

NO EASY DAY, WIKILEAKS, AND MITT'S 47%: THREE DIFFERENT APPROACHES TO ILLICITLY-RELEASED INFORMATION

[youtube]nYXXk0LgMqQ[/youtube]

Last week, DOD issued a guidance memo instructing DOD personnel what they are—and are not—permitted to do with the Matt Bissonnette book, *No Easy Day*, that they claim has sensitive and maybe even classified information. DOD personnel,

- *are free to purchase NED;*
- *are not required to store NED in containers or areas approved for the storage of classified information, unless classified statements in the book have been identified;*
- *shall not discuss potentially classified and sensitive unclassified information with persons who do not have an official need to know and an appropriate security clearance;*
- *who possess either*

firsthand knowledge of, or suspect information within NED to be classified or sensitive, shall not publically speculate or discuss potentially classified or sensitive unclassified information outside official U.S. Government channels (e.g., Chain-of-Command, Public Affairs, Security, etc.);

- *are prohibited from using unclassified government computer systems to discuss potentially classified or sensitive contents of NED, and must not engage in online discussions via social networking or media sites regarding potentially classified or sensitive unclassified information that may be contained in NED.*

The memo points to George Little's earlier flaccid claims that the book contains classified information as the basis for this policy, even though those claims fell far short of an

assertion that there was actually classified information in the book.

The strategy behind this policy seems to be to accept the massive release of this information, while prohibiting people from talking about what information in the book is classified or sensitive—or even challenging Little's half-hearted claim that it is classified. Moreover, few of the people bound by this memo know what the President insta-declassified to be able to tell his own version of the Osama bin Laden raid, so the memo also gags discussions about information that has likely been declassified, not to mention discussions about the few areas where Bissonnette's version differs from the Administration's official version.

Still, it does let people access the information and talk about it generally.

Compare that policy with the Administration's three-prong approach to WikiLeaks information:

- Government employees cannot discuss—and are not supposed to consult at all—WikiLeaks cables. The treatment of Peter Van Buren for—among other things—linking to some WikiLeaks cables demonstrates the lengths to which the government is willing to go to silence all discussion of the cables. (Though I imagine the surveillance of social media will be similar to enforce the DOD guidance.)
- Gitmo lawyers not only cannot discuss material—like the dodgy intelligence cable that the government used to

imprison Latif until he died of still undisclosed causes or the files that cite tortured confessions to incriminate other detainees—released by WikiLeaks unless the press speaks of them first. But unlike DOD personnel who do not necessarily have a need to know, Gitmo lawyers who do have a need to know couldn't consult WikiLeaks except in closely controlled secure conditions.

- The Government will refuse to release cables already released under FOIA. While to some degree, this strategy parallels the DOD approach—whereas the NED policy avoids identifying which is and is not classified information, the WikiLeaks policy avoids admitting that cables everyone knows are authentic are authentic, the policy also serves to improperly hide evidence of illegal activity through improper classification.

Now, one part of the Administration's logic behind this approach to purportedly classified information (thus far without the legal proof in either case, or even a legal effort to prove in the case of Bissonnette) is to limit discussion

of information that was allegedly released via illegal means. By preventing certain classes of people from discussing certain aspects of Bissonnette's book and the WikiLeaks cables, you ensure that political opponents don't gain an advantage because of these leaks.

Which brings us to the Obama campaign's treatment of the video showing Mitt Romney insulting 47% of the country. That video may have violated Federal and Florida wiretap and intrusion laws prohibiting non-consensual recordings (though as with Bissonnette's book, prosecuting that violation would be politically and legally challenging).

Yet, in spite of the fact that the 47% video is tainted by the same kind of allegedly illicit release as *No Easy Day* and WikiLeaks, Obama's campaign has had no compunctions about using it. A lot. Indeed, hitting Mitt for the content and the delivery of his 47% comments has been a cornerstone of Obama's (and his PAC's) campaign since the video was released.

Now, Obama might differentiate the 47% video by arguing that Mitt should have no expectation of privacy at a campaign fundraiser, as distinct from discussions with people in other countries or about operations the White House has hailed. He might argue that Mitt should not be able to shield the conversations he has with powerful donors from the citizens of the democracy he wants to represent, as distinct from the operations conducted in our name. He might claim that Mitt's comments—including those revealing Mitt's true beliefs about a 2-state solution—have nothing to do with national security.

But particularly in the case of a book covering the very same topics discussed openly so Obama can benefit from the OBL killing, and even in the case of WikiLeaks documents revealing our government's crimes, those claims ring hollow. *No Easy Day* and WikiLeaks cables, now that they have been released, ought to be acceptable topics of discussion for all the same reasons

why citizens should be permitted to talk about how much Mitt dislikes working people: such discussions are an important part of democracy.

When Obama's ability to engage in democratic debate is at stake, he appears to be a big fan of using illicitly circulated information. Somehow, when democratic debate might limit his power, it's a different issue.

"I'm Barack Obama, and I approve the circulation of illicitly leaked messages. Sometimes."