

DENNIS BLAIR'S NOT GOING TO TOUCH BUSH'S "INACCURACIES"

Fresh off his fishing vacation break from retirement, MadDog found this declaration that Dennis Blair submitted in the al-Haramain case affirming that the documents correcting Bush's inaccuracy are, themselves, classified.

There's a really fascinating paragraph in that document:

I have reviewed the public and *In Camera, Ex Parte* Declarations of then-DNI Negrofonte lodged in June 2006; the public and *In Camera, Ex Parte* Declarations of Lieutenant General Keith B. Alexander, Director of the National Security Agency, also lodged in June 2006; the public Declaration of John F. Hackett of the Office of Director of National Intelligence submitted in May 2006; and a copy of the classified "Sealed Document" that I understand was inadvertently disclosed to the plaintiffs and then lodged with the Court at the outset of this case. I have also reviewed the public and classified declarations submitted in February 2009 in connection with the declassification review ordered by the Court. This includes the public and classified declarations of John F. Hackett of the Office of Director of National Intelligence submitted on February 27, 2009; the public and classified declarations of Joseph J. Brand of the National Security Agency submitted on February 27, 2009; the classified Declaration of Anthony J. Coppolino, Department of Justice, Civil Division; and the classified Declaration of Andrea

M. Gacki, Department of the Treasury,
Office of Foreign Assets Control. [my
emphasis]

To summarize, here's what Blair said he had reviewed:

- Public and classified Negroponte declarations, June 2006
- Public and classified Alexander declaration, June 2006
- Public Hackett declaration, May 2006
- Sealed Document (the wiretap log)
- Public and classified Hackett declarations, February 2009
- Public and classified Brand declarations, February 2009
- Classified Coppolino declaration, February 2009
- Classified Gacki declaration, February 2009

See what's missing?

Blair reviewed Hackett's public declaration from May 12, 2006—but not his classified one. ~~Nor did he review Coppolino's or Gacki's classified declarations from the same date.~~ [Correction: I was working from memory—only Hackett submitted a declaration in May 2006. Update: I'm reviewing the language about this declaration from 2006, and they don't say Hackett authored it (lots of the use of passive throughout), though it appears to come from ODNI, so Hackett.]

Back in March, I suggested that this classified declaration was the source of the "inaccuracy"

that needed to be corrected before Judge Walker reviewed the record.

On May 12, 2006, in response to the judge's skepticism that the document and a subsequent government filing needed to be handled *ex parte*, DOJ submitted superseding *ex parte in camera* material, and filed a motion opposing efforts to unseal these documents.

Significantly (and I'll return to this), three of the four people who submitted new declarations on Friday night contributed to the May 12, 2006 filing: Anthony Coppelino (who was and still is the lead defense attorney in this case), Andrea Gacki (then working as a DOJ trial attorney focused on security issues and now serves as some sort of counsel for the OFAC), and John Hackett (who was and still is DNI's Director of Information Management Office, meaning he's in charge of keeping ODNI's secrets). Given that these three people have submitted new declarations (along with a new declaration from NSA), it suggests something about either the superseding materials or the unclassified declaration was inaccurate.

Given that Blair didn't mention the earlier classified Hackett declaration, he seems to suggest I'm right—this declaration has been superseded by the now "corrected" information submitted in February, and so it is no longer part of the record so he doesn't need to review them.

It suggests something else: Someone made damn sure that Blair didn't review this document, and didn't therefore become a party to the ~~lies~~ inaccuracies told to the Court under Bush.

Now, given that the earlier declaration was itself arguments for why this material couldn't be revealed, it might be possible to force Blair

to review those documents to see whether the rationale itself has changed. Or rather, to force him to take on the culpability of the three lawyers who submitted ~~lies~~ inaccuracies for Bush. I'm not sure how to do that exactly, or what the upside is. But I'd sure like an Obama appointee to have to admit that Bush was telling ~~inaccuracies~~ lies to the Court earlier in this case.

Update: Here's the filing the government submitted with the Blair declaration. Footnote 6 explains why they felt the need to submit the Blair declaration.

Plaintiffs contend that an inaccuracy in a prior submission in this case may forfeit any deference to the state secrets privilege assertion. See Pls. Reply/Opp. (Dkt. 671/104) at 17, n.2. The Government addressed this issue six months ago in four classified declarations and will provide the Court with additional information on the matter if it is subject to review on an ex parte basis. See Declaration of Dennis C. Blair, Director of National Intelligence, filed herewith.

I say demand they provide that additional information.