

GRAVELY DAMAGING INTELLIGENCE GAPS

Just two or three more bits on this Panetta declaration and the related Vaughn Index (Part One, Part Two).

Before he insisted in his declaration, implausibly, that he wasn't trying to hide embarrassing information that might show legal wrong-doing, Leon Panetta gave this general explanation for why he couldn't release this information:

I want to emphasize to the Court that the operational documents currently at issue contained detailed intelligence information, to include: intelligence provided by captured terrorists; intelligence requirements that CIA prioritized at specific points in time; what the intelligence community did not know about enemies in certain time frames, i.e., intelligence gaps;

[snip]

Much information in the documents is intelligence that was being provided to the field and intelligence that was being gathered from the interrogations. This sensitive intelligence provides important insight into what the CIA knew—and did not know, i.e. intelligence gaps—at specific points in time on specific matters of intelligence interest. I have determined that the disclosure of intelligence about al Qai'da reasonably could be expected to result in exceptionally grave damage to the national security by informing our enemies of what we knew about them, and when, and in some instances, how we obtained the intelligence we possessed.

Remember, earlier this year the ACLU and CIA

agreed that the Agency could exclude raw intelligence cables from this FOIA response.

In response to earlier orders, the CIA originally identified approximately 3,000 documents potentially responsive to paragraph 3 of the Court's April 20, 2009 Order. Those 3,000 records included "contemporaneous records," which were created at the time of the interrogations or at the time the videotapes were viewed, "intelligence records," which do not describe the interrogations but contain raw intelligence collected from the interrogations, "derivative records," which summarize information contained within the contemporaneous records, and documents related to the location of the interrogations that, upon further review by the CIA, were determined not to relate to the interrogations or to the destroyed videotapes.

With respect to paragraph 3 of the April 20, 2009 Order, the parties jointly propose that the Government address the contemporaneous and derivative records, but not the intelligence records or the other records that ultimately proved to be unrelated to the interrogations or the videotapes. [my emphasis]

Nevertheless, even before Panetta says he can't turn over this material because it would reveal the identities of our counterintelligence officers and the location at which we conducted these interrogations, he says he can't turn over this material because it'll reveal the intelligence that went into and came out of the interrogations, even though this is not the primary record of intelligence gathered in the interrogations.

Now, there's one obvious reason Panetta'd be fearful of releasing this stuff; he doesn't want to reveal how we prioritized the information we

sought from Abu Zubaydah and Rahim al-Nashiri. Imagine the scandal, of course, if the cables were to reveal that the first questions we asked Zubaydah after waterboarding him in August 2002 pertained to purported ties to Iraq? (I have no evidence it was and the CIA said they didn't tie any Iraq questions to waterboarding—but that's the sort of question we ought to be asking.)

Ahem.

But I'm particularly interested in the key thrust of his concern: intelligence gaps. Panetta says the US citizens cannot have these documents because they'll reveal what we "did not know about enemies in certain time frames." It'll reveal "what the CIA knew—and did not know, i.e. intelligence gaps—at specific points in time on specific matters of intelligence interest."

Aside from the obvious governance reason to reveal that—if the CIA was totally ignorant about stuff when it shouldn't have been, the taxpayer ought to know that—consider his emphasis on gaps and timing.

What we didn't know and when we didn't know it.

I can think of one really big intelligence gap that the CIA filled either before or after it started torturing Abu Zubaydah: the critical detail that Abu Zubaydah was not—as George Bush had proclaimed—the mastermind of the 9/11 attacks, but was instead a sort of travel agent for a training camp that al Qaeda had tried to shut down as a competitor.

I can see why it'd be embarrassing to have to reveal that fact—not least because of the President's crowing about catching the purported mastermind of the attacks. After all, if Abu Zubaydah wasn't who we claimed him to be—if he wasn't a top al Qaeda figure with actionable intelligence on upcoming attacks—then the whole torture thing becomes illegal.

I can see how Leon Panetta wouldn't want us to learn when the CIA found about this critical

detail.