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Senate Intelligence Committees Report on CIA Interrogations

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The recent Senate Intelligence Committees [report](#) on CIA interrogations is a parade of horrors. Detainees by the dozen arrested wrongfully and later released, including innocent nobodies and even men with mental disabilities. Poorly vetted interrogators with disciplinary problems and financial conflicts of interest. Relatives held as hostages to gain leverage over targets. Incredibly shoddy intelligence analysis.

And worst of all, widespread torture, both authorized and not: extreme sleep deprivation and isolation, causing mental breakdowns. Exposure to extreme cold. Shackling in painful positions. Waterboarding. Confinement in coffins. Non-consensual, medically unnecessary anal feeding with a tube, legally constituting rape.

Since the report has come out, much media attention has focused on the CIAs defenders, like former CIA director Michael Hayden and Vice President Dick Cheney, who have attempted to justify the CIAs actions with self-contradicting claims about the programs efficacy and legality. Notably, the primary wrongdoers implicated in the Senate report come from this same group of defenders: senior Bush administration officials who ordered the program and conspired to contort the law to evade it, along with senior CIA officers who carried out the tactics.

More attention, however, needs to be paid to the Obama administration and its own actions during the drafting and declassification of the Senate report. The public and media need to look much more closely at those actions and what they say about the Obama administrations commitment to ensuring that the US never tortures again after the president leaves office.

Back in December 2012, when a first version of the Senate report was completed, the Senate Intelligence Committee chair, Senator Diane Feinstein, sent a copy to President Obama, asking the White House to coordinate a response on behalf of the executive branch. Feinstein assumed, reasonably, that various executive agencies, from the CIA to the Justice Department to the State Department, would be involved in reviewing it. Human rights groups also [urged](#) Obama to take charge of the review process for the executive branch.

The Senate committee never received a formal written response from the White House. Instead, in June 2013, the committee received a response only from the CIAa document that the CIA [released](#) on the same day as the Senate report. The CIAs response has become the Obama administrations de facto written response.

It is a stunning read. After a somewhat conciliatory introduction, it proceeds into lengthy and detailed rebuttals justifying or disputing accounts of Bush administration interrogation tacticsthe waterboarding, sleep deprivation, and even the practice of rectal feeding, which it called a well acknowledged medical techniqueand in a way that strongly implies that the agency continues to believe in the tactics potential effectiveness and legality. The overall message of the CIA response is: *We made some mistakes, took things too far in a few places, and didnt exercise adequate oversight, but it really wasnt as bad as you claim, and we got useful intelligence, so. . .*

Nowhere in the document, outside of CIA Director John Brennans Forward to it, does the CIA even acknowledge that Obama has expressed his opposition to the CIA program and its methods. Nowhere in the document does the CIA take note of the fact that the Justice Departments Office of Legal Counsel repudiated the legal opinions used to justify the methods, or that Obama himself now considers the methods illegal. Nor does the document formally renounce the use of the CIAs methods.

Indeed, CIA director John Brennan, in the Forward to the response, all but admits that torture is potentially still on the table. Noting that the president has ordered the CIA to not use the tactics again, he wrote: I agree with the Presidents decision, and, *while I am the Director of the CIA*, this program will not under any circumstances be reinitiated. *I personally* remain firm in my belief that enhanced interrogation techniques are not an appropriate method to obtain intelligence [emphasis added].

In other words, with a different CIA director, torture is an option. When asked in a news conference on December 11 about whether the CIA might use the so-called Enhanced Interrogation Techniques (EITs) again, Brennan said: We are not contemplating at all getting back into the detention program using any of those EITs. So *I defer to the policymakers in future times* when there is going to be the need to be able to ensure that this country stays safe if we face a similar type of crisis [emphasis added].

There is no clearer way to say torture is still on the table without actually saying just that. Granted, the CIA by law and tradition is *supposed* to defer to policymakers, as Brennan notes, but like all agencies it is obligated to do so within the confines of the law. Brennan's point is deeply troubling because it appears to accept that the CIA's methods or most of them anyway potentially remain legal and that Obama's ban was simply a policy decision.

It should be remembered, of course, that prior to serving as CIA director, Brennan was the president's top counterterrorism advisor. His nomination to the CIA was [contentious](#), due to his apparent past support for CIA activities during the Bush administration, yet Obama threw his support behind Brennan.

So is this the Obama administration's position, that torture can remain on the table for future presidents?

This is a serious question that needs to be addressed. It should be recalled that Mitt Romney, as Republican nominee for president in 2008, appeared to [endorse](#) the CIA's methods, and the incoming chair of the Senate Intelligence Committee, Richard Burr, has [refused to rule out](#) the use of the old CIA methods again in the event the United States is faced with a 9/11 again.

Obama himself has repeatedly stated that he has banned torture, a reference to his January 2009 executive order [Ensuring Lawful Interrogations](#). And in his White House statement when the Senate report was released he stated that the CIA's harsh methods were inconsistent with our values as a nation. . . did not serve our broader counterterrorism efforts or our national security interests [and] did significant damage to America's standing in the world and made it harder to pursue our interests with allies and partners.

Obama also stated that, I will continue to use my authority as president to make sure we never resort to those methods again.

The president may not realize it, but he is actually failing to do just that. Despite Obama's clear policy ban on torture, and the clear prohibitions in US law, there is little to stop a future president, in the wake of an extraordinary national security event like the September 11 attacks, from unearthing unethical lawyers to revoke Obama's 2009 executive order, throw established law out the window, revive the twisted reasoning behind the old torture memos, and fashion a new neo-torture memo or other legal document to justify the CIA's old methods again.

So what should Obama do to prevent this? Legislatively, judging from the partisan divisions on the CIA torture issues, there will be little interest in the next Congress in adding meaningful restraints on the CIA. And perhaps no legislation can completely overcome some of the Bush administration's legal theories if they are resurrected: parts of them rest on the notion that the Constitution allows the president, in exigent circumstances, to disregard statutory law.

But President Obama can and should work with interested Senators like Feinstein and John McCain to codify restrictions on the CIA's detention authority, and make legal loopholes harder to jump through.

Obama should also ensure that the CIA, as an institution, publicly acknowledges the president's renunciation of the tactics used during the Bush administration, acknowledges their illegality even in exigent circumstances, and vows to never use them again. And he too should issue a clear statement on their illegality, for while he has said he banned torture, he has not made it clear enough that all the harsh methods he mentioned in his December 9 statement actually constitute torture or the cruel, inhuman or degrading treatment that is also prohibited under international law and are thus illegal.

The president may be reluctant to take this last step, because it raises the issue of why, if the tactics were illegal, no one is being prosecuted for them. But that's not a good enough reason, as the Convention against Torture, to which the US is a party, obligates countries to prosecute torture by government officials.

Practically speaking, prosecutions are the very best way to ensure that officials don't torture again. That's why Human Rights Watch has [repeatedly called](#) on Obama to reopen criminal investigations.

But if Obama is going to abdicate on the international obligation to prosecute torture, then the least he can do is disown the CIA's position, compel the CIA to acknowledge his position, and work with Congress to close the loopholes that make future torture possible.

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