PANETTA'S PARSINGS

As bmaz reported yesterday, in addition to the five current and former CIA officers whom Judge Lamberth has said were invoking state secrets to protect something that wasn't secret anymore, Lamberth also criticized a declaration he received from Leon Panetta invoking state secrets anew. He describes Panetta's declaration this way:

> Director Panetta's unclassified declaration appears to significantly conflict with his classified declaration. His unclassified declaration states that: "Plaintiff has provided a declaration in which he stated that the alleged wiretap at issue in this case was allegedly the result of an eavesdropping transmitter placed under the coffee table located in his residence in Burma… To the extent that this is his allegation, he is permitted to proceed with discovery to determine whether such a transmitter was used." (Panetta Unclassified Decl at 9) Panetta later states, however, that the plaintiff cannot inquire into information about the "U.S. Government's capabilities to conduct electronic surveillance." id. If a method of intelligence is unclassified and publicly available, it is not immediately apparent why it suddenly becomes a state secret to even argue that it could be used by the U.S. Government. Moveover, the plaintiff makes a credible argument not only that the device is publicly known, but that the fact that the government uses this type of device is publicly available, as this type of device is on display at the Spy Museum in Washington, D.C. Indeed, Panetta's classified, ex parte declaration significantly conflicts with the unclassified declaration and appears

> to acknowledge that the plaintiff can present evidence as to the coffee table eavesdropping transmitter, even if it is used by the U.S. Government. Panetta states: "Plaintiff has alleged that the defendants used an eavesdropping transmitter placed under the coffee table located in his residence in Burma. He has also stated that these types of transmitters are publicly available and on display at the Spy Museum in Washington, D.C. To the extent that the theory of his case is that the defendants conducted the alleged surveillance using purely unclassified, publicly available methods, I do not assert the state secrets or statutory privileges. To the extent Plaintiff's discovery attempts to sweep more broadly, and to inquire about other intelligence capabilities … such discovery cannot proceed …." (Panetta Classified Decl. 21) (citations omitted and emphasis added). In other words, Panetta's classified declaration appears to acknowledge that an eavesdropping transmitter of the type alleged by Horn is not a state secret even if used by the U.S. Government. [my emphasis]

I'm still looking for Panetta's declaration here (at least the unclassified one–love that Lamberth quoted from the classified one). But as I understand it, the issue has as much to do with Panetta's mushy line about whether the government really is, or is not, declaring state secrets (even as part of a state secrets declaration). He seems to be trying to say Horn can't have discovery on any surveillance–such as telecom surveillance–outside of the transmitter Horn says was placed on his coffee table. But at the same time, Panetta appears to be trying to stretch that to extend to whether in this case the CIA put a transmitter on his coffee table, even though the government's use of such things is widely known.

Just months into the job, and Panetta already has a problem with the credibility of his statements to the Courts.

I focus on this because—unlike almost everyone else named by Lamberth in this case (save Eatinger, who was one of the guys who told Jose Rodriguez he could destroy the torture tapes)—Panetta's declarations are being actively assessed by other Courts. Take the ACLU FOIA suit to get the documents related to the destroyed torture tapes. As I wrote last month, even Panetta's unclassified declaration in that suit is bogus on its face.

> Well, that didn't take long, for a Director of Central Intelligence to totally lose his credibility in the servitude of the institution. What has it been? Three, four months?
>
> I'll have more to say about Panetta's declaration in the ACLU FOIA case tomorrow. But for now, a little unsolicited advice for the spook-in-chief.
>
> When you say,
>
>> I also want to emphasize that my determinations expressed above, and in my classified declaration, are in no way driven by a desire to prevent embarrassment for the U.S. Government or the CIA, or to suppress evidence of unlawful conduct,
>
> Yet the entire world knows—and the CIA has itself acknowledged—that the materials in question do, in fact, show evidence of unlawful conduct, and when you sort of kind of pretend that no one else knows what they all know—that the materials show evidence of unlawful conduct…

> Then you look like a fool.
>
> A chump.
>
> Like George Tenet, maybe, when he boasted of "slam dunk."
>
> And then when you go on to say,
>
>> As the Court knows, some of the operational documents currently at issue contain descriptions of EITs being applied during specific overseas interrogations. These descriptions, however, are EITs as applied in actual operations, and are of qualitatively different nature than the EIT descriptions in the abstract contained in the OLC memoranda.
>
> Then you're just hoping we're all bigger idiots than we really are.
>
> Let me say this plainly. According to the CIA—the CIA itself—there's a reason why the interrogations don't resemble the "EIT descriptions in the abstract contained in the OLC memoranda." That's because some cowboy probably named James Mitchell who was getting rich off of torture thought things would be more poignant—yes, the fucker actually said "poignant"—if he drowned Abu Zubaydah in gallons of water rather than sprinkling him like a daisy. There's a reason why the descriptions of torture as it was applied is such a problem—and yes, is evidence of unlawful conduct. And that's because we know—we all know!!!!—that the torture began before the memos authorized it, and the torture exceeded what few guidelines John Yoo placed on it.
>
> So don't give me this crap about not trying to avoid embarrassment—unless you

> start admitting how damning this shit is.
>
> We know you're trying to hide the evidence of criminal torture. Insisting, over and over, under oath, that that's not what you're doing isn't convincing anyone.

The proof that the government was claiming state secrets over something that was embarrassing, but not secret, is going to make a lot of judges scrutinize the government's state secrets invocations more closely. Lamberth's use of a CIPA-like process going forward in this case will likely make it easier for other District Judges to advocate such an approach for their cases (think Jeppesen, in particular).

But Lamberth's public smackdown of Leon Panetta is going to affect cases that don't have to do with state secrets, as well.

This is the problem with all the bogus claims left over from the Bush Administration the Obama Administration has decided to support. They're going to very quickly destroy any credibility that people like Leon Panetta has with the Courts.

Or rather, they already have.