

CIA ACHIEVES A WHOLE NEW SCALE OF TORTURE EVIDENCE DESTRUCTION

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

I thought it time to start cataloging them, to keep them all straight.

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

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

Since that time, there have been at least two

more:

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

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

But last August, a chagrined Christopher R. Sharpley, the CIA's acting inspector general, alerted the Senate intelligence panel that his office's copy of the report had vanished. According to sources familiar with Sharpley's account, he explained it this way: When it received its disk, the inspector general's office uploaded the contents onto its internal classified computer system and destroyed the disk in what Sharpley described as "the normal course of business." Meanwhile someone in the IG office interpreted the Justice Department's instructions not to open the file to mean it should be deleted from the server – so that both the original and the copy were gone.

At some point, it is not clear when, after being informed by CIA general counsel Caroline Krass that the Justice Department wanted all copies of the document preserved, officials in the inspector general's office undertook a search to find its copy of the report. They discovered, "S***, we don't have one," said one of the sources briefed on Sharpley's account.

Sharpley was apologetic about the destruction and promised to ask CIA director Brennan for another copy. But as of last week, he seems not to have received it; after Yahoo News began asking about the matter, he called intelligence committee staffers to ask if he could get a new copy from them.

Sharpley also told Senate committee aides he had reported the destruction of the disk to the CIA's general counsel's office, and Krass passed that information along to the Justice Department. But there is no record in court filings that department lawyers ever informed the judge overseeing the case that the inspector general's office had destroyed its copy of the report.

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

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

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

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

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

HOW TO MAKE PEACEFUL PROTESTORS OF AMERICA'S TORTURE SCHOOL LOOK LIKE TERRORISTS

In 2001, it was uncorroborated reports that anarchists would be joining peace activists.

The Columbus Police Department and Muscogee County Sheriffs office are coordinating well on this matter and have made extensive operational and contingency plans. These agencies have collected **UNCORROBORATED, NON-SOURCED** intelligence that allegedly anarchist elements will travel to Columbus to cause problems.

In 2003, Anti-Free Trade of Americas protests were dubiously invoked (they were also invoked to investigate peace protestors in Pittsburgh that year).

Synopsis: To request that the Miami Division, Domestic Terrorism Intelligence Squad, provide any all relevant intelligence to the Atlanta-CRA acquired prior to, during, and post resulting from the Anti-Free trade Area of The Americas Anarchist Movement (AFTRA) protest.

In 2007, the FBI tied the event with four other open cases, including two government trespass ones, a bank robbery, and a corruption case.

Case ID #: 70A-AT-102199 (Pending)-8
70A-AT-101850 (Pending)-2
91H-AT-99997 (Pending)-14
194B-AT-102794 (Pending)-35
1300A-AT-90739 (Pending)-83

In 2009, it was the expected presence of peace activists under investigation (among other things) for ties to Palestinians and Colombia's FARC.

As in 2008, a small contingent of FBI personnel, acting in an undercover capacity, will be present at this protest to monitor the activities of predicated subjects of FBI-Minneapolis [redacted] who are expected to attend. These subjects have never expressed or exhibited a propensity for violence at any time. The FBI personnel will not be monitoring or conducting surveillance of the protest itself or any uninvolved persons, only the predicated subjects of the above noted matter. Due to the nature of this investigation and the fact that Undercover Employees (UCE) need to maintain their cover, local and state law enforcement will not be notified in advance of their presence at this open and public event. The Minneapolis case agent (SA [redacted])

2

To: Counterterrorism From: Atlanta
Re: 300A-AT-99650, 11/13/2009

[redacted] has been provided with all of the Columbus RA personnel contact telephone numbers. FBI-Atlanta (SA [redacted]) will meet the FBI-Minneapolis case agent prior to the above protest. FBI-Minneapolis has requested and received SAC-Atlanta concurrence for travel of personnel.

The two undercover officers who long tracked this group, "Karen Sullivan" and "Daniela Cardenas" attended that year to spy on the event.

Year after year, however – from 2000 until 2009, when consultation with the FBI's own domestic investigations guide finally led the FBI to shut the long-running investigation down – the FBI found an excuse to track the annual protest of the School of the Americas in the name of counterterrorism preparedness, as FOIAed documents released today reveal in detail.

In other words, year after year, even while recording how peaceful the event was, the FBI still tracked and coordinated with the Columbus, GA police in the guise of counterterrorism preparedness because a bunch of people use their First Amendment rights to protest the murder and torture propagated by the SOA.

Update: I originally got the year this investigation started wrong: it was opened in 2000.

ALONG WITH OUTDATED TOOTHPASTE AND CAITLIN JENNER COVERS, MANNING IN TROUBLE FOR READING TORTURE REPORT

As you've likely heard the authorities at Leavenworth have put Chelsea Manning in indefinite solitary confinement for – among other things – having an expired tube of toothpaste (and also sweeping some crumbs onto the floor).

She just posted the list of materials the authorities confiscated from her. They include the Caitlyn Jenner Vanity Fair issue and what I assume is the Cosmopolitan issue on Jenner.

But in addition, the government also confiscated Manning's copy of the SSCI torture report.

EVIDENCE/PROPERTY CUSTODY DOCUMENT		MPCICID SEQUENCE NUMBER		
For use of this form see AR 190-45 and AR 195-5; the proponent agency is US Army Criminal Investigation Command		CRD REPORT/CICID ROI NUMBER		
RECEIVING ACTIVITY United States Disciplinary Barracks		LOCATION Fort Leavenworth Kansas, 66027		
NAME, GRADE AND TITLE OF PERSON FROM WHOM RECEIVED <input type="checkbox"/> OWNER Crime Scene <input checked="" type="checkbox"/> OTHER		ADDRESS (include Zip Code) USDB 1301 North Warehouse Road Fort Leavenworth, KS 66027		
LOCATION FROM WHERE OBTAINED Oscar Housing Unit, Cell#227		REASON OBTAINED Prohibited Property	TIME/DATE OBTAINED 1315-1400 / 20150709	
ITEM NO.	QUANTITY	DESCRIPTION OF ARTICLES <i>(include model, serial number, condition and unusual marks or scratches)</i>		
1	1	3M Clinpro 5000 Anti-Activity Toothpaste, R#D50092390, MKIC Exp Date 04-09-15, Used Condition		
2	1	Book, "The 7 Habits on the Inside", Participant Workbook, Approximately 8 1/2" x 11", Used Condition		
3	1	Magazine, "The Advocate", August/September 2015 Issue, Used Condition		
4	1	Magazine, "OUT", August 2015 Issue No.246, Used Condition		
5	1	Magazine, "Vanity Fair", July 2015 Issue No. 659, Used Condition		
6	1	Magazine, "Cosmopolitan", May 2015 Issue Vol.258 No. 5, Used Condition		
7	1	Book, "Exploring Art", X000F29WQ7, Used Condition		
8	1	Book, "The Senate Intelligence Committee Report on Torture", ISBN: 978-1-612-19485-1, Used Condition		
9	1	Book, "The Hidden Qualities That Make Us Influential", ISBN: 978-1-59463-101-6, Used Condition		
10	1	Book, "Justice For Hedgehogs", ISBN: 978-0-674-04671-9, Used Condition		
Continued on Page 2				
CHAIN OF CUSTODY				
ITEM NO.	DATE	RELEASED BY	RECEIVED BY	PURPOSE OF CHANGE OF CUSTODY
1-23	09 JUL 15	SIGNATURE N/A NAME, GRADE OR TITLE Crime Scene	SIGNATURE S NAME, GRADE OR TITLE	Safe Keeping
1-23	09 JUL 15	SIGNATURE S NAME, GRADE OR TITLE	SIGNATURE S NAME, GRADE OR TITLE	Safe Keeping
		SIGNATURE	SIGNATURE	
		NAME, GRADE OR TITLE	NAME, GRADE OR TITLE	
		SIGNATURE	SIGNATURE	
		NAME, GRADE OR TITLE	NAME, GRADE OR TITLE	
		SIGNATURE	SIGNATURE	
		NAME, GRADE OR TITLE	NAME, GRADE OR TITLE	

DA FORM 4137, 1 JUL 1976 Replaces DA FORM 4137, 1 Aug 74 and DA FORM 4137-R Privacy Act Statement 26 Sep 75 Which are Obsolete

DOCUMENT NUMBER: APD1C-V150

Because it is the American way to subject someone to torturous solitary confinement because she tried to read about the torture done to others before she was subjected to the same kind of forced nudity described in the report?

**DID THE FORMER
DEPUTY DIRECTOR OF
CTC MISINFORM
CONGRESS ABOUT
TORTURE REPORT**

COSTS?

Jason Leopold had an important update on the torture report that – because he’s doing rolling updates – hasn’t gotten sufficient attention.

Leopold obtained the contracting documents of the company, Centra, that drove up costs for the report by reviewing every document turned over to the Senate Intelligence Committee. But after he posted those documents, the CIA’s story about how much Centra got paid for those specific tasks changed. After 7 months of public claims that the then-unnamed contractor had gotten paid \$40 million, the CIA all of a sudden changed its mind.

CIA spokesman Ryan Trapani disputed VICE News’ “interpretation” of the Centra contract.

“A significant portion of the contract cost pertained to services completely distinct from, and wholly unrelated to, the Senate Intelligence Committee review,” Trapani said, backtracking on the agency’s statement last year that the \$40 million the agency spent was due entirely to “the committee’s demands of CIA in this investigation.” “In terms of the services performed in support of the committee review, CIA dedicated substantial resources to provide the committee unprecedented access to millions of pages of documents as expeditiously as possible, consistent with the security requirements for such highly classified, sensitive documents.”

That’s troubling because it runs counter to what everyone on SSCI believed, including then Chair Dianne Feinstein, who has been rebutting claims that the committee itself spent the money ever since it became public last year.

The overwhelming majority of the \$40 million cost was incurred by the CIA and

was caused by the CIA's own unprecedented demands to keep documents away from the committee. Rather than provide documents for the committee to review in its own secure Senate office—as is standard practice—the CIA insisted on establishing a separate leased facility and a “stand-alone” computer network for committee use.

Which raises the question of where the claim that the entirety of that \$40 million was spent on the torture report came from – which Leopold notes in an update came from this footnote in the Republican views on the report (and by association, a 2012 letter from CIA's then number 3, Sue Bromley).

⁷ CIA, Letter from V. Sue Bromley, Associate Deputy Director, November 6, 2012, p. 1 (DTS 2012-4143).

Not only was Bromley CIA's number 3 when she wrote the letter, but in the years in question, she cycled through as Deputy Director of the Counterterrorism Center.

V. Sue Bromley, an Agency veteran of 28 years, will become our new Associate Deputy Director. Sue has served as our Chief Financial Officer since June 2009. As a former OMB director, I can attest to her exceptional skill and diligence in managing one of the most complex budgets in government.

Before that, Sue helped lead our analytic effort for two years as Deputy Director for Intelligence. She has made vital contributions to the fight against al-Qa'ida and its violent allies, both as Deputy Director of the Counterterrorism Center and as Chief of the Operations and Management Staff in the National Clandestine Service, where she helped plan, justify, and distribute a large increase in funding for counterterrorism operations after the September 11th attacks.

Now, it's possible that the Republicans just took her letter out of context and no one on the Democratic side checked their math. There are a lot of references in the minority report (heh) that don't make sense.

But Bromley is a money gal. She shouldn't be making mistakes about contracts, and certainly not to the scale that appears to have happened – all in such a way as to serve the pro-torture narrative which in turn serves to protect ... the counterterrorism center.

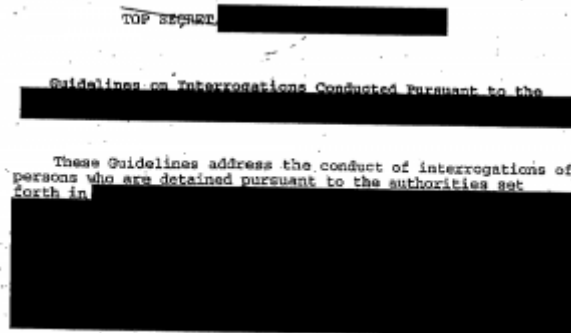
At least according to the story the CIA is currently telling, everyone on the CIA's oversight committee grossly misunderstood a \$40 million expenditure.

Why?

DID AUTHORIZING TORTURE MAKE THE NATIONAL SECURITY COUNCIL AN AGENCY SUBJECT TO FOIA?

Almost 3 years ago, I discovered that the

judge in the ACLU torture FOIA, Alvin Hellerstein (who recently ordered the Administration to release images from torture), was trying to force the Administration to declassify a phrase making it clear torture had



been authorized by the September 17, 2001 "Gloves Come Off" Memorandum of Notification. The phrase appeared on a January 28, 2003 Guidelines on Interrogation document signed by George Tenet (this post describes what great CIA including the phrase was).

In my reporting on it, I noted that National Security Advisor James Jones had secretly written a declaration in the suit arguing the phrase couldn't be released. And I also noted that CIA's own declarations conflicted about who had made torture a Special Access Program, CIA or the National Security Council.

Ultimately, however, the 2nd Circuit – in an opinion written by Judge Richard Wesley – reversed Hellerstein and permitted the Administration to keep that short phrase secret (though the Administration permitted that detail to be declassified for the Torture Report).

These issues have resurfaced in a related FOIA suit being reviewed by the 2nd Circuit (including Wesley and Judges Reena Raggi and Gerard Lynch).

Back in late 2012, Main Street Legal Services FOIAed the NSC for records on drone killing (including minutes of NSC meetings in 2011). The government refused to respond, arguing NSC is not an Agency subject to FOIA. So Main Street asked for discovery that might help it show that NSC is an Agency. It lost that argument with District Judge Eric Vitaliano, and this Appeal focuses on the issue of whether NSC is an Agency for purposes of FOIA or not.

In addition to pointing to statutory and historical reasons why NSC is an Agency, the appeal also points to things – including torture, but also including things like cybersecurity, crafting Benghazi talking points, and drone-killing – that were run out of NSC. The government, in response, argued that the President was very closely involved in NSC and presided over the Principals Committee, meaning NSC was too proximate to the President to be

subject to FOIA. The response also keeps insisting that NSC is an advisory body, not anything that can make decisions without the President.

That back and forth took place in the first half of 2014.

Then, the Torture Report Summary got released, showing that CIA records indicate President Bush was not briefed on torture until 2006 but that NSC figures – Alberto Gonzales and Condi Rice, among others – told CIA torture was authorized. Main Street wrote a letter in February pointing to the evidence that the President was not in the loop and that NSC authorized torture.

The SSCI Report found that NSC committees, on which the President does not sit, debated, authorized, and directed CIA to apply specific interrogation techniques to specific detainees. In 2004, for example, CIA “sought special approval from the National Security Council Principals Committee” to use “enhanced interrogation techniques” on detainee Janat Gul. Thereafter, NSC principals met and “agreed that ‘[g]iven the current threat and risk of delay, CIA was authorized and directed to utilize” the techniques on Mr. Gul.

The question of who authorized torture thus became a central issue at the oral argument in this suit on March 2 (this discussion starts after 34:00). After Raggi raised this issue, Wesley went on with some urgency about the possibility that someone started torturing without the input of the President.

Judge Wesley: Are you saying then that anything the CIA did in terms of enhanced interrogation techniques clearly, was clearly a Presidential directive?

NSC Counsel Jaynie Lilley: No, your

honor –

Wesley: Well then, well if that's not the case, its a very curious position for you to take because some of these bear heavy burdens. Some of these assertions that you're making that the President is at the end of all these decision chains bear heavy burdens and I don't quite understand it. Congress said sole duty is to advise and assist the President. If someone else decides to use enhanced interrogation techniques and we decide that this is done by the group, solely by the advisor, assistant to the President, then it's the President's decision is it not? Did the decision flow through the NSC?

Lilley: Your Honor, many decisions–

Wesley: Would it, structurally, I'll it easier, would it structurally have flowed through the NSC as it's currently structure pursuant to presidential order and an act of Congress, would a decision to conduct enhanced interrogation techniques have flowed through the NSC up to the President. Pursuant to the way it's structured now.

Lilley: Your Honor, let me be sure I'm answering the question that your asking. There are decisions that are made on matters of national security policy that come through the various–

Wesley: Pursuant to law and the structure of the NSC *who* had the authority? Did only *one person* have the authority to order enhanced interrogations techniques?

Lilley: Your Honor, –

Wesley [voice is rising]: Yes or no?!

Lilley: I cannot speak to individual decisions –

Wesley: Well, if you can't tell me, then you're telling me that then the President perhaps *didn't* make that decision. And then you're telling me that someone else did. And if someone else did, then I begin to have a problem. Because I have a hard time understanding how their sole function is to advise or assist the President if suddenly they decide, independent of any Presidential approval, that they can torture someone!

Lilley: Your Honor—

Wesley: It's very simple Counselor, and I've been troubled by the government's position on this throughout. I've been troubled — for twenty years the Office of Legal Counsel said that this was an Agency. And then suddenly in a letter, in 1994, for some reason the Agency flips. We have in the legislative record, we have the committee notes from the two committees, and what is one of the entities that's listed when they decided to include the Executive office, what is one of the Agencies that Congress lists, one of the groups that Congress lists as an Agency? The NSC. Who created the NSC? The President didn't. An act of Congress did. An Act of Congress creates two of the Subcommittees. A very curious advisor forced on the President — it sounds like a Separation of Powers issue to me. But, tell me. And then I won't ask again. And if you don't want to answer my question don't answer.

Pursuant to the way the it is currently structured if in your view the NSC is solely an advisory authority, *who had the authority* to order enhanced interrogation techniques? *Who?*

Lilley: In any matter of national security policy, there are two places

where decisions can be made. One by the President and one by that Agency with the statutory authority to take the act.

Wesley: So you're telling me that the CIA had the authority to do that?

[snip]

Wesley: The Director of the CIA could have done this independent of the President's directive?

Lilley: Your Honor, I cannot speak to that.

Wesley: But for purposes of this discussion you're saying 'not someone in the NSC'?

Lilley: The NSC could not – does not direct any individual Agency to take individual actions.

Wesley went onto to describe the plight of the CIA that might not want to do something (torture) it has been ordered to do by the NSC, "it's on him, legally, not on the NSC." "Yes, your Honor," Lilley agreed.

While Wesley didn't say so, that is, precisely, what Tenet argued when he noted Torture was done pursuant to Presidential order on his 2003 Interrogation document, dodging responsibility for torture. But if Lilley's claim is correct, then *CIA bears all the legal responsibility for torture.*

At the end of the hearing, Wesley asked Lilley whether they intend to respond to Main Street's letter. When Lilley said no, Wesley and Raggi specifically instructed Lilley to respond, noting actual page numbers.

In its response on March 16, the government – some members of which have been arguing for months that the NSC approved torture at every step of the process – newly asserted (ignoring the references that show Bush was never briefed

until 2006) that George Tenet was only getting NSC's advice; he was not being ordered or authorized by them.

Another cites a CIA official's notes indicating that the Principals Committee "agreed" that CIA was "authorized and directed" to engage in certain activity, confirming the CIA had such authority, and that the then-Attorney General approved the resulting action. See *id.* at 345. These references confirm that the NSC functions in accordance with the advice and assistance role assigned to it by statute and by the President (currently in Presidential Policy Directive-1) as an interagency forum for coordination and exercises no independent decisional authority. The authority for the underlying decisions rested with the relevant heads of departments and agencies or the President himself.

Remember, DOJ has been claiming it never opened this document. Has it now done so?

But the SSCI evidence that Bush was never briefed is a point Main Street made in a letter last night.

Defendant still fails to explain who authorized the torture if not NSC, as CIA's own records describe, especially given that CIA did not brief the President until years later.

A great deal of documentation shows that "NSC" (or rather, Dick Cheney and David Addington) authorized torture. But the NSC is trying to sustain the unsustainable position that a Memorandum of Notification not listing torture authorized torture, that Bush never got briefed on torture, and that all those meetings at which NSC members (and Dick Cheney) authorized torture didn't amount to authorizing torture.

Because if it admitted the truth – that NSC or the Vice President authorized torture without any review by the President – then it would make all these documents, the 9000 documents President Obama got CIA to successfully hide, subject to FOIA.

And then we'd really start having some fun.

Update: I've added some to my transcription from the hearing and some additional analysis.

THE UNOPENED TORTURE REPORT AND TRUSTING CIA ON OTHER COVERT OPERATIONS

Yesterday, Pat Leahy issued a Sunshine Week statement criticizing Richard Burr for attempting to reclaim all copies of the Torture Report, but also complaining that State and DOJ haven't opened their copy of the Torture Report.

I also was appalled to learn that several of the agencies that received the full report in December have not yet opened it. In a Freedom of Information Act (FOIA) lawsuit seeking release of the full report, Justice Department and State Department officials submitted declarations stating that their copies remain locked away in unopened, sealed envelopes. I do not know if this was done to attempt to bolster the government's position in the FOIA lawsuit, or to otherwise avoid Federal records laws. I certainly hope not. Regardless of the motivation, it was a

mistake and needs to be rectified.

The executive summary of the torture report makes clear that both the State Department and the Justice Department have much to learn from the history of the CIA's torture program. Both agencies were misled by the CIA about the program. Both should consider systemic changes in how they deal with covert actions. Yet neither agency has bothered to open the final, full version of the report, or apparently even those sections most relevant to them.

Today, Ron Wyden issued a Sunshine Week release linking back to a February 3 letter Eric Holder is still ignoring. The letter – which I wrote about here – addresses 4 things: 1) the unclear limits on the President's ability to kill Americans outside of war zones 2) the common commercial service agreement OLC opinion that should be withdrawn 3) some action the Executive took that Wyden and Russ Feingold wrote Holder and Hillary about in late 2010 and 4) DOJ's failure to even open the Torture Report. Wyden's statement, lumps all these under "secret law."

U.S. Senator Ron Wyden, D-Ore., renewed his call for Attorney General Eric Holder to answer crucial questions on everything from when the government believes it has the right to kill an American to secret interpretations of law. The Justice Department has ignored these questions or declined to answer them, in some cases for years.

[snip]

"It is never acceptable to keep the basic interpretations of U.S. law secret from the American people. It doesn't make our country safer, and erodes the public's confidence in the government and intelligence agencies in particular," Wyden said. "While it is

appropriate to keep sources, methods and operations secret, the law should never be a mystery. Sunshine Week is the perfect time for the Justice Department to pull back the curtains and let the light in on how our government interprets the law.”

This may be secret law.

But I find it interesting that both Wyden’s letter and Leahy’s statement tie covert operations to the lessons from the Torture Report.

There are many reasons DOJ (and FBI) are probably refusing to open the Torture Report. The most obvious – the one everyone is pointing to – is that by not opening it, these Agencies keep it safe from the snooping FOIAs of the ACLU and Jason Leopold.

But the other reason DOJ and FBI might want to keep this report sealed is what it says about the reliability of the CIA.

The CIA lied repeatedly to DOJ, FBI, and FBI Director Jim Comey (when he was Deputy Attorney General) specifically. Specifically, they lied to protect the conduct of what was structured as a covert operation, CIA breaking the law at the behest of the President.

Of course, both DOJ generally and FBI specifically continue to partner with CIA as if nothing has gone on, as if the spooks retain the credibility they had back in 2001, as if they *should* retain that credibility. (I’m particularly interested in the way FBI participated in the killing of Anwar al-Awlaki, perhaps relying on CIA’s claims there, too, but it goes well beyond that.)

That’s understandable, to a point. If DOJ and the FBI are going to continue pursuing (especially) terrorists with CIA, they need to be able to trust them, to trust they’re not being lied to about, potentially, everything.

Except that ignores the lesson of the Torture Report, which is that CIA will lie about anything to get DOJ to rubber stamp criminal behavior.

No wonder DOJ and FBI aren't opening that report.

DICK CHENEY'S FOGGY MEMORY ON BUSH'S PLAUSIBLE DENIABILITY FOR TORTURE

One of just three issues this Playboy interview [marginally SFW] with Dick Cheney pressed him on (the other two being whether Bush misjudged Putin and whether Cheney's father loved him) was whether President Bush had been briefed on the torture program.

James Rosen starts by asking whether Bush was briefed on the actual methods.

You have become publicly identified with the so-called enhanced interrogation techniques that CIA officers used when questioning suspected terrorists. Your critics call those techniques torture. To your knowledge, was President Bush briefed about the actual methods that were to be employed?
I believe he was.

It would have been useful had Rosen actually read the SSCI Torture Report, because even that explains that Bush was briefed – in 2006. “[T]he president expressed concern,” the report noted, “about the ‘image of a detainee, chained to the ceiling, clothed in a diaper, and forced to go to the bathroom on himself.”

Rosen then presents the disagreement between John Rizzo and George Tenet, who have said Bush wasn't briefed, and the President himself. Cheney responds by describing a specific, undated briefing in Condi's office.

We ask because in Decision Points, the former president's 2010 memoir, he recalls having been briefed on the EITs. Yet former CIA general counsel John Rizzo, in his 2014 memoir, Company Man, disputes that and says that he contacted former CIA director George Tenet about it, after reading the president's book, and that Tenet backs him up in the belief that Bush was not briefed. No, I'm certain Bush was briefed. I also recall a session where the entire National Security Council was briefed. The meeting took place in Condi Rice's office—I don't think Colin Powell was there, but I think he was briefed separately—where we went down through the specific techniques that were being authorized.

Rather than pointing out that Cheney doesn't even say Bush was at that briefing in Condi's office (or asking for a date, which I suspect is the real secret both Bush and the CIA are trying to keep), Rosen simply asks why Cheney is certain. He then raises James Risen's account of Bush being given plausible deniability, which Cheney quickly turns into an assessment of whether Risen has credibility rather than providing more details on when and how Bush was briefed.

Why do you say you're certain Bush was briefed?

Well, partly because he said he was. I don't have any doubt about that. I mean, he was included in the process. I mean, that's not the kind of thing that we would have done without his approval.

To that point, New York Times reporter

James Risen wrote in *State of War: The Secret History of the CIA and the Bush Administration*, published in 2006, "Cheney made certain to protect the president from personal involvement in the internal debates on the handling of prisoners. It is not clear whether Tenet was told by Cheney or other White House officials not to brief Bush or whether he made that decision on his own. Cheney and senior White House officials knew that Bush was purposely not being briefed. It appears that there was a secret agreement among very senior administration officials to insulate Bush and to give him deniability." I don't have much confidence in Risen.

That's not the question. Is what he alleges here true or false?

That we tried to have deniability for the president?

Yes.

I can't think of a time when we ever operated that way. We just didn't. The president needed to know what we were doing and sign off on the thing. It's like the terrorist surveillance program. You know, one of the main things I did there was to take Tenet and National Security Agency director Michael Hayden in hand and get the president's approval for what we were doing, and there's a classic example why I don't believe something like this. The president wanted personal knowledge of what was going on, and he wanted to personally sign off on the program every 30 to 45 days. To suggest that somehow we ran a system that protected the president from knowledge about the enhanced interrogation techniques, I just—I don't think it's true. I don't believe it.

I find Cheney's invocation of the dragnet really, really interesting. After all, even

according to Bush's memoir, he didn't know key details about the dragnet. Cheney told him it was going to expire on March 10 that day. Moreover, when Jim Comey briefed him the following day, he learned of problems that Cheney and others had kept from Bush.

Thus, Cheney's invocation of the dragnet is actually a documented example of Bush *not* being adequately briefed.

Plus, it's interesting given the timing. If I had to guess at this point, I would say that Bush was likely briefed on details of torture in 2004, in the wake of the Abu Ghraib scandal, not 2006. Indeed, that may explain the 7 week delay between the time Tenet asked for reaffirmation of torture approval and when it actually got fully approved – not to mention Tenet's still inadequately explained resignation (in Tenet's memoir, he says it was because of the "Slam Dunk" comment attributed to him in Bob Woodward's book many weeks earlier).

Which brings us back to Cheney invoking a vaguely remembered briefing, this one in the Oval Office.

But can you say as a fact "I know that's not true," rather than having to surmise?

I can remember sitting in the Oval Office with deputy national security advisor Stephen Hadley and others—I think others were in there—where we talked about the techniques. And one of the things that was emphasized was the fact that the techniques were drawn from that set of practices we used in training our own people. I mean, we were not trying to hide it from the president. With all due respect, I just don't give any credence to what Risen says there.

Cheney's got nothing – or at least nothing he's willing to share. And certainly nothing to

document Bush being briefed before torture started.

Which is, again, what I suspect to be the issue: Bush was briefed, maybe even before the 2006 briefing the Torture Report documents. But not before the bulk of the torture happened.

JIM COMEY'S CONSISTENT DODGES ON TORTURE

On March 12 of this year, Dianne Feinstein plaintively asked Jim Comey to read the full SSCI Torture Report. Before giving a really lame answer about how FBI doesn't torture to excuse why he (and his staffers) hadn't read, perhaps even opened, the report, he asserted he had read the Executive Summary. "You asked me to do it during my confirmation hearing, I kept that promise and read it."

Particularly given what we now know – specifically, that Comey concurred in an opinion retroactively authorizing the torture of Janat Gul, whom the Torture Report shows was tortured largely to get torture approved again – that led me to review precisely what transpired between Comey and Feinstein during his 2013 confirmation process. Granted, the report was not yet public, so no one could ask Comey directly whether he knew that's what CIA was scheming – to torture Janat Gul largely to get torture approved again – at least not publicly.

But what kind of commitment did they get?

First of all, at least in the public hearing, Comey did *not* promise to fulfill Feinstein's request. Moreover, she requested that he do more than read the Summary – she said he should read all 6,000 pages, emphasizing the importance of

the case studies (which would show far more specifics about what was done to Janat Gul than the Summary does).

I'd like to ask you to personally review our report. It's a big deal to review it – it's 6,000 pages. But I think it's very important. You have that background. And I think it's important to read the actual case studies.

During his turn, after pointing to how shoddy the memo Comey *did* concur in was, Sheldon Whitehouse reiterated Feinstein's request that Comey read the entire report, noting that the specific details of the torture cases showed how much CIA lied about what went on. (It's not clear whether the details surrounding the Janat Gul case would have been clear before Whitehouse left SSCI, so it's not clear whether he knew those specific details – the ones most pertinent to Comey's role on concurring in torture – during this hearing.)

In any case, after recommending he read the full report, Feinstein then went on to the memo Comey did concur in, asking him to explain why he had said in an email that the Principals were "unaware" or "willfully blind" when they reapproved torture.

Feinstein: You described telling Attorney General Gonzales that CIA interrogation techniques were, quote, simply awful, end quote. That quote, there needed to be a detailed factual discussion, end quote of how they were used before approving them and that, quote, it simply could not be that the Principals would be willfully blind.

Here's the question: Why did you believe that there was a danger that the Principals on the National Security Council were unaware, or willfully blind to the details of the CIA program?

Comey: Thank you Senator. Because I

heard ... I heard no one asking that third critical question. As you recall I said [in response to a Pat Leahy question] I think there are 3 critical questions with any counterterrorism technique, but especially with the interrogations. Is it effective – something the CIA was talking about. Is it legal under the – Title 18 Section 2340, the legal question. And then this last question, is this what we should be doing. And instead, I heard nothing, and in fact it was reported to me that the White House's view was only the first two questions matter. If the CIA says it works and DOJ will issue a legal opinion that it doesn't violate the statute, that's the end of the inquiry. And, as you said, Senator, I thought that was simply unacceptable.

The answer is interesting given that – earlier in the hearing – he had confirmed (or at least claimed) to Pat Leahy what I believed to be true, that he was out of the loop on the Article 16 CAT memo. I've believed that because on May 31, 2005, Comey was still trying (futilely) to influence the Principals through Alberto Gonzales, while still framing the discussion in terms of the earlier May 10 memo, not the May 30 one that got finalized the day before.

He also seemed unaware in his email that (as reported by the Torture Report) CIA had started torturing Abu Faraj al-Libi 3 days earlier, based on the May 10 memos and anticipating the May 30 one.

But he should have known – because he was in the loop on some discussions going back to the previous summer – that CIA felt it needed a memo addressing whether torture complied with the Constitution and therefore the Convention on Torture. Indeed, that's what CIA had demanded in a July 29, 2003 hearing Comey attended part of; is he now claiming (which would be possible but notable) that they only addressed that demand

after he and Bellinger left the meeting? That claim, given Comey's emphasis on 18 USC 2340 rather than legal questions more generally, is rather curious.

In any case, Comey's answer last week now appears all the more lame, given that Feinstein had in fact asked him to read the full report, not just the summary.

In any case, having gotten Comey to agree during his confirmation hearing to the notion that there are things the US shouldn't do, even if they're legal, Feinstein took this principle, and tried to get Comey to apply it to force feeding at Gitmo.

Feinstein: You have looked at the Combination of EITs, the manner in which they are administered, and you have come to the conclusion that they form torture. These are people, now, 86 of them, who are no threat to this country. They've been cleared for transfer, many of whom are being force fed to keep them alive. In my view, this is inhumane, and I am very curious what you would say about this.

Comey refused to do so, at first making the same argument he is now: force-feeding at Gitmo is not part of the FBI's job, then pleading ignorance about the practice (and, seemingly, protecting the use of force-feeding in an area where it'd be more pertinent to FBI use, especially given its use to get informants on gangs in California's Pelican Bay, in US prisons).

Comey: If I were FBI Director, I don't think it's an area that would be within my job scope. But I don't know more about what you're describing than what you're describ-

Feinstein: Well, let me just say it's within all of our job scopes to care about how the United States of America

acts.

Comey: I agree very much with that Senator. And I do also know that there are times in the Bureau of Prisons when the Federal authorities have had to force feed someone who's refusing to eat and they try to do it in the least invasive way. What you're describing I frankly wouldn't want done to me but I don't know the circumstances well enough to offer an opinion. I don't think it would be worth much at this point.

Ultimately, though, Comey didn't really fulfill his standard of reviewing to make sure counterterrorism techniques are effective and legal as well as reasonable. But that's not surprising, because he didn't exercise that standard in defending the phone dragnet either.

That's not the end of the public exchange between Feinstein and Comey during his confirmation process, however. She asked him one more question on torture while invoking the report in her Questions for the Record.

In December 2012 the Senate Intelligence Committee adopted a bipartisan 6,300-page Study of the CIA's former detention and interrogation program. The review is by far the most comprehensive intelligence oversight activity ever conducted by the Committee. The Study—which builds a factual record based on more than 6 million pages of intelligence community records—uncovers startling new details about the management, operation, and representations made to the Department of Justice, Congress, and the White House. I believe the Study will provide an important lessons learned opportunity for Congress, the executive branch, and the American people. You have testified that you raised objections about the CIA interrogation program with Attorney

General Gonzales in May 2005 before departing the Department of Justice. In one of your emails that was made public in 2009, you described telling the Attorney General that the CIA interrogation techniques were “simply awful,” that “there needed to be a detailed factual discussion” of how they were used before approving them, and that “it simply could not be that the Principles would be willfully blind.” In your confirmation hearing you expressed frustration that there was not a wider policy discussion on this matter, which you believed—rightfully so—was of great importance and contrary to our values and ideals as a nation.

Should you be confirmed, how will your experience raising concerns about CIA’s so-called “Enhanced Interrogation Techniques” behind closed doors influence your approach and leadership at the Federal Bureau of Investigation, your interactions with Congress, and your communications with the American people?

RESPONSE: My experience as Deputy Attorney General reinforced my long-standing view about the importance of fostering a culture of transparency, which I will bring to the FBI if I am confirmed as its new Director. I believe, as I did when I served as Deputy Attorney General, that if there are questions about whether proposed conduct is appropriate—consistent with our values—we should seek a vigorous debate about that conduct before going forward. In those circumstances, I am prepared to detail my concerns and reasoning to the relevant stakeholders, as I have done in the past. If confirmed, I intend to foster a culture at the Bureau that encourages subordinates to provide their candid

advice to me and transparency with Congress and the American people, consistent with the Bureau's law enforcement and national security responsibilities, and long-standing Executive Branch confidentiality interests.

Comey's tribute to transparency is pretty absurd, given that under him his Agency has stalled on IG reports and redacted things from Congress that were shared in the previous IG Report.

But it's also a throwaway question. I think Feinstein wanted Comey to reveal that he would share things he discovered with Congress. Given his nod to "Executive Branch confidentiality interests," there's no reason to believe he would.

Still, this question was even further away from the question of, "did you know, when you concurred in torture you now claim to recognize as torture, that the victim was someone tortured in part because CIA didn't vet a fabricator (again) and in part because CIA was so anxious to win torture approval'?"

It still doesn't ask the question Comey should now be asked: when you concurred in retroactively authorizing the torture of Janat Gul, did you know CIA had been lying about him for the better part of a year? Did you know you were concurring in the torture of a man largely tortured for legal cover?

I asked both Senator Feinstein's office and the FBI whether any more specific question got asked in classified fashion but I got a No Comment and a non-answer.

My guess is that Feinstein didn't come to a realistic understanding of just how cynical the CIA is and was until they started spying on her earlier this year, and so didn't ask the questions during confirmation that might have made Comey's willingness to – again – play

useful idiot to the CIA's crimes (including in investigating their spying on Congress).

But it deserves to be noted, even then, Comey was claiming that it is not the FBI Director to investigate the crimes committed by agents of the government.

CIA HEADQUARTERS ORDERED JANAT GUL'S TORTURE TO KEEP GOING FOR AN OLC APPROVAL

I'm working on a longer post on how the torture of Hassan Ghul and Janat Gul relate to the three May 2005 OLC memos, which – as Mark Udall has pointed out – were based on a series of lies from CIA.

But for the moment, I want to point to a narrower point.

As I have explained, CIA got the White House and DOJ to approve the resumption of torture in 2004 by claiming that Janat Gul had information on a pre-election threat. By October 2004, CIA confirmed that claim was based on a fabrication by a CIA source.

But even before CIA's source admitted to fabricating that claim, on August 19, 2004, CIA's torturers had come to the conclusion that Gul didn't have any information on an imminent threat. The "team does not believe [Gul] is withholding imminent threat information," they wrote in a cable that day. Two days later, folks at CIA headquarters wrote back and told the torturers to keep torturing. The cable "stated

that Janat Gul 'is believed' to possess threat information, and that the 'use of enhanced techniques is appropriate in order to obtain that information.'

So, as had happened in the past, the torturers had decided the detainee had given up all the information he had, but HQ ordered them to keep torturing.

But that's not all HQ did.

As I sort of lay out here (and will lay out at more length in my new post), we know from the May 30, 2005 CAT memo that several of the August 2004 OLC letters authorizing torture pertained to Janat Gul. At a minimum, that includes a request in response to which John Ashcroft authorized the use of most torture techniques approved in 2002 on July 22, 2004, and a series of requests in response to which Daniel Levin authorized the use of the remaining technique – the waterboard – on August 6, 2004.

And an August 25, 2004 letter in response to which Daniel Levin authorized four new techniques: dietary manipulation, nudity, water dousing, and abdominal slaps. [Update: The May 10, 2005 Techniques memo – which Comey described as “ready to go out and I concurred” in an April 27, 2005 email – served to retroactively approve all these memos and Gul's treatment.]

That August 25, 2004 letter had to have made the claim (because Levin repeated the judgment in his letter) – 6 days after the torturers had told HQ Gul was not withholding any imminent threat information and 4 days after HQ had said, no, Gul “is believed” to have threat information – that Gul “is believed to possess information concerning an imminent terrorist threat to the United States.”

That is, CIA's HQ made the torturers resume torturing a guy who had already asked to be killed so as to sustain the claim he had imminent threat information so as to be able to get OLC to cough up another memo.

Significantly, there's no indication all of those four new techniques – or waterboarding – were ever used on Gul. Indeed, here's what the torture report describes in its last description of the specific torture used on Gul.

On August 25, 2004, CIA interrogators sent a cable to CIA Headquarters stating that Janat Gul "may not possess all that [the CIA] believes him to know."⁸²⁴ The interrogators added that "many issues linking [Gul] to al-Qaida are derived from single source reporting" (the CIA source).⁸²⁵ Nonetheless, CIA interrogators continued to question Gul on the pre-election threat. According to an August 26, 2004, cable, after a 47-hour session of standing sleep deprivation, Janat Gul was returned to his cell, allowed to remove his diaper, given a towel and a meal, and permitted to sleep.⁸²⁶

They got their memo, authorizing techniques that had been used without any official authorization from OLC on detainees in the years before (including on Gul Rahman before he died). And then they finally let the suicidal Janat Gul sleep.

And only months later did they get around to checking (perhaps using a polygraph?) whether their original source had been bullshitting them, as at least one CIA officer had surmised back in March.

I reported in December that they used Gul and the threat of an election year threat to get OLC to reauthorize torture generally. But this sequence makes it clear that they continued to torture Gul, all in the name of getting OLC to approve torture techniques they had already used without approval, even after the torturers were convinced he was not withholding any information.

No wonder Jim Comey doesn't want to read any

more details about Gul's torture, which he retroactively signed off on.

JIM COMEY'S LEARNED HELPLESSNESS ABOUT THE TORTURE REPORT



Dianne Feinstein used the Federal Law Enforcement Appropriations hearing as an opportunity to implore Jim Comey to read the Torture Report.

I'm surprised neither by her request nor by her plaintive manner, given how most Federal Agencies have simply blown off the Report. But I am interested in the content of the exchange (my transcription).

Feinstein: One of my disappointments was to learn that the six year report of the Senate Intelligence Committee on Detention and Interrogation Program sat in a locker and no one looked at it. And let me tell you why I'm disappointed. The report – the 6,000 pages and the 38,000 footnotes – which has been compiled contains numerous examples of a learning experience, of cases, of interrogation, of where the Department could learn – perhaps – some new things from past mistakes. And the fact that it hasn't been opened – at least that's

what's been reported to me – is really a great disservice. It's classified. It's meant for the appropriate Department. You're certainly one of them. I'd like to ask if you open that report and designate certain people to read it and maybe even have a discussion, how things might be improved by suggestions in the report.

Comey: And I will do that Senator. As you know, I have read the [makes a finger gesture showing how thick it was] Executive Summary. You asked me to do it during my confirmation hearing, I kept that promise and read it. There's a small number of people at the FBI – as I understand it – who have read the entire thing. But what we have not done – and I think it's a very good question, is have we thought about whether there are lessons learned for us? There's a tendency for me to think "we don't engage in interrogation like that, so what's there to learn?"

Feinstein: You did. And Bob Mueller pulled your people out, which is a great tribute to him.

Comey: Yeah. So the answer is yes, I will think about it better and I will think about where we are in terms of looking at the entire thing. I don't know enough about where the document sits at this point in time and you mentioned a lock box, I don't know that well enough to comment on it at this point.

Feinstein and Comey appear to have differing understandings of whether anyone at FBI has actually read the report, with Comey believing someone has read it – and professing ignorance about a "lockbox" – and Feinstein referring to a report that no one has read it, a belief that may come in part from the responses the

government is making to FOIA requests. Is FBI lying about whether anyone has opened this in its FOIA responses?

But I'm also interested both that Comey hasn't read further and that he hasn't considered whether FBI might have anything to learn from it.

Tellingly, Comey suggests FBI would have nothing to learn because "we don't engage in interrogation like that, so what's there to learn." But as Feinstein corrects, FBI *did* engage in "interrogation like that," but then Bob Mueller withdrew his interrogators. Remember that Ali Soufan was present at the Thai black site for Abu Zubaydah's first extreme sleep deprivation and long enough to see the torturers bring out a coffin-like box. His partner, Steve Gaudin, stayed even longer. That stuff doesn't appear in the summary (the report's silence on this earlier phase of Abu Zubaydah's torture is one of CIA's legitimate complaints). Moreover, there are moments later in the torture program when one or another FBI Agent (including Soufan) were present for other detainees' interrogation, particularly for isolation. Comey wanted to suggest FBI was never involved in torture, but Feinstein reminded him they were.

Still, Feinstein seems to believe that Mueller withdrew Agents out of some kind of squeamishness. I think the record (especially from FBI Agents in Iraq who declined to write certain things down) suggests, instead, that Mueller withdrew his Agents to ensure that the FBI would never be witness to crimes committed against detainees which might force them to investigate those crimes. Indeed, it seems that in summer 2002 – at a time when US Attorney Jim Comey was relying on Abu Zubaydah's statements to detain Jose Padilla – DOJ found a way to bracket the treatment that had already occurred and remain mostly ignorant of that which would occur over the next several years. Feinstein should know that but seems not to; Comey almost certainly does.

Which makes Comey's explanation all the more nonsensical. There's stuff like the anal rape, even in the Executive Summary, that probably wasn't investigated (though the statute of limitations probably has expired on it). There's probably far, far more evidence of crimes that have never been investigated in the full report. And yet ... the premier law enforcement agency may or may not have taken the report out of storage in a lock box?

Consider me unconvinced.

Besides, Comey's claim that "we don't engage in interrogation like that" ignores that FBI is supposed to be the lead agency in the High Value Interrogation Group, about which there have been numerous hints that things like food and sleep deprivation have been used. His explanation that "we don't engage in interrogation like that," is all the more curious given FBI's announcement earlier this week that the guy in charge of one HIG section just got assigned to lead the Dallas Division.

Director James B. Comey has named Thomas M. Class, Sr. special agent in charge of the FBI's Dallas Division. Mr. Class most recently served as section chief of the High Value Detainee Interrogation Group in the National Security Branch (NSB) at FBI Headquarters (FBIHQ). In this position, he led an FBI-lead interagency group that deploys worldwide the nation's best interrogation resources against significant counterterrorism targets in custody.

Who's in charge of HIG, then? And is it engaging in isolation?

Finally, I am specifically intrigued by Comey's apparent lack of curiosity about the full report because of his actions in 2005.

As these posts lay out (one, two), Comey was involved in the drafting of 2 new OLC memos in May 2005 (though he may have been ignorant about

the third). The lies CIA told OLC in 2004 and then told OLC again in 2005 covering the same torture were among the worst, according to Mark Udall. Comey even tried to hold up the memo long enough to do fact gathering that would allow them to tie the Combined memo more closely to the detainee whose treatment the memo was apparently supposed to retroactively reauthorize. But Alberto Gonzales' Chief of Staff Ted Ulyot told him that would not be possible.

Pat [Philbin] explained to me (as he had to [Steven Bradbury and Ted Ulyot]) that we couldn't make the change I thought necessary by Friday [April 29]. I told him to go back to them and reiterate that fact and the fact that I would oppose any opinion that was not significantly reshaped (which would involve fact gathering that we could not complete by Friday).

[snip]

[Ulyot] mentioned at one point that OLC didn't feel like it would accede to my request to make the opinion focused on one person because they don't give retrospective advice. I said I understood that, but that the treatment of that person had been the subject of oral advice, which OLC would simply be confirming in writing, something they do quite often.

At the end, he said that he just wanted me to know that it appeared the second opinion would go [Friday] and that he wanted to make sure I knew that and wanted to confirm that I felt I had been heard.

Presuming that memo really was meant to codify the oral authorization DOJ had given CIA (which might pertain to Hassan Ghul or another detainee tortured in 2004), then further details of the

detainee's torture would be available in the full report. Wouldn't Comey be interested in those details now?

But then, so would details of Janat Gul's torture, whose torture was retroactively authorized in an OLC memo Comey himself bought off on. Maybe Comey has good reason not to want to know what else is in the report.