

Fact Check: Inaccurate and Misleading Assertions in “SSCI Study of the CIA’s Detention and Interrogation Program: A Flawed Report,” by Amy Zegart

On December 10, 2015, Professor Amy Zegart posted to the Lawfare Blog an article entitled, “SSCI Study of the CIA’s Detention and Interrogation Program: A Flawed Report.” The article contains numerous factually inaccurate statements about the Committee Study. The analysis below comments on the accuracy of that post.

<i>Assertion from Dec. 10 post</i>	<i>Fact Check</i>
“Though former Senate Intelligence Committee Chairman Dianne Feinstein says she believes her report will ‘stand the test of time,’ evidence suggests it has not stood the test of the moment. The report has not changed minds on either side of the torture debate and is unlikely to do so.”	Ms. Zegart’s statement is inaccurate. The Study has already had a profound impact. On June 16, 2015, the Senate voted 78-21 to prohibit U.S. Government interrogation techniques not specifically authorized by the Army Field Manual and to require access to U.S.-held detainees for the International Committee of the Red Cross. The bipartisan amendment was supported in conference by the House of Representatives and was signed into law by the President.
“Yet the investigation also committed a number of unforced errors that offer a cautionary tale for intelligence oversight.”	Ms. Zegart has not identified any “unforced errors” by the Committee investigation. As described below, each of her stated concerns about the Study was the direct result of decisions made by the Executive Branch or the minority membership of the Committee.
“Oversight is largely about process.”	Legislative oversight of the Executive Branch is a constitutional duty necessary for the effective functioning of our democracy. It is not “largely about process.” Oversight requires <i>substantive</i> reviews of Executive Branch programs, policies, and activities. The 6,800 page Committee Study with 38,000 footnotes to the CIA’s own records, the Executive Summary of which alone is 499 pages and includes 2725 footnotes, is a model for substantive, factual oversight of the Intelligence Community.
“Four key process errors doomed the Senate report to eternal controversy: it was not bipartisan, took too long to write, made little effort to generate public support along the way, and produced a declassified version that	Ms. Zegart’s assertions of “process errors” are inaccurate. As detailed below, impediments to the drafting and completion of the Study, restrictions on public discourse about the Study, and limitations on what has been

<p>constituted a tiny portion of the full study.”</p>	<p>declassified all reflect decisions made by the Executive Branch, not the Committee. While the Executive Summary does represent a fraction of the full Study, it is 499 pages long and includes 2725 footnotes and should be read by Ms. Zegart and other scholars.</p>
<p>“While Feinstein’s effort ultimately consisted entirely of Democrats (she could not even get moderate Republican Susan Collins, who had co-sponsored John McCain’s anti-torture statute, on her side), the Church Committee was bipartisan from start to finish.”</p>	<p>This is factually inaccurate. The Terms of Reference that guided the Committee investigation was approved with a bipartisan vote of 14-1, on March 5, 2009.¹ While the then-Vice Chairman withdrew from the investigation in September 2009, over objections to an announced Department of Justice criminal investigation into CIA abuses, the Committee Study continued to receive bipartisan support. On December 13, 2012, the Committee approved the Study with a bipartisan vote of 9-6, with Senator Olympia Snowe (R-ME) voting in favor.² In addition, Senator McCain (R-AZ), an <i>ex officio</i> member of the Committee, voiced support for the Study and documented this support in writing.³ Contrary to Ms. Zegart’s assertion, Senator Collins was not on the Committee at the time. On April 3, 2014, the Committee agreed by a bipartisan vote of 11-3 to seek declassification of the Executive Summary. Senator Collins was among the members to <i>support</i> declassification.</p> <p>Like the Committee’s Study of the CIA’s Detention and Interrogation Program, the Church Committee report had its vocal detractors and was opposed, in part or in full, by some of its members. For example, Senator Barry Goldwater (R-AZ) refused to sign the Church Committee report and argued that it “probably should never have been written.”⁴</p>
<p>“While the Feinstein investigation took 5 long</p>	<p>Ms. Zegart’s assertion that the Study “took too</p>

¹ See <http://www.intelligence.senate.gov/publications/report-select-committee-intelligence-covering-period-january-3-2013-january-5-2015>.

² Information on this bipartisan vote is publicly available. For example, see <http://www.reuters.com/article/2012/12/14/us-usa-interrogations-idUSBRE8BD01420121214>

³ <http://www.mccain.senate.gov/public/index.cfm/2012/12/post-95e0a445-d569-80f9-f216-89ec7a7b6928>

⁴ Individual Views of Senator Barry Goldwater, Final Report of the Select Committee to Study Governmental Operations With Respect to Intelligence Activities. See also Separate Views of Senator John G. Tower, Vice Chairman.

years, the Church committee investigation took 15 short months.”

long to write” ignores both the unprecedented breadth of the Committee’s investigation, and the extent to which the Executive Branch delayed its completion and public release. The Study, which was based on a review of more than 6.3 million pages of CIA records – the last of which were not provided until a few months prior to the completion of the draft report – is the most extensive intelligence oversight report ever produced. It was researched and drafted by a small number of existing Committee staff rather than the more than 100 staff hired by the Church Committee for its report. From the beginning, the CIA created impediments, requiring that documents only be available, and that initial drafts only be written, at an off-site location outside of Washington, D.C., rather than at the Committee’s secure spaces, and that the CIA partially redact those drafts prior to their transfer to the Committee. Then, as then-Chairman Feinstein detailed in her March 11, 2014, floor statement, the CIA removed documents that had previously been made available to the Committee.⁵ At the same time, approximately 9,400 documents were withheld from the Committee pending a possible claim of executive privilege. The CIA, due to a review process insisted upon by the CIA itself, then took more than three years to provide all of the responsive documents to the Committee, providing the last significant tranche of documents in late-2012. After the initial version of the Study was completed and approved by the Committee, in December 2012, the CIA took six months compiling its formal Response, after which Committee staff conducted extensive discussions with CIA officers. A few months later, in January 2014, as the Committee was integrating the CIA Response into the final Study, the CIA violated the Separation of Powers doctrine by searching computers intended exclusively for the Committee’s work. Nonetheless, in April

⁵ <http://www.feinstein.senate.gov/public/index.cfm/2014/3/feinstein-statement-on-intelligence-committee-s-cia-detention-interrogation-report>

	<p>2014, the Committee resubmitted the Study to the Executive Branch so that the Executive Summary could be declassified and released. The Committee did not receive a response until August 2014, when the CIA provided a document with proposed redactions that, as then-Chairman Feinstein has noted, “prevented a clear and understandable reading of the Study and prevented [the Committee] from substantiating the findings and conclusions.”⁶ Negotiations over redactions took more than four more months before the Executive Summary was released on December 9, 2014.</p>
<p>“What’s more, Feinstein’s investigation did not hold a single public hearing to generate public attention or support.”</p>	<p>Prior to the release of the Executive Summary, on December 9, 2014, the entirety of the factual record was classified by the Executive Branch, making a substantive open hearing on the Study impossible.</p>
<p>“In addition, Feinstein’s report is still almost entirely classified. The ‘report’ released in December 2014 was a redacted executive summary of 500 pages – that’s less than 10% of the 6,700 page report. No one knows when the other 6,200 pages will see the light of day.”</p>	<p>The declassification of the Executive Summary took eight months, from April 2014 to December 2014. Releasing the full report would have taken considerably longer, if it was completed at all. Future declassification and release is entirely possible.</p> <p>Then-Chairman Feinstein released the full-report to the Executive Branch. In her letter transmitting the full Study to the Executive Branch, then-Chairman Feinstein encouraged the President to disseminate it broadly and to use the Study “as you see fit.”⁷</p>
<p>“Because nearly all of the report remains classified, the public has far more information about the study’s conclusions than the evidentiary record on which they are based.”</p>	<p>This statement is inaccurate. The Study’s findings and conclusions are 19 pages long. The factual record detailed in the Executive Summary is 499 pages long and includes 2,725 footnotes. While the underlying source documents largely remain classified, nearly every single sentence is supported by a referenced CIA document.</p>
<p>“But intelligence assessments are highly context dependent; without a fuller understanding of context, history, and nuance, the same words can mean very different things. For example, what exactly constitutes the</p>	<p>The stark contrast between CIA representations about the supposed role of the CIA’s coercive interrogation techniques in identifying the courier and the facts, as detailed in the CIA’s own records, is detailed in 23 pages of the</p>

⁶ <http://www.feinstein.senate.gov/public/index.cfm/press-releases?ID=d2677a34-2d91-4583-92a4-391f68ceae46>

⁷ http://www.feinstein.senate.gov/public/index.cfm/files/serve/?File_id=be9d4494-383c-44c2-97ba-085033357ab6

<p>intelligence ‘tipoff’ on Bin Laden’s courier that ultimately led to the Abbottabad compound? The Feinstein report defines ‘tipoff’ as the <i>first</i> mention of information about the courier, which came from detainees who were not subjected to harsh interrogation techniques. Defenders of the CIA program assert that this original information wasn’t recognized as important until harsh interrogation techniques produced more. For them, the ‘tipoff’ was <i>additional information that catalyzed a new and fruitful focus on the courier</i>. With so little of the full record publicly available, there is still not enough evidence to know which of these interpretations is closer to ground truth.”</p>	<p>Executive Summary (pages 378-400). Ms. Zegart’s description of the CIA’s information on the courier obtained <i>prior</i> to any reporting from detainees subjected to the CIA’s coercive interrogation techniques is incomplete in terms of the numerous and varied sources of that information and the extensive detail on the courier provided by those sources. Moreover, Ms. Zegart’s focus on a “tipoff” disregards the numerous other inaccurate CIA representations about information obtained from detainees – the inaccuracy of which is not in dispute.</p>
<p>“In addition, Feinstein’s investigation relied exclusively on written documents. But documents reveal only so much. Often the more important information – ideas, intentions, relationships, conversations – rests in heads, not files. Interviews also force investigators to confront their own assumptions and weaknesses which can sharpen their evidence and analysis.”</p>	<p>Interviews were not conducted because the Director of the CIA, citing the attorney general’s investigation, would not instruct CIA employees to participate in interviews. Nonetheless, the Study relied on 6.3 million pages of CIA documents, including cables, final and draft memoranda, emails and Sametime communications from when the program was operating, not ten years later as interviews would have done. Moreover, the investigation <i>did</i> take advantage of interviews conducted by the CIA inspector general and the CIA’s Oral History Program – as well as numerous exchanges during congressional testimony. These statements are documented extensively in the Executive Summary. Subsequent to the public release of the Executive Summary, former CIA leaders have similarly complained about not having been interviewed, despite their previous interviews and testimony appearing in the Executive Summary, and despite their failure, over the course of numerous press appearances, to identify any factual errors in the Study.</p> <p>In response to Ms. Zegart’s statement that the Study was not subjected to challenges to its purported “assumptions and weaknesses,” it is worth noting that in June 2013, the CIA provided its response to the Study – a response based in part on CIA interviews with</p>

	<p>participants in the program – after which Committee staff met extensively with CIA officers to discuss the Study and the CIA Response. As detailed in numerous footnotes throughout the Executive Summary, this feedback was fully integrated into the final version of the Study.</p>
<p>“The report is an analytic jumble that argues coercive techniques are ineffective when its chief complaint is really that they are immoral. Couching moral arguments in efficacy terms weakens the analysis.”</p>	<p>Ms. Zegart’s claims that the Study’s “chief complaint” is that coercive techniques are immoral, and that the Study “couch[es] moral arguments in efficacy terms” are inaccurate. None of the findings and conclusions, including the first two that address the ineffectiveness of the CIA’s coercive interrogation techniques, makes any mention of morality. Rather, these findings and conclusions are described in factual terms and are fully supported by an extensive factual narrative and thousands of citations to the CIA’s own records. The Study evaluated CIA’s own claim that the so-called “Enhanced Interrogation Techniques” were necessary to obtain otherwise unavailable information to save lives. This claim was demonstrated to be false in all 20 cases reviewed.</p>
<p>“For example, the report notes that multiple detainees subjected to the harsh techniques provided ‘fabricated information.’ That’s hardly surprising. The more important efficacy question is whether harsh methods produced <i>more</i> instances of faulty intelligence than non-coercive techniques --a comparison the report never asks or attempts to answer.”</p>	<p>The Study did not just document when detainees subjected to the CIA’s coercive interrogation techniques fabricated information; the Study details how those detainees fabricated information on the terrorist threats which the CIA identified as its highest priorities. Moreover, the Study includes a detailed factual record of how the interrogations that the CIA has identified as the <i>successes</i> of the techniques actually produced fabricated information, while also demonstrating the direct causation between the use of the techniques and the fabrications.⁸ Finally, Ms. Zegart’s claim that the Study doesn’t address the effectiveness of non-coercive techniques is inaccurate. For</p>

⁸ See, for example, KSM’s fabrication of al-Qa’ida recruitment of African American Muslims in Montana (pages 91-92 and, more generally, pages 214-216); Hambali’s fabrications (pages 108-109), and Samr al-Barq’s reporting on anthrax (footnote 442, pages 82-83). Other examples of inaccurate information provided by detainees subjected to the CIA’s coercive interrogation techniques include information provided on bin Ladin’s courier by KSM and Abu Faraj al-Libi (see footnote 2190, pages 387-389).

	<p>example, as detailed throughout the Study, CIA personnel themselves frequently assessed that the most effective method for acquiring intelligence from detainees was to confront them with information already acquired by the Intelligence Community.</p>
--	---