

MEET DAVID PASSARO, THE ONLY CIA GUY PROSECUTED FOR DETAINEE ABUSE

As I said in my last post, bmaz and I are about to let loose a slew of posts on David Passaro, the only CIA guy prosecuted for detainee abuse. I first decided to look into Passaro's case given that he was prosecuted in relation to the death of an Afghan detainee, Ahmed Wali, in June 2004, whereas the CIA guy in charge of the Salt Pit was not prosecuted in relation to the death of Gul Rahman seven months earlier. Why, I wanted to know, was Passaro tried and convicted but Gul Rahman's killer has, thus far, avoided any consequences for Rahman's death.

As we'll eventually see, Passaro's lawyers tested many of the theories John Yoo laid out in his OLC memos.

Passaro was indicted in June 2004, not long after the Abu Ghraib scandal broke. He was tried and found guilty of assault in August 2006. He appealed his case to the Fourth Circuit, which last August rejected most of his appeal but remanded his case to the District Court for resentencing (his resentencing hearing was Wednesday and it's quite likely his sentence will be lowered to the five years he has already served). Though Passaro appealed his case to the Supreme Court, they denied him cert. That means his case—and his failed effort to rely on some of Yoo's theories—is legally binding for the Fourth Circuit, which just happens to cover both North Carolina (where JSOC is located) and Virginia (where CIA is located).

We'll cover all those details in follow-up posts. In this one, I just wanted to introduce you to Passaro and the events he was convicted for.

Passaro is around 44 years old now (so was 37

when he served in Afghanistan). Though none of the court filings provide much detail about Passaro's service, he is a former US Army Delta Special Forces medic, during which service he underwent SERE training. In 1990, he worked briefly as a cop in Hartford, CT, but got fired after being involved in a brawl (court filings mention one alleged and one other verified example of violent behavior on Passaro's part). Ultimately, in 2002, he was hired as what is called a contract paramilitary specialist. He describes being trained in renditions—during which, playing the detainee, he underwent physical abuse—before heading to Afghanistan, but the government says he was not trained in interrogations. In Afghanistan, he worked with Afghan militia conducting patrols, gathering intelligence, and capturing “terrorists.”

Passaro started as a CIA contractor in December 2002. He arrived in Afghanistan around May 17, 2003, briefly worked somewhere else, then moved to Asadabad firebase in early June. By the time he moved to Asadabad, Passaro was reporting to a CIA field officer with no military experience and no prior foreign assignments who had arrived at Asadabad just a month before Passaro.

The Asadabad firebase is a 200 meter square mud fortress with 10-foot walls located 5 miles from the Pakistani border, northeast of Jalalabad, Afghanistan. By 2003, 225 people were stationed there, including members of the 82nd Airborne, Special Forces, CIA, CIA contractors, and (in a number of filings) people from an “Other Government Agency” that doesn't appear to be the CIA. The firebase had been coming under rocket attacks that used white phosphorous starting in March 2003. Abdul Wali, whom Passaro was convicted of assaulting, was suspected of participating in those rocket attacks.

Passaro repeatedly pointed to some kind of classified information (probably intelligence from human sources) to support his claim that US forces knew Wali to be associated with the rocket attacks, and emphasized that Wali had

been designated a force protection target before he was arrested; the government referred to him as a suspect who insisted on his innocence. On June 18, 2003, Wali turned himself into the the Americans through the intervention of the son of the Province's governor, Hyder Akbar. No one did a medical intake exam of Wali when he turned himself in, though they did take a digital photo of him. There is some dispute over whose custody—DOD or CIA—he was in over the three days he was in US custody. In addition, there is some dispute about whether the head of the Special Forces team, Brian Halstead, or Passaro, ordered Wali to be sleep deprived and subjected to stress positions (they call the technique the "iron chair," which is basically the kind of wall-sit you might do in a gym for very limited periods, though Wali was forced to maintain the position for an hour or more). It appears that three or four people, in addition to Passaro, interrogated Wali before his death, the identity of one which Passaro didn't know. About 24 hours after he was detained, on June 19, Special Forces turned Wali over to the CIA; Passaro's CIA supervisor asked him if "we wanted to take a crack at him."

According to the government, when Passaro started questioning Wali, he told the guards, "his rules were different," his "only rule was not to cause permanent injury."

While the interpreter who attended Passaro's interview claimed, at one point, that Passaro never touched Wali, someone (it appears to be the same interpreter) testified that Passaro slammed Wali's face against the wall, kicked Wali, slammed him onto the ground, then subjected him to an hour of "iron chair." When Wali could no longer hold that position, Passaro hit Wali with his Maglite flashlight. Passaro kicked Wali in the groin.

The next day, June 20, Wali started showing signs of delirium and complained of stomach pain. The government says even after Wali was in this condition, Passaro continued to beat him,

this time using the Maglite to blind him before hitting him.

On June 21, Wali started asking the guards to shoot him. He was sluggish and appeared to be hallucinating. He collapsed (the government says Passaro kicked him after he collapsed), and within two hours, he died. The US turned Wali's body over to his family and never did an autopsy.

In the aftermath of Wali's death, the Governor of the Province (who, after all, had facilitated Wali's arrest) stated publicly that his family had a history of heart troubles, which probably contributed to the death. It appears Wali's death caused some tensions with local Afghans. At the same time, both CIA and DOD were providing different narratives of what happened to Wali as both agencies conducted their own investigations, and the commander of JTF-180 in Afghanistan, General John Vines, was accusing the CIA of "trying to leave a body on his doorstep." Within a month, George Tenet was involved, trying to soothe the US Ambassador to Afghanistan (who had not been informed in timely fashion) and General Vines.

As DOD and CIA investigations began, Passaro returned from Afghanistan and continued to work in a civilian role at Fort Bragg—in a position his pre-indictment lawyer says required either Secret or Top Secret clearance.

It's unclear precisely how and when the parallel DOD and CIA investigations into the death ended up focusing exclusively on Passaro. Apparently, at one point CID closed their investigation for lack of evidence, but reopened it in May 2004, as the Abu Ghraib story was breaking. That suggests the CIA Inspector General referred Passaro for criminal charges, because he received a target letter on February 10, 2004.

We'll get to his legal defense in follow-up posts. But it's of interest that he remained, working at Fort Bragg with some kind of clearance, from the time he got the target

letter until he was indicted on June 17, 2004. During that time (as described by his pre-indictment lawyer), he realized he might be arrested at any time, and was collecting documents in preparation to defend himself. Just over a week after he was indicted, US Marshalls seized a briefcase of his with two folders of legal materials inside.

It no doubt helped that he was indicted at the same time as the Bybee One memo became public, which led to a focus on the legal justifications the Bush Administration had laid out for torture. But between that, his SERE training, and his presence at Fort Bragg, Passaro appeared to have a very good idea how he might defend himself for having beat a guy so badly during interrogation that he died.