

Senate Select Committee on Intelligence

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



Additional Views

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**SENATOR
WYDEN
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VIEWS**

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ADDITIONAL VIEWS OF SENATOR WYDEN

Having served in Congress for nearly thirty-five years, and having served on the Intelligence Committee for over thirteen, I can easily say that this report is among the most detailed and comprehensive that I have ever seen. In addition, the investigation that produced it has been one of the most thorough and diligent that Congress has conducted during my tenure. I am proud to have been able to support it, and I would like to thank the extremely dedicated and talented staff who worked incredibly hard to produce it in the face of significant obstacles. Also, I commend Chairman Feinstein, and her predecessor Senator Rockefeller, for their leadership on the issue of interrogations.

However, I would be remiss if I let this opportunity go by without adding some brief additional thoughts that go beyond the scope of this report and touch on broader issues of secrecy and transparency. In my view certain aspects of the disturbing history surrounding coercive interrogations highlight broader problems faced by those who lead intelligence agencies, and those who oversee them.

In particular, I have long been concerned about the problems posed by government officials' reliance on what is effectively secret law. As I have said before, when laws are secretly interpreted behind closed doors by a small number of government officials, without public scrutiny or debate, it dramatically increases the likelihood of government agencies taking actions that the American public would not support.

Most Americans expect their government to gather information about genuine threats to national security and public safety, and they recognize that this information can sometimes be gathered more effectively when some details about how it is collected remain secret. But Americans also expect government agencies to operate at all times within the boundaries of publicly understood law. Americans in the 21st century don't expect their military and intelligence agencies to publish every single detail of their operations any more than they expected George Washington to publish his strategy for the Battle of Yorktown. But Americans absolutely expect that the law itself will not be secret – and as voters they have a need and a right to understand what government officials think the law actually means, so that they can decide whether particular laws need to be changed and ratify or reject decisions that their elected officials make on their behalf.

It is clear that a central problem with the CIA's secret detention and interrogation program was that it relied on secret interpretations of the law that went well beyond both the law's plain meaning and the public's understanding of what the law permitted. And this problem was unfortunately not confined to the CIA. During the same time period, the NSA relied on secret legal interpretations from the Department of Justice (and, later, the Foreign Intelligence Surveillance Court) as the basis for a massive expansion of its domestic surveillance activities. Both history and common sense made it clear that these secret interpretations of the law would not stay secret forever, and the predictable result was a robust public backlash and an erosion of confidence in US intelligence agencies and in government more generally.

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Another serious problem that can be seen in both the CIA interrogation case and the NSA surveillance case is the way that reliance on a secret body of law helped spawn a culture of misinformation, in which senior government officials repeatedly made inaccurate and misleading statements to the public and the press regarding intelligence agencies' authorities and activities. In addition to misleading the public about how the law was being interpreted, these statements often inaccurately characterized the effectiveness of these controversial programs – much of what CIA officials said about the effectiveness of coercive interrogations was simply untrue.

Beyond the problem of secret law, it is also clear that excessive secrecy within the government contributed to a troubling lack of oversight. This lack of oversight meant that bad decisions were not corrected, and shocking mistakes were often allowed to proliferate and be repeated. While some individual members of Congress and the executive branch pushed hard for more oversight of CIA interrogation activities, the argument that information about these programs needed to be kept tightly guarded even within the government was allowed to prevail.

This is an argument that has been frequently been made when oversight bodies in Congress and the executive branch have attempted to learn more about potentially controversial secret programs. Intelligence officials will naturally tend to argue that it is necessary to limit access to information about sensitive intelligence collection methods to keep those methods from being publicly disclosed. If this imperative is not balanced against the need for informed and vigilant oversight of intelligence activities, then effective oversight can be stymied by excessive secrecy, leaving these agencies much more likely to make serious errors and repeat them.

In the case of the CIA interrogation program, of course, the fact that this impulse toward secrecy was allowed to outweigh the need for robust, well-informed oversight is particularly egregious because CIA officials were at times providing information to the press (including information that was often inaccurate and misleading) at the same time that congressional requests for information were being stonewalled. It is an unfortunate fact that intelligence agencies' legitimate mandate for secrecy has often been used to hide programs and activities from people who might criticize them.

Fortunately, the solution to these problems is straightforward, even if it isn't easy. Members of Congress and the executive branch must continually push for the information that they need to do their jobs, and intelligence officials must avoid taking actions that obstruct this important oversight. And everyone involved must remember that there is ultimately no substitute for oversight from the public itself, which is why all government agencies – even intelligence agencies – should constantly be pressed to make as much information available to the public as possible. Finally, everyone who values the legitimacy of our democratic institutions must remember that the government's understanding of laws, treaties and the Constitution shouldn't just be public when government officials find it convenient. This information should be public all the time, and every American should be able to find out what their government thinks the law means.

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The vast majority of the men and women who work at America's intelligence agencies are overwhelmingly dedicated professionals who make enormous sacrifices to help keep our country safe and free, and they should be able to do their jobs secure in the knowledge that they have the confidence of the American people. By remembering these principles and working hard to adhere to them, I believe that those of us who are lucky enough to serve in government can ensure the protection of both American security and American values, and give these men and women the confidence that they deserve.

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