THE DISTINCTION BETWEEN TORTURING ABU ZUBAYDAH AND AL-NASHIRI AND JUST AL-NASHIRI

The difference between whether Gina Haspel oversaw the torture of both Abu Zubaydah and Abd al Rahim al-Nashiri or just the latter is critical to claims that she only did things authorized by the OLC memo.

TORTURE DOCUMENT DUMP

May 28, 2008: DOJ IG Report on Torture

April 6: NYRB posts the Red Cross report on high value detainees

April 9: CIA Director Leon Panetta bans contractors from conducting interrogations

April 16: Obama statement on memo release, torture memos released:

- August 1, 2002: Memo from Jay Bybee, Assistant Attorney General, OLC, to John A. Rizzo, General Counsel CIA
- May 10, 2005: Memo from Steven Bradbury, Acting Assistant Attorney General, OLC, to John A. Rizzo, General Counsel CIA

["Techniques"]
- May 10, 2005: Memo from Steven Bradbury, Acting Assistant Attorney General, OLC, to John A. Rizzo, General Counsel CIA ["Combined"]
- May 30, 2005: Memo from Steven Bradbury, Acting Assistant Attorney General, OLC, to John A. Rizzo, General Counsel CIA

April 21: Senate Armed Services Committee releases declassified Inquiry into the Treatment of Detainees in US Custody

April 22: Senate Intelligence Committee releases declassified Narrative Describing the Department of Justice Office of Legal Counsel's Opinions on the CIA's Detention and Interrogation Program (Jello Jay's statement on the release)

April 22: Pete Hoekstra op-ed about torture briefings

April 23: Ali Soufan, FBI interrogator, publishes NYT op-ed describing early interrogation of Abu Zubaydah

April 23: DOJ announces it will release a number of photos showing detainee abuse that had previously been FOIAed, along with thousands more

April 23: Pelosi press conference describing briefings

April 24: Greg Sargent gets a copy of Cheney's request for two documents to make his "efficacy" case

April 24: In ACLU FOIA case, Judge Hellerstein orders a more expansive response on torture tape documents from CIA

April 24: WaPo releases JPRA memo—which had been

circulated among the torture architects—using the word “torture” and warning that torture will beget false information

April 25: Porter Goss op-ed on torture briefings

May 7: CIA releases torture briefing list

May 18: CIA interrogation index

June 6: NYT publishes Comey emails

June 8: CIA submits Panetta declaration, Vaughn Index (Part One, Part Two)

August 24, 2009: CIA Inspector General Report and OLC documents released (2002-2005; 2006-2009)

August 31, 2009: CIA releases latest Vaughn Index

February 19, 2010: Congress releases OPR Report

Torture Reviews

> May 7, 2004: CIA IG Report on Torture
>
> February 14, 2007: International Committee of the Red Cross, Report on Treatment of 14 High Value Detainees
>
> May 28, 2008: DOJ IG Report on Torture
>
> April 22, 2009: Senate Armed Services Committee Inquiry into the Treatment of Detainees in US Custody (Backup to the report)
>
> April 22: Senate Intelligence Committee, Narrative Describing the Department of Justice Office of Legal Counsel’s Opinions on the CIA’s Detention and Interrogation Program
>
> February 19, 2010: OPR Report on torture [for searchable copies, go here)
>
> - *Memorandum for the Attorney General*
> - *OPR Final Report*

- *OPR 1st Draft Report*
- *OPR 2nd Draft Report*
- *Yoo Response to OPR 2nd Draft*
- *Yoo Response to OPR Final Draft*
- *Bybee Response to OPR 2nd Draft*
- *Bybee Response to OPR Final Draft*
- *Letter from Mukasey and Filip to Jarrett*
- *Letter from DOJ to Chairman Conyers*

December 13, 2014: Senate Intelligence Committee Report

- *Report*

OLC Memos

August 1, 2002: Yoo Letter to Gonzales

August 1, 2002: Bybee One Memo

August 1, 2002: Bybee Two Memo

March 14, 2003: Yoo DOD Torture Memo

December 30, 2004: Daniel Levin Torture Memo

May 10, 2005: Memo from Steven Bradbury, Acting Assistant Attorney General, OLC, to John A. Rizzo, General Counsel CIA [“Techniques”]

May 10, 2005: Memo from Steven Bradbury, Acting Assistant Attorney General, OLC, to John A. Rizzo, General Counsel CIA [“Combined”

May 30, 2005: Memo from Steven Bradbury, Acting Assistant Attorney General, OLC, to John A. Rizzo, General Counsel CIA

> April 13, 2006: Legal Review of Department of Defense Draft Documents (Appendix M)

Congressional Committee Hearings

> June 19, 2007: John Rizzo Confirmation Hearing (SSCI)
>
> February 14, 2008: Steven Bradbury (HJC)
>
> June 17, 2008: Shiffrin, Baumgartner, Ogrisseg, Beaver, Dalton, Mora, Haynes (SASC)
>
> June 18, 2008: Daniel Levin and Lawrence Wilkerson (HJC)
>
> June 26, 2008: David Addington and John Yoo (HJC)
>
> July 15, 2008: Doug Feith (HJC)
>
> July 17, 2008: John Ashcroft (HJC)
>
> September 25, 2008: Moulton, Kleinman (SASC)

CIA ACHIEVES A WHOLE NEW SCALE OF TORTURE EVIDENCE DESTRUCTION

I once made a list of all the evidence of torture the CIA or others in the Executive Branch destroyed.

> I thought it time to start cataloging them, to keep them all straight.
>
> - *Before May 2003: 15 of 92 torture tapes erased or damaged*

> - *Early 2003: Dunlavey's paper trail "lost"*
> - *Before August 2004: John Yoo and Patrick Philbin's torture memo emails deleted*
> - *June 2005: most copies of* ***Philip Zelikow's dissent*** *to the May 2005 CAT memo destroyed*
> - *November 8-9, 2005: 92 torture tapes destroyed*
> - *July 2007 (probably): 10 documents from OLC SCIF disappear*
> - *December 19, 2007: Fire breaks out in Cheney's office*
>
> (I put in the Cheney fire because it happened right after DOJ started investigating the torture tape destruction.)

Since that time, there have been at least two more:

- CIA stealing back copies of cables implicating the President from SSCI servers
- Someone modifying one of the black sites at which the 9/11 defendants were tortured, with Gitmo approval

But apparently, last summer, CIA's Inspector General destroyed something else: both his disk-based and server based copies of the Torture Report.

> But last August, a chagrined Christopher R. Sharpley, the CIA's acting inspector general, alerted the Senate intelligence panel that his office's copy of the report had vanished. According to sources familiar with Sharpley's account, he explained it this way: When it received its disk, the inspector general's office uploaded the contents onto its internal classified computer system and destroyed the disk in what Sharpley described as "the normal course of business." Meanwhile someone in the IG office interpreted the Justice Department's instructions not to open the file to mean it should be deleted from the server — so that both the original and the copy were gone.
>
> At some point, it is not clear when, after being informed by CIA general counsel Caroline Krass that the Justice Department wanted all copies of the document preserved, officials in the inspector general's office undertook a search to find its copy of the report. They discovered, "S***, we don't have one," said one of the sources briefed on Sharpley's account.
>
> Sharpley was apologetic about the destruction and promised to ask CIA director Brennan for another copy. But as of last week, he seems not to have received it; after Yahoo News began asking about the matter, he called intelligence committee staffers to ask if he could get a new copy from them.
>
> Sharpley also told Senate committee aides he had reported the destruction of the disk to the CIA's general counsel's office, and Krass passed that information along to the Justice Department. But there is no record in court filings that department lawyers ever informed the judge overseeing the

> case that the inspector general's office had destroyed its copy of the report.

Two key parts of this story: Sharpley appears to have no idea who decided to nuke the report off the IG server. Hmmmm.

And DOJ has been suppressing this detail in filings in the FOIAs for the Torture Report itself (which may be what led Dianne Feinstein to make an issue of it last week).

Click through if you want a really depressing list of all the ways Richard Burr is trying to disappear the report.

I guess I shouldn't be surprised that the entire report got disappeared. But destroying the whole thing is rather impressive.

Update: Katherine Hawkins reminds of of another one: the hood Manadel al-Jamadi wore when he suffocated to death while being tortured disappeared under circumstances the CIA IG considered non-credible.

DAVID COLE TURNS IN HIS TORTURE HOMEWORK LATE, GETS A C

I was going to simply ignore David Cole's annoying NYT op-ed, asking if the CIA got a bad rap with the SSCI Torture Report, until I saw the claims he made in his JustSecurity post on it.

> Like many others, I commented on and wrote about the Torture Report when it was initially released in December, but the demands of the 24-hour news cycle

> meant that I — and I'm certain, everyone else who commented in that first week — did so without having had time to read the report and its responses in full. The SSCI Report's executive summary is 525 pages, and the responses by the CIA and the Republican minority members of the SSCI total 303 pages. No one could possibly have read it all in those first few days. And of course, by the time one could read it all, the news cycle had moved on.

David Cole (he now admits 2 months later) blathered without first reading what he was blathering about, and so he insists everyone else must have too, thereby discrediting the views of those of us who actually had done their homework.

This, in spite of the fact that some of us torture critics (not to mention plenty of torture apologists) were making the very same critiques he has finally come around to in the days after the report was released: significantly, the Torture Report did not include the early renditions and Abu Zubaydah's earliest torture. And so, Cole argues, because it's never easy to definitively show where a particular piece of intelligence comes from, we shouldn't make an argument about what a disaster CIA's torture program was and instead should just repeat that it's illegal.

Let's look at the steps Cole takes to get there, before we turn to the conclusions he ignores.

First, Cole throws up his hands helplessly in trying to adjudicate the dispute between CIA and SSCI over their intelligence.

> Without the underlying documents, it's not possible to resolve the competing claims, but many of the C.I.A.'s responses appear plausible on their face. At a minimum it is possible that the C.I.A.'s tactics did help it capture

> some very dangerous people planning future attacks.

In some cases, I'll grant that you can't determine where CIA (which is not always the same as US government, which is another problem with the scope of this report) learned a detail, though in others, CIA's rebuttal is fairly transparently weak. But along the way we learn enough new about how helpless the CIA was in the face of even the claims that get shared in the unclassified summary — the most telling of which, for me, is that after being waterboarded, Khalid Sheikh Mohammed got the CIA to believe for 3 months that he had sent Dhiren Barot to Montana to recruit black Muslims in Montana (yes, really!) to start forest fires — to point to the problems of using torture as a means to address CIA's intelligence gaps on al Qaeda. What an unbelievable waste of effort, all arising because torture was presented as something magic that might make KSM tell the truth.

Even more importantly, there's the way that torturing Janat Gul delayed the discovery that the intelligence implicating him in election year plots was a fabrication, but not before Gul and the underlying fabrication served as the justification to resume torture and, in part, to roll out a dragnet treating all Americans as relevant to torture investigations. Both while he was being tortured and the following year, Gul also served as an excuse for the CIA to offer more lies to DOJ about what it was doing and why. Whether deliberately or not, torture served a very important function here, and it was about legal infrastructure, not intelligence. Exploitation.

Having declared himself helpless in the face of some competing claims but much evidence torture diverted the CIA from hunting down the worst terrorists, Cole then says SSCI has not proven its "other main finding," which is that CIA lied about efficacy.

> That conclusion in turn casts doubt on the committee's other main finding — namely, that the C.I.A. repeatedly lied about the program's efficacy.
>
> [snip]
>
> So why did the committee focus on efficacy and misrepresentation, rather than on the program's fundamental illegality?

Let me interject. Here, Cole misrepresents the conclusion of the Torture Report, which leads him to a conclusion of limited value. It is not *just* that CIA lied about whether torture worked. CIA also lied about what they were doing and how brutal it was. It lied to Congress, to DOJ's lawyers, and to (this is where I have another scope problem with the report, because it is demonstrably just some in) the White House and other cabinet members. That's all definitely well documented in the Torture Report — but then, it was well-documented by documents released in 2009 and 2010, at least for those who were doing their homework.

Bracket that misrepresentation from Cole, for the moment, and see where he takes it.

> Possibly because that meant it could cast the C.I.A. as solely responsible, a rogue agency. A focus on legality would have rightly held C.I.A. officials responsible for failing to say no — but it also would have implicated many more officials who were just as guilty, if not more so. Lawyers at the Justice Department wrote a series of highly implausible legal memos from 2002 to 2007, opining that waterboarding, sleep deprivation, confinement in coffinlike boxes, painful stress positions and slamming people into walls were not torture; were not cruel, inhuman or degrading; and did not violate the Geneva Conventions.

> The same can be said for President George W. Bush, Vice President Dick Cheney and all the cabinet-level officials responsible for national security, each of whom signed off on a program that was patently illegal. The reality is, no one in a position of authority said no.
>
> This may well explain the committee's focus on the C.I.A. and its alleged misrepresentations. The inquiry began as a bipartisan effort, and there is no way that the Republican members would have agreed to an investigation that might have found fault with the entire leadership of the Bush administration.
>
> But while the committee's framing may be understandable as a political matter, it was a mistake as a matter of historical accuracy and of moral principle. The report is, to date, the closest thing to official accountability that we have. But by focusing on whether the program worked and whether the C.I.A. lied, the report was critically misleading. Responsibility for the program lies not with the C.I.A. alone, but also with everyone else, up to the highest levels of the White House, who said yes when law and morality plainly required them to say no.

Now, I'm very sympathetic with the argument that there are others, in addition to CIA, who need to be held responsible for torture — as I've noted repeatedly, apparently without even reading the entire set of reports, according to Cole. I think Cole brushes with too broad a brush; we have plenty of detail about individuals who are more culpable than others, both within DOJ and the White House, and we shouldn't just throw up our hands on this issue, as Cole did with efficacy arguments, and claim to be unable to distinguish.

But Cole keeps coming back to the issue of legality, as if the people who went out of their way to put CIA back in the business of torturing give a flying fuck that torture is illegal.

And this is why it's important to emphasize that the Torture Report shows CIA lied *both* about efficacy and about what they were doing and when: because until we understand how everyone from Dick Cheney on down affirmatively and purposely implemented a torture program in spite of an oversight structure *and* won impunity for it, it will happen again, perhaps with torture, perhaps with some other Executive abuse.

Let me point to one of the key new revelations from the Torture Report that goes precisely to Cole's concern to explain why.

As I pointed out four and a half years ago, CIA decided to destroy the torture tapes right after giving their first torture briefing to Congress, to Porter Goss and Nancy Pelosi. Along with deciding to destroy the torture tapes, they also altered their own record of that briefing. In ACLU's FOIA that had liberated that information, CIA managed to hide what it was they took out of the contemporaneous record of that briefing.

The Torture Report revealed what it was.

> In early September 2002, the CIA briefed the House Permanent Select Committee on Intelligence (HPSCI) leadership about the CIA's enhanced interrogation techniques. Two days after, the CIA's [redacted]CTC Legal [redacted], excised from a draft memorandum memorializing the briefing indications that the HPSCI leadership questioned the legality of the program by deleting the sentence: "HPSCI attendees also questioned the legality of these techniques if other countries would use them."2454 After [redacted] blind-copied Jose Rodriguez on the email in which he transmitted the changes to the memorandum, Rodriguez responded to email with: "short and

> sweet."

According to the CIA's own records, in the very first briefing to Congress — which was already 5 months late and only told Congress about using torture prospectively — someone raised questions about the legality of the techniques (at least if done by other countries).

More than 12 years ago, someone — precisely the people our intelligence oversight system entrusts to do this — was raising questions about legality. And CIA's response to that was to alter records, destroy evidence (remember, the torture tapes were altered sometime in 2002 before they were destroyed in 2005), and lie about precisely what they were doing for the next 7 years.

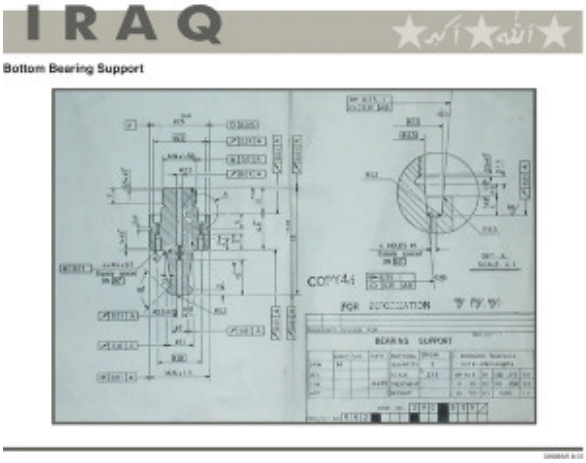
Finally, Cole remains silent about a very important confirmation from the Torture Report — one which President Obama had previously gone to some lengths to suppress — one which gets at why the CIA managed to get away with breaking the law. While SSCI may not have pursued all the documents implicating presidential equities aggressively enough, it did make it very clear that torture was authorized not primarily by a series of OLC memos, but by the September 17, 2001 Presidential Finding, and that neither CIA nor the White House told Congress that's what had happened until 2004.

Torture was authorized in the gray legal zone that permits the President to authorize illegal actions. The rest follows from there. The remaining question, the question you need to answer if you want to stop the Executive when it claims the authority to break the law — and this is elucidated in part by the Torture Report — is how, bureaucratically, the rest of government serves to insulate or fails to stop such illegal activity. Of course, these bureaucratic questions can get awfully inconvenient awfully quickly, even for people like David Cole.

Did the CIA get a bum rap in the Torture Report?

In part, sure, they were just doing what they were ordered, and the CIA routinely gets ordered to do illegal things. But if you want to prevent torture — and other Executive abuses — you need to understand the bureaucratic means by which intended oversight fails, sometimes by design, and sometimes by the deceit of the Executive. Some of that — not enough, but some key new details — appear in the Torture Report.

WHAT WAS THE CIA REALLY DOING WITH MERLIN BY 2003?



On June 26, 2003, CIA posted nuclear blueprints written in English on its website, claiming they were Iraqi.

Bloomberg is reporting that the exhibits released in the Jeffrey Sterling case may lead the UN to reassess some of the evidence they've been handed about Iran's alleged nuclear weapons program.

> International Atomic Energy Agency inspectors in Vienna will probably review intelligence they received about Iran as a result of the revelations, said the two diplomats who are familiar

> with the IAEA's Iran file and asked not to be named because the details are confidential. The CIA passed doctored blueprints for nuclear-weapon components to Iran in February 2000, trial documents have shown.
>
> "This story suggests a possibility that hostile intelligence agencies could decide to plant a 'smoking gun' in Iran for the IAEA to find," said Peter Jenkins, the U.K.'s former envoy to the Vienna-based agency. "That looks like a big problem."

Importantly, this story comes from two IAEA officials who are familiar with the evidence against Iran, and therefore would know if aspects of the Merlin caper resemble things they've been handed by the CIA, almost certainly including the Laptop of Death laundered through MEK to the CIA in 2004.

You'll recall that immediately upon hearing some of the sketchy details of the Merlin caper I thought of the Laptop of Death and a dubious tale, told by Iraqi nuclear scientist Mahdi Obeidi, involving the blueprints posted above. And I've only got more questions about the operation given what we learned since that day.

Here are some of those questions.

- Why did CIA immediately turn to dealing Iraq nuclear blueprints after such a clusterfuck on Merlin's first operation — and why wasn't Sterling involved?
- Why did both Bob S and Merlin tell the FBI in 2006 that Sterling was just a marginal player in the

operation?

- Did the program get *more* sensitive over time?
- Why is the government claiming this part of James Risen's State of War is as sensitive than his exposure of a massive illegal wiretap program?
- Did the *kind* of deception involved change?
- What was CIA intending with its Iran approach in 2003, and what really happened with it?
- What explains the weird reception for Jeffrey Sterling's complaint at the Senate Intelligence Committee?
- Why was Bill Duhnke the top suspect?

Why did CIA immediately turn to dealing Iraq nuclear blueprints after such a clusterfuck on Merlin's first operation — and why wasn't Sterling involved?

As I have laid out, less than a month after Bob S deemed Merlin unable "to follow even the simplest and most explicit direction" (Exhibit 44), he and one other case officer who was apparently not Jeffrey Sterling (though Sterling was still nominally Merlin's handler) approached Merlin about repeating the operation with another country (Exhibit 45). David Swanson has compellingly shown that that country was almost certainly Iraq. That operation, however, would be "rather more adventurous" than the Iranian op that Merlin had already proven so inadequate to.

I think it possible they bypassed Sterling because his Equal Opportunity complaints had already so soured his relationship with the CIA

they had it in for him already. But I do find it interesting that the transition to Stephen Y happened right as they moved onto this "more adventurous" operation (and Stephen Y handled Merlin through this 2003 leak).

Why did both Bob S and Merlin tell the FBI in 2006 that Sterling was just a marginal player in the operation?

That Bob S was bypassing Sterling in April 2000, over a month before Merlin got a new case officer, also raises questions about why he and Merlin, in what seems
remarkably similar testimony to the FBI in 2006, started saying that Sterling was not a central player in the operation. Bob S was doing 70% of the thinking on the operation, he reportedly told the FBI in an February 28, 2006 interview, Sterling just 30%. Sterling served only as a "middleman" editing his letters, Merlin told the FBI in an interview within a month after Bob S'. "The details of this operation were a wild forest to Sterling," Merlin told the FBI in the same interview (though when asked on cross, he said he meant Sterling didn't understand the technical details).

Why were Bob S and Merlin both so intent in the months after Risen's book first appeared on insisting that Sterling's understanding of the operation was incomplete?

Did the program get *more* sensitive over time?

Everything introduced at the trial treats the Merlin operation as a clandestine information collection operation. Yet a heavily redacted filing submitted in support of having Retired Colonel Pat Lang testify and other details from the trial suggest the operation got *more* sensitive as it went along. Like

the contemporaneous cables, the filing suggests the operation was clandestine. "The [redacted] operation was conducted as a [redacted] clandestine intelligence operation." But it also makes it clear that the government was trying to argue that this clandestine operation was covert. Note, for example, the discussion of CIA "electing" to notify Congress, obtain approval from the CIA Director, and … something redacted. That suggests the government went through some or all of the motions of the same kind of notice required under a Finding, without it being a formally covert operation. Risen may have been trying to get at this question, too, when he asked Bill Harlow's counterpart somewhere (this wouldn't have been at NSC, but it might have been at Sandia Lab), "he knew that President Clinton had approved the plan…but wanted to know if it had been reapproved by President Bush" (Exhibit 106; note, this appears to have been a seeded question, and not one that Sterling would have reason to pitch).

But two things suggest the program got, formally, more sensitive, perhaps even escalating to a covert operation that the US would want to deny. First, there are the two "facts" mentioned in the Lang filing that had not been shared with the defense, even though Lang was purportedly read into all the evidence pertaining to the Sterling defense. Then there's an odd exchange that happened with Condi Rice. Eric Olshan asked "did everyone at the NSC know about this specific classified information?" (remember, within weeks, Bob S would tell the FBI more than 90 people were briefed into this compartment). Defense attorney Barry Pollack objected that the question was beyond the protective order. But Olshan insisted it wasn't, and Judge Brinkema judged that "the government is very sensitive to the protective order and I doubt they would go beyond it." The suggestion was that very few people at NSC were read into the precise details of the program when Condi talked NYT out of publishing in 2003.

All of this leads me to believe that the program had gotten much more sensitive between the time Sterling was booted off the program in 2000 and the time Risen was reporting the story in 2003.

If so, why?

Why is the government claiming this part of James Risen's *State of War* is as sensitive than his exposure of a massive illegal wiretap program?

The program would have *had* to have gotten more sensitive over time, if any of the implications about the relative sensitivity of the chapters of Risen's book — including the series of witnesses claiming Chapter 9 was the only one they read (though jurisdictional issues explain some of this, given that Risen's NSA chapter came under MD's purview) are to be believed.

After all, elsewhere in Risen's book, he exposed a massive illegal wiretapping program that directly contravened FISA. He exposed a program that — we now know —directly implicated the Attorney General and Vice President in criminal wiretapping.

Yet the CIA and DOJ want us to believe that this program — described in contemporaneous CIA cables as an effort to give Iran a blueprint to find out if they wanted it — was more sensitive than that massive illegal program? (Admittedly this may all stem from the CIA thinking it is the center of the universe.)

Did the *kind* of deception involved change?

Those questions all make me wonder whether the kind of deception — and the audience — changed,

if the project got more sensitive.

This program was established in January 1997 to,

> create and sustain operational access to the Iranian nuclear target. [Merlin's] goals on behalf of [CIA] will be to gain insight into the stage of development of the Iranian nuclear program and to collect [redacted] information on their contacts with foreign nuclear scientists. Asset will also be involved in the ultimate operational objective of delivery and/or design of a piece of nuclear equipment needed by the Iranians. (Exhibit 5)

As far as we can tell, Merlin's outreach to Iranian scientists never developed substantive responses, much less insight into their alleged nuke program.

By May 1997, the focus had shifted even more to the blueprints (Exhibit 6).

> The goal is to plant this substantial piece of deception information on the Iranian nuclear weapons program, sending them down blind alleys, wasting their time and money, and discrediting Russian designs and equipment in their eyes. The terminology and list of parts are sufficiently specific that we stand a good chance of learning whether the Iranians have in fact adopted the design and trying to make it work.

This seems to suggest this operation was, in part, about trying to get the Iranians to adopt a parts list that would require they purchase in the US, which would be far easier for the CIA to track and thereby monitor Iranian progress. (Such a plan also seems similar to the monitoring of things like aluminum tubes the US was doing before the Iraq War, with all the implications of that.)

That was largely the goal as laid out in the December 1998 cable (Exhibit 16) where Bob S laid out the goal to approach Iranian Subject 1, who apparently was in the process of being assigned to serve as Iran's IAEA Head of Mission in Vienna (see Exhibit 3). That cable is notable, however, for its judgment that,

> The major hurdle here is that neither we nor [Merlin] want him to go to Iran, which would almost certainly be their request. But if we have planted the information and strung them along a bit before facing this issue we would be prepared to let the operation end at that point if necessary.

This admits that the point was dealing the blueprints, and the CIA would even have Merlin balk on an offered nuclear deal — which surely would have alerted the Iranians — if the Iranians asked him to travel to Iran.

In a cable (Exhibit 46) planning the replacement of Sterling (and including 3 offices besides Vienna that were working with local liaison services — one of which would surely be Tel Aviv— to track any Iranian response), Bob S reiterated that goal. "The goal of the operation is to waste as much Iranian nuclear weapons expertise and money as possible."

Curiously, the cable describing the handover from Sterling to Stephen Y (Exhibit 47) also notes that Merlin and his wife would be taken to a [CIA] setting to go over issues Merlin and his wife had covered in their initial debrief, which should cover more systematic Russian bomb construction.

All of which is to say for the period covering Sterling's involvement, the story remained consistent. The idea of planting the blueprints was about wasting Iranian time (not unlike the StuxNet plan, though via different means).

What was CIA intending with its Iran approach in 2003, and what really happened with it?

The same cannot be said about the CIA's plan to use Merlin to approach the Iranians again, after 3 years of having gotten absolutely no response to the first outreach (or, implicitly from Merlin's testimony, from any of the other countries Merlin approached), as captured in a March 11, 2003 cable (Exhibit 103). The cable, apparently coordinated with the Near East and Counter Espionage Divisions of CIA, is titled, "Surveilling the Iranians in City A for a Classified Program No. 1 Approach." It describes Bob S' plan to surveil Iranians in City A. And that's all the explanation, aside from the indication Bob S plans a unilateral approach to the Iranians at the end of the month, pending meeting with Merlin and his handler.

Whatever this operation was, it seems a more haphazard event than even having Merlin drop off a nuclear blueprint wrapped in a newspaper. And in a mostly redacted cable, none of the unredacted discussion describes the intent of dealing off nuclear blueprints to the Iranians for a second time.

Why was CIA satisfied continually throwing out million dollar blueprints without getting a response?

As noted, with Iran, with (presumably) Iraq, and with the other country or countries which Merlin also approached, Merlin got no response.

None.

The government introduced a stipulation (Exhibit 166) at the Sterling trial revealing the CIA had spent at least $1.5 million to develop the blueprint that Merlin wrapped in a newspaper and

left in a mailbox. Presumably, there were additional costs for each time Merlin dropped a newspaper wrapped blueprint in a mailbox. We can presume at least one of those — the blueprint dropped on Iraq, which had given up its nuclear program 9 years earlier — was completely wasted, at least if the purpose was to get the target to waste money on a nuclear program.

And yet the CIA considered the Iranian drop, at least, to be a success.

Why?

What explains the weird reception for Jeffrey Sterling's complaint at the Senate Intelligence Committee?

Particularly given the curious status of the program involving some kind of Congressional notice, there's some weird stuff about the Senate Intelligence Committee treatment of Sterling's Merlin complaint.

Jeffrey Sterling went to the Senate Intelligence on March 5, 2003 to raise concerns about the operation given "current events." He met with Vicky Divoll — a Democratic staffer Mark Zaid had contacted — and Donald Stone — who was in charge of whistleblower issues. Both staffers showed an appropriate amount of skepticism, given Sterling's ongoing disputes with CIA, and Stone was a bit peeved that Sterling hadn't first gone to CIA's Inspector General. But Divoll and Stone differ about what happened next.

Divoll remembers a meeting with her, Stone, and Staff Director Bill Duhnke immediately after the meeting, with Lorenzo Goco (who covered this portfolio) being pulled in. Divoll also remembers Duhnke ordering them to write a memo right away. Note, Divoll got fired for what she claims credibly were political reasons shortly

thereafter, but she blinked, a lot, during cross-examination (and she wears glasses, so it's not a contacts issue).

Stone, however, recalls a meeting involving just him and Bill Duhnke later. Perhaps at that meeting, Bill Duhnke told him there was an investigation into some kind of compromise (CIA referred the leak on April 7 and FBI opened the investigation on April 8), though Stone insisted he didn't know it involved a leak to the press. Worse, James Risen had tried to contact him on his direct line. And that's why, Stone said, he wrote the report, to admit that Risen had tried to contact him but that he hadn't spoken with him. Divoll said Stone wrote the draft and she reviewed it against her notes (though she appears to have an overestimation of her own note-taking skills). And Stone said he got rid of his notes at some point before his FBI interviews.

The thing is, Stone never got around to writing the report until April 25 (Exhibit 101), coincidentally the very same day Risen called the CIA with a completed draft of his story (Exhibit 112). And it seems no one had done any official channel follow-up on the report until someone — presumably Duhnke, though the sender is redacted, sent Goco an email on April 24 (Exhibit 110) asking about his follow-up and, the next day, instructing, "please attempt to schedule the meeting" to follow-up today.
It must have been that last minute follow-up — the day before and day that Stone wrote the report — that Stone refers to when he writes,

> To follow up, it was decided that at the next opportunity, the [redacted] account monitor would ask a question on the degree to which such plans are modified and the approach to making sure there is no benefit to the target or a buyer of the plans. Such a briefing is to take place in the near future.

That is, the report and the official follow-up

was constructed with the FBI's leak investigation in mind at a point when Risen already had a story done.

Which is why the details Stone provided the FBI, which would have been captured in his notes but which didn't show up in the report, are so interesting. First, Sterling said that "they did the equivalent of throwing it over a fence," an admission of how shoddy the pass-off of the blueprints was. Then, that one of CIA's two assets involved "got cold feet," an admission that Merlin almost backed out just before the trip to Vienna. And that one asset (it actually sounds like Stone might have meant Human Asset 2, the other Russian, which the records actually support) "recognized the plans were faulty."

In other words, Sterling told SSCI a number of details that not only correspond with known details of the operation, but which show up in Risen's book, but Stone (writing after Bill Duhnke told him of the leak investigation) didn't include those details in the report. Stone didn't know when he destroyed his notes, but he didn't have them when he met with the FBI.

Why was Bill Duhnke the top suspect?

Finally, there's Bill Duhnke, who not only didn't testify at the trial, but didn't cooperate with the investigation. While classified witnesses who did not testify also named Vicki Divoll, as someone who had "a vendetta" against the CIA (as a Bob Graham staffer, she would have been tied to acute criticism of CIA for missing 9/11), Bill Harlow and Special Agent Hunt both said they considered Duhnke a top suspect at the beginning of the investigation. Since that point, because SSCI Chair Pat Roberts refused to cooperate, FBI never really could have ruled out Duhnke.

What I don't understand is why both people

considered Duhnke the leading suspect, especially since he only heard of Sterling's complaints second-hand. Duhnke was a Richard Shelby staffer (and in recent years, has once again rejoined him as a key staffer), but remained at SSCI after Shelby left in the wake of allegations the Senator had leaked details of a wiretap on Osama bin Laden's satellite phone (which may have been a critique of CIA's failures prior to 9/11). But as he resumed the top SSCI staff position in 2003, Duhnke staffed Roberts as the Senator showed great deference to the CIA (as well as to Vice President Cheney). And very significantly, if the Merlin operation did get more sensitive between 2000 and 2003, Duhnke would have attended whatever Gang of Four briefings in this period included staffers. For example, Bill Duhnke staffed Roberts at the February 4, 2003 briefing at which Roberts agreed to the destruction of the torture tapes, quashed oversight efforts Graham had put into place, and — according to the CIA but contested by Roberts himself — said he could think of 10 reasons right off not to exercise more oversight over torture. Having been part of Roberts' hackery for a few months, why did CIA regard Duhnke to be hostile? And why did they think he had enough information about the operation to be able to leak it to Risen?

There were details of the story Risen had early on — that Merlin had been used (rather than might be, as Risen reported in his book) with other countries, that the fire set handoff was part of a "larger program" to sabotage Iran's nuke program — that didn't make it into his book but which reflected knowledge that Sterling didn't appear to have. They would also seem to reflect larger concerns about the program that had to come from someone with more visibility into what the CIA was doing. Did CIA know overseers at SSCI had such concerns?

SHORTER GOP INTELLIGENCE: "OVERSIGHT'S OUT FOR SUMMER!"

I'm just now getting around to the GOP rebuttal to the Senate Report. While it does raise a few decent points, it engages in a whole slew of the kind of word games the Bush Administration used to hide torture in the first place (I honestly would love to read a serious study of this whole project as an epistemological exercise).

Thus far, however, I most adore this paragraph on Congressional oversight.

> The Study claims, "[t]he CIA did not brief the Senate Intelligence Committee leadership on the CIA's enhanced interrogation techniques until September 2002, after the techniques had been approved and used."88 We found that the CIA provided information to the Committee in hearings, briefings, and notifications beginning shortly after the signing of the Memorandum of Notification (MON) on September 17, 2001. The Study's own review of the CIA's representations to Congress cites CIA hearing testimony from November 7, 2001, discussing the uncertainty in the boundaries on interrogation techniques.89 The Study also cites additional discussions between staff and CIA lawyers in February 2002.90 The Study seems to fault the CIA for not briefing the Committee leadership until after the enhanced interrogation techniques had been approved and used. However, the use of DOJ-

> approved enhanced interrogation techniques began during the congressional recess period in August, an important fact that the Study conveniently omitted.92 The CIA briefed HPSCI leadership on September4, 2002. SSCI leadership received the same briefing on September 27, 2002.93

I am somewhat sympathetic to the first claim. As it notes, at a briefing for what appears to be the Senators (as opposed to staff) on November 7, 2001, Deputy Director of Operations said something that should have set off alarm bells.

> Deputy Director of Operations (DDO) James Pavitt assured the Committee that it would be informed of each individual who entered CIA custody. Pavitt disavowed the use of torture against detainees while stating that the boundaries on the use of interrogation techniques were uncertain—specifically in the case of having to identify the location of a hidden nuclear weapon.2447
>
> 2447 "We're not going to engage in torture. But, that said, how do I deal with somebody I know may know right now that there is a nuclear weapon somewhere in the United States that is going to be detonated tomorrow, and I've got the guy who I know built it and hid it? I don't know the answer to that." (*See* transcript of Senate Select Committee on Intelligence MON briefing, November 7, 2001 (DTS #2002-0611);

Whoa!

Pavitt effectively said, just as the government started to round up people like Ibn Sheikh al-Libi in Afghanistan, "we're not going to torture but then again maybe we will." And while it is crystal clear he failed to meet the terms he laid out — Congress was not informed about each

detainee, there was never a detainee in custody who had set a nuclear bomb nor even a ticking time bomb scenario, much less Abu Zubaydah, who was put on ice for over a month before the worst of the torture — his contemplation of using torture in case of a ticking time bomb should have been the moment for Congress to say, "Whoa! Stop!"

There's no reason to believe the February briefing discussed the torture.

Which brings us to the September briefings.

Now, first of all, elsewhere in their rebuttal, the GOP note that Abu Zubaydah was subjected to torture in April (largely, but not entirely, sleep deprivation). They make much — some of it justified — of the Report for not dealing with this as torture. But here, they adopt the same approach the Report did and ignore that torture and point out that the DOJ-approved torture (that is, the torture that had some authorization beyond the Memorandum of Notification, rather than the torture that relied exclusively on it) started during Congressional recess, so whatever was the poor CIA to do about Richard Shelby and Bob Graham being on vacation? (FWIW, Graham remained actively involved in the Joint Inquiry into 9/11 during that period; it's when he first started getting incensed about Saudi Arabia's role in the attack.)

Schools out for summer!

Except it wasn't out.

JULY

Sun	M	Tu	W	Th	F	Sat
	1	2	3	4	5	6
7	~~8~~	~~9~~	~~10~~	~~11~~	~~12~~	13
14	~~15~~	~~16~~	~~17~~	~~18~~	~~19~~	20
21	~~22~~	~~23~~	~~24~~	~~25~~	~~26~~	27
28	~~29~~	~~30~~	~~31~~			

AUGUST

				~~1~~	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

As the official schedule from the period makes clear, the Senate met (marked by strike-through) on August 1, the day the torture memos were signed. Under the National Security Act, the Gang of Four, at least, are supposed to be briefed *before* a covert op. Clearly the Executive knew enough about what they planned to do with Abu Zubaydah on August 1 to be able to brief it before they started on August 4. (In case you're wondering, the Senate was also in session in April to be briefed.)

I am, however, rather interested that the GOP is adopting the argument that CIA had to wait until September to roll out a new product, just as Andy Card was doing with the Iraq War at that same time. Especially given the way both Nancy Pelosi and Bob Graham have noted that the Executive was lying about both in that same period.

Finally, there's the final claim — that Bob Graham and Richard Shelby got the same briefing that Nancy Pelosi and Porter Goss did. The claim commits another of the crimes the rebuttal accuses the Report of — insisting you can't find out what happened at a briefing without interviewing the participants, which the GOP did no more than the SSCI staffers did.

But from the available evidence, we can be pretty sure Graham and Shelby did not get the same briefing that Pelosi and Goss did.

As I've laid out, someone(s) in the Pelosi and Goss briefing noted that the torture described in the briefing — which CIA had already done, though they didn't tell Pelosi and Goss that — would be illegal in another country. The next day, CIA ramped up discussions of destroying the torture tapes that depicted that illegal torture. The next, Jose Rodriguez and a lawyer altered their record of the briefing to take out that reference to illegality. And, for some reason, the Graham and Shelby briefing, which had been scheduled for September 9, got postponed until the end of the month. Rodriguez did not attend the SSCI briefing, as he had the HPSCI one. And it appears to have been held in less secure space.

And while I've only interviewed half the people who attended those briefings, there does seem to be abundant evidence they were different. Not only that they were different, but different because of the reaction someone in the HPSCI briefing had.

Whatever. I guess it's nice to know that departing Vice Chair Saxby Chambliss and rising Chair Richard Burr both think the CIA should get none of the oversight legally required during recess.

JOSE RODRIGUEZ & CIA LAWYER REMOVED SENTENCE ABOUT TORTURE ILLEGALITY FROM PELOSI, GOSS BRIEFING RECORD

Over four years ago, I wrote a post noting how, in the two days after Jose Rodriguez and one of

his Counterterrorism Lawyers briefed Nancy Pelosi and Porter Goss in September 2002 they might use torture prospectively, they 1) moved closer to deciding to destroy the torture tapes and 2) altered their initial record of the briefing to take out one sentence.

> As I pointed out in **the comments to this thread**, someone (I'll show in my new weedy post why it might be then-Counterterrorism Center Legal Counsel Jonathan Fredman) changed the initial description of the briefing that Jose Rodriguez and two others (I believe Fredman was one of the two) gave to Porter Goss and Nancy Pelosi on September 4, 2002. To see the documents showing discussing the alteration (but not the content of it), **see PDF 84** of this set and **PDF 11-12 of this set**.
>
> That's suspicious enough. But as the email discussions of destroying the torture tape show (see **PDF 3**), the briefing and the alteration to the briefing record happened the day before and the day after—respectively—the day "HQS elements" started talking seriously about destroying the torture tapes.
>
> > On 05 September 2002, HQS elements discussed the disposition of the videotapes documenting interrogation sessions with ((Abu Zubaydah)) that are currently being stored at [redacted] with particular consideration to the matters described in Ref A Paras 2 and 3 and Ref B para 4. As reflected in Refs, the retention of these tapes, which is not/not required by law, represents a serious security risk for [redacted] officers recorded on them, and for all [redacted] officers present and participating in

> > [redacted] operations.
> >
> > [snip]
> >
> > Accordingly, the participants determined that the best alternative to eliminate those security and additional risks is to destroy these tapes [redacted]

So here's what this looks like in timeline form:

> > September 4, 2002: Jose Rodriguez, C/CTC/LGL (probably Fredman) and a CTC Records officer brief Porter Goss and Nancy Pelosi on Abu Zubaydah's treatment. According to both Goss and Pelosi, CIA briefs them on torture techniques, but implies they are hypothetical techniques that might be used in the future, not the past.
> >
> > September 5, 2002: Unnamed people at CIA HQ discuss destroying the torture tapes, ostensibly because of danger to CIA officers conducting the torture.
> >
> > September 6, 2002: Someone (possibly Jonathan Fredman or someone else in CTC's Legal department) alters the initial description of the Goss-Pelosi briefing, eliminating one sentence of it. "Short and sweet" Rodriguez responded to the proposed change.
> >
> > September 9, 2002: CIA records show a scheduled briefing for Bob Graham and Richard Shelby to cover the same materials as briefed in the Goss-Pelosi

> > briefing. The September 9 briefing never happened; Graham and Shelby were eventually briefed on September 27, 2002 (though not by Rodriguez personally).
> >
> > September 10, 2002: The altered description of the briefing is sent internally for CTC records. This briefing is never finalized by Office of Congressional Affairs head Stan Moskowitz into a formal Memorandum for the Record.
>
> Or, to put it more plainly, they briefed Pelosi, decided they wanted to destroy the torture tapes (there's no record Pelosi was told about the tapes), and then tweaked the record about what they had said to Pelosi.

The Torture Report backs my analysis (though doesn't include the details about the torture tapes or that both Pelosi and Goss said they had been briefed the torture would be used prospectively; see here for backing of the claim this was a prospective briefing). But it adds one more detail.

The sentence Jose Rodriguez and his lawyer eliminated — the day after folks at CIA discussed destroying the torture tapes showing they had already used this torture — recorded that one or both of Pelosi and Goss noted that these techniques would be illegal in another country.

> In early September 2002, the CIA briefed the House Permanent Select Committee on Intelligence (HPSCI) leadership about the CIA's enhanced interrogation techniques. Two days after, the CIA's [redacted]CTC Legal [redacted], excised from a draft memorandum memorializing

> the briefing indications that the HPSCI leadership questioned the legality of the program by deleting the sentence: "HPSCI attendees also questioned the legality of these techniques if other countries would use them."2454 After [redacted] blind-copied Jose Rodriguez on the email in which he transmitted the changes to the memorandum, Rodriguez responded to email with: "short and sweet."

At least one of these members of Congress (or their staffers) got briefed on torture and said the torture would be illegal if other countries used it, according to CIA's own records.
So CTC's lawyer eliminated that comment from the CIA's record, with Jose Rodriguez' gleeful approval.

And yet he says Congress approved of these techniques from the start.

CONNECTING THE DOTS ON THE CIA TORTURE REPORT

I want to pull several details of the HuffPo's last two pieces on the CIA torture report together (kudos to HuffPo for stealing Ali Watkins from McClatchy).

Tuesday's story presents conflicting claims about whether the CIA impersonated SSCI staffers to access the part of the server dedicated to their work.

One side — explicitly relying on the CIA Inspector General's own report — say the CIA impersonated staffers, and possibly worse.

> According to sources familiar with the CIA inspector general report that details the alleged abuses by agency officials, CIA agents impersonated Senate staffers in order to gain access to Senate communications and drafts of the Intelligence Committee investigation. These sources requested anonymity because the details of the agency's inspector general report remain classified.
>
> "If people knew the details of what they actually did to hack into the Senate computers to go search for the torture document, jaws would drop. It's straight out of a movie," said one Senate source familiar with the document.

The quote from the other side issued a non-denial denial (though perhaps there was a more direct denial not quoted): CIA did not use Administrator access (which is not what the other source claimed).

> A person familiar with the events surrounding the dispute between the CIA and Intelligence Committee said the suggestion that the agency posed as staff to access drafts of the study is untrue.
>
> "CIA simply attempted to determine if its side of the firewall could have been accessed through the Google search tool. CIA did not use administrator access to examine [Intelligence Committee] work product," the source said.

Now consider today's story, which describes the inconclusive result of the Senate Sergeant-at-Arms report. Here, the dispute is portrayed as a disagreement over whether the CIA has the original access logs, or only copies of them.

> Computer records may have provided evidence on how the CIA document made

> its way into the Intelligence Committee's hands. Those records, Senate sources said, were erased by the CIA.
>
> The claim is technically true. The computer audit logs that recorded activity on the CIA computers used for the committee's report were overridden from the machines' local drives at regular intervals throughout the five-year study, HuffPost has learned. The records, however, continued to be stored elsewhere, and were provided to the Sergeant-at-Arms office for its inquiry. The CIA said that the Senate office received the computer audit records earlier this year.
>
> "CIA cooperated fully with the Senate Sergeant-at-Arms review and provided all the relevant information that the [Sergeant-at-Arms] requested," said CIA spokesman Dean Boyd. "In fact, audit data was specifically provided to the [Sergeant-at-Arms] in July 2014. Furthermore, CIA continues to maintain copies of this audit data to this day. Claims alleging otherwise are patently false."
>
> [snip]
>
> A source familiar with the Senate inquiry has since said that the CIA submitted copies of records to the Sergeant-at-Arms, rather than the records themselves, which the investigators considered unreliable.
>
> The Sergeant-at-Arms "can't verify any of what CIA is saying," said the source, who was briefed on the investigation.

In other words, the Sergeant-at-Arms got records that they can't actually use to verify what happened on the servers. They would have gotten those logs after this issue had already blown up.

I'm reminded of the White House emails, where the content of the emails appears to have been doctored right as Patrick Fitzgerald was subpoenaing specific accounts.

If the CIA had doctored the access logs they stored, they would have been able to eliminate any trace of CIA using SSCI credentials to access the server.

So where does the claim that CIA impersonated the SSCI staffers come from? And what as the inaccurate information based on which the CIA IG referred Senate staffers for investigation?

> The CIA had asked the Department of Justice to pursue criminal charges against the Senate staff for removing the document, which the Justice Department declined in June to investigate. The CIA's inspector general has since determined that the criminal referral was based on "inaccurate information." The inspector general also publicly accused CIA staff of misleading the offices' investigators during its inquiry.

That doesn't necessarily mean that the Inspector General was working with dodgy access logs. CIA has any number of ways to lie — it's what we pay them to do. By 2010, after all, the CIA had already altered or destroyed all this evidence of their torture:

> Since there are so many incidences of destroyed or disappearing torture evidence, I thought it time to start cataloging them, to keep them all straight.
>
> - *Before May 2003: 15 of 92 torture tapes erased or damaged*
> - *Early 2003: Gitmo commander Mike*

> *Dunlavey's paper trail documenting the torture discussions surrounding Mohammed al-Qahtani "lost"*
> - *Before August 2004: John Yoo and Patrick Philbin's torture memo emails deleted*
> - *June 2005: most copies of* ***Philip Zelikow's dissent*** *to the May 2005 CAT memo destroyed*
> - *November 8-9, 2005: 92 torture tapes destroyed*
> - *July 2007 (probably): 10 documents from OLC SCIF disappear*
> - *December 19, 2007: Fire breaks out in Cheney's office*
>
> (I put in the Cheney fire because it happened right after DOJ started investigating the torture tape destruction.)

Add to that the 920 documents (potentially pertaining to White House involvement) stolen back from the server after they had originally been made available.

> After a series of meetings, I learned that on two occasions, CIA personnel electronically removed committee access to CIA documents after providing them to the committee. This included roughly 870 documents or pages of documents that were removed in February 2010, and secondly roughly another 50 were removed in mid-May 2010.

Again, we don't know that the CIA altered the access logs.

But if they didn't, it would almost constitute an exception to their rule of destroying evidence.

Update: As a reminder, here were the conclusions in the CIA IG Report summary that was publicly released.

> Agency Access to Files on the SSCI RDINet: Five Agency employees, two attorneys and three information technology (IT) staff members, improperly accessed or caused access to the SSCI Majority staff shared drives on the RDINet.
>
> Agency Crimes Report on Alleged Misconduct by SSCI Staff: The Agency filed a crimes report with the DOJ, as required by Executive Order 12333 and the 1995 Crimes Reporting Memorandum between the DOJ and the Intelligence Community, reporting that SSCI staff members may have improperly accessed Agency information on the RDINet. However, the factual basis for the referral was not supported, as the author of the referral had been provided inaccurate information on which the letter was based. After review, the DOJ declined to open a criminal investigation of the matter alleged in the crimes report.
>
> Office of Security Review of SSCI Staff Activity: Subsequent to directive by the D/CIA to halt the Agency review of SSCI staff access to the RDINet, and unaware of the D/CIA's direction, the Office of Security conducted a limited investigation of SSCI activities on the RDINet. That effort included a keyword search of all and a review of some of the emails of SSCI Majority staff members on the RDINet system.

> Lack of Candor: The three IT staff members demonstrated a lack of candor about their activities during interviews by the OIG.

Update: Katherine Hawkins reminds me that Manadel al-Jamadi's blood-stained hood disappeared.

CIA'S TORTURE PUSHBACK GETS MORE ARTFUL

I well remember when Robert Grenier testified at Scooter Libby's trial. His performance — like most of the witness testimony — was a performance. But I was more intrigued by the response. Even the cynical old DC journalists were impressed by the smoothness of the performance. "You can tell he was a great briefer," one journalist who had written a book on the CIA said.

Today, he takes up the role of bogus pushback to the Senate torture report, complete with all the false claims about the report, including:

- SSCI should not have relied exclusively on documents — which, if true, is an admission that millions of CIA's cables are fraudulent and false
- The claim that members of the Gang of Four were briefed earlier and more accurately than even CIA's own documents show them to

have been

- SSCI — and not CIA — made the decision that CIA officers should not testify to the committee
- That a report supported by John McCain and Susan Collins is a Democratic report (Grenier also claims all involved with it know history from history books, not — as McCain did — from torture chambers)
- That the CIA cables exactly matched the torture depicted on the torture tapes (see bullet 1!), and that CIA's IG reported that, both of which are false

But perhaps Grenier's most cynical assertion is his claim — in a piece that falsely suggests (though does not claim outright) that Congress was adequately briefed that Congress' job, their sole job, is to legislate, not oversee.

> A second, related reason would be to build support for comprehensive legislation — that is what Congress is supposed to concern itself with, after all — to remove any of the interpretive legal ambiguity which permitted coercive interrogation to be considered in the first place, and ensure it never happens again.

It is a cynical move, but given the rest of his argument, the part that I find compelling, necessary.

Because Grenier warns Dianne Feinstein that her attack on the Presidentially authorized

counterterrorism methods of the past will chill President Obama's preferred presidentially authorized counterterrorism methods – drone strikes – going forward.

> It is not just the past which is at stake, but the present and the future as well. Make no mistake – those currently serving in CIA are watching these developments closely.
>
> Senator Feinstein, we are told, though having great moral qualms about vigorously interrogating terrorists, appears to have no particular compunction about killing them – so long as it is done remotely, with little direct contact with the gruesome details. As anyone reading the press will know, the current, Democratic administration has shown great enthusiasm for directed killings, employing drones in lethal operations around the world to an extent that might have shocked their Republican predecessors in the Bush administration. Death by video game has its attractions, particularly for those lacking intestinal fortitude. It enables them to avoid confronting the essential and unavoidable brutality of what they are doing.
>
> Just as was the case with harsh interrogations during the last administration, the current resort to directed killings, including so-called "signature strikes," in which the specific identities of those targeted are unknown, though remarkably uncontroversial at the outset of the current administration, has become anything but uncontroversial since. Should the perceived threat from various bits of ungoverned, terrorist-dominated geography around the globe diminish, the controversy involving drone strikes will

> only grow further. At some point soon, if they haven't already, the tribunes of the people in the U.S. Congress will begin to wonder about the political wisdom of their association with directed killings.
>
> They needn't worry — they have already demonstrated their ability to avoid all responsibility — but those charged with carrying out such strikes should, and they know it. Those in both the White House and the Congress who have chosen to comfort themselves by propagating the myths associated with drone strikes — that they are universally "surgical," always precisely targeted, and that any civilian casualties associated with them are rare — will inevitably find themselves shocked — perhaps "chilled" is the word — by reality when political calculation dictates that they examine it more closely. Drone strikes, like any other aspect of war, are far more messy and imprecise than advertised, involving subjective judgments easily vulnerable to second-guessing and ex-post-facto recrimination. They benefit only by comparison with more primitive methods, including ground attacks and conventional air strikes, but those comparisons will no longer matter when political interest moves in the other direction. Some successor to Dianne Feinstein may well soon find political cover or political advantage, as the case may be, in a thorough, negative investigation of the drone program — we can watch for it.

I told you CIA would invoke Obama's drone strikes to limit the damage of the torture report.

To be sure, there is already evidence CIA is lying to Congress about drone strikes, just as it lied about torture, particularly about the

numbers of civilians it has killed. Yet DiFi has willfully continued to believe those lies, to believe the CIA's purportedly better record on drone strikes stems from some inherent skill and not the preference of foreign partners to work with a malleable CIA rather than DOD.

Grenier is absolutely right that Congress and the White House want to be lied to on this point.

Grenier then launches a more interesting implicit threat — that CIA will stop doing what the President demands under Article II.

> In my own time in CIA, as perhaps in all times, there were those inside the organization who preached that the Agency should steadfastly avoid presidential directives to affect or shape events, rather than just report on them. "Stick to traditional intelligence collection," they'd say. We hear similar voices now. But presidents always feel otherwise. Every president confronts foreign policy challenges for which a cheap, clandestine solution appears tempting. Given CIA's unique capabilities, it's often the right thing to do. But the opportunities to frustrate the president's wishes and avoid such entanglements are rife for those who are so inclined. There is even a term for it: "slow rolling." Current events, and the anticipated Senate report, will greatly strengthen the hand of the slow-rollers. It's hard to disagree with them now.
>
> [snip]
>
> Rather than taking responsibility for changes in counterterrorism policy on itself, it is a far safer, if more insidious course — one instinctive to Congress — to abuse the CIA to the point where it self-regulates. But as noted above, there are serious downsides to

> that approach. U.S. national security will not be served by fostering a culture within CIA in which the organization decides for itself which of its lawful orders it will choose to follow, and makes those judgments based on what CIA officers consider best for themselves and their institution, rather than on what their elected masters deem best for the country. That is not the way the system is supposed to work. The federal bureaucracy is supposed to follow legal orders. That is what CIA has always done, frequently to its cost, and that is what the American people need it to do. If they don't like what their elected leaders have done, they can throw them out. They shouldn't look to CIA to make these decisions for them — on their own, and for their own purposes.

Ostensibly, this talk about slow rolling the President's Findings is about drone strikes. Except that the President is re-launching the war in Iraq even as we speak, based solely on Article II authority (I presume JSOC features as prominently as CIA, but CIA clearly has been on the ground for some time).

The implicit threat: if SSCI continues to push, both the President and the Democrats who want to respond to ISIS without declaring war will regret it.

Even here, Grenier is full of shit. He makes no mention of the structure of the September 17, 2001 Gloves Come Off Finding, which itself outsourced most substantive decisions to CIA. It's one thing to demand Congress do something about that — and they should — and yet another to suggest the rest of Obama's covert operations employ such structure (though I wouldn't put it beyond the National Security establishment). Moreover, the abundant evidence (in CIA's own records, which Grenier treats both as accurate and as inaccurate!) that CIA ignored even the

limits imposed by DOJ makes their actions illegal, regardless of what order Bush originally gave.

The problem is the orders — both to torture and to drone strike. But it is also the type of relationship Cofer Black and Dick Cheney embraced (and Obama has retained, at least with respect to the Gloves Come Off MON).

Which is why this is my favorite line from Grenier's piece.

> Goodness. If even a substantial portion of this were true, I would be among the first to advise that CIA be razed to the ground and begun all over again.

This is coming (as Grenier alludes to but doesn't fully lay out, just as he lays out the suggestion that CIA resumed torture after he refused in early 2006) from a guy who tried to stay within the law, stopped torturing after the Detainee Treatment Act forbade it. It is, perhaps, the best line, given the impasse we're at.

CIA has become the instrument of illegal actions, an arm of the Executive that evades all law, precisely because of its corrupted relationships with both the Executive and Legislative branch.

So, I take you up on the suggestion, Robert Grenier. Let's raze the damn thing and — if a thorough assessment says a democracy really needs such an agency, which it may not — start over.

HISTORY REPEATS ITSELF: KESSLER ORDERS PRESERVATION OF GITMO FORCED FEEDING TORTURE VIDEOS

With even the New York Times editorial page chiming in on Thursday (just after the Abramson firing on Wednesday, so this is clearly a big deal to them), Judge Gladys Kessler ruled on Friday that the military must stop its forced feedings of a Syrian prisoner at Guantanamo and preserve videos of him being forcibly extracted from his cell and being fed. We've seen this movie before. Recall that Kessler was one of at least two judges ordering the CIA to preserve video evidence of waterboarding before Robert Eatinger and Jose Rodriguez decided to go ahead with destruction of the videotapes. Considering how out of control John Bogdan, head of the Joint Task Force Guantanamo Detention Group, already has been, it would not surprise me at all for these videos to meet the same fate. Heck, given Eatinger's current behavior in trying to use intimidation to stop further revelations on the torture front, it wouldn't even surprise me for him to decide, through some sort of OCA role, that it is the CIA's job to take possession of and to destroy the tapes in question.

Here is Carol Rosenberg reporting on Kessler's ruling:

> A federal judge waded deep into the Pentagon's handling of the Guantánamo hunger strike on Friday, ordering the military to temporarily suspend forced-feedings of a Syrian prisoner at the detention center until a hearing Wednesday.

> U.S. District Court Judge Gladys Kessler in Washington, D.C., also ordered the military to preserve any video recordings guards might have made hauling Syrian Mohammed Abu Wa'el Dhiab, 42, from his cell and giving him nasogastric feedings in a restraint chair. He has also been identified as Jihad Dhiab in court papers and news reports.
>
> The order appears to be the deepest intrusion into prison camp operations by the federal court during the long-running hunger strike, which at one point last year encompassed more than 100 of Guantánamo's 154 detainees.
>
> The military has since December refused to disclose how many detainees are force-fed as hunger strikers each day, and it was not possible to know if Navy doctors at the base considered Dhiab at risk by perhaps missing four or five days of tube feedings.

Rosenberg goes on to inform us that it only recently was learned that the videos exist. She also realizes that whether Bodgan and his crew will honor the order is an open question:

> Military spokesmen from Guantánamo and the U.S. Southern Command did not respond Friday night to questions from the Miami Herald on whether the 2,200-strong military and civilian staff at the detention center had received and would honor the order.

Recall that when the waterboarding tapes were destroyed, that destruction was in direct violation of court orders, including one from Kessler:

> The CIA destroyed the tapes in November 2005. That June, U.S. District Judge Henry H. Kennedy Jr. had ordered the

> Bush administration to safeguard "all evidence and information regarding the torture, mistreatment, and abuse of detainees now at the United States Naval Base at Guantanamo Bay."
>
> U.S. District Judge Gladys Kessler issued a nearly identical order that July.

One ruse that was used to dodge the orders was the fact that the tapes were of prisoners that were "off the books" at the time of the court orders:

> At the time, that seemed to cover all detainees in U.S. custody. But Abu Zubaydah and Abd al-Rahim al-Nashiri, the terrorism suspects whose interrogations were videotaped and then destroyed, weren't at Guantanamo Bay. They were prisoners that existed off the books — and apparently beyond the scope of the court's order.

Despite the clear knowledge that torture was carried out by the US and the videotapes of that torture were destroyed, there have been no consequences for those who were directly involved in these acts. As we saw back in March, the CIA attorney who gave the blessing for Rodriguez to destroy the tapes is now resorting to intimidation of Senate staffers to prevent further revelations of his crimes:

> Dianne Feinstein just gave a barn burner of a speech explaining the CIA/SSCI fight over the Torture Report. There are a lot of details I'll return to.
>
> But one of the most important issues, in my mind, is the detail that the Acting General Counsel of the CIA, Robert Eatinger, referred the Senate Intelligence Committee investigators to DOJ for investigation. (h/t to **DocexBlog** for **identifying** Eatinger)

> Feinstein correctly interpreted this as an attempt to intimidate her staffers as they complete the investigation.
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> And, as Feinstein made clear, Eatinger is a key focus of the report. Feinstein revealed that Eatinger (whom she did not name) was named, by name, (if I heard Feinstein's claim correctly) 1,600 times in the Torture Report.
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> At least some of those mentions surely describe CIA's decision to destroy the torture tapes, an act Eatinger **sanctioned**.

But Eatinger might not have to act. It seems pretty likely that John Bogdan will decide on his own to destroy the tapes, considering his central role in precipitating the hunger strike that is at the heart of the current litigation. From last July:

> It has been clear for some time that the current hunger strike crisis at Guantanamo can be laid squarely at the feet of John Bogdan, who heads the Joint Task Force Guantanamo Detention Group. In other words, he is the head of the guard force. As I noted in **this post**, Shaker Aamer's attorney, in a statement to Andy Worthington, clearly blamed Bogdan for the actions that precipitated the hunger strike.
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> Yesterday, Judge Royce Lamberth dealt a severe setback to Bogdan, striking down one of his most needlessly abusive practices.

While Kessler's ruling is a very positive development, history tells us that it is very unlikely the tapes will ever be viewed by a court or that anyone will ever face consequences either for the acts depicted in the tapes or their eventual destruction or removal from access.