

# Senate Select Committee on Intelligence

## *Committee Study of the Central Intelligence Agency's Detention and Interrogation Program*



Additional Views

UNCLASSIFIED

**SENATOR  
COLLINS  
ADDITIONAL  
VIEWS**

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### Additional Views of Senator Collins

(U) The use of torture is deplorable and is completely contrary to our values as Americans. For as long as I have served in the Senate, I have cast votes in opposition to torture and inhuman treatment of detainees. I cosponsored and voted in favor of Senator John McCain's Detainee Treatment Act of 2005, which banned "cruel, inhuman, and degrading" treatment of any prisoner in the custody of any U.S. government agency, and I supported the Military Commissions Act of 2006, which bolstered the Detainee Treatment Act's prohibition on abusive interrogations.

(U) The Senate Select Committee on Intelligence (SSCI) *Review of the Central Intelligence Agency's (CIA's) Detention and Interrogation Program* devotes much of its report to supporting its judgment that enhanced interrogation techniques (EITs) were ineffective in acquiring intelligence. While I agree with the Central Intelligence Agency's (CIA's) current position that it is "unknowable" whether or not its "enhanced interrogation techniques" elicited significant intelligence that would not otherwise have been obtained, the fact remains that torture is wrong. The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, which the United States ratified in 1994, is clear: "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."

(U) The method by which the SSCI report was produced was unfortunate, to say the least, and will cause many to question its findings. In my years of service on the traditionally bipartisan Homeland Security and Governmental Affairs Committee (HSGAC), the Senate's chief oversight committee, the congressional reports I have coauthored have almost always been the result of collaborative, bipartisan investigations. Indeed, even a subject as controversial as the treatment of detainees can lead to the production of a strong bipartisan report, as demonstrated by the Senate Armed Services Committee's *Inquiry into the Treatment of Detainees in U.S. Custody* drafted by Chairman Carl Levin and Ranking Member John McCain and approved by voice vote in November 2008. When I joined the Senate Select Committee on Intelligence in January 2013, I was disappointed to learn that the Committee's investigation into the CIA's Rendition, Detention, and Interrogation (RDI) program had not been conducted in a similarly bipartisan manner.

(U) Since joining the Committee, I have sought to compensate for this missed opportunity and have encouraged greater dialogue among the CIA and the majority and minority Committee staff members, and extensive conversations have indeed occurred. Following the delivery of the CIA's feedback to the Committee's report in June 2013, I asked that we hold a hearing prior to a vote to declassify this report that would have included CIA witnesses. Such a hearing would have permitted a robust and much-needed debate about the claims made in the report compared to the rebuttals in the Agency's formal response. Unfortunately, this hearing did not occur.

(U) In the absence of a formal Committee hearing, I was briefed directly by veteran, career CIA analysts who provided feedback on the report's factual accuracy and analytic quality. Two Senators from both sides of the aisle joined me in this worthwhile briefing.

(U) I also sought to improve the report by recommending revisions and greater precision in the Review's Findings & Conclusions, and I appreciate Chairman Feinstein incorporating some of my edits.

(U) In addition to the partisan nature of the staff investigation, the report has significant intrinsic limitations because it did not involve direct interviews of CIA officials, contract personnel, or other Executive branch personnel. John Rizzo, one of the chief architects of the program, has stated publicly that he would have been happy to be interviewed, and he said a number of his colleagues would have as well. The absence of interviews significantly eroded the bipartisan cooperation that existed when the SSCI Review began and calls into question some of the report's analysis.

(U) The lack of interviews violated the Committee's bipartisan Terms of Reference that were approved by an overwhelming 14-1 vote in March 2009. The Terms of Reference describe the purpose, scope, and methodology of the Review, and they include the following statement: "The Committee will use the tools of oversight necessary to complete a thorough review including, but not limited to, document reviews and requests, interviews, testimony at closed and open hearings, as appropriate, and preparation of findings and recommendations." Yet, there were no interviews, no hearings, and no recommendations. By comparison, the SASC's 2008 *Inquiry into the Treatment of Detainees in U.S. Custody* included 70 interviews, written responses from more than 200 individuals in response to written questions, two hearings, and at least two subpoenas.

(U) Documents never tell the full story and lack context. As the former Chairman or Ranking Member of the Senate's chief investigative committee for ten years, I found that interviews were always key sources of information for every investigation our Homeland Security Committee conducted. In the 2012 HSGAC investigation into the attacks in Benghazi, for example, we discovered one of our most alarming findings in a discussion with the Commander of U.S. Africa Command, General Carter Ham. We learned that he was unaware of the presence of CIA officers in Benghazi, despite the fact that his Command had responsibility to prepare for the evacuation of U.S. government personnel.

(U) The bipartisan Terms of Reference also called for the production of policy recommendations, but not one is included in the Review's Findings & Conclusions or its Executive Summary. Ironically, it was the CIA, rather than the Committee, that first developed recommendations to address the mismanagement, misconduct, and flawed performance that characterized too much of the CIA's Detention & Interrogation program. I have identified several recommendations that should be implemented as soon as possible.

(U) Despite these significant flaws, the report's findings lead me to conclude that some detainees were subject to techniques that constituted torture. This inhumane and brutal treatment never should have occurred.

(TS) [REDACTED] (NF) The Review also raises serious concerns about the CIA's management of this program. I particularly agree with its conclusions that the CIA was not prepared to conduct the RDI program, that the CIA failed to conduct a comprehensive evaluation

of the effectiveness of the use of EITs, that the CIA rarely held officers accountable for misconduct and mismanagement related to the RDI program, and that the CIA allowed a conflict of interest to exist among contractors responsible for too much of the RDI program. Is there any function that could be more inherently governmental than the questioning of high-level al Qaeda detainees in CIA custody? Yet, the CIA relied heavily on contractors for its RDI program and even had contractors evaluate the program.

(U) The Review's most significant finding deals with the ineffectiveness of EITs in collecting valuable intelligence. As a Senator who strongly opposes torture, I would have welcomed a well-documented finding that reached this judgment. Unfortunately, the evidence cited does not sustain the Review's categorical judgment that EITs were ineffective at acquiring valuable intelligence.

(U) For example, the Review concedes that some detainees were subject to EITs so soon after their capture that it is impossible to determine whether the information they provided could have been obtained through non-coercive debriefing methods. Here the report gets it right: there is no way to know what information these particular detainees would have provided without the use of EITs because the detainees were not afforded that opportunity for very long. Yet, the report draws a different and much more definitive conclusion: EITs were categorically ineffective at acquiring valuable intelligence.

(TS/ [REDACTED] /NF) It is also striking to me that two highly experienced public servants who are both widely respected for their integrity and impartiality, examined the program at two different times, independently of each other, and they both rendered the same verdict regarding the effectiveness of EITs. In 2011, former CIA Director Leon Panetta, and in 2005, a well-regarded [REDACTED] both took the position that we simply can never know for sure if the information obtained from detainees who were subjected to EITs would have been obtained through other non-coercive means.

(TS/ [REDACTED] /NF) A letter from then-Secretary of Defense Leon Panetta to Senator John McCain sums up his conclusion on the effectiveness of EITs with respect to the Osama bin Laden raid: "Some of the detainees who provided useful information about the facilitator/courier's role had been subjected to enhanced interrogation techniques. Whether those techniques were the 'only timely and effective way' to obtain such information is a matter of debate and cannot be established definitively." According to the Review's own Executive Summary, [REDACTED] said the following about the effectiveness of the CIA's enhanced interrogation techniques: "here enters the epistemological problem. We can never know whether or not this intelligence could have been extracted through alternative procedures."

(U) It bears repeating that torture need not be ineffective to be wrong. The United States correctly answered the question of whether torture should be prohibited when our nation ratified the Convention against Torture in 1994. The prohibition against torture in both U.S. law and international law is not based on an evaluation of its efficacy at eliciting information. Rather, the prohibition was put in place because torture is immoral and contrary to our values.

(U) There are three findings about the RDI program that warrant attention because they provide important perspective and context about the CIA program.

(U) First, even as the mistreatment of detainees was occurring, senior CIA officials repeatedly sought legal approval from the Department of Justice (DOJ) in an effort to make sure each the EITs employed by CIA officers did not constitute torture. For example, the CIA suspended the program and/or sought legal approval prior to conducting EITs on Abu Zubaydah and several times afterwards: in 2004 after a new attorney in DOJ's Office of Legal Counsel (OLC), Jack Goldsmith, said the Department had never formally opined on whether EITs met constitutional standards, in 2005 when another attorney in OLC assessed OLC had not provided a substantive ruling on whether certain EITs violated portions of the Convention Against Torture, after passage of the Detainee Treatment Act of 2005, and after the Supreme Court's decision in *Hamdan v. Rumsfeld* and the passage of the Military Commissions Act of 2006.

(U) Second, the problems of the detention program were frequently whole-of-government failures, not just CIA's alone. Legal opinions issued by OLC are almost never withdrawn, especially by the same Administration that issued them. Yet, that is exactly what happened in this case. Why was the original legal analysis by the Department of Justice so inadequate regarding such an important issue? CIA should not have made definitive claims about the effectiveness of EITs, but independent of the material facts represented by CIA, the withdrawal of the original August 1, 2002, OLC classified legal analysis demonstrated that it was too flawed and lacked the legal rigor necessary to serve as the basis for a controversial and questionable program.

(~~TS~~ [REDACTED] /~~NF~~) Third, the Review's Findings & Conclusions understate the degree to which the U.S. Government failed to focus on an end game for CIA detainees in the program by not moving them to military installations, even as the CIA repeatedly sought to move the detainees out of its custody in 2005 after many had ceased producing valuable intelligence.

(U) In the absence of recommendations in the SSCP's report, I believe four actions should be taken to prevent the terrible mistakes in the CIA's RDI program from ever happening again.

- (1) *Outlaw waterboarding of detainees once and for all.* President Obama implemented this policy when he took office by signing Executive Order 13491, which requires all government agencies, not just the Department of Defense, to adhere to the techniques in the Army Field Manual 2-22.3. Codifying this prohibition would make this restriction even more explicit than the Detainee Treatment Act of 2005. I voted in favor of the Fiscal Year 2008 Intelligence Authorization Act in February 2008, which would have restricted the interrogation techniques employed by CIA personnel to only those covered in the Army Field Manual. Unfortunately, this legislation was vetoed on March 8, 2008.
- (2) *Reduce the number of programs now shared exclusively with the Gang of Eight, which consists of the Chairman and Vice Chairman of the intelligence committees and the leadership of both chambers of Congress, so more member of the oversight*

*committees have access to significant information.* Congress was informed about the RDI program to the bare minimum required by the National Security Act and no further. Most members of the intelligence committees, not to mention the rest of Congress, officially learned about the program on the same day President Bush announced it to the world in September 2006. In this case, adherence to the letter of the law rather than the spirit of the law resulted in insufficient oversight. As former CIA attorney John Rizzo has said:

The decision in 2002 to limit congressional knowledge of the EITs to the Gang of 8 and to stick to that position for four long years—as the prevailing political winds were increasingly howling in the other direction—was foolish and feckless... For our part, we in the CIA leadership should have insisted at the outset that all members of the intelligence committees be apprised of all the gory details all along the way, on the record, in closed congressional proceedings.

- (3) *Strengthen the review process at the Department of Justice (DOJ) Office of Legal Counsel (OLC) for legal opinions concerning sensitive intelligence activities.* The Intelligence Community (IC) requires and deserves to have confidence that OLC can produce valid, durable legal analysis upon which it can rely. At the same time, the IC needs to inform OLC if material facts related to sensitive programs that have previously been reviewed have changed.
- (4) *Improve CIA controls in the management of covert action.* The unauthorized use of EITs beyond those approved by DOJ OLC, along with the many shortcomings in CIA's management of the RDI program, require CIA to implement greater and more detailed controls regarding sensitive programs.

(U) My vote to declassify this report does not signal my endorsement of all of its conclusions or its methodology. I do believe, however, that the Executive Summary, and Additional and Minority Views, and the CIA's rebuttal should be made public with appropriate redactions so the American public can reach their own conclusions about the conduct of this program. In my judgment, the "enhanced interrogation techniques" led, in some instances, to inhumane and brutal treatment of certain individuals held by the United States government.