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How a false witness helped the CIA make a case for torture

Fear of 2004 election attack prompted resumption of torture and Internet surveillance, amid dubious claims by 'Asset Y'

by Marcy Wheeler

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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.

Both the torture program and President Bush's warrantless wiretap program, Stellar Wind, were partly halted from March through June of 2004. That March, Assistant Attorney General Jack Goldsmith prepared to withdraw Pentagon authorization for torture, amid growing concern following the publication of pictures of detainee abuse at Iraq's Abu Ghraib, and a May 2004 CIA inspector general report criticizing a number of aspects of the Agency's interrogation program. On June 4, 2004, CIA Director George Tenet suspended the use of torture techniques.

During the same period, the DOJ lawyers who pushed to stop torture were also persuading President George W. Bush to halt aspects of Stellar Wind, a program that conducted warrantless wiretapping of Americans’ communications inside the U.S., on top of the Internet metadata. After a dramatic confrontation in the hospital room of Attorney General John Ashcroft on March 10, 2004, acting Attorney General Jim Comey and Goldsmith informed Bush there was no legal

basis for parts of the program. Ultimately, Bush agreed to modify aspects of it, in part by halting the collection of Internet metadata. But even as Bush officials suspended that part of the program on March 26, they quickly set about finding legal cover for its resumption. One way they did so was by pointing to imminent threats — such as a planned election-season attack — in the United States.

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.

In its rebuttal to the Senate report, the CIA argues the agency was right to take seriously Asset Y's reporting, in spite of those initial doubts. The CIA wrote numerous reports about the claim "even as we worked to resolve the inconsistencies." Reports from detainee Hassan Ghul, who was captured in January 2004, supported the possibility that a cell of Al-Qaeda members in Pakistan's tribal areas might be planning a plot of which he was unaware. And the CIA corroborated other parts of Asset Y's reporting.

Still, the CIA had one further reason for doubting claims that Gul was at the center of an Al-Qaeda election-year plot. Ghul told the CIA about an attempt by Gul, in the fall of 2003, to sell anti-aircraft missiles to Al-Qaeda; the Qaeda figure in Ghul's story didn't even want to work with Gul. And Ghul later learned Gul was probably lying about his ability to acquire the missiles.



Flawed, brutal and ineffective: Senate's damning report on CIA torture

Long-awaited document concludes agency provided 'extensive inaccurate information' about its black site operations

Nevertheless, the CIA took seriously Asset Y's claim that Gul was involved in an election plot and moved quickly to gain custody of him after his arrest by Pakistan in June 2004. Even before CIA rendered Gul to its custody, Tenet started lobbying to get torture techniques reapproved for his interrogation.

On June 29, Tenet wrote National Security Adviser Condoleezza Rice seeking approval to once again use some of the techniques whose use he suspended less than four weeks earlier, in the hope of gathering information on the election season plot. "Given the magnitude of the danger posed by the pre-election plot and Gul's almost certain knowledge of any intelligence about that plot" Tenet wrote, relying on Asset Y's claims, "I request the fastest possible resolution of the above issues."

On July 20, according to the report, top administration officials gave CIA verbal approval to get back into the torture business. Ashcroft stated that most previously approved interrogation techniques would not violate U.S. law on July 22 (though not waterboarding). And by the end of July, CIA started coaxing DOJ to approve other techniques — such as slapping someone in the stomach or hosing them down with cold water or limiting their food — which had already been used by the CIA but never officially approved by DOJ.

At the same time, the government was also using the ostensible election-season plot, among others, to persuade the Foreign Intelligence Surveillance Court (FISC) — the secret court that approves domestic spying on Americans — to authorize the Internet dragnet.

After Bush halted the Internet dragnet on March 26, his aides began working with FISC presiding judge Colleen Kollar-Kotelly to find a way to use FISA authority -- normally been used to access records for a single phone or Internet account -- to collect Internet metadata in bulk. They provided a series of briefings, including one attended by Terrorist Threat Integration Center head John Brennan and CIA Director George Tenet, to explain the threat. In addition, they provided what — under Stellar Wind — analysts called a "scary memo," summarizing all the threats facing the country to underscore the urgency of the program. Tenet's declaration included as an appendix to an application submitted in the days before July 14, 2004, laid out the threats CIA and others were fighting that summer.

Tenet's declaration is so heavily redacted that it's not clear which threats are being described and the relative urgency he assigned them. The CIA declined to comment on this and other questions for this story. It definitely includes other threats, such as that Al-Qaeda would obtain WMD. But the election year threat was a key part of it. The declaration lists U.S. election politics among the "four key factors" determining whether Al-Qaeda might execute the attack on the U.S. It describes "attacks against or in the host cities for the Democratic and Republican Party conventions" as "especially attractive" to the plotters, who it says were based in Waziristan — the area where Gul operated.

Gul was not the sole reason for concern about election year plots. Public reporting attributed it to the surveillance of U.S. targets a British extremist, Dhiren Barot, undertook on orders from Khalid Sheikh Mohammed well before 9/11. Under CIA torture, Mohammed offered outlandish and inconsistent descriptions of Barot's plots, leading CIA to believe for three months of 2003 that Mohammed sent Barot to recruit black Muslims in Montana (home to hardly any of either) to start forest fires. Barot traveled to Pakistan for training in early 2004. But by that point, the CIA should have known that Barot's plots, which a British court ultimately deemed "amateurish," focused on the U.K.

Gul, to the CIA, remained an important reason for the concern. According to an agency report from June 2004, just weeks before the FISC application, “Gul is the source of [Asset Y's] pre-election threat information. This information forms a substantial part of the USG's current pre-election threat assessment.” Another August report also stated that much of the reporting on the pre-election threat came from Asset Y.

Judge Kollar-Kotelly invoked Tenet's material in a redacted section of her opinion authorizing the phone dragnet, pointing to it as a key reason to permit collection of what she called “enormous” amounts of data from innocent Americans.

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 he 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.

By 2005, CIA had concluded that ASSET Y was a fabricator, and Janat Gul was a “rather poorly educated village man [who is] quite lazy [who] was looking to make some easy money for little work and he was easily persuaded to move people and run errands for folks on our target list” (though the Agency wasn't always forthright about the judgment to DOJ).

The torture program, which was resumed in part because of a perceived urgency of extracting information from Gul on a plot that didn't exist, continued for several more years. The Internet dragnet continued under FISC authorization, on and off, until December 2011. And several other still active NSA programs, including the phone dragnet, relied on Kollar-Kotelly's earlier authorization as precedents – the case for which had also been derived, in part, from one long discredited fabricator.