

# AP ALSO NOTES THE TORTURE AND DRONES DOUBLE STANDARD

After the Torture Report came out, I argued we ought to take a broader lesson from it about failures of accountability in CIA's covert programs. Specifically, I noted how the drone program – which operated under the same Memorandum of Notification as torture for years – appeared to suffer from the same problems as the torture program.

On the second day of Barack Obama's presidency, he prohibited most forms of physical torture. On the third, a CIA drone strike he authorized killed up to 11 civilians.

[snip]

Other reporting may explain why the report portrays Bush, rightly or wrongly, as so uninvolved in the torture program. Both Woodward and Mayer explain that the Sept. 17, 2001, MON was designed to outsource all the important decision-making to the CIA. "To give the President deniability, and to keep him from getting his hands dirty," Mayer writes in *The Dark Side*, "the [MON] called for the President to delegate blanket authority to Tenet to decide on a case-by-case basis whom to kill, whom to kidnap, whom to detain and interrogate, and how." Whether or not Bush had knowledge of what was going on, the very program itself was set up to insulate him from the dirty work, giving him the ability to claim ignorance of a torture program everyone else knew about. (Later, Bush claimed that he was fully briefed.)

But as we know, this insulation created the conditions for a program that was

allowed to spin so horribly out of control that the CIA was able to misplace 29 detainees and not worry all that much.

The implications of this subterfuge, however, do not end with the torture program. Nor with George W. Bush. This is the same MON that authorizes the CIA's current drone program. Presumably that means the drone program is characterized by the same unaccountable structures.

Indeed, after Obama escalated the CIA's use of drones when he took office, the program suffered from some of the same problems as the torture program. The CIA appears to have misinformed Congress about the details, given **claims** by people like House Intelligence Committee ranking member Dutch Ruppersberger (D-Md.) that the program had "very minor" civilian casualties, despite the fact that **evidence shows** that more than 1,000 people have been killed while targeting fewer than 50 terrorists. And like the CIA's detention and torture of the wrong suspects, a number of drone strikes have killed the wrong people – but with even greater frequency.

Top-ranking members of Congress, including Sen. Dianne Feinstein (D-Calif.), the chair of the Senate Intelligence Committee, have long insisted they have more oversight over the drone program than they did over torture. But the number of significant mistakes – take, for example, the **attack on a wedding party** earlier this year – suggests that oversight isn't preventing the same kind of mistakes that happened with torture. Moreover, as with the torture program, the congressional intelligence committees aren't able to get the information they request from

the White House and the CIA. It was only after years of requests that the intelligence committees were allowed to review the administration's justification for having the CIA kill Anwar al-Awlaki, a U.S. citizen, with a drone strike. Worse, the reports that the CIA killed Awlaki's 16-year-old son, Abdulrahman, are also shrouded in secrecy and full of inconsistencies.

AP's Ken Dilanian has a long article in similar vein, noting that the drone and Non Official Cover program have never been scrutinized this closely, in spite of complaints of abuse.

Yet the intelligence committees have never taken a similar look at what is now the premier counterterrorism effort, the CIA's drone-killing program, according to congressional officials who were not authorized to be quoted discussing the matter.

Intelligence committee staff members are allowed to watch videos of CIA drone missile strikes to monitor the agency's claims that civilian casualties are limited. But these aides do not typically get access to the operational cables, message traffic, interview transcripts and other raw material that forms the basis of a decision to kill a suspected terrorist.

Nor have they been able to examine cables, emails and raw reporting to investigate recent perceived intelligence lapses, such as why the CIA failed to predict the swift fall of Arab governments, Russia's move into Ukraine or the rapid military advance of the Islamic State group.

And there have been no public oversight reports on the weak performance of the CIA's multibillion-dollar "nonofficial

cover” program to set up case officers posing as businessmen, which has met with some criticism.

In addition to the nice review of how Dianne Feinstein’s staffers’ managed to do this work (which you should click through to read), Dilanian also got a fairly scathing interview with Feinstein herself (though she insists drones get enough oversight). In it, she professes to have lost her faith that CIA is telling the truth in briefings.

The torture investigation, she said in an interview with The Associated Press, has “changed how I view management in the CIA. It’s changed how I view the brotherhood of the CIA. I believe you do not lie to your oversight committee. And I think the way the program was managed was sloppy.”

The lesson for traditional intelligence oversight, she said, was that “you can sit and listen to a report ??? you don’t know whether it’s all the truth, you don’t know what gets left out. And part of (CIA) tradecraft is deception.”

She said she believes the CIA continues to lie about the effectiveness of torture.

And she dishes on White House collaboration with the CIA to overclassified the report.

But while Obama publicly supported releasing the report’s findings and conclusions, the administration privately pushed to keep significant parts of the summary secret, Feinstein said.

“The president said that he agreed the report should be made public, that he doesn’t condone (the harsh interrogations), but it sort of ends

there,” Feinstein said.

She said she perceived “an incredible closeness” between Obama’s chief of staff, Denis McDonough, and Brennan, “and the president and John Brennan.” In negotiations with Feinstein about what parts of the summary should be censored, McDonough spoke for the White House, but there was no daylight between him and the CIA, she said.

Feinstein said both wanted to black out large chunks of the executive summary in the name of protecting sensitive information.

It also provides more details on the attempt to fearmonger DiFi into suppressing the report at the last minute, including that Democrats found James Clapper’s report on the dangers of releasing it to be all that convincing.

This is, I think, one of the necessary conclusions to draw from the Torture Report: oversight isn’t working, because – as DiFi notes – CIA’s tradecraft is all about deception.

Let’s hope she really has learned a bit from this process, even if it’s too late to do anything about it as Chair.

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## **THE “TORTURE WORKS” STORY**

After Adam Goldman exposed the identity of Jihadi John, ISIL’s executioner, as Mohammed Emwazi, it set off an interesting response in Britain. CagePrisoners – the advocacy organization for detainees – revealed details of how MI5 had tried to recruit Emwazi and, when he refused, had repeatedly harassed him and his

family and prevented him from working a job in Kuwait (where he was born).

While that certainly doesn't excuse beheadings, it does raise questions about how the intelligence services track those it has identified as potential recruits and/or threats.

And seemingly in response to those questions, the former head of MI6 has come forward to say that torture has worked in a ticking time bomb scenario – that of the toner cartridge plot in 2010.

In his first interview since stepping down from Secret Intelligence Service in January, Sir John Sawers told the BBC yesterday that torture “does produce intelligence” and security services “set aside the use of torture... because it is against the values” of British society, not because it doesn't work in the short term. Sir John defended the security services against accusations they had played a role in the radicalising of British Muslims, including Mohammed Emwazi, who it is claimed is the extremist responsible for the murder of hostages in Syria.

*The IoS* can reveal details of a dramatic “Jack Bauer real-time operation” to foil an al-Qaeda plot to bring down two airliners in 2010. According to a well-place intelligence source, the discovery of a printer cartridge bomb on a UPS cargo aircraft at East Midlands airport was possible only because two British government officials in Saudi Arabia were in “immediate communication” with a team reportedly using torture to interrogate an al-Qaeda operative as part of “ticking bomb scenario” operation.

The terror plot was to use cartridge bombs to bring down two aircraft over the eastern United States. However,

British authorities intercepted the first device at the cargo airport hub after what they described as a “tip-off” from Saudi Arabia. A second device was intercepted aboard a freight plane in Dubai; both aircraft had started their trips in Yemen.

*The IoS* understands there was a frantic search prompted by “two or three” calls to Saudi Arabia after the tip-off, with security services battling to find the device. French security sources revealed the device was within 17 minutes of detonating when bomb disposal teams disarmed it.

One intelligence source said: “The people in London went back on the phone two or three times to where the interrogation was taking place in Riyadh to find out specifically where the bomb was hidden. There were two Britons there, in immediate communication with where the interrogation was taking place, and as soon as anything happened, they were in touch with the UK. It was all done in real time.”

I find this rather interesting for several reasons.

At the time, multiple sources on the Saudi peninsula revealed that authorities learned of this plot – and therefore learned about the bombs – from an apparent double agent (and former Gitmo detainee), Jabir al-Fayfi, who had left AQAP and alerted the Saudis to the plot. If so, it would mean what was learned from torture (if this account can be trusted) was the precise location of the explosives in planes that boxes that had already been isolated. I’m not certain, but that may mean this “success” prevented nothing more than an explosion in a controlled situation, because it had already been tipped by a double agent who presumably didn’t need to be tortured to share the information he had been

sent in to obtain.

That is, the story, as provided, may be overblown.

Or may be referring to torture that happened in a different place and time, as part of an effort to “recruit’ al-Fayfi.

But I’m interested in it for further reasons.

The toner cartridge story significantly resembles the UndieBomb 2.0 plot, which was not only tipped by a double agent, but propagated by it (indeed, I recently raised questions about whether leaks about both were part of the same investigation). But in that case, the double agent came not via Gitmo and Saudi “deradicalization,” but via MI5, via a recruitment effort very like what MI5 used with Emwazi.

Indeed, it is not unreasonable to imagine that Emwazi knew that double agent and/or that CagePrisoners has suspicions about who he is.

I have increasingly wondered whether the treatment of a range of people implicated in Yemeni and/or Somali networks (MI5 accused Emwazi of wanting to travel to the latter) derives from the growing awareness among networks who have intelligence services have tried to recruit who else might have been recruited.

Which might be one reason to tie all this in with “successful torture” – partly a distraction, partly an attempt to defer attention from a network that is growing out of control.

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**DAVID COLE TURNS IN**



# HIS TORTURE HOMEWORK LATE, GETS A C

I was going to simply ignore David Cole's annoying NYT op-ed, asking if the CIA got a bad rap with the SSCI Torture Report, until I saw the claims he made in his JustSecurity post on it.

Like many others, I commented on and wrote about the Torture Report when it was initially released in December, but the demands of the 24-hour news cycle meant that I – and I'm certain, everyone else who commented in that first week – did so without having had time to read the report and its responses in full. The SSCI Report's executive summary is 525 pages, and the responses by the CIA and the Republican minority members of the SSCI total 303 pages. No one could possibly have read it all in those first few days. And of course, by the time one could read it all, the news cycle had moved on.

David Cole (he now admits 2 months later) blathered without first reading what he was blathering about, and so he insists everyone else must have too, thereby discrediting the views of those of us who actually had done their homework.

This, in spite of the fact that some of us torture critics (not to mention plenty of torture apologists) were making the very same critiques he has finally come around to in the days after the report was released: significantly, the Torture Report did not include the early renditions and Abu Zubaydah's earliest torture. And so, Cole argues, because it's never easy to definitively show where a particular piece of intelligence comes from, we

shouldn't make an argument about what a disaster CIA's torture program was and instead should just repeat that it's illegal.

Let's look at the steps Cole takes to get there, before we turn to the conclusions he ignores.

First, Cole throws up his hands helplessly in trying to adjudicate the dispute between CIA and SSCI over their intelligence.

Without the underlying documents, it's not possible to resolve the competing claims, but many of the C.I.A.'s responses appear plausible on their face. At a minimum it is possible that the C.I.A.'s tactics did help it capture some very dangerous people planning future attacks.

In some cases, I'll grant that you can't determine where CIA (which is not always the same as US government, which is another problem with the scope of this report) learned a detail, though in others, CIA's rebuttal is fairly transparently weak. But along the way we learn enough new about how helpless the CIA was in the face of even the claims that get shared in the unclassified summary – the most telling of which, for me, is that after being waterboarded, Khalid Sheikh Mohammed got the CIA to believe for 3 months that he had sent Dhiren Barot to Montana to recruit black Muslims in Montana (yes, really!) to start forest fires – to point to the problems of using torture as a means to address CIA's intelligence gaps on al Qaeda. What an unbelievable waste of effort, all arising because torture was presented as something magic that might make KSM tell the truth.

Even more importantly, there's the way that torturing Janat Gul delayed the discovery that the intelligence implicating him in election year plots was a fabrication, but not before Gul and the underlying fabrication served as the justification to resume torture and, in part, to

roll out a dragnet treating all Americans as relevant to torture investigations. Both while he was being tortured and the following year, Gul also served as an excuse for the CIA to offer more lies to DOJ about what it was doing and why. Whether deliberately or not, torture served a very important function here, and it was about legal infrastructure, not intelligence. Exploitation.

Having declared himself helpless in the face of some competing claims but much evidence torture diverted the CIA from hunting down the worst terrorists, Cole then says SSCI has not proven its "other main finding," which is that CIA lied about efficacy.

That conclusion in turn casts doubt on the committee's other main finding – namely, that the C.I.A. repeatedly lied about the program's efficacy.

[snip]

So why did the committee focus on efficacy and misrepresentation, rather than on the program's fundamental illegality?

Let me interject. Here, Cole misrepresents the conclusion of the Torture Report, which leads him to a conclusion of limited value. It is not *just* that CIA lied about whether torture worked. CIA also lied about what they were doing and how brutal it was. It lied to Congress, to DOJ's lawyers, and to (this is where I have another scope problem with the report, because it is demonstrably just some in) the White House and other cabinet members. That's all definitely well documented in the Torture Report – but then, it was well-documented by documents released in 2009 and 2010, at least for those who were doing their homework.

Bracket that misrepresentation from Cole, for the moment, and see where he takes it.

Possibly because that meant it could

cast the C.I.A. as solely responsible, a rogue agency. A focus on legality would have rightly held C.I.A. officials responsible for failing to say no – but it also would have implicated many more officials who were just as guilty, if not more so. Lawyers at the Justice Department wrote a series of highly implausible legal memos from 2002 to 2007, opining that waterboarding, sleep deprivation, confinement in coffinlike boxes, painful stress positions and slamming people into walls were not torture; were not cruel, inhuman or degrading; and did not violate the Geneva Conventions.

The same can be said for President George W. Bush, Vice President Dick Cheney and all the cabinet-level officials responsible for national security, each of whom signed off on a program that was patently illegal. The reality is, no one in a position of authority said no.

This may well explain the committee's focus on the C.I.A. and its alleged misrepresentations. The inquiry began as a bipartisan effort, and there is no way that the Republican members would have agreed to an investigation that might have found fault with the entire leadership of the Bush administration.

But while the committee's framing may be understandable as a political matter, it was a mistake as a matter of historical accuracy and of moral principle. The report is, to date, the closest thing to official accountability that we have. But by focusing on whether the program worked and whether the C.I.A. lied, the report was critically misleading. Responsibility for the program lies not with the C.I.A. alone, but also with everyone else, up to the highest levels

of the White House, who said yes when law and morality plainly required them to say no.

Now, I'm very sympathetic with the argument that there are others, in addition to CIA, who need to be held responsible for torture – as I've noted repeatedly, apparently without even reading the entire set of reports, according to Cole. I think Cole brushes with too broad a brush; we have plenty of detail about individuals who are more culpable than others, both within DOJ and the White House, and we shouldn't just throw up our hands on this issue, as Cole did with efficacy arguments, and claim to be unable to distinguish.

But Cole keeps coming back to the issue of legality, as if the people who went out of their way to put CIA back in the business of torturing give a flying fuck that torture is illegal.

And this is why it's important to emphasize that the Torture Report shows CIA lied *both* about efficacy and about what they were doing and when: because until we understand how everyone from Dick Cheney on down affirmatively and purposely implemented a torture program in spite of an oversight structure *and* won impunity for it, it will happen again, perhaps with torture, perhaps with some other Executive abuse.

Let me point to one of the key new revelations from the Torture Report that goes precisely to Cole's concern to explain why.

As I pointed out four and a half years ago, CIA decided to destroy the torture tapes right after giving their first torture briefing to Congress, to Porter Goss and Nancy Pelosi. Along with deciding to destroy the torture tapes, they also altered their own record of that briefing. In ACLU's FOIA that had liberated that information, CIA managed to hide what it was they took out of the contemporaneous record of that briefing.

The Torture Report revealed what it was.

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."<sup>2454</sup> 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."

According to the CIA's own records, in the very first briefing to Congress – which was already 5 months late and only told Congress about using torture prospectively – someone raised questions about the legality of the techniques (at least if done by other countries).

More than 12 years ago, someone – precisely the people our intelligence oversight system entrusts to do this – was raising questions about legality. And CIA's response to that was to alter records, destroy evidence (remember, the torture tapes were altered sometime in 2002 before they were destroyed in 2005), and lie about precisely what they were doing for the next 7 years.

Finally, Cole remains silent about a very important confirmation from the Torture Report – one which President Obama had previously gone to some lengths to suppress – one which gets at why the CIA managed to get away with breaking the law. While SSCI may not have pursued all the documents implicating presidential equities aggressively enough, it did make it very clear that torture was authorized not primarily by a series of OLC memos, but by the September 17, 2001 Presidential Finding, and that neither CIA

nor the White House told Congress that's what had happened until 2004.

Torture was authorized in the gray legal zone that permits the President to authorize illegal actions. The rest follows from there. The remaining question, the question you need to answer if you want to stop the Executive when it claims the authority to break the law – and this is elucidated in part by the Torture Report – is how, bureaucratically, the rest of government serves to insulate or fails to stop such illegal activity. Of course, these bureaucratic questions can get awfully inconvenient awfully quickly, even for people like David Cole.

Did the CIA get a bum rap in the Torture Report? In part, sure, they were just doing what they were ordered, and the CIA routinely gets ordered to do illegal things. But if you want to prevent torture – and other Executive abuses – you need to understand the bureaucratic means by which intended oversight fails, sometimes by design, and sometimes by the deceit of the Executive. Some of that – not enough, but some key new details – appear in the Torture Report.

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## **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.<sup>5</sup>

<sup>5</sup> 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 (D.D.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.

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## **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 Rasmussen 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.

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## **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 claims 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 of Andrew 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.

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## **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.”<sup>2454</sup> 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.

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## **TORTURE? OBVIOUSLY, BUT WHAT ABOUT LITANY OF OTHER CRIMES?**

So, just a quick thought here, and with a little prompting by Jon Turley, obviously there is torture, and outright homicide thereon, spelled out and specified by the SSCI Torture Report. As I have said on Twitter, there are many things covered in the SSCI Torture Report and, yet, many things left out.

There are too many instances in the SSCI Torture Report to catalogue individually, but let’s be perfectly clear, the failure to prosecute the guilty in this cock up is NOT restricted to what is still far too euphemistically referred to as “torture”.

No, the criminality of US Government officials

goes far beyond that. And, no, it is NOT “partisan” to point out that the underlying facts occurred under the Cheney/Bush regime (so stated in their relative order of power and significance on this particular issue).

As you read through the report, if you have any mood and mind for actual criminal law at all, please consider the following offenses:

18 U.S.C. §1001 False Statements

18 U.S.C. §1621 Perjury

18 U.S.C. §1505 Obstruction of Justice

These are but a few of the, normally, favorite things the DOJ leverages and kills defendants with in any remotely normal situation. I know my clients would love to have the self serving, toxically ignorant and duplicitous, work of John Yoo and Jay Bybee behind them. But, then, even if it were so, no judge, court, nor sentient human, would ever buy off on that bullshit.

So, here we are. As you read through the SSCI Torture Report, keep in mind that it is NOT just about “torture” and “homicide”. No, there is oh so much more there in the way of normally prosecuted, and leveraged, federal crimes. Recognize it and report it.

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**SSCI TORTURE REPORT  
KEY: THEY KNEW IT WAS  
TORTURE, KNEW IT WAS  
ILLEGAL**

Okay, here are  
the critical  
working  
documents:



The SSCI Torture Report

The Minority Response to SSCI Torture  
Report

Dianne Feinstein's Statement

But, without any question, my best early  
takeaway key is that the United States  
Government, knew, they bloody well *knew*, at the  
highest levels, that what was going on in their  
citizens' name, legally constituted torture,  
that it was strictly illegal. They *knew* even a  
"necessity" self defense claim was likely no  
protection at all. All of the dissembling,  
coverup, legally insane memos by John Yoo, Jay  
Bybee et. al, and all the whitewashing in the  
world cannot now supersede the fact that the  
United States Government, knowing fully the  
immorality, and domestic and international  
illegality, proceeded to install an intentional  
and affirmative regime of torture.

Here, from page 33 of the Report, is the  
language establishing the above:

...drafted a letter to Attorney General  
John Ashcroft asking the Department of  
Justice for "a formal declination of  
prosecution, in advance, for any  
employees of the United States, as well  
as any other personnel acting on behalf  
of the United States, who may employ  
methods in the interrogation of Abu  
Zubaydah that otherwise might subject

those individuals to prosecution. The letter further indicated that “the interrogation team had concluded “that “the use of more aggressive methods is required to persuade Abu Zubaydah to provide the critical information we need to safeguard the lives of innumerable innocent men, women and children within the United States and abroad.” The letter added that these “aggressive methods” would otherwise be prohibited by the torture statute, “apart from potential reliance upon the doctrines of necessity or of self-defense.”

They knew. And our government tortured anyway. Because they were crapping in their pants and afraid instead of protecting and defending the ethos of our country and its Founders.

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## **THE DEBATE ABOUT TORTURE WE'RE NOT HAVING: EXPLOITATION**

*We're an empire now, and when we act, we create our own reality.*

Partly by design, the debate about torture that has already started in advance of tomorrow's Torture Report release is focused on efficacy, with efficacy defined as obtaining valuable intelligence. Torture apologists say torture provided intelligence that helped to find Osama bin Laden. Torture critics refute this, noting that any intelligence CIA got from those who were tortured either preceded or long post-dated the torture.

Even setting aside my belief that, even if torture “worked” to elicit valuable

intelligence, it still wouldn't justify it, there's a big problem with pitching the debate in those terms.

As the Senate Armed Services Committee Report on torture (released over 5 years ago, in far less redacted form than tomorrow's summary will be) makes clear, the Bush regime embraced torture not for "intelligence" but for "exploitation." In December 2001, when DOD first started searching for what would become torture, it was explicitly looking for "exploitation."

As Administration lawyers began to reconsider U.S. adherence to the Geneva Conventions, the DoD Office of the General Counsel also began seeking information on detention and interrogation. In December 2001, the DoD General Counsel's office contacted the Joint Personnel Recovery Agency (JPRA), headquartered at Fort Belvoir, Virginia, for information about detainee "exploitation."

And as a footnote explaining that reference makes clear, "interrogation is only one part of the exploitation process."

<sup>18</sup> "Exploitation" is a term that JPRA uses to describe the means by which captors use prisoners for their own tactical or strategic needs. Interrogation is only one part of the exploitation process. Other examples of exploitation  
Hearing to Receive Information Relating To The Treatment of Detainees, Senate Committee on Armed Services, 110<sup>th</sup> Cong. (August 3, 2007) (Testimony of Terrence Russell) at 32 (hereinafter "Testimony of Terrence Russell (August 3, 2007)"); Fax cover sheet from Lt Col Daniel Baumgartner to Richard Shiffrin (December 17, 2001).

Some other things exploitation is used for – indeed the very things the torture we reverse-engineered for our own torture program was used for – are to help recruit double agents and to produce propaganda.

And we have every reason to believe those were among the things all incarnations of our torture were used for. We tortured in Abu Ghraib because we had no sources in the Iraqi resistance and for some reason we believed sexually humiliating men would shame them into turning narcs for the US.

Sami al-Hajj, the Al-Jazeera journalist held at



Gitmo for 6 years, says the US wanted him to spy on ties between that outlet and al Qaeda for them.

SAMI AL-HAJJ: Yes, yes, three people, and one translator. And they told me, "Your story is clear. You don't have anything. But you are now in Guantánamo, and we wait until we get some decisions from Pentagon to release you. Until that time, we want you to be patient and to cooperate with our people." Later on, someone, he came, and they told me, "You are here to preparing you to cooperate with us in future." I told him, "What that means?" He said, "You said in Kandahar you are ready to cooperate with us." I told him, "Yes, I said that. But I said that I mean by 'cooperate' to answer question, not to work with you." He said, "No, we understand you want to be with us, work with us." And they starting give me some offer to give me a U.S.A. nationality and take care about my family, if I work with them in CIA to continue my job being journalist with Al Jazeera, just send for them some information about the link between Al Jazeera and al-Qaeda and the terrorist people and some people in the Middle East. Of course, I refused to do that. I told them, "I'm journalist, and I will die as a journalist. I will never work as a work, and just only journalist."

And while I question whether we'll ever learn the truth about Hassan Ghul, he reportedly agreed to infiltrate al Qaeda for us after we tortured him before he flipped back and got killed in a drone strike.

So one reason the CIA and DOD embraced torture was in hope of recruiting people to become our spies.

The propaganda value of torture, however, will receive far less attention still, because the

implications of it are truly horrible. All reports about our torture assume that we “knew” the answers we wanted because we were stupid – we assumed al Qaeda had more plots than they did, or had grander plans than they did.

Or had ties with Iraq.

But when we consider the case of Ibn Sheikh al-Libi, whose torture-induced claim al Qaeda had ties to Iraq’s WMD programs helped drag us into Iraq,

According to al-Libi, the foreign government service [redacted] “stated that the next topic was al-Qa’ida’s connections with Iraq. ... This was a subject about which he said he knew nothing and had difficulty even coming up with a story.” Al-Libi indicated that his interrogators did not like his responses and then “placed him in a small box approximately 50cm x 50cm.” He claimed he was held in the box for approximately 17 hours. When he was let out of the box, al-Libi claims that he was given a last opportunity to “tell the truth.” When al-Libi did not satisfy the interrogator, al-Libi claimed that “he was knocked over with an arm thrust across his chest and he fell on his back.” Al-Libi told CIA debriefers that he then “was punched for 15 minutes.”<sup>216</sup>

(U) Al-Libi told debriefers that “after the beating,” he was again asked about the connection with Iraq and this time he came up with a story that three al-Qa’ida members went to Iraq to learn about nuclear weapons. Al-Libi said that he used the names of real individuals associated with al-Qa’ida so that he could remember the details of his fabricated story and make it more believable to the foreign intelligence service. Al-Libi noted that “this pleased his [foreign] interrogators, who directed that al-Libi be taken back to a

big room, vice the 50 square centimeter box and given food.”217

And when you consider that Abd al-Rahim al-Nashiri claimed his torturers told him he had to claim Osama bin Laden had nukes,

>Number six. Usama bin Laden having a nuclear bomb. [REDACTED]. Then they used to laugh. Then they used to tell me you need to admit to those information. So I used to invent some of the stuff for them to say Usama bin laden had a, had a nuclear bomb. And they use to laugh and they were very happy. They were extremely happy because of the news. Then after that I told them, listen. He has no bomb.

When you consider under torture Abu Zubaydah turned Jose Padilla’s web searches into an active dirty bomb plot.

And when you consider that Dick Cheney wanted to have Iraqi Mukhabarat member Muhammed Khudayr al-Dulaymi waterboarded because he was sure he knew of the tie between Iraq and al Qaeda,

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

[snip]

Duelfer says he heard from “some in Washington at very senior levels (not in the CIA),” who thought Khudayr’s interrogation had been “too gentle” and

suggested another route, one that they believed has proven effective elsewhere. "They asked if enhanced measures, such as waterboarding, should be used," Duelfer writes. "The executive authorities addressing those measures made clear that such techniques could legally be applied only to terrorism cases, and our debriefings were not as yet terrorism-related. The debriefings were just debriefings, even for this creature."

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

Then it raises the really horrible possibility that Cheney pushed torture because it would produce the stories he wanted told. It would be difficult to distinguish whether Cheney believed this stuff and therefore that's what the torture produced or whether Cheney wanted these stories told and that's what the torture produced.

As Steven Kleinman said in an important Jason Leopold and Jeff Kaye story on this subject, the torture CIA used was designed to get false confessions, not accurate information.

"This is the guidebook to getting false confessions, a system drawn specifically from the communist interrogation model that was used to generate propaganda rather than intelligence," Kleinman said in an interview. "If your goal is to obtain useful and reliable information this is not the source book you should be using."

The people who approved torture had the means of knowing – should have known – it would elicit false confessions. It's just that no one can prove whether that was the entire point or not.

In this respect, then, the debate we'll resume tomorrow is similar to the debate about the phone dragnet, where the government has not fully described the purposes it serves (indeed, in both cases, the government is hiding their use of the program to obtain spies).

It's not just a question of whether torture is "effective" at obtaining intelligence. It's also whether the entire point of it was to produce spies and propaganda.