Part two

What is in the Senate Intelligence Committee report on CIA torture

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A massive crime requires a massive cover-up. The Central Intelligence Agency's detention and interrogation program, the subject of the recently released Senate Intelligence Committee report, richly confirms this observation.

The middle sections of the 525-page unclassified executive summary of the Senate Intelligence Committee's still-classified 6,700-page report provide a detailed, documentary review of how CIA officials lied about both the nature of their "Enhanced Interrogation Techniques" (EITs) and the extent to which the use of these torture methods served the ostensible goal of thwarting terrorist plots.

As outlined in the first part of this series, the CIA started to develop its legal justification for torture shortly after the 9/11 terror attacks on the World Trade Center and the Pentagon.

The necessity defense

On November 26, 2001, CIA Office of General Counsel (OGC) attorneys circulated a draft legal memorandum entitled "Hostile Interrogations: Legal Considerations for CIA Officers." The document listed interrogation techniques considered to be torture, including "cold torture," "forced positions," "enforced physical exhaustion," "sensory deprivation," "perceptual deprivation," "social deprivation," "threats and humiliation," "conditioning techniques" and "deprivation of sleep."

The draft memorandum described prohibitions on torture and the possibility of a "necessity" defense against criminal charges of torture, acknowledging that any "necessity" argument would be novel and would need to be backed by a claim that the torture saved many lives, such as in the prevention of a terrorist attack.

An attorney at the CIA's Counterterrorism Center (CTC) wrote a similar memo on the "necessity" defense in February 2002, concluding that, without this defense, enhanced interrogation techniques violated the Geneva Conventions.

By August 1, 2002, the Department of Justice Office of Legal Counsel (OLC) had signed on to this legal novelty in a memorandum to the White House Counsel. The OLC memorandum states:

"Under these circumstances, a detainee may possess information that could enable the United States to prevent attacks that potentially could equal or surpass the September 11 attacks in their magnitude. Clearly, any harm that might occur during an interrogation would pale to insignificance compared to the harm avoided by preventing such an attack, which could take hundreds or thousands of lives."

Deputy Assistant Attorney General John Yoo, who authored much of the memo, admitted in a later interview with the Office of Professional Responsibility (OPR) that "the CIA may have indirectly suggested the new sections [related to commander-in-chief authority and possible defenses, including the necessity defense] by asking him what would happen in a case where an interrogator went 'over the line' and inadvertently violated the statute."

One of Yoo's colleagues at the time, Patrick Philbin, informed the OPR that when he told Yoo that the sections were superfluous and should be removed, Yoo responded, "They want it in there."

The Senate Intelligence Committee report found that Yoo and his coworkers had been briefed by CIA officials on the supposedly successful results obtained by torturing accused "dirty bomber" Jose Padilla. The report found that Yoo and others were falsely led to believe that it was only through enhanced interrogation techniques that the CIA had obtained information necessary to stop the alleged "dirty bomb" plot.

It was subsequently acknowledged that there was never any such plot.

One of the necessary elements of proving guilt in most criminal cases is the element of knowledge. The following anecdote reveals that the CIA leadership understood very clearly that their "enhanced interrogation" program did in fact constitute torture, and that it was both inhumane and illegal.

In early 2003, CIA General Counsel Scott Muller expressed concern on multiple occasions to the National Security Council principals, White House staff and Department of Justice personnel that the CIA torture program might be inconsistent with public statements from the George W. Bush administration that the US government's treatment of detainees was "humane."

Muller then sought to verify with the White House and Department of Justice that a February 7, 2002 Presidential Memorandum requiring the US military to treat detainees humanely did not apply to the CIA. Among other things, this resulted in discussions in early 2003 in which the White House press secretary was advised to avoid using the term "humane treatment" when discussing the detention of Al Qaeda and Taliban suspects.

The CIA reacted with fear to a perfunctory speech by President Bush on June 26, 2003, to mark the United Nations International Day in Support of Victims of Torture that included the following language:

"The United States is committed to the world-wide elimination of torture and we are leading this fight by example. I call on all governments to join with the United States and the community of law-abiding nations in prohibiting, investigating and prosecuting all acts of torture and in undertaking to prevent other cruel and unusual punishment."

Shortly thereafter, the CIA asked Bush's national security advisor, Condoleezza Rice, for policy reaffirmation of the CIA's use of EITs.

While that request was being considered, CIA headquarters stopped approving requests by CIA officers to use EITs and responded to infractions in the interrogation program as reported through CIA cables and other communications, including the decertification of some interrogators. (Prior to this time, the CIA practice had been to let the interrogators do more or less whatever they wanted.)

The request for "clarification" from the executive branch, as well as the concurrent housekeeping, clearly demonstrate that the CIA leadership knew the EITs violated international and national laws against torture and that additional legal cover was needed to continue the program.

Was the executive branch deceived by the CIA?

It appears that the CIA leadership and White House officials colluded on preserving and protecting the torture program at a July 29, 2003 meeting. Director of Central Intelligence George Tenet and CIA General Counsel Muller were charged with briefing Vice President Cheney, National Security Advisor Rice, Attorney General John Ashcroft and White House Counsel Alberto Gonzales, among others, on the efficacy of the CIA's interrogation program. Records indicate that CIA General Counsel Muller described the practice of waterboarding and made false statements about the number of times it was used on Khalid Sheik Mohammed and Abu Zubaydah.

A slide show warned those in attendance that "termination of this program will result in loss of life, possibly extensive," an assertion that was supported by a host of claims, each of which was belied by the CIA's own records. These included the claim that 50 percent of CIA intelligence reports on Al Qaeda were derived from detainee questioning, and that "major threats were countered and attacks averted" because of the use of the CIA's enhanced interrogation techniques. The presentation listed thwarted terror plots against the US Consulate in Karachi and London's Heathrow airport, the foiling of a "second wave" of attacks on buildings on the American West Coast, and the thwarting of other plots against US infrastructure.

After the CIA's presentation, Vice President Cheney stated, and National Security Advisor Rice agreed, that the CIA was carrying out administration policy in its interrogation program.

The Senate Intelligence Committee report lists the above meeting as an example of the CIA supposedly duping the White House, a claim that is undermined by the revelation in the very same report that the CIA and White House conspired to keep Secretary of State Colin Powell out of the meeting. On this point the report states:

"The National Security Council principals at the July 2003 briefing initially concluded it was 'not necessary or advisable to have a full Principals Committee meeting to review and reaffirm the Program.' A CIA email noted that the official reason for not having a full briefing was to avoid press disclosures, but added that: 'it is clear to us from some of the run-up meetings we had with [White House] counsel that the [White House] is extremely concerned [Secretary of State] Powell would blow his stack if he were to be briefed on what's been going on.'"

This admission is a damning indictment of the executive branch, confirming its knowledge and approval of CIA torture, and it flies in the face of the Senate report's general thrust that the rogue CIA was taking everyone else for a ride.

Lies by the CIA leadership to internal reviewers

The Senate Intelligence Committee report documents deceit within the CIA itself, particularly in representations and interactions with the agency's internal review apparatus, the Office of the Inspector General (OIG). It was not until November 2002, or nine months after Abu Zubaydah became the CIA's first detainee, that OIG was even informed of the CIA's Detention and Interrogation Program.

The first documentation of the CIA's criminal practices came in an OIG "Special Review" released in May 2004. According to this document, by 2003 the OIG had "received information that some employees were concerned that certain covert Agency activities at an overseas detention and interrogation site might involve violations of human rights." The Special Review became a point of contention within the CIA, with leadership figures ultimately denouncing its findings.

According to the Special Review, "CIA officers described pressure from CIA Headquarters to use the CIA's enhanced interrogation techniques, which they attributed to faulty analytical assumptions about what detainees should know."

A February 2003 OIG interview quotes a CIA chief, name redacted, as saying:

"When the detainee does not respond to the question, the assumption at Headquarters is that the detainee is holding back and 'knows' more, and consequently, Headquarters recommends resumption of EITs. This difference of opinion between the interrogators and Headquarters as to whether the detainee is 'compliant' is the type of ongoing pressure the interrogation team is exposed to. [Redacted] believes the waterboard was used 'recklessly'—'too many times' on Abu Zubaydah at [DETENTION SITE GREEN], based in part on faulty intelligence."

The Senate Intelligence Committee report concludes that such "pressure," as well as opposition from field operatives, was commonplace. Other interviewees, whose names are redacted, describe disagreements on whether to use enhanced interrogation techniques as a "field versus Headquarters issue," or say that the CIA leadership wanted field operatives to "go to the mat" in advocating for the use of the EITs.

At the same time, these "field versus headquarters" issues were cautiously kept out of the written record. As another interviewee put it, "all of the fighting and criticism is done over the phone and is not put into cables," and "cables reflect things that are all rosy."

When the Office of the Inspector General circulated a draft of its Special Review on the interrogation program, CIA General Counsel Muller responded that the OIG Special Review presented "an imbalanced and inaccurate picture of the Counterterrorism Detention and Interrogation Program," and claimed the OIG Special Review, "[o]n occasion, quoted or summarized selectively and misleadingly" from CIA documents.

In like fashion, Deputy Director for Operations James Pavitt wrote that the OIG Special Review should have come to the "conclusion that our efforts [that is, the torture techniques] have thwarted attacks and saved lives," and "EITs (including the waterboard) have been indispensable to our successes." He attached to his response a document describing intelligence obtained "as a result of the lawful use of EITs," and stated, "[T]he evidence points clearly to the fact that without the use of such techniques, we and our allies would [have] suffered major terrorist attacks involving hundreds, if not thousands, of casualties."

The Senate Intelligence Committee report described Pavitt's claims as "almost entirely inaccurate."

The report found that the CIA leadership impeded the OIG's work, including by means of personal interventions by CIA directors Porter Goss in 2005 and Michael Hayden in 2007. Hayden went so far as to create a sort of "review of the review," appointing a "senior counselor," accountable only to himself, to investigate OIG practices. Not surprisingly, this sham oversight produced the desired result—namely, the uncovering of supposed instances of "bias" among OIG personnel against the Detention and Interrogation Program.

The Senate report found countless examples of CIA leaders making false and misleading statements to the executive branch. For example, in November and December of 2004, then-Secretary of State Condoleezza Rice sought information on the efficacy of the EITs in producing useful intelligence on terrorism, only to receive an evasive and internally inconsistent response—namely, that the EITs produced useful information, but a study of their efficacy was impossible.

The torture policies the CIA pursued between 2002 and 2009 were of such a scale as to require a great deal of cooperation and coordination, not only within the CIA itself, as the mainstream media would have us believe, but across all branches of government. In support of a criminal endeavor, the CIA and White House concocted sham legal defenses based on the premise of immanent, catastrophic public danger. Then, the criminals lied time after time to facilitate their project, claiming that torture was instrumental in saving "thousands of lives." One could aptly summarize the Senate Intelligence Report with the quote, repeated scores of times, that "the claim is not supported by CIA records."

The same lies, with virtually no modification, are currently being used to justify unlimited spying by the National Security Agency.

To be continued.