

JOHN ADAMS AND PATRICK FITZGERALD

About a million of you, seeing Isikoff and Hosenball's and Justin Elliott's coverage of a story about Fitzgerald getting involved in an investigation of how photos of torturers ended up at Gitmo have emailed me the story in alarm. (This is a story I first covered 8 days ago.)

I'm going to attribute the alarm to the fact that neither Newsweek nor Elliott mention Bill Gertz's much more detailed and informative story that first broke this. And to the use of phrases like "most feared," "paparazzi," "national controversy," "star prosecutor," which sensationalize the story more than it appears to merit, at least thus far.

Here's what I think is going on:

1) DOJ has been investigating the John Adams Project since last August to find out how photographs of torturers got into the hands of detainees at Gitmo. The JAP has employed a Private Investigator to track down likely interrogators of detainees, to take pictures, get a positive ID, and once done, call those interrogators as witnesses in legal proceedings. DOJ appears concerned that JAP may have made info—learned confidentially in the course of defending these detainees—available to those detainees, and therefore violated the protective order that all defense attorneys work under. Yet JAP says they collected all the info independently, which basically means the contractors in question just got caught using bad tradecraft.

2) DOJ appears to believe no crime was committed and was preparing a report to say as much for John Brennan, who will then brief Obama on it.

3) But CIA cried foul at DOJ's determination, claiming that because one of the lawyers involved, Donald Vieira, is a former Democratic House Intelligence staffer, he is biased. They

seem to be suggesting that Vieira got briefed on something while at HPSCI that has biased him in this case, yet according to the CIA's own records, he was not involved in any of the more explosive briefings on torture (so the claim is probably bullshit in any case). After CIA accused Vieira of bias, he recused himself from the investigation.

4) So apparently to replace Vieira and attempt to retain some hold on DOJ's disintegrating prosecutorial discretion, DOJ brought in Patrick Fitzgerald to pick up with the investigation. Fitz, of course, a) has impeccable national security credentials, and b) has the most experience in the country investigating the Intelligence Identities Protection Act, having investigated the Torturer-in-Chief and his Chief of Staff for outing CIA spy Valerie Plame. In other words, DOJ brought in a guy whom CIA can't bitch about, presumably to shut down this controversy, not inflame it.

Now, it appears that the CIA's concerns were included in the memo to Brennan over DOJ's wishes. Or perhaps Fitz is just going to review the case. And if the JAP people did, as they say, use only external information to ID these torturers, then they are likely legally safe and the involvement of Fitz is simply going to quiet down the controversy.

But all that's obviously NOT what this is about, notwithstanding efforts to turn this into a big scandal.

It's about three things:

First, whether detainees at Gitmo will be able to call witnesses in legal proceedings. The government has protected the identities of the torturers at every step of the way, thereby preventing any detainee from holding a torturer responsible for their torture or, just as importantly, getting the torturer to testify to exonerating information (remember, for example, that some of the torturers have conceded that the confessions the detainees made were false).

What JAP is trying to do is simply collect the information they need to litigate their cases.

CIA scandal-mongering again to avoid any liability for torture. It's worth noting, CIA is using exactly the same excuse to explain their concern here as they used to explain why they destroyed the torture tapes:

CIA counterintelligence officials oppose the effort and say giving terrorists photographs of interrogators has exposed CIA personnel and their families to possible terrorist attacks.

Now aside from how hollow this cry rings from a bunch of people who themselves threatened detainee family members, I really do wonder how they think a bunch of al Qaeda detainees imprisoned for life will be able to wreak revenge on their torturers? And I wonder how Mitchell and Jessen appear to wander freely with no care of such things?

But the other thing this is about is eroding all DOJ's prosecutorial independence such that it cannot try any torture cases, because every single decision will have to be approved by former CIA bigwig John Brennan. The torturers know that the White House wants to ~~bury its head in the sand~~ look forward. DOJ wants to simply do its job and weigh decisions independently. But CIA knows if DOJ does that, it will face repercussions for the things it did.

And so it turns what should be a thoroughly uncontroversial effort to cater to CIA's concerns into a bigger scandal.