

Portraits in Oversight:

Congress Investigates the Torture and Mistreatment of War Detainees



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In April 2004, shocking photographs depicting the torture and mistreatment of individuals in U.S. custody in Abu Ghraib Prison in Iraq triggered a firestorm of criticism, worldwide condemnation of U.S. practices, and two in-depth Senate investigations. The first was a five-year effort, from 2004 to 2009, by the Senate Armed Services Committee examining abusive actions taken by the U.S. Department of Defense (DOD). A second, overlapping, seven-year effort, from 2007 to 2014, by the Senate Select Committee on Intelligence investigated the role of the U.S. intelligence community in the wrongdoing. Each produced a lengthy committee report detailing what happened. Both Senate investigations exposed egregious misconduct by U.S. agencies; tracked the policies, persons, and approvals that produced the detainee abuses; and demonstrated that the wrongdoing was not the product of a “few bad apples” but of deliberate decisions by senior U.S. officials. Both investigations spurred reforms to prohibit the future mistreatment of individuals in U.S. custody.

America’s War on Terror

The detainee scandal had its origins in the September 11, 2001, terrorist attack that killed nearly 3,000 individuals. On September 12, 2001, President George W. Bush blamed global terrorism and promised the United States would respond. On September 17, 2001, the president signed a covert Memorandum of Notification giving the Central Intelligence Agency (CIA) broad authority to detain suspected terrorists.¹ On Sept. 20, 2001, in an address to Congress, President Bush declared, “Our war on terror begins with al Qaeda, but it does not end there.”² He called on world leaders to join the U.S. battle against terrorism.



Aftermath of September 11, 2001, terrorist attack on World Trade Center in New York City. (Source: National Archives)

On September 25, 2001, the United States initiated Operation Enduring Freedom, a military campaign focused on Afghanistan. The U.S. intelligence community had determined that the 9/11 attack was orchestrated by al Qaeda terrorists living in Afghanistan under the protection of the Taliban, a militant Islamic movement that largely controlled the Afghan countryside.³ U.S. forces took a large number of prisoners into custody. On November 13, 2001, President Bush issued a military order authorizing the Secretary of Defense to detain non-U.S.

¹ S. Rep. No. 113-288 (2014), p. 11, <https://www.intelligence.senate.gov/sites/default/files/publications/CRPT-113srpt288.pdf>

² The White House. (2001, September 20). *President Bush addresses a joint session of Congress and the nation* [Press release]. <https://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010920-8.html>

³ George W. Bush Presidential Library. (n.d.). *Global war on terror*. National Archives.

<https://www.georgewbushlibrary.gov/research/topic-guides/global-war-terror>

See also Maizland, L. (2023, January 19). *The Taliban in Afghanistan*. Council on Foreign Relations.

<https://www.cfr.org/background/taliban-afghanistan>

citizens when “there is reason to believe” they are or were members of al Qaeda and “engaged in, aided or abetted ... acts of international terrorism” causing “injury to or adverse effects on the United States, its citizens, national security, foreign policy, or economy.”⁴



U.S. soldiers and Northern Alliance fighters in Afghanistan, 2001. (Source: U.S. Army)

On December 28, 2001, the U.S. Department of Justice’s Office of Legal Counsel issued a legal opinion concluding that non-U.S. citizens could be detained at a U.S. naval base at Guantanamo Bay, Cuba, and would be unable to contest their detention in U.S. courts, because U.S. courts would lack jurisdiction over aliens at a detention facility outside U.S. territory.⁵ On January 11, 2002, U.S. military forces flew the first twenty detainees from Afghanistan to the Guantanamo Bay facility, also known as GTMO.⁶

On February 7, 2002, President Bush signed an internal executive branch memorandum declaring that the Geneva Convention protecting the treatment of prisoners of war did not protect al Qaeda or Taliban detainees, because they were not “regular armed forces” of a nation state.⁷ The memorandum instead classified them as “enemy combatants” who were not entitled to the Geneva Convention’s minimum standards for humane treatment of prisoners.

President Bush also decided to expand U.S. military operations from Afghanistan to Iraq. With his support, in October 2002, Congress approved a joint resolution authorizing military force against Iraq, then ruled by dictator Saddam Hussein.⁸ The primary justifications were that Iraq had harbored al Qaeda terrorists and that Iraq possessed and might use chemical, biological, or nuclear weapons of mass destruction against the United States or others in the region. Later, a U.S. bipartisan commission found no cooperative link between Iraq and al Qaeda,⁹ and an intense, multi-year effort located no weapons of mass destruction in Iraq.¹⁰

⁴ Mil. Order. No. 01-28904 66 F.R. 57833 (2001). <https://www.federalregister.gov/documents/2001/11/16/01-28904/detention-treatment-and-trial-of-certain-non-citizens-in-the-war-against-terrorism>

⁵ Philbin, P.F. (2001, December 28). *Possible habeas jurisdiction over aliens held in Guantanamo Bay, Cuba* [Memorandum]. The National Security Archive. <https://nsarchive2.gwu.edu/torturingdemocracy/documents/20011228.pdf>

⁶ *Transferring Guantanamo Bay detainees to the homeland: Implications for states and local communities: Hearings before the Committee on Homeland Security, House, 114th Cong.* p. 8 (2016, April 28). <https://www.govinfo.gov/content/pkg/CHRG-114hhrg22759/pdf/CHRG-114hhrg22759.pdf>

⁷ Bush, G. W. (2002, February 7). *Humane treatment of al Qaeda and Taliban detainees* [Memorandum]. The National Security Archive. <https://nsarchive2.gwu.edu/torturingdemocracy/documents/20020207-2.pdf>

⁸ Authorization for Use of Military Force Against Iraq Resolution of 2002. Pub. L. No. 107-243 116 Stat. 1498. (2002). <https://www.congress.gov/bill/107th-congress/house-joint-resolution/114>

⁹ National Commission on Terrorist Attacks Upon the United States. (2004, August 20). 10.3 “Phase two” and the question of Iraq, The 9/11 Commission Report, pp. 334 – 338. https://govinfo.library.unt.edu/911/report/911Report_Ch10.pdf

¹⁰ Associated Press. (2005, April 25). *CIA’s final report: No WMD found in Iraq*. NBC News. <https://www.nbcnews.com/id/wbna7634313>

On March 20, 2003, the United States led a massive invasion of Iraq, code named Operation Iraqi Freedom. Working with other countries, the combined armed forces initiated a shock-and-awe bombing campaign followed by a land invasion that overwhelmed Iraqi forces.¹¹ The United States took custody of thousands of captured fighters, suspected terrorists, and sympathizers.¹²



U.S. Marines from the 2nd Battalion, 1st Marine Regiment escort prisoners of war to holding area on March 21, 2003, during Operation Iraqi Freedom. (Source: U.S. Marine Corps)

To house the prisoners captured in Afghanistan and Iraq, the United States expanded the GTMO military prison in Cuba and, in May 2003, took control of the then vacant Abu Ghraib Prison, about 20 miles west of Baghdad. The prison was run primarily by U.S. military police brigades under the command of Brigadier General Janis Karpinski who was in charge of all U.S.-run prisons in Iraq.



Abu Ghraib Prison (Source: U.S. DOJ Office of Inspector General)

Within months, allegations began emerging of brutal torture and inhumane treatment of detainees at Abu Ghraib. The allegations appeared in June and July 2003 reports by Amnesty International, a nonprofit that combats torture and human rights abuses;¹³ a November 2003 special media report by the Associated Press;¹⁴ and a February 2004 report by the International Committee of the Red Cross that, with U.S. permission, had observed first-hand Abu Ghraib prison detainees.¹⁵

¹¹ Council on Foreign Relations. (n.d.). *The Iraq War 2003-2011*. <https://www.cfr.org/timeline/iraq-war>

¹² Saddam Hussein was also captured, bringing an end to his 24-year rule. He was later convicted by an Iraqi special tribunal of crimes against humanity and executed in 2006.

¹³ Amnesty International. (2003, June 20). *Iraq: Human rights must be foundation for rebuilding* [Press release]. <https://www.amnesty.org/en/documents/mde14/136/2003/en/>; Amnesty International. (2003, June 19). *On whose behalf? Human rights and the economic reconstruction process in Iraq*. <https://www.amnesty.org/en/documents/mde14/128/2003/en/>;

Amnesty International. (2003, July 23). *Iraq: Continuing failure to uphold human rights* [Press release]. <https://www.amnesty.org/en/wp-content/uploads/2021/06/mde141592003en.pdf>

¹⁴ Hanley, C. J. (2003, November 1). AP Enterprise: Former Iraqi detainees tell of riots, punishment in the sun, good Americans, and pitiless ones. *San Diego Union-Tribune*. Retrieved on October 14, 2024, from <https://web.archive.org/web/20140503221406/http://legacy.utsandiego.com/news/world/iraq/20031101-0936-iraq-thecamps.html>

¹⁵ International Committee of the Red Cross. (2004, February). *Report of the International Committee of the Red Cross (ICRC) on the treatment by the Coalition Forces of prisoners of war and other protected persons by the Geneva Convention in Iraq during arrest, internment, and interrogation*. Equipa Nizkor. <https://www.derechos.org/nizkor/us/doc/icrc-prisoner-report-feb-2004.pdf>

The allegations included reports that prisoners were subjected to beatings; sleep deprivation; bright lights and loud noises; aggressive military dogs; painful stress positions; sexual assaults; threats of rape, execution, or harm to family members; and humiliations such as videotaping or photographing detainees forced to strip naked or pose in mock sexual acts.

On April 28, 2004, a respected CBS news program, *60 Minutes*, shocked the American public and the world when it broadcast information about Abu Ghraib Prison misconduct and displayed horrific photographs taken by U.S. personnel of naked and abused detainees.¹⁶ The photographs included a detainee with a bag over his head, standing on a box with electric wires attached to his hands. The *60 Minutes* program also disclosed that 17 American soldiers, including Gen. Karpinski, had been removed from duty and charged with misconduct. It reported that civilians who conducted inhumane prisoner interrogations were also under investigation. On April 30, 2004, reporter Seymour Hersh published a *New Yorker* article with additional disturbing information about the torture and mistreatment of Abu Ghraib prisoners, generating additional public outrage and worldwide condemnation of U.S. practices.¹⁷



Prisoner in U.S. Custody at Abu Ghraib (Source: U.S. Army Criminal Investigation Command)

On May 7, 2004, at a press conference, President Bush acknowledged publicly the Abu Ghraib abuses. President Bush said he was “sorry for the humiliation suffered by the Iraqi prisoners” and called the acts “a stain on our country’s honor.”¹⁸

Investigation by Senate Committee on Armed Services

That same day, May 7, 2004, Secretary of Defense Donald Rumsfeld appeared in front of the Senate Armed Services Committee (SASC) and answered questions about the Abu Ghraib abuses. It was the beginning of a five-year, bipartisan, committee inquiry into DOD detention and interrogation policies at military facilities in GTMO, Afghanistan, and Iraq. Over the next five years, the committee held multiple hearings, initiated an in-depth investigation into the origins of the abuse, and issued a lengthy report.

The committee inquiry was led by Republican Sen. John Warner and Democratic Sen. Carl Levin. During its first two years, Sen. Warner chaired the committee and Sen. Levin served as its Ranking Minority Member. When Democrats won control of the Senate in 2006, the two reversed leadership roles on the committee but continued the bipartisan inquiry into detainee abuses. Throughout, the investigation benefited from bipartisan support by committee members whose roster included, over the relevant period, 13 members of one party and 12 of the other,

¹⁶ Leung, R. (2004, April 27). *60 Minutes II: Abuse of Iraqi POWs by GIs probed*. CBS News. <https://www.cbsnews.com/news/abuse-of-iraqi-pows-by-gis-probed/>

¹⁷ Hersh, S. M. (2004, April 30). *Torture at Abu Ghraib*. *New Yorker*. Retrieved October 14, 2024, from <https://web.archive.org/web/20160801141211/http://www.newyorker.com/magazine/2004/05/10/torture-at-abu-ghraib>

¹⁸ CBS News. (2004, May 7). *Bush ‘sorry’ for abuse of Iraqi prisoners*. <https://www.cbsnews.com/news/bush-sorry-for-prisoner-abuse/>

depending upon which party was in the majority. Committee member Sen. John McCain (R-AZ), who had been a prisoner of war in Vietnam for nearly six years in the 1960s, also played a leadership role.

From 2004 to 2005, the committee held eight days of public hearings focused on detainee abuse. In the first hearing on May 7, 2004, committee members from both political parties grilled Secretary Rumsfeld and other senior Pentagon officials about what had happened.¹⁹ Sen. Levin's opening statement helped set a solemn tone:

The abuses that were committed against prisoners in U.S. custody at the Abu Ghraib prison in Iraq dishonored our military and our Nation, and they made the prospects for success in Iraq even more difficult than they already are. Our troops are less secure and our Nation is less secure because these depraved and despicable actions will fuel the hatred and fury of those who oppose us.²⁰



Prisoner in U.S. Custody at Abu Ghraib (Source: U.S. Army Criminal Investigation Command)

Committee members emphasized that the mistreatment of detainees in U.S. custody made it more likely that U.S. personnel would be subjected to similar mistreatment if captured and fueled the recruitment of terrorists around the world. Secretary Rumsfeld apologized and took ultimate responsibility for the abuses. He disclosed that he had not seen any of the photographs of detainee abuse before they were broadcast and so did not comprehend the brutality involved or the impact that the photographs would have.²¹

That hearing was followed by two more hearings in May examining the mistreatment of Iraqi prisoners;²² a July hearing on a DOD Inspector General report on the military's detention doctrines and training;²³ and a September hearing on the role of the 205th Military Intelligence Brigade at Abu Ghraib Prison and the conclusions reached by an independent DOD panel examining detainee issues.²⁴ In 2005, the committee held three days of hearings on DOD interrogation techniques, objections lodged by the Federal Bureau of Investigations (FBI) to abusive interrogations at Guantanamo Bay, and how the military's justice system was handling wrongdoers.²⁵ Detainee issues also came up during 2005 SASC hearings on Iraqi military

¹⁹ *Review of Department of Defense detention and interrogation operations: Hearings before the Committee on Armed Services, Senate*, 108th Cong. (2004, May 7, 11, 19, July 22, & September 9).

<https://www.govinfo.gov/content/pkg/CHRG-108shrg96600/pdf/CHRG-108shrg96600.pdf>

²⁰ *Review of Department of Defense detention and interrogation operations* (2004, May 7), p. 3.

²¹ *Review of Department of Defense detention and interrogation operations* (2004, May 7), pp. 44, 57-58.

²² *Review of Department of Defense detention and interrogation operations* (2004, May 11, 19).

²³ *Review of Department of Defense detention and interrogation operations* (2004, July 22).

²⁴ *Review of Department of Defense detention and interrogation operations* (2004, September 9).

²⁵ *Review of Department of Defense detention and interrogation policy and operations in the global war on terrorism: Hearings before the Committee on Armed Services, Senate*, 109th Cong. (2005, March 10, July 13-14). <https://www.govinfo.gov/content/pkg/CHRG-109shrg28578/pdf/CHRG-109shrg28578.pdf>

operations and 2006 SASC hearings on detainee policies and contractor abuses in Iraq and Afghanistan. In addition, the committee held multiple classified briefings.²⁶



Sen. John Warner at a SASC hearing on detainees.
(Source: CSPAN)

One issue that became a matter of contention involved the FBI. In its March 2005 hearing, the committee disclosed it had learned that FBI agents had strongly objected to the “aggressive and coercive interrogation techniques” used by DOD. One FBI agent in a series of emails described DOD tactics as “torture,” criticized them as ineffective, and obtained FBI permission to “step out of the picture” when those tactics were used.²⁷ When asked, the DOD witness, Vice Admiral Albert T. Church, stated that his investigation had not interviewed any FBI personnel.

After the hearing, Sen. Levin asked the Department of Justice (DOJ) to allow the committee to interview the FBI agent who’d witnessed DOD actions and provide unredacted copies of key FBI emails and related documents, but DOJ refused.²⁸ In response, Sen. Levin placed a hold on the nomination of Alice Fisher to head DOJ’s criminal division, not only to obtain the information, but also because an email stated she’d been informed about DOD’s abusive tactics. In its July 2005 hearing, the committee further probed FBI concerns about DOD’s interrogations,²⁹ but DOJ continued to deny requests for additional information. Finally, one year later in July 2006, DOJ allowed Senators Levin and Arlen Specter (R-PA) to interview the key FBI agent. Having succeeded in obtaining at least some information important to the committee’s oversight work, Sen. Levin lifted his hold on the nomination and allowed a vote.³⁰

In response to the SASC investigation, in December 2005, Congress enacted the bipartisan Detainee Treatment Act which prohibited the “cruel, inhuman, or degrading treatment” of individuals in U.S. custody “regardless of nationality or physical location.” The new law also required military interrogations to comply with the U.S. Army Field Manual which

²⁶ *Review of Department of Defense detention and interrogation policy and operations in the global war on terrorism* (2005, March 10), p. 2.

²⁷ *Review of Department of Defense detention and interrogation policy and operations in the global war on terrorism* (2005, March 10), pp. 6, 12-14, 36-37.

²⁸ 152 Cong. Rec. S9,703 – S9,709 (daily ed. September 19, 2006) (statement of Sen. Levin).
<https://www.congress.gov/109/crec/2006/09/19/CREC-2006-09-19-senate.pdf>

²⁹ *Review of Department of Defense detention and interrogation policy and operations in the global war on terrorism* (2005, July 13).

³⁰ 152 Cong. Rec. S9714 (daily ed. September 19, 2006) (roll call vote confirming Fisher nomination).
<https://www.congress.gov/109/crec/2006/09/19/CREC-2006-09-19-senate.pdf>

Three years later, DOJ’s Inspector General issued a lengthy report confirming that the FBI had objected to the abusive detainee interrogations as inhumane and ineffective, and FBI Director Robert Mueller had directed FBI agents not to participate. See U.S. Department of Justice Office of the Inspector General. (2009, October). *A review of the FBI’s involvement in and observations of detainee interrogations in Guantanamo Bay, Afghanistan, and Iraq*. Oversight.gov. pp. 71, 74. <https://www.oversight.gov/sites/default/files/oig-reports/s0910.pdf>

prohibited specific abusive interrogation techniques, required use of approved methods, and required detainees to be treated humanely.³¹

When Sen. Levin became chair of the Armed Services Committee in January 2007, he determined, with the support of Sen. McCain, that the committee staff should conduct an investigation into how the U.S. military came to use such brutal interrogation techniques against detainees. Over the next 18 months, a small bipartisan investigative team of staffers gathered documents, issued two subpoenas, and reviewed over 200,000 pages of classified and unclassified materials. The staff also interviewed over 70 individuals, including high-ranking military officers and civilians. The committee then held two hearings on what it had learned.



Sen. Carl Levin at SASC hearing on detainees. (Source: CSPAN)

The first hearing took place on June 17, 2008.³² It focused on how Survival, Evasion, Resistance, and Escape (SERE) training, a DOD program designed to help U.S. military personnel withstand imprisonment and illegal, abusive interrogations, led to using some of the same inhumane SERE techniques on individuals in U.S. custody. The hearing presented evidence, in particular, on how the abusive SERE techniques were approved by senior officials in the DOD chain of command, including Bush administration senior officials.

A key hearing witness was Lieutenant Colonel Daniel Baumgartner who, before retiring, served as chief of staff of the Joint Personnel Recovery Agency (JPRA), a DOD agency that provides military training. He explained that JPRA administered SERE training to expose U.S. military personnel to simulated physical and psychological abuse they might receive if captured and ways to respond. He stated that the training was carefully calibrated to avoid injuring participants who knew they could call off the training at any time. He also testified that, upon request, JPRA provided briefings about SERE simulated interrogations to the Defense Intelligence Agency in late 2001 or early 2002. In addition, he testified that in response to a July 2002 request from DOD's general counsel William J. Haynes II, JPRA provided the general counsel with a list of the abusive techniques including beatings, nudity, stress positions, and waterboarding, and an assessment of their psychological impact. He confirmed that DOD decided to use those same abusive techniques, without safeguards, when interrogating detainees at GTMO and Abu Ghraib Prison.

³¹ Detainee Treatment Act of 2005. Pub. L. No. 109-148 119 Stat. 2739 (2005). <https://www.govinfo.gov/content/pkg/COMPS-489/pdf/COMPS-489.pdf>

³² *The Treatment of detainees in U.S. custody: Hearings before the Committee on Armed Services, Senate*, 110th Cong. (2008, June 17, September 25). <https://www.congress.gov/110/chrg/CHRG-110shrg47298/CHRG-110shrg47298.pdf>

Committee member Sen. Susan Collins (R-ME) made the following harrowing point:

So, by the very nature of the SERE training, we're trying to help our troops resist and survive interrogation techniques that are ... inhumane or outside the pale. That's why I think it's so troubling to many of us that those techniques were investigated for use by our interrogators, when, in fact, the whole purpose of SERE training is to teach our troops how to survive when they're being questioned by people who do not obey the international standards of humane treatment.³³

The hearing also took testimony from Lieutenant Colonel Diane Beaver, GTMO's staff judge advocate, who wrote an October 2002 legal opinion determining that the use of SERE interrogation techniques on detainees would be "lawful" if properly regulated.³⁴ She testified that she incorrectly assumed her legal opinion would be carefully reviewed by more senior DOD legal and policy experts. She said, "I cannot help but conclude that others chose not to write on this issue to avoid being linked to it. That was not an option for me," as she had been ordered to do the legal analysis. The committee report later concluded:

GTMO Staff Judge Advocate Lieutenant Colonel Diane Beaver's legal review justifying the October 11, 2002, GTMO request was profoundly in error and legally insufficient. Leaders at GTMO, including Major General Dunlavey's successor, Major General Geoffrey Miller, ignored warnings from DoD's Criminal Investigative Task Force and the Federal Bureau of Investigation that the techniques were potentially unlawful and that their use would strengthen detainee resistance.³⁵



Former DOD Gen. Counsel William Haynes at SASC hearing on detainees. (Source: CSPAN)

The hearing's final witness was William J. Haynes II, who had served as DOD general counsel, the department's most senior lawyer. He confirmed that on November 27, 2002, despite objections expressed by other military lawyers, he sent a memo to Secretary Rumsfeld recommending approval of most of 18 proposed interrogation techniques including "stress positions, removal of clothing, use of phobias, such as fear of dogs, and deprivation of light and auditory stimuli."³⁶ He also confirmed that, on December 2, 2002, Secretary Rumsfeld

³³ *The Treatment of detainees in U.S. custody* (2008, June 17), p. 33.

³⁴ *The Treatment of detainees in U.S. custody* (2008, June 17), p. 64.

³⁵ S. Rep. No. 110-54 (2008), p. xxvii-xxviii. <https://www.govinfo.gov/content/pkg/CPRT-110SPRT48761/pdf/CPRT-110SPRT48761.pdf>

³⁶ *The Treatment of detainees in U.S. custody* (2008, June 17), pp. 7, 117, 126-127, 130; Haynes II, W. J. (2002, November 27). *Counter-resistance techniques* [Memorandum]. The National Security Archive. <https://nsarchive2.gwu.edu/NSAEBB/NSAEBB127/02.12.02.pdf>

approved the use of those abusive techniques against detainees.³⁷ Committee member Jack Reed (D-RI) told Mr. Haynes that he'd done "a disservice" to U.S. soldiers: "You empowered them to violate basic conditions which every soldier respects, the [Uniform Code of Military Justice], the Geneva Conventions." Sen. Levin stated that by approving the use of abusive interrogation methods, Secretary Rumsfeld had unleashed "a virus which ultimately infected interrogation operations conducted by the U.S. military in Afghanistan and Iraq."³⁸

The committee held its second hearing on Sept. 25, 2008. A key witness was retired Air Force Colonel John "Randy" Moulton who'd served as deputy commander and commander of JPRA from 2000 to 2004, while the GTMO and Abu Ghraib abuses were taking place. He expressed regret for the use of SERE interrogation tactics on detainees. When asked "[w]hat's the price we've paid for Abu Ghraib," Col. Moulton responded, "I think it's pretty severe, as far as international opinion. That hurt us gravely. It also may have some ramifications for our own detainees in the future."³⁹

In November 2008, the committee approved without objection a 265-page report describing DOD's role in the detainee abuses.⁴⁰ After a contentious declassification process with defense and intelligence agencies leading to redactions of some text, the committee released the report's executive summary and conclusions to the public in December.⁴¹ The full report, with additional redactions, was released in April 2009. The bipartisan report presented detailed factual findings about what happened and identified many of the military officials involved. It concluded in part:

The abuse of detainees in U.S. custody cannot simply be attributed to the actions of 'a few bad apples' acting on their own. The fact is that senior officials in the United States government solicited information on how to use aggressive techniques, redefined the law to create the appearance of their legality, and authorized their use against detainees. Those efforts damaged our ability to collect



U.S. military officer confronting a detainee. (Source: U.S. Army Criminal Investigation Command)

³⁷ DOJ had previously issued a memorandum narrowly defining unlawful torture. Bybee, J. S. (2002, August 1). *Standards of conduct for interrogation under 18 U.S.C. §§ 2340-2340A* [Memorandum]. U.S. Department of Justice. <https://www.justice.gov/sites/default/files/olc/legacy/2010/08/05/memo-gonzales-aug2002.pdf> In 2003, DOJ issued a memorandum directly to DOD finding only limited legal liability for military interrogations of "unlawful combatants held outside of the United States." Yoo, J. C. (2003, March 14). *Military interrogation of alien unlawful combatants held outside the United States* [Memorandum]. U.S. Department of Justice. <https://www.justice.gov/sites/default/files/olc/legacy/2009/08/24/memo-combatantsoutsideunitedstates.pdf>

³⁸ *The Treatment of detainees in U.S. custody* (2008, June 17), pp. 7, 128.

³⁹ *The Treatment of detainees in U.S. custody* (2008, September 25), p. 197.

⁴⁰ S. Rep. No. 110-54 (2008).

⁴¹ Office of Senator Levin. (2008, December 11). *Statement of Senator Carl Levin on Senate Armed Services Committee report of its Inquiry into the Treatment of Detainees in U.S. Custody* [Press release]. <https://irp.fas.org/news/2008/12/levin121108.html>

accurate intelligence that could save lives, strengthened the hand of our enemies, and compromised our moral authority.⁴²



Cover of *The Economist* magazine (May 8, 2004)

The report placed significant blame on Secretary Rumsfeld:

Secretary of Defense Donald Rumsfeld's authorization of aggressive interrogation techniques for use at Guantanamo Bay was a direct cause of detainee abuse there ... [and] influenced and contributed to the use of abusive techniques, including military working dogs, forced nudity, and stress positions, in Afghanistan and Iraq.⁴³

In a written statement following release of the report, Committee Chair Levin explained that the SASC investigation was “an effort to set the record straight on this chapter in our history that has damaged both America’s standing and our security. America needs to own up to its mistakes so that we can rebuild some of the good will that we have lost.”⁴⁴

Investigation by the Senate Select Committee on Intelligence

In 2007, the Senate Select Committee on Intelligence (SSCI), led by then chair Sen. Jay Rockefeller (D-WV), investigated and confirmed reports that, over the objection of the National Intelligence Director and White House legal counsel, the CIA had destroyed videotapes of brutal detainee interrogations.⁴⁵ On March 5, 2009, under new SSCI chair Senator Dianne Feinstein (D-CA), the committee voted 14-1 to initiate a broader inquiry into actions by the intelligence community related to abuses of CIA detainees.⁴⁶

To conduct the work, the committee entered into a memorandum of understanding with the CIA to gain access to highly sensitive and classified materials. A small committee staff assigned to the effort used secure facilities at a CIA facility with a CIA-approved, stand-alone computer system to review documents and, ultimately, write a committee report.⁴⁷ The CIA provided the committee with more than six million pages of CIA materials as well as transcripts of interviews of CIA officials conducted by the CIA Inspector General and others.⁴⁸

In August 2009, the Department of Justice (DOJ) expanded a criminal review into the CIA’s videotape destruction to include its use of unauthorized interrogation techniques. A month

⁴² S. Rep. No. 110-54 (2008), p. xii.

⁴³ S. Rep. No. 110-54 (2008), p. xxviii.

⁴⁴ Office of Senator Levin (2008).

⁴⁵ Rockefeller, J., & Jones, D. J. (2018, May 9). It’s time to hold the CIA accountable. Gina Haspel’s hearing is the best place to start. *Washington Post*. <https://www.washingtonpost.com/news/global-opinions/wp/2018/05/09/its-time-to-hold-the-cia-accountable-gina-haspels-hearing-is-the-best-place-to-start/>

⁴⁶ S. Rep. No. 113-288 (2014), p. 525.

⁴⁷ *Cox v. Department of Justice*, Case. No. 22-1202, slip op. (2nd Cir. August 5, 2024), pp. 8-10.

<https://www.govinfo.gov/content/pkg/USCOURTS-ca2-22-01202/pdf/USCOURTS-ca2-22-01202-0.pdf>

⁴⁸ S. Rep. No. 113-288 (2014), p. viii. SSCI did not conduct its own interviews of U.S. intelligence personnel.

later, SSCI Republicans announced they would no longer participate in the committee's investigation, arguing it would conflict with the DOJ investigation. Then SSCI vice chair, Sen. Christopher Bond (R-MO), explained, "What current or former CIA employee would be willing to gamble his freedom by answering the Committee's questions? Indeed, forcing these terror fighters to make this choice is neither fair nor just."⁴⁹

The committee staff nevertheless continued its work and, three years later, completed a 6,700-page classified report that detailed the CIA's role in detainee abuses and identified many of the intelligence officials who approved or participated in the torture and mistreatment of individuals in CIA custody.⁵⁰ On December 13, 2012, by a vote of 9-6, which included seven Democrats, one Independent, and one Republican, Olympia Snowe (R-ME), voting in favor, the committee approved the report. Sen. McCain, an ex-officio member of SSCI but without a vote, also supported the report. Six committee Republicans voted against approval of the report, criticizing it as partisan and containing factually inaccurate statements.

The committee provided the report to the CIA and other intelligence agencies for their review and comments. Six months later, on June 27, 2013, the CIA issued a 136-page memorandum agreeing that its interrogation techniques had been "inappropriate" and involved management failures, but also disputing key facts and conclusions in the report.⁵¹



CIA Seal (Source: CIA)

On December 17, 2013, during an SSCI hearing, Sen. Mark Udall (D-CO) disclosed for the first time the existence of a secret internal CIA review, ordered by then CIA director Leon Panetta in 2009, which confirmed many of the key facts in the SSCI report but were disputed in the CIA's 136-page analysis.⁵² Sen. Udall also noted then, and later, that the CIA refused to provide the full Panetta Review to the committee.⁵³ After public disclosure of the existence of the Panetta Review, the CIA claimed in January 2014, that SSCI staffers had improperly obtained and removed parts of the Panetta Review from CIA headquarters.

⁴⁹ Finn, P. (2009, September 26). GOP senators drop out of panel inquiry into CIA program. *Washington Post*. <https://www.washingtonpost.com/wp-dyn/content/article/2009/09/25/AR2009092503745.html>

⁵⁰ S. Rep. No. 113-288 (2014).

⁵¹ Brennan, J. O. (2013, June 27). *CIA comments on the Senate Select Committee on Intelligence Report on the Rendition, Detention, and Interrogation Program* [Memorandum]. Central Intelligence Agency. Retrieved October 14, 2024, from

https://web.archive.org/web/20141210004103/https://www.cia.gov/library/reports/CIAAs_June2013_Response_to_the_SSCI_Study_on_the_Former_Detention_and_Interrogation_Program.pdf

⁵² *Nomination of Daniel Bennett Smith to be an Assistant Secretary of State (Intelligence and Research) and Caroline Diane Krass to be General Counsel of the Central Intelligence Agency: Hearings before the Select Committee on Intelligence, Senate* [Video], 113th Cong. (2013). <https://www.intelligence.senate.gov/hearings/open-hearing-nomination-daniel-bennett-smith-be-assistant-secretary-state-intelligence-and>; Mazzetti, M. (2014, March 7). Behind clash between C.I.A. and Congress, a secret report on interrogations. *New York Times*. <https://www.nytimes.com/2014/03/08/us/politics/behind-clash-between-cia-and-congress-a-secret-report-on-interrogations.html>

⁵³ 160 Cong. Rec. S6,476 (daily ed. December 10, 2014) (Sen. Mark Udall floor statement). <https://www.congress.gov/113/crec/2014/12/10/CREC-2014-12-10-senate.pdf>

In March 2014, in a statement on the Senate floor, Sen. Feinstein stated that SSCI staff had legally obtained portions of the Panetta Review from documents provided by the CIA, printed a hard copy, and transferred it from CIA grounds to a secure Senate safe.⁵⁴ She explained



Sen. Feinstein speaking on Senate floor about the SSCI investigation. (Source: CSPAN)

that, earlier in 2010, the CIA had secretly removed over 900 documents from the SSCI's secure computer and, when confronted, had initially denied it, then blamed contractors, and finally falsely claimed the White House had ordered the removal. She said those actions had led SSCI staff to safeguard key documents, which they could do legally. The CIA Inspector General later confirmed that CIA employees had improperly searched the SSCI computers, read staff emails, and sent a referral to the Justice Department seeking an investigation of SSCI staff based on fabricated information.⁵⁵

On April 3, 2014, in a closed session, by a vote of 11-3, the committee approved an updated version of the 6,700-page report which included changes made in response to CIA comments, and also voted to declassify the report's executive summary which exceeded 700 pages. The committee did not consider declassifying the full report, in part due to the time it would require.⁵⁶ On April 7, 2014, the committee submitted the executive summary to President Obama and requested its declassification with minimal redactions. He asked the CIA to take the lead, and for more than six months the committee conducted contentious negotiations with the CIA to minimize redactions to the executive summary.

On December 9, 2014, the committee filed a final version of the classified report with the Senate and released to the public a declassified, redacted version of the executive summary, together with additional and dissenting views. The committee made the full classified report available only to members of Congress and sent a limited number of copies to the President and certain federal agencies.⁵⁷ The committee never held a public hearing on the role of the intelligence agencies in the abuse of individuals in U.S. custody.

In the foreword to the SSCI report, Sen. Feinstein acknowledged the need to acquire intelligence to protect the United States and the pressures placed on intelligence agencies to "use every possible tool to gather intelligence and remove terrorists from the battlefield," but she also wrote: "[P]ressure, fear, and expectation of further terrorist plots do not justify, temper, or excuse improper actions taken by individuals or organizations in the name of national security."⁵⁸

⁵⁴ 160 Cong. Rec. S1488-S1489 (daily ed. March 11, 2014) (Sen. Dianne Feinstein floor statement). <https://www.congress.gov/113/crec/2014/03/11/CREC-2014-03-11-pt1-PgS1487-8.pdf>

⁵⁵ 160 Cong. Rec. S6,476, 2014; Dilanian, K. (2014, July 31). *CIA admits to spying on Senate intelligence committee*. Christian Science Monitor. <https://www.csmonitor.com/USA/Latest-News-Wires/2014/0731/CIA-admits-to-spying-on-Senate-intelligence-committee>

⁵⁶ *Cox v. Department of Justice* (2024), pp. 12-13.

⁵⁷ S. Rep. No. 113-288 (2014), p. iv.

⁵⁸ S. Rep. No. 113-288 (2014), p. 2.

The report's executive summary disclosed a large body of new information about the intelligence community's role in the inhumane detention and interrogation of detainees. Among other facts, the report revealed the existence of more CIA detainees than previously known, that more CIA detainees were subjected to brutal interrogation methods than previously admitted, that more types of inhumane interrogation techniques were used without proper approval than previously acknowledged, and that the CIA rarely reprimanded or punished any person engaged in the mistreatment of CIA detainees.⁵⁹ The report detailed instances of unauthorized waterboarding⁶⁰ and one site where "[u]ntrained CIA officers ... conducted frequent, unauthorized, and unsupervised interrogations of detainees using harsh physical interrogation techniques that were not—and never became—part of the CIA's formal 'enhanced' interrogation program."⁶¹

The report's most controversial finding was that brutal interrogation techniques were "not an effective means of acquiring intelligence or gaining cooperation from detainees."⁶² The report found the inhumane interrogation techniques had repeatedly produced false information: "While being subjected to the CIA's enhanced interrogation techniques and afterwards, multiple CIA detainees fabricated information, resulting in faulty intelligence." The report stated: "CIA officers regularly called into question whether the CIA's enhanced interrogation techniques were effective, assessing that the use of the techniques failed to elicit detainee cooperation or produce accurate intelligence."⁶³

The report reviewed twenty examples of counterterrorism successes the CIA had attributed to inhumane interrogation techniques and found the CIA's assertions to be inaccurate and inconsistent with the CIA's own internal records.⁶⁴ It determined that, with respect to the twenty examples, there was often no relationship between the interrogation techniques used and the information the CIA had represented it had gained, and that in many cases, useful information had been acquired prior to using the inhumane interrogation tactics or was merely corroborative of information the CIA already had, rendering the torture pointless.

Additionally, the report found that the CIA had consistently misrepresented the program to policymakers, including with respect to the brutality of its detainee interrogations. The report provided examples in which the CIA misled Congress⁶⁵ and "impeded effective White House oversight and decision-making"⁶⁶ by providing inaccurate or incomplete information. It also determined that CIA personnel had "avoided, resisted, and otherwise impeded oversight" by the CIA's own Inspector General.⁶⁷ At the same time, the report found that the CIA itself had continually failed to evaluate the effectiveness of the brutal interrogation methods it employed.⁶⁸

⁵⁹ S. Rep. No. 113-288 (2014), pp. xxi, xix-xxiii, 14-15, 99-104.

⁶⁰ S. Rep. No. 113-288 (2014), pp. 105-107.

⁶¹ S. Rep. No. 113-288 (2014), p. xix.

⁶² S. Rep. No. 113-288 (2014), p. xi.

⁶³ S. Rep. No. 113-288 (2014), p. xi.

⁶⁴ S. Rep. No. 113-288 (2014), p. xi.

⁶⁵ S. Rep. No. 113-288 (2014), pp. xiv-xv.

⁶⁶ S. Rep. No. 113-288 (2014), pp. xv-xvi.

⁶⁷ S. Rep. No. 113-288 (2014), p. xvii.

⁶⁸ S. Rep. No. 113-288 (2014), p. xxii.

The December 2014 SSCI report generated widespread media attention.⁶⁹ In response, in June 2015, Congress enacted a bipartisan amendment that strengthened the Detainee Treatment Act of 2005.⁷⁰ Cosponsored by Senators McCain, Feinstein, Reed, and Collins, the new law effectively barred all U.S. government personnel, whether from a military or civilian agency, from using interrogation techniques that were not authorized by the U.S. Army Field Manual.⁷¹ By broadening the application of the Army Field Manual, the law ensured that the same protections applied to interrogations by both defense and intelligence agencies, and that U.S. personnel could no longer engage in the torture or mistreatment of individuals in U.S. custody.



Sen. John McCain speaking on the Senate floor about the SSCI report. (Source: CSPAN)

Despite two Senate reports and the hiring of a special counsel, DOJ charged and obtained a criminal conviction of only one person who conducted an abusive interrogation of a detainee in U.S. custody.⁷² DOJ did not conduct any new investigations in response to the SSCI report.⁷³ Only 12 U.S. soldiers were brought up on military charges such as dereliction of duty. While some were jailed, others were reprimanded, fined, demoted, or discharged from the military, but avoided being sentenced to prison.⁷⁴

In January 2015, after Republicans won control of the Senate, Sen. Richard Burr (R-NC) replaced Sen. Feinstein as SSCI chair. Over her objection, on January 14, 2015, Sen. Burr sent a letter to President Obama directing the executive branch to return all copies of the 6,700-page SSCI report. Some agencies returned their copies, but others did not.⁷⁵

In November 2016, Donald Trump was elected president of the United States. In his campaign, he called for reinstating waterboarding and other forms of torture to fight terrorism.⁷⁶ In response, Senators Levin and Rockefeller wrote an opinion editorial urging President Obama

⁶⁹ Mazzetti, M. (2014, December 9). Panel faults C.I.A. over brutality and deceit in terrorism interrogations. *New York Times*. <https://www.nytimes.com/2014/12/10/world/senate-intelligence-committee-cia-torture-report.html>

⁷⁰ 161 Cong. Rec. S4,182 (daily ed. June 16, 2015) (Senate roll call vote 209 approving, by a vote of 78-21, McCain-Feinstein Amendment No. 1889 to S. 1356, National Defense Authorization Act for FY2016). <https://www.congress.gov/114/crec/2015/06/16/CREC-2015-06-16-senate.pdf>

⁷¹ National Defense Authorization Act for FY2016. Pub. L. No. 114-92 129 Stat. 859 (2015). [https://www.congress.gov/bill/114th-congress/senate-bill/1356 Codified at 42 U.S.C. § 2000dd-2, “Limitation on interrogation techniques.”](https://www.congress.gov/bill/114th-congress/senate-bill/1356/Codified%20at%2042%20U.S.C.%202000dd-2,%20%22Limitation%20on%20interrogation%20techniques.%22)

⁷² PBS News Hour. (2015, April 20). *Convicted former CIA contractor speaks out about prisoner interrogation*. PBS. <https://www.pbs.org/newshour/show/convicted-former-cia-contractor-speaks-prisoner-interrogation>

⁷³ Hattern, J. (2014, December 10). DOJ won't reopen torture probe after CIA report. *The Hill*. <https://thehill.com/policy/defense/226603-justice-department-wont-reopen-torture-probes/>

⁷⁴ CNN. (2014, February 28). *Iraq prison abuse scandal fast facts*. <https://www.cnn.com/2013/10/30/world/meast/iraq-prison-abuse-scandal-fast-facts/index.html>

⁷⁵ *Cox v. Department of Justice* (2024), p. 20.

⁷⁶ Johnson, J. (2016, February 17). Trump says ‘torture works,’ backs waterboarding and ‘much worse’. *Washington Post*. https://www.washingtonpost.com/politics/trump-says-torture-works-backs-waterboarding-and-much-worse/2016/02/17/4c9277be-d59c-11e5-b195-2e29a4e13425_story.html

to preserve the full text of the SSCI report, explaining that, while classified, it contained critical historical information showing why using torture in interrogations was ill-advised:

President Obama has said that “one of the strengths that makes America exceptional is our willingness to openly confront our past, face our imperfections, make changes and do better.” We couldn’t agree more, but to do that it is critical to know our history and to have a full accounting of how mistakes happened in the first place. The Senate Intelligence Committee’s full report on torture is that history.⁷⁷

Upon leaving office in January 2017, President Obama included the SSCI report in his official presidential papers, ensuring preservation of at least one copy, while also retaining its classified status for at least 12 years.⁷⁸



(Source: International Commission of Jurists)

In late 2016 and early 2017, at least three judges ordered the Obama Administration to deposit a copy of the full report with their respective courts in case it was needed during proceedings involving GTMO prisoners subjected to torture.⁷⁹ In 2017, President Trump ordered all executive agencies to return their copies of the report to SSCI; it is unclear if any copies now remain within the executive branch.⁸⁰ In 2024, the U.S. Court of Appeals for the Second Circuit ruled that the report remained under SSCI control and federal agencies could not be compelled to release its text under the Freedom of Information Act.⁸¹ It is unclear whether SSCI retained its own copy of the full report or provided a copy to the National Archives. To date, the full 6,700-page report remains classified.

In a December 2014 statement on the Senate floor, after public release of the redacted SSCI report’s executive summary, Sen. Udall framed the committee’s work as key to addressing a continuing problem of “how to ensure that secret government actions are conducted within the confines of the law.” He paid tribute to “the power of oversight and the determination of Chairman Feinstein and the members of this committee to doggedly beat back obstacle after obstacle in order to reveal the truth.”⁸²

⁷⁷ Levin, C., & Rockefeller, J. (2016, December 9). The torture report must be saved. *New York Times*. <https://www.nytimes.com/2016/12/09/opinion/the-torture-report-must-be-saved.html>

⁷⁸ Gerstein, J. (2017, January 8). Obama taps longtime aide to oversee presidential records process. *Politico*. <https://www.politico.com/blogs/under-the-radar/24>

⁷⁹ Gerstein, J. (2017, January 19). Judge bluntly warns of contempt if he doesn’t get ‘torture report’. *Politico*. <https://www.politico.com/blogs/under-the-radar/2017/01/torture-report-judge-request-233854>; *Abd Al Rahim Hussein Al Nashiri v. Obama*, Case No. 08-cv-12-7 (RCL), Order, (D.D.C. Dec. 28, 2016). <https://www.politico.com/f/?id=00000159-4763-d7b1-a3ff-577715f50000>

⁸⁰ Reuters. (2017, June 2). *Trump administration moves to keep full CIA ‘torture’ report secret*. VOANews. <https://www.reuters.com/article/world/trump-administration-moves-to-keep-full-cia-torture-report-secret-idUSKBN18T2NE/>

⁸¹ *Cox v. Department of Justice* (2024).

⁸² 160 Cong. Rec. S6,474, 2014.

Conclusion

When confronted by egregious misconduct by U.S. personnel that violated American values, damaged U.S. standing around the world, fueled terrorist recruitment, and placed U.S. soldiers at increased risk of abusive treatment when captured, the Senate Armed Services Committee and Select Committee on Intelligence did not turn away but initiated extended inquiries into what happened. Their investigations fought for and collected evidence from recalcitrant federal officials and agencies; worked to declassify key information; and disclosed to the public details about who approved, directed, and participated in the mistreatment of individuals in U.S. custody.

Both investigations confirmed that senior U.S. officials had approved the use of brutal interrogation techniques that included waterboarding, beatings, nudity, stress positions, sleep deprivation, excessive lights and noise, threats to family members, and use of military dogs. Both presented evidence that inhumane interrogations produced unreliable intelligence. Both Senate investigations not only exposed, documented, and condemned the misconduct, they also spurred enactment of new laws to prohibit the torture and mistreatment of individuals in U.S. custody.

To Learn More

C-SPAN Testimony from Senate Proceedings

- May 7, 2004 – Hearing testimony of Defense Secretary Rumsfeld – <https://www.c-span.org/video/?181727-1/treatment-iraqi-prisoners>
- July 22, 2004 – Senate hearing on Abu Ghraib prisoner abuse – <https://www.c-span.org/video/?182821-1/prisoner-abuse-abu-ghraib>
- June 17, 2008 – Hearing testimony of DOD General Counsel Haynes -- <https://www.c-span.org/video/?206004-2/detainee-interrogation-techniques-afternoon>
- March 11, 2014 – Floor statement by Sen. Dianne Feinstein on CIA search of Senate computers – <https://www.c-span.org/video/?318232-5/senators-feinstein-leahy-cias-search-senate-computers>

Other Resources

- January 29, 2008 – Sen. Carl Levin speech discussing Abu Ghraib prisoner abuse – <https://www.brandeis.edu/now/2008/january/carllevin-video.html>
- Torturing Democracy: Read the Key Documents – <https://nsarchive2.gwu.edu/torturingdemocracy/documents/>
- 2008 DOJ IG report on FBI observations of detainee interrogations – <https://www.oversight.gov/sites/default/files/oig-reports/s0910.pdf>
- Timeline: The Tortured History of the Senate’s Torture Report – <https://projects.propublica.org/graphics/torture-report>
- *The Report* (2019 film) -- <https://www.imdb.com/title/tt8236336/>

