

AMAZON ORIGINAL

THE [REDACTED] REPORT

A GUIDE FOR HIGHER EDUCATION



TABLE OF CONTENTS

USING THE HIGHER EDUCATION GUIDE

A NOTE ON EUPHEMISMS

TEACHING MODULES

Screening *The Report*: Pre- and Post-Screening Discussion

Module One: Full Lecture Materials

Module Two: Focused Mini-Modules

THE DETAINEES
THE INTERROGATORS
THE INVESTIGATION
ACCOUNTABILITY

Additional Content

MEDIA LITERACY: Examining the Press
RELEVANT DOMESTIC AND INTERNATIONAL LAW
TIMELINE: U.S. Investigations
INVESTIGATIVE BRIEF RESEARCH EXERCISE

BIBLIOGRAPHY



USING THE HIGHER EDUCATION GUIDE

The Higher Education Guide supports incorporating *The Report* within graduate and undergraduate courses. The guide can be used to examine topics such as the CIA's Detention and Interrogation Program implemented after the September 11, 2001, terrorist attacks on the United States, the process and need for Legislative and Judicial Oversight of the Executive Branch, the separation of powers doctrine, the need for accountability; and the legacy and detrimental effects of the CIA's "enhanced interrogation techniques" on U.S. global standing.

Screening *The Report*: Pre- and Post-Screening Discussion

Provides suggested questions to use when moderating a film screening.

Module One: Lecture Outline and Notes

Designed for a full lecture that would follow a screening of the film, including extensive pre-and post-screening discussion topics.

Module Two: Focused Mini-Modules

Materials designed to incorporate into an existing syllabus focused on four topics:

- **The Detainees**
- **The Interrogators**
- **The Investigation**
- **Accountability**

This content can support a separate lecture or be truncated into a larger thematic lecture.

For instance, the materials can be used in lectures on the "wars of 9/11," international law, U.S. human rights policy, or the ineffectiveness of torture. The **Accountability** section contains several suggested discussion questions with notes for instructors.

Additional Content

Each of the following sections contains relevant data on overarching themes that emerge from the film:

Media Literacy

Content to provide a basic understanding of the conventions of print, broadcast, and cinematic media and of the importance of investigative reporting and coverage of national security during wartime. It serves both as a blueprint for leading such discussions in class, or as supplementary material to be distributed to students.

Relevant Domestic and International Law

A general overview of relevant U.S. and international laws governing the treatment of prisoners and human rights. This section discusses the historical and ethical implications of violating or circumventing such standards with real-world scenarios drawn from post-World War II era, as well as the period immediately following the 9/11 attacks.

Timeline: U.S. Investigations

Provides a historical chronology of important oversight inquiries and hearings conducted by the Legislative Branch of the Executive Branch, establishing the historical context and reinforcing for students the significance of the balance of power between the three branches of the U.S. government.

Investigative Brief Research Exercise

This curated set of questions encourages students to delve more deeply into the materials available on *The Report* Movie Deep Dive Website.

A NOTE ON EUPHEMISMS

“I really was upset about the appropriation of euphemistic language to conceal things that are torture. It is stunning to me that in the initial CIA communiques after 9/11, they called it torture, and then someone must’ve said, ‘That’s against the law. We need to come up with a new name for it.’ That is very upsetting to me. It should be upsetting to everybody.”

- Writer, Director, and Producer of *The Report*, Scott Z. Burns

A euphemism is defined as “the substitution of an agreeable or inoffensive expression for one that may offend or suggest something unpleasant.”¹ Language holds power and the CIA’s use of the term “enhanced interrogation techniques”—which was further obscured through the acronym “EITs”—in place of the word “torture” is worth expanding upon before beginning any lesson in this curriculum.

The term “EITs” was used by the CIA to obfuscate the use of torture on at least 39 of the known 119 detainees held in numerous secret detention sites around the world. The Department of Justice (DOJ) and the White House approved the CIA’s use “enhanced interrogation techniques” under the so-called Torture Memo drafted by John Yoo, Deputy Assistant Attorney General of the United States. The memo, signed in August 2002, claimed

that waterboarding and other torture tactics were legal if they were necessary to produce “unique information” to thwart terrorist attacks that would save American lives.

A larger discussion on the use of euphemisms as a tool of propaganda may get sparked by introducing the context of “EITs.” Students do not need to look too far to see examples in history—Argentina and “the Dirty Wars” (1976-1983), the Nazi Period (1933-1945) and “The Final Solution” are examples of euphemisms used to hide repressive policies and violence. Thus, in *The Report* curriculum when the acronym of “EITs” is used, it will consistently be in quotes to demarcate it as a euphemism and used only when directly referencing the CIA’s program.² Otherwise “coercive interrogation techniques,” or “torture,” will be used depending upon the context.

1 <https://www.merriam-webster.com/dictionary/euphemism>, accessed November 15, 2019.

2 See the Senate Report: “On September 17, 2001, the President signed a covert action Memorandum of Notification (MON) granting the CIA unprecedented counterterrorism authorities, including the authority to covertly capture and detain individuals ‘posing a continuing, serious threat of violence or death to U.S. persons and interests or planning terrorist activities.’ The MON made no reference to interrogations or coercive interrogation techniques.” Senate Select Committee on Intelligence’s “Committee Study of the CIA’s Detention and Interrogation Program” released December 9, 2014, located at Findings and Conclusions page 9 of 19. Audio Book link to “Findings and Conclusions” Chapter.

SCREENING *THE REPORT*: PRE- AND POST-SCREENING DISCUSSION

Whether a full screening of *The Report* is held in class or assigned to be watched outside of the classroom, the film provides rich material for discussion.

“Whenever we could we made part of the movie, what the CIA did in those rooms, as fact based as possible.”³³

- Writer, Director, and Producer of *The Report*, Scott Z. Burns

Prior to or following any screening, point students to *The Report* Movie Deep Dive Website (<https://www.amazon.com/thereportmovie>) and the extensive [Annotated Script](#), which can be found on Genius and under Tab IV of *The Report* Movie Deep Dive Website. Because *The Report* is based on actual events, it is critical for students to return again and again to research and check sources, see where creative license was used, and when scenes are closely aligned with what actually occurred.

The following questions are recommended to prepare students for viewing and to spark reflection and conversation after watching the film.

³³ Quoted from Episode 1, *The Report Podcast*.

Pre-Screening

- What do you know about the September 11, 2001 attacks on the United States?
- Who were the perpetrators of the attacks?
- What domestic and international laws exist to protect detainees and prisoners of war?
- Do you think the rules protecting detainees and prisoners of war should change during wartime? Why or why not?
- What is the mission and purpose of CIA? How does the CIA’s role in the detention and interrogation of prisoners after 9/11 fit into that mission or purpose, or not?
- What constitutional right does Congress have to oversee the conduct of the CIA?
- Can U.S. intelligence officials be held criminally liable for their actions during a time of war?
- Why did the CIA transport captured suspects to third countries rather than bring them to the United States for prosecution?
- How important is language when talking about the CIA’s interrogation programs? Does it matter if it is called “enhanced interrogation techniques” or “torture”?
- Do you believe that the actions of the U.S. administration following the 9/11 attacks hurt or advanced American interests globally?
- Do you regard Daniel J. Jones as a heroic figure or something else?
- How did electoral politics and ideology affect the course of events in the film?
- How can intelligence and national security agencies collect necessary intelligence without violating international human rights laws and conventions?
- Should Congress allow intelligence and national security agencies a wider berth regarding their activities in order to collect intelligence during wartime?
- What are the potential long-term risks of violating the Geneva Convention’s standards for the treatment of prisoners?

Post-Screening

- Do you think the United States, or any nation, has the right to hold prisoners with ties to suspected terrorist activity without trial under the conditions depicted in the film?
- Do you feel the use of torture was fairly represented in the film? Why or why not?

- Should irregular troops, guerrilla fighters, or terrorists be covered by the Geneva Convention?
 - Would Daniel J. Jones have been within his rights to leak information to the media when the release of an unclassified version of the report was being blocked?
 - Had classified portions of the report emerged due to a leak, would the media be subject to prosecution?
 - Should all officials of the U.S. government, including the president and cabinet, be subject to subpoena from congressional investigating committees?
 - Should U.S. government officials, military officers, or others involved in the CIA's interrogation programs during the years 2001-2009 be subject to arrest and prosecution? Why or why not?
- Do you think the Republicans were right to pull out of the probe when the CIA was subjected to an expanded investigation by the Department of Justice?
 - There are points in the film where the script uses dramatic license to keep the story moving forward. Did any moments stand out to you as likely examples of dramatic license? What are ways to explore the facts more thoroughly?
 - What do you see as the legacy of the Senate's report on torture in U.S. policy today?

MODULE ONE: LECTURE OUTLINE AND NOTES

I. Introduction

Having viewed *The Report*, students will have important questions both about the message of the film and the intricacies of the legal, bureaucratic, and human rights issues raised. At the start of the lecture, it is critical to re-inforce to students that torture and conspiracy to commit torture are federal crimes.

At the time of the September 11th attacks, the United States had been a party to the United Nations Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (Torture Convention) for seven years. The Torture Convention was signed in 1988 by President Ronald Reagan. President George H. W. Bush pressed for Senate action on the treaty in 1990, and the Convention was ultimately ratified in 1994 under President Bill Clinton when Congress enacted legislation (18 U.S.C. § 2340A) to make torture and conspiracy to commit torture felonies under domestic law.⁴

It is also important to note that controversy continues to surround many topics included in *The Report*. Take some time to read these references and discuss the questions that emerge as a result.

- The intelligence failures and lack of communication between the CIA, FBI, and NSA that allowed Al-Qaeda to thrive and plan the attacks of 9/11.
- The CIA's creation and concealment of secret detention sites.
- The ongoing abusive behavior toward detainees at U.S. detention centers that was revealed at sites, such as the Abu Ghraib scandal that emerged in April 2004.

- The role of investigative journalists is revealing information at critical times during the program and investigation.
- The practice of U.S. intelligence agencies versus their obligation by law to cooperate or not cooperate with congressional investigations.
- The reputational risks of the United States in covering up its actions.
- "Rendition" or "Extraordinary Rendition:" the transfer of foreign nationals suspected of terrorist activities to detention and interrogation sites outside U.S. sovereign territory, where federal and international legal safeguards may not apply. Either U.S. personnel or foreign agents may detain and interrogate suspects, using interrogation methods such as torture that do not comply with federal and internationally recognized standards.
- The DOJ memoranda written to justify what the CIA termed "Enhanced Interrogation Techniques," which were later invalidated. Certain Obama administration policies under the umbrella of national security also came under ethical scrutiny, including the use of drone strikes and the collection of emails and phone records.⁵
- The level of accountability to hold CIA personnel involved in the torture program.

For example, Gina Haspel became CIA director in 2018. Prior to her confirmation hearing on May 9, 2018, she served as chief of staff to Mr. Rodriguez, Deputy Director for Operations - head of the Clandestine Service. During her CIA confirmation Ms. Haspel confirmed she supported the tapes destruction, and drafted the cable for Rodriguez ordering their destruction.⁶

4 Leading by Example? Torture Ten Years After 9/11, American Bar Association, January 01, 2011, accessed November 5, 2019 https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/human_rights_vol38_2011/human_rights_winter2011/leading_by_example_torture_ten_years_after_9-11/

5 The Torture Memos, 10 Years Later, *The Atlantic Monthly*, December 2012, accessed Oct 30, 2019 <https://www.theatlantic.com/national/archive/2012/02/the-torture-memos-10-years-later/252439/> and <https://www.vox.com/policy-and-politics/2016/11/14/13577464/obama-farewell-speech-torture-drones-nsa-surveillance-trump>

6 <https://www.intelligence.senate.gov/hearings/open-hearing-nomination-gina-haspel-be-director-central-intelligence-agency#>, accessed November 23, 2019. <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/>

II. The Persistence of the Myth that Torture is Effective

“There is no credible scientific evidence that torture works. But there is evidence that rapport-building interrogation techniques are effective.”

–Antonio E. Puente, PhD, President, American Psychological Association, January 27, 2017⁷

“Inhumane physical or psychological techniques are counterproductive because they do not produce intelligence and will probably result in false answers.”

–John Helgerson, Senior CIA Official, 1989⁸

“Physical abuse or other degrading treatment [has been] rejected not only because it is wrong, but because it has historically proven to be ineffective.”

–CIA Deputy Director of Operations in 1988⁹

The preponderance of research shows torture to be ineffective with broad international and domestic agreement that it is also immoral and illegal. Yet there are some individuals that continue to assert that the CIA’s

“enhanced interrogation techniques” (torture) produced unique intelligence that disrupted plots and led to the capture of terrorists.¹⁰ Those assertions have been undermined by the Senate investigation into the CIA torture program.

The “ticking time bomb” scenario is often used as a thought experiment to question if torture can ever be justified. In the scenario, there is an immediate threat, such as a bomb, that will result in massive loss if more information is not immediately attained. The scenario leads to questions about whether torture should be allowed if a person in custody knows about the impending attack. The premise of the scenario, however, is that torture is an effective means of attaining information, which the majority of research shows is incorrect.

III. The Ongoing Tensions between the Executive and Legislative Branches

While federal law compels executive compliance with legislative investigating committees’ requests, such as for cabinet members to honor subpoenas to testify, enforcing that cooperation has proved difficult.¹¹ Legally, Congress can arrest and detain those refusing to honor a subpoena, but because the executive branch has generally complied with subpoenas, Congress has not exercised that right since the 1930s.

Investigations of national security or intelligence issues face an even higher bar as the executive branch cites the need for secrecy. The Senate Select Committee on

⁷ APA Warns Against Re-Instituting ‘Enhanced’ Interrogation, *American Psychological Association*, January 27, 2017, accessed Nov 6, 2019. <https://www.apa.org/news/press/releases/2017/01/reinstituting-interrogation>

⁸ Senate Select Committee on Intelligence’s “Committee Study of the CIA’s Detention and Interrogation Program,” released December 9, 2014, located at Footnotes 36 and 37 at Page 18 of 499, <https://www.intelligence.senate.gov/sites/default/files/publications/CRPT-113srpt288.pdf> January 8, 1989, Letter from John L. Helgerson, Director of Congressional Affairs, to Vice Chairman William S. Cohen, Senate Select Committee on Intelligence, re: SSCI Questions on [REDACTED] at 7-8 (DTS #1989-0131); Senate Select Committee on Intelligence, Transcript of Richard Stolz, Deputy Director for Operations, Central Intelligence Agency (June 17, 1988), p. 15 (DTS #1988-2302).

⁹ Senate Select Committee on Intelligence’s “Committee Study of the CIA’s Detention and Interrogation Program,” released December 9, 2014, located at Footnotes 36 and 37 at Page 18 of 499, <https://www.intelligence.senate.gov/sites/default/files/publications/CRPT-113srpt288.pdf> January 8, 1989, Letter from John L. Helgerson, Director of Congressional Affairs, to Vice Chairman William S. Cohen, Senate Select Committee on Intelligence, re: SSCI Questions on [REDACTED] at 7-8 (DTS #1989-0131); Senate Select Committee on Intelligence, Transcript of Richard Stolz, Deputy Director for Operations, Central Intelligence Agency (June 17, 1988), p. 15 (DTS #1988-2302).

¹⁰ Newton, J. (2015). <https://digitalcommons.ciis.edu/cgi/viewcontent.cgi?article=1079&context=ijts-transpersonalstudies>. *International Journal Of Transpersonal Studies*, 34 (1-2), 172-186. doi: 10.24972/ijts.2015.34.1-2.172, Accessed Oct. 31 2019.

¹¹ If Contempt Can’t Be Enforced Then Congress Isn’t a Co-Equal Branch, *Washington Post*, Sept. 24, 2019, Accessed Oct. 31, 2019. <https://www.washingtonpost.com/outlook/2019/09/24/if-contempt-congress-cant-be-enforced-then-congress-isnt-co-equal-branch/>

Intelligence Investigation on Torture, conducted entirely behind closed doors, was neither the first nor last inquiry to face these obstacles. Others include the Church Committee hearings into the actions of the CIA and other intelligence agencies during the Cold War; the Iran-Contra investigations of the mid-1980s; inquiries into the intelligence failures preceding the 9/11 attacks; and the Mueller investigation and the impeachment inquiry of President Donald Trump. (*For a look at major congressional and executive branch inquiries through U.S. history, see the Timeline: U.S. Investigations in this guide*).

IV. Detrimental Effects on U.S. International Standing

Because of America's reputation of promoting the rule of law and human rights, the revelation that U.S. detainees were subject to torture caused significant and measurable damage to America's global reputation. A senior U.S. counterterrorism official relayed to Harvard researchers that the revelations of mistreatment of prisoners at Abu

Ghraib and elsewhere were "the single most important motivating factor" in the radicalization of anti-American terrorists.¹²

The atmosphere of insecurity and alarm that prevailed after 9/11 obscured long-term U.S. interests in favor of short-term action. The establishment of secret detention sites and the authorization of torture (based on false representations) are two examples of decisions that were made without regard to long-term consequences. The Bush administration's subsequent pursuit of a preemptive foreign policy doctrine,¹³ and its decision to launch a war in Iraq based on false pretenses, further eroded global sympathy for the U.S. after 9/11 and led to further domestic divisions.¹⁴ The War in Iraq destabilized the region, placing Iraq's government in the hands of a pro-Iranian faction, and ultimately created the power vacuum that allowed the gestation of the Islamic State (ISIS). All these factors sowed further conflict and chaos in the region that has compelled ongoing U.S. intervention.

12 Johnson, Douglas A., Mora, Alberto, and Schmidt, Averell; The Strategic Costs of Torture, *Foreign Affairs*, Sept/Oct 2016. Accessed Oct. 19, 2019. <https://www.foreignaffairs.com/articles/united-states/strategic-costs-torture>

13 Aza, Nyor, The Bush's Doctrine of Pre-Emption and Its Effects on World Peace and Security (December 30, 2015). *Humanities and Social Sciences Review*, 04(02):119–130 (2015). Available at SSRN: <https://ssrn.com/abstract=2717104>

14 "Consequences of the War and Occupation of Iraq." Global Policy Forum, Accessed Oct. 30, 2019. www.globalpolicy.org/humanitarian-issues-in-iraq/consequences-of-the-war-and-occupation-of-iraq.html

MODULE TWO: FOCUSED MINI-MODULES

Screening *The Report* + Discipline-Specific Background and Content

Topic I. The Detainees

Several of the detainees held in U.S. custody were key figures in the planning and execution of terrorist attacks, including the attacks on 9/11, other attacks against the U.S., and attacks against allied nations and other countries.¹⁵ However, the CIA admits that a quarter of the individuals it detained, should not have been. Although the Senate report on torture identified that at least 39 individuals were tortured during the CIA's Detention and Interrogation Program, it may never be known exactly how many people were subjected to "enhanced interrogation techniques" at CIA detention sites.¹⁶

At the time that the CIA's program was approved, one of the key justifications for the program was that the recommended "EITs" were necessary to save lives and would not cause long-term or permanent damage. That claim was not supported with data at the time, and research since has proved it to be false. An Amicus Brief from the Center for Victims of Torture outlines the lasting and debilitating harm that detainees suffered as a result of torture, including specific accounts of torture's effects on Abu Zubaydah, such as the loss of an eye, partial amnesia, incontinence, and chronic seizures.¹⁷

The Report Movie Deep Dive Website Content Related to the Topic of Detainee

- Episodes 2 and 3 of [The Report's accompanying podcast](#) includes detailed description of some of these detainees and what happened to them while in detention.

15 Taub, B., & Taub, B. (2019). Guantánamo's Darkest Secret. Accessed Oct. 30, 2019, from <https://www.newyorker.com/magazine/2019/04/22/guantanamos-darkest-secret>

16 Human dignity denied: Torture and accountability in the 'war on terror' (AI Index: AMR 51/145/2004). Accessed Oct. 30, 2019. <http://web.annesty.org/library/Index/ENGAMR511452004>

17 <https://www.cvt.org/sites/default/files/Final%20Amicus%20Brief-4.Jan%202018.pdf>

18 Senate Select Committee on Intelligence's "Committee Study of the CIA's Detention and Interrogation Program," Report released December 9, 2014, footnote 60, p. 21. Abu Zubaydah's role as a 'senior al-Qaeda lieutenant' with deep knowledge of al-Qaeda was a significant overstatement of his role. [Audio Book Chapter Two B](#)

Below are short biographical pieces of several of the detainees portrayed in *The Report*:

Abu Zubaydah

[Listen to the audio book, Part 2 B](#) for a more in-depth account of Abu Zubaydah's detention.

Abu Zubaydah is a Saudi-born Palestinian citizen and was initially assessed by CIA officers to be a senior member of Al-Qaeda. This assessment was based on single source reporting, which was retracted prior to his torture. The CIA later concluded Abu Zubaydah was not a member of Al-Qaeda.

Abu Zubaydah administered the Khaldan camp in Afghanistan that was incorrectly believed to be run by Al-Qaeda.

The capture of Abu Zubaydah occurred in late March 2002 during which he suffered several bullet wounds and was detained in this condition.¹⁸ Initially questioned by veteran FBI interrogator Ali Sufan who speaks Arabic, Abu Zubaydah shared his willingness to cooperate and provided information about suspected terrorists and his own activities. As his condition worsened, the FBI agent remained by his bedside, helping with his medical care until his condition improved. By April 2002, Abu Zubaydah identified Khalid Shaykh Mohammod (KSM) from a photograph. KSM, who he called by his alias "Mukhtar," was the mastermind of the 9/11 attacks, trained the 9/11 hijackers, spoke fluent English, and was in charge of Al-Qaeda's activities outside of Afghanistan. This intelligence was all gained by the FBI prior to the use of "EITs."

CIA and FBI personnel questioned Abu Zubaydah until June 18, 2002, when Zuybaydah was put in isolation for 47 days. Upon reengaging with Abu Zubaydah on August 4, 2002, the CIA immediately subjected Abu Zubaydah to

torture for more than 20 consecutive days.¹⁹ According to the Senate's report on torture,

“Prior to Abu Zubaydah’s 47-day isolation period, Abu Zubaydah provided information on al-Qa’ida activities, plans, capabilities, and relationships. In addition to information on its leadership structure, including personalities, decision-making processes, training and tactics. . . Abu Zubaydah’s inability to provide information on the next attack in the United States and operatives in the United States served as the basis for CIA representations that Abu Zubaydah was ‘uncooperative,’ as well as for the CIA’s determination that Abu Zubaydah require the use of what would later be known as the CIA’s “enhanced interrogation techniques” to become “compliant” and reveal the information the CIA believed he was withholding.”²⁰

The CIA would later reveal that it was in mid-June, at the very beginning of implementing the so-called “established U.S. government interrogation techniques,” that Abu Zubaydah ceased cooperating. Despite this, from August 4 - August 23 the CIA subjected Abu Zubaydah to “EITs” on a near 24-hour period, including waterboarding, walling, attention grasps, and more.²¹

After the use of “EITs” on Abu Zubaydah ended, “CIA personnel at the detention site concluded that Abu Zubaydah had been truthful and that he did not possess any new terrorist threat information.” Today, Abu Zubaydah remains confined at the U.S. detention center in Guantanamo Bay, Cuba.”²²

TO DISCUSS FURTHER:

¹⁹ Ibid., p. 30.

²⁰ Ibid., p. 31

²¹ Ibid., p. 45.

²² Abu Zubaydah - The Guantánamo Docket, The New York Times, Oct. 1, 2016, Accessed Oct. 30, 2019. <https://www.nytimes.com/interactive/projects/guantanamo/detainees/10016-abu-zubaydah>

²³ Excerpted from The Report Podcast Episode 2, <https://www.topic.com/the-report-podcast>.

²⁴ Senate Select Committee on Intelligence’s “Committee Study of the CIA’s Detention and Interrogation Program,” released December 9, 2014, p. 33.

²⁵ Senate Select Committee on Intelligence’s “Committee Study of the CIA’s Detention and Interrogation Program,” released December 9, 2014, located at Footnotes p. 82.

1. FBI interrogation and interview methods with Abu Zubaydah (rapport building) were successful. The information gained from Abu Zubaydah would have allowed an eventual prosecution of suspects within the rule of laws of the U.S. The FBI interrogation did not do anything to “shock the conscious of the court.”²³
2. Abu Zubaydah’s “reluctance” to share “critical intelligence on the identities of al-Qa’ida personnel in the United States and planned al-Qa’ida attacks”²⁴ served as a so-called rationale for the CIA to argue that “EITs” were required in order to acquire this information. The CIA later determined he did not possess this intelligence.

Khalid Sheikh Mohammed

[Listen to the audio book, Part 2 G](#) for a more in-depth account of Khalid Sheikh Mohammed’s detention.

Within days of the September 11th terrorist attacks, it was believed within the CIA that Khalid Sheikh Mohammed (KSM) was behind the attacks. KSM is a Pakistani militant and Al Qaeda leader who was captured in March 2003. While the CIA initially told the Department of Justice, Congress, and the President that it was the “enhanced interrogation techniques” that led to his capture, that was false. KSM was apprehended due to a single informant and not because of the “EIT” program.

Held in Pakistani custody, KSM was first transferred to Detention Site Cobalt where he was immediately subjected to “enhanced interrogation techniques,” including sleep deprivation, facial and abdominal slaps, the facial grab, stress positions, nudity, water dousing, and rectal rehydration.²⁵ CIA interrogators also threatened his children. The Senate’s “Torture Report,” which drew almost

entirely on the CIA's internal communications, states that the interrogation of KSM provided more intelligence reporting than any other CIA detainee over the 3.5 years of his interrogation, and that he also received the most intelligence requirements and attention from senior CIA interrogators.²⁶ No information provided by KSM led directly to the capture of a terrorist or the disruption of a terrorist plot.²⁷

Under torture, KSM fabricated a great deal of information to interrogators such as using Black American Muslim converts training in Afghanistan to conduct attacks on gas-stations in the United States, telling CIA interrogators that he had sent "Abu Issa al-Britani to Montana to recruit African-American Muslim converts," and that he "tasked Majid Khan with attending Muslim conferences in the United States" to identify potential extremists to assist in the gas-station plot.²⁸ While the CIA falsely claimed the waterboard was particularly effective at gaining information from KSM, this is not supported by the CIA's own records. According to the Senate's report on torture, CIA agents waterboarded KSM at least 183 times and interrogated him and his four co-defendants with additional violence, sleep deprivation, dietary manipulation and rectal abuse.

Still detained at Guantanamo Bay, Cuba, Khalid Sheikh Mohammed is scheduled for trial for his crimes starting in 2021. However, the "enhanced interrogation techniques" he was subjected to may disqualify his confessions and much of the evidence gathered against him.

TO DISCUSS FURTHER

1. The reluctance of the CIA to disclose the truth of how KSM was arrested.
2. The decision of the CIA to continue "EITs" despite evidence that KSM was fabricating intelligence.
3. The legal ramifications of the CIA program on the criminal prosecution of detainees.

Gul Rahman

²⁶ Senate Select Committee on Intelligence's "Committee Study of the CIA's Detention and Interrogation Program," released December 9, 2014, located at Footnotes p. 96.

²⁷ Senate Select Committee on Intelligence's "Committee Study of the CIA's Detention and Interrogation Program," released December 9, 2014, p. 98.

²⁸ Senate Select Committee on Intelligence's "Committee Study of the CIA's Detention and Interrogation Program," released December 9, 2014, p. 91-92.

²⁹ Ibid., p. 54.

[Listen to the audio book, Part 2 C](#), for a more in-depth account of Gul Rahman's death in detention.

Gul Rahman died of suspected hypothermia in U.S. captivity in November 2002, the first known fatality in the CIA's interrogation program. Picked up in a foreign country, the CIA believed Gul Rahman was a suspected Islamic extremist. He was held for three weeks at an Afghan black site known as the "Salt Pit."

The interrogation of Gul Rahman was never approved by CIA headquarters in advance but included treatments such as 48 hours of sleep deprivation, auditory overload, total darkness, isolation, cold shower, and being shackled to the wall of his cell in position of resting on a bare concrete floor. In November 2002, a CIA officer had ordered Gul Rahman to be stripped of all clothing other than a sweatshirt.²⁹ Gul Rahman was discovered the next day by guards dead on the floor.

Gul Rahman's death is often pointed to as a turning point in the CIA Detention and Interrogation Program. Mark Mazzetti, investigative reporter, states that Gul Rahman's death is the beginning of the end of the program. In [The Report Podcast Episode 3](#), "The Architects of The Torture Program," he shares:

"The Salt Pit death [of Gul Rahman] is the immediate trigger of an internal review at the CIA, which is led by the CIA Inspector General . . . John Helgerson. So in January 2003, Helgerson undertakes this review and this is the first real hard look at what the CIA is doing. And it takes Helgerson some time to try to get to the bottom of it. . . . People close ranks and it's hard for Helgerson to get people to talk about it, and so it takes him some time. But, in the course of his investigation, he comes across a great deal of material about the breadth of the CIA Detention and Interrogation Program up to that point and comes to some pretty stark conclusions that the CIA officers could potentially be exposed to charges of war crimes because of the interrogation

methods that were used. And this sends shock waves in the CIA. When his report comes out . . . in the spring of 2004, there's great concern, not only inside the CIA, but throughout the Bush administration where there's a respected CIA officer doing this report that comes from within the CIA, raising questions about what had been done. . . . The stark conclusions of the Helgeson Report really effectively ended the program from the position of what was approved early on."³⁰

John Helgeson also uncovers in his review that there were no guidelines for the use of the CIA's "enhanced interrogation techniques" at the site of Gul Rahman's death prior to December 2002, that this site was not seen as a priority site by Jose Rodriguez and others amongst the network of detention facilities, and that "interrogators, some with little or no training, were 'left to their own devices in working with detainees.'"³¹

On February 10, 2006, CIA Executive Director K.B. Foggs stated that no disciplinary action would be taken in response to the death of Gul Rahman.³² In fact, many of the CIA officers who had recommended the use of "enhanced interrogation techniques" against Gul Rahman remained key figures in the ongoing Detention and Interrogation Program.

To this day, the Gul Rahman's body has not been returned to his family.

TO DISCUSS FURTHER

1. Explore the Helgeson Report in more depth and discuss the context of when the report came out, including the publication of the Abu Ghraib photographs from Iraq.

Topic II: The Interrogators

³⁰ <https://www.topic.com/the-report-podcast>

³¹ Senate Select Committee on Intelligence's "Committee Study of the CIA's Detention and Interrogation Program," released December 9, 2014, Footnote 277, p. 57.

³² Senate Select Committee on Intelligence's "Committee Study of the CIA's Detention and Interrogation Program," released December 9, 2014, Footnote 277, p. 55.

³³ Senate Select Committee on Intelligence's "Committee Study of the CIA's Detention and Interrogation Program," released December 9, 2014, p. 15.

³⁴ Summarized from www.amazon.com/thereportmovie and explore Investigate Further, Podcast 4.

Two former Air Force psychologists, James E. Mitchell and Bruce Jessen, designed the CIA's "enhanced interrogation" program. Mitchell had retired just before the 9/11 attacks and was contacted by the CIA to evaluate how to implement a more aggressive interrogation methodology for Al Qaeda suspects. As detailed in the Senate's "Torture Report," neither Mitchell or Jessen "had any experience as an interrogator, nor did either have specialized knowledge of al-Qa'ida, a background in counterterrorism, or any relevant cultural or linguistic expertise."³³ The CIA contracted with Mitchell and Jessen, who compiled a program of interrogation techniques, including slapping, isolation, waterboarding, sleep deprivation, and others that they theorized would effectively induce a state of "learned helplessness," wherein the detainees would become passive and cooperative and therefore willing to provide information.

Further, the CIA needed to put in place the legal defense to protect interrogators from ever being convicted of torture. By the time the CIA took their first detainee into its own custody, the Bush Administration had already decided that the Geneva Conventions did not apply to the conflict of Al-Qaeda. There was still the Federal Torture Statue and the CIA was readying a defense in which to run afoul of the Federal statute. The result was the "Torture Memo" which states that if the interrogators do not inflict permanent damage on the detainees, it isn't torture. The Bush Administration also read the Federal Torture Statute very narrowly, claiming it is not torture unless it inflicts severe harm, meaning organ failure or death.³⁴

Daniel Jones explains the legal argument in more depth in *The Report Podcast Episode 4*, "Justifying Torture":

"The argument is that we are engaging in activity that would otherwise be illegal, but it's legal because . . . 'enhanced interrogation techniques'"

produce unique information that CIA and, in fact, the U.S. government cannot obtain any other way. We can only get this information by waterboarding, and our defense for engaging in torture is that it was necessary to save lives.”³⁵

Finally, who were the individuals who used “EITs” on detainees and what were their qualifications to be brought on by the CIA as interrogators? Despite statements made by CIA Director Michael Hayden that candidates were carefully chosen and screened, CIA records show that the CIA inadequately screened potential interrogators beginning in 2002 and 2003.

“The Committee identified a number of personnel whose backgrounds include notable derogatory information calling into question their eligibility for employment, their access to classified information, and their participation in CIA interrogation activities. In nearly all cases, the derogatory information was known to the CIA prior to the assignment of the CIA officers to the Detention and Interrogation Program. This group of officers included individuals who, among other issues, had engaged in inappropriate detainee interrogations, had workplace anger management issues, and had reportedly admitted to sexual assault.”³⁶

TO DISCUSS FURTHER:

1. In 2002, when the use of “EITs” were approved, “neither psychologist had any experience as an interrogator, nor did either have specialized knowledge of

al-Qa’ida, a background in counterterrorism, or any relevant cultural or linguistic expertise.”³⁷ Regardless, Mitchell and Jessen conducted many of the interrogations themselves, and trained and supervisors others to do the same.

2. Despite the lack of evidence and qualifications, the company Mitchell and Jessen established in 2005, called Mitchell Jessen and Associates, had a base contract with the CIA that was valued in excess of \$180 million in 2006. Shortly after the company was established, the CIA largely outsourced all operations related to the program.³⁸ The contractors were paid \$81 million prior to the contracts termination in 2009.³⁹

In 2004, the CIA Inspector General concluded in a classified report that there was no reason to believe that the program Mitchell and Jessen designed was medically safe or would produce reliable information. A redacted version of the report was released in 2008.⁴⁰

3. In 2010, the international watchdog group Physicians for Human Rights published a 2010 report entitled **Experiments in Torture** detailing how the CIA’s interrogation program was in effect an illegal experiment on unwilling human subjects, making it “one of the gravest breaches of medical ethics in U.S. history.”⁴¹

Topic III: The Investigation

The story told in *The Report* concerns the workings of the Senate Select Committee on Intelligence (SSCI) and its investigation into CIA’s Detention and Interrogation Program following the 9/11 attacks and continuing until

35 See more on the Necessity Defense, https://www.law.cornell.edu/wex/necessity_defense; <https://www.topic.com/the-report-podcast>

36 Senate Select Committee on Intelligence’s “Committee Study of the CIA’s Detention and Interrogation Program,” released December 9, 2014, p. 59..

37 <https://www.intelligence.senate.gov/sites/default/files/documents/CRPT-113srpt288.pdf>, p 11, accessed November 20, 2019.

38 Senate Select Committee on Intelligence’s “Committee Study of the CIA’s Detention and Interrogation Program,” released December 9, 2014. Committee Findings and Conclusions, #13.

39 <https://www.nytimes.com/interactive/2017/06/20/us/cia-torture.html>, accessed November 6, 2019.

40 National Security Archive, George Washington University, Counterterrorism Detention and Interrogation Activities, CIA Inspector General’s Office, May 7, 2004. Accessed Oct. 30, 2019. https://nsarchive2.gwu.edu/torture_archive/20040507_redact.pdf

41 <https://phr.org/issues/torture/prevention/torture-in-u-s-national-security-detention/>, accessed November 20, 2019.

January 2009, when the program was officially decertified by President Barack Obama.⁴² The film offers valuable perspectives on the powers—and sometimes, the powerlessness—that such congressional investigations wield, and the frustrations, distortions, obstacles, and temptations that dog those charged with uncovering facts and compiling them into a cogent, actionable report.

Content Related to Investigations

- Go to *The Report* Movie Deep Dive Website, Tab IV-[Closer Look, FAQ](#)

Checks and Balances

To properly convey the various forces acting upon Daniel J. Jones, his investigators, and his political supporters and opponents in Congress and the White House, it is helpful to establish the constitutional basis of Congressional investigations. In effect, they are among the most salient examples of the balance of power, or “checks and balances,” outlined in the Constitution as a means of preventing any of the three branches of the U.S. government from securing preeminence over another.

The U.S. system of democratic government was designed to encourage argument and challenge when necessary to prevent one branch of government from gaining too much power. In effect, the “checks and balances” create both constant friction and a consistent accountability between the three branches. This balance of powers was regarded as necessary by Jefferson, Madison, and Hamilton, who believed that one branch would seek to set boundaries on another during periods when the nature of government had to evolve. Such periods in history - for instance, following the Civil War, in the wake of the Pearl Harbor attack in 1941, during periods of high tension during the Cold War, and following the 9/11 attacks - have all created both a need to rethink the scope of executive, legislative, and judicial powers, and the countervailing moves to check such changes. (See *A Timeline of Major*

U.S. Investigations)

The balance of power between the three branches—and particularly between the legislative and executive branches (the Congress and Presidency)—has ebbed and flowed. For much of the 19th Century, scholars note that Congress usually held the upper hand, guarding its constitutional power to declare war and approve government spending. It also exercised greater influence than today in foreign affairs and in the composition of a presidential cabinet. For example, presidential historian Doris Kearns Goodwin described Abraham Lincoln’s cabinet as a “team of rivals.” Unlike modern presidents, Lincoln felt compelled to allow factions within his Republican Party to name his secretaries of state, war, treasury, and other key posts.

Expansion of the Executive Branch

The 20th Century marked the beginning of a century-long swing towards increased executive power. At the turn of the century, the United States began to accrue territories overseas whose governance fell to the executive and the military.

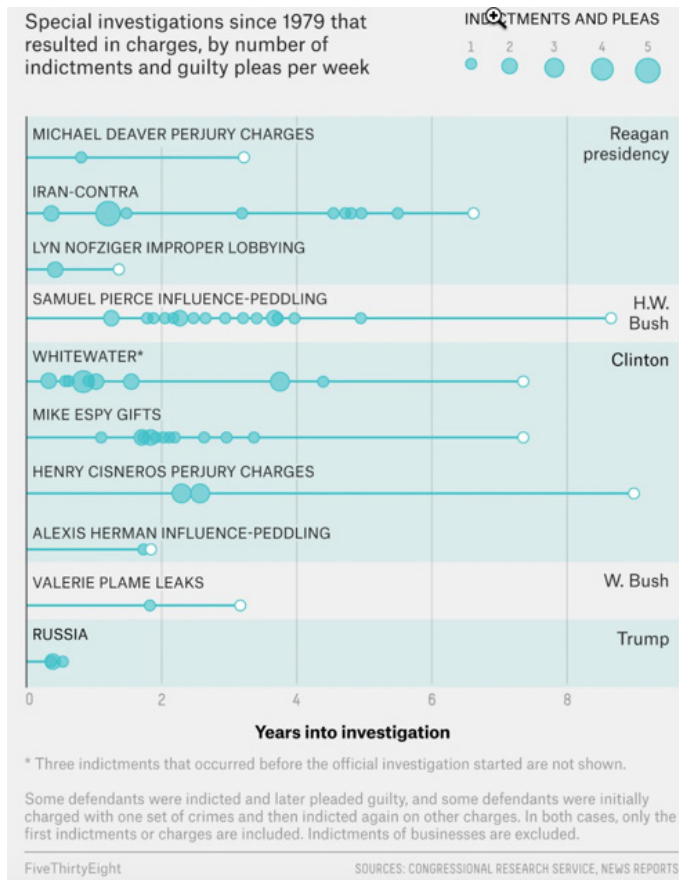
After the Great Depression and through World War II, the Progressive Movement led the executive to insert itself into areas of social and economic policy. For example, President Franklin D. Roosevelt’s New Deal added two dozen new bureaucracies to the executive branch, such as the Securities and Exchange Commission (SEC) to regulate the stock market, the Social Security Administration, the Federal Deposit Insurance Corporation (FDIC) to insure bank deposits, and many others.

After World War II, President Harry S. Truman won congressional approval for the National Security Act of 1947 that created a single Department of Defense out of the Army and Navy departments, the Central Intelligence Agency (CIA) and the National Security Council (NSC), from which sprung countless other intelligence, defense and advisory bodies.⁴³ Efforts to curb this trend were

⁴² Obama Reverses Key Bush Security Policies, The New York Times, January 22, 2009 <https://www.nytimes.com/2009/01/23/us/politics/23obama.html>, accessed November 6, 2019.

⁴³ Milestones: 1945–1952, Office of the Historian, *US State Department*, Accessed Oct. 30, 2019 <https://history.state.gov/milestones/1945-1952/national-security-act>

largely unsuccessful until the 1970s, when the Vietnam War and the abuses associated with Watergate scandal⁴⁴ led to new limits on the executive such as the War Powers Act⁴⁵ and the creation of a Federal Elections Commission



to monitor campaign donations.

Since that time, the presidency has only grown more powerful in both its ability to ignore congressional demands on fiscal matters and its propensity to continually expand the bureaucracies it oversees, particularly in the areas of intelligence and national security.

Constitutional Authority

⁴⁴ A Timeline of the Watergate Affairs, *Washington Post*, Accessed Oct. 30, 2019.

<http://www.washingtonpost.com/wp-srv/politics/special/watergate/timeline.html>

⁴⁵ Nixon and the War Powers Resolution Bill, *of Rights Institute* website; Accessed Oct. 30, 2019

<https://billofrightsinstitute.org/educate/educator-resources/lessons-plans/presidents-constitution/war-powers-resolution/>

⁴⁶ Investigation and Oversight: US House of Representatives, Office of the Historian. Accessed Oct. 30, 2019

<https://history.house.gov/Institution/Origins-Development/Investigations-Oversight/>

Though the power of the executive branch steadily expanded, Congress has retained its ability to control and sometimes overrule executive power in two ways. First, through its influence on the federal budget which must ultimately be appropriated by Congress, and secondly through oversight, its ability to hold hearings on policy matters, and in urgent instances, to convene investigative committees with the power to subpoena both witnesses and records. Since the Nixon administration and Watergate, few presidencies have avoided such investigations, usually led by a Special Prosecutor or Independent Prosecutor appointed by the Department of Justice (DOJ), which is itself part of the executive branch. Post-Watergate, as Daniel J. Jones' struggle to gather evidence showed in *The Report*, reluctance to cooperate has often manifested itself as presidential refusal, or even obstruction.

While the Constitution says nothing explicit about congressional investigations and oversight, the authority to conduct investigations is regarded as implied since Congress possesses "all legislative powers." The Supreme Court determined that the framers intended for Congress to seek out information when crafting or reviewing legislation. George Mason of Virginia said at the Federal Convention that Members of Congress "are not only Legislators but they possess inquisitorial powers. They must meet frequently to inspect the Conduct of the public offices."⁴⁶ This has provided Congress with wide berth when it comes to investigating matters of policy as well as potential breaches of the law or constitution by the executive branch. Impeachment, a political process by which the House may indict and the Senate convict and remove a president, is the ultimate expression of this power.

Besides impeachment, congressional investigative hearings are almost routine. The first occurred in 1792 when the Senate launched an inquiry into the defeat of federal troops at the hands of Native American tribes in the upper Midwest. In the 20th Century, the right of

Congress to subpoena private citizens in such investigations was affirmed by the Supreme Court in *McGrain v. Daugherty*, 1927. Two years later, in *Sinclair v. United States*, the Supreme Court broadened congressional investigative power to include all matters “related to legislation or to oversight of the executive branch.”⁴⁷

Increasingly outmaneuvered by the executive branch on matters of foreign and domestic policy, Congress in the 20th Century stepped up its investigative activity, particularly that directed at uncovering suspected presidential abuses of power and corruption. Examples include the Teapot Dome scandal in the 1920s,⁴⁸ Watergate in the 1970s, the Iran-Contra affair during the Reagan administration, and hearings into the Obama administration’s alleged failures in the Benghazi affair. Others include the successive hearings on foreign policy matters and the spate of hearings that sought to establish how the 9/11 attacks could have happened, including a joint inquiry by the Senate and House Select Committees on Intelligence.⁴⁹ But hearings have also been used for less noble purposes, such as the blacklisting of private citizens during the “un-American activities” hearings in the 1950s.

The Senate Select Committee Report on Torture and its Conclusions

The Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program grew out of a narrower inquiry into the CIA’s destruction of video tapes depicting the CIA’s torture of detainees at a CIA black sites in the years following the 9/11 attacks.⁵⁰ CIA records show that the decision to destroy the tapes came shortly after CIA attorneys raised concerns about Congress discovering the tapes’ existence. When it became known that the CIA had withheld the tapes from the National

Commission on Terrorist Attacks Upon the United States (also known as the 9/11 Commission), the Chair and Vice Chair of the Commission charged the CIA with obstructing justice.⁵¹

When the destruction of tapes came to light in December 2007, the Senate Select Committee on Intelligence opened an investigation and designated staffers to conduct the investigation. This initial inquiry finished in February 2009. Its presentation to the full Senate Intelligence Committee led to a decision to launch a far more expansive investigation, and on March 5, 2009, the committee approved an investigation into the entire CIA Detention and Interrogation Program by a vote of 14-to-1.

Beginning in March 2009 and continuing through December 2012, Daniel Jones and his small team wrote a more than 6,700-page report, which was approved by the committee by a vote of 9–6. This full report remains classified. On April 3, 2014 the Senate Select Committee on Intelligence voted to send the Findings and Conclusions, and the Executive Summary of its Study on the CIA’s Detention and Interrogation Program, to the President for declassification and eventual public release. The Committee’s full Study is more than ten times the length of the Executive Summary, but as Chairman of the Senate Intelligence Committee Dianne Feinstein states in the Forward to the Executive Summary:

“The major lesson of this report is that regardless of the pressures and the need to act, the Intelligence Community’s actions must always reflect who we are as a nation, and adhere to our laws and standards. It is precisely at these times of national crisis that our government must be guided by the lessons of our history and subject decisions to internal and

47 Senate Investigations, The United States Senate, Art and History, Accessed Oct. 30, 2019 https://www.senate.gov/artandhistory/history/common/briefing/Senate_Investigations.htm

48 The Teapot Dome Scandal, The United States Senate, Art and History, Accessed Oct. 30, 2019 https://www.senate.gov/artandhistory/history/minute/Senate_Investigates_the_Teapot_Dome_Scandal.htm

49 Report Of The Joint Inquiry Into The Terrorist Attacks Of September 11, 2001, The House Permanent Select Committee On Intelligence And The Senate Select Committee On Intelligence, December 2002, Accessed Oct. 30, 2019 <https://www.govinfo.gov/content/pkg/CRPT-107srpt351/pdf/CRPT-107srpt351.pdf>

50 Ibid., p. 1

51 Report of the National Commission on Terrorist Attacks Upon the United States, August 2004, Accessed Oct 30, 2019 <https://www.9-11commission.gov/>

external review.”⁵²

Amongst some of the most serious conclusions in the Executive Summary include:

- The CIA’s interrogation techniques were more brutal and employed more extensively than the agency portrayed;
- The CIA interrogation program was mismanaged and was not subject to adequate oversight;
- The CIA misled members of Congress and the White House about the effectiveness and extent of its torture;
- Interrogators in the field who tried to stop the use of “EITs” were repeatedly overruled by senior CIA officials;
- The CIA repeatedly underreported the number of people it detained and subjected to “EITs” under the program;
- At least 26 detainees were wrongfully held and did not meet the government’s standard for detention;
- The CIA leaked classified information to journalists, exaggerating the success of interrogation methods in an effort to gain public support.

Opposition to a full release of the report emanated from officials directly involved and from national security advisors to President Barack Obama who claimed its details would place Americans overseas in danger of retribution. On December 9, 2014, the committee released a 525-page unclassified Executive Summary with redactions.

Topic IV: Accountability

DISCUSSION QUESTIONS

- What were the implications of the CIA’s Detention and Interrogation Program for U.S. foreign policy?

Instructor’s Note: The revelations of torture set back decades-long efforts to expand adherence to universal

human rights conventions. It also strengthened recruitment for a variety of radical groups, from Al Qaeda and the Islamic State to Boko Haram (Nigeria) and Al Sayyaf (the Philippines). In a macro sense, the reputation of the United States, already damaged by the failure to find weapons of mass destruction (WMD) in Iraq and the subsequent U.S.-sparked global financial crisis, was blackened by accounts of torture at black sites and by images that emerged from the U.S.-run Abu Ghraib military prison on Afghanistan.

- Despite claims that terrorist operations were disrupted by information gained through torture, no evidence has been presented to that effect.

“In reality, enhanced interrogation never secured any crucial information in the War on Terror and more often than not produced false answers or caused prisoners to totally shut down.”⁵³

- Daniel J. Jones

Instructor’s Note: The public debate persists, and President Trump’s endorsement of torture in 2016 has energized its supporters. Nonetheless, moves taken by President Obama to deauthorize “enhanced interrogation techniques” and black sites have not been reversed as of January 2020. Rendition, the extrajudicial process of effectively capturing and transporting suspects to Guantanamo Bay, continues unabated. In October 2019, a number of senior ISIS figures held by Kurdish forces in northern Syria were renditioned prior to the controversial U.S. pullout. The fact remains: No publicly available evidence exists to prove that torture by the CIA led to significant intelligence or saved lives.⁵⁴

- Should U.S. officials who ordered or participated in torture be subject to criminal prosecution?

⁵² Senate Select Committee on Intelligence’s “Committee Study of the CIA’s Detention and Interrogation Program,” released December 9, 2014, p. 4.

⁵³ <https://www.theatlantic.com/entertainment/archive/2019/01/scott-z-burns-and-daniel-jones-discuss-the-report-movie-cia-sundance/581518/>

⁵⁴ Executive Summary, Nuremberg Betrayed, Human Experimentation and the CIA Torture Program, https://phr.org/wp-content/uploads/2017/06/phr_humanexperimentationreport_executivesummary.pdf, accessed November 6, 2019.

Instructor's Note: The risk of criminal prosecution was cited by the Bush administration and Republican Party officials during the Iraq War years as a reason not to submit to interviews with Senate investigators. To date, no U.S. official has ever been criminally prosecuted for their role in torturing prisoners or establishing the black sites program.

As of this writing, no official of the U.S. government or contractors have been prosecuted for violating the many laws that forbid the use of torture. In August 2017, the American Civil Liberties Union (ACLU) announced a settlement in the lawsuit against Jessen and Mitchell, the two psychologists who designed and implemented the agency's program. With a jury trial looming, the settlement - the terms of which remain confidential - were deemed a victory by the ACLU on behalf of three plaintiffs, detainees Suleiman Abdullah Salim, Mohamed Ahmed Ben Soud, and the family of Gul Rahman. The three men were tortured and experimented on using methods developed by the CIA contractors.⁵⁵

- Do you see a direct line from Watergate to today's relationship between Congress and the executive branch?

Instructor's Note: Many scholars and commentators view the Watergate period as an early moment for politically charged investigations in Washington. Despite the fact that they existed long before Watergate (the McCarthy hearings, to name just one example), there is a sense in Washington that the investigative prowess honed during Watergate has been employed with increasing frequency since then. While the Watergate prosecutions and impeachment hearings ultimately won bipartisan support, the same cannot be said for the Iran-Contra hearings of the 1980s, the Whitewater inquiry and Bill Clinton's impeachment in the 1990s, or the inquiries into the handling of a terrorist attack on a U.S. consulate in Benghazi, Libya

during the Obama presidency. The aggressively partisan atmosphere in Washington, in this view, is seen as the inevitable result of tit-for-tat investigations. Yet all of them have something in common: they are based on genuine evidence of wrongdoing. Indeed, in every case, these probes by special counsels, independent prosecutors and Congress itself ultimately led to resignations and criminal prosecutions.

- Dozens of detainees are still imprisoned at Guantanamo Bay. Given what we know about the CIA's Detention and Interrogation Program, how would you suggest their fates be decided?

Instructor's Note: This problem will bedevil American presidents for some time into the future as Guantanamo Bay will stand as a visible example of America's inability to live up to the high standards of justice and rule of law it frequently has impressed on other nations. The decision to employ extrajudicial means of detention and torture may mean that any effort to bring suspected terrorist leaders to justice in court will be unsuccessful. This was referenced early in the film by an FBI agent who objects to the new interrogation techniques, describes them as torture, and note that such methods would make it impossible to obtain convictions. The officer is withdrawn with other Justice Department officers whose general counsel was concerned about the direction of the CIA program. The Trump administration continues to make political arguments for keeping the detainees in a state of legal limbo. Of 800-odd inmates who have been held in Guantanamo, 40 are known to remain. Some 500 were repatriated during the Bush presidency, and 197 during Obama's eight years. But the Trump administration has expressed no desire to continue transfers. In 2018, Trump issued an executive order to prepare the prison for indefinite operations, reversing a 2009 order from President Obama to shut the prison down.⁵⁶

55 Settlement Reached in CIA Torture Case, *The New York Times*, Aug. 17, 2017, Accessed Nov. 5, 2019. <https://www.nytimes.com/2017/08/17/us/cia-torture-lawsuit-settlement.html>

56 Trump, Reversing 2009 Move, Orders Guantanamo to Remain Open Indefinitely, *Washington Post*, Jan. 30, 2018 https://www.washingtonpost.com/world/national-security/trump-revoking-2009-order-moves-to-keep-guantanamo-open-indefinitely/2018/01/30/c45a0b02-061b-11e8-8777-2a059f168dd2_story.html

- Why do some people continue to believe that torture is an effective interrogation method?

Instructor's Note: One aspect may point to the culture that produces narratives and media that normalizes torture and wrongly shows that torture yields intelligence. Think of the hit television show *24* or the Academy Award Winning Film *Zero Dark Thirty*. In the *Journal of Experimental Social Psychology* a study was conducted that offered these summative insights:

For those closely involved with its (torture) administration, torture can be a self-justifying system, as those who are harmed appear guilty and therefore deserving of harm. For the distant public, the pain of torture victims leads to the inference of innocence, and harming innocents is generally believed to be unacceptable. Thus, those close to the torture feel it is justifiable while those far away from it see it as wrong.

Of course the debate on torture is more complex, as many in the public do support torture, and many close to torture do reject its methods. Research suggests that other motives are important evaluations of torture, such as the desire for retribution (*Carlsmith & Sood, 2009*) or power (*Janoff-Bulman, 2007*). . . .

The effects uncovered in these studies suggest that two psychology theories linking blame to pain—dissonance and moral typecasting—apply differently depending upon the observer's role. These findings provide an insight into not only torture, but also instances in which we simultaneously observe pain and form judgments of guilt, such as instances of domestic violence, workplace harassment and child abuse. They imply that those close

to harms of any kind will blame victims more than those further away.

What these data suggest most of all is that pain itself affects judgements of guilt, which means that torture may not uncover guilt as much as lead to its perception.⁵⁷

- Do you think the CIA's Detention and Interrogation Program and their use of "enhanced interrogation techniques" would have been constructed and implemented differently if the detainees had been white?

Instructor's Note: Islamophobia existed well before September 11, 2001. It is important to clarify that it is Islamophobic for criticism of Islam to be generated for the sole purpose of advocating social and political measures that discriminate against and violate the rights of Muslims.⁵⁸ Thus it is difficult to separate, and perhaps even more difficult to argue, that the treatment of detainees in the CIA's Detention and Interrogation Program is not an expression of Islamophobia. History can point to instances where prisoners of war, who did not visibly look different than their interrogators, did not endure torture. While terms such as implicit bias, racial profiling, and dehumanization may not immediately surface when speaking of the role of race in the treatment of the detainees, it may be instructive to point out these dynamics, and worthwhile to spend time with students analyzing the role of race as it relates to the brutality, dehumanization, and the ability of interrogators to carry out torture.

It is important to point out that this program was not the only post-9/11 expression of Islamophobia in policy. The surveillance of Muslim American citizens, especially men, and the restrictions on travel and immigration from Muslim-majority countries, are several other examples.⁵⁹

57 "Torture and judgments of guilt" Kurt Grey, Daniel M. Wegner, *Journal of Experimental Social Psychology* 46 (2010), <https://pdfs.semanticscholar.org/0fcd/a33ce998a0cc6a9428df13ea8afeac90fd78.pdf>, Accessed November 7, 2019.

58 <https://bridge.georgetown.edu/about-us/what-is-islamophobia/>, accessed November 19, 2019.

59 <https://belonging.berkeley.edu/global-justice/islamophobia/resource-pack-us/politics-foreign-policy>

ADDITIONAL CONTENT

MEDIA LITERACY: CONSIDERING THE PRESS

I. Introduction

The details of how the U.S. media operates, relates to, and reports on government activities has always been complex. This is particularly true in the realm of national security, intelligence, and counterterrorism, where operations require a degree of secrecy to be effective. This section outlines the current state of relations between the media and government to provide some guidelines for what students should look for when seeking reliable information. We'll look at the rules that govern mainstream media outlets, look at how the Internet and its "democratization" of media has undermined these rules, consider special sensitivity of national security reporting, and finally touch on the artistic license that is afforded film makers.

** Note: For more information on watching *The Report* with a critical media literacy lens, **Module I** of the [High School Lessons](#), "A Critical Media Analysis Unit" focuses on rhetoric, critical media literacy, and film studies or in contemporary History/Politics examining the construction of a post-9/11 American narrative.

II. Objectivity, Activism, and Disinformation

The media has specific rights enumerated in the First Amendment of the U.S. Constitution:

"Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

Yet government officials, and presidents in particular, have always disputed how broad the leeway granted to the media should be, sometimes leading to legal challenges. These disputes – over the right of the media to publish classified information, for instance, or to withhold the names of confidential sources even under court

order—are the flash points of the media-government relationship.

Modern Media's Three Faces

- **Objectivity:** Striving to remain neutral and unbiased regardless of the writer's opinion or personal beliefs. Increasingly "commoditized" and de-emphasized. Examples: BBC News, Associated Press, Reuters.
- **Advocacy:** Intentionally and transparently adopts a non-objective viewpoint, usually for some social or political purpose. Because it is intended to be factual and reveals its sources, it is distinguished from propaganda. Examples: Grist, Small Wars Journal, The American Spectator, The New Republic.
- **Disinformation/Propaganda:** False or incomplete information that is intended to mislead, especially propaganda issued by a government organization to a rival power or the media. Examples: RT, Newsmax, Infowars, World Socialist Website.

In the 20th Century, journalists in the United States have strived towards objectivity as the goal of excellence in reporting, even in the knowledge that achieving it might be impossible. Achieving objectivity entails seeking to understand a story and an issue from all sides, acquiring multiple perspectives from those involved, and avoiding the insertion of the journalist's own thinking. Objective journalism, in this form, is what can still be found in the "News" pages of major newspapers such as *The New York Times* and the *Wall Street Journal*, as distinct from the Opinion, Editorial or "Op-Ed" (opinion editorial) pages. These sections were traditionally distinct parts of a newspaper, helping the reader to understand the context of any given article.

Until the 1980s, broadcast journalism was bound by federal Fairness Doctrine, which discouraged editorializing. While sometimes stretched, this kept nightly network and local newscasts in the objective News category. Even after the Reagan administration repealed the Fairness Doctrine in 1987,⁶⁰ the three major U.S. television

60 A Brief History of the Fairness Doctrine, TIME, Feb. 20, 2009, Accessed Oct 30, 2019 <http://content.time.com/time/nation/article/0,8599,1880786,00.html>

networks adhered to its standards. In 1997, the founding of Fox News saw a shift in those traditions with an intentionally more overtly partisan approach. Still, its major rivals, including CNN and MSNBC, resisted counter-programming until after the turn of the 21st century.

The advent of the Internet further complicated the landscape and accelerated the adoption of a more partisan tone in many media channels, including print, broadcast and online. For example, the online versions of front pages of traditionally objective newspapers, such as *The New York Times*, suddenly featured opinion pieces. While this shift may have been in response to market demand, it also served to highlight the political leanings of each publication. In broadcast media, Fox, CNN, and MSNBC all sought specific segments of the wider audience to cater to, and while traditional network news audiences aged and declined, new internet-native outlets exploded, providing consumers with the choice to access hard-right or hard-left news and anything in between, few of which adhere to the traditional objectivity standards.

This often-confusing mix of veteran journalists, market-driven cable channels, and opinion-writers and pundits resulted in an atmosphere that enables disinformation. In a previous era, printing a correction was something a newspaper hated to do. In the current era, only a few outlets bother to acknowledge errors, preferring to allow a fray of commenters to do battle over such issues. With no one to hold them accountable, many outlets mutated into outright propaganda platforms for narrow political interests.

Still another complication involves the rise of non-news social media platforms such as Instagram, Facebook, Twitter and others. Until very recently, these platforms claimed no obligation to police the veracity of content on their pages. This policy was exploited in 2016 when Russia and other political consultants actively used Facebook algorithms to manipulate U.S. public opinion in the 2016 U.S. presidential elections.

Note: As of November, 2019, Twitter has banned all political ads from appearing on their platform.⁶¹

61 <https://help.twitter.com/en/rules-and-policies/twitter-rules>, accessed November 15, 2019.

62 Mitchell, Amy, et al, Many Americans Say Made-Up News Is a Critical Problem That Needs To Be Fixed, Pew Research Center, <https://www.journalism.org/2019/06/05/many-americans-say-made-up-news-is-a-critical-problem-that-needs-to-be-fixed/>, accessed November 15, 2019.

Americans are deeply concerned about misinformation. In a Pew Research poll in October, 2019, 68 percent of Americans stated that false news stories erode confidence in government institutions, and 54 percent states it is eroding citizens' confidence in one another.⁶²

The Conventions and Deterioration of Traditional Journalism

Around the turn of the 21st century, as the Internet grew in influence, there was a perception that it would have the potential to democratize information, opening space for independent voices outside of the few print, broadcast, and radio publications and networks who some perceived to “control” the news, such as *The New York Times*, *The Washington Post*, *The LA Times*, *The Wall Street Journal*, broadcast networks like NBC, ABC, and CBS, PBS, NPR, and the cable news networks Fox, CNN, MSNBC, and a few others.

To some extent, all of those outlets shared a common, more traditional understanding of standards of journalism, such as pursuing objective fact in their News pages, even as they allowed reporters a bit more leeway if the piece was labeled “Analysis.” Otherwise, reporters were forbidden from taking part in television punditry, blogging, social media or the writing of opinion pieces.

By and large, those were the understandings in place during the period represented in *The Report*. For instance, the conversations between Daniel J. Jones and a *New York Times* reporter about the possible leak of the report were handled much the way they might have been during the Vietnam War in the 1970s. Jones' ultimate decision not to leak rested on the potentially negative consequences of sharing classified material with the press. Within a few short years, this world would be gone.

Two developments changed the rules forever. The first was the Iraq War, the supposed evidence for which was channeled into the mainstream media using high-level leaks and anonymous sources – many of which turned out to be false. This did much to discredit the elite media outlets and encourage a more activist approach to news.

The second was the rise of outlets like WikiLeaks and the theft of massive caches of classified information by Chelsea Manning and Edward Snowden, whose revelations undercut official narratives and ultimately had to be embraced by the elite outlets.

Combined with the effects the Internet has had on the advertising-based business model of media, the mainstream outlets that survive have embraced an advocacy mission on behalf of the particular audience they represent. Even if the “news” pages remain relatively objective, those pages are more rare in today’s landscape where once they were the centerpiece of media’s offerings.

Leaks, Classification, and National Security

Even in the Internet era, as the traditions of objective reporting and publishing are giving way to a more partisan atmosphere, the rules governing national security reporting occupy a particularly sensitive place in media law and public perceptions.

This took on particular significance in the days after 9/11, when the Bush administration cited threats to the national homeland as an impetus to push new surveillance powers and to reinforce existing laws prohibiting the leak of classified information. As mentioned above, the sole person to be jailed as a result of the CIA interrogation and detainee program was an official who gave an interview to ABC News describing the torture inflicted on a detainee in detail. He served 23 months in prison.⁶³

For many years, dating to the legal battles between the media and Nixon administration over the publication of the Pentagon Papers in 1971, it was assumed that journalists could publish even classified materials as long as they came across them honestly. In *New York Times v United States* in 1971, the Supreme Court effectively ruled it was the leaker, not the publisher, who would be at risk.⁶⁴

However, following 9/11, a *New York Times* national security reporter, Judith Miller, was held in jail for 12 weeks for refusing demands to reveal the source of a

story.⁶⁵ The reporter was released after her source, Lewis “Scooter” Libby, an aide to Vice President Dick Cheney, agreed to allow her to breach the confidentiality agreement they made for the article in question. While it did not settle the issue of whether the media has the right to withhold the names of such sources, it did drive home the unsettling nature of the issue. It also led to Libby’s conviction on charges related to the leak, which revealed the identity of a CIA agent married to an opponent of the Bush administration’s Iraq policies. Libby never served any time; his sentence was commuted by President Bush and he was subsequently pardoned in 2018 by President Trump.

While Libby escaped prison, the lessons for potential leakers were clear: this was no slap on the wrist. The incoming Obama administration cracked down on leakers, arresting eight people using the 1917 Espionage Act and sending several to prison. The Trump administration has railed publicly against leakers and also used the Espionage Act against several. But persistent investigations of his White House have led many to eschew media leaks in favor of “whistleblowing”—a legally protected process whereby officials provide evidence of potential wrongdoing to inspector generals or other law enforcement officials.

Cinema: Artistic License and ‘Docu-Drama’

While it may seem obvious, it still bears mentioning that Hollywood operates under none of the strictures of the media when it comes to production of films based on historical events. Films based on historical events range from false accounts, to overly romanticized stories, conspiratorial takes, or other fictional interpretations of events.

The Report is positioned as a docu-drama, or a film that attempts to portray an accurate, non-sensationalized version of events. In this sub-genre, there are no gratuitous love stories or combat scenes to generate interest or spice up the script. Where possible, dialogue has been lifted directly from transcripts of events or the

⁶³ Ibid., p. 40

⁶⁴ US Supreme Court, *New York Times v the United States*, June 30, 1971, No. 1873, <https://www.law.cornell.edu/supremecourt/text/403/713>

⁶⁵ Jailed Reporter Reaches Deal in CIA Probe, CNN, Oct. 28. 2005, <https://www.cnn.com/2005/POLITICS/09/30/cia.leak/>

Report itself, and the scenes of torture attempt to depict events that the Senate's investigation conclude actually happened.

However, it is a fictional account, and there is a risk of conflating the historical characters with the actors who portray them. Actors like Adam Driver and Annette Benning may attempt to emulate Daniel Jones and Senator Feinstein, respectively, but will bring personality and interpretations to those characters that are different in nature from documentary representations. Students should not assume the exact words were used or that meetings took place precisely where and when depicted.

Here the need to keep a plot moving allows significant leeway, even in a “docu-drama.”

The producers also describe the character played by Maura Tierney, who is a high-ranking CIA official in the film present at some of the interrogations, as a composite character based in part on current CIA Director Gina Haspel. Whether that is for legal or artistic reasons remains unclear, but precise reactions and statements of the character cannot be directly ascribed to Haspel.

** Note: For more information on the characters in *The Report* and their representation within a docu-drama, see Tab I “Cast of Characters.”

RELEVANT DOMESTIC AND INTERNATIONAL LAW

I. Introduction

There are several international protocols that govern the treatment of prisoners of war, most notably the 1929 Geneva Convention. Subsequent additions to the Convention, and the development of international human rights law following World War II, have added heft to this legal foundation. Still, nations around the world often feel free to flout international law in the pursuit of their own interests, particularly large nations who can ride out the political and economic consequences.

II. The Laws of War

The rules protecting prisoners of war (POWs) are specific and were first detailed in the 1929 Geneva Convention. They were refined in the third 1949 Geneva Convention, following World War II, as well as in Additional Protocol I of 1977.

The status of POW only applies in international armed conflict. POWs are usually members of the armed forces of one of the parties to a conflict who fall into the hands of the adverse party. The third 1949 Geneva Convention also classifies other categories of persons who have the right to POW status or may be treated as POWs.

POWs cannot be prosecuted for taking a direct part in hostilities. Their detention is not a form of punishment, but only aims to prevent further participation in the conflict. They must be released and repatriated without delay after the end of hostilities. The detaining power may prosecute them for possible war crimes, but not for acts of violence that are lawful under international humanitarian law (IHL).

POWs must be treated humanely in all circumstances. They are protected against any act of violence, as well as against intimidation, insults, and public curiosity. IHL also defines minimum conditions of detention covering such issues as accommodation, food, clothing, hygiene and medical care.⁶⁶

Common Article 3 of the Geneva Convention provides

further protections against torture in times of conflict. It states that those in armed conflict not actively or any longer taking part in hostilities are prohibited from being subjected to “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture.” In 2006 the Supreme Court of the United States determined in *Hamdan v. Rumsfeld* that Common Article 3 must be applied to terror suspects in U.S. custody.

III. Relevant International Laws

The following international laws prohibit the use of torture or mistreatment of POWs. This analysis is from the University of Pennsylvania’s Center for Ethics and the Rule of Law.⁶⁷

- The United Nations Convention Against Torture (UNCAT) defines torture in Article 1 as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession....”
- Article 5 of the United Nations Universal Declaration of Human Rights (UNUDHR) clearly states that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”
- Article 7 of the International Covenant on Civil and Political Rights (ICCPR) repeats, verbatim, the outlawing of torture found in UNUDHR. Article 5 of the ICCPR includes language meant to prevent states from utilizing legal work arounds to overcome the spirit of the condemnation of torture.

IV. Soldiers, Insurgents, and Terrorists

Article 4(a)2 of the Third Geneva convention (1949) recognized that not all wars in the modern era would be fought by uniformed military personnel of opposing nations. The Article, written at a time of colonial insurrections, creates a wide definition of those who must be accorded the protections due to any soldier captured on the battlefield. It says that all protections of the Geneva Convention extend to:

⁶⁶ International Committee of the Red Cross, Overview, Detainees as Protected Persons, Accessed Oct. 30, 2019

<https://www.icrc.org/en/doc/war-and-law/protected-persons/prisoners-war/overview-detainees-protected-persons.htm>

⁶⁷ The Ethics of Interrogation and the Rule of Law, *University of Pennsylvania’s Center for Ethics and the Rule of Law*, Feb. 24, 2017.

<https://www.law.upenn.edu/live/files/6299-final-version-abridged--ethics-of-interrogation>

- Members of “other militias” and “volunteer corps,” including “organized resistance movements” that belong to a Party to the conflict. In addition, members of militias and volunteer corps must meet four conditions: (a) “being commanded by a person responsible for his subordinates”; (b) “having a fixed distinctive sign recognizable at a distance”; (c) “carrying arms openly”; and (d) “conducting their operations in accordance with the laws and customs of war.”⁶⁸

V. Domestic Law and the Interrogation Program

U.S. law unequivocally outlaws torture, from Constitutional protections against cruel, inhumane and degrading treatment, through multiple Executive and Judicial decisions throughout our nation’s history.⁶⁹

The following is a review of some modern U.S. laws govern the use of torture. This analysis is from the University of Pennsylvania’s Center for Ethics and the Rule of Law.⁷⁰

- Within U.S. domestic law, the act of torture or conspiracy to commit torture is specifically prohibited.⁷¹ Torture is defined by this statute as “an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering....” Severe mental pain or suffering includes the “infliction of severe physical pain or suffering,” as well as “other procedures calculated to disrupt profoundly the senses of the personality.” This applies within the U.S. as well as to American nationals acting abroad.
- In *Boumediene v. Bush* the Supreme Court determined that prisoners detained under the Military Commissions Act of 2006 were required to be given the right to habeas corpus.⁷² While this is applicable to those individuals detained by the United States Military and held within the country and abroad, it does not address the clandestine detention of individuals being held by intelligence agencies.
- President Obama’s January 2009 Executive Order 13491 required all government entities to bring any current and future programs in line with all international laws and treaties defining and preventing the use of torture. This order rescinded all previous Bush-era legal opinions.
- In 2015, the McCain-Feinstein Amendment to the 2016 National Defense Authorization Act for FY 2016 expanded the provisions of the previously enacted 2005 Detainee Treatment Act. The 2005 legislation restricted the interrogation practices of the U.S. military to those found in the Army Field Manual, effectively ruling out military-led enhanced interrogation. The 2015 McCain-Feinstein Amendment expanded this prevention to cover the entire U.S. government, particularly meant to prevent future CIA-led enhanced interrogation programs.
- Army Field Manual 2.22.3 Section 5-13 is the current basis for all legal interrogations carried out by the United States. Paragraph 5-51 states that the lawful treatment of “enemy prisoners of war” and civilians is dictated by the Geneva Convention Relative to the Treatment of Prisoners of War and the Geneva Conventions Relative to the Protection of Civilian Persons in Time of War respectively.
- The United States Department of Defense Law of War Manual states numerous times that armed conflict does not remove the international laws and norms preventing torture. Moreover, Section 5.26.2 of the text directly addresses appropriate behavior for information gathering: “Information gathering measures violate specific law of war rules...it would be unlawful, of course, to use torture or abuse to interrogate detainees for purposes of gathering information.”
- The U.S. Military’s UCMJ 928 Art. 128 finds any service member who “inflicts grievous bodily harm with or without a weapon guilty of aggravated assault.”

68 Geneva Convention III, Articles 1-4, Columbia University website, Accessed Oct. 30, 2019

<https://web.law.columbia.edu/sites/default/files/microsites/gender-sexuality/Geneva%20Convention%20III.pdf>

69 <https://www.humanrightsfirst.org/sites/default/files/Issue-Brief-Laws-Against-Torture.pdf>

70 Ibid, 48

71 18 U.S.C. §§ 2340A, Cornell Law School, Accessed Oct 19, 2019 <https://www.law.cornell.edu/uscode/text/18/2340A>

72 <https://www.oyez.org/cases/2007/06-1195>

TIMELINE: US INVESTIGATIONS

The current generation of students may associate congressional inquiries of the kind that Daniel J. Jones led for the Senate Select Committee on Intelligence with contemporary controversies. As this Timeline demonstrates, however, such passions have always afflicted American politics, with tension between the executive and legislative branches often the driving factor.

1807: Thomas Jefferson and the **Embargo Act**

At Jefferson's insistence, Congress passed the Embargo Act, a drastic and self-destructive attempt to punish Britain for seizing American merchant ships by cutting off all U.S. exports to any nation. Six months later, a Jefferson appointee to the Supreme Court, William Johnson, ruled that the President had exceeded his authority.



1819: **McCulloch v. Maryland**

The Supreme Court ruled that Congress had implied powers under the Necessary and Proper Clause of Article I, Section 8 of the Constitution to create the Second Bank of the United States and that the state of Maryland lacked the power to tax the Bank. Later, Jefferson seemed to deny the power of the Supreme Court to bind the other branches with its interpretations of the Constitution.

1832: Andrew Jackson and **Worcester v. Georgia**

Andrew Jackson passed the *Indian Removal Act* in 1830, giving the president jurisdiction over Indian-state relations. However, the Supreme Court decision in *Worcester v. Georgia* made Jackson's plans difficult to enact. The ruling said that Native American nations were sovereign nations and only the United States could negotiate rules regarding land and territory. The act gave the Cherokee Nation the full rights to their land in Georgia.

Despite the seeming victory for the Cherokee people,

Note: All images from WIKICOMMONS



Jackson defied the court ruling. He allowed the Georgia militia to invade Cherokee land, which eventually led to the mass removal of Cherokee people from Georgia now known as the "Trail of Tears."

Further media

Video: President Jackson and the Indian Removal Bill

1861: Abraham Lincoln and **Habeas Corpus**

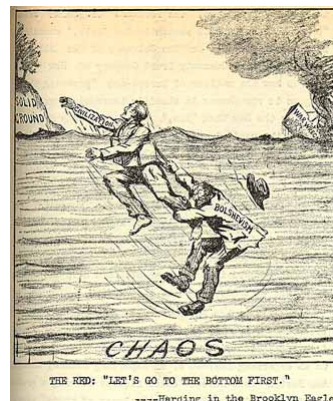


During the first year of the Civil War, Lincoln suspended the writ of habeas corpus (a federal mandate that requires the government to allow prisoners to appear before court) due to local riots and uprising from Confederate sympathizers. By suspending habeas corpus, officials in the North were able to arrest

citizens and hold them indefinitely without trial.

1919-1920: **The Overman Committee and the 'First Red Scare'**

This period of history in the United States was marked by a widespread fear of Bolshevism and anarchism. The Overman Committee, a special subcommittee of



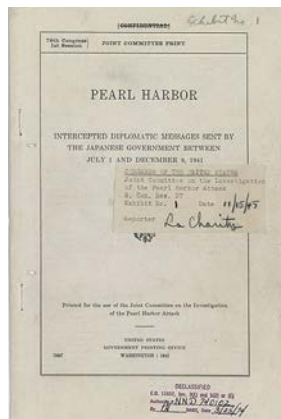
the Senate, investigated German and Bolshevik elements in the United States between September 1918 and June 1919. It represented the first congressional committee investigation of communism. The Committee's

final report detailed its investigations into German propaganda, Bolshevism, and other “un-American activities” and predicted effects of communism’s implementation in the United States. Released in June 1919, it was over 35,000 words long, and was compiled by Major Edwin Lowry Humes. Anti-Bolshevik public sentiment surged after the release of the report and ensuing publicity.

1945-1946: **Joint Committee on the Investigation of the Pearl Harbor Attack (The Pearl Harbor Committee)**

Members of the Senate and House of Representatives formed this committee after World War II to investigate the causes of the 1941 attack on Pearl Harbor and possible preventative measures against future attacks. Authors rejected the claim that President Roosevelt and top advisors “tricked, provoked, incited, cajoled, or coerced” Japan into attacking the United States in order to draw the nation into war.

Admiral Husband E. Kimmel, Commander-in-Chief of the U.S. Pacific Fleet at the time of the attack, was singled out for blame and demoted from a four- to two-star admiral. Many historians agree today that Kimmel was a fall guy for systemic failures.



1950: **Army-McCarthy Hearings (House Un-American Activities Committee)**

This series of hearings held by the United States Senate’s Subcommittee on Investigations investigated conflicting accusations between the United States Army and U.S. Senator Joseph McCarthy (R-Wisc). His subsequent focus on rooting out alleged Communists in the State Department pitted the legislative against the executive branch in one of the most destructive periods in U.S. history.

The House Un-American Activities, which McCarthy led, called officials and average citizens to testify in high-profile hearings before Congress and accused many, often on thin evidence, of conspiring against the nation or



being members of the Communist Party. This intimidating atmosphere led to wide repercussions in society at large as people suspected of leftist sentiments were fired or blackballed.

1952: **Harry S. Truman and the US Steel Industry Takeover**



During the Korean War, tensions in U.S. steel mills threatened mass strikes in the United States. This could potentially halt steel production, which Harry Truman believed would be dangerous during a war. In response, he ordered to seize all the steel mills to prevent them from shutting down. Only a few weeks later, the Supreme Court ruled that seizure unconstitutional. Truman based his actions partly on the National Security Act of 1947, which vastly expanded executive branch authority over foreign policy, intelligence and national security.

1974: **Richard Nixon and Watergate**

In a battle between congressional investigators and the White House that ultimately led to Richard Nixon’s

resignation in 1974, a constitutional crisis was narrowly averted when the president refused to turn over secret recordings of conversations in the Oval Office. The tapes included evidence that Nixon covered up a break in organized by his loyalists at the Democratic Presidential Campaign Committee at the Watergate hotel. In the *United States v. Nixon*, a case expedited by the Supreme Court, the president cited executive privilege in an effort to resist turning over the recordings. The 8-0 decision, which included three Nixon appointees to the high court, went against him, dooming his presidency.



1985-1987: **Iran-Contra Hearings**

In an effort to circumvent a congressional ban on arms sales to Nicaragua's anti-Sandinista "contra" rebels, the Reagan Administration organized a complex agreement with Iran to trade arms for Iranian aid to the contras. The



subsequent cover up, revealed by the congressional Iran Contra hearings, led to multiple resignations and jail sentences among Reagan's aides and tainted his second term in office.

⁷³ <https://billofrightsinstitute.org/elessons/the-impeachment-of-bill-clinton/>

Further media

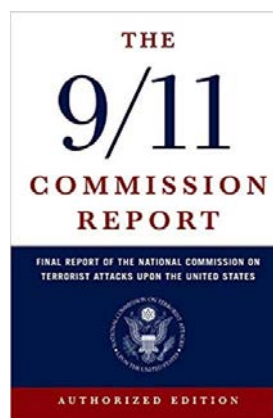
Video of Col. Oliver North's testimony to the Iran-Contra hearings.

1996: **Bill Clinton, Paula Jones and Impeachment**



After being sued in civil court for damages because of an alleged sexual assault, the Supreme Court ruled that a sitting president can be subjected to civil lawsuits while holding office, rejecting the president's request for presidential immunity. Later in his presidency, however, Clinton was impeached by the Republican-led House of Representatives in another sexual scandal, this time for his efforts to suborn perjury – that is, to get witnesses to lie under oath – about his affair with another woman, a White House intern named Monica Lewinsky. The Senate failed to convict him.⁷³

2002: **9/11 Commission Report**



The 9/11 Commission Report, formally named Final Report of the National Commission on Terrorist Attacks Upon the United States, was the official investigation into the events leading up to the September 11, 2001 terrorist attacks. The panel was an independent, bipartisan commission created by congressional legislation and signed into law by President George W. Bush

in late 2002. The panel was held hearings over a period of months and issued a report that recommended sweeping changes in the intelligence and national security bureaucracies, many of which were enacted. It later emerged that the CIA had hidden the existence of video tapes of its so-called “Enhanced Interrogation Techniques” from the commission.

2019: The Committee Study of the CIA’s Detention and Interrogation Program⁷⁴

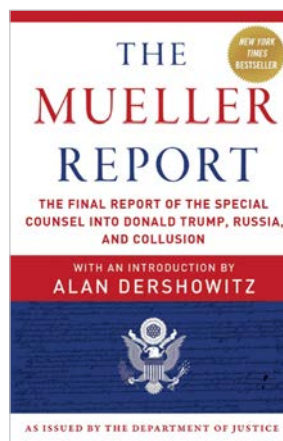
The **Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program**⁷⁵ is a bipartisan report compiled by the **United States Senate Select Committee on Intelligence** (SSCI) about the **Central Intelligence Agency** (CIA)’s Detention and Interrogation Program and its use of torture against detainees in CIA custody. The report covers CIA activities before, during, and after the “**War on Terror**.”

The more-than 6,700-page report (including 38,000 footnotes)⁷⁶ details the history of the CIA’s Detention and Interrogation Program and the Committee’s 20 findings and conclusions. On December 9, 2014, the SSCI released a 525-page portion that consisted of key findings and an executive summary of the full report. It took five years and the CIA spent \$40 million in connection with the Senate investigation.^{77 78 79} The full unredacted report remains **classified**.^{80 81 82}

The report details actions by CIA officials, including torturing prisoners, providing misleading or false information about classified CIA programs to the President, Department of Justice, Congress, and the media, impeding government oversight and internal criticism, and mismanaging the program. It also revealed the existence of

previously unknown detainees, that more detainees were subjected to enhanced interrogation techniques than was previously disclosed, and that more techniques were used without Department of Justice approval. It concluded that the use of enhanced interrogation techniques did not yield unique intelligence that saved lives (as the CIA claimed), nor was it useful in gaining cooperation from detainees, and that the program damaged the United States’ international standing.

2019: **The Mueller Report**



Controversy over Russian-backed disinformation campaigns during the 2016 election cycle led to the appointment by the Justice Department of Special Counsel Robert Mueller, who probed not only Russian interference but evidence of collusion on the part of President Trump and his coterie. Muller’s conclusions fell short of recommending impeachment but laid out a case

for presidential misconduct and obstruction of justice. The report fueled divisiveness in the U.S. and was heavily criticized as a “witch hunt” by Republicans and as too legalistic and timid by Democrats. It also supercharged the constitutional power struggle between the executive and legislative branches, with the White House deriding the investigation publicly, refusing subpoenas and other efforts by the special counsel to collect evidence.

⁷⁴ https://en.wikipedia.org/wiki/Senate_Intelligence_Committee_report_on_CIA_torture

⁷⁵ https://en.wikipedia.org/wiki/Senate_Intelligence_Committee_report_on_CIA_torture#cite_note-TheReportItself-1

⁷⁶ https://en.wikipedia.org/wiki/Senate_Intelligence_Committee_report_on_CIA_torture#cite_note-feinsteinsenate-4

⁷⁷ https://en.wikipedia.org/wiki/Senate_Intelligence_Committee_report_on_CIA_torture#cite_note-GuardDec0914-5

⁷⁸ https://en.wikipedia.org/wiki/Senate_Intelligence_Committee_report_on_CIA_torture#cite_note-contractor-6

⁷⁹ https://en.wikipedia.org/wiki/Senate_Intelligence_Committee_report_on_CIA_torture#cite_note-feinstein40-7

⁸⁰ https://en.wikipedia.org/wiki/Senate_Intelligence_Committee_report_on_CIA_torture#cite_note-NPR-8

⁸¹ https://en.wikipedia.org/wiki/Senate_Intelligence_Committee_report_on_CIA_torture#cite_note-GuardDec0814-9

⁸² https://en.wikipedia.org/wiki/Senate_Intelligence_Committee_report_on_CIA_torture#cite_note-10

SUGGESTED RESEARCH PROJECT

Investigative Brief*

The Senate investigation team spent more than five years reading through 6.5 million pages of CIA materials before writing the Senate Report. In comparison, the film, the class lectures, and the accompanying materials can only offer a brief introduction to the topic.

Amazon has created *The Report* Movie Deep Dive Website that includes a curated collection of primary sources, and unique supplemental content, such as The Report Podcast, to allow you to explore, question, argue, and arrive at your own conclusions about the political and moral gravity of what occurred, and what it means for the United States moving forward.

Use the resources available on *The Report* Movie Deep Dive Website, particularly Tab IV, A Closer Look, to answer the following key questions and analytical challenges.

I. Origins of the CIA Detention and Interrogation Program

KEY QUESTION:

As the use of torture was at the time, and is currently, expressly against the law in the United States, what series of events needed to take place in order for the CIA program to begin?

ANALYTICAL CHALLENGE:

What is your analysis of how and why this was allowed to happen?

II. Rationale for “Enhanced Interrogation Techniques”

KEY QUESTION:

How did the CIA justify their use of “enhanced interrogation techniques”?

ANALYTICAL CHALLENGE:

What is your assessment of their rationale?

III. Effective Intelligence Gathering

KEY QUESTION:

How did the FBI gain intelligence on suspected terrorists prior to the CIA program?

ANALYTICAL CHALLENGE:

What criteria would you recommend interrogation techniques be measured against in order to decide whether they should be in use?

IV. Exposure of the Program

KEY QUESTION:

What were the key turning points in exposing the CIA program?

ANALYTICAL CHALLENGE:

Why was the death of Gul Rahman significant?

V. Contradictions

SAMPLE QUESTION:

Why did the CIA choose to transport captured suspects to third countries rather than bring them to the United States for prosecution?

ANALYTICAL CHALLENGE:

What was unique about the post-9/11 conflicts, in comparison to other conflicts that took place during the 20th century, that might have made it possible for the “EITs” to be put into use?

VI. The Senate Intelligence Investigation

SAMPLE QUESTION:

What triggered the Senate Select Committee on Intelligence to begin their investigation of the CIA program?

*Note - this exercise mirrors one from the high school curriculum: [Lesson Three: The CIA Detention and Interrogation Program](#)

ANALYTICAL CHALLENGE:

Do you feel that the investigation was an example of our government's oversight system being effective? Explain your answer.

VII. Oversight and Accountability**SAMPLE QUESTION:**

Who has been held accountable across the government for carrying out a program of torture?

ANALYTICAL CHALLENGE:

Do you think the government's response to the CIA program was appropriate? If so, why? If not, what do you think should have happened?

VIII. Legacy Today**KEY QUESTION:**

How did the CIA's Detention and Interrogation Program influence the standing of the United States at home and abroad?

ANALYTICAL CHALLENGE:

Discuss the CIA program in the context of the U.S.'s role in advocacy for human rights around the world. Do you think the U.S. should have a role in enforcing global human rights policy? Why or why not?

IX. Other

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