REMINDER: BYBEE WAS TOO BUSY PROTECTING BIG OIL TO OVERSEE TORTURE

Jay Bybee just gave a speech at University of Utah on the Constitution at which he tried to claim the torture memos that bear his name included constraints that no one else has been able to find.

> One middle-aged man stood to the side of the classroom with a sign reading "Torture Is a War Crime." A woman of a similar age next to him tried to ask Bybee about executive branch power and "the secret torture of Muslims." The moderator from the Federalist Society cut her off before she finished the question.
>
> "That question is way beyond my ability to predict," Bybee then replied.
>
> [snip]
>
> After the question-and-answer period, Irvine approached Bybee and tried to ask more about the memos.
>
> Bybee pointed to a section in one memo telling the CIA that if the facts change, to notify the Justice Department for an updated opinion. Bybee also invited Irvine to his offices in Las Vegas to discuss the issue further.
>
> Irvine said he would visit Bybee the next time he is in Las Vegas.
>
> Irvine said moments later that the speech didn't make him feel better about the memos, though he found it interesting when Bybee described the constrictions on presidential power.

> “That is not what I read in that [2002] memo,” Irvine said.

It’s worth remembering, however, that Bybee claims — and the record supports his claim — that he wasn’t all that involved in writing the torture memos that bear his name. According to his own attorney, Maureen Mahoney, he swooped into the memo-writing process just weeks before they were finalized.

The reason she gave for why Bybee was so uninvolved in the nitty gritty of rubber stamping torture is worth noting. Jay Bybee was too busy protecting the secrecy of Cheney’s sweetheart Energy Task Force to oversee his nominal subordinate John Yoo on torture.

> I wanted to draw attention to a footnote she includes to—apparently—explain that Jay Bybee was a very busy man at the time when he was supposed to be overseeing John Yoo’s attempts to legalize torture in the summer of 2002. (This is on PDF page 19)
>
> > Judge Bybee’s role in reviewing the memo began in earnest around mid-July, roughly two weeks before he signed them.5
> >
> > 5 During the summer of 2002, in addition to his work on national security issues, Judge Bybee, as head of OLC, was also heavily involved in a number of other difficult and pressing legal matters. Of particular note, Judge Bybee was engaged in the district court litigation in Walker v. Cheney, No. 02-340 (DD.C.). The attorneys in that case were working closely with the Department’s Civil Division and the Solicitor General’s Office. The legal issues involved in the case were

> > peculiarly within Judge Bybee's expertise because his scholarly research had been cited as authority by both sides. See Jay S. Bybee, Advising the President: Separation a/Powers and the Federal Advisory Committee Act, 104 Yale L.J. 51 (1994).
>
> **Walker v. Cheney**, of course, is the suit the GAO took against Cheney's office to try to force it to turn over documents relating to his Energy Task Force. After District Court Judge John Bates **ruled against GAO** in December 2002, it ended one of the more important efforts to subject Cheney's office to Congressional oversight. Furthermore, this effort must be regarded as Cheney's first attempt to assert that his was a Fourth Branch, exempt from oversight but also executive regulation.
>
> How interesting, then, that Mahoney highlighted Bybee's role in helping Cheney succeed in winning this suit to argue that Jay Bybee was doing what he should have been doing in summer 2002.

All one OLC office's work of expanding Executive Authority to coddle corporations and torture prisoners.

DIANNE FEINSTEIN CALLS OUT NCTC HEAD

FOR BULLSHIT TORTURE REPORT THREAT ASSESSMENT

Today's SSCI public hearing was remarkably useful, in spite of Chairman Burr's interrupting a chain of serious questions to ask a clown question of National Counterterrorism Center head Nick Rasmussen. Roy Blunt, Marco Rubio, and Angus King all asked questions about Authorizations to Use Military Force that will be useful in the upcoming debate.

The highlight, however, came when Dianne Feinstein asked Rasmussen whether the claims of great harm — provided to her just before she released the Torture Report in December — had proven to be correct.

> Feinstein: And I have one other question to ask the Director. Um, Mr. Director, days before the public release of our report on CIA detention and interrogation, we received an intelligence assessment predicting violence throughout the world and significant damage to United States relationships. NCTC participated in that assessment. Do you believe that assessment proved correct?
>
> Rasmussen: I can speak particularly to the threat portion of that rather than the partnership aspect of that because I would say that's the part NCTC would have the most direct purchase on, and I can't say that I can disaggregate the

> level of terrorism and violence we've seen in the period since the report was issued, disaggregate that level from what we might have seen otherwise because, as you know, the turmoil roiling in those parts of the world, not that part of the world, those parts of the world, the Middle East, Africa, South Asia, there's a number of factors that go on creating the difficult threat environment we face.
>
> So the assessment we made at the time as a community was that we would increase or add to the threat picture in those places. I don't know that looking backwards now, I can say it did by X% or it didn't by X%. We were also, I think, clear in saying that there's parts of the impact that we will not know until we have the benefit of time to see how it would play out in different locations around the world.
>
> Feinstein: Oh boy do I disagree with you. But that's what makes this arena I guess. The fact in my mind was that the threat assessment was not correct.

Note, Ron Wyden used his one question to get Rasumussen to admit that he had only read the Torture Report summary in enough detail to conduct the threat assessment. Wyden informed Rasmussen there were other parts in the still-classified sections that he should be aware of as NCTC head.

MATT DEHART DENIED ASYLUM IN CANADA

> "It was an FBI investigation into the [Central Intelligence Agency's]

> practices."

Matt DeHart claims that all his troubles stem from a file uploaded, twice, to a Tor server he ran out of a closet in his parent's home. An FBI investigation into something the CIA might have done.

After having seen that file in 2009, according to an important National Post series published last year (one, two, three, four, five) the government started coming after him. But not for his ties to Anonymous, Tor, and (DeHart thinks) WikiLeaks. But for kiddy porn. When the FBI came to search his parents house on a kiddy porn warrant, they seized every computer storage device they could find, but they didn't find the two USB drives DeHart had hidden in his father's locked gun case.

> "But the only thing of value that would be interesting to the government, other than the server, were two IronKey [USB] thumb drives," Matt said. Whenever he left his home he would take them with him, stuffed in his wallet; whenever he was at home he would tuck them behind the padding of his dad's gun case that was kept locked and bolted to a wall. Apparently not knowing that, an officer asked the agent if they should force the gun case open. The agent said that wasn't necessary and everyone left.

DeHart got buggy after this search, in ways that raise questions about his subsequent claims. Fearing the government would come after him, he went to the Russian and Venezuelan embassy and attempted to defect to both, with no luck. Instead, he went to Canada to go to school, to try to put his online activism behind him. But when he came back to the US to get a student visa on August 6, 2010 (not long after Chelsea Manning was detained), he was detained and denied his request to call his attorney. DeHart claims he was forcibly drugged and then asked

questions that had nothing to do with kiddie porn, and everything to do with espionage. During this, the FBI presented him with a complaint accusing him of soliciting kiddie porn.

> That evening, an agent showed him a criminal complaint — drafted only that afternoon — accusing him of soliciting the production of child pornography in 2008, according to both Matt and FBI records.
>
> "I looked the guy in the eye and said, 'I didn't do that,' and he said, 'I know,' " Matt claimed.

In response, according to government documents, DeHart confessed to being part of a spy ring dating back to his service (before he was honorably discharged for depression) as a drone pilot. But DeHart said he did so because of the treatment used against him.

> The FBI document recounts Matt's new story, that when he was in the Air National Guard he met airmen interested in selling military secrets. One had remote access to a U.S. Department of Defense portal and another had a relative working with Air Force Special Operations, and Matt agreed to be their salesman.
>
> That was what sparked his embassy visit, the document says, and Evgeny, the Russian, had told Matt he would have to contact the Russians from outside the United States if he wanted to close a deal.
>
> "That is the reason DeHart moved to Canada," the FBI's summary says. Evgeny supposedly set up a Russian contact for Matt in Canada. "He was told he would be paid approximately $100,000 per month if the intelligence he gave was good" and was directed to send a secure data

> archive to a Russian contact in Canada. “He was supposed to meet his new contact in the Russian embassy in Ottawa on Saturday, Aug. 21, and they would give him a list of what they needed.”
>
> By the end of that day’s questioning, Matt offered to co-operate with the FBI in a sting operation against the Russians and the airmen, the summary says.
>
> Matt says the FBI account of his interrogation is “laughably inaccurate.” He has never been to Ottawa, is not a spy nor even a would-be spy, he said.
>
> “I would have told them anything” because of the torture, he said. “Information that is derived from torture, to use it against somebody, is ridiculous. It’s garbage. I already said it’s not true.”

As this was happening, the FBI got DeHart to sign over access to all his online accounts associated with Anonymous, which they used to infiltrate the group.

> One other thing happened while Matt was in custody, something both Matt and the FBI agree on: He relinquished control of his online accounts to the FBI.

After DeHart’s delayed presentment, the judge found the charges against him — kiddie porn, not espionage — were odd.

> The court docket listed his arrest as taking place two days after it really had. After struggling to confirm the proper date — Aug. 6 — the judge wondered why Matt had not been brought to court before now. She also asked why the government had pulled out such seemingly stale pornography allegations — two years old — but was now arguing

> Matt posed a serious danger to the community. She even noted Matt's computers had not even been analyzed for evidence of porn seven months after they had been seized.

Then DeHart was sent back to TN to stand accused on the kiddy porn charges. There was a lot screwy with the government claims on that charge (see this installment for details). Significantly, the judge in the case (after having read sealed documents on the national security investigation) agreed with DeHart that this was primarily about the espionage investigation and the kiddy porn charge was weak.

> "The other investigation, the national security investigation, the court has learned much more about," Judge Trauger said in her ruling.
>
> "I can easily understand why this defendant was much more focused on that [national security] investigation, much more afraid of that investigation, which was propelling his actions at that time. He thought that the search for child pornography was really a ruse to try to get the proof about his extracurricular national security issues. I found him very credible on that issue."
>
> Judge Trauger also questioned the strength of the government's porn evidence.
>
> "Obviously, child pornography charges are serious offences," she said. "I have learned several aspects of this case which, in the court's mind, indicate the weight of the evidence is not as firm as I thought it was."

That's when, on April 3, 2013, the entire DeHart family fled to Canada and filed for asylum. For much of the time since, DeHart has been held in

strict prison conditions, punctuated by bouts of mental health problems.

The entire story is bizarre. But one thing is clear: two US judges have been very skeptical this is all about kiddie porn.

To which a Canadian panel of immigration judges has now joined. They found there was "no credible or trustworthy evidence" DeHart solicited child pornography. Nevertheless, they rejected his asylum bid, meaning he will probably be shipped back here for – who knows what.

> The IRB ruled that the United States "has a fair and independent judicial process" available to him where he can continue to fight his criminal charges and press his civil rights complaint.
>
> [snip]
>
> "The panel acknowledges that this particular claim is by no means a simple one," wrote IRB adjudicator Patrick Roche.
>
> "The principal claimant is alleging that he is being persecuted by the government of the United States, or agents of that government, for his perceived political beliefs as a hacker and whistleblower involved in leaking sensitive government information," wrote Mr. Roche. "He alleges that he has been falsely accused of crimes in order to keep him incarcerated and he alleges that he had been drugged and subjected to interrogations without his constitutional rights."

I admit there are crazy aspects of this story – particularly Matt DeHart's attempt to defect to Russia out of what he claims is fear.

But as this drama moves back to the US, remember that, at least according to him, it comes down to the file that he presumably kept on those two

USB drives, records of an FBI investigation into CIA acts.

HOW CIA CRIMINALIZED A SENATE STAFFER GOOGLE SEARCH

Katherine Hawkins has a very good review of the results of the CIA IG Report and "Accountability Review Board" over the Senate Intelligence Committee staffers' access to CIA documents on torture; you should read the whole thing. Hawkins points out that the CIA's own review of the Torture Report admitted it needs to approach individual failures from a broader systemic approach, but that their treatment of this issues shows they continue to fail to do so.

> While the CIA's official response to the Senate torture report acknowledges "significant shortcomings in CIA's handling of accountability" for failures and abuses that occurred during the rendition and black site program, it still does not recommend any corrective action. The response instead states that the agency "do[es] not believe it would be practical or productive to revisit any [rendition, detention and interrogation program]-related case so long after the events unfolded," thinking it sufficient to say:
>
> > Looking forward, the Agency should ensure that leaders who run accountability exercises do not limit their sights to the perpetrators of the specific failure or misconduct, but look

> > more broadly at management responsibility and more consistently at any systemic issues … [N]o board should cite a broader issue as a mitigating factor in its accountability decision on an individual without addressing that issue head on.
>
> **The CIA Accountability Board's December report on the agency's search of Senate computers is the first test of whether these reforms have any meaning or effect. And the answer is: they do not.**

Critically, Hawkins points to something the ARB ignores: the rationalization the CIA General Counsel lawyer used to justify searching the Senate side of the RDI server hosting the torture documents. She describes how this lawyer justified treating Senate Intelligence Committee staffers doing their job as criminals.

> [T]he CIA lawyer assigned IT staff to search Senate staffers' side of RDINet, the computer network that staffers used to review documents for the torture study. The attorney presents himself as having not only the legal right, but also the duty, to take these actions because of the CIA's statutory obligation to protect "sources and methods."
>
> [snip]
>
> Incredibly, the Accountability Board report repeatedly cites the need to preserve the CIA's relationship with the Senate as a *justification* for searching Senate computers without informing the committee. The board writes that the initial search was "reasonable given the embarrassment to the Agency and harm to the Agency-SSCI relationship that would

> have resulted from a false allegation." Further searches were "reasonable" because "this was no normal potential security problem; it involved the United States Senate," which made it more important to "have explored all alternatives and possible solutions before the problem was confirmed and the D/CIA would have raised it with Senate leaders."
>
> But the CIA lawyer's memo makes it very clear that the purpose of not informing the Senate was not to verify evidence and explore alternatives – which could have been accomplished through dialogue with the committee. The purpose was to gather evidence for a potential criminal prosecution of Senate staff, before Senators could protest or staff could "get their stories straight." The agency went on to file an inaccurate crimes report against Senate staff with the Department of Justice – a fact that the Accountability Board does not dispute, but barely acknowledges. It is hard to think of anything that could be more damaging to the oversight relationship that the CIA and the White House claim to value so highly. But the Accountability Board fails to identify who was responsible for the inaccurate report to DOJ, fails to recommend that anyone be disciplined for it, and fails to recommend any safeguards against a repetition of the incident.

As Hawkins summarizes, the crime report was based off a flaw in the Google search that CIA's own contractor had built into the system.

> On February 7, 2014, the CIA's Acting General Counsel Robert Eatinger (whose name is redacted from the OIG report) filed a crimes report against Senate staff with the Department of Justice. The OIG report found that the crimes

report “was unfounded,” in part because Eatinger “had been provided inaccurate information on which the letter was based.” In particular, the OIG wrote:

> > [T]he crimes report stated that SSCI staffers might have exploited a software vulnerability on RDINet to obtain access to the [Panetta Review documents], in violation of the Computer Fraud and Abuse Act … The report was solely based on inaccurate information provided by the two [Office of the General Counsel] attorneys [to the Office of Security].

The OIG report found that there was indeed “a vulnerability” with the Google search tool that the CIA provided to the committee, which was “not configured to enforce access rights or search permissions within RDINet and its holdings” from 2009 to April 2013. But contrary to the CIA lawyer’s memorandum and the crimes report to DOJ, OIG found no evidence that Senate staff had deliberately “exploited” this flaw until CIA personnel “confronted them” with inappropriately accessed documents. Rather, it was SSCI staff who brought the vulnerability to the CIA’s attention. On November 1, 2012, a SSCI staff member alerted CIA staff that the search tool “was indexing the Majority staff work product on a shared drive,” and asked them to make it stop. The CIA did not act on this request for months. Then in 2013, a SSCI staff member requested “a number of detainee videos not provided to the SSCI by the CIA,” based on a spreadsheet that a CIA employee recognized as being from the Panetta Review. After this incident, in April 2013, CIA IT staff finally

> discovered and repaired the flaw with the Google search tool.

In other words, CIA set up an expensive server, accessed by Google searches, so SSCI staffers could do their job. And then tried to get them prosecuted for using what turned out to be a flaw in that Google search function.

There's just one question Hawkins leaves out of this. This entire server set-up (as well as multiple contractor reviews of each document) reportedly accounts for the bulk of the $40 million the Torture Report cost to complete.

But it apparently didn't even accomplish the function it was supposed to (or did it?). Why is CIA trying to prosecute oversight rather than reclaiming some chunk of that $40 million?

ISLAMIC STATE RECRUITER IN AFGHANISTAN WAS "SUBSTANTIALLY EXPLOITED" AT GUANTANAMO

Many outlets are reporting on the disclosure earlier this week that there appears to be active recruiting for Islamic State taking place in Afghanistan's Helmand province. Here is AP as carried by ABC News:

> Afghan officials confirmed for the first time Monday that the extremist Islamic State group is active in the south, recruiting fighters, flying black flags and, according to some sources, even battling Taliban militants.

> The sources, including an Afghan general and a provincial governor, said a man identified as Mullah Abdul Rauf was actively recruiting fighters for the group, which controls large parts of Syria and Iraq.

The article notes that the Taliban is not taking this development lightly and that there are reports that up to 20 people had died up to that point in skirmishes between the Taliban and those swearing allegiance to IS.

But Mullah Rauf is not just any random figure in Afghanistan. As the article notes, he was once a prisoner at Guantanamo.

In their profile of him this week, the Washington Post had this to say about Rauf:

> Rauf is also known as Abdul Rauf Aliza and Maulvi Abdul Rauf Khadim. According to a military document released by the anti-secrecy group WikiLeaks, he turns 34 in February and was listed as detainee 108 at Guantanamo Bay. He was transferred to Afghanistan's control in 2007.
>
> The report on him released by WikiLeaks said he was associated with several known Taliban commanders, but claimed to be a low-level soldier. In interviews with U.S. officials, he was cooperative, but his responses were vague or inconsistent when asked about the Taliban leadership, according to the report. Nonetheless, Rauf was assessed not to be a threat, and was recommended for transfer out and continued detainment in another country.

That Wikileaks document on Rauf can also be read here at the New York Times. This particular paragraph in the report caught my eye:

(4) (S//NF) Although cooperative with his debriefers, detainee's accounts remain vague and inconsistent when questioned on high-level Taliban leadership or topics of a sensitive nature. *(Analyst note: Detainee is substantially exploited but there are several intelligence gaps that remain in his story, such as his involvement and knowledge concerning Taliban communications operations, associations with other JTF GTMO detainees, and his opium business. After serving three tours with Taliban, it does not seem plausible that the detainee was not promoted and given a more important duty than a mere bread deliverer. When asked questions that he has been previously asked, or asked to clarify previous statements, the detainee says it is in his file, or complains of maltreatment. These are common anti-interrogation techniques used by numerous JTF GTMO detainees, as well as by Al-Qaida.)*

The document from which this is taken is dated October 26, 2004. The parenthetic note from the analyst begins "Detainee is substantially exploited". In the context of Guantanamo, the issue of prisoner exploitation is a very important topic. A groundbreaking post by Jason Leopold and Jeffrey Kaye in 2011 provides crucial context by what this aside from the analyst means for Rauf's detention:

> Bush administration officials have long asserted that the torture techniques used on "war on terror" detainees were utilized as a last resort in an effort to gain actionable intelligence to thwart pending terrorist attacks against the United States and its interests abroad.
>
> But the handwritten notes obtained exclusively by Truthout drafted two decades ago by Dr. John Bruce Jessen, the psychologist who was under contract to the CIA and credited as being one of the architects of the government's top-secret torture program, tell a dramatically different story about the reasons detainees were brutalized and it was not just about obtaining intelligence.
>
> Rather, as Jessen's notes explain, torture was used to "exploit" detainees, that is, to break them down physically and mentally, in order to get them to "collaborate" with government authorities. Jessen's notes emphasize how a "detainer" uses the stresses of detention to produce the appearance of compliance in a prisoner.

So if Rauf was “substantially exploited”, that sounds to me like he got substantially all of the bag of tricks developed by Mitchell and Jessen as they developed the torture programs that CIA and other interrogators relied on. Note also that the same parenthetic analyst note mentions “anti-interrogation techniques” employed by Rauf. Considering that Mitchell and Jessen developed their techniques by reverse-engineering the military’s Survival Evasion Resistance Escape (SERE) course meant to train troops against enemy torture, the reference to “exploitation” can only mean that Rauf was exposed to Mitchell and Jessen’s torture program.

Despite being “exploited” [or perhaps because of it if it was believed he had become a collaborator?], Rauf was cleared for release and was part of a group of 13 prisoners transferred to Afghanistan’s notorious Pul-e-Charkhi prison in December of 2007.

Long War Journal profiled Rauf in August of 2010:

> The career of Abdul Rauf Khadim (whose internment serial number at Gitmo was 108) is intertwined with that of another former Guantanamo detainee, Mullah Abdullah Zakir (internment serial number 8). Both men were detained at Gitmo for several years and then transferred together, along with 11 other Gitmo detainees, to Afghanistan on Dec. 12, 2007.
>
> Khadim escaped Afghan custody last year, according to Newsweek. He then quickly rejoined the Taliban’s ranks. Zakir had already rejoined the Taliban, and he became its surge commander in southern Afghanistan. [See LWJ report, The Taliban’s surge commander was Gitmo detainee, for more information on Zakir.]
>
> Earlier this year, Khadim and Zakir were

> reportedly detained together by Pakistani officials and then released in short order. Multiple press outlets have reported that the two have been named to the Taliban's Quetta Shura Council – that is, Mullah Omar's inner circle. Some accounts have suggested that Khadim is the head of the Quetta Shura, but it is not clear if that is true, as other accounts say that another Taliban leader holds that position. (Leadership within the Quetta Shura is also known to rotate.)
>
> Still, Khadim and Zakir are consistently reported to be among Mullah Omar's top leaders.

Isn't that interesting? Rauf went to the Afghan prison in December of 2007 and escaped sometime in 2009. Within about a year of that escape, he was being described as sitting on the Quetta Shura as one of Omar's "top leaders".

Now, he is reported to have had a falling out with the Quetta Shura and is recruiting for the Islamic State, even in the face of armed resistance from his former allies. That's quite an about-face (although he's hardly alone in leaving the Taliban for Islamic State) for someone who in 2010 was believed to have resisted exploitation only to rejoin the Taliban in the fight against the US.

As a postscript, it is also interesting to note that even with reports that Islamic State has a training camp in the next province to the west of Helmand, some officials within the Afghan government refute all reports of Islamic State operating in Afghanistan.

DID JELLO JAY ROCKEFELLER ENDORSE TORTURE BASED ON A FABRICATION?

Over at Al Jazeera, I have a piece about ASSET Y, a CIA source whose fabricated claimed served as one excuse to restart both the torture and the Internet dragnet (ASSET Y's intelligence was the excuse to restart torture).

> Buried amid details of "rectal rehydration" and waterboarding that dominated the headlines over last week's Senate Intelligence Committee findings was an alarming detail: Both the committee's summary report and its rebuttal by the CIA admit that a source whose claims were central to the July 2004 resumption of the torture program — and, almost certainly, to authorizing the Internet dragnet collecting massive amounts of Americans' email metadata — fabricated claims about an election year plot.
>
> [snip]
>
> The CIA in March 2004 received reporting from a source the torture report calls "Asset Y," who said a known Al-Qaeda associate in Pakistan, Janat Gul — whom CIA at the time believed was a key facilitator — had set up a meeting between Asset Y and Al-Qaeda's finance chief, and was helping plan attacks inside the United States timed to coincide with the November 2004 elections. According to the report, CIA officers immediately expressed doubts about the veracity of the information they'd been given by Asset Y. A senior CIA officer called the report "vague" and "worthless in terms of actionable

> intelligence.” He noted that Al Qaeda had already issued a statement “emphasizing a lack of desire to strike before the U.S. election” and suggested that since Al-Qaeda was aware that “threat reporting causes panic in Washington” and inevitably results in leaks, planting a false claim of an election season attack would be a good way for the network to test whether Asset Y was working for its enemies. Another officer, assigned to the group hunting Osama bin Laden, also expressed doubts.
>
> [snip]
>
> Soon after the reauthorization of the torture and the Internet dragnet, the CIA realized ASSET Y’s story wasn’t true. By September, an officer involved in Janat Gul’s interrogation observed, “we lack credible information that ties him to pre-election threat information or direct operational planning against the United States, at home or abroad.” In October, CIA reassessed ASSET Y, and found him to be deceptive. When pressured, ASSET Y admitted had had made up the story of a meeting set up by Gul. ASSET Y blamed his CIA handler for pressuring him for intelligence, leading him to lie about the meeting.

Like the Iraq War before then, then, the torture and the dragnet were in part justified by a fabricator, one who, when caught in his lie, complained his handler had pressured him into telling this story. CIA obtained this intelligence in March 2004, after it became clear the counterterrorism programs were in trouble.

The CIA used the claim Janat Gul was involved in an election year plot to get the Principals Committee to reauthorize torture after Jack Goldsmith and George Tenet had halted it.

But there's also this detail not included in the AJAM piece, which may explain quite a bit about why Senate Democrats have been so aggressive on oversight here where they usually aren't.

> On July 15, 2004, based on the reporting of ASSET Y, the CIA represented to the chairman and vice chairman of the Committee that Janat Gul was associated with a pre-election plot to conduct an attack in the United States.
>
> According to handwritten notes of the briefing, CIA briefers described Janat Gul as "senior AQ" and a "key facilitator" with "proximity" to a suspected pre-election plot. Committee records indicate that CIA briefers told the chairman and vice chairman [Jay Rockefeller] that, given the pre-election threat, it was "incumbent" on the CIA to "review [the] need for EITs," following the suspension of"EITs." (See Handwritten notes ofAndrew Johnson (DTS #2009-2077) CIA notes (DTS #2009-2024 pp. 92-95); CIA notes (DTS #2009-2024, pp. 110-121).) [redacted] CTC Legal [redacted] later wrote that the "only reason" for the chairman and vice chairman briefing on Janat Gul was the "potential gain for us" as "the vehicle for briefing the committees on our need for renewed legal and policy support for the CT detention and interrogation program." See email from:mmil;to: [REDACTED]; subject: Re: Priority: congressional notification on Janat Gul; date: July 29, 2004. (Senate Report, 345)

That is, not only did CIA use this fabricated single source story to get the Principals Committee to reauthorize torture (as well as a series of OLC memos and, ultimately 2 of the May 2005 memos), but they used it as an opportunity to get at least two members of Congress, SSCI Chair Pat Roberts and SSCI Vice Chair Jay

Rockefeller, to reauthorize it as well (it's unclear whether Porter Goss and Jane Harman got an equivalent briefing; in what appears unredacted from the released record of their briefing, they did not, but the CTC lawyer talks about briefing the "committees," plural, so I assume they did).

This July 2004 briefing would have been the *only* known briefing for the Gang of Four about the use of torture on a particular detainee before that detainee was tortured (while 3 of 4 Gang of Four members had been briefed that CIA was using torture in February 2003, I know of no briefing where they signed off on torturing Khalid Sheikh Mohammed or those rounded up around that time). And the briefing happened even as Pat Roberts was releasing a whitewash on the Iraq War intelligence and the fabricators who went into that.

In his own narratives about torture, Jello Jay never explained what went on in this briefing — that CIA told a story based on a fabrication and based on that, he gave at least tacit approval, after which the CIA tortured someone so badly the detainee asked to be killed. But I can imagine how that might lead him to have a particular interest in exposing all the lies that CIA told Congress about torture.

For its part, CIA is fairly circumspect about how they resumed torture based on a fabrication. Unlike the GOP response, they admit fairly readily this was a fabrication. Yet one of the key claims the SSCI Report challenges is that the torture of Gul, Sharif al-Masri, and Ahmed Ghailani, all of whom were tortured based on this claim, served to "validate" one of their sources — that it, the three together served to debunk Asset Y. Given how central Janat Gul's torture was, both in 2004 and in Steven Bradbury's retroactive authorizations in May 2005, I can see why they'd have to invent some purpose for this torture (and Gul did have associations with al Qaeda — just not very involved ones). But ultimately, this torture

fell so far below the standards they had set for themselves, it may well explain a great deal about the tensions between CIA and those in Congress who reauthorized torture based on a fabrication.

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

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

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

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

> additional discussions between staff and CIA lawyers in February 2002.90 The Study seems to fault the CIA for not briefing the Committee leadership until after the enhanced interrogation techniques had been approved and used. However, the use of DOJ-approved enhanced interrogation techniques began during the congressional recess period in August, an important fact that the Study conveniently omitted.92 The CIA briefed HPSCI leadership on September4, 2002. SSCI leadership received the same briefing on September 27, 2002.93

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

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

Whoa!

Pavitt effectively said, just as the government started to round up people like Ibn Sheikh al-Libi in Afghanistan, “we’re not going to torture but then again maybe we will.” And while it is crystal clear he failed to meet the terms he laid out — Congress was not informed about each detainee, there was never a detainee in custody who had set a nuclear bomb nor even a ticking time bomb scenario, much less Abu Zubaydah, who was put on ice for over a month before the worst of the torture — his contemplation of using torture in case of a ticking time bomb should have been the moment for Congress to say, “Whoa! Stop!”

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

Which brings us to the September briefings.

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

Schools out for summer!

Except it wasn’t out.

JULY

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

AUGUST

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE 2 YEAR DELAY IN GETTING ASSET X TO BRING US TO KHALID SHEIKH MOHAMMED

We've known for some time that CIA found Khalid Sheikh Mohammed with the help of a walk-in source. Terry McDermott and Josh Meyer describe the source as "Baluchi" in their book, *The Hunt for KSM*—someone, like KSM, from Baluchistan.

But the Torture Report provides a different take for the delay in having him lure in KSM, which McDermott and Meyer describe as more than a year and the Torture Report describes ASSET X, the source in question, as approaching the CIA in spring 2001. (This heavily redacted narrative

starts on page 328) The CIA did not meet with him until after 9/11, probably some time after September 26, 2001. Per the Senate Report (the CIA disputes that they knew what he could bring them until after starting to torture), before the end of the year, ASSET X "proposed multiple times to the CIA that he use his contacts to locate KSM through [redacted]—the same approach that would lead the CIA to KSM more than 15 months later." He apparently argued for a "more aggressive and proactive approach" than the CIA, but was persuaded otherwise. Then ALEC Station rejected ASSET X's monetary demands.

So they lost him. For 9 months.

In July 2002, a detainee in foreign government custody confirmed that ASSET X "should know how to contact KSM."

The CIA appears to have sent ASSET X to do something else before going after KSM, during which period his handler — whom McDermott and Meyer say was an Iranian-American flying into Pakistan whenever ASSET X wanted to meet — got reassigned. When a new officer took over handling ASSET X, he almost lost him.

> ASSET X was thus handled by a new CIA officer who was unfamiliar with ASSET X's potential utility in tracking KSM. Seeking guidance on how to proceed with ASSET X, the new CIA case officer sent several cables to CIA Headquarters, which he later described as disappearing into a "black hole." According to an interview of a CIA officer involved in the operation, the cables were being sent to a special compartment at CIA Headquarters which had been previously used by the team [redacted]. With the dispersal of that CIA team, however, the compartment was idle and no one at CIA Headquarters was receiving and reading the cables being sent to the special compartment. When the CIA case officer received no response to the cables he was sending to

> CIA Headquarters, he made preparations to terminate the CIA's relationship with ASSET X. According to interviews, in [redacted] 2002, the CIA officer [redacted] and was on his way to meet ASSET X to terminate the asset's relationship withthe CIA. By chance, the CIA officer who had previously handled ASSET X [redacted] was visiting [redacted]. This visiting CIA officer overheard the discussion between the chief of Base and the CIA case officer concerning the CIA's termination of ASSET X as a CIA source. The discussion included names that ASSET X had been discussing with the case officer [redacted]—names that the visiting officer recognized [redacted]. The visiting CIA officer interceded and recommended that the CIA Base delay the termination of ASSET X as a CIA source. At the next meeting ASSET X again demonstrated that he had direct access to KSM's [redacted]. As a result, the CIA decided not to terminate ASSET X's work as a CIA source.

ASSET X then traveled on his own and set up a meeting with KSM, which set off something the report redacts entirely. The debate over whether to go after KSM's associates or directly after him appears to have continued, however.

> The internal debate within the CIA continued, however, with the [redacted] and ASSET X and his CIA handlers urging the CIA to delay action and wait for an opportunity for ASSET X to locate KSM. ALEC Station initially supported immediate action to capture any KSM associate ASSET X could lead them to, before reversing its position on February [redacted] 2003. The next day, ASSET X arrived in Islamabad [redacted] where he was surprised to find KSM.

After some reservations (not included in McDermott and Meyer's description), ASSET X appears to have again been able to locate KSM, after which Pakistani authorities conducted a raid and caught the 9/11 mastermind.

That is, even aside from CIA's claims that they didn't know ASSET X could bring them to KSM without further evidence gained through torture, there seems to have been delay and debate about how to do it and in what priority. But it appears the guy who eventually led the CIA to KSM had offered up his services even before 9/11.

It just took two years before the CIA would act on his ability to bring them to KSM.

KSM HAD THE CIA BELIEVING IN BLACK MUSLIM CONVERT JIHADIST ARSONISTS IN MONTANA FOR 3 MONTHS

Before I get into the weeds, let me be clear: there are almost no black Muslims in Montana. Just 0.6% of Montana's roughly 1 million people are African American, or about 6,100 total. Just 0.034 Montanans identify as Muslim (or around 345 people). Montana has both the fewest African Americans and fewest Muslims. It is almost certainly the least likely state to find black Muslims seeking to wage jihad.

Nevertheless, Khalid Sheikh Mohammed had the CIA believing he was going to send Dhiren al-Barot (an Indian Muslim Brit whom KSM did have case out actual US terrorist targets in 2000) to

Montana to recruit African American converts to Muslim to start forest fires.

> On March 17, 2003, KSM stated that, prior to the September 11, 2001, attacks, he tasked Issa[al-Hindi, whose real name is Dhiren Barot] to travel to the United States to "collect information on economic targets." On March 21, 2003, KSM was waterboarded for failing to confirm interrogators' suspicions that KSM sought to recruit individuals from among the African American Muslim community. KSM then stated that he had talked with Issa about contacting African American Muslim groups prior to September 11, 2001 The next day KSM was waterboarded for failing to provide more information on the recruitment of African American Muslims. One hour after the waterboarding session, KSM stated that he tasked Issa "to make contact withblack U.S. citizen converts to Islam in Montana," and that he instructed Issa to use his ties to Shaykh Abu Hamza al-Masri, a U.K.-based Imam, to facilitate his recruitment efforts.KSM later stated that Issa's mission in the United States was to surveil forests to potentially ignite forest fires.1502

It took the ALEC Station team over 3 months to conclude that KSM's plan to send an Indian Muslim to Montana to recruit virtually non-existent African American Muslim converts to start forest fires was a fabrication, in part because they first spent a week after he recanted this claim believing it was an attempt to trick them again.

> On June 22, 2003, CIA interrogators reported that "[KSM] nervously explained to debriefer that he was under 'enhanced measures' when he made these claims" about terrorist recruitment in Montana, and "simply told his interrogators what

> he thought they wanted to hear.”1505 A CIA Headquarters response cable stated that the CIA’s ALEC Station believed KSM’s fabrication claims were “another resistance/manipulation ploy” and characterized KSM’s contention that he “felt ‘forced’ to make admissions” under enhanced interrogation techniques as “convenient excuses.” As a result, ALECStation urged CIA officers at tiie detention site to get KSM to reveal “who is the key contact person in Montana?”1506 [citing a June 26, 2003 ALEC Station cable] By June 30, 2005, ALEC Station had concluded that KSM’s reporting about African American Muslims in Montana was”an outright fabrication.”

A year after CIA decided KSM was not really going to have a non-existent cell of black Muslims start forest fires, the FBI nevertheless warned a bunch of Rocky Mountain states, including Montana, to be on guard for the threat.

I can think of many more useful things the national security establishment could be doing than chasing ghosts — non-existent black Muslim jihadist ghosts, in the forests of Montana. But by torturing, we signed up to a ghost chase.