

DOJ'S DOUBLE STANDARD ON OSAMA BIN LADEN TROPHY PHOTOS

Two and a half years ago, I first started pointing to the evidence that several of the guys on the Osama bin Laden operation took trophy photos.

[O]n February 15, 2013, DOJ informed Judicial Watch that CIA had found 7 more photos responsive to their FOIA. That happened just 4 days after Esquire published a splashy story about the guy who claimed to have been the SEAL who actually killed OBL. The current version includes this line.

In the compound, I thought about getting my camera, and I knew we needed to take pictures and ID him.

I had made the connection at the time, and I have a distinct suspicion the language was slightly different in the original (Esquire was making factual corrections along the way but the original is not on Internet Archive), making it clear that the Shooter and possibly others did take pictures, though perhaps not for operational purposes.

What kind of amped up warrior who had just helped kill the bogeyman could resist taking souvenir pictures? Could you blame them, if so?

In any case, I suspected at the time that the reason CIA "located" new photos was because they read about another set of photos in the possession in one of

the guys who participated in the op, if not shot the lethal bullet. The ambiguity in the description of McRaven's order seems to support that.

That is, what SOCOM and CIA appear to be protecting are – in significant part – the personal photos taken by the guys who did the operation.

The Intercept has a story describing how Matt Bissonnette – the guy who wrote *No Easy Day* – is under continued investigation as a result of having done just that.

It appears the government went after Bissonnette after he published his book, and demanded a cut of his profits and that he turn over a hard drive that had an “unauthorized” picture of OBL.

The retired SEAL voluntarily provided investigators with a copy of his hard drive as part of an agreement not to prosecute him for unlawfully possessing classified material, according to the two people familiar with the deal.

[snip]

Luskin said that he had negotiated a deal in 2014 with the Pentagon and the Justice Department to hand over to the government some of the millions of dollars in book profits Bissonnette had received.

He would not confirm Bissonnette's possession of the bin Laden photo or whether any investigation still remains open.

But once DOJ got Bissonnette's hard drive – which according to the Intercept was technically turned over voluntarily (meaning there'd be no warrant to limit the scope of what the government could do with it), they found evidence he may have had side deals associated with his procurement role for the team.

During their search of his hard drive, investigators subsequently found emails and records dealing with Bissonnette's work as a consultant while he was on active duty at SEAL Team 6. Those records, which were not part of the non-prosecution agreement, led to the widening probe. Federal investigators then became interested in whether Bissonnette's business ventures with companies that supply military equipment – including companies whose products were used by SEAL Team 6 – were helped by his role in the elite unit's procurement process, according to one of the people familiar with the case.

Element Group, a company Bissonnette helped set up in Virginia Beach about five years ago, is among the companies NCIS is said to be investigating. According to a former SEAL Team 6 operator familiar with Element Group's business arrangements, the firm, which has since been shut down, designed prototypes for, and advised, private companies that make sporting and tactical equipment.

According to several former SEAL Team operators familiar with the company, Element Group also did business with at least one Defense Department contractor that sold equipment to SEAL Team 6. The defense contractor, Atlantic Diving Supply, or ADS, has military supply and equipment contracts with SEAL Team 6, according to several former SEAL Team 6 operators, as well as other parts of the departments of Defense and Homeland Security. Federal investigators have been looking into the business relationship between Element Group and ADS.

I don't defend Bissonnette if his side deals were corrupt. But this is bullshit on several

levels.

Of course, many people, including me, have noted that Bissonnette's book was an attempt to push back on the information asymmetry – and with it, propaganda – that the government uses classification to pull off.

Prosecuting Bissonnette would require admitting that the government used its unilateral authority over the nation's secrets to tell a fiction—not an egregious one, but still one that served a significant political objective.

Now there are probably legal ways around that problem (they could prosecute Bissonnette for revealing obscure details that no one really cares about, for example). But probably not political ways around it, because at best, it would seem like retaliation for exposing the Administration's fluffing of the facts.

It appears that Bissonnette has shown that the Administration used its control over secrecy as a political tool, not just an operational one, and to prosecute him, they'd have to make that point even more clear.

In addition, as I noted in a series of posts, DOD did a lot of things that arguably violate classification laws to hide those trophy photos by retroactively classifying them and sending them over to CIA where they'd be further hidden from Judicial Watch and other FOIAs that had already been filed.

[I]f the photos were classified after their FOIA, they would have had to have been classified on a photo by photo basis by the Director of CIA, Deputy Director, or a Senior Agency Official in charge of classifications, the CIA responded by saying that, after the CIA got the photos (which by all appearances

happened after the FOIA), they were derivatively classified in accordance with the SAO's guidance.

CIA doesn't say whether that official reviewed the photos individually or not. Nor does it explain who wrote "TOP SECRET" on them, without adding all the other required classification markers.

And note how the CIA claims these photos "were always considered to be classified" by them – but not necessarily by SOCOM, which originally had the photos. But they don't even claim they were always considered to be Top Secret.

If I'm right about the DOD's efforts to avoid its obligation under FOIA, then it basically went after Bissonnette for improperly handling classified information while it was doing the same thing (albeit to withhold previously unclassified information). Plus, if these photos were unauthorized, classifying them to hide them would amount to classification to hide misconduct.

Finally, whatever the ethical conflicts with Bissonnette's side deals (they remain under investigation and it's not clear there was a conflict, in which case this feels like DOJ's pursuit of NSA whistleblowers Bill Binney et al for their effort to start a business), they're being investigated at a time when the Intelligence Community has just eliminated some measures designed to facilitate oversight of precisely this kind of conflict. I sure take from that that the powers that be in our IC want to continue to engage in the kind of conflicted business deals that Bissonnette is being investigated for.

Here's the irony though: I noted James Clapper had pushed that conflict change through, in part because it is so much work to ride herd on conflicts, even while accepting a requirement

that his office increase its surveillance of line personnel. I concluded that Clapper has some really funny ideas about insider threats, finding abusive incompetents trading on their position to be less of a problem than leakers.

Clapper's perfectly willing to expand his bureaucracy to look for leakers, but not to weed out the dangerously incompetent people ordering potential leakers around.

Bissonnette's problem, I guess, is he was allegedly both, someone who shared information that undercut official propaganda, and someone who traded on his position.

Had he just done the latter everything would have been fine, I guess.