

BREAKING: CIA TORTURED ABU ZUBAYDAH AT A PRISON IN POLAND

Earlier today, the European Court of Human Rights ordered Poland to pay Abu Zubaydah and Abd al Rahim al-Nashiri a combined total of 230,000 Euros for facilitating the torture suffered at Stare Kiejkuty.

The court found Poland violated its obligations under the European Convention on Human Rights to prevent torture, ensure the right to liberty, and properly investigate allegations a crime had been committed on its territory.

It ordered Poland to pay al-Nashiri 100,000 euros in damages and 130,000 euros to Zubaydah.

“The ruling of the tribunal in Strasbourg on CIA jails is embarrassing for Poland and is a burden both in terms of our country’s finances as well as its image,” said Joanna Trzaska-Wieczorek, a spokeswoman for the Polish president.

Of course, that Poland hosted one of CIA’s black sites is not breaking news at all. We’ve known it for years.

But this is an official judgment affirming that to be true. Finally, a court has called America’s torture torture.

The judgment comes as the CIA dawdles over declassifying the Senate Intelligence Committee’s torture report. One reason for the delay, prior reporting has said, comes from a desire to protect our foreign partners in crimes – notably the UK and Poland.

So now that Poland's role has been confirmed, can we please get the torture report?

DOD REASSERTS ITS RIGHT TO FORCE FEED WHILE NOT DENYING FORCE FEEDING IS TORTURE

Last Thursday, as a number of outlets reported, Judge Gladys Kessler declined to renew her own Temporary Restraining Order prohibiting the government from force feeding Abu Wa'el Dhiab. As she wrote, Dhiab was willing to be force fed without withdrawing his feeding tube each session and without use of the restraining chair. But the government refused, and so, "faced with an anguishing Hobson's choice," in the face of the "intransigence of the Department of Defense," Kessler did not renew her TRO and ordered DOD to, "abide by their own Standard Operating Protocols, and that the standard for enteral feeding is whether Mr. Dhiab is actually facing an 'imminent risk of death or great bodily injury.'"

Only, it's not clear that's the standard. In fact, the government itself says the standard may be simply body weight of less than 85% of ideal body weight.

A slew of filings have been released in Dhiab's case in the last month (see below). But key among them are some filings submitted in April and early May, which were just released Friday.

Effectively, the delayed release of these documents reveals that back on May 7, one of the government's primary rebuttals to claims about the conditions under which Dhiab was force fed

last year was not to refute those claims, but rather to claim he had no standing to complain because he was not – at that point – being force fed. Only 6 days later Gitmo cleared Dhiab to be force fed.

Underlying this discussion is Dhiab's claim that the government has made the standards for force feeding arbitrary so as to be able to subject those detainees leading force feeding campaigns to painful treatment to get them to stop.

To substantiate that argument, the memorandum unsealed on Friday lays out the changes made to Gitmo's force feeding protocol in November and December. Those changes include:

- Deletion of limits on the speed at which detainees could be force fed
- Elimination of guidelines on responding to complaints about speed of force feeding
- Change of weight monitoring from daily to weekly
- Deletion of chair restraint guidelines (DOD made a special SOP to cover restraint chair they have thus far refused to turn over)
- Expansion of scenarios in which prisoners can be force fed, including those at 85% of ideal body weight (IBW)
- Deletion of provisions against on-off force feeding
- Discontinuation of use of Reglan (this has to do with potentially permanent side effects from the drug)

- Replacement of phrase “hunger strike” with phrase “medical management of detainees with weight loss”

In response, the government argued (at a time Dhiab was not eating but before they put him on the force feeding list) that he didn't have standing because he had not been force fed for 2 months. It also made a sustained defense of the 85% of IBW. Much of the rest of the response described how prisoners are currently force fed.

Dhiab's lawyers responded by parsing the language of the government response closely. They point out that:

- No one actually involved in the force feeding of detainees submitted a declaration in the case
- The Senior Medical Officer whose declaration forms the basis of much of the response didn't arrive in Gitmo until this February, and so has no first hand knowledge of last year's force feeding
- The guy who preceded him did not submit a declaration even though he remains in the Navy, stationed at Jacksonville NAS
- The government relies on a 2006 DOD Standard Operating Procedure document rather than the specific Gitmo SOPs written last year

Ultimately, Dhiab argues that the government has

stopped some of the most abusive practices associated with force feeding – which they compare (with a doctor’s declaration in support) to water torture – while being sued.

Respondents state that the force-feeding “is” conducted humanely, and that detainees “are” not being force-fed at quantities and speeds amounting to water torture. That might be partially true *today*, to the extent respondents have suspended some (but not all) of their abusive practices during the pendency of litigation challenging those practices. But Respondents utterly fail to rebut Petitioner’s showing of *past* abusive practices.

And of course, they’re making this argument as the government claims they shouldn’t have to turn over videos *or Dhiab’s medical records* from last year, the latter because they couldn’t be relevant to this suit because they couldn’t affect what might happen to Dhiab going forward – in spite of the fact that the SOPs remain unchanged.

This is all cross-allegation at this point; we may find out more when the government has to start turning over this stuff in June.

But it seems remarkable, the way the government has hidden details from last year, even while controlling Dhiab’s force feeding status and with it their legal argument.

April 18, 2014: Motion for preliminary injunction, with sealed supplemental memorandum

April 22, 2014: Dhiab speaks to lawyers

April 23, 2014: Dhiab resumes skipping meals

April 24, 2014 Status report

May 7, 2014: Sealed opposition to preliminary injunction

May 12, 2014: Sealed reply to opposition;
government refuses to provide 2013 medical
records, videos, restraint chair SOP

May 13, 2014: Emergency motion to preserve
evidence; Dhiab placed back on force feeding
list; nurses start cajoling him about eating

May 14, 2014: Order to reply to emergency
motion; according to his lawyer, Jon Eisenberg,
Dhiab force fed (all other force feeding details
come from Eisenberg)

May 15, 2014: Opposition to emergency motion;
according to filing, Dhiab had not yet been
force fed; Dhiab force fed in afternoon

May 16, 2014: Reply to opposition to emergency
motion; Kessler issues TR0; Dhiab claims
Sergeant harasses him about a FCE

May 21, 2014: Status report hearing

May 22, 2014: Kessler does not reissue TR0

May 23, Kessler orders partial disclosure;
documents unsealed; Dhiab force fed

May 24: Dhiab force fed twice

May 25: Dhiab force fed twice

May 26: Dhiab voluntarily takes food and
nutrient

**HISTORY REPEATS
ITSELF: KESSLER
ORDERS PRESERVATION
OF GITMO FORCED
FEEDING TORTURE**

VIDEOS

With even the New York Times editorial page chiming in on Thursday (just after the Abramson firing on Wednesday, so this is clearly a big deal to them), Judge Gladys Kessler ruled on Friday that the military must stop its forced feedings of a Syrian prisoner at Guantanamo and preserve videos of him being forcibly extracted from his cell and being fed. We've seen this movie before. Recall that Kessler was one of at least two judges ordering the CIA to preserve video evidence of waterboarding before Robert EATINGER and Jose Rodriguez decided to go ahead with destruction of the videotapes. Considering how out of control John Bogdan, head of the Joint Task Force Guantanamo Detention Group, already has been, it would not surprise me at all for these videos to meet the same fate. Heck, given EATINGER's current behavior in trying to use intimidation to stop further revelations on the torture front, it wouldn't even surprise me for him to decide, through some sort of OCA role, that it is the CIA's job to take possession of and to destroy the tapes in question.

Here is Carol Rosenberg reporting on Kessler's ruling:

A federal judge waded deep into the Pentagon's handling of the Guantánamo hunger strike on Friday, ordering the military to temporarily suspend forced-feedings of a Syrian prisoner at the detention center until a hearing Wednesday.

U.S. District Court Judge Gladys Kessler in Washington, D.C., also ordered the military to preserve any video recordings guards might have made hauling Syrian Mohammed Abu Wa'el Dhiab, 42, from his cell and giving him nasogastric feedings in a restraint chair. He has also been identified as Jihad Dhiab in court papers and news

reports.

The order appears to be the deepest intrusion into prison camp operations by the federal court during the long-running [hunger strike](#), which at one point last year encompassed more than 100 of Guantánamo's 154 detainees.

The military has since December refused to disclose how many detainees are force-fed as hunger strikers each day, and it was not possible to know if Navy doctors at the base considered Dhiab at risk by perhaps missing four or five days of tube feedings.

Rosenberg goes on to inform us that it only recently was learned that the videos exist. She also realizes that whether Bodgan and his crew will honor the order is an open question:

Military spokesmen from Guantánamo and the U.S. Southern Command did not respond Friday night to questions from the Miami Herald on whether the 2,200-strong military and civilian staff at the detention center had received and would honor the order.

Recall that when the waterboarding tapes were destroyed, that destruction was in direct violation of court orders, including one from Kessler:

The CIA destroyed the tapes in November 2005. That June, U.S. District Judge Henry H. Kennedy Jr. had ordered the Bush administration to safeguard "all evidence and information regarding the torture, mistreatment, and abuse of detainees now at the United States Naval Base at Guantanamo Bay."

U.S. District Judge Gladys Kessler issued a nearly identical order that July.

One ruse that was used to dodge the orders was the fact that the tapes were of prisoners that were “off the books” at the time of the court orders:

At the time, that seemed to cover all detainees in U.S. custody. But Abu Zubaydah and Abd al-Rahim al-Nashiri, the terrorism suspects whose interrogations were videotaped and then destroyed, weren't at Guantanamo Bay. They were prisoners that existed off the books – and apparently beyond the scope of the court's order.

Despite the clear knowledge that torture was carried out by the US and the videotapes of that torture were destroyed, there have been no consequences for those who were directly involved in these acts. As we saw back in March, the CIA attorney who gave the blessing for Rodriguez to destroy the tapes is now resorting to intimidation of Senate staffers to prevent further revelations of his crimes:

Dianne Feinstein just gave a barn burner of a speech explaining the CIA/SSCI fight over the Torture Report. There are a lot of details I'll return to.

But one of the most important issues, in my mind, is the detail that the Acting General Counsel of the CIA, Robert EATINGER, referred the Senate Intelligence Committee investigators to DOJ for investigation. (h/t to [DocexBlog](#) for [identifying](#) EATINGER) Feinstein correctly interpreted this as an attempt to intimidate her staffers as they complete the investigation.

And, as Feinstein made clear, EATINGER is a key focus of the report. Feinstein revealed that EATINGER (whom she did not name) was named, by name, (if I heard Feinstein's claim correctly) 1,600 times in the Torture Report.

At least some of those mentions surely describe CIA's decision to destroy the torture tapes, an act Eatinger **sanctioned**.

But Eatinger might not have to act. It seems pretty likely that John Bogdan will decide on his own to destroy the tapes, considering his central role in precipitating the hunger strike that is at the heart of the current litigation. From last July:

It has been clear for some time that the current hunger strike crisis at Guantanamo can be laid squarely at the feet of John Bogdan, who heads the Joint Task Force Guantanamo Detention Group. In other words, he is the head of the guard force. As I noted in **this post**, Shaker Aamer's attorney, in a statement to Andy Worthington, clearly blamed Bogdan for the actions that precipitated the hunger strike.

Yesterday, Judge Royce Lamberth dealt a severe setback to Bogdan, striking down one of his most needlessly abusive practices.

While Kessler's ruling is a very positive development, history tells us that it is very unlikely the tapes will ever be viewed by a court or that anyone will ever face consequences either for the acts depicted in the tapes or their eventual destruction or removal from access.

TORTURE FOR US,

RETIRE WITH IMPUNITY

Torturing on behalf of the United States appears to be a career move that results in a comfortable lifestyle after moving on from government service. Jose Rodriguez, who both ordered up torture and then personally destroyed video evidence of it, now profits from those events through book sales. James Mitchell, who was integral to the design of the torture program, now lives quietly in Land O'Lakes, Florida and until very recently didn't even have to bother talking with reporters, let alone crime investigators. Of course, if you choose to expose US torture, it's prison for you, as John Kiriakou has demonstrated.

But the disgusting free status of Rogdriguez and Mitchell pales in comparison to the level of depravity in the known history of personal involvement in torture for Haji Gulalai and how it was revealed yesterday that Gulalai is now living a quiet, comfortable life just outside Los Angeles. [Just as a bit of life advice, never piss off Julie Tate, as her work in finding Gulalai is perhaps the best bit of investigative journalism in the US in decades.]

Even very early in the US misadventures in Afghanistan, Gulalai was a favorite for the US and its press. Here is a bit from CNN in December of 2001:

Despite intelligence reports indicating the location of Mullah Mohammed Omar, a senior Afghan official said going after the Taliban leader is not a priority.

Haji Gulalai, Kandahar's intelligence chief, said information suggests that Omar is in Helmand province, west of Kandahar, in a district called Baghran.

He says the priority of officials in the Kandahar region is to rebuild the country and the city of Kandahar first, not chasing after Omar.

Gulalai played a special role in development of the Afghan government, eventually becoming, as described in the Post article, Afghanistan's "torturer in chief":

Since its inception, the NDS [National Directorate of Security] has depended on the CIA to such an extent that it is almost a subsidiary – funded, trained and equipped by its American counterpart. The two agencies have shared intelligence, collaborated on operations and traded custody of prisoners.

Gulalai was considered a particularly effective but corrosive figure in this partnership. He was a fierce adversary of the Taliban, officials said, as well as a symbol of the tactics embraced by the NDS.

"He was the torturer in chief," said a senior Western diplomat, who recalled meeting with a prisoner at an NDS facility in Kabul to investigate how he had been treated when Gulalai entered unannounced. The detainee became agitated and bowed his head in submission. "He was terrified, which made sense," the diplomat said. Gulalai was "a big wheel in a machine that ground up a lot of people."

In setting up the torture program for Afghanistan, Gulalai was paid directly by the CIA:

"It was chaos; you had to start from scratch," said a former senior U.S. intelligence official involved in the effort. The agency equipped the NDS with a fleet of vehicles brought up through Pakistan, delivered office supplies to a Kabul building that the Taliban had trashed and provided a stream of cash to cover payroll. "Money would come in on

aircraft, we'd put it through a counting machine and distribute it in duffel bags," said the former U.S. official, who spoke on the condition of anonymity to discuss the CIA's role.

Gulalai distinguished himself particularly for his torture in Kandahar:

Twice, U.N. officials persuaded then-NDS Chief Amrullah Saleh to issue orders firing Gulalai. Both times, the orders were undone by ethnic politics, U.N. officials said, as Karzai countermanded the Tajik NDS chief to protect his fellow Pashtun tribesman.

Instead of being dismissed, Gulalai was promoted to NDS headquarters in Kabul and put in charge of the agency's investigations directorate, known at the time as Department 17. The position gave him authority over the main NDS prison in Kabul, to which detainees from across the country were sent for long-term custody.

Allegations of abuse surged.

Although Gulalai disappeared sometime in 2009, it appears that by 2010 his Department 17 had been specifically banned by the UK for receiving prisoners they captured because of the known torture carried out there.

Standing out especially among the disgusting aspects of Gulalai's case is the mystery surrounding how he was able to enter the US and then be granted asylum. Rank and file interpreters who worked for the US military in Afghanistan (and Iraq) face incredible difficulty getting into the US, even when they can present evidence that they face extreme danger staying behind:

With the looming withdrawal of U.S. forces from Afghanistan, thousands of

Afghans who have served as military interpreters are in limbo as the State Department works to clear a backlog of SIV [Special Immigrant Visa] applications. Congress had authorized 8,750 visas for Afghan interpreters, but only 1,982 have been issued through Dec. 10.

/snip/

The Iraqi Refugee Assistance Project calls the SIV process “prohibitively complicated, bureaucratic and opaque.” The group, which also assists Afghans, says more than 5,000 Afghan applicants are backlogged. It says only 6,675 of the 25,000 visas authorized for Iraqi interpreters have been issued.

Congress last month extended the Iraq SIV program through Sept. 30, but failed to extend the Afghan program, which is set to expire Sept. 30.

But here is an even bigger outrage in the process surrounding Gulalai, again from the excellent report from Greg Miller, Julie Tate and Joshua Partlow:

Gulalai has made several return trips to Afghanistan in recent months to sell property there, family members and associates said. If true, the visits could undermine the argument that Afghanistan had become too dangerous for him, potentially complicating his asylum claim.

Just like Rogriguez and Mitchell, Gulalai will never face trial for his many well-documented crimes. Legal and diplomatic barriers magically fade away for those who conduct torture on behalf of the US, and every step is taken to make sure they live out the remainder of their lives in comfortable surroundings.

We can only hope that their sleep is haunted forever by the screams of their victims.

WILL ILLEGALITY OF NASHIRI TORTURE GET EXPOSED?

Carol Rosenberg reports the very big news that Judge James Pohl has ordered the government to turn over to Abd al Rahim al-Nashiri's lawyers top secret information on the torture their client endured.

The judge's order instructs prosecutors to provide nine categories of closely guarded classified CIA information to the lawyers – including the names of agents, interrogators and medical personnel who worked at the so-called black sites. The order covers “locations, personnel and communications” as well as cables between the black sites and headquarters that sought and approved so-called enhanced interrogation techniques, the two sources said.

It does not, however, order the government to turn over Office of Legal Counsel memos that both blessed and defined the so-called Torture Program that sent CIA captives to secret interrogations across the world after the Sept. 11, 2001 attacks – out of reach of International Committee of the Red Cross delegates.

“It's a nuclear bomb that may shut down the case,” said one person who read the order and is not a part of the Cole case.

I find Pohl's decision to order this in Nashiri's case whereas he has not made equivalent orders in the 9/11 case of particular interest. Perhaps he will once public releases back WaPo's report that CIA subjected Ammar al-Baluchi to ice drowning not sanctioned by any DOJ memo.

But in Nashiri's case, we have reason to believe that CIA realized right away they had broken the law with Nashiri. His treatment generated the referral to CIA IG John Helgerson. And the only technique John Yoo rejected was mock burial, which may have implications for the mock execution Nashiri endured.

I'm also quite interested in two other details. First, there are conflicting reports about how long Nashiri was subject to torture in in the UAE. I'm curious if this is part of the chronology at issue.

And finally, remember that even Papa Dick Cheney and his daughter don't claim waterboarding worked with Nashiri. We've never learned why not, though there are hints he may have had medical problems with the waterboard. Which makes Pohl's order about the doctors present particularly interesting too.

SHORTER DIFI: THE TORTURE REPORT STARTED IN RESPONSE TO MICHAEL HAYDEN'S LIE

I gotta hand it to Dianne Feinstein: the closest she comes to calling Michael Hayden a shriveled impotent old man in response to his suggestions

she's a hysterical female is when (at 6 minutes) she says calling women emotional is "an old male fallback position."

Far more interesting, though, is the description she offers for the genesis of the report. It arose in response to Hayden's damage control after CIA's destruction of the torture tapes became public.

In December [2007]—the 11th—Director Hayden appeared before our committee and said he would allow members and/or staff to review operational cables which he said were just as good.

[snip]

The genesis of the report was back with the videotape and back under then Chairman Rockefeller, who assigned staff, staff studied the operational cables, came back, reported to us, we took a look at that and said – both sides – we should move ahead and do a full study.

And while she doesn't say it, she makes clear that Hayden lied in this damage control, when he said the "operational cables were just as good" as the torture tapes.

He can't know that.

The backup to the CIA IG Report, after all, is that the even by the time CIA's Office of General Counsel decided to destroy the tapes, they had been damaged.

[Redacted] for many of the tapes one 1/2 or 3/4 of the tape "there was nothing." [Redacted] on some tapes it was apparent that the VCR had been turned off and then turned back on right away. [Redacted] on other tapes the video quality was poor and on others the tape had been reused (taped over) or not recorded at all. [Redacted] The label on some tapes read "interrogation session,"

but when viewed there was just snow. [Redaction] did not make note of this in [redaction] report. [Redaction] estimated that “half a dozen” videotapes had been taped over or were “snowy.”

And at least one torture session, including waterboarding, was not captured on the tapes at all.

OIG compared the videotapes to logs and cables and identified a 21-hour period of time” which included two waterboard sessions” that was not captured on the videotapes.

That’s important because the IG also found that the waterboarding depicted in the videos that remained undamaged didn’t comply with the guidelines laid out by DOJ. In other words, there’s very good reason to believe that the tapes got destroyed, in part, because they showed CIA exceeding the legal limits laid out by DOJ.

To make things worse, Rockefeller had requested the torture tapes in the weeks before they got destroyed.

So I can imagine how Hayden’s bullshit line about the cables being just as good as the torture tapes withheld from Rockefeller might launch an investigation.

Michael Hayden has only himself to blame for this report.

DIANNE FEINSTEIN INVOKES TORTURE’S

COVERT STATUS ON DECLASSIFICATION

Five years ago, I reported (BREAKING) that the Bush Administration (aka Dick Cheney) made the torture program a Special Access Program in unusual fashion. Rather than CIA Director George Tenet make torture a SAP, as mandated by the Executive Order governing such things, unnamed people in the National Security Council did so.

Panetta tells a funny story about how (but not when) the torture program became a special access program.

Section 6.1(kk) of the Executive Order defines a "special access program" as "a program established for a special class of classified information that imposes safeguarding and access requirements that exceed those normally required for information at the same classification level." Section 4.5 of the Order specifies the U.S. Government officials who may create a special access program. This section further provides that for special access programs pertaining to intelligence activities (including special activities, but not including military operations, strategic, and tactical programs), or intelligence sources or methods, this function shall be exercised by the Director of the CIA.

[snip]

Officials at the National Security Council, (NSC) determined that in light of the extraordinary circumstances

affecting the vital interests of the United States and the sensitivity of the activities contemplated in the CIA terrorist detention and interrogation program, it was essential to limit access to the information in the program. NSC officials established a special access program governing access to information relating to the CIA terrorist detention and interrogation program. As the executive agent for implementing the terrorist detention and interrogation program, the CIA is responsible for limiting access to such information in accordance with the NSC's direction. [my emphasis]

See the funny bit? The first paragraph says the Director of the CIA "shall" "exercise" the function of creating special access programs pertaining to intelligence. But then the very next paragraph says "NSC officials established a special access program." One paragraph says the Director of CIA has to do it, but the next paragraph admits someone else did it.

Since that time, I've asked experts in classification and they agree that something funky went down (note, too, that torture wasn't a SAP at the very beginning).

I believe torture's odd SAP status is one of the things that has implicated the Presidency, which the Obama Administration went to some lengths to cover up.

But it also should dictate the White House take the lead on declassification of the torture program.

Don't take my word for it – take Dianne Feinstein's word. In a letter to the White House, she invoked torture's status as a "covert action program under the authority of the President and National Security Council" to call for the White House to lead declassification.

In a letter to the President dated April 7 and obtained by McClatchy, Dianne Feinstein, D-Calif., called for swift action on the summary and the findings and conclusions of the report, which members voted last week to declassify. The summary, Feinstein said, should be released "quickly and with minimal redactions."

"As this report covers a covert action program under the authority of the President and National Security Council, I respectfully request that the White House take the lead in the declassification process," the letter reads.

Note, Dianne Feinstein has just formally confirmed the same detail the Obama Administration appealed to keep secret: torture was authorized by the President, not by OLC, not by George Tenet, not by John Rizzo. The President.

Which is why the President should take responsibility for releasing the report.

THE TORTURE APOLOGISTS RAISE

BRENNAN'S TORTURE-DERIVED SCARY MEMOS

Some time in mid-2004, 8 high ranking National Security officials gave then presiding FISA Court Judge Colleen Kollar-Kotelly a briefing. Their goal was to convince her the then halted and now-discontinued Internet dragnet program was so important, and the terrorist threat against the US so great, she should write a shoddy legal opinion authorizing NSA to restart the program under the authority of the FISA Pen Register statute.

As part of the briefing, they replicated a process they had used for Bush's illegal wiretap program: to have CIA's analytical people write what they called a "scary memo" explaining why al Qaeda was so dangerous we had to continue that dragnet.

After the terrorism analysts completed their portion of the memoranda, the DCI Chief of Staff added a paragraph at the end of the memoranda stating that the individuals and organizations involved in global terrorism (and discussed in the memoranda) possessed the capability and intention to undertake further terrorist attacks within the United States. The DCI Chief of Staff recalled that the paragraph was provided to him initially by a senior White House official. The paragraph included the DCI's recommendation to the President that he authorize the NSA to conduct surveillance activities under the PSP. CIA Office of General Counsel (OGC) attorneys reviewed the draft threat assessment memoranda to determine whether they contained sufficient threat information and a compelling case for reauthorization of the PSP. [my emphasis]

As head of the Terrorist Threat Integration Center (and later as head of the nascent National Counterterrorism Center), John Brennan oversaw that “scary memo.”

Last year, John Brennan admitted that he used information derived from the torture program (he calls it the detention and interrogation program) for those “scary memos.”

Burr: I’m still not clear on whether you think the information from CIA interrogations saved lives. Have you ever made a representation to a court, including the FISA court, about the type and importance of information learned from detainees including detainees in the CIA detention and interrogation program?

Brennan: Ahm, first of all, in the first part of your question, as to you’re not sure whether I believe that there has been information ... I don’t know myself.

Burr: I said I wasn’t clear whether I understood, whether whether I was clear.

Brennan: And I’m not clear at this time either because I read a report that calls into question a lot of the information that I was provided earlier on, my impressions. Um. There, when I was in the government as the head of the national counterterrorism center I know that I had signed out a number of um affirmations related to the uh continuation of certain programs uh based on the analysis and intelligence that was available to analysts. I don’t know exactly what it was at the time, but we can take a look at that.

Burr: But the committee can assume that you had faith if you made that claim to a court or including the FISA court, you had faith in the documents in the information that was supplied to you to make that declaration.

Brennan: Absolutely. At the time if I had made any such affirmation, i would have had faith that the information I was provided was an accurate representation. [my emphasis]

We can imagine the kind of things Brennan might have used in his “scary memos” and that briefing to Kollar-Kotelly, on which the entire FISC-authorized dragnet .

Hassan Ghul – whom CIA tortured even after he provided critical information about Osama bin Laden’s courier – was already in custody, and given uncertainty about when his torture started, may have provided such information.

In addition, at the time of the June-July briefing, the Bush Administration was already gearing up claims of a Presidential election year threat. These claims derived in part from Khalid Sheikh Mohammed and Hambali interrogations in June and July, and September 2003, respectively. Then, in December 2003, the British arrested and beat Babar Ahmad, who had ties to a bunch of Pakistanis who would later be captured, and who led to Dhiren Barot in the UK. The Brits started tailing Barot sometime in June 2004 (so during the period when Brennan and others were briefing about the threat). And in mid-June, the CIA took custody of Khalid Sheikh Mohammed’s nephew, Musaad Aruchi.

While Barot clearly intended harm and was plotting against the UK when he was arrested, the claims they made about his threat to the US were based on preliminary documents that dated to 1999-2000. That is, while these detainees did present a hostile threat, the US government was, in public statements (and therefore presumably the CIA was, in the earlier private briefing), vastly overstating the imminence of the threat to the US.

In any case, just days and weeks after the likely date of the briefing to Kollar-Kotelly, CIA began a second series of lies to DOJ to get

torture approved.

I would suspect there was a good deal of chaff in the briefing in response to which Kollar-Kotelly blew up the concept of “relevant” and with it institutionalized the dragnet.

And Brennan would have been the one vouching for those claims – and claims he continued to present to FISC through 2005.

I raise all this because the torture apologists are now repeating what Richard Burr started back during Brennan’s confirmation hearing: reminding Brennan that he made legal declarations incorporating information derived from torture. That’s how Marc Thiessen frames his entire op-ed demanding that Brennan “defend” the torture program.

CIA Director John Brennan is trapped – caught between the Senate Intelligence Committee, which is accusing his agency of lying about the effectiveness of its terrorist interrogation program, and his boss, President Obama, who has told Brennan directly that he does not want him to defend the program.

Brennan knows that the Senate Intelligence Committee report is a partisan sham. As head of the National Counterterrorism Center from 2004 to 2005, Brennan was one of the top consumers of the intelligence obtained from CIA detainees. If their interrogations had produced nothing of value, as committee chairman Dianne Feinstein (D-Calif.) claims, Brennan would know it.

There are a whole slew of reasons why Brennan can be pressured to suppress the Torture Report. But a big one is that he used claims derived from torture in legal contexts. Not only is his legal affirmation at risk, but so are the counterterrorism programs based on those torture-derived affirmations.

Which is why I expect to hear more of this from torture apologists in coming months.

THANKS TO DIANNE FEINSTEIN AND MARK UDALL FOR SEEING TORTURE REPORT THROUGH

The Senate Intelligence Committee just voted 11-3 to release the torture report, with 3 ardent GOP critics voting to release the report.

McClatchy (as it has had throughout recent debates over this) has good coverage, including two new details:

- CIA illegally detained 26 of 119 detainees (this may refer to CIA's practice of ghosting detainees, and removing some illegally from Iraq, as well as the mistaken detention of people like Khalid el-Masri).
- "The news media were manipulated with leaks that tended to blunt criticism of the agency." (We knew that, but glad to see SSCI agrees).

A lot of people on the Senate Intelligence Committee deserve credit for making this happen. It started, after all, under Jay Rockefeller's tenure.

But Dianne Feinstein and Mark Udall deserve particular attention. Feinstein persisted in this through a lot of opposition from Republicans on the committee. And she oversaw a great deal of work to get it done.

Her statement read, in part,

The report also points to major problems with CIA's management of this program and its interactions with the White House, other parts of the executive branch and Congress. This is also deeply troubling and shows why oversight of intelligence agencies in a democratic nation is so important.

The release of this summary and conclusions in the near future shows that this nation admits its errors, as painful as they may be, and seeks to learn from them. It is now abundantly clear that, in an effort to prevent further terrorist attacks after 9/11 and bring those responsible to justice, the CIA made serious mistakes that haunt us to this day. We are acknowledging those mistakes, and we have a continuing responsibility to make sure nothing like this ever occurs again.

While I'm not satisfied simply with admitting error – democracy can't work when rule of law doesn't – she's right that the intel agencies need adequate oversight.

Mark Udall, in the last year, has also made the report a particular focus, particularly with his relentless pressure on the White House, even in a tough reelection year. He repeated that pressure in his statement on the release.

"Following today's historic vote, the president faces what I believe should be a straightforward question. He can defer declassification decisions to the CIA – which has demonstrated an inability to face the truth about this program – or

pass this authority to the Director of National Intelligence or hold on to the redaction pen himself,” Udall added. “The president needs to understand that the CIA’s clear conflict of interest here requires that the White House step in and manage this process.”

Let’s hope Feinstein, Udall, and others persist in their efforts to fight back on what is sure to be CIA criticism of the report.

Update: As I noted earlier, Richard Burr was a yes vote, along with Saxby Chambliss and one other Republican in addition to Collins. Tom Coburn voted “present.”

HOW THE TORTURE REPORT DECLASSIFICATION IS LIKELY TO WORK

Aspiring Senate Intelligence Chair Richard Burr has announced he will vote to declassify the Torture Report.

Sen. Richard Burr, R-N.C., also said he planned to vote to declassify.

[snip]

Burr added: “We’ve already expressed our opposition to the content.”

Declassifying, he said, is “the only way that we get minority views out there,” because the Republicans plan to offer their views on the report.

This gives a pretty strong indication of where this Torture Report debate will go – and why CIA

got so quiet all of a sudden, aside from former CIA lawyer John Rizzo's tireless propaganda efforts.

The Committee would have published dissenting views in any case, but Republican Susan Collins specifically included them in her support for the report.

What we're going to get will be the Executive Summary, Findings, and Additional and Dissenting Views. Because we'll get just the Executive Summary, we won't get much hard detail – aside from that which has been public for years – about the allegations that will appear in the Executive Summary, which will make it harder to rebut any claims CIA's defenders make.

Moreover, I would not be in the least surprised if the same rule that applies to CIA Publication Review Board decisions – that the writings of torture critics like Ali Soufan and Glenn Carle are aggressively censored, while the views of torture boosters like Rizzo and Jose Rodriguez will be permissively published – applied here. The CIA has – as McClatchy emphasizes – already assumed they'll do the declassification review. And in spite of calls for the White House to take the lead, I expect they won't. After all, the White House has relied on CIA to hide the Executive Privilege-lite documents (which I suspect would show that CIA only lied to some people at the White House, but not to people like David Addington). So CIA is owed something by the White House.

That mutual embrace of incrimination will provide the CIA a great deal of protection.

Remember, too, that torture critics have gotten recent warnings not to speak publicly, even while Rodriguez and Rizzo blather away.

And all this – what will surely be calls that Democrats have unfairly tainted noble Jose Rodriguez' reputation – will play out against electoral politics, as Republicans try to take out Mark Udall for his opposition to torture.

Thus far, too, the torture boosters have laid the groundwork to win this debate. Even ignoring Rizzo and Rodriguez' books, they've been working the press with details, as compared to the vague releases that the Torture Report will find CIA lied.

Which is my pessimistic way of saying that unless torture critics get a lot more serious about the propaganda onslaught the Republicans plan to launch to defend torture, this Torture Report release may not do all that much good at all. Torture critics largely lost this debate in 2009, and they'll actually have less new information with which to fight this if CIA gets its way on declassification.