# A GOOD REASON TO ENCRYPT YOUR IPHONE: TO PREVENT DEA FROM CREATING A FAKE FACEBOOK ACCOUNT

At Salon yesterday, I pushed back against the Apple hysteria again. In it, I look at the numbers that suggest far more Apple handsets are searched under the border exception than using warrants.

> Encrypting iPhones might have the biggest impact on law enforcement searches that don't involve warrants, contrary to law enforcement claims this is about warranted searches. As early as 2010, Customs and Border Patrol was searching around 4,600 devices a year and seizing up to 300 using what is called a "border exception." That is when CBP takes and searches devices from people it is questioning at the border. Just searching such devices does not even require probable cause (though seizing them requires some rationale). These searches increasingly involve smart phones like the iPhone.
>
> These numbers suggest border searches of iPhones may be as common as warranted searches of the devices. Apple provided account content to U.S. law enforcement 155 times last year. It responded to 3,431 device requests, but the "vast majority" of those device requests involved customers seeking help with a lost or stolen phone, not law enforcement trying to get contents off a cell phone (Consumer Reports estimates that 3.1 million Americans will have their smart phones stolen this year). Given that Apple has

> by far the largest share of the smart phone market in the U.S., a significant number of border device searches involving a smart phone will be an iPhone. Apple's default encryption will make it far harder for the government to do such searches without obtaining a warrant, which they often don't have evidence to get.

Almost 20% of Americans this year will have an iPhone, and that number will be far higher among those who fly internationally. If only 20% of 5,000 border searches involve iPhones, then there are clearly more border iPhone searches than warranted ones.

Meanwhile, we have an appalling new look at what law enforcement does once it gets inside your smart phone. A woman in Albany is suing DEA because — after she permitted DEA to conduct a consensual search of her phone — DEA then took photos obtained during the search, including one of her wearing only underwear, and made a fake Facebook page for her with them. They even sent a friend request to a fugitive and accepted other friend requests. They also posted pictures of her son and niece, on a site intended to lure those involved in the drug trade.

And they consider this a legitimate law enforcement activity!

> In a court filing, a U.S. attorney acknowledges that, unbeknownst to Arquiett, Sinnigen created the fake Facebook account, posed as her, posted photos, sent a friend request to a fugitive, accepted other friend requests, and used the account "for a legitimate law enforcement purpose."
>
> The government's response lays out an argument justifying Sinnigen's actions: "Defendants admit that Plaintiff did not give express permission for the use of photographs contained on her phone on an

> undercover Facebook page, but state the Plaintiff implicitly consented by granting access to the information stored in her cell phone and by consenting to the use of that information to aid in an ongoing criminal investigations [sic].”

To be sure, DEA and FBI would still be able to obtain consensual access to phones, as they did in this case, by threatening people with harsher charges if they don’t cooperate (which appears to be how they got her to cooperate).

But this demonstrates just how twisted is the government’s view of legitimate use of phone data. The next time you hear a top officer wail about pedophiles, you might ask whether they’re actually the one planning to post sexy pictures.

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# UNIT 8200 REFUSENIKS MAKE VISIBLE FOR ISRAEL WHAT REMAINS INVISIBLE IN THE US

Last week, 43 reserve members of Israel’s equivalent to the NSA, Unit 8200, released a letter announcing they would refuse to take actions against Palestinians because the spying done on them amounts to persecution of innocent people. The IDF has responded the same way government agencies here would — scolding the whistleblowers for not raising concerns in official channels. But the letter has elicited rare public discussion about the ethics and morality of spying.

One of the allegations made by the refuseniks highlighted in the English press is that Israel used SIGINT to recruit collaborators, which in

turn divides the Palestinian community.

> The Palestinian population under military rule is completely exposed to espionage and surveillance by Israeli intelligence. While there are severe limitations on the surveillance of Israeli citizens, the Palestinians are not afforded this protection. There's no distinction between Palestinians who are, and are not, involved in violence. Information that is collected and stored harms innocent people. *It is used for political persecution and to create divisions within Palestinian society by recruiting collaborators and driving parts of Palestinian society against itself.* In many cases, intelligence prevents defendants from receiving a fair trial in military courts, as the evidence against them is not revealed. Intelligence allows for the continued control over millions of people through thorough and intrusive supervision and invasion of most areas of life. This does not allow for people to lead normal lives, and fuels more violence further distancing us from the end of the conflict. [my emphasis]

These refuseniks, apparently, have access both to the intelligence they collect and how it is used. That means they're in a position to talk about the effects of Unit 8200's spying. And press coverage has made it sound like something that would uniquely happen to occupied Palestinians.

It's not.

We know of one way that the NSA's dragnet is definitely being used to recruit informants (aka collaborators), and another whether it it permissible to use.

The first way is via the phone dragnet. As I have noted, the government has twice told the

FISA Court — once in 2006 and once in 2009 — that FBI uses dragnet derived information to identify people who might cooperate (aka inform or collaborate) in investigations. Once people come up on a 2-degree search, they are dumped into the corporate store indefinitely, data mined with sufficient information to find embarrassing and illegal things. Apparently, FBI uses such data to coerce cooperation, though we have no details on the process.

All the revealing things metadata shows? The government uses that information to obtain informants.

One way the government probably does this is by using the connections identified by metadata analysis (remember, this is not just phone and Internet data, but also includes financial and travel data, at a minimum) to put people on the No Fly list, regardless of whether they are a real threat to this country. Then, No Fly listees have alleged, FBI promises help getting them off that life-altering status if they inform on their community.

More troubling still is FBI's uncounted use of warrantless back door searches of US person content when conducting assessments. As I noted, in addition to doing assessments in response to "tips," the FBI will use them to profile communities or identify potential informants.

> As the **FBI's Domestic Investigations and Operations Guide** describes, assessments are used for "prompt and extremely limited checking out of initial leads." No factual predicate (that is, no real evidence of wrong-doing) is required before the FBI starts an assessment. While FBI cannot use First Amendment activities as the sole reason for assessments, they can be considered. In addition to looking into leads about individual people, FBI uses assessments as part of the process for Domain Assessments (what **FBI calls their profiling of Muslim communities**) and the

> selection of informants to try to recruit. In some cases, an Agent doesn't need prior approval to open an assessment; in others, they may get oral approval (though for several kinds, an Agent must get a formal memo approved before opening an assessment). And while Agents are supposed to record all assessments, for some assessments, they're very cursory reports — basically complaint forms. That is, for certain types of assessments, FBI is not generating its most formal paperwork to track the process.

So while I can't point to a DOJ claim to FISC that these back door searches are useful because they help find informants, it appears to be possible. Plus, as early as 2002, Ted Olson said they would use evidence of rape collected using traditional FISA to talk someone into cooperating (aka inform or collaborate); that was the reason he gave for blowing the wall between intelligence and criminal investigations to smithereens.

Indeed, knowing the way the government uses phone dragnet information as an index to collected content, the government may well use phone dragnet metadata to pick which Americans to subject to warrantless back door searches.

It sounds really awful when we hear about Israel using SIGINT — including information we provide without minimizing it — to spy on Palestinians.

But we have a good deal of reason to believe the US intelligence community — in collaboration — does similar things, spying on Muslim communities and using SIGINT to recruit collaborators that end up sowing paranoia and distrust in the communities.

Not only don't we have a group of refuseniks who, among themselves, can explain how all of this works. But how the FBI uses all this data is precisely what the government intends to keep

secret under the so-called “transparency” provisions of USA Freedom Act. While I will provide more detail in a follow-up post, remember that the FBI refuses to count its back door searches, which means it would be almost impossible for anyone to get a real sense of how these warrantless back door searches on US persons are used. It also has asserted it does not need to disclose evidence derived from Section 215 to criminal defendants, which is another way the evidence against defendants gets hidden.

It’s awful that Israel is doing it. But it’s even worse that we’re almost certainly doing the same, but that we can only find hints of how it is being done.

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# PABLO ESCOBAR ON A TRAIN USING DATA FOR OTHER PURPOSES

Yesterday, AP reported that the DEA paid an Amtrak secretary $854,460 over 20 years to hand over train passenger lists.

> According to a report released Monday by Amtrak’s inspector general, the DEA paid an Amtrak secretary $854,460 to be an informant. The employee was not publicly identified except as a “secretary to a train and engine crew.”
>
> Amtrak’s own police agency is already in a joint drug enforcement task force that includes the DEA. According to the inspector general, that task force can obtain Amtrak confidential passenger reservation information at no cost.

There’s a lot that’s weird about this story.

That Amtrak's IG, and not DEA's IG (that is, DOJ's) IG found this problem. That the secretary was permitted to just fade into retirement.

But I'm most intrigued that DEA treated the secretary taking these bribes as an informant — with an anonymous federal law enforcement official justifying such an approach by pointing to the chemical company informant that helped bust Pablo Escobar.

> It's not unprecedented for law enforcement to have professional people who are informants employed in transportation and other industries, said a federal law enforcement official who is familiar with the incident involving Amtrak. The official spoke on condition of anonymity because the person was not authorized to speak on the record.
>
> The official said that years ago during the investigation of drug lord Pablo Escobar, an informant at a U.S. chemical company provided a major assist to law enforcement by informing authorities that thousands of gallons of acetone were being shipped to Colombia. Acetone is used to manufacture cocaine.

DEA could have gotten this information for free, but it instead chose to dump 850K into getting it via other means, and the law enforcement side of this picture (DOJ) has not checked to see what DEA did with this data.

I can imagine why DEA would want to work via "informant" rather than regular law enforcement information sharing venues (and Amtrak is definitely part of that network). At the very least, it would permit them to shield the source of their data (as they shield the source of their data in the AT&T Hemisphere program). But it would also permit them to use the information for other off-book purposes.

But that appears not to be the concern of the

IGs involved.

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# IN A NATION RAVAGED BY BANKSTERS, FBI CAN'T AFFORD THE "LUXURY" OF FRIVOLOUS COUNTERTERRORISM STINGS

In a JustSecurity post reviewing the same speech that I observed ignored US failures to prevent violent extremism, NYU Professor Samuel Rascoff defends the US use of counterterrorism stings, even in spite of the details revealed by HRW's report on all the problems related to them. David Cole has an excellent response, which deals with many of the problems with Rascoff's argument.

I'd like to dispute a more narrow point Rascoff made when he suggested that, because we have so many fewer trained militants than the Europeans, we "can[] afford" the "luxury" of stings.

> There are now approximately 3,000 European passport holders fighting in Syria and Iraq. In the time that it took Najibullah Zazi to drive from Denver to New York, a fighter could drive from Aleppo to Budapest. What that means is that European officials are relatively more consumed than American counterparts in keeping up with, and tabs on, trained militants. Orchestrating American-style sting operations is, in a sense, a luxury they cannot afford.

The claim is astonishing on its face, in that it suggests that, because we don't have real militants like Europe does, we should engage in the "luxury" of entrapping confused young Muslim men and sending them to expensive decades-long prison terms.

Think a bit more about that notion of "luxury" and the financial choices we make on law enforcement. Here are some numbers taken from two sources: the HRW report (I basically searched on the dollar sign, though this doesn't include every mention of dollars) and today's Treasury settlement with Bank of America for helping 10 drug kingpins launder their money over a four year period, three years of which constituted "egregious" behavior.

First, HRW reports that FBI spends over $1.3 billion a year on counterterrorism, much of it stings, leaving less than $2 billion for all other investigations.

> More than 40 percent of the FBI's operating budget of $3.3 billion is now devoted to counterterrorism.

That allows the FBI to pay some of its informants and experts hefty sums.

> Beginning in August 2006, the FBI paid Omar $1,500 per week during the investigation. Omar received a total of $240,000 from the FBI. This included: $183,500 in payment unrelated to expenses, and $54,000 for expenses incurred during the investigation including car repair and rent.
>
> [snip]
>
> "Kohlmann is an expert in how to use the Internet, like my 12-year-old. He has found all the bad [stuff] about Islam, and testifies as if what he is reading on the Internet is fact. He was paid around $30,000 to look at websites, documents, and testify."

These informants sometimes promise — but don't deliver — similar hefty sums to the guys they're trying to entrap.

> Forty-five-year-old James Cromitie was struggling to make ends meet when, in 2009, FBI informant Hussain offered him as much as $250,000 to carry out a plot which Hussain—who also went by "Maqsood"—had constructed on his own.
>
> [snip]
>
> The informant proposed to lend Hossain $50,000 in cash so long as he paid  him back $2,000 monthly until he had paid back $45,000.

Which is particularly important because many of these guys are quite poor (and couldn't even afford to commit the crimes they're accused of).

> At the time he was in contact with the informant and the undercover [agent] he was living at home with his parents in Ashland and he didn't have a car, he didn't have any money and he didn't have a driver's license because he owed $100 and he didn't have $100 to pay off the fine. In various parts of the investigation he didn't have a laptop and he didn't have a cellphone. At one point the informant gave him a cell phone.

And some of these crimes (the very notable exceptions in the HRW report include two material support cases, both of which are close calls on charity designations, but which involved very large sums, $13 million a year in the case of *Holy Land Foundation*) involve relatively minscule sums.

> According to the prosecution, Mirza was the ringleader in collecting around $1,000—provided by the FBI agents and co-defendant Williams—that he handed to

> a middleman with the intent that it go to families of Taliban fighters.

So one theme of the HRW report is we're spending huge amounts entrapping what are often poor young men in miniscule crimes so taxpayers can pay $29,000 a year to keep them incarcerated for decades.

These are the stakes for what Rascoff calls a "luxury." At a time of self-imposed austerity, these stings are, indeed, a luxury.

Compare that to what happens to Bank of America, which engaged in "egregious" violations of bank reporting requirements for three years (and non-egregious ones for a fourth), thereby helping 10 drug kingpins launder their money. No one will go to jail. Bank of America doesn't even have to admit wrong-doing. Instead, it will have to pay a $16.5 million fine, or just 0.14% of its net income last year.

This settlement came out of a Treasury investigation, not an FBI one.

But when DOJ's Inspector General investigated what FBI did when it was given $196 million between 2009 and 2011 to investigate (penny ante) mortgage fraud, FBI's focus on the issue actually *decreased* (and DOJ lied about its results). When FBI decided to try to investigate mortgage fraud proactively by using undercover operations, like it does terrorism and drugs, its agents just couldn't figure out how to do so (in many cases Agents were never told of the effort), so the effort was dropped.

Banks commits crimes on a far grander scale than most of these sting targets. But FBI throws the big money at its counterterrorism stings, and not the banks leaching our economy of its vitality.

Rascoff accuses HRW's and similar interventions of being one-dimensional.

> [F]or all the important questions about official practices that critics raise,

> they have tended to ignore some hard questions about the use of stings and the tradeoffs they entail.Instead, their interventions have an exaggerated, one-dimensional quality to them.

But he himself is guilty of his own crime. Because every kid the FBI entraps in a $240,000 sting may represent an actual completed bank crime that will never be investigated. It represents an opportunity cost. The choice is not just sting or no sting or (more accurately, as David Cole points out) sting or community outreach and cooperation.

Rather, the choice is also between manufacturing crimes to achieve counterterrorism numbers or investigating real financial crimes that are devastating communities.

So long as we fail to see that tradeoff, we fail to address one major source of the economic malaise that fuels other crimes.

Ignoring bank crimes is, truly, something we don't have the luxury of doing. Nevertheless, we continue to choose to go on doing so, even while engaging in these "luxurious" counterterrorism stings that accomplish so little.

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# ANONYMOUS PUSHBACK EMPHASIZES THAT SURVEILLANCE LEADS TO INFORMANTS

I've already suggested I suspect the government falsely claimed it didn't have a a FISA warrant on CAIR's Executive Director Nihad Awad in an attempt to gain an advantage in EFF's suit challenging the phone dragnet.

The conflicting denials anonymous officials gave to ABC about the story — with one senior official implying the people the Intercept profiled actually were profiled, but other current and former officials claiming the Intercept may have misunderstood what they were looking at — don't change that suspicion in the least.

> A senior government official said without knowing the underlying probable cause presented to a federal judge from the FISA court in each case, Greenwald and The Intercept cannot know why the e-mails of the purported targets were collected.
>
> As a result, the official said, Greenwald and Snowden cannot know whether the surveillance revealed evidence or intelligence in each case that was incriminating or exculpatory — or whether some targets later cooperated with the FBI. Several officials said it was "irresponsible" to name individuals as surveillance targets when no public court record exists. The identified targets could be guilty or innocent or even cooperating with the government, the officials said.
>
> "*You don't know if somebody was later approached to become an informant*," the senior official said. "To the extent any of these people were targets, [The Intercept report] is a serious compromise. And if they weren't targets, they shouldn't be named."
>
> The Intercept said many of the emails on the spreadsheet titled "FISA Recap," which they said Snowden provided, "appear to belong to foreigners whom the government believes are linked to al Qaeda, Hamas and Hezbollah." But the report says their three-month investigation showed that "in practice, the system for authorizing NSA

> surveillance affords the government wide latitude in spying on U.S. citizens."
>
> However, current and former U.S. officials told ABC News that Snowden or Greenwald may have misunderstood some of the NSA documents, which they reported are spreadsheets with 7,485 email addresses, including many among multiple accounts by individuals.
>
> "You should not assume all of the names Glenn Greenwald has were targets of surveillance," a senior official familiar with Snowden's pilfered cache told ABC News last week.
>
> A former senior official once closely involved in the FISA warrant process told ABC News that The Intercept's reporters were repeatedly warned by him that they "were getting it wrong" in how they interpreted what the NSA spreadsheets from Snowden signified. The documents also were curiously absent of the markings secret files typically carry which denote its specific level of classification and distribution limitations.
>
> "The documents indicated to me that they were not targets," the former official said. [brackets original, emphasis mine]

Surely DOJ will point to any doubts about the document in an effort to prevent it from being used to obtain standing to sue.

I'm just as interested in the logic the anonymous senior official used to say these names shouldn't be released: that the person might have been approached to be an informant!

Sure, I get why the FBI probably wouldn't want its informants exposed (though more and more GWOT era informants have exposed themselves without being harmed).

But I'm particularly interested in how quickly

this official talked about informants. As Ted Olson did, more obliquely, back in 2002.

NSA has offered hint after hint that its surveillance does serve to identify people to coerce into informing. I find it odd that this official, hiding behind the veil of anonymity, introduces it with such little self-awareness.

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# THE ASSOCIATIONS BEHIND FBI'S NO FLY INFORMANT COERCION

Before I disappeared on my trip last week, the WaPo and others reported on a new suit against the FBI for using the No Fly list to coerce Muslims to become informants, one of whom, Naveed Shinwari, talked about it with Democracy Now as well.

WaPo included a quote from a former senior FBI official dismissing the notion that someone might be added to the No Fly lists to coerce them to inform.

> A former senior FBI official said that there are criteria for putting people on the list and that refusing to work as a confidential informant is not one of them.
>
> "That's not a reason," the former official said. "It has nothing to do with potential threats to aviation."

That is, FSFBIO claims there are criteria that must be met before placing someone on the No Fly list.

Let's take the FSFBIO at his (or her) word, and imagine that the FBI singled out the four

plaintiffs in this suit for some reason, and only then used the No Fly status as leverage to try to coerce an informant. Because the sort of things that appear to have gotten the FBI interested in these plaintiffs is just as telling as that, after learning the men weren't threats, the FBI then tried to use their No Fly status to flip them.

At least according to the complaint, the FBI seems to have focused on these men because of who they knew or what they may have done online.

Naveed Shinwari

Naveed Shinwari, whom Amy Goodman interviewed above, was first questioned in Dubai on his way back from his wedding in Afghanistan in February 2012. At that point, they asked general questions about his trip to Afghanistan, including whether he had visited any training camps on his trip.

But a month later, the FBI asked about videos he had watched online.

> Agents Dun and Langenberg began the meeting by asking Mr. Shinwari to think about the reasons why he may have been placed on a watch list. Mr. Shinwari said that he did not know. The agents then asked Mr. Shinwari about videos of religious sermons that he had watched on the internet. Mr. Shinwari responded that he watched the videos to educate himself about his faith.

Last December though, in response to Shinwari's second TRIP complaint (DHS' ineffective recourse process), DHS suggested the whole thing had been a mistake.

> The letter stated, in part, that Mr. Shinwari's experience "was most likely caused by a misidentification against a government record or by random selection," and that the United States government had "made updates" to

> its records.

Since then, Shinwari has flown domestically once, but says he has become reluctant to share his religious and political views with others.

Awais Sajjad

Like Shinwari, Awais Sajjad may have first come to attention of FBI because of a trip to a wedding — that of his brother — in Pakistan.

He was first prevented from flying when trying to visit his father and grandmother in Pakistan in September 2012. In that interrogation, he was asked about his friends in the US. But in a follow-up interrogation a month later, the FBI asked for specifics about a trip he had made the previous year.

> Once inside Mr. Sajjad's home, the agents asked Mr. Sajjad many questions, including questions about his last trip to Pakistan in 2011, why he went and which cities he visited on that trip. Mr. Sajjad replied that he went to Pakistan to attend his brother's wedding.

But then, as part of the same interrogation, they asked if he watched bomb-making videos on YouTube.

> On the way, they asked Sajjad whether he had watched bomb-making videos on YouTube, to which he replied that he had not, that he only watches movies and music videos.

More recently, in an interview without the presence of his counsel, the FBI asked what Sajjad would do if his family members were involved in a terrorist attack.

> They asked him hypothetical questions regarding what he would do if he were to find out that any of his relatives or

> friends were involved in a terrorist attack.

At that same interview, however, one of the FBI Agents told Sajjad he was not a threat to America.

> Agent John Doe #13 told Mr. Sajjad that he had been watching Mr. Sajjad for the last two years and knew that Mr. Sajjad did not do anything wrong and was not a "terrorist" or a threat to America.

As far as Sajjad knows, he remains on the No Fly list.

Muhammad Tanvir

The FBI first approached Muhammad Tanvir back in 2007, when out of the blue they came to his workplace to interview him. At that very first interview, they asked about "an old acquaintance" who apparently had tried to enter the US illegally.

> They asked him about an old acquaintance whom the FBI agents believed had attempted to enter the United States illegally.

Then, as he returned from a 2008 trip to visit his wife in Pakistan, agents (possibly DHS) interrogated him for 5 hours and confiscated his passport. Just before he was supposed to go back to DHS to get it back, the FBI showed up to his workplace again. This time, they asked questions about Taliban training camps, but also his rappelling skills.(!)

> The FBI agents asked Mr. Tanvir about terrorist training camps near the village where he was raised, and whether he had any Taliban training. The agents also referred to the fact that at his previous job as a construction worker, Tanvir would rappel from higher floors while other workers would cheer

> him on. They asked him where he learned how to climb ropes. Mr. Tanvir responded that he never attended any training camps and did not know the whereabouts of any such camps. He also explained to the FBI agents that he grew up in a rural area, where he regularly climbed trees and developed rope-climbing skills.

Immediately after that interview, DHS returned Tanvir's passport, saying he had been cleared. But he was prevented from flying after that point — in 2010 domestically,and twice in 2011 and once in 2012 to Pakistan — because he had gotten placed on the No Fly List. All that time, the FBI continued to pressure him to inform.

Then, last March, after his lawyer got involved and just at the point where DHS would have to start turning over "releasable" information about why he appeared on the list, DHS decided it had all been a mistake.

> The letter stated, in part, that Mr. Tanvir's experience "was most likely caused by a misidentification against a government record or by random selection," and that the United States government had "made updates" to its records.

Last June, Tanvir succeeded in flying to Pakistan.

Jameel Algibhah

On December 17, 2009 (so during the period between the Nidal Hasan attack and the UndieBomb attack, when scrutiny on Anwar al-Awlaki and therefore Yemen was increasing), when he was roughly 27, Yemeni-American Jameel Algibhah was first approached and asked specifics about Muslims he knew in college, in addition to general questions (such as about his place of worship) asked the others.

> [T]hey proceeded to ask him questions about his friends, his acquaintances, other Muslim students who attended his college, and the names of Muslim friends with whom he worked at a hospital library, one of several jobs he held as a college student. The agents also asked Mr. Algibhah where he worships on Fridays, and asked for additional personal information

After refusing to become an informant after this interrogation, Algibhah was twice prevented from visiting his wife and daughters in Yemen in 2010. In 2012, after seeking help from Congressman Jose Serrano and Senator Chuck Schumer, the FBI came to him and told him, "the Congressmen can't do shit for you; we're the only ones who can take you off the list."

So Algibhah answered the questions they posed, including whether he knew people from Hadhramut in Yemen.

As far as he knows, Algibhah remains on the No Fly list. He has not been able to see his wife or three daughters since 2009.

The Associational No Fly Triggers

So to sum up, here's what the complaint reveals may have led to these men being put on the No Fly list:

Naveed Shinwari: A wedding trip to Afghanistan and some sermons he watched online

Awais Sajjad: A wedding trip to Pakistan, potentially some YouTube viewing, and potentially something a family member had done

Muhammad Tanvir: An old tie to someone who tried to enter the country illegally, and unusual dexterity climbing

Jameel Algibhah: Possibly ties to people from his college, and ties to Yemen (at a time when everything tied to Yemen became suspect)

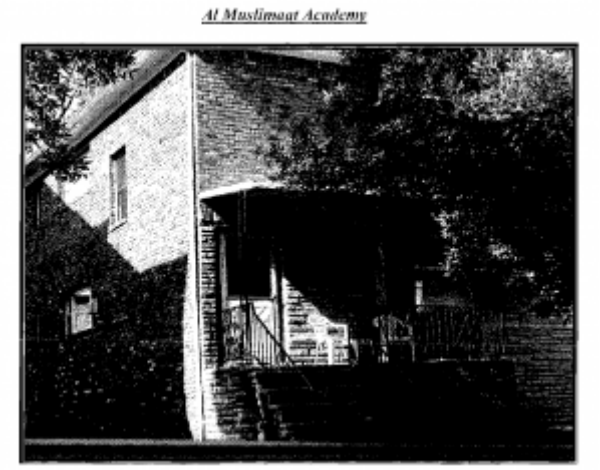
All of these men appear to have had some kind of associations (not actions) that led to their placement on the No Fly list, though those associations were potentially mapped, in two cases, to online activity. Associations and First Amendment activities (as well as great dexterity in climbing!). And — at least as far as the complaint reflects what the FBI told them and in turn reflects the real reasons they got targeted — that's it.

I raise all this because we know the government has twice told the FISC that one benefit of the phone (and therefore presumably the Internet) dragnet is finding potential informants. This suggests they might use the networks identified by queries on people in whom they have suspicions — such as Tanvir's old acquaintance who tried to illegally enter the US — and then troll those networks for people who might be of use (and potentially of use to inform on their own community, not to explain the original RAS-related person).

Only Tanvir and Algibhah appear possibly to have come from that kind of communication-based network analysis (unless Shinwari and Sajjad's communications in relation to the weddings produced some such tie), and it might well be FBI's network analysis, not NSA's. Though all might be data mining-driven assessments, particularly when you throw in travel records.

But it certainly does seem possible that these No Fly designations primarily arise out of mappings (which would be no surprise, really). And then, once those mappings end up being false positives, the FBI instead uses them to coerce informants.

# JUDGE WILLIAM MARTINI ENDORSES HUNTING FOR TERRORISTS IN MUSLIM GIRLS SCHOOLS




The AP correctly captures the jist of Judge William Martini's rejection of a lawsuit against the NYPD for spying on Muslims.

The core of his logic is that Adam Goldman and Matt Apuzzo have injured NYC's Muslim community by providing them proof of the spying targeted at them.

> The ruling also singled out The Associated Press, which sparked the suit with a series of stories based on confidential NYPD document showing how the department sought to infiltrate dozens of mosques and Muslim student groups and investigated hundreds in New York and elsewhere.
>
> "Nowhere in the complaint do the plaintiffs allege that they suffered harm prior to the unauthorized release of documents by The Associated Press," Martini wrote. "This confirms that plaintiffs' alleged injuries flow from the Associated Press's unauthorized disclosure of the documents. … The Associated Press covertly obtained the materials and published them without

> authorization. Thus the injury, if any existed, is not fairly traceable to the city."

But it doesn't expose the other part of his shoddy logic clearly enough. Martini said all this spying was cool because it was designed to find Muslim terrorists hiding among Muslims.

> The police could not have monitored New Jersey for Muslim terrorist activities without monitoring the Muslim community itself. While this surveillance Program may have had adverse effects upon the Muslim community after the Associated Press published its articles; the motive for the Program was not solely to discriminate against Muslims, but rather to find Muslim terrorists hiding among ordinary, law – abiding Muslims.

As I emphasized here, when it was first reported, NYPD wasn't hunting for Muslim terrorists in places where the 9/11 terrorists were known to hang out – cheap hotels, gyms, cybercafes, and a bunch of other businesses catering to anonymity rather than Muslims. Rather, the NYPD was hunting terrorists in schools in Newark, including the one above teaching girls in fifth to twelfth grade, and another teaching first through fourth graders.

The NYPD was hunting terrorists in a girls school.

And Judge William Martini thinks that makes a whole bunch of sense.

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# YES, MARGARET, THE

# NSA DRAGNET DOES INVOLVE INFILTRATION

Margaret Talbot has a piece at the New Yorker comparing COINTELPRO with Snowden's leaks (and implicitly, the theft of data that lies behind both disclosures). Here's the key paragraph of the comparison:

> In most respects, the National Security Agency's collection of domestic phone records which Edward Snowden revealed is nowhere near as disturbing as cointelpro's activities. It is neither ideologically motivated (the N.S.A.'s actions were initially ramped up in response to a real attack; Hoover's were intent on destroying perceived enemies) nor thuggish (it entails surveillance but not infiltration or harassment or blackmail or smear campaigns). Yet in one regard—its technological prowess—it is worse. As the U.S. District Court Judge Richard Leon wrote last month, in an opinion that strongly suggests that the metadata collection could be found unconstitutional, "Records that once would have revealed a few scattered tiles of information about a person now reveal an entire mosaic—a vibrant and constantly updating picture of a person's life." Leon noted that the government did not cite any instances in which the data collection proved necessary in preventing an imminent attack, and concluded that, when weighed against the "almost-Orwellian technology that enables the Government to store and analyze the phone metadata of every telephone user in the United States," the N.S.A.'s rationale was simply too weak. [my emphasis]

There's a lot I might quibble with in this paragraph. The government considered the anti-

war effort part of Communism's "attack" on the "free world," whether or not that was true, in the same way it sometimes considers many critics of US policy in the Middle East — if they are themselves Muslim — to be inspired by al Qaeda, not opposition to crappy US policy. And the NSA has itself analogized its targeting of certain people in the US as terrorists with Project Minaret, the SIGINT targeting of largely anti-war activists; if the NSA makes this comparison, who are we to question it? Further, there's evidence (albeit still very sketchy) that NSA targeted people associated with the Iraq War, not just terrorism.

But I'm particularly concerned by Talbot's claim that none of this dragnet entails infiltration. The government itself told the FISA Court that it uses the phone dragnet to find potential informants — it is, according to the representations the government has made to get the FISC to approve the program, one of the primary purposes of the dragnet.

> From the very start of the FISC-approved program, the government maintained the dragnet "may help to discover individuals willing to become FBI assets," and given that the government repeated that claim 3 years later, it does seem to have been used to find informants.

When you unpack the possibilities of using metadata including the phone records of all Americans to find people who might narc on their community, it becomes very scary indeed. Because the dragnet would allow the government to discover details about people — their 3 degrees of separation from people suspected of terrorist ties, sure, but also extramarital affairs or financial problems — they can use to harass or blackmail potential informants with to convince them to inform, something they've suggested they do with their SIGINT.

One of the only reasons why we don't know more

about this is because we're seeing just the NSA side of these programs. The government is thoroughly redacting any details about what FBI or CIA do with the data that gets churned out of the dragnet (all while boasting of its transparency), so we can't yet explain what happens between the time the data gets crunched and some kid gets caught in a sting or some American loses her right to fly.

But we do know what the end product of infiltrating the Muslim community looks like, both in the way FBI informants push young men until they press a button they can be arrested for, the descriptions of the extensive spying FBI's (and NYPD's) informants conduct, largely targeted at mosques, and in the effect it has had on the discourse that takes place within those mosques.

> African-Americans in the heart of Michigan's auto industry built the mosque I attended as a child.
>
> [snip]
>
> Our African-American imam took turns with others to deliver the Friday *khutba* (sermon). We witnessed oral traditions accented from around the globe and across the road: the *khateebs*(deliverers of sermons) were lyrical and inspired, awkward and soft-spoken; the congregants received the *khutba* differently too, from active talk back to a silent receptive posture. While varied in style, the *khutba* routinely offered global context and critical content. The *khateebs* would remind us of the poverty in Detroit's neighborhoods and the death in Baghdad's streets. They would preach about the importance of the Muslim *ummah* (global community) and the duty to speak out against injustices small and large. The *khateeb* would regularly call for civic engagement as he also reached for religious

> inspiration.
>
> These days, when I stop in a mosque, I am struck by the new normal: no politics, no world, no nimble movement between religious ethics and social context. Today's *khutbas* present the congregation religious teachings in a void. *Khateebs* speak of the importance of honesty, forgiveness, humility and remembrance. They ignore Iraq and Afghanistan, Guantánamo and drones, informants and surveillance. They tell stories about Muhammad, Abraham, Moses, Mary and Jesus but leave out the universal themes of poverty, inequality and injustice.
>
> From mosques to Muslim Student Association offices, American Muslim community spaces have been emptied of their politics, leeched of their dynamism as centers for religious and political debate. This new normal is the result of ten years of post-9/11 scrutiny combined with our government's more recent embrace of "counter-radicalization" and "countering violent extremism" programs, which subject Muslim communities' religious and political practices to aggressive surveillance, regulation and criminalization.

It's easy, I think, for elite non-Muslim commentators to consider the infiltration of a political tradition they or their associates had personal involvement in, the anti-war movement, to be worse than the infiltration of mosques. I'm not sure they're in a position to judge. But at least from what I've seen and heard, the infiltration of America's Muslim communities seems designed to "enhance the paranoia endemic in these circles and will further serve to get the point across there is an FBI agent behind every mailbox," just as the FBI's efforts targeting the anti-war and African-American

communities aimed to do.

The NSA has told us the dragnet involves infiltration. That the NSA hands off the data it collects so the FBI can carry out the infiltration should not confuse us that it does, in fact, play a role in infiltrating communities and sowing paranoia.

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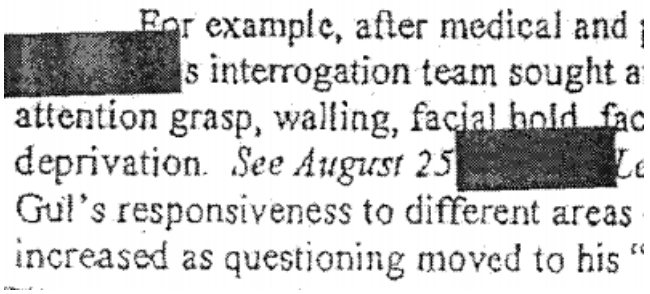
# THE SENATE TORTURE REPORT AND CIA'S LIES ABOUT HASSAN GHUL'S 2004 TORTURE

*Update, March 12, 2015: We know from the Torture Report that the detainees treated in July and August 2004 were not Hasan Ghul, but Janat Gul and two others.*


[redacted] For example, after medical and
[redacted] s interrogation team sought a
attention grasp, walling, facial hold, fac
deprivation. *See August 25* [redacted] Le
Gul's responsiveness to different areas
increased as questioning moved to his "

In my last post, I noted that in his report that Hassan Ghul served as a double agent before we offed him with a drone, Aram Roston stated, without confirming via sources, that Ghul is the person whose name was not entirely redacted on the bottom of page 7 in the May 2005 Convention Against Torture (CAT) torture memo. I noted that if Ghul is the detainee (and I do think he is, contrary to what sources told AP when the CIA was hunting Ghul down with drones in 2011), then we're going to be hearing about him — and arguing about his treatment — quite a bit more in the coming weeks.

That's because, according to information released by Mark Udall, the detainee named in the CAT memo is one of the detainees about whose treatment the CIA lied most egregiously to DOJ. This is apparently one of the key findings from the Senate Intelligence Committee Torture Report that CIA is fighting so hard to suppress.

Mark Udall's list of torture lies

Back in August, Mark Udall posed a set of follow-up questions to then CIA and now DOD General Counsel Stephen Preston. Udall was trying to get Preston to endorse findings that appeared in the Torture Report that hadn't appeared elsewhere (in his first set of responses about CIA's lies to DOJ, Preston had focused on CIA's lies about the number of waterboardings, which the CIA IG Report had first revealed). Udall noted that that lie ("discrepancy") was known prior to the Torture Report, and asked Preston to review the "Representations" section of the Torture Report again to see whether he thought the lies ("discrepancies") described there — and not described elsewhere — would have been material to OLC's judgements on torture.

Udall gave Preston this list of OLC judgements that might have been different had CIA not lied to DOJ. (links added)

- Memorandum Regarding Interrogation of al Qaeda Operative (August 1, 2002);
- Letters from the Department of Justice related to the interrogation of individual detainees, including to the Acting Director of Central Intelligence, dated July 22, 2004; to the CIA Acting General Counsel, dated August 6, 2004; to the CIA

Acting General Counsel, dated August 26, 2004; to the CIA Acting General Counsel, dated September 6, 2004; and to the CIA Acting General Counsel, dated September 20, 2004;

- Memorandum Regarding Application of 18 U.S.C. §§ 2340-2340A to Certain Techniques That May be Used in the Interrogation of a High Value al Qaeda Detainee (May 10, 2005) [Techniques]
- Memorandum Regarding Application of 18 U.S.C. §§ 2340-2340A to the Combined Use of Certain Techniques in the Interrogation of High Value al Qaeda Detainees (May 10, 2005) [Combined]
- Memorandum Regarding Application of United States Obligations Under Article 16 of the Convention Against Torture to Certain Techniques that May Be Used in the Interrogation of High Value al Qaeda Detainees (May 30, 2005) [CAT]
- Memorandum Regarding Application of the Detainee Treatment Act to Conditions of Confinement at Central Intelligence Agency Detention Facilities (August

31, 2006)

- Memorandum Regarding Application of the War Crimes Act, the Detainee Treatment Act, and Common Article 3 of the Geneva Conventions to Certain Techniques that May Be Used by the CIA in the Interrogation of High Value al Qaeda Detainees (July 20, 2007)

The 2002 memo is the original Abu Zubaydah memo, the lies in which (pertaining to who AZ was, what the torture consisted of, what had already been done to him, and whether it worked) I've explicated in depth elsewhere. The 2006 memo authorizes torture in the name of keeping order in confinement and the 2007 memo authorizes torture (especially sleep deprivation); both of these later memos not only rely on the 2005 memos, but on the false claims about efficacy CIA made in 2005 in their support. The lies in them pertain largely to the purpose CIA wanted to use the techniques for.

Which leaves the claims behind the 2004 letters and the 2005 memos as the key lies CIA told DOJ that remain unexplored.

The 2004 and 2005 lies to reauthorize and expand torture

I'm going to save some of these details for a post on what I think the lies told to DOJ might be, but there are two pieces of evidence showing that the 2005 memos were written to retrospectively codify authorizations given in 2004, many of them in the 2004 letters cited by Udall.

We know the 2005 memos served to retroactively authorize the treatment given to what are described as two detainees in 2004, purportedly

in the months after July 2004 (though this may be part of the lie, in Ghul's case) when DOJ and CIA were trying to draw new lines on torture in the wake of the completion of the CIA IG Report and Jack Goldsmith's withdrawal of the Bybee Memo.

We know the May 10 Combined Memo was retroactive because Jim Comey made that clear in emails raising alarm about it.

> I just finished a long call from Ted Ullyot. He said he was calling to tell me that "circumstances" were likely to require that the second opinion "be sent over tomorrow." He said Pat had shared my concerns, which he understood to be concerns about the prospective nature of the opinion and its focus on "prototypical" interrogation.
>
> [snip]
>
> He mentioned at one point that OLC didn't feel like it could accede to my request to make the opinion focused on one person because they don't give retrospective advice. I said I understood that, but that the treatment of that person had been the subject of oral advice, which OLC would simply be confirming in writing, something they do quite often.

This memo probably, though not definitely, refers to a detainee captured in August 2004 in anticipation of what the Administration claimed (almost certainly falsely) were election-related plots in the US.

And we know the May 10 Techniques and May 30 CAT memos are retroactive because we can trace back the citations about the treatment of one detainee, the detainee who appears to be Ghul, to the earlier letters from 2004.

Just as an example, the August 26 letter cited in Udall's list relies on the August 25 CIA

letter that is also cited in the CAT Memo using the name Gul (the July 22 and August 6 letters are also references, at least in part, to the same detainee).

So we know the 2005 memos served to codify the authorizations for torture that had happened in 2004, during a volatile time for the torture program.

The description of Hassan Ghul in the lying memo

There are still some very funky things about these memos' tie to Hassan Ghul (again, that's going to be in a later post), notably that Bush figures referred to the Ghul of the August letters as Janat Gul, including in a Principals meeting discussing his torture on July 2, 2004; sources told the AP after OBL's killing that this Janat was different than Hassan and different than the very skinny Janat Gul who had been a Gitmo detainee.

But this description — the timing of the initial references and the description of his mission to reestablish contact with Abu Musab al-Zarqawi — should allay any doubts that Ghul is one of two detainees referenced in the CAT memo.

> Intelligence indicated that prior to his capture, [redacted] "perform[ed] critical facilitation and finance activities for al-Qa'ida," including "transporting people, funds, and documents." Fax for Jack Goldsmith, III, Assistant Attorney General, Office of Legal Counsel, from [redacted] Assistant General Counsel, Central Intelligence Agency (March 12, 2004). The CIA also suspected [redacted] played an active part in planning attacks against United States forces [redacted] had extensive contacts with key members of al Qaeda, including, prior to their captures, Khalid Sheikh Mohammed ("KSM") and Abu Zubaydah. See id. [redacted] was captured while on a mission from [redacted] to reestablish contact with

> al-Zarqawi. *See CIA Directorate of Intelligence, US Efforts Grinding Down al-Qa'ida* 2 (Feb 21, 2004).

Ghul was captured by Kurds around January 23, 2004, carrying a letter from Zarqawi to Osama bin Laden.

So while there are a lot of details that the Senate Torture Report presumably sorts out in detail, it seems fairly clear that Ghul is the subject of some of the documents in question, and that, therefore, there are aspects of the treatment he endured at CIA's hands that CIA felt the need to lie to DOJ about.

We've known for years that CIA lied to DOJ about what they had done and planned to do with Abu Zubaydah. But a great deal of evidence suggests that CIA lied to DOJ about what they did to Hassan Ghul, a detainee (the Senate Report also shows) who provided the key clue to finding Osama bin Laden before he was tortured.

If that's the case, then I find the release of a story that, after that treatment, he turned double agent either directly or indirectly in our service to be awfully curious timing given the increasing chance we're about to learn more about these lies and this treatment with any release of the Torture Report.

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# DRONES AND DOUBLE AGENTS: HASSAN GHUL

On September 30, 2011, a drone killed Anwar al-Awlaki, a person long suspected of being a US double agent gone bad.

On October 1, 2012, a drone killed Hasan Ghul (see this post for background on Ghul), whom a new report from Aram Roston reports was a double

agent gone bad.

> In 2006, the U.S. sent Ghul back to Pakistan, where he was taken into custody by the Inter-Service Intelligence agency, the country's version ofthe CIA. The next year, the ISI quietly set him free, with the full agreement of American intelligence authorities, according to a Pakistani insider. "He was released and both parties agreed on this," he says. "Both countries were on board in releasing him."
>
> The insider declined to discuss Ghul's status as an informant. But three intelligence sources with knowledge of the issue say Ghul was one of those who agreed to cooperate and provide information about terrorists if he was released.
>
> [snip]
>
> Yet another source says that Ghul initially agreed to the project while he was still in American custody, before he was released to the Pakistanis. "Hassan Ghul," says one former counterterrorism official who is familiar with the case but declined to discuss it in depth, "may have been, probably, one of the highest penetrations of Al Qaeda."
>
> [snip]
>
> Whatever Ghul's agreement with the Americans or Pakistanis, by the time Bin Laden was killed, it appears to have ended. One Pakistani source with knowledge of the case says that Ghul eventually "vanished" and that "the deal was rescinded." Yet he would not say anything about exactly when after his release Ghul lost contact with the ISI.

Now, there are a number of aspects of this story

that are unclear, which (if clarified) might explain this further. For example:

- The report does not note the chronology of Ghul's torture. According to Dianne Feinstein and Carl Levin, Ghul was cooperative right after being captured in 2004. Yet we proceeded to torture him. This chronology would suggest Ghul was cooperative, then tortured, then cooperative, then not cooperative.
- The report makes no mention of Ghul's alleged ties to Lashkar-e-Taiba, a crucially important detail when you're discussing whether the US or the Pakistanis were running him as a double agent. We would have a real incentive to recruit Ghul to inform on LET (which is, after all, what we did with David Headley and may have been what Ray Davis was trying to do, recruit LET informants). But the Pakistanis would never stand for it. If Ghul indeed was a "triple agent," his ties to LET (and Pakistani interest in obscuring LET to us) may explain that entirely.
- The report states, without

> citing any source, that Ghul is the person referred to in a May 2005 OLC memo (sources told the AP in 2011 he was not that detainee; though Roston also states he was a large man, which would support the claim). I will show why, in an follow-up post I've been noodling for months, why this is so crucially important. But suffice it to say that if Ghul is the detainee in the memo, anonymous sources have a very significant incentive to spin his torture positively right now (and we will be hearing far far more about him in the coming weeks).

In any case, the report presents important new explanations and questions about Hassal Ghul.

It also makes you wonder how many of our drone strikes have been used to take out our former informants.