

IN RESPONSE TO NYT LAWSUIT, FBI RECLASSIFIES 26 WORDS

Last week, a number of people hailed the further declassification of DOJ Inspector General's Report on FBI's use of Exigent Letters.

That enthusiasm is misplaced, however. What too few people noticed is the thankless work Charlie Savage did to identify what was newly declassified. He had FOIAed the IG Report, which is what set off the declassification review.

In fact, FBI redacted three things that had previously been visible. On page 55/PDF 68, it redacted the title, "Diagram 2.1: Calling Circle or "Community of Interest." On page 105/PDF 118 they redacted language indicating they use a certain kind of "language" to order what are probably also communities of interest. Finally, on page 207/PDF 220, FBI newly redacted the title, "Chart 4.3 Records for 10 Telephone Numbers Uploaded to FBI Databases With the Longest Periods of Overcollection."

So the NYT sued the FBI to declassify language that should be declassified, given everything we've learned about related programs subsequent to the Snowden leaks, and FBI responded by trying to pretend we don't know they were getting (and still get, per DOJ IG's most recently report) call chains from telecoms.

To be fair, FBI did declassify some new stuff. That includes:

- Roughly 44 uses of some form of the word "search"
- Roughly 33 uses of some form of "target"
- Roughly 24 references to

years, either 2004 or 2005

- The names of 3 of a number of journalists whose records had been improperly collected and details of the collection

About the most interesting declassification was a citation to a Carrie Johnson story, published well over a year before the IG Report came out, describing the collection on those 3 journalists. The IG Report invoked this language in the story...

Mueller called the top editors at The Washington Post and the New York Times to express regret that agents had not followed proper procedures when they sought telephone records under a process that allowed them to bypass grand jury review in emergency cases.

... as evidence to support a footnote, which (except for the reference to Johnson's article) had been unclassified, explaining,

In addition to the letter, Director Mueller called the editors of the two newspapers to express regret that the FBI agents had not followed proper procedures when they sought the reporters' telephone records.

That is, they had classified reference to a published news article as S/NF! (Though I suppose it is possible that the fact they were hiding is that Glenn Fine had to read the WaPo to figure out what happened here, because Mueller wasn't speaking directly to him.)

Congratulations to Carrie Johnson who I guess now classifies as a state secret!

I asked the Savage (and through him, NYT's lawyer, David McCraw) how the NYT felt about FBI classifying, rather than declassifying language

in response to his suit, and he suggested NYT expects DOJ to pay them for their time. "We have incurred no outside counsel fees and anticipate that the government will be required to pay us for the time spent by in-house counsel."

Still, I think Savage (and FOIA requesters generally) should get finder's fees every time the government newly classifies stuff years later ... impose some kind of fine for stupid overclassification.

Update: Corrected timing on Johnson story which came out in August 2008, so 17 months before the IG Report.

PRESIDENT WHO HAD YEMENI JOURNALIST JAILED CRITICIZES IMPUNITY FOR MISTREATMENT OF JOURNALISTS



November 2, 2014 was the first annual International Day to End Impunity for Crimes Against Journalists.

To mark the date, the President just issued this statement.

History shows that a free press remains a critical foundation for prosperous, open, and secure societies, allowing citizens to access information and hold their governments accountable. Indeed, the Universal Declaration of Human Rights reiterates the fundamental principle that every person has the right “to seek, receive, and impart information and ideas through any media and regardless of frontiers.” Each and every day, brave journalists make extraordinary risks to bring us stories we otherwise would not hear – exposing corruption, asking tough questions, or bearing witness to the dignity of innocent men, women and children suffering the horrors of war. In this service to humanity, hundreds of journalists have been killed in the past decade alone, while countless more have been harassed, threatened, imprisoned, and tortured. In the overwhelming majority of these cases, the perpetrators of these crimes against journalists go unpunished.

All governments must protect the ability of journalists to write and speak freely. On this first-ever International Day to End Impunity for Crimes against Journalists, the United States commends the priceless contributions by journalists to the freedom and security of us all, shining light into the darkness and giving voice to the voiceless. We honor the sacrifices so many journalists have made in their quest for the truth, and demand accountability for those who have committed crimes against journalists.

It’s a wonderful sentiment, but I wonder if President Obama has thought this through.

After all, as Jeremy Scahill reported several years ago, President Obama personally intervened to ensure that Yemeni journalist Abdulelah Haider Shaye would remain in prison after having been tortured and subjected to a trumped up trial.

On February 2, 2011, President Obama called Yemeni President Ali Abdullah Saleh. The two discussed counterterrorism cooperation and the battle against Al Qaeda in the Arabian Peninsula. At the end of the call, according to a White House read-out, Obama “expressed concern” over the release of a man named Abdulelah Haider Shaye, whom Obama said “had been sentenced to five years in prison for his association with AQAP.” It turned out that Shaye had not yet been released at the time of the call, but Saleh did have a pardon for him prepared and was ready to sign it. It would not have been unusual for the White House to express concern about Yemen’s allowing AQAP suspects to go free. Suspicious prison breaks of Islamist militants in Yemen had been a regular occurrence over the past decade, and Saleh has been known to exploit the threat of terrorism to leverage counterterrorism dollars from the United States. But this case was different. Abdulelah Haider Shaye is not an Islamist militant or an Al Qaeda operative. He is a journalist.

In addition to interviewing Anwar al-Awlaki just as the US started targeting the radical cleric, Shaye also provided important coverage exposing the US role in an attack on the village of al Majala that massacred women and children.

On December 17, the Yemeni government announced that it had conducted a series of strikes against an Al Qaeda training camp in the village of al Majala in Yemen’s southern Abyan province, killing

a number of Al Qaeda militants. As the story spread across the world, Shaye traveled to al Majala. What he discovered were the remnants of Tomahawk cruise missiles and cluster bombs, neither of which are in the Yemeni military's arsenal. He photographed the missile parts, some of them bearing the label "Made in the USA," and distributed the photos to international media outlets. He revealed that among the victims of the strike were women, children and the elderly. To be exact, fourteen women and twenty-one children were killed.

Shaye was kept in prison for an additional two and a half years after Obama's intervention.

There are a number of other examples of US crimes against journalists that have been treated with impunity. In particular, the detention of Al Jazeera cameraman Sami al-Hajj at Gitmo for over six years, reportedly in an effort to recruit him to inform on his employer, comes to mind.

But with Shaye, President Obama personally intervened to ensure a journalist would remain imprisoned in a brutal prison system.

Does President Obama decry the impunity he has enjoyed for imprisoning Shaye for his journalism?

Cross-posted from ExposeFacts.

THE EXECUTIVE BRANCH'S VENDETTA

AGAINST JAMES RISEN

Sorry for the silence today – I’ve been traveling. Meanwhile, this piece – talking about how insane the government’s pursuit of James Risen has been – was published over at the Nation.

We focused particularly in the number of top officials implicated in stories Risen published.

But under strong pressure from White House officials—including some later implicated in the legally suspect program—*Times* editors delayed the story’s publication for over a year, until December 2005. The coverage won Risen and Lichtblau a Pulitzer Prize for “carefully sourced stories on secret domestic eavesdropping that stirred a national debate.” It was the kind of debate that the people running the US surveillance state had been desperate to avoid.

The belated publication of those stories came just before Risen brought out a book that contained reporting on the wiretap program and several other sinister initiatives under categories like “counterterrorism” and “counterproliferation.” On January 13, 2006, the week after Risen’s book *State of War* reached the stores, Attorney General Alberto Gonzales told a news conference that an investigation into the *Times* wiretap stories was under way and that “it’s too early to make decisions regarding whether or not reporters should go to jail.” Though not apparent at the time, facts later emerged to show that Gonzales was implicated in the illegal wiretapping that Risen exposed. (As White House counsel, Gonzales had authorized continued operation of the program after the Justice Department refused to do

so.)

[snip]

Some high-ranking individuals have been mainstays in the continuation of policies that Risen exposed in his book. John Brennan—President Obama’s former counterterrorism czar and now CIA director—has been at notable cross-purposes with both Risen and Sterling for more than a decade. Brennan was a senior CIA official when the agency rolled out its torture program under Bush, which came under intense public scrutiny after the use of waterboarding was revealed in a May 13, 2004, front-page *Times* story with Risen as the lead reporter. And Brennan played a key role in the illegal wiretap program, overseeing the production of what personnel in the program called the “scary memos” intended to justify the domestic spying exposed by Risen.

HAPPY MONDAY OF DRUM-UP-WAR WEEK

“From a marketing point of view, you don’t introduce new products in August.”
— Andy Card

12 years ago today, Michael Gordon and Judy Miller published a story about aluminum tubes based off deliberate leaks from Dick Cheney and Condi Rice. Dick Cheney then cited the story on Meet the Press.

More than a decade after Saddam Hussein agreed to give up weapons of mass destruction, Iraq has stepped up its

quest for nuclear weapons and has embarked on a worldwide hunt for materials to make an atomic bomb, Bush administration officials said today.

Yesterday, Obama himself appeared on Meet the Press, to roll out his new war.

CHUCK TODD:

Thanks for doing this. We start with a very basic question. Are you preparing the country to go back to war?

PRES. OBAMA:

I'm preparing the country to make sure that we deal with a threat from ISIL. Keep in mind that this is something that we know how to do. We've been dealing with terrorist threats for quite some time. This administration has systematically dismantled Al Qaeda in the FATA.

ISIL poses a broader threat because of its territorial ambitions in Iraq and Syria. But the good news is coming back from the most recent NATO meeting is the entire international community understands that this is something that has to be dealt with.

So what I have done over the last several months is, first and foremost, make sure that we got eyes on the problem, that we shifted resources, intelligence, reconnaissance. We did an assessment on the ground. The second step was to make sure that we protected American personnel, our embassies, our consulates. That included taking air strikes to ensure that towns like Erbil were not overrun, critical infrastructure, like the Mosul Dam was protected, and that we were able to engage in key humanitarian assistance programs that have saved thousands of

lives.

The next phase is now to start going on some offense. We have to get an Iraqi government in place. And I'm optimistic that next week, we should be able to get that done. And I will then meet with congressional leaders on Tuesday. On Wednesday, I'll make a speech and describe what our game plan's going to be going forward.

But this is not going to be an announcement about U.S. ground troops. This is not the equivalent of the Iraq war. What this is is similar to the kinds of counterterrorism campaigns that we've been engaging in consistently over the last five, six, seven years. And the good news is is that because of American leadership, we have I believe, a broad-based coalition internationally and regionally to be able to deal with the problem.

And the NYT – including Michael Gordon – published a story based partly on leaks (those are about bombing Syria) from senior officials warning that this war would take 3 years.

The Obama administration is preparing to carry out a campaign against the Islamic State in Iraq and Syria that may take three years to complete, requiring a sustained effort that could last until after President Obama has left office, according to senior administration officials.

On Wednesday, Obama will roll out this new war, just in time for 9/11.

I'm thinking if maybe we could force Michael Gordon to take the entire month of September off in the future we might get out of this war cycle?

If note, we might as well just mark this in our regular calendar: Labor Day, Back to School, New War Roll-Out. Because it seems to be an annual thing.

A NOTE OF PRAISE FOR JAKE TAPPER



Yammering on the internet is not hard work, in fact it is blindingly

(and sometimes maddeningly when it is pointed in your direction) easy. Getting heard, and functionally interacting in a fashion that can contribute to the real focus and discussion, however, is hard. For my part, I often carp enough about the failings of big media that it is only right to give praise where due.

Today credit is due to CNN's Jake Tapper. Because he cares.

Two nights ago, rightly or wrongly but I think rightly ... I laid into CNN for their overbearing focus on repetitive, and somewhat mindless, continuing drivel on celebrity. That was, of course, in relation to Robin Williams' death. A noteworthy, sad, and tragic event for sure, but there was only so much news, the rest was pure Entertainment Tonight like pathetic drivel.

So I went after CNN, and I tacked Jake Tapper's

twitter handle on the end. I did so not because I thought he was the prime offender producing the overall CNN news product, but because I knew, from prior interaction, that Jake actually gives a damn and is a contact point at CNN who would care. And maybe...maybe...be a change point. That was both fair, and unfair to him personally, at the same time.

I am pretty sure both CNN and Jake were bombarded by by an untold number of missives of the same variety. I don't how how other inflection points at CNN dealt with what was surely a lot of feedback, but the fact Mr. Tapper took the time to take umbrage, and discuss...and think...seems significant and admirable to me. And I admire that.

I thought about writing this post long before I saw the following, but I was off with clients and court appearances, and could have easily shined it on, as I do with so many posts I want to write but don't get to.

Until I saw something from Mr. Jake Tapper today that was just awesome.



Well, yes!

But then, not long later, came this:



Well, to be sure, this is the stuff even a critic of journalism can love and applaud. You know why? Because not only is solidarity with journalists under grand jury and governmental

oppression admirable (I have some experience in GJ targeting), it is the only, and only proper, thing that can be done.

There are not many out there to be so applauded. Maybe tomorrow there will be an issue, and moment of difference, on a different case. So it goes, and so be it.

But, now, James Risen stands exposed and on his own. As a man, and as a journalist, Tapper stood up and gave public square to his voice. Good on him.

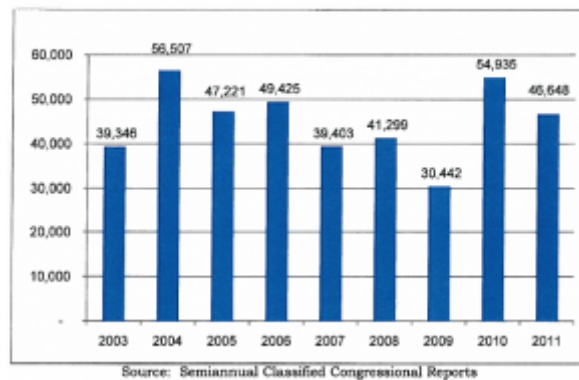
Tonight, I am glad Jake Tapper is out there and is willing to engage. Tonight he did one hell of a report from Ferguson Missouri. Even if a big part was consumed by press conference feed. But, before and after, he made his voice clear. That is not exactly a common thing. It is to be commended.

Give the man credit, he was there, and he cares. And I will buy him a drink.

**THE FBI HAS
SIGNIFICANT PROBLEMS
COUNTING ITS
NATIONAL SECURITY
LETTERS**

Today's
Inspector
General
Report
on
FBI's
use of
Nation

FIGURE 3.7: NSL Requests 2003-2011



al Security Letters has set off a bunch of alarm bells in my head.

At issue are two unexplained problems.

First, the Inspector General identified a huge drop in NSL use for the years covering this report: FBI obtained 49,425 NSLs in 2006, the year before this report. It obtained 54,935 afterwards. The years in-between – the 3 years covered by this report – NSLs dropped off a relative cliff, with 20% fewer in 2007 and even fewer in 2009.

The IG wasn't able to offer any explanation for this, besides the possibility that increased scrutiny on NSL use led people to use other methods to get this information.

However, two supervisors and a division counsel told us that they believe agents use NSLs less often now than they did five years ago. These individuals told us that because of increased scrutiny on NSL use agents employ alternative investigative tools when possible.

In testimony last year, Jim Comey said FBI agents would just use grand jury subpoenas rather than NSLs if the NSLs became too onerous, so that may be where the activity disappeared to.

Hey, if 20% of FBI NSLs could be grand jury subpoenas without any problem, let's make them do that!

It's FBI's other counting problems – and its non-answers – that have me even worried.

According to the IG, the FBI is not reporting as much as 7.3% [update, 10/16: I think the correct number is 6.8%] of its NSL use to Congress. For example, when the IG tried to pull NSLs by NSL type (that is, toll billing, financial records, electronic transaction records), it found a significant discrepancy between what had been reported to Congress and what FBI's internal spreadsheets showed.

[T]he NSL data in the itemized spreadsheets does not exactly match the NSL data reported to Congress in 2008 and 2009. The total number of requests reported for each year [by transaction type] is more than the total number of NSL requests reported to Congress by 2,894 and 2,231 requests, respectively. (63)

So for 2009, where FBI requested just 30,442 NSLs, FBI did not report 7.3% of the NSLs it requested.

(I can't double check my math here because FBI redacted some of these tables, but I guess that's one of the hazards of overclassifying things.)

That's troubling enough, as is FBI's lackadaisical attitude towards correcting the disparity.

After reviewing the draft of this report, the FBI told the OIG that while 100 percent accuracy can be a helpful goal, attempting to obtain 100 percent accuracy in the NSL subsystem would create an undue burden without providing corresponding benefits. The FBI also stated that it has taken steps to minimize error to the greatest extent possible.

Ho hum, we're just the FBI, why expect us to be able to police ourselves?

But it gets weirder.

First, the one theory the IG came up with to explain the discrepancy is that FBI is not counting all the manual NSLs that bypass their automatic counting system implemented in response to the first IG Reports on NSLs.

In fact, they're not: FBI's Inspection Division found they're not counting some significant (not single digit) percentage number of their manual NSLs (they redact how much they're not counting on page 39).

But the IG seems to suspect there may be even more manual requests that are not being counted at all.

[T]he total number of manually generated NSLs that the FBI inspectors identified is relatively small compared to the total number of 30,442 NSL requests issued by the FBI that year. What remains unknown, however is, whether the FBI inspectors identified all the manually identified generally NSLs issued by the FBI or whether a significant number remains unaccounted for and unreported.(58)

If you guessed that FBI redacted under what circumstances FBI permits agents to bypass this automatic counting system, you'd be right. That discussion is in footnote 35 on page 17, and again on pages 113-115.

But I worry, given one observation from the IG, that they're bypassing the automatic system in cases of "sensitive" investigations. Some apparent moron tried to explain why the IG found higher numbers for NSLs than Congress because the NSLs related to sensitive investigations were being reported to Congress but not the IG.

After reviewing the draft of this report, the FBI told the OIG for the

first time that the NSL data provided to Congress would almost never match the NSL data provided to the OIG because the NSL data provided to Congress includes NSLs issued from case files marked “sensitive,” whereas the NSL data provided to the OIG does not. According to the FBI, the unit that provided NSL data to the OIG does not have access to the case files marked “sensitive” and was therefore unable to provide complete NSL data to the OIG. The assertion that the FBI provided more NSL data to Congress than to the OIG does not explain the disparities we found in this review, however, because the disparities we found reflected that the FBI reported fewer NSL requests to Congress than the aggregate totals. (58)

Aside from the revelation that FBI doesn’t understand how numbers work – that if Congressional reporting reflected a larger universe of NSLs than what the IG got to see, Congressional numbers should be higher, now lower – this also seems to mean that the IG is not being permitted to review the NSLs relating to sensitive investigations.

Now, it’s not entirely clear what FBI means by “sensitive” in this circumstance. But generally, “sensitive” investigations at FBI are those that investigate reporters, faith leaders, and politicians.

So it seems possible the FBI is not permitting the IG to review precisely the practices he should review.

Which brings me to another matter that is almost entirely redacted.

As I’ve reported repeatedly, one thing the last IG report on Exigent Letters showed is that a number of journalists have had their phone records collected by FBI. In addition, the 2011 DIOG made it acceptable to use NSLs to do so.

Here's the section of the executive summary of this report that describes whether FBI has resolved this issue.

In addition, we determined that the FBI should take further steps to address our recommendation concerning [REDACTED] of [REDACTED]. In our Exigent Letters Report, we found that the FBI conducted [REDACTED]. Because of the significant First Amendment interests implicated by such [REDACTED], as well as operational considerations such as obtaining cooperation from the media when necessary in future exceptional circumstances, we recommended that the Department re-evaluate the policies governing the conduct of [REDACTED] and consider under what circumstances FBI personnel may conduct [REDACTED], including whether approval by senior FBI officials at the level of an Assistant Director or higher should be required for the conduct of such [REDACTED].

Since that time, on July 12, 2013, the Department issued a report, *Report on Review of News Media Policies*, which made revisions to the Department's policies regarding investigations that involve members of the news media. Although this report did not specifically address [REDACTED], we believe the FBI should consult with the Department to determine whether the recent policy changes warrant any revisions to the DIOG's procedures for conducting [REDACTED] of members of the news media, including the approval level required before such [REDACTED] may be conducted.

From which I can only assume that FBI is continuing to use NSLs to collect journalist records (if FBI would like to declassify this language to prove me wrong, I welcome their transparency!).

So to sum up:

- FBI can't figure out why its NSL numbers dropped off a cliff for the years in question
- FBI can't figure out what happened to up to 7.3% of its NSLs
- The IG thinks it is possible there are even more NSLs missing from those numbers
- When asked, the FBI said maybe discrepancies come from files on sensitive investigations that the IG has no access to
- The FBI does appear to be continuing its use of NSLs to hunt down journalists'

sources, which qualifies under the DIOG as a “sensitive” investigation, along with faith leaders and politicians

All that could be badly wrong – much of this information is redacted from both me, and in some cases, from Congress.

But doesn't it raise some awfully big questions?

ALL THE TORTURE'S THAT FIT TO CALL TORTURE NOW INCLUDES US TORTURE

On Monday in Salon, I said (in part),

[T]he recent history of America's torture also damns the conventions of journalism that strive so hard for some kind of fake balance that still prefers a term that obscures the truth over one that accurately describes it.

Don't get me wrong: We owe our knowledge of torture to some of the best journalists in the business, people like Jane Mayer and Dana Priest and Adam Goldman.

But as soon as coverage moved beyond that superb investigative work to coverage of the politics of torture – to the journalists who should hold those who implemented torture accountable – we remain mired in obscurantist language.

Which brings us to the torture report result the press might take most

seriously.

According to McClatchy, in addition to misleading Congress, DOJ and the White House, the torture report concludes that the CIA also fed misleading information to the press: “[T]he news media were manipulated with leaks that tended to blunt criticism of the agency.”

Part of this manipulation (one the White House participated in) involved convincing the press to call torture something else, something it’s not. Enhanced interrogation. Harsh treatment.

Anything but torture.

For 10 years, journalists have willingly perpetuated this linguistic absurdity, even as more evidence came out proving the CIA used torture and not some fluffed up interrogation process, even as more and more neutral arbiters judged our torture torture.

The Senate Intelligence Committee has spent five years trying to understand and come to grips with the torture done in our name. Isn’t it time for journalists to do the same?

While I don’t flatter myself that my column was needed at this point – or even would have been influential –the NYT did just announce that it would henceforth call torture, including US torture, torture.

Over the past few months, reporters and editors of The Times have debated a subject that has come up regularly ever since the world learned of the C.I.A.’s brutal questioning of terrorism suspects: whether to call the practices torture.

[snip]

Given [changes that have taken place in recent years, including with the legal status of torture], reporters urged that The Times recalibrate its language. I agreed. So from now on, The Times will use the word “torture” to describe incidents in which we know for sure that interrogators inflicted pain on a prisoner in an effort to get information.

I may have more to say about the substance of the statement down the road. But for now two things are important: The most prestigious newspaper in the country has formally given up Bush’s euphemism. And this change came from the reporters.

May other outlets follow the Gray Lady’s lead.

GOVERNMENT CONTINUES TO FREAK OUT ABOUT THE INTERCEPT, RAISE ITS PROFILE

The Intercept had a story on the content of the government’s terrorist watchlist yesterday – I’ll have more to say about the content later. But the government – largely National Counterterrorism Center – response to it shows the government getting increasingly unhinged about the Intercept and other journalistic models based on leaked documents.

First, in an apparent effort to shift the focus away from the 200,000 people on the terrorist watchlist with no tie to a known terrorist organization and to the fact that the watchlist

has ballooned in response to the UndieBomb attempt in December 2009, NCTC gave the scoop to AP's Eileen Sullivan.

The Associated Press dropped a significant scoop on Tuesday afternoon, reporting that in the last several years the U.S. government's terrorism watch list has doubled.

A few minutes after the AP story, then consisting of three paragraphs, was posted at 12:32 p.m., The Intercept published a much more comprehensive article.

NCTC even admitted they spoiled the scoop after the Intercept's John Cook called them on it.

After the AP story ran, The Intercept requested a conference call with the National Counterterrorism Center. A source with knowledge of the call said that the government agency admitted having fed the story to the AP, but didn't think the reporter would publish before The Intercept did. "That was our bad," the official said.

Asked by The Intercept editor John Cook if it was the government's policy to feed one outlet's scoop to a friendlier outlet, a silence ensued, followed by the explanation: "We had invested some quality time with Eileen," referring to AP reporter Eileen Sullivan, who the official added had been out to visit the NCTC.

"After seeing you had the docs, and the fact we had been working with Eileen, we did feel compelled to give her a heads up," the official said, according to the source. "We thought she would publish after you."

This is bone-headed on several levels. In the

future, all government agencies will get less time to comment on the Intercept's upcoming stories, which – given how much classified information they're sitting on – could really hurt their interests.

And NCTC burned Sullivan badly; she's a decent reporter, but NCTC has made it clear they consider her *their* reporter. (NSA has done this similarly but less obviously with some superb beat reporters, leaking them partial stories then exploiting those partial stories to undercut real attention on the documents.)

Then, the government gave CNN's Evan Perez an "Exclusive" to trumpet their determination that there's probably someone else leaking documents to the Intercept.

The federal government has concluded there's a new leaker exposing national security documents in the aftermath of surveillance disclosures by former NSA contractor Edward Snowden, U.S. officials tell CNN.

Proof of the newest leak comes from national security documents that formed the basis of a news story published Tuesday by the Intercept, the news site launched by Glenn Greenwald, who also published Snowden's leaks.

The Intercept article focuses on the growth in U.S. government databases of known or suspected terrorist names during the Obama administration.

The article cites documents prepared by the National Counterterrorism Center dated August 2013, which is after Snowden left the United States to avoid criminal charges.

Greenwald has suggested there was another leaker. In July, he said on Twitter "it seems clear at this point" that there was another.

Government officials have been investigating to find out that identity.

Note, there's almost certainly an error here, presumably on the part of the government. There appears to be a second NSA leaker, leaking to Jacob Appelbaum. But there's also the person who gave the Intercept the NCTC documents, which is almost certainly an entirely different person.

Of course, there's not just one new leaker. In DC there are new leakers everyday, even people who share classified documents. What Perez' sources mean is OMIGOD there's another person giving That Outlet documents.

The government has chosen to make it a Big Story that at least one more person has decided to leak the Intercept documents.

Ultimately, I think the Known and Suspected Terrorist documents the Intercept got are badly overclassified and also should be released in whole to permit debate and oversight. The documents show some good things (and some areas where NCTC has implemented questionable demands from Congress such as that they biometric everything). They also show the system lacks controls. Absent real discussion, it appears NCTC and the rest of this bureaucracy hasn't gotten the right balance on watchlisting.

But rather than engaging in that debate, the government first tried to pre-empt it, burning Sullivan in the process, and then screaming so loud as to raise the value of such leaks.

Dumb.

YOU'RE DOING

COUNTER-PROPAGANDA WRONG, HAND-PICKED JOURNOS EDITION

I've been so buried in Netroots Nation and related issues I've only followed the top-line coverage of the MH17 shoot-down. I think the version the Administration released yesterday – that Ukrainian rebels shot down the airliner by mistake – is the most plausible explanation, though I'm aware of questions about that story.

All that said, there's something about yesterday's dog-and-pony show offered at the Office of Director of National Intelligence that seriously discredits the US story.

As the WSJ account of it makes clear, the reporters brought in for that dog-and-pony were explicitly told the dog-and-pony was being held to "not let[] a Russian narrative get out there."

The Russian government is making a "full-court press" to spread a Russian version of events that try to pin the shoot-down on the Ukrainians, which is "not plausible to us," one senior intelligence official said.

A key goal of Tuesday's presentation, said one senior intelligence official was "not letting a Russian narrative get out there," said one senior U.S. intelligence official.

(Apparently this senior intelligence official is not honest enough to admit both sides are already in a game of full court pressing – and John Kerry has already gotten beyond what the government released yesterday.)

Here's the thing. While the Russians have not offered as much proprietary intelligence as the US offered yesterday, the presentation this dog-and-pony show is meant to rebut involve

their Ministry of Defense providing a televised briefing on their questions about the event.

By contrast, noted liar James Clapper's office invited hand-picked journalists in, and swore them to silence about who actually gave the briefing, and only afterwards released a transcript and other materials on the briefing. Spencer Ackerman was among the obvious journalists who should have been but was not invited.

Some of the evidence provided by US intelligence – whose fiscal 2013 budget was \$68bn – included Facebook posts. “After it became evident that the plane was a civilian airliner, separatists deleted social media posts boasting about shooting down a plane and possessing a Buk (SA-11) surface-to-air missile system,” a senior intelligence official said in the briefing, held on condition of anonymity. The Guardian was not invited to the briefing, a transcription of which was later made available.

Look, if the US government has a case, they can release it publicly. But what they appear to be doing instead is creating their own official press corps and presenting their case there.

That's especially true given that something else said at the briefing undermines the US case against the rebels.

They noted that it can be difficult to track the transportation of weapons because they are often moved at night, and the Russians have provided the separatists with types of weapons that the Ukrainians also have in order to maintain “plausible deniability.”

If the Russians have gone to some length to hide their role in arming rebels, why would they also give them a weapon that would draw so much

attention (the Ukrainian government has them as well, but they haven't used them)? (Though I actually think the point is they have been fired, but weren't considered so fancy until they took down a civilian jet.)

I suspect at this point both sides are hiding interesting details they know. But the US has the more plausible case, thus far. So why are they unwilling to present their case publicly?

DOJ'S CAKE-EATING ON JOURNALISTS WILL BUILD SUPPORT FOR FAULTY JOURNALIST SHIELD

As many people have reported, SCOTUS today declined to take Jim Risen's appeal of the Fourth Circuit's decision requiring him to testify in Jeff Sterling's trial. As I noted at the time of the decision, this effectively guts any reporter's privilege in the circuit that matters: the Fourth Circuit governs the CIA and JSOC.

Now, Risen's team is calling on DOJ to uphold Eric Holder's promise of last week, that no journalist engaged in journalism will be prosecuted on his watch.

“As long as I'm attorney general, no reporter who is doing his job is going to go to jail. As long as I'm attorney general, someone who is doing their job is not going to get prosecuted.”

As Kevin Gosztola has noted on Twitter, however, there's a difference between prosecution and

jailing under contempt. So that promise is likely meaningless.

And not only does that put Holder where he wants to be: with the courts on his side, exercising the discretion to jail a journalist or not as he can convince the court.

Furthermore, consider how it creates pressure for Chuck Schumer's (Administration-backed) badly flawed press shield bill. The bill wouldn't cover me. It wouldn't cover Glenn Greenwald. And it would leave James Risen precisely where he is now, subject to a judges ruling on the significance of the information he has.

There was already a lot of support for this bill. But now that the Executive Branch has gained all the leverage where it matters, I imagine there'll be a greater push to Do Something – even if that just codifies an official press that gets privilege.

On the same day NYT's Adam Liptak reported this decision, he also did a profile of SCOTUSBlog's Thomas Goldstein, who – because he doesn't fit the official model of journalist, in spite of the number of people who rely on his journalism – still can't get press SCOTUS press credentials. In spite of near universal acknowledgment of the important role SCOTUSBlog plays, the traditional press hasn't budged, which has helped SCOTUS punt on the issue too.

The closer the press gets to official sanction, the worse the reporting we'll get.