

CONNECTING THE DOTS ON THE CIA TORTURE REPORT

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

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

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

According to sources familiar with the CIA inspector general report that details the alleged abuses by agency officials, CIA agents impersonated Senate staffers in order to gain access to Senate communications and drafts of the Intelligence Committee investigation. These sources requested anonymity because the details of the agency's inspector general report remain classified.

"If people knew the details of what they actually did to hack into the Senate computers to go search for the torture document, jaws would drop. It's straight out of a movie," said one Senate source familiar with the document.

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

A person familiar with the events surrounding the dispute between the CIA and Intelligence Committee said the

suggestion that the agency posed as staff to access drafts of the study is untrue.

"CIA simply attempted to determine if its side of the firewall could have been accessed through the Google search tool. CIA did not use administrator access to examine [Intelligence Committee] work product," the source said.

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

Computer records may have provided evidence on how the CIA document made its way into the Intelligence Committee's hands. Those records, Senate sources said, were erased by the CIA.

The claim is technically true. The computer audit logs that recorded activity on the CIA computers used for the committee's report were overridden from the machines' local drives at regular intervals throughout the five-year study, HuffPost has learned. The records, however, continued to be stored elsewhere, and were provided to the Sergeant-at-Arms office for its inquiry. The CIA said that the Senate office received the computer audit records earlier this year.

"CIA cooperated fully with the Senate Sergeant-at-Arms review and provided all the relevant information that the [Sergeant-at-Arms] requested," said CIA spokesman Dean Boyd. "In fact, audit data was specifically provided to the [Sergeant-at-Arms] in July 2014. Furthermore, CIA continues to maintain copies of this audit data to this day. Claims alleging otherwise are patently

false.”

[snip]

A source familiar with the Senate inquiry has since said that the CIA submitted copies of records to the Sergeant-at-Arms, rather than the records themselves, which the investigators considered unreliable.

The Sergeant-at-Arms “can’t verify any of what CIA is saying,” said the source, who was briefed on the investigation.

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

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

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

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

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

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

Since there are so many incidences of destroyed or disappearing torture evidence, I thought it time to start cataloging them, to keep them all straight.

- *Before May 2003: 15 of 92 torture tapes erased or damaged*
- *Early 2003: Gitmo commander Mike Dunlavey's paper trail documenting the torture discussions surrounding Mohammed al-Qahtani "lost"*
- *Before August 2004: John Yoo and Patrick Philbin's torture memo emails deleted*
- *June 2005: most copies of Philip Zelikow's dissent to the May 2005 CAT memo destroyed*
- *November 8-9, 2005: 92 torture tapes destroyed*
- *July 2007 (probably): 10 documents from OLC SCIF disappear*
- *December 19, 2007: Fire breaks out in Cheney's office*

(I put in the Cheney fire because it happened right after DOJ started investigating the torture tape destruction.)

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

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

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

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

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

Agency Access to Files on the SSCI RDINet: Five Agency employees, two attorneys and three information technology (IT) staff members, improperly accessed or caused access to the SSCI Majority staff shared drives on the RDINet.

Agency Crimes Report on Alleged Misconduct by SSCI Staff: The Agency filed a crimes report with the DOJ, as required by Executive Order 12333 and the 1995 Crimes Reporting Memorandum between the DOJ and the Intelligence Community, reporting that SSCI staff members may have improperly accessed

Agency information on the RDINet. However, the factual basis for the referral was not supported, as the author of the referral had been provided inaccurate information on which the letter was based. After review, the DOJ declined to open a criminal investigation of the matter alleged in the crimes report.

Office of Security Review of SSCI Staff Activity: Subsequent to directive by the D/CIA to halt the Agency review of SSCI staff access to the RDINet, and unaware of the D/CIA's direction, the Office of Security conducted a limited investigation of SSCI activities on the RDINet. That effort included a keyword search of all and a review of some of the emails of SSCI Majority staff members on the RDINet system.

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

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

THE OBAMA ADMINISTRATION DEBATE ON THE CONVENTION AGAINST TORTURE AND ANAS AL-

LIBI

For some reason, the NYT decided to bury this article from Charlie Savage on page A21. It explains that the Obama Administration is debating internally whether to overturn Obama's ban against cruelty (which is also mandated by the Detainee Treatment Act). Some intelligence lawyers, apparently, believe Obama's torture ban and the DTA are too limiting.

It is considering reaffirming the Bush administration's position that the treaty imposes no legal obligation on the United States to bar cruelty outside its borders, according to officials who discussed the deliberations on the condition of anonymity.

[snip]

State Department lawyers are said to be pushing to officially abandon the Bush-era interpretation. Doing so would require no policy changes, since Mr. Obama issued an [executive order](#) in 2009 that forbade cruel interrogations anywhere and made it harder for a future administration to return to torture.

But military and intelligence lawyers are said to oppose accepting that the treaty imposes legal obligations on the United States' actions abroad. They say they need more time to study whether it would have operational impacts. They have also raised concerns that current or future wartime detainees abroad might invoke the treaty to sue American officials with claims of torture, although courts [have repeatedly thrown out lawsuits](#) brought by detainees held as terrorism suspects.

There were remarkable amounts of denial in response to this, from people who seem totally

unaware of the kind of practices – that appear to include isolation, sleep deprivation, food manipulation, and other forms of coercion – currently used by High Value Interrogation Group (HIG), the inter-Agency group used to interrogate terrorist suspects. And this post from David Luban, which lays out some of the loopholes the government might be using to engage in abuse, misses a few.

We know, for example, that there are 2 OLC opinions that say Presidents don't have to change the text of Executive Orders they choose to ignore, meaning Obama could ignore his torture ban "legally." There's also the Appendix M OLC opinion that has approved whatever DOD wants to sneak into the sometimes classified appendix in advance.

All of these issues have been invoked in the case of Anas al-Libi, who recently testified in his challenge to the use of the statements he made to FBI's Clean Team in his trial, invoking the anxiety produced by the "CIA" interrogation al-Libi experienced on the USS San Antonio. (The interrogation was conducted by the HIG; note that while al-Libi has retained counsel, Bernard Kleinman, I believe he also still has public defenders, including Sabrina Shroff, who has represented HIG-interrogated defendants before, so she can attest to the continuity of the methods involved.)

Al-Libi, a 50-year-old Libyan whose legal name is Nazi Abdul al-Ruqai, testified before U.S. District Judge Lewis Kaplan in an evidentiary hearing tightly focused on the moments following al-Libi's transfer on October 12, 2013, from military to civilian custody.

Given the situation, "I couldn't concentrate on anything," al-Libi told the court through an Arabic translator. When asked by his attorney, Bernard Kleinman, why he signed the papers waving his *Miranda* rights and paving the way for an FBI interview, al-Libi said,

"You have no choice but to sign it."

And in a filing calling on the government to preserve videotapes and any other records of his shipboard interrogation, al-Libi's Libyan-retained lawyer invoked precisely the law and Executive Order in question.

18. Upon information and belief he was subjected to daily interrogation by professional interrogator[s] of the CIA in an unrelenting, hostile, and extraordinary manner.

19. Upon information and belief this interrogation was conducted in a manner in violation of the Defendant's rights under the Fifth and Sixth Amendments to the federal Constitution, and under applicable treaties and conventions to which the United States is a signatory.²

20. Furthermore, this interrogation was conducted in a manner of inhumane treatment. Notwithstanding the changes effected by both Congress³ and the President⁴ after the revelations of physical abuse and torture as conducted by the CIA in the name of national security, such measures (even if actually observed by the participants and interrogators) could easily lead to harsh, improper and inhumane treatment that would taint any and all subsequent interrogations, even if preceded by a Miranda warning and waiver execution, and conducted by the FBI or some other federal law enforcement agents.

21. Upon information and belief, these interrogations were videotaped, and otherwise recorded by the CIA, among other U.S. Government agencies.

22. It is, furthermore, reasonable and logical to presume that the interrogator[s] produced hard copy notes of their actions, and provided reports

to other representatives of the United States Government (both in the Executive and Legislative branches).

3 In 2005 Congress passed the Detainee Treatment Act, Pub. L. No. 109-148, codified at U.S.C. §§ 2000dd, 2000dd-0, and 2000dd-J, which applied the U.S. Army Field Manual to all military interrogations. It should be noted that the Act specifically provides that

No individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment.

The degree and extent to which the United States Government violated this statute in the kidnapping, abduction, and interrogation of the Defendant are issues to be raised similarly in any subsequent motions made pursuant to Rule 12(b).

4 On January 22, 2009, President Obama issued Executive Order 13491, which directed the CIA to adopt the methods of interrogation as set forth in the U.S. Army Field Manual. See E.O. 13491, 74 Fed. Reg. 4893 (Jan. 22, 2009).

5 Both the Detainee Treatment Act and E.O. 13491 refer to the U.S. ARMY FIELD MANUAL, HUMAN INTELLIGENCE COLLECTOR OPERATIONS, referenced as FM 2.22.3 (Sept. 2006 ed.).

I think there are probably a number of HIG-interrogated individuals – including some who were interrogated entirely within the US – who could claim they were subject to degrading treatment. But in this case, the person in

question has a privately-retained lawyer, which may present significant concerns for the interrogators in question.

Meanwhile, the government is not providing al-Libi cancer treatment doctors at Duke said during the summer he needs to address liver cancer. Maybe the government is just hoping al-Libi will succumb to cancer before he can press these issues?

Whatever the plan, the government is at least entertaining widening the loopholes that they used in the past to protect torturers.

THE FORGOTTEN OPR REPORT EXPOSING THE WHITE HOUSE ROLE IN TORTURE

McClatchy
report says
today that
the Senate
Intelligence



Report will include no details on the White House role in torture.

The Senate Intelligence Committee report also didn't examine the responsibility of top Bush administration lawyers in crafting the legal framework that permitted the CIA to use simulated drowning called waterboarding and other interrogation methods widely described as torture, McClatchy has learned.

"It does not look at the Bush administration's lawyers to see if they were trying to literally do an end run around justice and the law," the person said.

McClatchy's story is interesting, in part, because I had heard that the report was going to admit what has been in the public domain for years: the torture program, contrary to almost all reporting, was authorized by Presidential finding, not primarily by the memos that garner all the attention.

If the Torture Report is no longer going to confirm that, it is far bigger news than McClatchy has conveyed. It would mean someone – presumably the White House! (though remember the Finding's author, Cofer Black, was involved in reviewing the document) – had won concessions in the declassification discussions to hide the role of President Bush in personally authorizing torture.

That would be consistent with President Obama's rather remarkable efforts to keep a short mention of the September 17, 2001 Gloves Come Off Memorandum of Notification suppressed in ACLU's torture FOIA (something that's in the public record, but which I have been the only one to report).

But if President Obama's White House has, a second time, intervened to prevent public confirmation that the President authorized torture, we really ought to start demanding to know why that's the case. Remember when the 2nd Circuit backed White House efforts to keep mention of the MON suppressed, the White House said it was still using the MON.

The other reason I find McClatchy's report curious is because it leaves something utterly central out of its narrative.

As Katherine Hawkins noted yesterday, McClatchy missed a key detail in the chronology of when and how Republicans backed out of the torture

review.

Obama DOJ investigation into torture is not "prior" to SSCI report. Launched after SSCI, & is reason GOP withdraws

But there's one more part of that chronology – one McClatchy might actually review if it wants the things it says it wants: the Office of Public Responsibility report into OLC lawyers' role in the torture memos. Reporting in 2009 made it clear that Eric Holder launched the John Durham investigation in response to reading the OPR Report. So the chronology goes OPR Report, Durham investigation, GOP withdraws from SSCI Torture Report which (McClatchy argues) is when the Democrats could have turned and pushed to get documents implicating Bush White House figures.

While both David Addington and Tim Flanigan refused to be interviewed for the OPR report, it made it clear (especially Jay Bybee and John Yoo's rebuttals) that both had had a direct role in setting up the legal loopholes CIA used to conduct torture. Between that and other public (largely unreported by anyone but me) documents, it is fairly clear that in response to concerns raised around July 10, 2002, CIA tried to get DOJ to give "advance" declination of prosecution (though for conduct that surely had already occurred). On July 13, Michael Chertoff refused, probably because Ali Soufan had already raised concerns about the conduct (his concerns probably relate to the use of mock burial) to give advance declination for torture. This led John Yoo to freelance a July 13, 2002 fax laying out how CIA could avoid accountability; that appears to be what Jonathan Fredman relied on in his advice to the torturers, not the more famous Bybee Memos. Nevertheless, at a July 16, 2002 meeting at the White House, it was decided (Yoo and Addington differ, it appears, on who did the deciding, but it is a rock solid bet that Addington did) that the Bybee Memo would include Commander of Chief language on how to avoid prosecution.

There are a number of other moments in the history of the program where White House responsibility is clear. But at that moment on July 16, 2002, David Addington got John Yoo to provide legal cover for anything the President ordered CIA do; he did so, of course, after CIA had been torturing for months on Presidential orders.

The answers to many of the questions McClatchy says have gone unanswered are sitting right there in the OPR report. And those answers are crucial to understanding the dance over declassification going on right now.

Aside from whatever else the Torture Report is, it is also a report that dodges the underlying power structure, in which the President orders the CIA to break the law and later ensures CIA avoids any accountability for doing so. At some point in this Torture Report process – fairly recently too! – Democrats seemed interested in exposing that dynamic, a dynamic President Obama has benefitted from at least as much as Bush did, going so far as to permit him to have CIA kill a US citizen with no due process. (That's probably why Leon Panetta told some fibs in his memoir on this point.)

Ultimately, we're never going to rein in CIA until we expose the mutual embrace of complicity the White House and CIA repeatedly rely on. Now it looks like the Senate Intelligence Committee has – in bipartisan fashion – decided to back off doing so here.

IN TELLING OF BRENNAN FIT, PANETTA SOMEHOW FORGETS THE TORTURE

DOCUMENTS STOLEN BACK FOR THE WHITE HOUSE

As you likely know, I'm firmly of the belief that one should call DC memoirs – especially those written by National Security figures – autobiographical novels, because they tend to stray so far from the truth (that's true of all autobiographies, but in DC it seems far more motivated). Turbo-Tax Timmy Geithner is about the only DC figure whose memoir has ever been treated with any of the skepticism it deserves.

With that in mind, I wanted to look at this detail from Leon Panetta's book, which Katherine Hawkins alerted me to.

To illustrate how Obama's micromanagement hurt relations with Congress, Panetta describes the negotiations with Dianne Feinstein over the cables that went into the torture report.

She requested access for her staff to every operational cable regarding the program, a database that had to be in the hundreds of thousands of documents. These were among the most sensitive documents the agency had. But Feinstein's staff had the requisite clearances and we had no basis to refuse her. Still, I wanted to have some control over this material, so I proposed a deal: Instead of turning over the documents en masse to her staff, we would set up a secure room in Virginia. Her staff could come out to the secure facility and review documents one by one, and though they could take notes, the documents themselves would stay with CIA.

When the White House found out, they went apeshit, calling Panetta into the Situation Room for a spanking.

"The president wants to know who the fuck authorized this release to the committees," Rahm said, slamming his hand down on the table. "I have a president with his hair on fire, and I want to know what the fuck you did to fuck this up so bad."

I'd known Rahm a long time, and I was no stranger to his language or his temper, so I knew when to worry about an outburst and when it was mostly for show. On this occasion, my hunch was that Rahm wasn't that perturbed but that Obama probably was and that others at the table, particularly Brennan and McDonough, were too. Rahm was sticking up for them by coming after me.

[snip]

It went back and forth like this for about fifteen minutes. Brennan and I even exchanged sharp words when I, unfairly, accused him of not sticking up for the agency in the debate over the interrogation memos. Finally, the White House team realized that whether they liked it or not, there was no way we could go back on our deal with the committee. And just like that, the whole matter was dropped.

Rahm and Brennan spanked Panetta, he claims, but then the whole thing blew over.

There are just three problems with this story.

First, according to the quotations Dianne Feinstein revealed from her agreement with Panetta, the CIA wasn't supposed to "have ... control over this material."

Per an exchange of letters in 2009, then-Vice Chairman Bond, then-Director Panetta, and I agreed in an exchange of letters that the CIA was to provide a "stand-alone computer system" with a

“network drive” “segregated from CIA networks” for the committee that would only be accessed by information technology personnel at the CIA—who would “not be permitted to” “share information from the system with other [CIA] personnel, except as otherwise authorized by the committee.”

Far more significantly, Panetta doesn't mention the documents that disappeared during Panetta's tenure – ostensibly, on orders from the White House.

In early 2010, the CIA was continuing to provide documents, and the committee staff was gaining familiarity with the information it had already received.

In May of 2010, the committee staff noticed that [certain] documents that had been provided for the committee's review were no longer accessible. Staff approached the CIA personnel at the offsite location, who initially denied that documents had been removed. CIA personnel then blamed information technology personnel, who were almost all contractors, for removing the documents themselves without direction or authority. And then the CIA stated that the removal of the documents was ordered by the White House. When the committee approached the White House, the White House denied giving the CIA any such order.

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

And Panetta also doesn't mention what may or may not be the same set of documents, those withheld by CIA on behalf of the White House, as described by Stephen Preston in response to Mark Udall.

With specific reference to documents potentially subject to a claim of executive privilege, as noted in the question, a small percentage of the total number of documents produced was set aside for further review. The Agency has deferred to the White House and has not been substantively involved in subsequent discussions about the disposition of those documents.

In other words, CIA *didn't* live up to its deal with Feinstein, not with respect to this set of documents, anyway. After turning over all the cables it believed SSCI had a right to obtain, it then took some back. As far as we know, it never did provide them.

We know that one of the Torture Report's conclusions is that the CIA lied to the White House.

While there's good reason to believe CIA lied to Condi Rice, there's also abundant reason to believe that Dick Cheney and David Addington knew precisely what was going on. If I had to guess, the documents CIA stole back probably make that clear.

Panetta would have us believe that, after his spanking by John Brennan and others, the whole matter was dropped. Which is a convenient tale, except that it obscures that the White House succeeded in clawing back documents CIA originally believed SSCI was entitled to.

REMEMBER THAT NASHIRI'S TORTURE — “REAL TORTURE” — DIDN'T WORK

Yesterday, the Telegraph reported that the “waterboarding” used with Khalid Sheikh Mohammed and Abd al-Rahim al-Nashiri was far worse than described before – more actual drowning to the point of death than “pours.”

The description of the torture meted out to at least two leading al-Qaeda suspects, including the alleged 9/11 mastermind Khalid Sheikh Mohammed, far exceeds the conventional understanding of waterboarding, or “simulated drowning” so far admitted by the CIA.

“They weren’t just pouring water over their heads or over a cloth,” said the source who has first-hand knowledge of the period. “They were holding them under water until the point of death, with a doctor present to make sure they did not go too far. This was real torture.”

That CIA was drowning people rather than “pouring” water over them is not news. Details described by the Telegraph exactly match the WaPo’s description of CIA’s drowning of Ammar al-Baluchi just months after KSM’s worst torture.

If declassified, the report could reveal new information on the treatment of a high-value detainee named Ali Abdul Aziz Ali, the nephew of Khalid Sheikh Mohammed, the self-proclaimed mastermind of the Sept. 11 attacks. The Pakistanis captured Ali, known more commonly as Ammar al-Baluchi, on April, 30, 2003, in Karachi and turned him over to the CIA

about a week later. He was taken to a CIA black site called "Salt Pit" near Kabul.

At the secret prison, Baluchi endured a regime that included being dunked in a tub filled with ice water. CIA interrogators forcibly kept his head under the water while he struggled to breathe and beat him repeatedly, hitting him with a truncheon-like object and smashing his head against a wall, officials said.

As with Zubaida and even Nashiri, officials said, CIA interrogators continued the harsh treatment even after it appeared that Baluchi was cooperating.

But I'm a little curious about this story.

It comes from a "security source" (which sounds like a contractor), single sourced. And it describes the treatment of two detainees whose torture has been most closely scrutinized, which makes it interesting this is only coming out now.

All that said, one question I hope we'll answer once the summary of the SSCI torture report gets released later this year is what happened with Nashiri's waterboarding.

Two things distinguish his treatment from Abu Zubaydah and KSM's, after all: at least according to public reports, he was only waterboarded twice (by whatever twisted means you want to quantify torture). More interestingly, even Liz BabyDick Cheney doesn't claim Nashiri gave up useful information after being waterboarded.

There's a story about Nashiri's "waterboarding" that's overdue to be told. I wonder how close to death CIA brought him?

WHATEVER HAPPENED TO MUHAMMED KHUDAYR AL-DULAYMI?

On the same day the NYT published the latest in a series of reports of how ISIS has incorporated Baathists from Saddam's regime, the WaPo reported that ISIS had tortured some of its captives, including James Foley, using some of the same techniques employed by the US.

The NYT described how Abu Bakr al-Baghdadi teamed up with some of Saddam's old officers.

He had a preference for military men, and so his leadership team includes many officers from Saddam Hussein's long-disbanded army.

They include former Iraqi officers like Fadel al-Hayali, the top deputy for Iraq, who once served Mr. Hussein as a lieutenant colonel, and Adnan al-Sweidawi, a former lieutenant colonel who now heads the group's military council.

The pedigree of its leadership, outlined by an Iraqi who has seen documents seized by the Iraqi military, as well as by American intelligence officials, helps explain its battlefield successes: Its leaders augmented traditional military skill with terrorist techniques refined through years of fighting American troops, while also having deep local knowledge and contacts. ISIS is in effect a hybrid of terrorists and an army.

And WaPo described the waterboarding used with Foley – but it described it exclusively as a CIA

torture technique.

James Foley was among the four who were waterboarded several times by Islamic State militants who appeared to model the technique on the CIA's use of waterboarding to interrogate suspected terrorists after the Sept. 11, 2001, attacks.

Waterboarding often involves strapping a person down on a gurney or bench and pouring cold water over a cloth covering the face. It causes the sensation of drowning. "The wet cloth creates a barrier through which it is difficult – or in some cases not possible – to breathe," according to a Justice Department memo in May 2005 about the CIA's use of the technique.

True, waterboarding – as opposed to simulated drowning by submersion – has only been admitted in 3 known cases, all CIA detainees – Abu Zubaydah, Abd al Rahim al-Nashiri, and Khalid Sheikh Mohammed (as well as Egypt's waterboarding on our behalf of Ibn Sheikh al-Libi).

But waterboarding was at least contemplated for use on Baathists. Charles Duelfer admitted that OVP suggested a Mukhabarat officer Duelfer names as Muhammed Khudayr al-Dulaymi be waterboarded, though Duelfer claims he ultimately wasn't waterboarded.

At the end of April 2003, not long after the fall of Baghdad, U.S. forces captured an Iraqi who Bush White House officials suspected might provide information of a relationship between al Qaeda and Saddam Hussein's regime. Muhammed Khudayr al-Dulaymi was the head of the M-14 section of Mukhabarat, one of Saddam's secret police organizations. His responsibilities included chemical weapons and contacts with terrorist

groups.

[snip]

Duelfer says he heard from “some in Washington at very senior levels (not in the CIA),” who thought Khudayr’s interrogation had been “too gentle” and suggested another route, one that they believed has proven effective elsewhere. “They asked if enhanced measures, such as waterboarding, should be used,” Duelfer writes. “The executive authorities addressing those measures made clear that such techniques could legally be applied only to terrorism cases, and our debriefings were not as yet terrorism-related. The debriefings were just debriefings, even for this creature.”

Duelfer will not disclose who in Washington had proposed the use of waterboarding, saying only: “The language I can use is what has been cleared.” In fact, two senior U.S. intelligence officials at the time tell The Daily Beast that the suggestion to waterboard came from the Office of Vice President Cheney.

[snip]

“Everyone knew there would be more smiles in Washington if WMD stocks were found,” Duelfer said in the interview. “My only obligation was to find the truth. It would be interesting if there was WMD in May 2003, but what was more interesting to me was looking at the entire regime through the slice of WMD.”

But, Duelfer says, Khudayr in fact repeatedly denied knowing the location of WMD or links between Saddam’s regime and al Qaeda and was not subjected to any enhanced interrogation. Duelfer says the idea that he would have known of such links was “ludicrous”.

There's a lot that's dodgy about this story. Duelfer's book is, generally, very pro Cheney. And Khudayr does not appear on detainee lists from the period; others are listed as the head of M14 (search on Khudayr, M14, and Special Operations to see the others). Was he still a ghost detainee three months after this happened? Did Duelfer give a cover name?

But whatever happened with Khudayr, it's quite clear that Baathists were brutally tortured in US custody – often by JSOC, as opposed to CIA, which continued the worst kinds of torture even after CIA had halted them. And of course, some even died.

ISIS' leader, Abu Bakr al-Baghdadi also went through (and reportedly grew closer to al Qaeda) in US prisons in Iraq, though Camp Bucca rather than Abu Ghraib or Camp Nama. (And I think there's still quite a story to be told about the jail breaks across the Middle East that preceded the recent ascension of ISIS.)

CIA was, obviously, quite active in Iraq, along with JSOC. But even accounting for DOD's more central role in detention in Iraq, there's reason to believe the torture of ISIS is more closely associated with the torture the US conducted in Iraq than it did in black sites on the other side of the world.

That is, some people associated with ISIS may have a very personal understanding of how the US tortured.

DOES ITS USE OF WATERBOARDING MAKE ISIS MORE OR LESS

BARBARIC?

When ISIS beheaded James Foley, pundits in DC pointed to it as proof of the organizations barbarism. Never mind that Saudis were busy beheading people for sorcery in the same period. Not to mention America's latest penchant for executing people with DIY cocktails of lethal chemicals that leave them gasping for breath for hours.

It's very confusing discerning what does and does not qualify an entity as barbaric these days.

The WaPo report that ISIS subjected Foley and others to waterboarding and mock execution makes it all the more confusing.

At least four hostages held in Syria by the Islamic State, including an American journalist who was recently executed by the group, were waterboarded in the early part of their captivity, according to people familiar with the treatment of the kidnapped Westerners.

James Foley was among the four who were waterboarded several times by Islamic State militants who appeared to model the technique on the CIA's use of waterboarding to interrogate suspected terrorists after the Sept. 11, 2001, attacks.

[snip]

French journalist Didier Francois, who was imprisoned with Foley, has told reporters that Foley was targeted for extra abuse because his captors found pictures on his computer of his brother, who serves in the U.S. Air Force.

Francois said Foley was subjected to mock executions – something suspected al-Qaeda operative Nashiri also endured while being held in a secret CIA prison,

according to a report by the inspector general of the CIA. The Justice Department did not sanction mock executions.

Note how carefully the WaPo skirts the political minefield and journalistic primer of whether to call waterboarding torture or not. It, unlike NYT, still refuses to call waterboarding torture, probably because its editorial page routinely serves as a lead defender of waterboarding as a value “enhanced interrogation technique.”

Nevertheless, our adversaries have moved beyond dressing up prisoners in our signature orange jumpsuits to using the techniques much of the political establishment has defended for the last decade.

That’s not surprising. It’s sickening. But it’s also going to present an interesting challenge to the DC punditry, as it tries to villainize ISIS in advance of expanding the war against it.

Update: Katherine Hawkins has convinced me that I’m unduly harsh on WaPo’s language here. I think the language in the piece is interesting, but the implications of the story are quite clear.

SHOULD ALFREDA BIKOWSKY’S LAWYER REALLY BE IN CHARGE OF DECLASSIFYING THE TORTURE REPORT?

It took McClatchy 21 paragraphs to illustrate why it was such a big conflict of interest for

Director of National Intelligence General Counsel to lead negotiations over how much of the torture report would be declassified, as he currently is doing.

According to reports in The Washington Post, Litt previously represented a CIA analyst, Alfreda Frances Bikowsky, who played a central role in the bungled rendition of Khaled el-Masri. El-Masri, who was revealed to be innocent, claimed to have been tortured by the agency.

As the rest of the article explains, Litt reviewed his role brokering the declassification process with ODNI's Ethics officer – who is his subordinate – and she approved his participation.

But it still probably conflicts with Litt's promises, made during his confirmation process, to recuse himself from matters affecting his former clients. And given the centrality of CIA's absurd demand to hide even the pseudonyms making clear that the same woman who got El-Masri tortured also went out of her way to watch Khalid Sheikh Mohammed be tortured (among a fairly substantial list of other things – here's a reminder of details on how she got promoted after the El-Masri debacle), it is a problem that Litt is brokering this process.

Don't worry, National Security Council spokesperson Caitlin Hayden insists (fresh off insisting it's a good thing that the White House cybersecurity czar doesn't have a technical background), Bob Litt – the same guy hiding known dates in Internet dragnet documents, almost certainly to avoid legal repercussions – is one of the administration's strongest proponents of what it calls "transparency."

"Bob Litt is one of the administration's strongest proponents of transparency in intelligence, consistent with our national security, and he and we are fully committed to ensuring there is no

conflict of interest as the administration continues to work to see the results of the committee's review made public," Hayden said in a statement.

Calling Bob Litt a proponent of "transparency"™ is itself cause for concern.

BEHOLD, JOHN BRENNAN'S SCARY MEMO!

I've been writing for a long time about the "Scary Memos"



the government used to justify its dragnet.

As the Joint IG Report described, they started in tandem with George Bush's illegal wiretap program, and were written before each 45-day reauthorization to argue the threat to the US was serious enough to dismiss any Fourth Amendment concerns that the President was wiretapping Americans domestically.

Jack Goldsmith relied on one for his May 6, 2004 memo reauthorizing some – but not all – of the dragnet.

Yesterday, James Clapper's office released the Scary Memo included in the FISA Court application to authorize the Internet dragnet just two months later, on July 14, 2004.

ODNI calls it the Tenet Declaration – indeed it is signed by him (which, given that he left government on July 11, 2004 and that final FISC applications tend to be submitted days before their approval, may suggest signing this Scary Memo was among the very last things he did as CIA Director).

Yet the Memo would have been written by the Terrorist Threat Integration Center, then headed by John Brennan.

Much of the Scary Memo describes a “possible imminent threat” that DOJ plans to counter by,

seeking authority from this Court [redacted] to install and use pen register and trap and trace devices to support FBI investigations to identify [redacted], in the United States and abroad, by obtaining the metadata regarding their electronic communications.

There is no mention of NSA. There is no mention that the program operated without legal basis for the previous 2.5 years. And there’s a very curious redaction after “this Court;” perhaps CIA also made a show of having the President authorize it, so as to sustain a claim that all this could be conducted exclusively on Presidential authority?

After dropping mention of WMD – anthrax! fissile material! chemical weapons! – the Scary Memo admits it has no real details about this “possible imminent threat.”

[W]e have no specific information regarding the exact times, targets, or tactics for those planned attacks, we have gathered and continue to gather intelligence that leads us to believe that the next terrorist attack or attacks on US soil could be imminent.

[snip]

Reporting [redacted] does not provide

specific information on the targets to be hit or methods to be used in the US attack or attacks.

But based on “detainee statements and [redacted] public statements since 9/11,” the Scary Memo lays out, CIA believes al Qaeda (curiously, sometimes they redact al Qaeda, sometimes they don’t) wants to target symbols of US power that would negatively impact the US economy and cause mass casualties and spread fear.

It took an “intelligence” agency to come up with that.

Based on that “intelligence,” it appears, but not on any solid evidence, CIA concludes that the Presidential conventions would make juicy targets for al Qaeda.

Attacks against or in the host cities for the Democratic and Republican Party conventions would be especially attractive to [redacted].

And because of that – because CIA’s “intelligence” has decided a terrorist group likes to launch attacks that cause terror and therefore must be targeting the Presidential conventions – the FBI (though of course it’s really the NSA) needs to hunt out “sleeper cells.”

Identifying and disrupting the North American-based cells involved in tactical planning offers the most direct path to stopping an attack or attacks against the US homeland. Numerous credible intelligence reports since 9/11 indicate [redacted] has “sleepers” in North America. We judge that these “sleepers” have been in North American, and the US in general, for much of the past two years. We base our judgment, in part, [redacted] as well as on information [redacted] that [redacted] had operatives here.

Before we get to what led CIA to suggest the US was targeted, step back and look at this intelligence for a moment. This report mentions detainee reporting twice. It redacts the name of what are probably detainees in several places. Indeed, several of the claims in this report appear to match those from the exactly contemporaneous document CIA did on Khalid Sheikh Mohammed to justify its torture program, thus must come from him.

Yet, over a year after KSM had been allegedly rendered completely cooperative via waterboarding, CIA still did not know the answer to a question that KSM was probably one of the only people alive who could answer.

We continue to investigate whether the August 2001 arrest of Zacarias Moussaoui may have accelerated the timetable for the 9/11 attacks because he knew of al-Qa'ida's intention to use commercial aircraft as weapons.

Nevertheless, they believed KSM was being totally straight up and forthcoming.

Note, too, the CIA relied on claims of sleeper cells that were then two years old, dating back to the time they were torturing Abu Zubaydah, whom we know did give "intelligence" about sleeper cells.

To be sure, we know CIA's claims of a "possible imminent threat" in the US do not derive exclusively from CIA's earlier torture (though CIA had claimed, just months earlier, that their best intelligence came from that source for the Inspector General's report).

Less than 3 weeks after this Scary Memo was written, we'd begin to see public notice of this "possible imminent threat," when Tom Ridge raised the threat level on August 1, 2004 because of an election year plot, purportedly in response to the capture of Muhammad Naeem Noor Khan in Pakistan on July 13 (which could only have been included in "the Tenet declaration" if

Khan were secretly arrested and flipped earlier, because Tenet was no longer CIA Director on July 13). But what little basis the election year plot had in any reality dated back to the December 2003 British arrest and beating of Khan's cousin, Babar Ahmed, which would lead to both Khan's eventual capture as well as the British surveillance of Dhiren Barot as early as June 10 and the latter's premature arrest on August 3. KSM's nephew, Musaad Aruchi, was also handed over by Pakistan to CIA on June 12; best as I know, he remains among those permanently disappeared in CIA's torture program. This would also lead to a new round of torture memos reauthorizing everything that had been approved in the August 1, 2002 Bybee Memo plus some.

The claims the US was a target derive, based on the reporting in the NYT, from Dhiren Barot. Barot apparently did want to launch a terrorist attack. Both KSM and Hambali had identified Barot during interrogations in 2003, and he had scouted out attack sites in the US in 2000 and 2001. But his active plots in 2004 were all focused on the UK. In 2007 the Brits reduced his sentence because his plots weren't really all that active or realistic.

Which is to say this election plot – the Scary Plot that drives the Scary Memo that provided the excuse for rolling out (or rather, giving judicial approval for continuing) an Internet dragnet that would one day encompass all Americans – arose in significant part from 2003 torture-influenced interrogations that led to the real world detention of men who had contemplated attacking the US in 2000, but by 2004 were aspirationally plotting to attack the UK, not the US, as well as men who may have been plotting in Pakistan but were not in the US.

That, plus vague references to claims that surely were torture derived, is what John Brennan appears to have laid out in his case for legally justifying a US dragnet.

You see, it's actually John Brennan's dragnet – it all goes back to his Scary Memo – and his

role in it is presumably one of the reasons he doesn't want us to know how many lies went into the CIA torture program.

Brennan's Scary Memo provides yet more evidence how closely linked are torture and the surveillance of every American.

HOW ABU ZUBAYDAH'S TORTURE PUT CIA AND FBI IN NSA'S DATABASES

I said yesterday that the plan, going as far back as 2002, was to let CIA and FBI tap right into NSA's data. I base that on this explanation from Keith Alexander, which he included in his declaration accompanying the End to End Report that was submitted sometime after October 30, 2009.

By the fall of 2002, the Intelligence Community had grown increasingly concerned about the potential for further attacks on the United States. For example, during 10 to 24 September 2002, the Government raised the homeland security threat condition to "orange," indicating a high likelihood of attack. In this context, in October 2002 the Directors of NSA, CIA, and FBI established an Inter-Agency Review Group to examine information sharing [redacted] The group's top recommendation was that NSA create a common target knowledge database to allow joint research and information exchanges [redacted].

Of course, we now know that the threat level was

high in September 2002 because the government was chasing down a bunch of false leads from Abu Zubaydah's torture.

Abu Zubaida's revelations triggered a series of alerts and sent hundreds of CIA and FBI investigators scurrying in pursuit of phantoms. The interrogations led directly to the arrest of Jose Padilla, the man Abu Zubaida identified as heading an effort to explode a radiological "dirty bomb" in an American city. Padilla was held in a naval brig for 3 1/2 years on the allegation but was never charged in any such plot. Every other lead ultimately dissolved into smoke and shadow, according to high-ranking former U.S. officials with access to classified reports.

"We spent millions of dollars chasing false alarms," one former intelligence official said.

In other words, the justification for creating a database where CIA and FBI could directly access much of NSA's data was a mirage, one created by CIA's own torture.

All that's separate from the question of whether CIA and FBI should have access directly to NSA's data. Perhaps it makes us more responsive. Perhaps it perpetuates this process of chasing ghosts. That's a debate we should have based on actual results, not the tortured false confessions of a decade past.

But it's a testament to two things: the way in which torture created the illusion of danger, and the degree to which torture – and threat claims based on it – have secretly served as the basis the Executive uses to demand the FISA Court permit it to extend the dragnet.

Even the current CIA Director has admitted this to be true – though without explicitly laying out the import of it. Isn't it time we start acknowledging this – and reassessing the civil

liberties damage done because of it – rather
than keeping it hidden under redactions?