INTIMIDATING THE DEFENSE ATTORNEYS

It was bad enough that the Bush Administration did away with attorney-client privilege via their warrantless wiretap program. Now the Obama Administration appears to be trying to intimidate lawyers defending Gitmo detainees by threatening them with prosecution for trying to ascertain the identities of those involved in abusing their clients.

> The Justice Department recently questioned military defense attorneys at Guantanamo Bay about whether photographs of CIA personnel, including covert officers, were unlawfully provided to detainees charged with organizing the Sept. 11, 2001, attacks, according to sources familiar with the investigation.
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> Investigators are looking into allegations that laws protecting classified information were breached when three lawyers showed their clients the photographs, the sources said. The lawyers were apparently attempting to identify CIA officers and contractors involved in the agency's interrogation of al-Qaeda suspects in facilities outside the United States, where the agency employed harsh techniques.
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> If detainees at the U.S. military prison in Cuba are tried, either in federal court or by a military commission, defense lawyers are expected to attempt to call CIA personnel to testify.

This seems akin to me with the practice of refusing to tell defense attorneys what was done to their clients, including withholding Abu Zubaydah's own diary.

But for a more informed take on what's going on, check out this Bill Leonard post (remember, he

used to head ISOO, the organization in charge of the federal security classification and after the AIPAC defendants won the right to call him to testify, the government case against the defendants fell apart).

> With the above as background, it is useful to look at the facts as reported in the WaPost article and assess exactly what the government is trying to do with the critical national security tool of classification. First of all, the classified nature of an intelligence officer's cover is not sacrosanct. For example, earlier this year Andrew Warren was identified as the CIA Station Chief in Algeria when he was charged with drugging and sexually assaulting two women.
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> The ready disclosure by the government of Warren's identity brings up an important provision of Executive Order 12958, as amended, which governs the classification of national security information and which is thus instrumental in investigating any alleged illegal disclosure of classified information. Section 1.7(a) of the order states that "In no case shall information be classified in order to: (1) conceal violations of law…". I have confronted many in government who take the position that this provision has next to no meaning. They argue that this section only prohibits the classification of information with the intent of concealing a violation of law. As such, they argue that classification could legitimately have the "unintended consequence" of concealing a violation of law. Although I do not agree with such a narrow interpretation, it would prove useful to examine the government's intent in the use of classification in the case of defense attorneys reportedly showing detainees photos of CIA

> officers.
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> First of all, there is no evidence that the government took steps to conceal the identity of the CIA officers from the detainees themselves – otherwise showing photos to the detainees would be pointless. In view of the fact that no detainee is authorized access to classified information, the government apparently violated its own provisions by failing to conceal the intelligence officers identity from the detainees.

There's more—some of which folks here may agree and disagree with.

But Leonard does raise interesting challenges to the government's intent to hide the evidence of its own wrong-doing even while winning cases against those it tortured.