



National Archives and Records Administration

8601 Adelphi Road
College Park, Maryland 20740-6001

June 4, 2008

Steven Aftergood
Federation of American Scientists
1725 DeSales Road, NW
Sixth Floor
Washington, DC 20036

Dear Mr. Aftergood:

This is in response to your Freedom of Information Act (FOIA) request of December 20, 2007, for records regarding the destruction of audio, video or digital recordings of the Padilla interrogations. Your request was received in this office on December 20, 2007 and assigned the tracking number NGC08-047. We apologize for the delay in responding.

We have conducted a search of the records of the Office of General Counsel and the Life Cycle Management Division and located approximately 62 pages of records that are responsive to your request. Of those, we are releasing 4 pages in full. We are releasing 6 pages in part with redactions pursuant to 5 U.S.C. 552(b)(3). The statute in this instance is 10 USC § 424, which authorizes the withholding of organizational and personnel information for DIA. The remaining 54 pages are being withheld in full pursuant to 5 U.S.C. 552(b)(5), which pertains to certain inter- and intra- agency communications protected by the deliberative process privilege.

You have the right to file an administrative appeal of this denial. You may do so by writing the Deputy Archivist (ND), Room 4200, at the above address, and briefly state the reasons why the National Archives and Records Administration should release the withheld records. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." The appeal should include a copy of the initial request and denial, and must be received no later than 35 calendar days after the date of the denial letter.

Questions concerning this response can be addressed to the attention of our FOIA Customer Service Center by calling at 301-837-FOIA.

Sincerely,



RAMONA BRANCH OLIVER
FOIA & Privacy Act Officer
Office of General Counsel

Enclosure

16:31

DI. 11:11:59



National Archives and Records Administration

8601 Adelphi Road
College Park, Maryland 20740-6001

May 16, 2007

(b)(3)
[REDACTED]
Chief, Office for Information and Special Services
Defense Intelligence Agency
Bolling Air Force Base
ATTN: SV-1
Washington, DC 20340-3299

Dear [REDACTED]

The National Archives and Records Administration (NARA) has become aware of a possible unauthorized disposal of DIA records based on a February 28, 2007 *Newsweek* report (copy attached). As reported by *Newsweek*, DIA can no longer locate a crucial video recording of Mr. Jose Padilla's final interrogation session held by DIA officials at a U.S. Navy brig in Charleston, S.C. on March 2, 2004. There is currently no approved schedule that covers this series of records. Therefore, disposition action is not authorized.

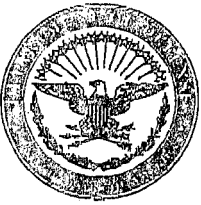
In accordance with 44 USC 2905, NARA is obligated to investigate allegations of unauthorized destruction or alienation of Federal records. We request that you look into this matter and determine if there was an unauthorized disposal of Federal records. If there was an unauthorized disposal of Federal records, please provide us with the report required under 36 CFR 1228.104 (copy enclosed) within 30 days of the date of this letter. If you are unable to complete your inquiry within this time, please let us know what actions you have taken and when you expect to submit the full report.

Thank you for your cooperation. If you have any questions, please contact Curt Francisco at 301-837-0663.

Sincerely,

LAURENCE BREWER
Acting Director
Modern Records Programs

Enclosures



DEFENSE INTELLIGENCE AGENCY

WASHINGTON, D.C. 20340-5100



U-313-07/GC

December 6, 2007

VIA FAX: 301-837-3698

Mr. Paul Wester
Director
Modern Records Programs
National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740-6001

RE: 36 C.F.R. § 1228.104 Report - Padilla Interrogation Tape

Dear Mr. Wester:

Please allow this to serve as the Defense Intelligence Agency's (DIA or Agency) report regarding the destruction of a Padilla interrogation tape. This report is written in accordance with requirements set forth in 36 C.F.R. § 1228.104, your letter dated May 16, 2007, a copy of which is included for your convenience, and the meeting between our Agencies on October 19, 2007 regarding this matter.

The Agency conducted an inventory of the video records of the Padilla interrogations in connection with his criminal trial. At that time, the Agency discovered that a DVD from an interrogation session conducted in March 2004 could not be located. Agency officials diligently searched all files, including electronically stored data and hard drives, to locate the DVD or its contents, to no avail. Agency officials also appeared before Judge Cooke in the United States District Court in the Southern District of Florida to explain that the DVD could not be located and the Judge made no adverse comment.

To avoid accidental record disposal or destruction in the future, officials charged with preservation and maintenance of such records are using more rigorous control procedures to detail transfer of record custody in accordance with disposition instructions of the Agency's approved records schedule (DIA Instruction 5015.001, Records Management Program, 29 September 2004).

Please contact Assistant General Counsel [REDACTED] if you have further questions. (b)(3)

Very respectfully,

[REDACTED]

Principal Deputy General Counsel

CC: VIA FAX: 301-837-0293
Mr. Gary Stern
General Counsel, NARA

VIA EMAIL

[REDACTED]
Chief, Office for Information and Special Services, DIA

[REDACTED]
Chief, Records Administration Services Branch, DIA

[REDACTED]
Chief, Public Access and Dissemination Services Division, DIA

(b)(3)

December 11, 2007

(b)(3)

[REDACTED]
Principal Deputy General Counsel
Defense Intelligence Agency
Pentagon 2E-238
Washington, DC 20301-7400

Dear [REDACTED]

We have reviewed your letter of December 6, 2007, concerning the unauthorized disposal of Defense Intelligence Agency (DIA) records. The letter describes the events and your corrective actions and is in compliance with 36 CFR 1228.104. NARA, therefore, will close out our examination of this matter.

We look forward to working with you to schedule all DIA records, including the operational files, to ensure that adequate and proper documentation of DIA activities is maintained. If you have any questions, please contact Lisa Roberson of the Life Cycle Management Division on (301) 837-0759, or by email at lisa.roberson@nara.gov.

Sincerely,

PAUL M. WESTER, JR
Director
Modern Records Programs

Official file – NWML
Reading file – NWML
NWM
Roberson

**1301-1b Unauthorized Destruction Defense
Intelligence Agency**

S:/alleged/DIA.Closeout.doc

LR/sg/12/11/07



Terror Watch: The Missing Padilla Video

The government made a secret video of its interrogations of 'enemy combatant' Jose Padilla. But now that he's on trial, the Feds claim they don't know where it went.

WEB EXCLUSIVE

By Michael Isikoff and Mark Hosenball

Newsweek

Updated: 7:32 p.m. ET Feb 28, 2007

Feb. 28, 2007 - A federal judge ruled today that suspected Al Qaeda operative Jose Padilla is mentally competent, paving the way for his long-delayed case to proceed to trial, at long last, in April. But the ruling by U.S. Judge Marcia Cooke in Miami leaves open what may be more intriguing questions than those surrounding the defendant's mental health: what happened to a crucial video recording of Padilla being interrogated in a U.S. military brig that has mysteriously disappeared?

The missing DVD dates from March 2, 2004. It contains a video of the last interrogation session of Padilla, then a declared "enemy combatant" under an order from President Bush, while he was being held in military custody at a U.S. Navy brig in Charleston, S.C. But in recent days, in the course of an unusual court hearing about Padilla's mental condition, a government lawyer disclosed to a surprised courtroom that the Defense Intelligence Agency—which had custody of the evidence—was no longer able to locate the DVD. As a result, it was not included in a packet of classified DVDs that was recently turned over to defense lawyers under orders from Judge Cooke.

The disclosure that the Pentagon had lost a potentially important piece of evidence in one of the U.S. government's highest-profile terrorism cases was met with claims of incredulity by some defense lawyers and human-rights groups monitoring the case. "This is the kind of thing you hear when you're litigating cases in Egypt or Morocco or Karachi," said John Sifton, a lawyer with Human Rights Watch, one of a number of groups that has criticized the U.S. government's treatment of Padilla. "It is simply not credible that they would have lost this tape. The administration has shown repeatedly they are more interested in covering up abuses than getting to the bottom of whether people were abused."

Alicia Valle, a spokeswoman for the U.S. Attorney's Office in Miami, said in an e-mail to NEWSWEEK that the missing DVD was "of the last interrogation of Padilla while in military custody." She further added that a lawyer for DIA had advised the court "that an exhaustive search was conducted but the [DVD] could not be located." She added that a classified document summarizing what took place during the session did exist, however. (Valle did not respond to followup questions from NEWSWEEK, and a spokesman for the DIA said the agency could not comment because of the pending litigation.)

The contents of the DVD was at least theoretically relevant to the issue that was before Judge Cooke this week: whether Padilla was so traumatized by the way he was treated while he was in military custody that he is now mentally unfit to aid his own lawyers in his defense. But after several day of testimony, Cooke ruled otherwise. "The defendant clearly has the capacity to assist his attorneys," she declared today.

She added that the 36-year-old defendant, a former Chicago gang member with a long history of criminal conduct, appeared to have a good understanding of the legal proceedings involving him. "He is aware of the consequences," she said. After the ruling, Padilla, who has sat largely emotionless through the past few days of testimony about his mental competency, stood up and smiled, making a point of shaking the hands of each one of his defense attorneys.

The existence of video recordings of Padilla's interrogation sessions was **first disclosed by NEWSWEEK last December**. But the fact that one of them had disappeared was not revealed until an assistant U.S. attorney, Stephanie K. Pell, mentioned it in court late last week and again on Monday. Pell is one of the prosecutors in a criminal case that has since been brought against Padilla and two codefendants, Adham Amin Hassoun and Kifah Jayyousi, on charges of conspiracy to provide material support for terrorism overseas and other offenses.

In court, neither Pell nor the DIA lawyer offered any explanation as to why or how the DVD went missing. On Monday, Judge Cooke accepted the government's account and did not press for any further details, concluding the missing DVD was not directly relevant to Padilla's current mental condition.

Cooke did, however, direct the government to determine whether the written summary document could be turned over to defense lawyers who have been given access to classified material. Anthony Natale, one of the Padilla's

defense lawyers, said he could not comment beyond the brief references to the missing video that were made in open court. But the circumstances of his interrogation sessions are likely to come up again, because they go to the larger questions about the treatment of Padilla over the past few days.

In arguing that Padilla should be declared incompetent, his lawyers have contended that their client was subjected to extraordinarily harsh treatment that included extreme isolation, manipulation of the temperature in his cells, loud noises and other techniques designed to break him down. As part of their case, the defense introduced testimony from two mental-health professionals who testified Padilla was now uncommunicative with his lawyers and suffering from posttraumatic stress disorder caused by his treatment at the naval brig.

The defense has also found some support for their case in the accounts of two U.S. government officials. One is the technical director of the brig, who testified that Padilla was at times subjected to unannounced and "irregular" cell checks, deprived of a mattress and forced to sleep on the steel frame of a bunk.

But many of the more sensational claims made by Padilla—that he was, for example, injected with LSD or some other drug designed to be used as a "truth serum"—have also been vigorously denied by the government. Sandy Seymour, the brig technical director, testified that Padilla did receive an injection, but that it was a flu shot, not LSD. But the government's overall conduct in the case has bolstered skepticism about its claims. Padilla has been treated differently from virtually every other domestic terror suspect. Arrested by the FBI at Chicago's O'Hare airport in May 2002, Padilla—a U.S. citizen—was declared an "enemy combatant" under an order signed by President Bush the following month. He was then removed from the criminal-justice system and whisked off to the military brig without any criminal charges filed against him. He was not allowed to consult with a lawyer. At the time, Attorney General John Ashcroft said the president acted after receiving intelligence reports that Padilla had re-entered the United States on his way back from Pakistan in order to carry out an Al Qaeda plot to set off a radiological "dirty bomb" inside the country.

As an enemy combatant, Padilla was a candidate for a number of aggressive interrogation techniques, including manipulation of temperatures and exploitation of phobias, that were for a time approved by Secretary of Defense Donald Rumsfeld. But the handling of his case—particularly of the government's refusal to allow him to have an attorney—provoked a fierce national debate over civil liberties, which eventually went to the Supreme Court in 2004.

That's what makes the timing of the missing DVD noteworthy. In the spring of 2004, not long after the final interrogation session on March 2, and just before oral arguments before the Supreme Court, Padilla's lawyers were notified they would be permitted to consult with him after all.

And then on June 1, 2004, just weeks before the Supreme Court was expected to rule on the case, James Comey, deputy attorney general at the time, released a declassified Pentagon document that was said to be based on the secret interrogation sessions of Padilla in the military brig. The document said that Padilla had apparently confessed to having undergone weapons training at an Al Qaeda camp in Afghanistan and had met with Al Qaeda leaders Khalid Shaikh Mohammed and Abu Zubaydah. He allegedly discussed with them the idea of detonating a nuclear or radiological bomb in the United States. But Al Qaeda leaders were said to have concluded the plan was unworkable and instead dispatched him on a mission to blow up high-rise apartment buildings.

Comey described the account as a "sobering story" that illustrated the continuing danger from Al Qaeda's efforts to bring operatives into the country. But he and other government officials acknowledged the statements Padilla made in the course of the interrogation sessions could never be used as evidence in a regular courtroom, because they were made without him ever being advised of his legal rights. The government has also consistently refused to discuss how Padilla was interrogated, saying such a disclosure would assist Al Qaeda to prepare countermeasures for other operatives who might be captured in the future.

As it turned out, the Supreme Court did not rule on Padilla's treatment in 2004 and instead sent the case back to the lower courts on technical grounds. But the expectation that it would return—and that the Supreme Court would ultimately rule that the president's action was unconstitutional—prompted the government to transfer him back into Justice Department custody and indict Padilla on criminal charges in November 2005. The indictment accused Padilla of being part of a North American support cell that was committed to promoting violent jihad abroad. But it made no mention of the dirty-bomb plot—or even one against apartment buildings—the allegations that the administration originally used to justify his highly unusual treatment.

Carmen Gentile in Miami contributed to this report.

URL: <http://www.msnbc.msn.com/id/17389175/site/newsweek/>