

DOJ WARNS GITMO DEFENSE ATTORNEYS NOT TO USE GITMO FILES

The defense attorneys representing detainees at Gitmo in habeas proceedings received this email today.

Subject: Information in the public domain 2nd reminder

All:

As many of you have undoubtedly heard or read, government documents that may contain classified information have been released via the news media. As a reminder, information that is marked as classified, or that a person with access to classified information knows to be classified, remains as such despite a potential public disclosure by unauthorized means. Classified National Security Information only becomes declassified when the appropriate original classification authority makes their determination that the information may no longer cause damage to national security and may be declassified. Accordingly, consistent with your Classified Information Nondisclosure Agreements and Memorandum of Understanding that you signed as a participant in the Guantanamo Habeas proceedings, counsel are hereby cautioned that this presumptively classified information must be handled in accordance with all relevant security precautions and safeguards, including but not limited to, use and preparation in the Secure Facility and filing under seal with the Court Security Officer.

Thank you.

Court Security

In other words, in spite of the fact that the entire world now sees the flimsy evidence on which many Gitmo detainees are being held, Gitmo detainees' lawyers can't use that now very public information to defend their clients without going through the court security officer first. In fact, they can't even *talk* about this information, for example in public appearances to explain their client's plight, without asking the government for permission first.

And the warning is even more appalling given the protection order proposed for military commissions. As I noted last month, military commission defense attorneys have a couple of additional restrictions on top of all the ones habeas lawyers have; notably, they are not allowed to share classified information with their clients even if it reflects information that came from their client.

Statements of the detainee that detainee's counsel acquires from classified documents cannot be shared with the detainee absent authorization from the appropriate government agency authorized to declassify the classified information.

So all these Detainee Assessment Briefs purportedly based on the detainees' own statements? The Gitmo lawyers can't ask their clients whether they're an accurate representation of what the detainee actually said.

And then there's the timing. The government has presumably known that these files might be released since last May, if not December, when Mark Hosenball said they were imminent.

So when the government wrote the protection order preventing military commission lawyers from sharing with their clients or even talking about classified but widely public information,

they knew this trove of useful information would soon be available.

So now the organization that will prosecute detainees is the same organization that can determine that its use in a military commission would “cause damage to national security” and on that basis prevent defense attorneys from using a key tool to defend their clients.

You know—because if detainees got due process it might “cause damage to national security.”

Update: Second-to-last paragraph fixed to hopefully make a bit of sense.