

DOD GETS AWFULLY SENSITIVE WHEN THEY'RE CORNERED

Just about every outlet that reported on George Little's whine about Matt Bissonnette's book yesterday claimed that Little had said there was "classified" information in the book.[all emphasis in this post mine]

CNN: A Pentagon official said Tuesday that a former Navy SEAL who helped kill Osama bin Laden included classified material in his new book and did not follow protocol for pre-publication review.

AP: George Little said that an official review of the book, "No Easy Day," determined that it reveals what he called "sensitive and classified" information.

ABC: Top Pentagon officials said today that a controversial firsthand account of the nighttime raid that killed Osama bin Laden written by a former U.S. Navy SEAL reveals classified information and could endanger other special operations servicemen.

Fox: "Sensitive and classified information is contained in the book," Pentagon spokesman George Little told reporters in Washington. "It is the height of irresponsibility not to have this material checked."

The reality is far more telling. Little did not commit to saying there was classified information in the book until cornered after repeated questions by the press. The transcript is worth reviewing in more detail since, if this ever gets litigated, Little's hesitation to claim the book included classified information

will become an issue.

In response to the first question on Bissonnette's book, Little gave what was probably his rehearsed answer to it. He focused on Bissonnette's failure to do a prepublication review (remember, Bissonnette's lawyer, Bob Luskin, says such a review was recommended but not required). And when discussing the actual review, Little said there was sensitive information; only later, speaking more generally, did Little say "sensitive and classified."

George, on the separate issue, on the SEAL book, has the department made a decision yet on whether to take any legal action regarding this and on whether or not there is classified material in the book, and if there – if, indeed, you've determined there is, can you tell us what it is and what action may or may not be taken at this point?

MR. LITTLE: Thank you very much, Lita, for that question. We continue to review our options when it comes to legal accountability for what in our estimation is a material breach of nondisclosure agreements that were signed by the author of this book.

With respect to the information that's contained in the book, people inside the department have read it. And we do have concerns about some of the sensitive information that we believe is contained in it. I'm not going to get out ahead of what the process going forward might be and what options we might decide to pursue, but this is a very serious concern that we have.

When it comes to sensitive special operations missions, such as the operation that took down Osama bin Laden, it is important that those who are involved in such operations take

care to protect sensitive and classified information. And if I had been part of the raid team on the ground and I had decided to write a book about it, it wouldn't have been a tough decision for me to submit the book for pre-publication review. That is common sense. It's a no-brainer. And it did not happen.

Thus far into the process, the press wasn't buying Little's slight of hand. He gets a followup on the sensitive/classified distinction, which he dodges by focusing on pre-publication review again.

Q: Will you – just as a follow-up – you made a distinction between sensitive and classified. So is the determination that it is sensitive information there and not classified? And also, is there any determination on whether the book will be sold on – on bases (off mic)

MR. LITTLE: There's been no directive from this department to withhold sale of the book from military exchanges. This book is being made widely available in bookstores and online. It is not our typical practice to get into the business of deciding what and what does not go on bookshelves in military exchanges. But that doesn't mean in any way, shape or form that we don't have serious concerns about the fact that this process of pre-publication review was not followed.

This is a solemn obligation. And the author in this case elected not to abide by his legal obligations. And that's disheartening and, frankly, is something that we're taking a very close look at.

He gets another followup, which he doesn't answer directly.

Q: So there is classified information in the book, the department believes?

MR. LITTLE: We believe there's sensitive information that would have raised concerns had this book gone through pre-publication review. There's no doubt about it.

The conversation returns to the question of the nondisclosure agreement. When asked if he can release the nondisclosure agreements to prove that DOD's interpretation—that a review was required, rather than invited—Little dodges again, pleading privacy (not secrecy—which is funny, since we know one of the NDAs lists Special Access Programs).

So then the reporters come back to the sensitive/classified distinction. When cornered, Little—who earlier had said that several people in the department had finished the book, now said they weren't done with their review (this may suggest that DOD has only found sensitive information, but CIA, which is a bunch more "sensitive" hasn't finished its review yet)—starts talking about DOD's belief that there will be classified information in the book once they get done reviewing a book they've already read.

Q: George, can you tell me the difference between sensitive information and classified information?

MR. LITTLE: Yeah, I mean, we can dance around definitions all we want, Elisabeth, but —

Q: (off mic)

MR. LITTLE: I agree. We are — we are very concerned that — that classified information may be contained in this book.

Q: Wait a minute. So wait a minute. You haven't found any yet? You're saying you found sensitive information, but not

classified.

MR. LITTLE: We have – we have – we have very serious concerns that classified information is likely contained in this book.

Q: Have you made a determination yet, though, about whether – has anyone determined that there is, in fact, classified information in there?

MR. LITTLE: We are, of course, continuing to review the book, but at this stage, let me put it this way. We do think that – that sensitive and classified information is probably contained in the book.

This is when things get hysterical. While the transcript doesn't record most of what goes on, after several more exchanges about Little's beliefs, he finally states that the book does contain sensitive and classified information, which leads to some Clintonesque discussion of the word "is." But then shortly thereafter, Little retreats to the language of belief, not is.

Q: Very briefly, can I go back on sensitive versus classified, because I still don't understand your answer?

MR. LITTLE: (off mic)

Q: So sensitive – you are definite that you found sensitive information and your "probably" phrase applies to classified? Or are you definite or probable on both? Which is it?

MR. LITTLE: I think that there is a very strong sense that – that this book contains sensitive and classified information.

Q: But that is not a legal determination yet by the department. That's just your sense of it?

MR. LITTLE: I'm not going to get into the legal issues at play here. I'm not an attorney, and as I think I said on Friday, it's probably a tribute to the legal profession that I'm not a lawyer. But I do think that –

Q: (off mic) by saying that there was sensitive information in the book.

MR. LITTLE: Yes, absolutely. And there – there –

Q: (off mic)

MR. LITTLE: We believe that – that sensitive and classified information is contained in the book. I don't think I could be any clearer than that.

Q: (off mic)

Q: (off mic)

MR. LITTLE: Okay, all right. Well, let's – let's cut through it.

Q: (off mic)

MR. LITTLE: All right. Let's cut through it.

Q: Say again?

MR. LITTLE: Let's – let's cut through it. Sensitive and classified information is contained in the book. Now, look.

Q: It is?

MR. LITTLE: Is. Is. Is contained.

[snip]

Q: But classified – so you're – I just want to make sure I hear this right. You're now saying there is classified information in the book?

MR. LITTLE: I think I've said at least three times now that we believe –

Q: (off mic) now you're saying is.

MR. LITTLE: Okay, all right.

Q: (off mic) difference.

MR. LITTLE: Okay. All right. Let me – let me be clear. I’m – I’m – not to get into the semantics of the word “is,” that’s –

Q: (off mic)

MR. LITTLE: The – the – the answer is that we believe that there is classified information in this book.

Someone takes a step back and asks whether what DOD maintains is mandatory prepublication review applies only to classified information or just sensitive—it’s the former.

Q: Does the disclosure of sensitive information require pre-publication review or just classified?

MR. LITTLE: I’m not going to get into the semantics here. The sole – the sole yardstick is classified information. And that’s – sensitive information, you know, we can go into definitional disputes here, but, you know, the –

Which brings us to the piece de resistance, when someone asks whether DOD has lost its legal ground to complain given that so many people were blabbing on about the Osama bin Laden raid. At which point Little introduces a new distinction: those authorized to speak about stuff, and those not authorized.

Q: George, just to follow up on that, Pentagon and White House officials had already talked so extensively about the details of this mission, how the SEALs flew into Pakistan, what their original plan was to drop each team, how the plane crashed, and then the backup plan, where the SEALs were dropped, how they deployed into the building and where

they shot their different targets, I mean, it got to the point where Secretary Gates basically told everyone to shut up and stop talking about the mission. Have you compromised any sort of legal standing you have to bring against this author by how much the U.S. government has already talked about this mission?

MR. LITTLE: There are senior U.S. officials who are authorized to speak on these matters. And there are those who are not necessarily authorized to speak on these matters, but have other obligations, such as when they write a book to go through pre-publication review. And sometimes even those officials who are authorized at the time to speak on a particular subject, such as the bin Laden operation, if they were to write a book later on, would have to go through pre-publication review.

So let's review where we are. At first, Little tries to focus on the prepublication review, asserting only that the book included sensitive information. That's because—as Little admits later on—that the prepublication review only applies to classified information, not sensitive. When cornered by a bunch of sharper-than-normal journalists, he claims they know there's classified information in the book, though I think Little lost 5 teeth in the process of going as far as stating that. And he immediately retreats to belief again.

And left with that—with the fact that DOD has only found sensitive, but not classified, information in several people's first reading, and that the purportedly required NDA applies only to classified information, Little then introduces another category: senior officials authorized to talk about stuff that somehow is but is not covered by these categories.

In other words, this is DOD claiming that all

legal requirements aside, John Brennan is still the only one allowed to blab about this stuff, even though a plain reading of what Little says about the law suggests that's not true legally. If what Luskin says about the NDA is true, Little is treading water on the "just because" explanation (though Little does return to the NDA later with slightly stronger claims about Bissonnette's obligation).

One more note. DOJ has been trying to extend the Espionage Act to cover "sensitive" information (and given that this was all DOD information, I'm sure they'd be happy just treating all this as defense information, as well, regardless if they don't claim it's classified). So that doesn't mean this utterly telling conversation means DOJ won't press charges (though I've expressed my doubts about whether that would work).

But it does mean that George Little went out there yesterday to try to convince a bunch of journalists to declare Bissonnette guilty. And even in spite of the obvious weakness of Little's case against Bissonnette, the press went out and declared him guilty anyway.