

# JAMIE DIMON OWNS OBAMA'S TESTICLES

Jamie Dimon owns Barack Obama's testicles. That's the only explanation I can think of for why, rather than firing his JP Morgan Exec Chief of Staff for being incompetent, Obama simply shifted him over to serve as the public face of his Administration.

Ten months into his tenure as chief of staff, [Bill] Daley's core responsibilities are shifting, following White House missteps in the debt-ceiling fight and in its relations with Republicans and Democrats in Congress.

On Monday, Mr. Daley turned over day-to-day management of the West Wing to Pete Rouse, a veteran aide to President Obama, according to several people familiar with the matter. It is unusual for a White House chief of staff to relinquish part of the job.

[snip]

The new set-up effectively makes Mr. Rouse the president's inside manager and Mr. Daley his ambassador, roles that appear to better suit both men's talents.

As you recall, Daley was hired as a sop to the banks, who thought endless bailouts weren't enough bounty from this and the prior Administration and successfully demanded having one of their own in the White House gatekeeper position. And so, after fucking up the debt ceiling, and fucking up the introduction of Obama's jobs push (and overseeing the passage of three trade agreements that will send jobs overseas), Daley has been moved into a figurehead role.

Here's a snapshot of the kind of people whom

Daley is sucking up to as “Ambassador”: the architect of the housing bubble-and-crash, the embodiment of corruption in the GSEs, and a guy who helped pass a law that will help his wife’s insurance company, only to leave to work for the Chamber of Commerce and a private equity firm.

Lately, Mr. Daley has been trying out his new role, deploying his back-slapping persona in Washington social circles. He recently held a private reception at his Ritz Carlton residence for a small group of D.C. elites, including former Fed Chairman Alan Greenspan, former Fannie Mae Chief Executive Jim Johnson and Yousef Al Otaiba, the United Arab Emirates ambassador to the U.S.

Former Sen. Evan Bayh (D., Ind.) said an invitation to lunch with Mr. Daley in his West Wing office was the first time he had heard from him.

So at a time when Obama’s campaign wants to pretend he’s taking a tough line with the 1%, he’s refusing to fire 1%er Bill Daley when he proves to be incompetent. Does this mean the banksters will effectively retain their own personal gate-keeper?

And FWIW, I believe Pete Rouse was and will be the best of the three Chiefs of Staff Obama has had, so I approve of that move. Though I question the wisdom of making the move just in time for another government shutdown, which is due up in the next few weeks.

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## **GITMO’S COMMANDERS**

# AND MY 4-YEAR OLD NIECE PLAY GAMES

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tary commissions and implements

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Mr. EW

in a game of “Matches” last week. She kept making up new rules every turn, ensuring Mr. EW didn’t know precisely what the rules of the game were.

It provided me an excellent opportunity to teach her what the word “shrewd” means—“A special kind of smart.”

I’m less amused by this: Gitmo’s second new set of Military Commission rules in as many years. Last year, they released the 2010 Manual for Military Commissions hours before Omar Khadr’s trial started. This year, they’re introducing the 2011 Regulation for Military trial days before the Abd al Rahim al-Nashiri death penalty case starts. But make no mistake, this “Regulation” amends last year’s Manual. As Carol Rosenberg reports:

The Defense Department released the document two days ahead of the arraignment of a Saudi-born captive charged with murder and terrorism for al Qaida’s suicide bombing of the USS Cole off Yemen.

[snip]

Almost simultaneously, the document appeared on the war court’s new nearly \$500,000 website, numbering 202 pages and including some changes to procedures. For example, each case’s

military judge now has the authority to approve the costs of a so-called "learned counsel," typically a civilian defense attorney with extensive experience defending capital murder cases. It also outlined procedures through which observers could protest, through a chief clerk, a judge's decision to declare an aspect of a trial as "protected."

[snip]

The Pentagon's new Deputy Secretary of Defense, Ashton B. Carter, signed the new document on Sunday. He said in a foreword that it provided guidance at times that differed from the way the U.S. military court martials its own troops. "That difference is necessitated by the unique circumstances of the conduct of military and intelligence operations during hostilities or by other practical need."

Legal experts were poring over the document Monday night.

Meantime, Human Rights Watch attorney Andrea Prasow called the timing troubling.

"The very idea that new rules could be issued moments before someone is arraigned to face the death penalty offends any notion of due process," said Prasow, who has worked on war court defense cases. "The stamp of illegitimacy has been firmly affixed to Nashiri's case."

To make it all the more pathetic, check out the image at the top of the page.

Nothing

That's the top corner of these brand new rules. From DOD. The biggest bureaucracy in the world.

With no headers.

How the hell can DOD release new rules governing a capital case without even bothering to include headers or footers (the document has simple centered page numbers) to indicate these are actually the rules issued by the biggest bureaucracy in the world?

It's like some sergeant somewhere who doesn't know how to operate Microsoft Word was tweaking these until an hour ago.

Seriously, I haven't even gotten into the contents of these new rules yet. But they look like a—very long—high school project, not the considered rules of court of law.

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## **CHINA! AND RUSSIA! AND [AN UNNAMED ALLY THAT IS LIKELY ISRAEL] ARE STEALING OUR STUFF!**



Last week, ODNI released a report on cyberwarfare that is raising eyebrows for the way it named China and

Russia as the sponsors of cyberespionage

explicitly.

Jack Goldsmith wonders what naming them will accomplish.

I am sure that naming the Chinese and Russians specifically and openly was a big deal inside the government. The *Wall Street Journal* reports that a “senior intelligence official said it was necessary to single out specific countries in order to confront the problem and attempt contain a threat that has gotten out of control.” Perhaps so, but naming names alone will not accomplish much. For one thing, the U.S. government has presented no public evidence on Chinese and Russian cyberespionage, and those countries generally deny it. (Chinese Embassy spokesman Wang Baodang said yesterday, in response to the DNI Report, that China opposes “any form of unlawful cyberspace activities.”) For another, Cyberespionage does not violate international law. For yet another, the United States itself, while it does not engage in broad-ranging industrial or economic espionage, does do so on a limited scale.

[snip]

In light of these factors, it is hard for me to understand what naming names is supposed to accomplish, especially since the Chinese and Russian hand in industrial espionage is widely known.

Whereas Shane Harris compares this moment to Churchill’s Iron Curtain speech.

The report marks the first time the United States government has unequivocally stated, in empathetic and highly publicized fashion, that China and Russia are responsible for a pervasive electronic campaign to steal

American intellectual property, trade secrets, negotiating strategies, and sensitive military technology. This is not the first time sitting US officials have singled out Chinese and Russian cyber theft. But those complaints were largely off the record and carefully calibrated not to be read as a shot across the bow of America's strategic adversaries. This report, however, is that shot.

[snip]

And one is tempted to draw parallels to pivotal moments of the last cold war, which were underappreciated at the time, or even ridiculed. The release of this report may turn out to be the Internet's Iron Curtain moment. Though it landed with much less ceremony and eloquence than Sir Winston Churchill's fateful 1946 address, it nevertheless does the same job: It makes clear the stakes as the United States intelligence community sees them, and it throws down a challenge against Russia and China, which are judged to be the two greatest strategic threats to American prosperity and influence.

But there's something funny about this grand moment. Sure, the report names and shames China and Russia. But it also makes clear that our allies [cough, Israel] are also stealing our stuff. Here's how the executive summary presents the culprits.

▪ *Chinese actors are the world's most active and persistent perpetrators of economic espionage. US private sector firms and cybersecurity*

*specialists have reported an onslaught of computer network intrusions that have originated in China, but the IC cannot confirm who was responsible.*

- *Russia's intelligence services are conducting a range of activities to collect economic information and technology from US targets.*
- *Some US allies and partners use their broad access to US institutions to acquire sensitive US economic and technology information, primarily through aggressive elicitation and other human intelligence (HUMINT) tactics. Some of these states have advanced cyber capabilities.*

If this theft is such a big deal, then it's a big deal whether China does it or Israel. Hell, since Israel often steals our defense information than sells others the war toys we sell to them, in some ways it presents a more immediate threat.

And whatever the significance of naming China and Russia might be if they were the only



culprits, shaming them while at the very same time admitting that our buddies do the same thing sort of makes us look like chumps or hypocrites.

Which is all the more hysterical given that the report cover features a thumb drive—the means by which we continue to make it child's play to give us viruses that make stealing our stuff easier—wielded like a bright red gun to represent the danger.

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## **TWO YEARS AFTER ELBARADEI'S DEPARTURE, IAEA JOINS ANTI-IRAN DRUMBEAT**

As I noted on Thursday, the “sport” of predicting when Israel will attack Iran has now moved from the progressive blogosphere to many conventional news outlets. This week will see a major escalation in the anti-Iran rhetoric after the release of a much-anticipated report on Iran from the International Atomic Energy Agency.

Many news outlets already are saying this report will be damning for Iran. Today, the Washington Post devotes front-page prominence to its “scoop” of details expected to be contained in the report. The title for the article, which seems meant to be read with breathless fear, is “IAEA says foreign expertise has brought Iran to threshold of nuclear capability”.

Here is the how the Post article opens:

Intelligence provided to U.N. nuclear officials shows that Iran's government has mastered the critical steps needed to build a nuclear weapon, receiving assistance from foreign scientists to overcome key technical hurdles,

according to Western diplomats and nuclear experts briefed on the findings.

So, outsiders have provided assistance to Iran so that they have “mastered key steps needed to build a nuclear weapon”. But, if we dig a bit deeper in the article, we have a little more detail on just what these “key steps” are. The Post seems to be relying almost exclusively on information provided by David Albright of the Institute for Science and International Security, a non-partisan organization concentrating on nonproliferation:

Albright said IAEA officials, based on the totality of the evidence given to them, have concluded that Iran “has sufficient information to design and produce a workable implosion nuclear device” using highly enriched uranium as its fissile core. In the presentation, he described intelligence that points to a formalized and rigorous process for gaining all the necessary skills for weapons-building, using native talent as well as a generous helping of foreign expertise.

It would appear that the latest basis for war will be the conclusion that Iran has developed technology for a nuclear trigger. Another aspect of this triggering technology is reported by AP, where they describe a large steel container designed for testing the trigger technology.

These reports simply ignore the major barrier Iran has not yet passed. As I noted on Thursday, Iran’s current capability for uranium enrichment is at 20% uranium and a bomb requires uranium enriched to 90%. But if Iran has been tutored on how to trigger the 90% uranium once it exists and might be carrying out experiments on that triggering, then now is the time to attack if we listen to those beating the war drums.

But how have we gone from the 2007 National Intelligence Estimate that stated unequivocally that Iran suspended all weapons work in 2003 to now, with claims Iran is on the “threshold” of nuclear capability? For one thing, there was a change at the top of the IAEA. The Director General of the IAEA from 1997 to 2009 was Mohamed ElBaradei. Recall that ElBaradei received the Nobel Peace Prize in 2005. Many believe that ElBaradei’s prize was awarded to highlight the difference between his diligent, truth-based work on weapons inspections and nonproliferation and the false “intelligence” on WMD’s the Bush administration manufactured as the basis for the 2003 invasion of Iraq.

The new Director General of the IAEA took over December 1, 2009. Two years seems to be just about the right amount of time for a new attitude to propagate through such an institution, so it seems reasonable to assume that ElBaradei’s influence at IAEA is no longer being felt in the new report about to be issued.

I’m not familiar with Yukiya Amano or his previous work. It appears that most of his career has been in the Japanese Ministry of Foreign Affairs, where he did spend one year as their director of the Nuclear Energy Division, but that seems to be the extent to which his career may have been intertwined with the problematic Japanese nuclear energy industry.

As for David Albright, whom the Post relied on extensively for its “scoop”, the History Commons entry for him shows that he demonstrated a healthy dose of skepticism for Bush administration claims about Iraq in 2003 and did not hesitate to go public with his concerns. That someone with Albright’s credibility and track record is concerned about where Iran is headed with their nuclear technology then becomes a reason to look carefully at the new claims being made. I’m a little less concerned about any “knowledge” Iran may have gotten from outside consultants, as nuclear technology has been around for decades and is hardly a well-protected secret. I would like to see more

detailed information, though, on the reported steel container for testing the explosive trigger technology. On the surface, this doesn't sound like a facility that might have a more peaceful alternative use, so we definitely need to know more about this facility.

In the end, though, the trusted voice of ElBaradei will be missed as the world debates what is going on in Iran. If only the world had listened to him back in 2005. Here is a snippet from his Nobel Prize acceptance speech, where he outlined how we could have avoided exactly what is happening in Iran today:

Second, tighten control over the operations for producing the nuclear material that could be used in weapons. Under the current system, any country has the right to master these operations for civilian uses. But in doing so, it also masters the most difficult steps in making a nuclear bomb.

To overcome this, I am hoping that we can make these operations multinational – so that no one country can have exclusive control over any such operation. My plan is to begin by setting up a reserve fuel bank, under IAEA control, so that every country will be assured that it will get the fuel needed for its bona fide peaceful nuclear activities. This assurance of supply will remove the incentive – and the justification – for each country to develop its own fuel cycle. We should then be able to agree on a moratorium on new national facilities, and to begin work on multinational arrangements for enrichment, fuel production, waste disposal and reprocessing.

We must also strengthen the verification system. IAEA inspections are the heart and soul of the nuclear non-proliferation regime. To be effective, it is essential that we are provided

with the necessary authority,  
information, advanced technology, and  
resources. And our inspections must be  
backed by the UN Security Council, to be  
called on in cases of non-compliance.

This week's report from the IAEA could well determine whether a new war will break out in Iran. It is vital that the IAEA provide sufficient details in its report and in follow-up discussions for the world to determine the reliability of the information in the report. Sources of information should be documented fully and the credibility of those sources needs to be vetted. The determination on the part of Israel and the US for war with Iran feels strikingly like the US determination to attack Iraq in 2003. If the intelligence has been gamed once again, it is incumbent on the citizens of the world to find the flaws in the intelligence and point them out before hostilities break out. Many people pointed out those flaws in 2003 and were ignored. Will the world listen this time if there are flaws in the Iran report?

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## **THE WAFFLE HOUSE ~~TERRORISTS~~ "CITIZENS WHO THREATEN OUR SAFETY AND SECURITY"**

When the Waffle House Plot broke last week, I joked that maybe the FBI will start profiling Waffle Houses rather than mosques; they'd probably have more luck finding terrorists there.

But I wanted to make a few points about the plot in addition to what Jim already said.

First, there are actually two sub-plots: one attempt to acquire silencers and explosives to attack federal buildings and employees; just Frederick Thomas and Dan Roberts are implicated in that plot. The other was a half-baked discussion to manufacture ricin. Ray Adams and Samuel Crump are primarily implicated in that plot, with Roberts and Thomas goading them on. That's significant because while the weapons plot advanced steadily over time culminating in a purchase, the ricin "plot" consisted of some bragging in March, and some taped conversations in September and October, showing not only that the alleged attackers were largely ignorant about ricin, but also appearing to show them coaching the confidential informant in the case how to make ricin, not necessarily making it themselves.

If you're gonna do this  
(unintelligible), it's gotta be built, a  
hood. There can be no air, can't be no  
disturbance.

[snip]

I can get ya seed (castor beans). I know  
where the seeds is at right now.

[snip]

You take a pound of that  
(unintelligible), get upwind, up around  
Washington, DC, get about 20,000 feet  
(in an airplane), and turn that shit  
loose, it'd cover the whole  
(unintelligible) of Washington.

That's particularly significant because the last two conversations laying out the ricin plot—separate conversations October 29 with both Crump and Adams—were not recorded by the informant. And that informant? He's a liar.

CHS1 is currently on bond for pending  
felony state charges. The FBI  
administered a polygraph test to CHS1  
during the investigation of a militia

group. The FBI polygrapher determined that CHS1 gave less than truthful responses concerning the activities of the militia group.

In short, the whole ricin plot seems like a bad advertisement for Red Devil lye, since Crump appeared to put off making the ricin because he couldn't find that brand of lye; Adams, for his part, claimed he'd make lye himself by leaching wood ashes.

Given the lack of seriousness of the ricin plot, it appears to have been incited at the end in time for the bust in the other plot, to use guns and explosives to kill federal workers. That plot started back in March, included a surveillance trip in May, and discussions with an undercover FBI employee about buying weapons on June and July. On September 20, Thomas agreed to trade weapons 30 days later and also to pay \$1000 for explosives. In late October, Thomas, Roberts, and the informant put together money to make the purchase. On November 1, Thomas and Roberts bought a silencer and what they believed to be explosives from an undercover FBI agent.

There's just one weird thing about the evidence presented in the Thomas and Roberts affidavits. They describe planning for the final meeting—at which they'd pool their money to buy the silencers and explosives—to be held on October 29. The affidavits were signed on November 1. The indictment describes them buying a silencer and what they believed were explosives on November 1. But there's no discussion about what happened at the October 29 meeting. Particularly given that the two ricin conversations on October 29 were not taped, I wonder whether the informant in this case got cold feet?

In any case, that's what passes for a terrorist plot propagated by a bunch of senior citizen wingnuts.

Now, the plot is interesting for the way US Attorney Sally Quillian Yates used this FBI-

abetted sting to warn about the risks posed by [senior] “citizens within our own borders who threaten our safety and security.”

While many are focused on the threat posed by international violent extremists, this case demonstrates that we must also remain vigilant in protecting our country from citizens within our own borders who threaten our safety and security.

I’m grateful that the FBI is finally focusing on domestic terrorists, even if they’re fluffing up the risk just as they do with aspirational Muslim terrorists. But note that, in spite of the involvement of the Joint **Terrorism** Task Force, it seems Yates can’t force herself to call these dudes terrorists. Perhaps they should rename the JTTF the JCW00BWT0SASTF?

And of course there’s another difference between this and the crimes those brown people called terrorists commit. As Manssor Arbabsiar was alleged to have done, these militia members allegedly discussed assassinations. As Arbabsiar was alleged to have done, these plotters allegedly discussed explosives. Whereas with Arbabsiar, there is zero public evidence he affirmatively sought to use explosives to commit assassination, there is here. Unlike Arbabsiar, these militia members actually bought what they believed to be explosives.

And yet, unlike Arbabsiar, these alleged terrorists did not get charged with a WMD charge—not even for their alleged attempt to make ricin. Once again, it seems almost impossible for white terrorists to be charged with the FBI’s favorite charge for brown terrorists.

Finally, one more difference between the treatment of these scary white terrorists and scary brown ones. As TP’s Lee Fang notes (piggybacking off this GAPolitico post), Thomas was a commenter at RedState, where Erick



Erickson has called for violence in the past.

Thomas blogged on RedState.com, the website edited by CNN's Erick Erickson. The Thomas blog post highlighted by Baker and AJC revealed that at one point, he did not "advocate a general rebellion against the U.S. Government for cause," but seemed conflicted about the idea of violent revolution. Something apparently changed between that unpromoted post, published in July of 2008 and this year, when the alleged plot began taking shape.

A ThinkProgress examination of Thomas's online writing in the following years shows that the alleged terrorist grew more and more upset, and expressed sympathy with the anti-Obama conspiracies posted on RedState. Last year, he posted a comment to a popular RedState post about the evils of health reform. Thomas claimed that the "ObummerCare Bill" not only "won't be forgiven," but will lead to "TYRANNY of the worst order" and "civil war." (view a screenshot of the comment [here](#))

And as the affidavits make clear, the plot was inspired by a Mike Vanderboegh novel; Fang notes that Thomas has also commented on Vanderboegh's blog. Last year, Vanderboegh claimed credit for coordinated attacks in protest of the health insurance reform—one of them targeted at Gabby Giffords—in three states.

On Friday, former militia leader Mike Vanderboegh called for anti-Democratic vandalism across the country to protest the health care bill.

Vanderboegh posted the call for action Friday on his blog, "Sipsey Street Irregulars." Referring to the health care reform bill as "Nancy Pelosi's

Intolerable Act," he told followers to send a message to Democrats.

"We can break their windows," he said. "Break them NOW. And if we do a proper job, if we break the windows of hundreds, thousands, of Democrat party headquarters across this country, we might just wake up enough of them to make defending ourselves at the muzzle of a rifle unnecessary."

And, apparently in response, there were attacks in—at least—Wichita, KS, Tucson, AZ, Rochester, NY, Niagara Falls, NY. Vanderboegh has proudly claimed credit for the coordinated attacks.

Now maybe Vanderboegh and Erickson are just the FBI's latest incarnation of Hal Turner, wingnut bloggers they pay to inspire other wingnuts whom they can arrest in Waffle House plots; maybe the FBI hasn't tracked their calls for violence at all. But if Vanderboegh and Erickson were Muslim propagandists advocating violence—like Anwar al-Awlaki or Samir Khan—they'd probably be worried about a drone raining down from the sky. I'm definitely not advocating that for any propagandists, whether Muslim or wingnut, being killed for their protected, albeit vile, speech.

But maybe now that the government is using stings to warn of the danger of domestic terrorists, those inciting them ought to think more seriously about how our government combats terrorists.

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# TIDE, TIGERS AND OTHER PRO FOOTBALL

ESPN tells me that the BIGGEST COLLEGE FOOTBALL GAME EVAH is being played today between Number 1 LSU and Number 2 Alabama. Got a pretty tough hill to climb to beat the Stanford/USC game last weekend though; we shall see. No question about these two teams defenses, they are both big, tough and fast. The game is at fabled Bryant-Denny Stadium in Tuscaloosa, so the home turf factor certainly goes to the Tide. But the Tigers have the Honey Badger X-Factor. The Honey Badger is LSU cornerback/roving hit man Tyrann Mathieu. Both teams have competent QBs, although neither Jarrett Lee nor AJ McCarron have really been tested so far in a situation where the game depended on their arms, so their stats are a little misleading. Really so far, it is basically a wash and the teams are pretty similar. Except Alabama has Trent Richardson, who is simply a punishingly good running back; by the end of the game, that may well be the difference.

A week or two ago, I might have thought #14 Kansas State could give #3 Oklahoma State a run for the money; but not now, and not in Stillwater. A third late game of note is #9 South Carolina at #7 Arkansas. Marcus Lattimore's season ending knee injury cost the "Cocks maybe the best all around RB in the nation, but his fill in, Brandon Wilds has been picking right up where Lattimore left off. The Hogs just kill SC every year, but I am going to go out on a limb and say the Gamecocks get the upset. The fourth key game is yet another late game, with ASU traveling to the Rose Bowl to take on UCLA. Hard to believe, but if the Bruins manage a win, they would be in the lead for the Pac-12 Southern Division berth in the conference championship game. The Bruins have rebounded from a lousy start to the season, but I don't think they have the horses to match points with Brock Osweiler and the Devils.

Honorable mentions go to Texas A&M/Sooners; potential upset there, but it is in Norman. In early action, Iowa is Hawking all over the Wolvereenies so far as are the Longwhores over the Texas Tech Red Raiders.

Oh, and in the sick news of the week, legendary ex-Penn State Defensive Coordinator Jerry Sandusky has been indicted on 40, count em 40, counts of various deviant sexual assault of minor boys over a fifteen year period between 1994 and 2009. Sandusky retired from PSU in 1999, but the current Athletic Director and a second school athletic oversight official have also been charged in the matter with perjury and failure to report. JoePa has been left out, presumably because he did report when he supposedly first heard of Sandusky's conduct (which was in 2002 after Sandusky had left PSU), but it sure doesn't look like Paterno did much in the way of followup when he had to have known nothing had come of his report. Pretty bleak day in University Park.

In more positive news, the fine folks in Deetroit have organized to try to unsuck the Lions' home games. From the Free Press:

A petition to dislodge Nickelback from the Detroit Lions' Thanksgiving Day game has turned into a whole mess of petitions.

Rolling into its second day, the Great Nickelback Debacle continued to generate heated Internet chatter and international headlines, as the original fan campaign against the rock band closed in on 35,000 signatures.

Now THAT is a worthy effort; here is the petition. Nickelback?? You gotta be fucking kidding me. Deetroit Motor City, what the hell were you thinking??

UPDATE: Aaaaannndddd here come the "other pro-football players", the ones that work for money instead of Escalades, free tattoos and money. I

get the choice of 49ers at Skins or the Jets  
Jets Jets getting Circled By Wagons. I am kind  
of watching both, but am more interested in the  
Bills. Say this though, Frank Gore is an animal.  
Dude is really good. San Francisco is not a  
fluke, they can play. Hey, look, Sanchez is on  
the ground getting dirty near his own end zone  
already! Fancy that....Hey, wait, the Sanchize  
drove the Jets all the way down to the Bills  
endzone .... and was promptly intercepted with a  
20 yard runback.

Actually, now that I look at the schedule,  
Skins/49ers may be the second best early game;  
yuk what a lousy slate. Tampa Bay and Saints  
might be interesting, but it is in Nawlins, and  
Le Bon Temps Roulet there. The late slate is  
much better with Bolts/Cheesers, Pats/Gents,  
Bengals/Titans, and Baby Jesus at the Black Hole  
all being pretty interesting matchups. This is  
the kind of weird game the Bolts often somehow  
win, but for the life of me, I cannot see how  
they are gonna stop the Cheese Offensive. I  
don't think the Pats could stop Bad Eli, much  
less Good Eli. Isn't this where the famed  
"gelling of the young Belichick defense" is  
supposed to be happening? No signs of that so  
far this year.

Most unfortunately, I will be watching none of  
those games, because I get the extra pleasure of  
being given the Rams and Cardinals as my only  
late afternoon game. That is a fair fight. Of  
losers. Oh well, the Sunday and Monday Night  
games are both superb this week. Big Ben and the  
Stillers are back in form, and they might just  
have some payback in the offing for the Ravens.  
And Flacco and the Baltimore offense are  
regressing. Bears at Philly just depends on  
which Bears show up. But it seems Vick and teh  
Iggles are starting to click finally, so Philly  
looks good here.

Crack open a cold one and shove some chips and  
salsa in yer maw and let's rock.

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# THE IMPLICATIONS OF DOJ'S FOIA "LIES"

On Thursday, we learned it has been the practice of DOJ for nearly a quarter century to provide misleading information in response to FOIAs asking for certain kinds of information—broadly, ongoing investigations, informants, and foreign intelligence.

In this post I want to consider how the practice may be ripe for abuse.

Here's the statutory language in question, Section 552(c) of FOIA:

(c)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) **[ed: this is the law enforcement exception]** and – (A) the investigation or proceeding involves a possible violation of criminal law; and (B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1) **[ed: this is the exemption for information that has been properly classified according to Executive Order]**, the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

Let's take each of these in order.

### **Ongoing Legal Investigation**

The first exclusion—for information that might tip the subject of an investigation into a potential crime to that investigation and therefore lead her to, for example, destroy evidence—makes a bit of sense.

But it seems ripe for abuse in several ways.

First, DOJ can only exclude these files if “the subject of the investigation or proceeding is not aware of its pendency.” But DOJ gets to decide whether the subject of an investigation really “knows” she is being investigated or not. As the Meese Guidelines governing this practice explain,

Obviously, where all investigative subjects already are aware of an investigation's pendency, the “tip off” harm sought to be prevented through this record exclusion is not of concern. Accordingly, the language of this exclusion requires agencies to consider the level of awareness already possessed by all investigative subjects involved as they consider employing it. It is appropriate that agencies do so, as the statutory language provides, according

to a good-faith, “reason to believe” standard, which closely comports with the “could reasonably be expected to” standard utilized both within this exclusion and in the amended form of Exemption 7(A).

This “reason to believe” standard for considering a subject’s pre-existing awareness should afford agencies all necessary latitude in making such determinations. **As the exclusion is phrased, this requirement is satisfied so long as an agency determines that it affirmatively possesses “reason to believe” that such awareness does not in fact exist.** While it is always possible that an agency might possess somewhat conflicting or even contradictory indications on such a point, **it should be firmly resolved that a subject is aware of an investigation before an agency risks impairing it through any telling FOIA disclosure.**<sup>(38)</sup>

38. Indeed, it is even conceivable that some investigative subjects seeking to force out sensitive information through the FOIA might attempt to evade the protective barrier of this exclusion by generally professing (*i.e.*, speculating) to agencies at the outset that they “know” of ongoing investigations against them. **Because such a ploy, if accepted, could defeat the exclusion’s clear statutory purpose, agencies should rely upon their own objective indicia of subject awareness and consequent harm.** [my emphasis]

While DOJ could presumably claim a person who has been interviewed by the FBI, but has not been formally told he was the subject of an investigation, did not “know” he was the subject of the investigation, this broad leeway for DOJ (or other agencies—in another footnote Meese



makes it clear that non-law enforcement agencies can use this exclusion as well) to determine whether a subject of an investigation knows about that investigation seems most ripe for abuse for the object of surveillance. That is, FBI may be following a person in barely concealed surveillance or throwing multiple informants at him, but still claim it had reason to believe that the subject did not affirmatively know about the investigation.

DOJ's prerogative to decide whether or not a subject of an investigation knows about the investigation seems particularly open for abuse given the kind of drawn out investigations that have become more common since 9/11. If someone routinely gets stopped at the border, do they "know" they are the subject of an investigation? If peace activists realize there's an informant in their midst, do they "know" they are they subject of an investigation?

DOJ—or the CIA or the Customs and Border Patrol or DHS generally or the SEC or Treasury—get to decide, not the person himself. Which means this exclusion can be used a shield to hide abusive fishing expeditions.

Moreover, how does this exclusion work with "assessments," which can be initiated with no predicate? These, after all, involve possible violations of law (though there would be almost no evidence one way or another). Would FBI shield the assessments its agents had made, as part of its effort to hide how much information it collects on completely innocent people?

### **Informants**

The second exclusion prevents people from asking for information on people they suspect might be informants by name. So, for example, if a peace group thinks Joe Smith asks too many question about group members' pot smoking and therefore might be an informant, their FOIA request for information on him could be excluded.

The practice makes sense when you're thinking primarily of the dangerous role mafia or drug

informants play. But given the increasing use of informants both in the War on Drugs and the War on Terror (not to mention the War on Peaceful Protest), this exclusion seems ripe to shield abuse. For example, even where an informant has made it obvious that she is an informant, the FBI can hide details about what they're paying her, how they've coerced her to becoming an informant, or even what predicate they used, if any, to justify sending an informant to spy on a group.

And with this exclusion, the FBI has set an even higher bar for making such records available—records can be excluded so long as the government hasn't officially confirmed an informant's role. Meese writes,

Not unlike the (c)(1) exclusion, this exclusion is expressly conditioned so as to not apply where "the informant's status as an informant has been officially confirmed." 5 U.S.C. § 552(c)(2). Although the temporal nature of this condition is made somewhat less clear through the structure and phrasing of exclusion (c)(2) than is the counterpart condition in exclusion (c)(1), it reasonably should be taken as likewise requiring that an agency employing (c)(2) protection cease doing so in the unlikely event that, during the pendency of a request, the informant involved becomes "officially confirmed" as such. In this regard, however, it should be remembered that, as a matter of well-recognized principle under the FOIA, "official confirmation" is a high standard indeed.

So in the case where an informant really fucks up or lies, the FBI can simply never acknowledge the informant's role (if the informant lied or engaged in ongoing crimes, he'd be less likely to ever serve as a witness at a trial where his role might be officially confirmed, after all). And that would prevent citizens from showing the

abuse inherent in the use of informants.

**Classified FBI records on “foreign intelligence or counterintelligence, or international terrorism”**

As with the other two exclusions, there’s some logic to the third, covering classified FBI records on foreign intelligence, counterintelligence, or international terrorism. In areas where the FBI acts as intelligence rather than law enforcement officers, you don’t want the subject of their spying to learn they are being spied on. You don’t want Anna Chapman or Robert Hanssen to know that you’re hip to their role as a spy.

Or at, that logic held before 9/11 turned the “foreign intelligence” category into a giant grab bag.

In the guise of investigating potential terrorists, the FBI and related agencies have trolled First Amendment protected chat rooms, collected information on journalists, infiltrated houses of worship, developed lists of people who bought acetone and hydrogen peroxide, and used completely innocent people’s cell phone signals to map the geolocation of wide swaths of this country. And yet if you, a completely innocent person, asked the FBI whether it had ever tracked your purchase of nail polish remover, it could simply deny it had records on those purchases.

So as with the other two exclusions, this one could be used to shield abuse, and, more specifically, racial profiling, or outright illegal surveillance. And on a more general level, it would prevent Americans from discovering how little protection minimization guidelines now offer them.

In other words, while there are very good reasons for these exclusions to exist, they are prone to abuse. And DOJ’s practice of not identifying withheld information at all makes it a lot less likely for a judge to review such exclusionary decisions, which makes it likely

FBI would get away with such abuse if they were using the exclusions in this fashion.

Foreign intelligence and international terrorism information has simply become too encompassing to permit such exclusions to remain entirely secret.

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## THE DANGERS OF HIRING BAE'S MERCENARIES

How stupid was Moammar Qaddafi, who reportedly hired the same mercenary firm that tried to take out Equatorial Guinea's dictator in 2004?

A total of 50 private soldiers, including 19 South Africans, are reported to have travelled to Libya on instructions to smuggle the former dictator from his birthplace of Sirte over the border to Niger.

Among them were said to be members of the team led by former SAS officer Simon Mann on the "Wonga coup" to unseat Equatorial Guinea's dictator.

In addition to Simon Mann, after all, those plotters also had ties to Mark Thatcher, Maggie's kid. And in addition to Sir Mark's involvement with that coup attempt, Thatcher was involved in the BAE kick-back scheme with Saudi Arabia. And that scheme reportedly funded covert operations ... presumably things like the Wonga coup. Led by the same Saudi family the head of which Qaddafi allegedly tried to assassinate.

Perhaps, after Qaddafi's "secret" deal with Britain on the Lockerbie bomber, he thought he could trust the same mercenaries tied to a very British coup. Or perhaps he was just in a pinch

and couldn't get any more reliable mercenaries to help him escape Libya.

But it appears Qaddafi shouldn't have trusted these particular mercs.

It has been alleged that one of the security firms who provided mercenaries for the mission may have acted as a "double agent", helping Nato to pinpoint Gaddafi's convoy for attack, and that the dictator's escape was "meant to fail".

[snip]

A source in the private security sector said it was "highly likely" that one of those involved deliberately recruited mercenaries who were ill-equipped to handle the mission.

"These guys did not have the experience to be successful," he said. "The formation of the convoy, the way they tried to leave Sirte, it's clear they were meant to fail.

"Someone got paid to protect him and at the same time to deliver him."

Which makes it all the more interesting that Hillary was hanging out in Libya the day before Qaddafi was assassinated. I have noted how convenient it is that Qaddafi didn't survive to testify at the ICC about how Ibn Sheikh al-Libi was suicided so conveniently; the same is true of his Lockerbie deal. I guess if you own the mercs "protecting" someone, it becomes a lot easier to arrange such convenient assassinations?

I guess dictators today can't find mercenaries like they used to.

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# CIA'S "VENGEFUL LIBRARIANS" V. DIFI: OPEN SOURCE GRUDGE MATCH

The AP's story on the CIA's social media monitoring project is an important article, if unsurprising.

At the agency's Open Source Center, a team known affectionately as the "vengeful librarians" also pores over Facebook, newspapers, TV news channels, local radio stations, Internet chat rooms – anything overseas that anyone can access and contribute to openly.

From Arabic to Mandarin Chinese, from an angry tweet to a thoughtful blog, the analysts gather the information, often in native tongue. They cross-reference it with the local newspaper or a clandestinely intercepted phone conversation.

But I'm struck by one thing. The Center's head, Doug Naquin, seems to directly contradict DiFi's assertions, made in February, when she complained that the CIA had ignored open-source intelligence on Arab Spring protests. Here's DiFi:

Feinstein set a skeptical tone at the opening of the hearing, saying Obama and other policymakers deserved timely intelligence on major world events. Referring to Egypt, she said, "I have doubts whether the intelligence community lived up to its obligations in this area."

After the hearing, Feinstein said she was particularly concerned that the CIA and other agencies had ignored open-

source intelligence on the protests, a reference to posts on Facebook and other publicly accessible Web sites used by organizers of the protests against the Mubarak government.

Speaking more broadly about intelligence on turmoil in the Middle East, Feinstein said, "I've looked at some intelligence in this area." She described it as "lacking . . . on collection."

And here's Naquin, claiming they did too predict Egypt's uprising.

Yes, they saw the uprising in Egypt coming; they just didn't know exactly when revolution might hit, said the center's director, Doug Naquin.

The center already had "predicted that social media in places like Egypt could be a game-changer and a threat to the regime," he said in a recent interview with The Associated Press at the center.

Given what I found in this post—that our government spent time counting Mohammed el Baradei's FaceBook followers while dismissing the April 6 movement people who ended up leading the uprising—I actually think DiFi may be right. Indeed, the AP article focuses on other moments—Thai riots in spring 2010 and the aftermath of the bin Laden killing—to demonstrate the value of the center.

I'm really glad CIA boasted of their analysis of the Toobz. But I'm not entirely convinced they're any good at what they're doing.

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# COLUMNIST ENDORSES WAR CRIMES AGAINST AL QAEDA BECAUSE THEY MURDERED A JOURNALIST

I had never heard of Alex Beam before today, but his column in today's Boston Globe crossed my email (h/t dakine01) and I am still fuming at his cavalier endorsement of war crimes. Perhaps even more infuriating, though, is that Beam's endorsement of war crimes is an aside tossed in while Beam is making an argument with which I otherwise agree.

Beam's central point, as he suggests in his title for the column, "A double standard on war crimes?", is that while John Yoo has been widely vilified for his role in authoring the OLC memos that authorized torture, David Barron and Martin Lederman haven't been attacked nearly as aggressively for authoring the OLC memos under which Anwar al-Awlaki, an American citizen, was killed in Yemen. My only quibble with that point is that Beam's roster for the torture memos should be expanded to also include at least Jay Bybee and Steven Bradbury. His argument:

So, which is the greater crime against the Constitution that all three men swore to uphold? Waterboarding Al Qaeda suspects or killing US citizens? Yoo has been vilified from Marin County to Munich for his legal opinion. If the Obama lawyers are facing job loss or tenure revocation, I haven't heard about it. This is not a subject they care to discuss.

Beam relies on Mary Ellen O'Connell of Notre Dame to further his argument:



"I do think the two cases call for a different level of criticism," she says. "Isn't killing worse than torture? Even if the arguments to support torture are weaker arguments, it seems to me that the US should err on the side of the strictest compliance of the law when it comes to taking somebody's life."

Where is the outrage, I asked? It won't come from the right, she pointed out, "because the policies that Obama is pursuing are basically the same policies that Bush pursued." So where are the principled men and women of the left? "Some of the people who criticized Yoo and his colleagues are in the administration," she answered. "Marty Lederman was a critic of John Yoo, and now he's writing the memos. So he's not going to criticize himself."

I agree that Lederman and Barron should be subjected to the same level of criticism as Yoo (and Bybee and Bradbury), although I'm less inclined to make a distinction between the crimes of murder and torture. I find both equally heinous and never justified under any conditions. As O'Connell points out, the torture arguments likely were much farther outside the law than the extrajudicial execution arguments, but I still can't join her in making killing artificially a higher crime than torturing.

But here is the jaw-dropping problem with Beam's column. Just a bit over halfway through the column, we get this paragraph:

Two points. First, I'm all for waterboarding Al Qaeda bad guys, and the disappearance of al-Awlaki and his ilk by whatever means necessary bothers me not a whit. My interest in the civil rights of Arab terrorists took a dive when a bunch of them passed a knife across journalist Daniel Pearl's neck.

Second, you've got to be pretty naive if you're plotting your life course according to the moral compass of lawyers, regardless of their stellar pedigrees. If you're former deputy attorney general Eric Holder and you need to dream up a reason for Bill Clinton to pardon megacrook Marc Rich, you find one. If you work for current attorney general Holder, as Barron and Lederman did, and you need to gin up a rationalization for killing a US citizen overseas, you do it.

Beam's second point is standard "Let's kill all the lawyers", especially as filtered through a right-wing hatred of Clinton and Obama. I agree that Holder has prostituted himself for many issues over the years, but I put that squarely on Holder's shoulders rather than saying that his failings are the result of being associated with Clinton and Obama.

But oh, that first point. Beam is "all for waterboarding al Qaeda" and "the disappearance of al-Awlaki and his ilk by whatever means necessary". His reason for this abandonment of the Constitution and reliance on due process to mete out government "justice"? It's not 9/11 and al Qaeda's attack on the US, as most who hate "Arab terrorists" spout in the "they attacked us first" defense, but Beam's reasoning is a bit more personal: " My interest in the civil rights of Arab terrorists took a dive when a bunch of them passed a knife across journalist Daniel Pearl's neck."

I'm guessing the thinking must have gone something like this. Beam didn't seem to develop specific animosity to al Qaeda from 9/11, perhaps because the United States is a large target and he is just one of hundreds of millions of potential targets, even though they killed a few thousand on 9/11. But just a few months later, al Qaeda executed journalist Daniel Pearl. Beam must have thought "Uh oh, they kill journalists and I write a column in a

major newspaper. Let's torture and murder those bastards!" It's very surprising that Beam didn't make the direct connection that it was Khalid Sheikh Mohammed himself, who eventually was waterboarded 183 times, who is said to have been the one who passed that knife across Pearl's neck.

And yes, Mr. Beam, if you are looking for where the outrage is over the targeting killing of Anwar al-Awlaki, you can certainly find a healthy dose of it among a few of us. Try looking at posts here at Emptywheel with the tag "Anwar al-Awlaki" for starters. By golly, if you scroll back far enough among those posts, you'll find that the discussion started even before al-Awlaki was killed and that there is also the difficult issue of the US killing al-Awlaki's sixteen year old son in a subsequent attack. You'll also find detailed discussion of the narrow conditions under which there could be legal justification for killing a US citizen and how the Anwar al-Awlaki case likely falls outside those conditions. Branch out a bit from the narrow al-Awlaki case and read few posts on the broad category of drones here, and you will find that a few of us care pretty deeply about the Constitution, due process and even international law as it applies to what you would be likely to disregard as mere "collateral damage" when innocent civilians are killed by drones.