

# THE HOUSE JUDICIARY COMMITTEE PREENS IN FULL IGNORANCE AT LEAKS HEARING

The headline that has come out of yesterday's House Judiciary Committee hearing on leaks is that the Committee may subpoena people. As US News correctly reports, one push for subpoenas came from a John Conyers ploy trying to call Republican members' bluff; he basically asked how they could be sure who leaked the stories in question and if they were they should just subpoena those people to testify to the committee.

It's a testament to the thin knowledge of these stories that none of the Republicans responded, "John Brennan." But then, even if they had, the committee would quickly get into trouble trying to subpoena Brennan as National Security Advisors (and Deputy NSAs) have traditionally been excused from Congressional subpoena for deliberation reasons, a tradition reinforced by Bush's approach with Condi Rice.

Ah well. I'm sure we're going to have some amusing theater of Jim Sensenbrenner trying to force Conyers to come up with some names now.

The other big push for subpoenas, though, came from Trey Gowdy. Partly because he wanted to create an excuse to call a Special Prosecutor and partly because, just because, he was most interested in subpoenaing some journalists. And in spite of the way that former Assistant Attorney General Ken Wainstein patiently explained why there are good, national security, reasons why DOJ is hesitant to subpoena journalists, Gowdy wouldn't let up.

But what concerned me more is that no one—not a single person on the House committee that oversees DOJ—explained that DOJ doesn't need to subpoena journalists to find out who they've

been talking to. They've given themselves the authority to get journalist call records in national security cases without Attorney General approval.

That's a detail every member of the committee should know, particularly if they're going to hold hearings about whether DOJ can adequately investigate leaks. And while I expect Trey Gowdy to be ignorant, it seems they all are ignorant of this detail.

There was another display of ignorance I find troubling for a different reason. Dan Lungren suggested that he learned of what we're doing with StuxNet from David Sanger's reports. He rightly noted that—as the Chair of the House Homeland Security Subcommittee on Cybersecurity—he ought to learn these things from the government, not the NYT. And while his ignorance of StuxNet's escape may be due to the timing of his ascension to the Subcommittee Chair (most members of the Gang of Four, except Dianne Feinstein, would not have gotten briefed on early stages of StuxNet, when someone should have told the government what a boneheaded plan it was), the Subcommittee still should be aware that our own recklessness has made us vulnerable in dangerous new ways.

Perhaps the most telling detail of the hearing, though, came from retired Colonel Kenneth Allard. He was brought on, I guess, to label what we did with StuxNet an act of war (without, of course, considering whether that is the problem rather than the exposure that both Republican and Democratic Administrations are engaging in illegal war without telling anyone). In his comments, he went so far as to say that “What Mr. Sanger did is equivalent of having KGB operation run against White House.”

Someone had to accuse the journalists of being enemy spies.

But Allard's statement reveals where all this comes from: personal pique against the NYT for coverage they've done on him. Not only did he

complain that David Sanger's publisher didn't give the New York Journal of Books, for which he writes reviews, an advance copy, but also that the NYT reported on the scam the Pentagon set up to give select Generals and Colonels inside information to spin favorably on TV.

Third, I have personally experienced what it feels like when the NYT deliberately distorts national security information, even to the point of plagiarism. On April 20, 2008, the NYT published an inflammatory expose: "Behind Analysts, Pentagon's Hidden Hand" by David Barstow. The Times' article charged that over 70 retired officers, including me, had misused our positions while serving as military analysts with the broadcast and cable TV networks. The article went on at considerable length (7500 words) to suggest that: we had been seduced by privileged access to closed-door Pentagon briefings; that some of the military analysts had allowed their ties to defense contractors to influence what they later said on TV (there were even hints of possible kickbacks); but above all, that the military analysts had conveyed to their TV audiences a view of the wars in Afghanistan and Iraq secretly shaped by Pentagon propaganda.

This whole leak hunt has become an opportunity for those who've been slighted in the past—even if the slight was deserved—to engage in literal McCarthyism in retaliation.

It is a concern that Dan Lungren learns about this stuff from the NYT. It is a concern that our system of secrecy allows both parties to engage in self-serving information asymmetry to reinforce their own political power. It is a concern that Trey Gowdy and the rest of the committee are ignorant about the Agency they're supposedly overseeing.

But ultimately, to create a political circus these politicians are now actively choosing to engage in McCarthyism over oversight. And to hell with the First Amendment.