

Key Takeaways from the CIA Torture Report

☑ **What's new in the report? Didn't we know about torture already?**

The report contains a lot of new and worrying information. The CIA program included the use of horrific interrogation techniques that were not previously publicized, such as rectal rehydration, which officials justified as a medical necessity but doctors say has no medical value.¹ The duration and frequency with which detainees were subject to techniques like waterboarding, stress positions, and sleep deprivation were much more extreme than previously thought.

CIA officials took extensive measures to overstate the success of the torture program, and misled the Senate intelligence committee (SSCI), Congress, the White House, the Department of Justice (DOJ), the National Security Council, and the public about the extent and success of the program. Additionally, CIA records show that very little was actually gained from these interrogations.

While the public knew there were many problems with the CIA program, this report demonstrates just how deep those problems were and how far CIA officials went to cover them up.

☑ **Wasn't torture only used as a last resort if nothing else worked?**

No. The CIA told the Senate intelligence committee that detainees always had the opportunity to cooperate before starting enhanced interrogation techniques ("EITs"), but in the case of Ramzi Bin al-Shibh, the interrogation plan called for him to be shackled nude with his arms overhead in a cold room prior to any discussion with interrogators or any assessment of his level of cooperation.² Another detainee, Hambali, was also deemed cooperative before the use of torture. Hambali ended up recanting most of the information he provided to interrogators after being subjected to the CIA's techniques.³

☑ **Didn't Justice Department lawyers say that the techniques used didn't constitute torture and were legal?**

Techniques used in the CIA program went well beyond what the DOJ authorized. Even John Yoo, who was the principal author of DOJ memos arguing that the program was legal, has said that

¹ Physicians for Human Rights, *Medical Practitioners Denounce 'Rectal Feeding' as 'Sexual Assault Masquerading as Medical Treatment'*, available at https://s3.amazonaws.com/PHR_other/fact-sheet-rectal-hydration-and-rectal-feeding.pdf.

² Senate Select Committee on Intelligence, *Committee Study of the Central Intelligence Agency's Interrogation and Detention Program*, available at <http://www.intelligence.senate.gov/study2014/sscistudy1.pdf> [hereinafter SSCI Report], p. 76-77.

³ *Ibid.* p. 108

techniques like prolonged sleep deprivation and rectal rehydration violate international anti-torture laws.⁴

The DOJ's memos have also been widely rejected as a plausible interpretation of the law. Many prominent American lawyers, including those who served in the Bush Administration, disagree with their conclusions. Jack Goldsmith resigned from the DOJ in 2004 after a fight to change the torture memos, which he considered deeply flawed.⁵ Attorney General Eric Holder has also said that he believes that waterboarding constitutes torture.⁶

Furthermore, the CIA and administration's influence on the DOJ may have colored their legal analysis. In 2002 Yoo drafted several memos that included a description of a "necessity defense" to torture, stating that torture could be justified by risk to American life. When another DOJ lawyer, Patrick Philbin, challenged Yoo on these sections and suggested they be removed, Yoo's response was that "they want it in there."⁷

The CIA also withheld many details of the program when briefing the DOJ. The Senate intelligence committee's report contains dozens of examples of CIA representations to the DOJ that the program produced vital intelligence that the CIA would not have gained any other way.⁸ It was these representations that the DOJ used to inform their memos—representations that, CIA records make clear, were highly exaggerated and misleading.

☑ Even so, didn't the Bush Administration approve these actions? Wasn't the CIA just doing what the White House wanted it to do?

It's true that individuals in the Bush Administration approved the use of some techniques. However, the CIA hid many details about the program, including what techniques were used and how successful they were, from the administration. President Bush was not briefed on the program until April 2006, when it has been in place for several years—and he expressed concern at some of the techniques being used.⁹ The CIA also gave misleading information to the president in his Presidential Daily Briefings. For example, the fact that the CIA gained no useful information from the interrogation of Abu Ja'far al-Iraqi in 2005 was expressly removed from the president's daily brief. One CIA officer wrote in an email, "If we allow the Director to give this PDB, as written, to the President, I would imagine the President would say, 'You asked me to risk my presidency on your

⁴ Andy Sullivan, "Even Torture Memo Author John Yoo Thinks Rectal Feeding Was Illegal," *Huffington Post*, Dec. 14, 2014, available at http://www.huffingtonpost.com/2014/12/14/john-yoo-torture-report_n_6323360.html.

⁵ Jeffery Rosen, "Conscience of a Conservative," *New York Times*, Sept. 9, 2007, available at http://www.nytimes.com/2007/09/09/magazine/09rosen.html?_r=0.

⁶ David Stout, "Holder Tells Senators Waterboarding is Torture," *New York Times*, Jan. 15, 2009, available at <http://www.nytimes.com/2009/01/16/us/politics/16holdercnd.html?scp=3&sq=Eric%20Holder%20torture&st=cse>

⁷ SSCI report p. 181

⁸ *Ibid.* p. 172-178

⁹ *Ibid.* p. 37-40

interrogations, and now you give me this that implies that the interrogations are not working. Why do we bother?' We think the tone of the PBD should be tweaked."¹⁰

Even the CIA's response to the Senate intelligence committee's report acknowledges that "on several occasions, including in prominent representations such as President Bush's 2006 speech, we mischaracterized the impact of the reporting we acquired from detainees"¹¹ and that the "CIA mistakenly provided incorrect information to the Inspector General that led to a one-time misrepresentation of this case in the Inspector General's 2004 Special Review."¹²

What about Congress? Weren't members briefed on the program?

As John Rizzo—former CIA general counsel during the creation and implementation of the Rendition, Detention, and Interrogation (RDI) program—has said: "[O]ther than the chair and ranking member, the two intelligence committees would be kept in the dark for the first five years of the program, as was every other member of Congress."¹³ Of the current members of the committee, only one (Senator Rockefeller) was ever briefed about the program, and he was not permitted to discuss the details.¹⁴ Furthermore, the CIA consistently lied to or misled those members who were told about important details over the course of the torture program. This includes specifically:

- December 2008: Then-CIA Director Michael Hayden asked CIA officers to keep the total number of detainees within the number he gave Congress, when the numbers were exceeding Hayden's claims.¹⁵
- Spring/Summer 2002: The CIA hid its evaluation and use of torture and the establishment of Detention Site Green from the Senate intelligence committee.¹⁶
- September 2002: The CIA conspired to keep information on the RDI program from intelligence committee Chair Sen. Bob Graham, after it had briefed him and Vice Chair Shelby on Abu Zubaydah's interrogation.¹⁷
- April 2007: Michael Hayden told Congress that all interrogators and those involved with interrogations had been carefully screened for judgment and maturity. This was not true, and

¹⁰ Ibid. p. 138-139

¹¹ Senate Select Committee on Intelligence, CIA's June Response to the SSCI Study on the Former Detention and Interrogation Program, available at https://www.cia.gov/library/reports/CIA_June2013_Response_to_the_SSCI_Study_on_the_Former_Detention_and_Interrogation_Program.pdf [hereinafter CIA response], section on 20 cases, p. 6.

¹² Ibid. p. 26.

¹³ John Rizzo, "9/11: Three Major Mistakes," *Hoover Institution*, Sept. 8, 2011, available at <http://www.hoover.org/research/911-three-major-mistakes>.

¹⁴ United States Senate Select Committee on Intelligence, Open Hearing on the Nomination of John O. Brennan to be Director of the Central Intelligence Agency, Feb. 7, 2013, available at <http://www.intelligence.senate.gov/130207/transcript.pdf>.

¹⁵ SSCI report p. 14-17

¹⁶ Ibid. p. 48

¹⁷ Ibid. p. 48-49

the CIA's Counterterrorism Center (CTC) Director Jose Rodriguez himself even stopped the CTC's Legal division from conducting screenings.¹⁸

If all this is true, why didn't more people in the CIA object?

CIA officials, officers, and contractors did speak out in various ways:

- According to the report, during Abu Zubaydah's interrogation, his interrogation team sent a series of messages that showed various levels of discomfort with the process, noting that team members might not be able to continue, and that team members were likely to transfer out if torture continued.¹⁹
- The CIA's Rendition Group, unlike officers in the Directorate of Operations, considered waterboarding "life threatening" and refused to use the technique.²⁰
- The CIA's Office of Medical Staff (OMS) expressed concerns over conflict of interest for the two contractor psychologists hired by the CIA. These contractors were both carrying out torture on detainees (collecting \$1,800 per day) and performing psychological evaluations of the same detainees, a part of which would be recommending whether those detainees were subjected to more torture. OMS also noted that any data that the contractors collected from the detainees they had tortured would be suspect.²¹
- After receiving the proposed interrogation plan for detainee Abd al-Rahim al-Nashiri (which included waterboarding), the CIA's chief of interrogations expressed his reservations about the plan and the continued use of the techniques, even saying that he no longer wanted to be associated with the interrogation program and that he would be retiring shortly. He also expressed concern over the use of psychologists as interrogators.²²
- After the release of the report, one of these contractors, James Mitchell, says he also expressed concern multiple times about the program and the need to "dial it back."²³

Despite all these objections, the use of torture continued.

Even so, wasn't it worth it to gain intelligence to protect Americans and prevent another 9/11?

Not only was torture not necessary to protect American lives, it could have significant negative consequences for national security. Simply put, torture is ineffective, illegal, counterproductive, and immoral.

¹⁸ Ibid. p. 59

¹⁹ Ibid. p. 44-45

²⁰ Ibid. p. 65

²¹ Ibid. p. 65-66

²² Ibid. p. 71-72

²³ Jason Leopold, "Psychologist James Mitchell Admits He Waterboarded al Qaeda Suspects," *Vice News*, Dec. 15, 2014, available at <https://news.vice.com/article/psychologist-james-mitchell-admits-he-waterboarded-al-qaeda-suspects>.

There is no evidence that torture is effective. The CIA strongly exaggerated the effectiveness of their techniques, often saying that crucial intelligence was only gained after they were used when in fact the detainees in question had willingly given answers before the techniques were applied.²⁴ The CIA claimed that detainee Abu Zubaydah was withholding information after being interrogated using non-coercive methods, and claimed that he provided important information as a result of the CIA's program. However, his interrogation does not indicate that the torture was essential or even beneficial—he provided significantly more intelligence during FBI interrogations before the CIA's techniques were used.²⁵ In other instances, the CIA did not give detainees the option to answer questions before subjecting them to torture and then claimed that the techniques used were essential in gaining the intelligence they provided.²⁶

Furthermore, the CIA communications in the Senate intelligence committee report show that in some instances, it already had the intelligence that it claims detainees provided after being interrogated, but had “simply overlooked” it or had not given it appropriate weight.²⁷ It is hard to argue that torture was essential when the CIA could have simply reviewed its own files.

Torture also produces false information. Some detainees reported that they said whatever what they thought their interrogators wanted to hear to make the pain stop.²⁸ In the wake of the Senate intelligence committee report's release, many seasoned interrogators have stepped forward to say that information gained during torture is not reliable,²⁹ that detainees will say anything to make the torture stop, and that the use of torture makes the country less safe.³⁰

Torture is also illegal. Under U.S. law, 18 U.S.C. § 2340A specifically prohibits torture outside the United States and 18 U.S.C. § 2441, the War Crimes Act, prohibits war crimes including torture. The United States is also a party to the Convention Against Torture, the International Covenant on Civil and Political Rights, and the Geneva Conventions, all of which prohibit torture and acts of official cruelty.

Finally, state-sanctioned torture goes against everything the United States stands for as a democracy and as a nation that respects human rights. As retired U.S. Army Brigadier General and Army

²⁴ See *e.g.* Zubaydah case, SSCI report p. 208

²⁵ SSCI report p. 208

²⁶ *Ibid.* p. 76

²⁷ CIA response, section on 20 cases, p. 22

²⁸ SSCI report p. 108-109

²⁹ Donald Canestraro, “Experienced Interrogator: Torture Doesn’t Work,” *The Hill*, Dec. 13, 2014, available at <http://thehill.com/blogs/congress-blog/homeland-security/226866-experienced-interrogator-torture-doesnt-work>

³⁰ Human Rights First Media Briefing Call, December 9, 2014, available at <http://www.humanrightsfirst.org/sites/default/files/120914-Torture-Transcript.pdf>. See also Statement of National Security, Intelligence, and Interrogation Professionals, October 1, 2014, <http://www.humanrightsfirst.org/sites/default/files/Torture-Statement-09-30-14.pdf>.

BACKGROUND PAPER

Intelligence School instructor David Irvine put it, torture is “absolutely anathema to democracy.”³¹ The United States should be a model of human rights, and through the use of these techniques we have undermined our standing as a nation that respects even basic standards of treatment. Torture impacts our relationships with our allies, making them less likely to trust us; it affects the way the rest of the world views us; and it gives terrorists a recruiting tool to foster hatred against Americans. Through the use of torture, we have given those who wish to attack us a reason to do so, and we have undermined our credibility as a country worthy of respect and trust. Professional interrogator Colonel Steve Kleinman put it simply: “We diminish ourselves in any war—when we accede to the values of the enemy that must be lower than ours, then we’ve lost.”³²

³¹ Ibid.

³² Ibid.