

HISTORY REPEATS ITSELF: KESSLER ORDERS PRESERVATION OF GITMO FORCED FEEDING TORTURE VIDEOS

With even the New York Times editorial page chiming in on Thursday (just after the Abramson firing on Wednesday, so this is clearly a big deal to them), Judge Gladys Kessler ruled on Friday that the military must stop its forced feedings of a Syrian prisoner at Guantanamo and preserve videos of him being forcibly extracted from his cell and being fed. We've seen this movie before. Recall that Kessler was one of at least two judges ordering the CIA to preserve video evidence of waterboarding before Robert Eater and Jose Rodriguez decided to go ahead with destruction of the videotapes. Considering how out of control John Bogdan, head of the Joint Task Force Guantanamo Detention Group, already has been, it would not surprise me at all for these videos to meet the same fate. Heck, given Eater's current behavior in trying to use intimidation to stop further revelations on the torture front, it wouldn't even surprise me for him to decide, through some sort of OCA role, that it is the CIA's job to take possession of and to destroy the tapes in question.

Here is Carol Rosenberg reporting on Kessler's ruling:

A federal judge waded deep into the Pentagon's handling of the Guantánamo hunger strike on Friday, ordering the military to temporarily suspend forced-feedings of a Syrian prisoner at the detention center until a hearing Wednesday.

U.S. District Court Judge Gladys Kessler in Washington, D.C., also ordered the military to preserve any video recordings guards might have made hauling Syrian Mohammed Abu Wa'el Dhiab, 42, from his cell and giving him nasogastric feedings in a restraint chair. He has also been identified as Jihad Dhiab in court papers and news reports.

The order appears to be the deepest intrusion into prison camp operations by the federal court during the long-running [hunger strike](#), which at one point last year encompassed more than 100 of Guantánamo's 154 detainees.

The military has since December refused to disclose how many detainees are force-fed as hunger strikers each day, and it was not possible to know if Navy doctors at the base considered Dhiab at risk by perhaps missing four or five days of tube feedings.

Rosenberg goes on to inform us that it only recently was learned that the videos exist. She also realizes that whether Bodgan and his crew will honor the order is an open question:

Military spokesmen from Guantánamo and the U.S. Southern Command did not respond Friday night to questions from the Miami Herald on whether the 2,200-strong military and civilian staff at the detention center had received and would honor the order.

Recall that when the waterboarding tapes were destroyed, that destruction was in direct violation of court orders, including one from Kessler:

The CIA destroyed the tapes in November 2005. That June, U.S. District Judge Henry H. Kennedy Jr. had ordered the

Bush administration to safeguard “all evidence and information regarding the torture, mistreatment, and abuse of detainees now at the United States Naval Base at Guantanamo Bay.”

U.S. District Judge Gladys Kessler issued a nearly identical order that July.

One ruse that was used to dodge the orders was the fact that the tapes were of prisoners that were “off the books” at the time of the court orders:

At the time, that seemed to cover all detainees in U.S. custody. But Abu Zubaydah and Abd al-Rahim al-Nashiri, the terrorism suspects whose interrogations were videotaped and then destroyed, weren’t at Guantanamo Bay. They were prisoners that existed off the books – and apparently beyond the scope of the court’s order.

Despite the clear knowledge that torture was carried out by the US and the videotapes of that torture were destroyed, there have been no consequences for those who were directly involved in these acts. As we saw back in March, the CIA attorney who gave the blessing for Rodriguez to destroy the tapes is now resorting to intimidation of Senate staffers to prevent further revelations of his crimes:

Dianne Feinstein just gave a barn burner of a speech explaining the CIA/SSCI fight over the Torture Report. There are a lot of details I’ll return to.

But one of the most important issues, in my mind, is the detail that the Acting General Counsel of the CIA, Robert EATINGER, referred the Senate Intelligence Committee investigators to DOJ for investigation. (h/t to [DocexBlog](#) for [identifying](#) EATINGER)

Feinstein correctly interpreted this as an attempt to intimidate her staffers as they complete the investigation.

And, as Feinstein made clear, Etinger is a key focus of the report. Feinstein revealed that Etinger (whom she did not name) was named, by name, (if I heard Feinstein's claim correctly) 1,600 times in the Torture Report.

At least some of those mentions surely describe CIA's decision to destroy the torture tapes, an act Etinger **sanctioned**.

But Etinger might not have to act. It seems pretty likely that John Bogdan will decide on his own to destroy the tapes, considering his central role in precipitating the hunger strike that is at the heart of the current litigation. From last July:

It has been clear for some time that the current hunger strike crisis at Guantanamo can be laid squarely at the feet of John Bogdan, who heads the Joint Task Force Guantanamo Detention Group. In other words, he is the head of the guard force. As I noted in **this post**, Shaker Amer's attorney, in a statement to Andy Worthington, clearly blamed Bogdan for the actions that precipitated the hunger strike.

Yesterday, Judge Royce Lamberth dealt a severe setback to Bogdan, striking down one of his most needlessly abusive practices.

While Kessler's ruling is a very positive development, history tells us that it is very unlikely the tapes will ever be viewed by a court or that anyone will ever face consequences either for the acts depicted in the tapes or their eventual destruction or removal from access.