

## *INS Special Forum: The US Senate Select Committee report on the CIA's Detention and Interrogation Program*

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In December 2014, the US Senate Select Committee on Intelligence (SSCI) released a summary report of its investigation into the Central Intelligence Agency's (CIA) Detention and Interrogation Program during the 'war on terror'.<sup>1</sup> This amounted to less than a tenth of the full report<sup>2</sup> - which remains classified - yet represented the culmination of one of the most contentious investigations in the history of the SSCI, into one of the controversial episodes in the history of the CIA.

The report provided graphic detail of the application of CIA techniques and its findings and conclusions were damning. However, public understanding of the report's findings and conclusions was shaped not just by the content but by the circumstances of its release and the politics of its reception. The report catalogued instances of CIA resistance to the SSCI investigation and for some the response to the report's publication from former CIA officials was a further stage in this process, one in which the form of resistance shifted from obstruction to obfuscation. For others, this was a necessary response to a partisan attack – some defenders of the program pointedly referred to the report as a 'majority' or 'Democrat's' report - which misrepresented the efficacy of the program. The manner in which the media pursued the issue and the language it adopted in reporting it (for example, did these methods amount to torture or were they merely Enhanced Interrogation Techniques - EITs?) impacted on understandings of the lessons to be drawn from the report. Social media

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<sup>1</sup> US Senate Select Committee on Intelligence, *Committee Study of the Central Intelligence Agency's Detention and Interrogation Program*, December 3, 2014 (henceforward 'SSCI report'). Available at [http://fas.org/irp/congress/2014\\_rpt/ssci-rdi.pdf](http://fas.org/irp/congress/2014_rpt/ssci-rdi.pdf). Accessed July 10, 2015.

<sup>2</sup> SSCI report, p.3.

also played a significant role. Defences in the mainstream media by former members of the George W. Bush Administration – particularly Vice-President Dick Cheney – were robust, but for some were best understood as episodes in the history of the ‘politics of lying’.<sup>3</sup>

The report’s reception also focused attention on the process by which the Committee had produced it. Defenders of the program were highly critical of this process. At the same time, some critics of the program could also find much to criticise in the process that culminated in the release of the summary report. As a consequence of all this the question of precisely what conclusions should be drawn from the report remains contested, while opinion polling on the question of torture does not suggest that the SSCI’s findings have impacted negatively on public attitudes, despite the wealth of detail contained in the report. This process of contestation is ongoing. September 2015 saw the publication of *Rebuttal*, a volume that pulled together the SSCI Minority Views, the CIA’s response to the SSCI summary report, and essays by former senior CIA officials such as George Tenet, Porter Goss, Michael Hayden and Jose Rodriguez. In it, Goss argues that the Senate report was “polarizing and corrupted” and “drove the issue from the highway of discourse to the gutter of sniping.”<sup>4</sup> The office of former SSCI Chairman Dianne Feinstein responded with a 93-page rebuttal of the claims contained in *Rebuttal*.<sup>5</sup>

The continuing controversy over the report – in terms of the investigative process, the report’s findings, and its reception – and the range of issues this raises in relation to the study

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<sup>3</sup> See, for example, Eric Alterman, *When Presidents Lie: A History of Official Deception and Its Consequences* (New York: Penguin Books, 2004); John J. Mearsheimer, *Why Leaders Lie: The Truth About Lying in International Politics* (New York: Oxford University Press, 2011); Frank Rich, *The Greatest Story Ever Sold: The Decline and Fall of Truth in Bush’s America* (New York: Penguin Books, 2006). On Dick Cheney’s role in the reception of the report, see, for example, Ruth Marcus, ‘Dick Cheney’s Tortured Logic’, *Washington Post*, December 16, 2014, [https://www.washingtonpost.com/opinions/ruth-marcus-dick-cheney-tortured-logic/2014/12/16/6cfc8e82-854c-11e4-b9b7-b8632ae73d25\\_story.html](https://www.washingtonpost.com/opinions/ruth-marcus-dick-cheney-tortured-logic/2014/12/16/6cfc8e82-854c-11e4-b9b7-b8632ae73d25_story.html). Accessed July 25, 2015.

<sup>4</sup> Bill Harlow (ed.), *Rebuttal: The CIA Responds to the Senate Intelligence Committee’s Study of Its Detention and Interrogation Program* (Annapolis, MD: Naval Institute Press, 2015).

<sup>5</sup> [http://www.feinstein.senate.gov/public/index.cfm/files/serve?File\\_id=69A0EBC9-999C-4593-B44C-CB24CE9D6689&SK=9B3E4220EB835CCB4A92E9A7EE85AFA8](http://www.feinstein.senate.gov/public/index.cfm/files/serve?File_id=69A0EBC9-999C-4593-B44C-CB24CE9D6689&SK=9B3E4220EB835CCB4A92E9A7EE85AFA8). Accessed September 16, 2015.

of intelligence ethics, oversight and accountability, all combine to make this an important topic for the second *INS* Special Forum.<sup>6</sup> Eight leading experts in the areas of intelligence ethics and oversight and accountability were invited to contribute their perspectives on these issues. The responses that follow, presented in alphabetical order, offer a range of views that together provide an excellent guide to the questions and concerns posed by the report and its reception, and provide a thoughtful basis for further exploration and consideration of key issues; of ethics, of the relationship between claims regarding efficacy and normative values in the torture debate, of the relationship between law and ethics, of the significance of language in the torture debate, of the ‘politics of lying’, and of the implications of this episode for the future of intelligence oversight in the US.

DAVID M. BARRETT

The fact that the SSCI’s “torture report” (at least a redacted version of its large executive summary) was declassified at all is significant, in light of the opposition of the CIA’s director, John Brennan, and many past directors and current supporters. The limp support given by President Obama for its release did not help much. Nor was there intense public pressure for that step. In the Congress, including its two intelligence committees, views were split on the propriety of doing so. Its publication was due in large part to the courage of Dianne Feinstein (D-California), then chair of the Committee.

Here, I wish to speak mainly to the politics of the report’s release, since the news media did much to summarize the document’s content.

The greatest obstacles that Senator Feinstein faced were political. Yes, the logistical challenges that her committee and its staff faced in reviewing voluminous records was

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<sup>6</sup> The first was Loch K. Johnson (ed.), ‘An *INS* Special Forum: Implications of the Snowden Leaks’, *Intelligence and National Security*, Vol.29 No.6 2014, pp. 793-810.

notable, as was the task of writing the report, but that's what legislators, committees and their staffs are for. The real problem for Feinstein, once she realized that the report should be made substantially public, was the fierce opposition, even attempted intimidation, she faced.

On the intelligence committee, most Republicans initially went along with conducting the investigation, but opposed the release of the report. While Feinstein had a decent working relationship with the ranking Republican member, Saxby Chambliss (Georgia), even he ultimately voted against releasing it. Chambliss, who has since retired, argued publicly that Feinstein had become too partisan. In the larger Congress, criticisms were greater. One House member suggested that Feinstein was a "traitor."<sup>7</sup>

A major complication was Brennan's conviction that Senate staffers had somehow accessed (thereby stealing) certain highly classified material. In response, he authorized CIA personnel to investigate this by hacking into computers reserved exclusively for use by Senate staffers. Here he crossed a constitutional line, i.e. the so-called separation of powers of the different branches of government. After revealing this to Feinstein and Chambliss, he insisted for months that he was justified in doing so. Feinstein insisted the opposite. As importantly, she took the issue to the Senate floor with a major speech. In time, Brennan would be shown to have been wrong, though, and he apologized to Feinstein and Chambliss. But it was clear to Feinstein's close associates that she suffered through the months of struggle and wondered at times if she was indeed in the right. But, like certain others, Republican Senator John McCain, a key opponent of torture, voiced private and public admiration for Feinstein's actions and courage.

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<sup>7</sup> "Jeff Duncan Calls Dianne Feinstein a 'Traitor,'" *Piedmont Today*, December 21, 2014. Accessed on August 15, 2015 at <http://www.piedmonttoday.com/2014/12/21/jeff-duncan-calls-dianne-feinstein-a-traitor/>

About the report, even President Obama stayed mostly silent when Feinstein fought for its fullest declassification. (When the Feinstein-Brennan struggle became highly publicized, I predicted that Brennan's professional future was endangered.<sup>8</sup> My logic was that a CIA head cannot function effectively if an intelligence committee chair strongly opposes him. I was wrong, though, having underestimated President Obama's attachment to Brennan.) Secretary of State John Kerry even telephoned Feinstein and parroted a familiar line, that release of the report, with ugly details of torture, would endanger U.S. personnel stationed around the world. But, to her credit, shortly before the Republicans re-took control of the Senate, she had the committee report issued.

There is not much reward for legislators who engage in robust oversight of the CIA when a controversial issue is at hand. On CNN, the journalist Wolf Blitzer repeatedly implied in interviewing Feinstein that she actually had endangered the lives of Americans. That news channel sometimes seems to be competing with Fox News in doing hawkish "journalism." It is revealing that even "liberal" American news outlets deferred to the Bush administration and the CIA well into the Obama era by calling torture by the bizarre name the Agency and others used: "enhanced interrogation techniques." Only at the time of the controversy over whether the torture report should be declassified did the *New York Times* finally decide, as a matter of policy, to drop that practice. "From now on, *The Times* will use the word 'torture' to describe incidents in which we know for sure that interrogators inflicted pain on a prisoner in an effort to get information."<sup>9</sup>

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<sup>8</sup> David M. Barrett, "Feinstein Vs. Brennan: Heads Will Roll," *Roll Call*, March 20, 2014. Accessed on August 15, 2015 at [http://www.rollcall.com/news/feinstein\\_vs\\_brennan\\_heads\\_will\\_roll\\_commentary-231555-1.html](http://www.rollcall.com/news/feinstein_vs_brennan_heads_will_roll_commentary-231555-1.html)

<sup>9</sup> Dean Baquet, "The Executive Editor on the Word 'Torture,'" *The New York Times*, August 7, 2014. Accessed on August 10, 2015 at <http://www.nytimes.com/times-insider/2014/08/07/the-executive-editor-on-the-word-torture/>

The public wasn't much interested in the report and still has an uneducated enthusiasm for torture.<sup>10</sup> What can we expect otherwise when even some elites, including a justice of the Supreme Court, get their enlightenment on the issue from a fictional and wildly unrealistic television program?<sup>11</sup>

Senator Jay Rockefeller (D-West Virginia), who formerly led the intelligence committee, had it right: "The committee's study of the detention and interrogation program is not just the story of the brutal and ill-conceived program itself; this study is also the story of the breakdown in our system of governance that allowed the country to deviate in such a significant and horrific way from our core principles. One of the profound ways that breakdown happened was through the active subversion of meaningful congressional oversight..."<sup>12</sup> And Senator Feinstein's repeated response to critical questions about why the report should have been declassified still bears circulation: "Read the report!"

### **Notes on Contributor**

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### ROSS W. BELLABY

When it comes to holding people to account for the atrocities detailed in the SSCI report, it is clear that those in the interrogation room carrying out the torture should face a significant amount of blame for the harm caused. What is less clear, however, is how far up the chain of

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<sup>10</sup> Connie Bruck, "The Inside War: To Expose Torture, Dianne Feinstein Fought the CIA—and the White House," *The New Yorker*, June 22, 2015. Accessed on August 9, 2015 at <http://www.newyorker.com/magazine/2015/06/22/the-inside-war>

<sup>11</sup> Andrew Sullivan, "Scalia and Torture," *The Atlantic Monthly*, June 19, 2007. Accessed on August 10, 2015 at <http://www.theatlantic.com/daily-dish/archive/2007/06/scalia-and-torture/227548/>

<sup>12</sup> Rockefeller, remarks to the Senate, December 9, 2014. Accessed on August 13, 2015 at <http://votesmart.org/public-statement/942456/senate-select-committee-on-intelligence-study-of-the-cias-detention-and-interrogation-program#.VdAn5Bfugqt>.

command the blame should stretch. Who knew; should they have known; and what role did they have in instigating or perpetuating the harm?

Upon reading the report it can be strongly argued that while those at CIA Headquarters might have been distanced from the harmful acts, they were not only aware of the type of interrogation techniques used but also actively fostered and escalated a torture culture itself.<sup>13</sup> Indeed, the report details how senior CIA officials created an environment for the successful deployment of torture by isolating themselves and their activities from external oversight;<sup>14</sup> encouraged an elite, inward looking mentality that distorted the pressures involved that resulted in the normalising, vindicating and even lionising of the abuse carried out;<sup>15</sup> developed a training program on how to administer enhanced interrogation;<sup>16</sup> and smothered internal criticism from on-site interrogators who claimed that individuals were ‘compliant and cooperative’, but were still ordered by CIA Headquarters ‘to continue using the CIA’s enhanced interrogation techniques’ – escalating and protracting the abuse.<sup>17</sup>

In comparison, the role of the political elite is less clear. On the one hand it could be argued that they had no knowledge of the harm being caused and so cannot be blamed as a result. For example, CIA records state that prior to the use of the EITs on Abu Zubaydah in 2002, ‘the CIA did not brief Secretary of State Colin Powell or Secretary of Defense Donald Rumsfeld’.<sup>18</sup> Also, anticipating that presidential approval might be needed for the EITs, the CIA significantly revised their presentation to reduce the harm reported and ‘eliminate references to the waterboard’.<sup>19</sup>

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<sup>13</sup> SSCI report, p.26.

<sup>14</sup> Ibid, pp.54, 119, 123.

<sup>15</sup> Ibid, p.438.

<sup>16</sup> Ibid, p.58.

<sup>17</sup> Ibid, pp.78, 43, 66.

<sup>18</sup> Ibid, p.38.

<sup>19</sup> Ibid.

At this stage it could be that there was limited awareness by the political branches as to what was occurring and so their blame is muted. A simple lack of knowledge, however, is not sufficient. Those in positions of power should be held personally liable when they fail in their responsibility to have all the relevant information they would need to make a full and rational decision.<sup>20</sup> Those in a position of authority or responsibility are bound with the obligation to be informed on the actions of those within their care or jurisdiction. Such members of the executive and legislature are not laypeople, but individuals who actively sought a job with a position of authority and are thus charged with an extra-special expectation to collect information and act. Moreover, while it could be argued that they were never explicitly asked for authorisation, or the details were obfuscated, there were indications of abuse that should have prompted an explicit and personal review. For example, in September 2002 when SSCI Chairman Bob Graham made multiple and specific requests for additional information and the CIA officials simply did not respond,<sup>21</sup> given that he had concerns means he is still obligated to investigate further, report his concerns upwards to his superiors and pass them on to his successor, without which a significant degree of blame is placed on him for the harm that then followed.

Equally, when DCI Tenet and CIA General Counsel Scott Muller met with Vice President Cheney and National Security Advisor Condoleezza Rice on July 29, 2003 to seek policy reaffirmation, even if they were not aware of the magnitude of the abuse, they were presented with a list of EITs including the use of waterboarding, demonstrating that they were now aware that something far greater than is normally allowed was occurring. They are, therefore, at this stage guilty for the harm caused by not investigating further, informing their superiors

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<sup>20</sup> M. Bradley & C. A. Schipani, 'The Relevance of the Duty of Care Standard in Corporate Governance' *Iowa Law Review* Vol.75 No.1 1989, p.19.

<sup>21</sup> SSCI report, pp.48-9.

and for giving their authorisation.<sup>22</sup> Although the report indicates that Rice had originally advised against informing other members of the National Security Council, she subsequently decided that Secretary of State Colin Powell and Secretary of Defence Donald Rumsfeld should be briefed, which happened for the first time in a 25-minute briefing on September 16, 2003.<sup>23</sup> This widens the circle of blame rather than diminishing its individual power. Moreover, they are also negligent in their failure to inform the President as their superior. In doing so they also make the President negligent for not inquiring further, which becomes especially problematic on the behalf of George W. Bush given the International Committee of the Red Cross's two reports on November 18, 2004 and April 18, 2006 that raised concerns over the treatment of individuals that 'amounted to torture and/or cruel, inhuman or degrading treatment' and the media attention it received over the years.<sup>24</sup> Any report of such horrendous treatment should have propelled those at the highest level to investigate, and failing to do so makes them blameworthy.

What this amounts to is that all individuals at all levels of this tragedy are guilty of not acting; of not blowing the whistle. Torture represents one of the most egregious attacks on the individual, destroying them on a physical, psychological and emotional level. All those involved failed in their universal duty to 'do a Snowden' and blow the whistle. Even though the legality of whistleblowing is often contested and unclear, the moral argument in this instance is not. Regardless of what was seen as the benefit – for which there was none<sup>25</sup> – all those who knew had a moral obligation to act to their fullest capacity to stop the harm and inform the public as the most likely avenue for achieving this. This failure leaves them all

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<sup>22</sup> Ibid, pp.117-18.

<sup>23</sup> Ibid, p.119.

<sup>24</sup> International Committee of the Red Cross 'ICRC Report on the Treatment of Fourteen "High Value Detainees" in CIA Custody', February 2007; <http://www.nybooks.com/media/doc/2010/04/22/icrc-report.pdf>, p.4. Accessed February 1, 2015.

<sup>25</sup> SSCI report, pp.17, 124, 167, 179.

equally blameworthy for the abuse caused and as such should be tried for their criminal activities.

### Notes on Contributor

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### BOB BRECHER

What is at once most depressing and most significant about the CIA Torture Report is not what it revealed about CIA practice or what it failed to lead to: of course they tortured; of course ‘the use of torture didn’t lead to discovering the truth’;<sup>26</sup> of course there was no discussion of war crimes or of possible prosecutions. What is most disturbing is that no one apart from a few academics seems to think there is any problem about any of that. The American public agrees with Cheney even though it knows he’s lying.<sup>27</sup> He pretends to pretend that torture isn’t torture; he ignores the facts: and hardly anyone, it seems, is bothered. In the UK, meanwhile, the *Guardian* runs an excellent analysis of how and why there’s ‘no mention of MI5 or MI6’<sup>28</sup> in the report and Parliament’s response is to remain almost completely silent. As ever, the difference between the USA and the UK is that the UK is officially more squeamish and thus more hypocritical. But that’s all. Torture has been normalized in both countries. For the USA, the report constitutes a perverse vindication of Alan Dershowitz’s defence of interrogational torture in terms of avoiding the hypocrisy of

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<sup>26</sup> Seymour M. Hersh, ‘The Killing of Osama bin Laden’, *London Review of Books*, May 21, 2015, pp. 3-12, p. 12.

<sup>27</sup> Jake Miller, ‘Cheney on CIA’s Brutal Interrogations: “I would do it again in a minute”’, CBS News, December 14, 2014; <http://www.cbsnews.com/news/dick-cheney-on-cias-brutal-interrogations-id-do-it-again-in-a-minute/>. Accessed July 11, 2015.

<sup>28</sup> ‘Torture: British role suppressed’, *Guardian*, December 10, 2014; <http://www.theguardian.com/us-news/defence-and-security-blog/2014/dec/10/cia-torture-mi5-mi6>. Accessed July 11, 2015.

pretending that “we” don’t do it,<sup>29</sup> even though Cheney and his cronies continue to keep up their guard -- knowing all the while that they don’t really need to bother. In the UK, silence and hypocrisy remain the first rule of the rulers: the finest traditions of *Cruel Britannia* are maintained.<sup>30</sup>

The report repeatedly confirms that the CIA lied. Bush, Cheney and the rest lied. Their academic lapdogs continue to lie every time they assert the effectiveness of interrogational torture, its moral justifiability or both. And still it makes no difference. People shrug their shoulders; academics murmur something about realpolitik, whether enthusiastically or otherwise; and the torturers and their political masters know with even greater assurance than ever that they can carry on torturing. Post-report, in fact, they don’t have even to bother to keep up much of a pretence otherwise. Even if Cheney were suddenly to declare that he had been lying all along, and that after all he knew perfectly well that torture was torture, it would make no difference.

So what is to be done? Having been unable to stop thinking about torture, its realities and its role in the onward march of neo-liberal “shock and awe” for the last ten years, I don’t know. All I have to offer to those of us who know that torture is always wrong, everywhere -- some academics’ delusions, whether sincere or otherwise, notwithstanding – is a very small suggestion. We need to focus ruthlessly on what has always been a central intellectual duty: to expose lies. Twenty years ago, Nicholas Lezard observed that while it ‘might seem fussy, or perverse, to accuse a torturer of being a liar’,<sup>31</sup> it was in fact crucial to do exactly that. He was right. So-called interrogational torture is a fantasy designed to obscure torture’s longstanding historical role as a weapon of terror. To insist that that is the case may be a first

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<sup>29</sup> Alan Dershowitz, ‘Tortured Reasoning’, in Sanford Levinson (ed.), *Torture: A Collection* (Oxford: Oxford University Press, 2004), pp. 257-80, p. 266.

<sup>30</sup> Ian Cobain, *Cruel Britannia: A Secret History of Torture* (London: Portobello Books, 2012).

<sup>31</sup> Nicholas Lezard, ‘Respects to the Cell God’, review of Kate Saunders, *Eighteen Layers of Hell: Stories from the Chinese Gulag* (London: Cassell, 1996), *Guardian*, October 17, 1996.

step in resisting today's normalization of torture. If this report helps us do that it may yet have a use beyond its authors' intentions.

### **Notes on Contributor**

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### JAN GOLDMAN

The United States intelligence and military communities are in a confused state of existence. Both communities have a long history of conducting operations viewed through the prism and high ideals of "professionalism." Unfortunately, according to Vice President Cheney, after the attacks of September 11, 2001, those attributes would not be acceptable. As a nation, we needed to go ad-hoc, or in other words, "it was time to take the gloves off." This should be interpreted that "professionalism" (i.e. competency, expertise, ethics and standards based on accepted knowledge) should remain in the classroom. It is time to be "unprofessional."

It was not long ago that "professional" adversaries wore uniforms and used expensive equipment, united by a common nationality; even during U.S. counter-insurgency operations in Latin America during the 1980s, the enemy wore the same armband. Today, the threat posed by terrorists the intelligence community seeks to track is an unrestricted, multi-national and global effort in a gross misunderstanding of religious teachings. Add 'cyberwarfare' into this mix, and you have a new and unfamiliar environment of warfare. Consequently, some politicians led the public to believe we no longer could rely on or trust the professionalism of the intelligence and military communities. The world has become so crazy, that we need to invent new ways of fighting the enemy. Human intelligence collection would take on a new meaning.

It is against this backdrop that one needs to understand the significance of the publicly released Senate Select Committee report on the CIA's detention and interrogation program. It is also important to understand the significance of how much time and effort went into publication. To get to the truth, reportedly, Senate staffers went through six million classified reports. The result is that compiling and writing this document took five years at a cost of \$40 million to the taxpayers; it then took another eight months to debate which parts of the report should be released to the public. Ultimately, this heavily redacted 550 page report with over 2,300 footnotes was released. (The public has been shielded from the full 6,700 page report which proportionally would have over 30,000 footnotes and weigh almost sixteen pounds. In the abridged edition, my favorite footnote is #1050, which is over 900 words and is longer than this contribution to the *INS* Forum.) Nevertheless, critics of this document and supporters of such interrogation techniques will never admit that such techniques are immoral, ineffective or counter-productive. I have yet to meet a "professional interrogator" that supports such techniques, nor am I familiar with any intelligence school that teaches such techniques (rather than professional survival schools.)

Nevertheless, while EITs are morally reprehensible as a useful tool of intelligence collection, few people will change their mind after reading this report. Moral beliefs are difficult to change and can easily be rationalized. It is the rare occurrence when a person will admit that they were wrong in their personal conviction, principle or value. It requires moral courage and self-awareness. However, this document is not about a conviction or morals, but, rather bureaucracy.

This report is an indictment that governmental oversight is broken; or, a more pessimistic view is that governmental oversight of the intelligence community never was an effective instrument of control. Intelligence oversight, as envisioned by Congress in the 1970s, has long been more of a notion than an actual instrument or function. Over forty years ago the

Pike Commission report said: “If the Committee's recent experience is any test, intelligence agencies that are to be controlled by Congressional lawmaking are, today, beyond the lawmaker's scrutiny.”<sup>32</sup> This sentiment now re-appears, this time in the current Senate report on extreme interrogation. Buried in this report is the Senate’s ineptitude, or lack of caring, to conduct oversight.

Of the twenty findings in the report, fifteen outline a program that is out-of-control without adult supervision. Buried in the middle of this summary are findings #5 to #9 which accuse those in charge of this program of repeatedly providing inaccurate information, actively impeding or avoiding oversight from either the White House, Congress, or even the CIA’s own Office of Inspector General. Instead, the report (Finding #10) accuses the CIA of coordinating its own media campaign to shape the public debate over the effectiveness of its EITs.

This report makes it very clear there is no oversight over the Intelligence Community. (In case you need more proof, see Director of National Intelligence James Clapper’s apology to Congress on misleading them on the NSA programs that he said didn’t exist, except, they really did exist. Amazingly enough, Clapper remains in charge of the intelligence community. Neither Congress nor the President are seeking his removal.) More importantly, what is missing from this report is an assessment of Congress’ ability or desire to conduct oversight of the intelligence community. If Congress cannot or will not provide oversight, then it may be time to establish an outside independent review panel. Currently, intelligence oversight seems to be based on the “CNN effect” (when the media dictates oversight and policy) or by whistleblowers and the leaking of classified information. Consequently, we are

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<sup>32</sup> This is the very first line of the Pike Committee report. It was never officially published, but was leaked to journalist Daniel Schorr and published by the *Village Voice*, February 16, 1976.

dependent on a moral compass emanating from sources outside of government, which seems to be fine with everyone involved.

### **Notes on Contributor**

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### FRED F. MANGET

The SSCI Study arrived in late December of 2014 in a declassified executive summary form totaling almost five hundred pages. It landed with the thud of a butterfly's descent. It was entirely a Democratic majority product. The Republican minority had long abandoned the project as a hopeless exercise in partisan witch-hunting and immediately noted the serious flaws in both the investigative techniques used and the conclusions reached. They also opposed the public dissemination of parts of the Study that were hurriedly released after the Republicans gained control of the Senate in November of that year, leading some to conclude that it was a cynical attempt by the Democratic majority, soon to go out of power, to rewrite history in its favor before the new Senate and Committee leadership took office in 2015.

The Republicans had a point. The Study's authors did not interview CIA officials, contract personnel, or other Executive Branch personnel. The Study directly contradicts public statements not only by a number of those individuals but also commentary by non-partisan observers. Descriptions of parts of the Study by some of those sources include "incredible and false claim," "uses information selectively and distorts facts," "outlandish charges," "astounding," "unconvincing," and "not true." The Republican minority viewed the study as having significant intrinsic limitations and published a 159 page response outlining their view of the Study's flawed process, problematic analysis, and erroneous conclusions.

For example, the Study's conclusions numbered six, seven, and nine state that CIA systematically and significantly impeded Congressional, White House, and CIA Inspector General oversight. Yet:

- CIA records show over thirty-five SSCI briefings, over thirty HPSCI (House Intelligence Committee) briefings, and over twenty Congressional notifications relating to the detention and interrogation program during the 2002-08 period.
- Former President Bush says he was briefed on the program in 2002, before any of the controversial EITs were used.
- The Study notes that there were at least twenty-nine investigations by the CIA Inspector General (IG) on detainee-related issues with no record that the IG complained or reported that he was impeded, which is a requirement by law. In fact the CIA IG is required to certify that he had "full and direct access to all information relevant to the performance of his function," and he so certified in every one of the semi-annual reports to Congress during the time frame of the use of EITs.

By contrast, the July 2004 SSCI study of the pre-war intelligence assessments of Iraq's weapons of mass destruction was based upon, among many other things, interviews with over 200 intelligence community officers of all ranks. That report was unanimously supported by the SSCI (a fifteen-to-nothing vote.)

So is the interrogation study report more Pike Committee than Church Committee? It certainly was received with howls of outrage from all sides of the issue, and it may be impossible to conclude which view is more correct. But some key lessons can be demonstrated, especially about how intelligence oversight works in the United States.

- There are internal oversight layers at CIA. CIA's Office of General Counsel (OGC) comprises a group of approximately 100 lawyers headed up by a presidentially-appointed and Senate-confirmed attorney. All significant activities receive OGC legal and often policy review.
- The CIA Inspector General, also a presidentially-appointed, Senate-confirmed position, has a powerful and independent source of statutory power and responsibility to investigate and report to the Congressional intelligence committees on any significant Agency activity. Both offices are also required to report to the FBI and Department of Justice information relating to possible crimes.
- Oversight is also conducted by Executive Branch agencies and departments outside of CIA. The FBI and Department of Justice are especially involved when possible crimes may have occurred.
- In addition, as happened with the interrogation program, the Department of Justice Office of Legal Counsel (OLC) provides legal opinions that have the weight of the Attorney General behind them and are binding on the rest of the U.S. government. The role and opinions of OLC in the interrogation program have generated great amounts of controversy. But it is clear that lawyers are involved in overseeing everything.
- Also, the Department of Justice conducted two separate and independent criminal investigations of the interrogation program, under both a Republican and a Democratic administration. Press reports note that both were closed without any criminal charges being made.

It is clear from the Study and history that with regard to anything controversial, Congress will always complain that it was not informed enough, and CIA will attempt to keep knowledge of

its activities limited. Both have legitimate arguments. But Congressional oversight related to the interrogation program is extensive. The Study proves that point: although it is seriously flawed and partisan, it took years to prepare, and press reports note that the staffers conducting the investigation reviewed over six million records and produced a full report of over 6,000 pages. That's a lot of oversight, even after the fact.

Other points raised by a study of the Study:

- Even the federal judiciary oversees: see the U.S. Supreme Court opinion in *Hamdan v. Rumsfeld*.
- What is acceptable to Congress and the American public and what is lawful vary over time. Both are pendulums whose velocity and stopping points reflect the beliefs of factions in the country. Those beliefs vary according to the perceived imminence and seriousness of the threat. We were at war after 9/11. Bad things happen in wars.
- Torture is a defined U.S. federal capital punishment crime. The President cannot approve torture. The Department of Justice concluded that the EITs were not torture, either before they were used or in hindsight. Abuse perhaps, degradation, humiliation, limited violence. But not torture.
- The staff work on the Study was poor. A revolving door and political considerations make it hard to develop long-term expertise and professionalism on the Committee staff. A joint select intelligence oversight committee comprised of both Senate and House members of both parties and a non-partisan professional staff might help, but is unlikely.
- There is significant disagreement on whether the EITs “worked,” or even what that means. One implication of the Study is that if the techniques “worked,”

they might be more acceptable. But the Study made no recommendations for interrogation protocols that would be lawful. None.

- Media treatment of the Study is lazy. Pre-written narratives dominate: headline first, then uncritical story follows. Some reporters have a pre-determined and internalized message along the lines of: “CIA: Rogue Desperados Who Liked to Torture People! They Hid It from Congress and the American People! True Story to Follow!” Others allege the movie *Zero Dark Thirty* was a nefarious CIA plot to influence popular American culture. Ridiculous.
- Morality as opposed to legality was important to the Study authors and the entire Committee. But would it have been immoral to cause suffering to a few known terrorists to prevent another 9/11 in which 3,000 innocent civilians died? Is it more moral to kill suspected terrorists via unmanned aerial vehicles than to capture and interrogate them?
- No significant U. S. government secret remains secret for long.

### **Notes on Contributor**

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SAMANTHA NEWBERY

The debate surrounding the justifiability of interrogation techniques that can be called torture has been advanced by the SSCI's Study. Its approach to assessing the effectiveness of the CIA's interrogation program demonstrates the difficulties involved in attempting these assessments, while also presenting valuable information to base them on. The Study also examines the effectiveness of the techniques that many would classify as torture. That there were an inadequate number of trained interrogators at the start of the CIA's program is understandable. But it is remarkable that two psychologists with no experience in interrogation working as contractors conducted interrogations and even applied the water during the waterboarding of high-profile terror suspect Khalid Sheikh Mohammed.

The Study quickly became known as the 'CIA torture report'. Dianne Feinstein, Chairman of the Committee, used the word 'torture' in the Study's Foreword to describe the treatment of the CIA's detainees. Her decision to use the term in the sense of its 'common meaning' is surprising. Although the press often use it in this way, government documents refrain from doing so. They sometimes express disapproval of interrogation practices in strong terms, but use the term 'torture' in the legal sense, applying it only to practices that have been established by the legal profession as meeting the definition established by law.

In addition to the legal approach, the question of the justifiability of interrogation techniques can be approached by assessing their effectiveness on the basis of their outcomes. The Study provides detail about the outcomes of the CIA's interrogation program that allows judgments of effectiveness to be made. However, the Study, and the Minority Views report produced by dissenting Committee members, demonstrate contrasting approaches to assessing effectiveness.

The Study contains an astonishing amount of detail. Illustrative examples from the 119 detainees known to have been held by the CIA were chosen for inclusion in the declassified Executive Summary. One example detailed in the Study is the interrogation of al-Qaeda

suspect Abu Zubaydah, who was exposed to so-called EITs continuously over seventeen days, including waterboarding two to four times a day with multiple applications of water each time. This information is valuable for assessing the CIA's claims about the effectiveness of their interrogation program. But as noted in the Study, the CIA did not always keep full records, so these accounts are incomplete. Further, this kind of information can be presented in a way that hides gaps or seeks to influence readers' opinions. The Minority Views report goes so far as to claim the Study presents quotes out of context in a way that was designed to support the Committee's political views.

On the basis of this imperfect but voluminous evidence the Committee found the CIA's interrogation techniques were not effective for obtaining accurate information. If true, this is hugely significant for assessments of the justifiability of these interrogations. The Minority Views report rightly points out that it is not just the quantity of intelligence that is important, but its qualitative value. Indeed, assessments of effectiveness can be widened to include a myriad of other results, including whether that intelligence was timely, whether it was used to enhance security, and the impact of the techniques upon the detainees, interrogators and the reputation of the US or any other state involved.

The importance of injecting an understanding of intelligence processes into assessments of interrogation practices is demonstrated by a further difference of opinion. The Study adopted the view that if a detainee produced intelligence the CIA already possessed, this intelligence could not be used to support the case that these interrogation techniques were effective. The Minority View responded accurately when it pointed out that in this case the intelligence does have value because it can corroborate the existing intelligence. Yet intelligence that replicates what is already possessed might be argued to be less valuable than new intelligence.

Whether the justifiability of interrogation is assessed on the basis of effectiveness or of legality, these are challenging exercises. Nonetheless, these approaches can, and should, be used not only retrospectively, as was the case with the SSCI's consideration of the effectiveness of the CIA's interrogation program, but before and during the use of the kinds of techniques employed by the CIA.

### **Notes on Contributor**

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JAMES P. PFIFFNER

The most important fact about the SSCI Report is that it was published, even though only the 500 page executive summary of 6,000 total pages was released in 2014. The Report documents in excruciating detail, with 2,725 footnotes, the ways in which US personnel abused detainees suspected of helping or having knowledge about al Qaeda. There can be no doubt that the US tortured many terrorist suspects in a variety of ways, as detailed in the Report.

The Report was authoritative in that it was a formal document of the SSCI, created and approved with bi-partisan support. It is also authoritative in that it is overwhelmingly based on CIA documents themselves (some six million pages). The CIA had ample opportunity to review drafts of the report, and its objections were taken into account in revisions. Significant redactions were made in response to CIA and White House concerns.

Understandably in 2001 the leadership of the Bush administration expected that there might be further attacks on the United States, and most of the impressive range of intelligence gathered about terrorists was done through legitimate means and was successful in protecting

the country. But administration leaders decided that in order to gather further, “actionable” intelligence, they needed to break the laws against torture and undertake the fundamentally immoral tactics of brutal interrogation and torture. There is no doubt that al Qaeda committed atrocities, but with respect to the morality of torture, Senator John McCain (R-Arizona), who had been tortured in Vietnam got it right: “this question isn’t about our enemies; it’s about us.”<sup>33</sup> The United States should be better than this unfortunate policy.

Although torture is immoral and illegal, the efficacy question is still important because some people think that it may still be a viable policy option for future administrations. Some former members of the Bush administration, as well as most of the candidates for the Republican nomination to the presidency in the 2012 campaign (and a few candidates for 2016) believe that EITs are essential for US security. The former head of the CIA Clandestine Services, Jose Rodriguez, wrote that refusing to use EITs amounts to “unilateral disarmament” in the war on terror. CIA Director John Brennan, though admitting EITs were counterproductive as a matter of policy, refused to rule out their use in future administrations.

The SSCI concluded that, for purposes of interrogation, torture did not work. They specifically rebutted twenty instances in which the CIA claimed to have gained important information from victims of EITs. The CIA did not accept the SSCI conclusions about the efficacy of EITs and published counter perspectives. One problem here is that CIA and its defenders often conflated intelligence discovered from detainees *who had been subject to EITs* with intelligence that was discovered *as a result of* EITs. This significantly confused the broad claims of efficacy for the program. Despite the conclusions of the Report, it is possible that some useful intelligence was gained as a result of EITs, but the inability of the

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<sup>33</sup> Floor Statement by Senator John McCain on Senate Intelligence Committee report on CIA Interrogation Methods, December 9, 2014; <http://www.mccain.senate.gov/public/index.cfm/press-releases?ID=1a15e343-66b0-473f-b0c1-a58f984db996>. Accessed September 21, 2015.

CIA to cite convincing evidence of any major breakthroughs produced by these methods is telling.

Even if one concedes that the CIA did obtain useful intelligence as a result of EITs, the question remains whether the bits of intelligence gained were worth the cost of using torture - - in terms of moral compromises, our international reputation, and precedents set. The Bush administration justification for using torture was not to find useful intelligence about al Qaeda; the EITs were justified because the interrogators were trying to find evidence of plots of future attacks. In this they failed, probably because the detainees did not know about whatever plans may have existed.

The assertions that EITs reduce the amount of time needed to “break” a detainee and elicit intelligence are also not supported by the experience of the CIA with EITs. Thus any reference to the ticking bomb justification for torture fails. The SSCI reported that of 119 total prisoners, the CIA found that twenty-six had no intelligence value to the US or did not pose a threat. Even if one posits that the number of “wrong men” tortured was fewer, the problem is that the intelligence was not strong enough to ensure that the detainees had the information we sought. Some of the detainees died from the abuse; that is, they were tortured to death.

To read this Report is to be profoundly saddened by what was done in the name of the United States. In order to learn from our mistakes of the past, we must admit what happened and recognize that we acted in error. The SSCI is the most important measure so far to help us learn from these mistakes. Documenting and publicizing these abuses makes it less likely that they will occur in the future.

It is unfortunate that these instances of abuse and torture have marred the reputation of the CIA as an institution. Intelligence is crucial to national security, and a strong, resilient, and

responsive CIA is essential to our national security. That is why it is important to document any abuses and assure that they do not occur again. The primary objection to torture is not that it doesn't work, but that it is wrong -- by virtually universal religious proscriptions as well as the principles of the United States Constitution, international law, and American values.

Dianne Feinstein recognized the importance of documenting the abuses, and it was through her leadership that the Report was finally released. Her perspective is encouraging: "In my view, the beauty and the strength of this country – what makes it so different – is that we admit our mistakes and we go on. And it's tough."<sup>34</sup>

### **Notes on Contributor**

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AMY ZEGART

The Senate report is a Greek tragedy: full of noble motives and tragic flaws. Seeking to write the definitive account of Bush-era interrogation and detention policies, the report's process errors and substantive weaknesses have diminished its impact considerably. Though former Committee Chairman Dianne Feinstein says she believes her report will "stand the test of time," evidence suggests it has not stood the test of the moment.<sup>35</sup> The report has not changed minds on either side of the torture debate and is unlikely to do so.

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<sup>34</sup> Quoted by Bruck, 'The Inside War'.

<sup>35</sup> Dianne Feinstein, remarks at Stanford University, May 28, 2015, <https://www.youtube.com/watch?v=RXcEV3nLlO8>. Accessed July 15, 2015.

Feinstein and her staff devoted five years to the investigation, combing through over six million pages of documents and producing the longest, most footnoted report in committee history. They faced extraordinary resistance from the CIA that included spying on the investigation; stonewalling and whittling away what parts of the report would be declassified; and a publicity campaign to discredit the study as soon as it was released.

Yet the investigation also committed a number of unforced errors that offer a cautionary tale for intelligence oversight. Even those who consider the interrogation and detention programs a dark mark on American history should be wary of calling the Senate report the definitive account of the subject or a model of intelligence oversight success.

Oversight is largely about process. Four key process errors doomed the Senate report to eternal controversy: it was not bipartisan, took too long to write, made little effort to generate public support along the way, and produced a declassified version that constituted a tiny portion of the full study. The influential 1975-76 Church Committee investigation of intelligence abuses made different calls on all four issues that helped it achieve significantly more impact. While Feinstein's effort ultimately consisted entirely of Democrats (she could not even get moderate Republican Susan Collins, who had co-sponsored John McCain's anti-torture statute, on her side), the Church Committee was bipartisan from start to finish.<sup>36</sup> While the Feinstein investigation took five long years, the Church committee investigation took sixteen short months. This was deliberate: As one Church committee source told the *New York Times* in December 1975, "If you wait too long, both the public and the members of Congress forget what you're trying to reform."<sup>37</sup> He was right. While Feinstein's staff labored away from 2009 to 2014, public outrage about torture faded. In fact, support for

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<sup>36</sup> See Collins' press release, December 9, 2014, <http://www.collins.senate.gov/public/index.cfm/press-releases?ID=af9451d7-9eab-41fa-a63f-71886cd65c52>. Accessed July 15, 2015.

<sup>37</sup> Nicholas M. Horrock, "Intelligence Investigations End Though Gaps Remain," *New York Times*, December 14, 1975.

coercive techniques *increased*. In a 2007 poll, twenty-seven percent of Americans said the U.S. should torture captured terrorists, while fifty-three percent said the U.S. should not. In my 2012 YouGov poll, support for torture rose fourteen points while opposition fell nineteen points.<sup>38</sup> What's more, Feinstein's investigation did not hold a single public hearing to generate public attention or support.<sup>39</sup> Church's investigation held twenty-one public hearings in fifteen months, some of them nationally televised.<sup>40</sup> In addition, Feinstein's report is still almost entirely classified. The "report" released in December 2014 was a redacted executive summary of 500 pages – that's less than ten percent of the 6,700 page report. No one knows when the other 6,200 pages will see the light of day. Church, by contrast, released a redacted version of the full final report when his investigation ended.<sup>41</sup> For Feinstein's report, all of these process errors gave CIA defenders the upper hand. When the summary was released, former CIA officials launched an unprecedented public relations campaign replete with a web site,<sup>42</sup> op-ed onslaught,<sup>43</sup> and even a "CIA saved lives" Twitter hashtag.

These process mistakes were compounded by the report's substantive weaknesses. Because nearly all of the report remains classified, the public has far more information about the study's conclusions than the evidentiary record on which they are based. But intelligence

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<sup>38</sup> See Amy Zegart, "Torture Creep," *Foreign Policy*, September 25, 2012, <http://foreignpolicy.com/2012/09/25/torture-creep/>. Accessed July 16, 2015.

<sup>39</sup> U.S. Senate Select Committee on Intelligence, Hearings, <http://www.intelligence.senate.gov/hearings>. Accessed July 20, 2015.

<sup>40</sup> United States Senate Historical Office, [http://www.senate.gov/artandhistory/history/minute/Church\\_Committee\\_Created.htm](http://www.senate.gov/artandhistory/history/minute/Church_Committee_Created.htm). Accessed July 15, 2015.

<sup>41</sup> The Final Report was released in April 1976. Five more volumes of supporting reports, hearing testimony, and materials were released in May. Loch K. Johnson, *A Season of Inquiry* (Lexington: University of Kentucky Press, 1985), pp. 221-222.

<sup>42</sup> <http://ciasavedlives.com/media.html>. Accessed July 16, 2015.

<sup>43</sup> See for example Jose A. Rodriguez, Jr. "Today's CIA Critics Once Urged the Agency to do Anything to Fight al-Qaeda," *Washington Post*, December 5, 2014; John Deutch, "Inaccurate Senate Report Endangers U.S. Security," *Politico*, December 9, 2014; George J. Tenet, Porter J. Goss, Michael V. Hayden, John E. McLaughlin, Albert M. Calland, and Stephen R. Kappes, "Ex-CIA Directors: Interrogations Saved Lives," *Wall Street Journal*, December 10, 2014.

assessments are highly context dependent; without a fuller understanding of context, history, and nuance, the same words can mean very different things. For example, what exactly constitutes the intelligence “tipoff” on Bin Laden’s courier that ultimately led to the Abbottabad compound? The Feinstein report defines “tipoff” as the *first* mention of information about the courier, which came from detainees who were not subjected to harsh interrogation techniques.<sup>44</sup> Defenders of the CIA program assert that this original information wasn’t recognized as important until harsh interrogation techniques produced more. For them, the “tipoff” was *additional information that catalyzed a new and fruitful focus on the courier*.<sup>45</sup> With so little of the full record publicly available, there is still not enough evidence to know which of these interpretations is closer to ground truth.

In addition, Feinstein’s investigation relied exclusively on written documents. But documents reveal only so much. Often the more important information – ideas, intentions, relationships, conversations – rests in heads, not files. Interviews also force investigators to confront their own assumptions and weaknesses which can sharpen their evidence and analysis. The Church committee interviewed 800 people. Feinstein’s staff interviewed no one.<sup>46</sup> It showed. The report is an analytic jumble that argues coercive techniques are ineffective when its chief complaint is really that they are immoral. Couching moral arguments in efficacy terms weakens the analysis. For example, the report notes that multiple detainees subjected to the harsh techniques provided “fabricated information.”<sup>47</sup> That’s hardly surprising. The more important efficacy question is whether harsh methods produced *more* instances of faulty

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<sup>44</sup> SSCI report, p.389.

<sup>45</sup> Minority Views and Additional Minority Views, Senate Select Committee on Intelligence, Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program, revised for redaction December 5, 2014, p.XVII.

<sup>46</sup> SSCI report, p.5; Dan Froomkin, “12 Things to Keep in Mind When You Read the Torture Report,” *Huffington Post*, December 3, 2014, [http://www.huffingtonpost.com/dan-froomkin/12-things-to-keep-in-mind\\_b\\_6260932.html](http://www.huffingtonpost.com/dan-froomkin/12-things-to-keep-in-mind_b_6260932.html). Accessed July 22, 2015.

<sup>47</sup> Minority Views and Additional Minority Views, p. 2.

intelligence than non-coercive techniques --a comparison the report never asks or attempts to answer.

For all of these reasons, the report is likely to remain more a Rorschach test than smoking gun, reinforcing existing views of the past rather than informing them.

### **Notes on Contributor**

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