

THE ASSASSINATION SQUADS: TWO POINTS

Siobhan Gorman reports that the secret program that Leon Panetta just revealed to Congress is an assassination squad.

A secret Central Intelligence Agency initiative terminated by Director Leon Panetta was an attempt to carry out a 2001 presidential authorization to capture or kill al Qaeda operatives, according to former intelligence officials familiar with the matter.

The precise nature of the highly classified effort isn't clear, and the CIA won't comment on its substance.

According to current and former government officials, the agency spent money on planning and possibly some training. It was acting on a 2001 presidential legal pronouncement, known as a finding, which authorized the CIA to pursue such efforts. The initiative hadn't become fully operational at the time Mr. Panetta ended it.

In 2001, the CIA also examined the subject of targeted assassinations of al Qaeda leaders, according to three former intelligence officials. It appears that those discussions tapered off within six months. It isn't clear whether they were an early part of the CIA initiative that Mr. Panetta stopped.

Two comments about this.

First, there must be something more. Aside from the near ubiquitous drone strikes, which seem to be fully acknowledged and non-controversial, there have been enough personal strikes against al Qaeda figures that appear likely to have been assassinations, that for all intents and

purposes, it appears we are assassinating al Qaeda figures.

It may be, for example, that the conflict reported by Sy Hersh is the problem—that Special Ops has the mandate to kill but CIA is being dragged into those assassinations.

Senior Democrats in Congress told me that they had concerns about the possibility that their understanding of what the new operations entail differs from the White House's. One issue has to do with a reference in the Finding, the person familiar with it recalled, to potential defensive lethal action by U.S. operatives in Iran. (In early May, the journalist Andrew Cockburn published elements of the Finding in *Counterpunch*, a newsletter and online magazine.)

The language was inserted into the Finding at the urging of the C.I.A., a former senior intelligence official said. The covert operations set forth in the Finding essentially run parallel to those of a secret military task force, now operating in Iran, that is under the control of JSOC. Under the Bush Administration's interpretation of the law, clandestine military activities, unlike covert C.I.A. operations, do not need to be depicted in a Finding, because the President has a constitutional right to command combat forces in the field without congressional interference. But the borders between operations are not always clear: in Iran, C.I.A. agents and regional assets have the language skills and the local knowledge to make contacts for the JSOC operatives, and have been working with them to direct personnel, matériel, and money into Iran from an obscure base in western Afghanistan. As a result, Congress has been given only a partial view of how the money it

authorized may be used. One of JSOC's task-force missions, the pursuit of "high-value targets," was not directly addressed in the Finding. There is a growing realization among some legislators that the Bush Administration, in recent years, has conflated what is an intelligence operation and what is a military one in order to avoid fully informing Congress about what it is doing.

"This is a big deal," the person familiar with the Finding said. "The C.I.A. needed the Finding to do its traditional stuff, but the Finding does not apply to JSOC. The President signed an Executive Order after September 11th giving the Pentagon license to do things that it had never been able to do before without notifying Congress. The claim was that the military was 'preparing the battle space,' and by using that term they were able to circumvent congressional oversight. Everything is justified in terms of fighting the global war on terror." He added, "The Administration has been fuzzing the lines; there used to be a shade of gray"—between operations that had to be briefed to the senior congressional leadership and those which did not—"but now it's a shade of mush."

"The agency says we're not going to get in the position of helping to kill people without a Finding," the former senior intelligence official told me.

But even that can't be it. While the conflict Hersh reported pertained to Iran, not al Qaeda, Congress clearly knows about this conflict—they've even drafted legislation to curb it. Nevertheless, you'd think that if Congress saw this going on with regards to Iran, it'd worry them more than the same practice going on with al Qaeda.

Second, just to pre-empt the inevitable discussion of "law" every time this comes up. Yes, EO 12333 still appears to ban assassinations.

No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination.

But EO 12333 is precisely the Executive Order that Sheldon Whitehouse invoked in 2007 when he revealed that Bush got an OLC opinion stating he could change EOs without changing the EO—what I call pixie dust.

Here's what—according to Whitehouse, who after all ought to know—Bush believes about whether or not he has to follow EO 12333, an Executive Order signed by Saint Reagan.

Let's start with number one. Bear in mind that the so-called Protect America Act that was stamped through this great body in August provides no — zero — statutory protections for Americans traveling abroad from government wiretapping. None if you're a businesswoman traveling on business overseas, none if you're a father taking the kids to the Caribbean, none if you're visiting uncles or aunts in Italy or Ireland, none even if you're a soldier in the uniform of the United States posted overseas. The Bush Administration provided in that hastily-passed law no statutory restrictions on their ability to wiretap you at will, to tap your cell phone, your e-mail, whatever.

The only restriction is an

executive order called 12333, which limits executive branch surveillance to Americans who the Attorney General determines to be agents of a foreign power. That's what the executive order says.

But what does this administration say about executive orders?

An executive order cannot limit a President. There is no constitutional requirement for a President to issue a new executive order whenever he wishes to depart from the terms of a previous executive order. Rather than violate an executive order, the President has instead modified or waived it.

"Whenever (the President) wishes to depart from the terms of a previous executive order," he may do so because "an executive order cannot limit a President." And he doesn't have to change the executive order, or give notice that he's violating it, because by "depart(ing) from the executive order," the President "has instead modified or waived it."

So for those who will, inevitably, immediately invoke E0 12333 in arguing that assassination is "illegal," please do your homework. E0 12333 apparently prohibits assassinations, but there's no way we can guarantee that Bush didn't pixie

dust the EO back in 2001 when he set up his little assassination squad. Furthermore, an EO is just that, an EO, one that a President can change at will without even publicly informing Congress or the American people. While it counts as law for the Executive Branch, it is not the same as a law passed by Congress, and treating it as if it is is simple foolishness at this point.

I assume we'll learn more about this in coming days. But thus far, I'm not convinced this is the whole of the story yet.

Update: Okay, the WaPo explains that it's not the assassinations themselves, it's technical capability to make assassinations easier.

The program began shortly after the Sept. 11, 2001, attacks and was authorized by Bush as part of a highly classified directive on Sept. 26 of that year. The directive granted the CIA blanket authority to attempt to kill or capture al-Qaeda operatives.

Former intelligence officials said the program was aimed at enhancing the agency's ability to carry out the goals of the directive.

Note the date, too. The presidential finding that enabled CIA to capture and keep Al Qaeda members was signed September 17, 2001. So this is a follow-up to that one, it appears.

Also, consider this recent reporting from Wired.

American drone strikes are finding their targets in Pakistan through a series of infrared homing beacons, Al Qaeda alleges in a new online publication.

The American and Pakistani intelligence services credit U.S. unmanned aircraft with decimating the ranks of terrorist and insurgent operatives in Pakistan. "Very frankly, it's the only game in town in terms of confronting and trying

to disrupt the Al Qaeda leadership," CIA director Leon Panetta said in May. The unmanned aircraft have supposedly carried out 28 attacks on suspected militants, just since the start of the year. Hundreds have been killed, including as many as 45 more people in a series of strikes today.

But how the killer drones find their targets has been a matter of some dispute. Local Taliban commander Mullah Nazir, himself an occasional target, says they're guided by SIM cards, installed in militant cell phones. Area tribesmen talk of homing devices, planted by informants, that are capable of signaling American aircraft. In *The Ruling Concerning Muslims Spies*, an internet-distributed book written by self-styled theologian and emerging Al Qaeda leader Abu Yahya al-Libi, warns readers of American infrared devices which he claims directs the attacks on Al Qaeda and its allies.

"These result in the firing of the murderous and destructive missiles whose wrath is inflicted on the Mujahedeen and the weak," he writes. Then he provides "photos of some of the devices the spies painstakingly transport to the targets they are assigned by their infidel patrons."

The pictures of the "chips with 9 volt batteries" provided in the book (see photo, above) bear a sharp resemblance to the Phoenix and Pegasus models of infrared flashing beacons made by Cejay Engineering. The devices are used by the U.S. military, among others, to identify friend from foe, mark drop zones, and outline perimeters.

Now, I don't think these beacons are the big secret thing. But I think the big secret might

be something similar to this—a technical toy that would make it easier to conduct drone attacks or the like.