

# Factual Errors and Other Problems in “Playing to the Edge: American Intelligence in the Age of Terror,” By Michael V. Hayden<sup>1</sup>

March 2016

<i>Assertions in “Playing to the Edge”</i>	<i>Factual errors and other problems</i>
<p><b>Page 189:</b> The interrogation techniques – in KSM’s case, especially sleep deprivation – had pushed him into what the interrogators called a zone of cooperation from his previous zone of defiance and after that, KSM’s questioning resembled more an interview than an interrogation. The information we got from him and others was incredibly valuable.</p>	<p><b><u>CIA records demonstrate that Hayden’s account of KSM’s interrogation is inaccurate.</u></b> KSM was not “pushed” into a “zone of cooperation.” CIA officers described repeatedly how, despite the use of sleep deprivation, waterboarding and other CIA enhanced interrogation techniques, KSM withheld and fabricated extensive information concerning the threats about which the CIA was most concerned.<sup>2</sup> The CIA ceased using the techniques against KSM in late March 2003. On April 2, 2003, the Interagency Intelligence Committee on Terrorism (IICT) produced an assessment of KSM’s intelligence entitled, “Precious Truths, Surrounded by a Bodyguard of Lies.” The assessment concluded that KSM was withholding information or lying about terrorist plots and operatives targeting the United States.<sup>3</sup> In June</p>

<sup>1</sup> See also “Fact Check: Inaccurate and Misleading Assertions Related to the CIA Detention and Interrogation Program in the Book, ‘Rebuttal: The CIA Responds to the Senate Intelligence Committee’s Study of Its Detention and Interrogation Program,’” pages 29-37 (chapter by Michael V. Hayden):

[http://www.feinstein.senate.gov/public/index.cfm/files/serve?File\\_id=69A0EBC9-999C-4593-B44C-CB24CE9D6689&SK=9B3E4220EB835CCB4A92E9A7EE85AFA8](http://www.feinstein.senate.gov/public/index.cfm/files/serve?File_id=69A0EBC9-999C-4593-B44C-CB24CE9D6689&SK=9B3E4220EB835CCB4A92E9A7EE85AFA8)

<sup>2</sup> See Committee Study, pages 94-95, 212-215.

<sup>3</sup> “Khalid Shaykh Muhammad’s Threat Reporting – Precious Truths, Surrounded by a Bodyguard of Lies,” Interagency Intelligence Committee on Terrorism (IICT), April 3, 2003.

	<p>2003, senior CIA officers met at least twice to discuss concerns about KSM’s lack of cooperation.<sup>4</sup> As a CIA ALEC Station cable noted at the time, “KSM’s pattern of behavior over the past three months, trying to control his environment, lying and then admitting things only when pressed that others have been caught and have likely admitted the plot, is a cause for concern.”<sup>5</sup> In an email, one CIA officer wrote that “what KSM’s doing is fairly typical of other detainees... KSM, Khallad [bin Attash], and others are doing what makes sense in their situation – pretend cooperation.”<sup>6</sup></p>
<p><b>Page 190:</b> When [Abu Zubaydah] was all done [with the CIA’s enhanced interrogation techniques], he actually said that we owed this to all the “brothers” who would come into the interrogation program. Cooperating with us was a sin, he said, and he could go to hell. But Allah teaches that he will not send a burden that is more than we can bear, he told us, and we had done that. And therefore he could cooperate with us and still go to paradise.</p>	<p><b><u>There is no evidence in CIA records that Abu Zubaydah made these statements.</u></b> Rather, CIA records indicate that Abu Zubaydah maintained that he always intended to talk and never believed he could withhold information from interrogators. In February 2003, Abu Zubaydah told a CIA psychologist that he believed prior to his capture that every captured “brother” would talk in detention and that he told individuals at a terrorist training camp that “brothers should be able to expect that the organization will make adjustments to protect people and</p>

<sup>4</sup> Email from: [REDACTED]; to [REDACTED]; cc: [REDACTED], [REDACTED]; subject: Khallad & KSM Detainee Case Discussion; date: June 18, 2003, at 10:09 AM; ALEC [REDACTED] (302258Z JUN 03).

<sup>5</sup> ALEC [REDACTED] (302258Z JUN 03)

<sup>6</sup> Email from: [REDACTED]; [REDACTED]; cc: [REDACTED], [REDACTED], [REDACTED], [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; subject: Re: KSM’s passive restraint – please let me know if you have comments for a memo to the DCI; date: June 24, 2003, at 1:27:06 PM.

	<p>plans when someone with knowledge is captured.”<sup>7</sup></p>
<p><b>Pages 193-94:</b> The remarks the president gave in the East Room of the White House on September 6, 2006, were magnificent. He laid out what we’d done since 9/11, and why. “Captured terrorists have unique knowledge about how terrorist networks operation,” the president said. “They have knowledge of where the operatives are deployed and knowledge about what plots are under way. This intelligence – this is intelligence that cannot be found any other place, and our security depends on getting this kind of information....”</p> <p>...</p> <p>He explained that a number of suspected terrorists and terror leaders had been held and questioned in secret sites operated by the Central Intelligence Agency. He said that information they divulged during questioning had prevented attacks on the United States and across the world.</p>	<p><b><u>CIA records demonstrate that the president’s September 6, 2006, speech included numerous inaccuracies provided by the CIA.</u></b> Passages in the speech were not supported by the CIA’s own “validation” documents. For example, five days <i>after</i> the speech, a CIA officer questioned whether there was any support in CIA records for the passage asserting that the interrogation of Ramzi bin al-Shibh “helped in the planning and execution of the operation that captured Khalid Sheikh Mohammed.”<sup>8</sup> (For additional information on the CIA’s role in developing the speech, see pages 197-204 of the Committee Study.) <b><u>In addition, the CIA has acknowledged it introduced factual inaccuracies into the speech, specifically the misattribution of intelligence from Majid Khan (who was not in CIA custody) to KSM.</u></b><sup>9</sup> As detailed extensively in the Study, CIA records demonstrate that the CIA’s representation that intelligence provided by detainees subjected to the CIA’s enhanced interrogation</p>

<sup>7</sup> [REDACTED] 10496 (162014Z FEB 03). See March 7, 2005, cable describing Abu Zubaydah’s explanations more fully ([REDACTED] 2166 (070647Z MAR 05)).

<sup>8</sup> Email from: [REDACTED]; to: [REDACTED]; cc: [REDACTED], [REDACTED]; subject: Re: THE MOMENT YOU MAY HAVE BEEN WAITING FOR!!! Please verify the Attached; date: September 11, 2006, at 9:16:15 AM; attachment N1: CIA Validation of Remarks on Detainee Policy Final (Draft #15).

<sup>9</sup> CIA *Note to Readers of the Central Intelligence Agency’s Response to the Senate Select Committee on Intelligence’s Study of the CIA’s Detention and Interrogation Program*, 1 August 2014 (“We acknowledge that in various representations, including President Bush’s 2006 speech, CIA introduced a sequencing error regarding Majid Khan’s arrest/debriefings, and KSM’s arrest/debriefings.”)

	<p>techniques “cannot be found any other place” is inaccurate. In its June 2013 Response to the Study and in its “Note to Readers” of that Response, the CIA has acknowledged inaccurate representations in more than half of its examples of terrorists captured and plots “thwarted” purportedly as a result of the techniques.<sup>10</sup></p>
<p><b>Page 217:</b> No one with any knowledge of this program doubted that it had provided unique, actionable intelligence.</p>	<p><b><u>To the extent that “this program” is intended to signify the use of the CIA’s enhanced interrogation techniques, CIA records demonstrate that numerous individuals with knowledge of the program doubted that it had provided unique, actionable intelligence.</u></b> The Inspector General concluded that “it is not clear whether these plots have been thwarted or if they remain viable or even if they were fabricated in the first place,” noting that the IG’s review “did not uncover any evidence that these plots were imminent.”<sup>11</sup> In several examples, CIA officers identified inaccuracies in the CIA’s representations that the program had produced “unique, actionable</p>

<sup>10</sup> In its June 2013 Response, the CIA acknowledged having provided inaccurate information with regard to nine of the 20 most frequent and prominent examples (the “dirty bomb” plot, the Karachi plots, the “second wave” plot, the arrest of Iyman Faris, the identification of KSM as the mastermind of 9/11, the identification of KSM as “Mukhtar,” the capture of Majid Khan, intelligence alerting the CIA to Ja’far al-Tayyar, and the arrest of Salih el-Marri). In its “Note to Readers” of its Response, the CIA acknowledged having provided inaccurate information with regard to the capture of Hambali, including introducing the error into President Bush’s September 6, 2006, speech. The “Note to Readers” further acknowledged having included inaccurate information in its June 2013 Response with regard to the capture of Sajid Badat, the Heathrow plotting, and the arrests of Uzhair and Saifullah Paracha. See Central Intelligence Agency’s Response to the Senate Select Committee on Intelligence’s Study of the CIA’s Detention and Interrogation Program, June 2013, Examples of CIA Representations of the Value of Intelligence Acquired From Detainees (CIA Response), p. 2; CIA *Note to Readers of the Central Intelligence Agency’s Response to the Senate Select Committee on Intelligence’s Study of the CIA’s Detention and Interrogation Program*, 1 August 2014.

<sup>11</sup> CIA Inspector General, Special Review, Counterterrorism Detention and Interrogation Program (2003-7123-IG), January 2004.

	<p>intelligence,” but the CIA failed to take action to correct those representations.<sup>12</sup> Finally, the CIA agreed “in full” with the Study’s conclusion that the CIA never conducted its own comprehensive analysis of the effectiveness of its enhanced interrogation techniques.<sup>13</sup></p>
<p><b>Page 219:</b> I candidly and unapologetically talked about renditions, detentions and interrogations [to the Council on Foreign Relations on September 11, 2007] and attempted to give a sense of scale to our actions: fewer than a hundred high-value detainees and another group of about half that number subject to rendition. “These programs are targeted and they are selective. They were designed only for the most dangerous terrorists and those believed to have the most valuable information, such as knowledge of planned attacks.”</p>	<p><b><u>CIA records demonstrate that these statements are inaccurate.</u></b> CIA records demonstrate the CIA detained at least 119 individuals, of whom 26 did not meet the standard for detention. This number includes only CIA detainees whom the CIA itself determined did not meet the standard. There were additional detainees about whom there was internal disagreement within the CIA over whether they met the standard or not, as well as numerous detainees who, following their detention and interrogation, were found not to “pose a continuing threat of violence or death to U.S. persons and interests” or to be “planning terrorist activities” as required by the September 17, 2001, MON. (See pages 14-17 of the Committee Study for details.)</p>
<p><b>Page 221:</b> Binyam Mohamed was an Ethiopian who had trained with al-Qaeda. He ended up in Guantanamo,</p>	<p>As CIA records demonstrate, Binyam Mohamed <u>was</u> held earlier by the CIA. The CIA has not disputed this fact.</p>

<sup>12</sup> For example, the chief of the Abu Zubaydah Task Force, in the context of representations to the Inspector General, sought to correct the record with regard to Abu Zubaydah and the “dirty bomb” plot, writing that “[Abu Zubaydah] never really gave ‘this is the plot’ type of information. He claimed every plot/operation had knowledge of and/or was working on was only preliminary. (Padilla and the dirty bomb plot was prior to enhanced [interrogation techniques] and he never really gave us actionable intel to get them).” Email from: [REDACTED]; to: [REDACTED]; cc: [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], John P. Mudd, [REDACTED], [REDACTED], [REDACTED], Jose Rodriguez, [REDACTED], [REDACTED], [REDACTED]; subject: Please Read – Re CTC Response to the Draft IG Report; date: February 10, 2004.

<sup>13</sup> See Central Intelligence Agency’s Response to the Senate Select Committee on Intelligence’s Study of the CIA’s Detention and Interrogation Program, June 2013, page 24.

<p>but claimed he had been held earlier by CIA in Afghanistan, then transferred to Morocco, and added that he had been tortured in both places.</p>	
<p><b>Page 223:</b> I <i>tried</i> to explain the history. Enhanced interrogation techniques had been used on about a third of the hundred or so HVDs that had been held. The techniques were <i>not</i> used to elicit information, but rather to move a detainee from defiance to cooperation by imposing on him a state of helplessness. When we got to the latter state (the duration varied, but on average a week or so), interrogations resembled debriefings or conversations. I estimated that about half of what the agency knew about al-Qaeda at that time had come from detainees of one type or another.</p>	<p><b><u>CIA records demonstrate that Director Hayden’s congressional testimony about the interrogation process was inaccurate.</u></b> CIA detainees were frequently subjected to the CIA’s enhanced interrogation techniques immediately after being rendered to CIA custody. CIA interrogators asked open-ended questions of CIA detainees, to which the CIA did not know the answers, while subjecting detainees to the CIA’s enhanced interrogation techniques. This approach began with Abu Zubaydah, whose interrogation focused on him being told to provide “the one thing you don’t want me to know,” and remained a central feature of the program. Numerous CIA detainees were determined never to have reached a state of “cooperation.” Several detainees, when subjected to the CIA’s enhanced interrogation techniques, transitioned to normal debriefing, and were then subjected to one or more additional periods of being subjected to the techniques. (See page 484 of the Committee Study.)</p>
<p><b>Pages 223-24:</b> I later spoke with one of those experts, a young woman whom the agency hastily deployed to help with the interrogation of Abu Zubaida. Within twenty-four hours of the decision to send her, she was standing face-to-face with Zubaida at a black site. She later described it to me</p>	<p><b><u>CIA records demonstrate that the visit to the detention facility by personnel from CIA Headquarters came <i>after</i> the interrogation team had concluded that it was “highly unlikely” that Abu Zubaydah possessed the information they were seeking and <i>after</i> the interrogators</u></b></p>

<p>as her most surreal experience ever and confessed that “no one wanted to be there.”</p>	<p><b><u>had stated that the use of the CIA’s enhanced interrogation techniques against Abu Zubaydah was “approach[ing] the legal limit.”</u></b><sup>14</sup>                  Despite the assessment of personnel at the detention site that Abu Zubaydah was already “compliant,” CIA Headquarters stated that they continued to believe that Abu Zubaydah was withholding threat information and instructed the CIA interrogators to continue using the techniques.<sup>15</sup> (See pages 42-43 of the Committee Study.)</p>
<p><b>Page 224:</b> But she also added that, with a second wave of attacks thought imminent, “how could we in conscience have outsourced this interrogation to a third party and trust that they would ask the right questions or give us truthful answers.” For some prisoners, perhaps, but not for the likes of Zubaida or, later, Khalid Sheikh Mohammed.</p>	<p><b><u>CIA records contradict this statement.</u></b> In rejecting the rendition of Abu Zubaydah to a third country, ALEC Station wrote that the CIA needed to participate directly in the interrogation, “[n]ot because we believe necessarily we can improve on [Country [REDACTED]] performance, but because the reasons for the lack of progress will be transparent and reportable up the line.”<sup>16</sup> (Emphasis added. See page 22 of the Committee Study.)</p>
<p><b>Page 224:</b> She knew al-Qaeda cold, but like everyone else in this new enterprise, she was feeling her way. She asked Zubaida questions to explore his knowledge and his truthfulness. At team meetings she had to give her assessment. She told me that she was struck by the degree of certainty that the interrogators demanded of her that Zubaida was lying or withholding</p>	<p><b><u>CIA records demonstrate that the interrogators did not “agree to continue with enhanced techniques”;</u></b>  <b><u>they were directed to by CIA Headquarters. As noted above, CIA records demonstrate that the interrogators had already concluded that it was unlikely that Abu Zubaydah “had actionable new information about current threats to</u></b></p>

<sup>14</sup> [REDACTED] 10607 (100335Z AUG 02)

<sup>15</sup> [REDACTED] 10614 (111633Z AUG 02); ALEC [REDACTED] (101728 AUG 02); ALEC [REDACTED] (130034Z AUG 02); ALEC [REDACTED] [REDACTED] AUG 02); [REDACTED] 10700 (280820Z AUG 02)

<sup>16</sup> ALEC [REDACTED] (282105Z MAR 02)

before they would agree to continue with enhanced techniques.

They did, of course, until Zubaida became compliant, and then he became a torrent of information. She described him in some sessions as chatting “like an adolescent girl at a slumber party.” Even here, though, knowledge was still power. She would entice Zubaida to share his views with questions reflecting CIA knowledge of al-Qaeda well beyond his expectations. He confirmed some data points, challenged some, and filled in the blanks between others. She would even sometimes prompt him with recently acquired sensitive intelligence (no problem telling him – he wasn’t going anywhere). A lot of the data he (and other detainees) revealed looked on the surface like trivia – what kind of car, who else was at the meeting, casual relationships, an e-mail address – but it built up the storehouse of granular information that would be used to build threats to ultimately kill and capture terrorists and disrupt plots.

**the United States.**<sup>17</sup> On August 10, 2002, the interrogation team stated that it was “highly unlikely” that Abu Zubaydah possessed the information they were seeking.<sup>18</sup> CIA Headquarters instructed the interrogators to continue to use the CIA’s enhanced interrogation techniques despite the assessment of personnel at the detention site that Abu Zubaydah was “compliant.”<sup>19</sup> The “aggressive phase” of Abu Zubaydah’s interrogation, which included repeated waterboarding, lasted for an additional 12 days, until August 23, 2002.<sup>20</sup> (See pages 42-43 of the Committee Study.)

**Even the Director of CTC, Jose Rodriguez, believed that the interrogators were correct in assessing Abu Zubaydah to be compliant, and that the “CTC subject matter experts” from CIA Headquarters were mistaken.**

According to the Office of the Inspector General’s interview with Rodriguez, “disagreement between the analysts and interrogators can be healthy, but in this case Rodriguez believes that the analysts were wrong.”<sup>21</sup>

<sup>17</sup> [REDACTED] 10604 (091624Z AUG 02)

<sup>18</sup> [REDACTED] 10607 (100335Z AUG 02)

<sup>19</sup> [REDACTED] 10614 (111633Z AUG 02); ALEC [REDACTED] (101728 AUG 02); ALEC [REDACTED] (130034Z AUG 02); ALEC [REDACTED] [REDACTED] AUG 02); [REDACTED] 10700 (280820Z AUG 02)

<sup>20</sup> [REDACTED] 10667 (231206Z AUG 02); [REDACTED] 10672 (240229Z AUG 02)

<sup>21</sup> Interview of Jose Rodriguez, Office of the Inspector General, March 6, 2003. See page 41 of the Committee Study.

	<p><b><u>This account of Abu Zubaydah’s reporting after the use of the CIA’s enhanced interrogation technique is inaccurate both qualitatively and quantitatively.</u></b> According to CIA records, 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.” However, Abu Zubaydah provided this type of information <u>prior to</u>, as well as during and after the use of the CIA’s enhanced interrogation techniques. At no point during or after the use of the techniques did Abu Zubaydah provide information on al-Qa’ida cells in the United States or operational plans for terrorist attacks against the United States. Moreover, a quantitative review of Abu Zubaydah’s intelligence reporting indicates that more intelligence reports were disseminated from Abu Zubaydah’s first two months of interrogation, before the use of the CIA’s enhanced interrogation techniques and when FBI special agents were directly participating, than were derived during the next two-month phase of interrogations, which included the non-stop use of the CIA’s enhanced interrogation techniques. (See pages 207-208 of the Committee Study.)</p>
<p><b>Page 225:</b> She reminded me that one of the key clues in the pursuit of bin Laden was that KSM and Abu Faraj obviously lied when confronted with</p>	<p>This statement omits the extensive information about bin Laden’s courier, Abu Ahmed al-Kuwaiti, that was available to the CIA <i>prior</i> to any</p>

<p>new information about bin Laden’s courier. That was just another thread in a complex and slowly woven fabric.</p>	<p>reporting from CIA detainees. (See pages 378-383 of the Committee Study.) While KSM denied that al-Kuwaiti was a courier, it was in January 2004, <i>after</i> Hassan Ghul (who had not yet been subjected to the CIA’s enhanced interrogation techniques) stated that it was “well known” that UBL was always with al-Kuwaiti that CIA Headquarters determined that KSM “has some explaining to do about Abu Ahmed and his support to UBL and Zawahiri.” In other words, it was Hassan Ghul’s reporting that provided “one of the key clues,”<sup>22</sup> not what the CIA <i>subsequently</i> noted was a “serious disconnect” between Ghul’s reporting and KSM’s previous statements. (See page 397 of the Committee Study.) Abu Faraj al-Libi was not captured until May 2, 2005.</p> <p>The fact that KSM and Abu Faraj al-Libi both lied, notwithstanding having been subjected to the CIA’s enhanced interrogation techniques, is not evidence of the success of the techniques.</p>
<p><b>Page 225:</b> I wanted Congress to be part of that consensus. That required a serious discussion with them. That discussion never happened. The members were too busy yelling at us and at one another.</p>	<p><b><u>Serious discussion did occur in Congress, although it did not lead to Director Hayden’s anticipated “consensus” in favor of the CIA’s Detention and Interrogation Program.</u></b> The Senate Select Committee on Intelligence conducted</p>

<sup>22</sup> Hassan Ghul also described Abu Ahmed as UBL’s “closest assistant” and speculated that “UBL’s security apparatus would be minimal, and that the group likely lived in a House with a family somewhere in Pakistan.” He further speculated that “Abu Ahmed likely handled all of UBL’s needs, including moving messages out to Abu Faraj [al-Libi]....” Ghul provided this information prior to being subjected to the CIA’s enhanced interrogation techniques. HEADQUARTERS [REDACTED] JAN 04). See pages 395-396 of the Committee Study.

	<p>numerous hearings on the program. Multiple Senators, including Senators Feinstein, McCain, Feingold, Wyden and Hagel, expressed their concerns with and opposition to the program. As described below, the Committee sent Questions for the Record to the CIA that were never answered. And, in late 2007 and early 2008, Congress voted to limit CIA interrogations to techniques authorized by the Army Field Manual, thus prohibiting the use of the CIA’s enhanced interrogation techniques. The fact that these efforts could not withstand a veto by the President is not evidence of Congress’s lack of resolve. Rather, it shows the extent to which the Administration was determined to continue supporting this program, even though it had already largely been abandoned. The Committee and Congress undertook these acts despite being provided extensive inaccurate information by the CIA, including by Director Hayden. (See pages 446-454 and 462-499 of the Committee Study.)</p>
<p><b>Page 227:</b> In one case, Senator Feinstein had been publicly excoriating the agency for slamming the heads of prisoners into walls, like ramming skulls into turnbuckles during a World Wrestling Federation death match.</p> <p>I dutifully got on the senator’s calendar and briefer her and her staff director on the now eliminated technique of “walling”: pushing the shoulders of a detainee whose neck had</p>	<p>The “walling” technique was far more aggressive than reported by Director Hayden. According to one interrogator, Abu Zubaydah was initially subjected to walling against a concrete wall.<sup>23</sup> “Walling,” used in conjunction with other techniques, also resulted in injuries. For example, on March 20, 2003, KSM was subject to the CIA’s enhanced interrogation techniques throughout the day,</p>

<sup>23</sup> CIA email, March 28, 2007, at 04:42 PM; subject: “Subject detainee allegation – per our telcon of today.”

<p>been braced into a false plywood wall that gave off a loud bang. She took notes while staring at me solemnly and then proceeded to publicly repeat the same accusation a few days later.</p>	<p>including a period of “intense questioning and walling.” KSM was described as “[t]ired and sore,” with abrasions on his ankles, shins, and wrists, as well as on the back of his head.”<sup>24</sup> Abu Ja’far al-Iraqi experienced edema on his head due to walling, abrasions on his neck, and blisters on his ankles from shackles.<sup>25</sup> Two other detainees were subjected to walling, despite medical concerns that this and other enhanced interrogation techniques (cramped confinement, stress positions and vertical shackling) should not be used on the detainees as each had a broken foot. The CIA itself has acknowledged that the application of walling and the other techniques “could have exacerbated” their injuries. (See pages 101 and 112-113 of the Committee Study, and pages 56 and 57 of the CIA Response.)</p>
<p><b>Pages 228-29:</b> I tried to show Congress the care with which the program was now being run. The average age of those interrogating detainees was forty-three. Once they were selected, they had to complete more than 250 hours of specialized training before they were allowed to come face-to-face with a terrorist. And we required additional fieldwork under</p>	<p><b><u>CIA records demonstrate that this testimony was inaccurate.</u></b> As detailed in CIA records, in November 2002, following the completion of the first formal interrogation class, CTC attorneys sought to vet all personnel enrolled in, observing, teaching or otherwise associated with the class.<sup>26</sup> This approach was rejected by the chief of CTC, Jose Rodriguez.<sup>27</sup> CIA</p>

<sup>24</sup> [REDACTED] 10916 (210845Z MAR 03); [REDACTED] 10921 (211046Z MAR 03). See pages 91-92 of the Committee Study.

<sup>25</sup> [REDACTED] 1810 [REDACTED] DEC 05); [REDACTED] 1813 [REDACTED] DEC 05); [REDACTED] 1819 [REDACTED] DEC 05); [REDACTED] 1847 [REDACTED] DEC 05); [REDACTED] 1848 [REDACTED] DEC 05); HEADQUARTERS [REDACTED] [REDACTED] DEC 05).

<sup>26</sup> Email from: [REDACTED] [REDACTED]/CTC/LGL; to: [REDACTED]; cc: Jose Rodriguez, [REDACTED], [REDACTED], [REDACTED]; subject: EYES ONLY; date: November [REDACTED], 2002, at 03:13:01 PM.

<sup>27</sup> Email from: Jose Rodriguez; to: [REDACTED], [REDACTED]CTC/LGL; cc: [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]; subject: EYES ONLY; date: November [REDACTED] 2002, at 04:27 PM.

<p>the direct supervision of an experienced officer before a new interrogator could direct an interrogation.</p>	<p>records suggest the vetting did not take place. The Committee reviewed CIA records related to several CIA officers and contractors involved in the CIA's Detention and Interrogation Program, most of whom conducted interrogations. 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. <b><u>The CIA has acknowledged that some of the officers involved in the program "should have been excluded."</u></b><sup>28</sup></p> <p>CIA records indicate that CIA officers and contractors who conducted CIA interrogations in 2002 did not undergo any interrogation training. The first interrogator training course, held in November 2002, required approximately 65 hours of classroom and operational instruction.<sup>29</sup> The initial training was designed and</p>
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<sup>28</sup> CIA Response, page 43.

<sup>29</sup> December 4, 2002 Training Report, High Value Target Interrogation and Exploitation (HVTIE) Training Seminar 12-18 Nov 02, (pilot running).

	<p>conducted by an individual who had been sanctioned for using abusive interrogation techniques in the 1980s and another individual who had never been trained in, or conducted interrogations. In April 2003, a CIA officer was certified as an interrogator after only a week of classroom training.<sup>30</sup> In 2003, interrogator certification required only two weeks of classroom training (a maximum of 80 hours) and 20 additional hours of operational training and/or actual interrogations.<sup>31</sup> See pages 469-471 of the Committee Study.</p>
<p><b>Page 229:</b> ... We answered 1,140 QFRs – that’s Questions for the Record – as well as 254 other letters, queries, and requests.</p>	<p><b><u>CIA and Committee records demonstrate that, during Director Hayden’s tenure, the CIA failed to respond to Questions for the Record submitted by the Committee related to detention and interrogation.</u></b> In 2008, the Committee submitted QFRs on the CIA’s enhanced interrogation techniques, including how the CIA assessed the effectiveness of the techniques for purposes of representations to the Department of Justice.<sup>32</sup> CIA prepared responses that included an acknowledgment that CTC Legal had provided inaccurate information. That prepared response was never provided to the Committee.<sup>33</sup> Instead, in October 2008, the CIA informed the Committee that it would</p>

<sup>30</sup> DIRECTOR [REDACTED] [REDACTED] APR 03)

<sup>31</sup> Interrogator Selection, Training, Qualification, and Certification Process; approximately January 29-February 4, 2003.

<sup>32</sup> Questions for the Record submitted to CIA Director Michael Hayden, September 9, 2008, with a request for a response by October 10, 2008.

<sup>33</sup> See CIA document prepared in response to “Questions for the Record” submitted by the Senate Select Committee on Intelligence on September 8, 2008.

	<p>not respond to the Committee’s QFRs and that instead, the CIA was “available to provide additional briefings on this issue to Members as necessary.”<sup>34</sup> See page 454 of the Committee Study.</p>
<p><b>Pages 230-231:</b> In the end, the Congress of the United States had <i>no</i> impact on the shape of the CIA interrogation program going forward. Congress lacked the courage or the consensus to stop it, endorse it, or amend it.</p>	<p><b><u>Public records demonstrate that this is inaccurate.</u></b> As noted above, and as acknowledged by former Director Hayden in his footnote on page 366, Congress voted to limit CIA interrogations to techniques authorized by the Army Field Manual, thus prohibiting the use of the CIA’s enhanced interrogation techniques. President Bush vetoed that legislation.</p>
<p><b>Page 232:</b> We shared the [ICRC] report, in strictest confidence based on ICRC requirements, with the oversight committees and a very few executive branch offices. We reminded them that the document was based <i>solely</i> on detainee claims.</p>	<p><b><u>The implication that the ICRC report, because it was based on detainee claims, was inaccurate, is contradicted by CIA records.</u></b> Following a November 8, 2006, meeting with the ICRC, CIA Acting General Counsel wrote to Director Hayden and other CIA leaders: “[a]s described to us, albeit in summary form, what the detainees allege actually does not sound that far removed from reality....”<sup>35</sup> Director Hayden nonetheless testified to the Committee in April 2007 that “[m]any assertions [in the ICRC report] regarding physical or threatened abuse are egregious and are simply not true.” As detailed in the Study, the ICRC report was largely consistent with information contained in CIA interrogation records, whereas</p>

<sup>34</sup> CIA Letter to Chairman John D. Rockefeller, IV, October 17, 2008.

<sup>35</sup> Email from John A. Rizzo; to: Michael V. Hayden, Stephen R. Kappes, Michael J. Morell; cc: [REDACTED], [REDACTED], [REDACTED]; subject: Fw: 8 November 2006 Meeting with ICRC Reps; date: November 9, 2006, at 12:25 PM.

	<p>Director Hayden’s testimony about the ICRC report was inaccurate. See pages 487-493 and 497-498 of the Committee Study.</p>
<p><b>Page 234:</b> After the interrogators explained [to Senator Feinstein] how Abdul Hadi’s inaccurate version of what we did led to his cooperation and our decision to proceed with a standard briefing, the senator asked if this was how we were going to conduct interrogations “from now on.” They told her that this was the way that interrogations had always been conducted. Start with an interview to determine the willingness to participate voluntarily and credibly and stick with that if it’s producing an appropriate level of information. At the first sign of fabrication, though, they were prepared to request approval for enhanced techniques.</p>	<p><b><u>As described above, CIA records demonstrate that this description of the interrogation process was inaccurate.</u></b> CIA detainees were frequently subjected to the CIA’s enhanced interrogation techniques immediately after being rendered to CIA custody. CIA interrogators asked open-ended questions of CIA detainees, to which the CIA did not know the answers, while subjecting detainees to the CIA’s enhanced interrogation techniques. This approach began with Abu Zubaydah, whose interrogation focused on him being told to provide “the one thing you don’t want me to know,” and remained a central feature of the program. Numerous CIA detainees were determined never to have reached a state of “cooperation.” Several detainees, when subjected to the CIA’s enhanced interrogation techniques, transitioned to normal debriefing, and were then subjected to one or more additional periods of being subjected to the techniques. (See page 484 of the Committee Study.)</p>
<p><b>P. 236:</b> Senator McCain had another approach that just cut out Congress. In a ticking time-bomb or similar scenario, he said, the president should just do what he had to do. Legality be damned; it came with the job. Steve Hadley told him that the president wouldn’t do that. He was the chief law</p>	<p><b><u>CIA records demonstrate that Senator McCain informed the CIA that he opposed its enhanced interrogation techniques and called them “torture.”</u></b> After a briefing for Senator McCain on September 11, 2006, a CIA officer wrote “[Senator McCain] asked if I thought ‘sleep</p>

<p>enforcement officer in the country, after all. And even if he did order it, he reasoned, in those circumstances he would likely have to do it himself.</p>	<p>deprivation' was torture. I responded that I did not and he then added that he had talked with a Marine Colonel friend of his and the Colonel had indicated it was and believed his friend.”<sup>36</sup> Senator McCain's opposition to the techniques is confirmed in other CIA documents.<sup>37</sup></p>
<p><b>Page 236:</b> In the end, Congress wasn't going to make any tough calls, so it decided instead to reinforce already existing presidential authority to define the meaning of treaties for the United States.</p>	<p><b><u>This is inaccurate.</u></b> Former Director Hayden is repeating the inaccurate representations made by the CIA to the Department of Justice: that members of Congress supported the CIA's enhanced interrogation techniques and that, by subsequently voting for the Military Commissions Act (MCA), those members effectively endorsed an interpretation of the Act that would be consistent with the continued use of the techniques. Specifically, the CIA represented to DOJ that, prior to the passage of the MCA, “several Members of Congress, including the full memberships of the House and Senate Intelligence Committees and Senator McCain, were briefed by General Michael Hayden, director of the CIA, on the six techniques,” and that “in those classified and private conversations, none of the Members expressed the view that the CIA interrogation program should be stopped, or that the techniques at issue</p>

<sup>36</sup> Email from: [REDACTED]; to: [REDACTED]; cc: [REDACTED]; subject: Briefing for Senator John S. McCain (R-AZ); date: September 11, 2006, at 5:51 PM.

<sup>37</sup> See, for example, Sametime communications between [REDACTED] and [REDACTED], 11/Sep/06, 15:47:27 to 18:43:29.



<p>a fast-moving battlefield. Those were not CIA's circumstances.</p>	<p><b><u>force that trains primarily to detain large numbers of enemy prisoners of war. That's not what the CIA program is."</u></b>) <b><u>mischaracterizes the experience of many U.S. military debriefers, the value of the Army Field Manual for strategic debriefing purposes and the professionalism of CIA interrogators.</u></b> As noted above, CIA interrogators did not receive the vetting recommended by CTC/Legal, did not have the training Director Hayden claimed they did, and were the subject of derogatory information known to the CIA prior to their assignment to the Detention and Interrogation Program. They included individuals who, among other issues, had engaged in inappropriate detainee interrogations, had workplace anger management issues, and had reportedly admitted to sexual assault. (See pages 469-471 of the Committee Study.)</p>
<p><b>Page 239:</b> We gave Congress detailed updates on Abdul Hadi and Rahim and even made the captures public when each was shipped to Guantanamo. The reports to Congress were received largely without comment (or objection) but there was no sign that they ever helped our relationship with them much.</p>	<p><b><u>This characterization of Congress's response to these updates is inaccurate.</u></b> Director Hayden briefed the Committee on the detention of Abdul Hadi al-Iraqi on November 16, 2006. This was only the second briefing on the CIA's Detention and Interrogation Program and Vice Chairman Rockefeller and two other members of the Committee expressed frustration that Director Hayden's description of the capture of al-Iraqi, who was <u>not</u> subjected to the CIA's enhanced interrogation techniques, was preventing what was expected to be an</p>

	<p>in-depth discussion of those techniques.<sup>41</sup></p> <p>By July 2007, when Muhammad Rahim was rendered to CIA custody, several Senators had already written to Director Hayden expressing their concerns with and opposition to the CIA's enhanced interrogation techniques. The Senate Select Committee on Intelligence conducted a hearing on the interrogation of Rahim on August 2, 2007. On December 5, 2007, the Senate and House intelligence committees voted to limit CIA interrogations to techniques authorized by the Army Field Manual. (See page 447-451 of the Committee Study.)</p>
<p><b>Pages 240-41:</b> In the letter [to the workforce] I pointed out that in 2003 the leadership of the two intelligence committees had been briefed that the tapes existed and that the agency intended to destroy them. I also said that the tapes had been reviewed by the inspector general, who found them consistent with the reporting cables from the black site. We had no further use for the tapes, which had been made to help write and verify reporting cables. Actually, they hadn't been very useful in the first place.</p>	<p><b><u>CIA records demonstrate that these statements are inaccurate.</u></b> A CIA memorandum recording a February 4, 2003, briefing states that Chairman Roberts "gave his assent" to the destruction of interrogation videotapes; however, this account in the CIA memorandum was later disputed by Senator Roberts. Vice Chairman Rockefeller did not attend that briefing.<sup>42</sup></p> <p>The videotapes reviewed by the Inspector General were <u>not</u> consistent with the reporting cables: a 21-hour period, which included two</p>

<sup>41</sup> Transcript of Senate Select Committee on Intelligence hearing, November 16, 2006. See pages 447-448 of the Committee Study.

<sup>42</sup> Moskowitz Memorandum for the Record, February 4, 2003, "Subject: Sensitive Notification." For information on Senator Roberts' objections, see "Destroying C.I.A. Tapes Wasn't Opposed, Memos Say," by Scott Shane, *The New York Times*, dated February 22, 2010.

waterboarding sessions, was missing from the tapes. Moreover, the cables themselves failed to capture certain events, most notably the use of the waterboard resulting in Abu Zubaydah becoming “completely unresponsive, with bubbles rising through his open, full mouth,” which was recorded only in emails.<sup>43</sup> (See pages 43-44 of the Committee Study.)

**The suggestion that the tapes were destroyed because they were not useful is inaccurate.** In October 2005, a proposal from Senator Carl Levin to establish an independent commission to investigate U.S. detention policies and allegations of detainee abuse resulted in concern at the CIA that such a commission would lead to the discovery of the videotapes, which in turn led to renewed interest in the CIA in destroying the videotapes. In an email exchange on October 31, 2005, three senior CIA attorneys urged that the videotapes be destroyed. As John Rizzo wrote, “Sen. Levin’s legislative proposal for a 9/11-type outside Commission to be established on detainees seems to be gaining some traction, which obviously would serve to surface the tapes’ existence. I think I need to be the skunk at the party again and see if the Director is willing to let us try one more time to get the

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<sup>43</sup> Email from: [REDACTED], OMS; to: [REDACTED] and [REDACTED]; subject: Re: Acceptable lower ambient temperatures; date: March 7, 2003, at 8:22 PM; email from: [REDACTED], OMS; to: [REDACTED] and [REDACTED]; subject: Re: Talking Points for review and comment; date: August 13, 2004, at 10:22 AM; email from: [REDACTED]; to: [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]; subject: Re: Discussions with Dan Levin – AZ; date: October 26, 2004, at 6:09 PM.

	<p>right people downtown on board with the nation of our [sic] destroying the tapes.” (See pages 443-444 of the Committee Study.) Senator Levin’s proposal failed on November 8, 2005; the CIA destroyed the videotapes the following day.</p>
<p><b>Page 241:</b> At the height of all this handwringing, in February 2008, during an open session of the Senate Intelligence Committee with C-SPAN cameras rolling, I tried to rein in the wildest speculation. “CIA has waterboarded three people,” I casually noted. “Zubaida, Nashiri, and Khalid Sheikh Mohammed. The last waterboarding was in March 2003.”</p>	<p><b><u>CIA records call into question this testimony.</u></b> There are no records of the CIA using the waterboard interrogation technique at the COBALT detention site, yet CIA records include a photograph of a wooden waterboard at the site. The waterboard device in the photograph is surrounded by buckets, with a bottle of unknown pink solution (filled two thirds of the way to the top) and a watering can resting on the wooden beams of the waterboard. In meetings between Committee staff and the CIA in the summer of 2013, the CIA was unable to explain the details of the photograph, to include the buckets, solution, and watering can, as well as the waterboard’s presence at COBALT.</p> <p>In interrogation sessions on April 5, 2003, and April 6, 2003, Mustafa al-Hawsawi was subjected to the water dousing technique. He later described the session to another interrogator who wrote that al-Hawsawi might have been waterboarded or subjected to treatment that “could be indistinguishable from the waterboard.”<sup>44</sup> A December 6, 2006, inspector general report indicated</p>

<sup>44</sup> Email from: [REDACTED], using [REDACTED] [REDACTED] account; to: [REDACTED], [REDACTED], and [REDACTED]; subject: Al-Hawsawi Incident; date: November 21, 2003.

	<p>that water was poured on al-Hawsawi while he was lying on the floor in a prone position, which, in the opinion of at least one CIA interrogator quoted in the report, “can easily approximate waterboarding.”<sup>45</sup> (For additional information, see pages 106-108 of the Committee Study.)</p>
<p><b>Page 242:</b> Things died down a bit after that [February 2008] as John Durham’s criminal investigation effectively dampened any congressional enthusiasm for further inquiries.</p>	<p><b><u>This account of congressional action is inaccurate.</u></b> Congressional oversight efforts continued throughout this period. In February 2008, Congress passed legislation limiting CIA interrogations to techniques authorized by the Army Field Manual. The legislation was vetoed by President Bush on March 8, 2008. On June 10, 2008, the Committee held a hearing on the Department of Justice memoranda relating to the CIA’s Detention and Interrogation Program, submitting Questions for the Record that the CIA refused to answer. Throughout 2008, Committee staff reviewed thousands of CIA cables describing the interrogations of CIA detainees Abu Zubaydah and ‘Abd al-Rahim al-Nashiri, whose interrogations were the subject of videotapes destroyed by the CIA. In March 2009, the Committee voted 14-1 to initiate its Study of the CIA’s Detention and Interrogation Program. (See pages 452-456 of the Committee Study.)</p>
<p><b>Pages 279-80:</b> There were lots of issues here [related to the rendition of Khalid el-Masri]. One was the time</p>	<p><b><u>The CIA itself has cast doubts on then-Director Hayden’s decision not to impose any accountability on the</u></b></p>

<sup>45</sup> CIA OIG Disposition Memorandum, “Alleged Use of Unauthorized Interrogation Techniques” OIG Case 2004-7604-IG, December 6, 2006.

(weeks to months) it took to release el-Masri once CIA knew his true identify. Another was the manner of release: dropped on a road in the Balkans with no apology and little compensation. Finally, there was the public relations disaster (and later diplomatic storm) when el-Masri predictably went public with his story of confinement and claims of abuse.

But none of those formed the core issue in the inspector general's report. *The* issue there was the IG's recommendation that I form an accountability board (a kind of professional jury) to judge the behavior of the analyst who had launched the chain of events.

I declined, and that later became part of the SSCI Democrat narrative in their December 2014 report on detentions and interrogations that characterized us as a rogue and unaccountable agency.

Actually, it was a pretty easy call. The analyst was among the best al-Qaeda watchers we had. She had been doing this since well before 9/11 and her knowledge was encyclopedic. So I'm not sure whom I would have gotten to second-guess her judgment.

...  
Absent clear malfeasance, if I had disciplined an analyst for a false positive (thinking someone was a terrorist when he wasn't), the system would have digested the lesson in the most perverse way: the most important

**analyst for the wrongful rendition and detention of Khalid al-Masri.** As the CIA wrote in its June 2013 Response to the Committee Study, "we concede that it is difficult in hindsight to understand how the Agency could make such a mistake, take too long to correct it, determine that a flawed legal interpretation contributed, and in the end only hold accountable three CTC attorneys, two of whom received only an oral admonition."<sup>46</sup> Moreover, the CIA has stated that accountability should also have been extended to more senior officers:

*"The first argument [in the Study] is that in some important cases involving clearly evident misconduct, CIA did not in the end sufficiently hold officers accountable even after full investigation and adjudication. We largely concur, although we would take the Study's argument one step further. The Study focuses on the inadequate consequences meted out for line officers who acted improperly when conducting interrogations in the field or by providing insufficient rationales necessary to justify detentions. To us, an even more compelling concern is that the Agency did not sufficient broaden and elevate the focus of its accountability efforts to include more senior officers who were responsible for organizing, guiding, staffing, and*

<sup>46</sup> CIA Response, p. 45.

<p>thing is to avoid false positives (you'll be punished for those) even if it means a few true positives slip through (bad things might happen, but probably not to you).</p>	<p><i>supervising RDI activities, especially in the beginning.</i>"<sup>47</sup></p> <p>Hayden's justification for "false positives" is consistent with the CIA's lack of accountability for the unauthorized use of the CIA's enhanced interrogation techniques and the wrongful detention of numerous individuals.</p> <p>In refusing to "second-guess" one of "the best al-Qaeda watchers we had" who "had been doing this since well before 9/11," Hayden fails to note that the same officers responsible for the wrongful detention of Khalid el-Masri were also criticized for failures associated with the attacks of September 11, 2001. In fact, as the CIA informed the Committee, failures associated with the 9/11 attacks were one of Director Hayden's justifications for the decision to forego accountability for the el-Masri rendition. As the CIA wrote in a notification to the Committee, there was a "high threat environment" at the time of el-Masri's rendition, which "was essentially identical to the one in which CTC employees, including the two in question here, previously had been sharply criticized for not connecting the dots prior to 9/11."<sup>48</sup> In other words, the "perverse" lesson was <u>not</u> as Hayden describes it (that a wrongful rendition, but not the failure</p>
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<sup>47</sup> CIA Response, page 8.

<sup>48</sup> Congressional notification, with the subject, "CIA Response to OIG Investigation Regarding the Rendition and Detention of German Citizen Khalid al-Masri," dated October 9, 2007. See pages 129-130 of the Committee Study.

	<p>to thwart an actual terrorist plot, would be subject to accountability), but rather that the failure to thwart an actual terrorist plot became justification for the wrongful rendition.</p>
<p><b>Page 366:</b> I also pointed out [to the transition team] that for all the huffing and puffing, Congress had had the opportunity in 2006 to stop the program, and it had not. [Footnote: To be fair, the Intelligence Authorize Act of 2008 would have confined all US government agencies to the interrogation techniques in the Army Field Manual, but the bill was vetoed by President Bush.]</p>	<p>As detailed above, members of Congress expressed opposition to and concerns about the CIA’s enhanced interrogation techniques, even prior to the vote to limit CIA interrogations to techniques authorized by the Army Field Manual.</p>
<p><b>Page 366:</b> I emphasized how many times CIA had gone to the Justice Department in the history of the program and how Justice had been supportive, not just in the infamous and overreaching “Bybee memo” at the beginning of the program but in later, more limited opinions.</p> <p>I had a lot of details. There were twenty-two pages of text and briefing notes in front of me on numbers and techniques and reports and intelligence.</p>	<p><b><u>CIA records demonstrate the Department of Justice opinions were based on extensive inaccurate information provided by the CIA.</u></b> (See pages 409-436 of the Committee Study.)</p> <p>Former CIA General Counsel, Stephen Preston, has also stated that the Department of Justice did not always have accurate information about the CIA’s Detention and Interrogation Program and that the inaccurate information was “material.”<sup>49</sup></p> <p>The CIA itself, while arguing that it “did not <u>consistently</u> or <u>intentionally</u> provide inaccurate information to DOJ,” has acknowledged that OLC opinions did not always “reflect” “up-to-date factual information.”</p>

<sup>49</sup> “Top C.I.A. Lawyer Sides with Senate Torture Report,” *The New Yorker*, September 26, 2013.

	<p>(Emphases added. See page 32-33 of the CIA Response.)</p> <p>CIA records demonstrate that the briefing provided to president-elect Obama’s team included extensive inaccurate information about the intelligence derived from the CIA’s enhanced interrogation techniques. (See pages 170, 171, 213, 222, 289, 342, 343, 360, 361 and 369 of the Committee Study.) In addition, Director Hayden briefed the team that there had been 98 detainees in the history of the CIA program, despite having been informed that there had been at least 112. (See below, as well as page 476 of the Committee Study.)</p>
<p><b>Page 386:</b> I argued publicly that they did work and had been vital for national security. In a Fox News interview the Sunday after the release of the memos, I said, “The facts of the case are that the use of these techniques against these terrorists made us safer. It really did work... President Bush, in September of ’06 , outlined how one detainee led to another, led to another, with the use of these techniques.”</p>	<p><b><u>As described above, CIA records demonstrate that President Bush’s September 2006 speech included extensive inaccurate assertions provided by the CIA. The CIA has acknowledged having inserted inaccurate information into the speech.</u></b></p>
<p><b>Page 392:</b> The agency had cooperated extensively in the prosecution of an agency contractor who was convicted for manslaughter following the death of one detainee. The agency has also referred other findings of inappropriate behavior to the Department of Justice, where they were reviewed thoroughly by career prosecutors in the Eastern</p>	<p><b><u>The CIA has contradicted former Director Hayden’s statements.</u></b> With regard to accountability generally, the CIA acknowledged “significant shortcomings in CIA’s handling of accountability for problems in the conduct and management of CIA’s RDI activities.”<sup>50</sup> With regard to the specific case described by Hayden, the</p>

<sup>50</sup> CIA Response, page 8.

<p>District of Virginia, who ultimately declined further prosecutions.... Finally, following the prosecutors' decision not to act, the agency took its own disciplinary action, where appropriate.</p>	<p>CIA has acknowledged that it was <u>not</u> part of the CIA's Detention and Interrogation Program and that more than half of the Inspector General investigations previously cited by the CIA were, in fact, unrelated to the program.<sup>51</sup></p>
<p><b>Page 396:</b> It was an unrelenting prosecutorial screed that accused us and the agency of going beyond our authorities and lying to everyone about that and about the effectiveness of the program. We were all more than a little stunned. And angry. We asked how the Democrat staff could arrive at those conclusions without talking to any of us.</p>	<p><b><u>CIA records demonstrate that the CIA went beyond its authorities and provided inaccurate information to the White House, the CIA Inspector General, Congress, the Department of Justice, and the public. Many of these instances have been acknowledged by the CIA itself.</u></b></p> <p>The Committee did not conduct interviews because, after Attorney General Holder expanded the Department of Justice investigation, the CIA decided not to compel its employees and contractors to appear before the Committee. The Study does, however, rely on contemporaneous CIA documents and interviews of CIA personnel conducted by the CIA Office of Inspector General and CIA Oral History Program. In preparing its Response to the Study, the CIA interviewed CIA officers, including Director Hayden, providing them an opportunity to respond to the Study's findings.<sup>52</sup></p> <p>Finally, the Study relied on previous statements to the Committee made by CIA leaders, in particular Director</p>

<sup>51</sup> CIA Response, pages 10, p. 44; "Note to Readers."

<sup>52</sup> See, for example, page 19 of the CIA Response.

	<p>Hayden, whose April 12, 2007, testimony is detailed in Appendix 3 of the Study (pages 462-499 of the Committee Study). <b><u>In numerous public interviews and publications, including “Playing to the Edge,” former Director Hayden has largely repeated his inaccurate testimony.</u></b></p>
<p><b>Pages 396-397:</b> We also asked why this was being done. We were told that the SSCI staff director had said because Senator Feinstein wanted to be sure that this would never happen again, which struck us as a conclusion that then launched a search for data. The agency was as livid about the report as we were, and they were going to push back hard, since the draft had been selective in citing documents, had errors of fact, and seemed ignorant of the way that intelligence really worked.</p>	<p><b><u>Neither the CIA nor Director Hayden have demonstrated any “errors of fact” in the Study.</u></b> The public Executive Summary, much less the full Study, which is more than 6,700 pages long, is not “selective in citing documents.” Indeed, the documents subsequently declassified and released by proponents of the CIA’s Detention and Interrogation Program have not contradicted any of the findings or conclusions of the Study.</p> <p>Neither the CIA nor Director Hayden have offered any evidence that the desire to prevent a recurrence of the CIA program – a desire shared by an overwhelming bipartisan majority of the U.S. Senate – in any way influenced the “search for data” or the factual record established by the Study.</p>
<p><b>Page 397:</b> John McLaughlin crafted a magnificent 2,300-word op-ed that we pre-positioned with the Wall Street Journal’s Web site along with a shorter version for the print edition.</p>	<p>John McLaughlin contributed an essay to a collection entitled “Rebuttal: the CIA Responds to the Senate Intelligence Committee’s Study of its Detention and Interrogation Program.” <b><u>The factual inaccuracies in the collection, including in the essay by McLaughlin, are detailed in a 93-</u></b></p>

	<p><b><u>page document on Senator Feinstein’s website.</u></b><sup>53</sup></p> <p><b><u>In addition, the numerous factual errors in McLaughlin’s Wall Street Journal op-ed were documented by Senator Wyden.</u></b><sup>54</sup></p>
<p><b>Page 398:</b> John’s argument in the Journal summarized our case: “The Senate Intelligence Committee’s report on Central Intelligence Agency detention and interrogation of terrorists, prepared only by the Democratic majority staff, is... a one-sided study marred by errors of fact and interpretation—essentially a poorly done and partisan attack on the agency that has done the most to protect America after the 9/11 attacks.”</p>	<p><b><u>The assertion that the Study was “partisan” is inaccurate.</u></b> The Terms of Reference that guided the Committee investigation was approved with a bipartisan vote of 14-1, on March 5, 2009.<sup>55</sup> 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.<sup>56</sup> 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.<sup>57</sup> On April 3, 2014, the Committee agreed by a bipartisan vote of 11-3 to seek declassification of the Executive Summary.</p>

<sup>53</sup> [http://www.feinstein.senate.gov/public/index.cfm/files/serve?File\\_id=69A0EBC9-999C-4593-B44C-CB24CE9D6689&SK=9B3E4220EB835CCB4A92E9A7EE85AFA8](http://www.feinstein.senate.gov/public/index.cfm/files/serve?File_id=69A0EBC9-999C-4593-B44C-CB24CE9D6689&SK=9B3E4220EB835CCB4A92E9A7EE85AFA8)

<sup>54</sup> <http://www.scribd.com/doc/249963726/Wyden-Torture-Rebuttal>

<sup>55</sup> See <http://www.intelligence.senate.gov/publications/report-select-committee-intelligence-covering-period-january-3-2013-january-5-2015>.

<sup>56</sup> <http://www.reuters.com/article/2012/12/14/us-usa-interrogations-idUSBRE8BD01420121214>

<sup>57</sup> <http://www.mccain.senate.gov/public/index.cfm/2012/12/post-95e0a445-d569-80f9-f216-89ec7a7b6928>

	<p>As noted above, neither the CIA nor Hayden have demonstrated any “errors of fact and interpretation” in the Study.</p>
<p><b>Page 398:</b> [McLaughlin] challenged the report’s findings that CIA routinely went beyond the authorized interrogation techniques and misled the Justice Department, the White House, Congress, and the American people. He pointed out that the report chose to ignore the context of the time in which the program was launched and the fact that the agency was not operating alone (he noted more than thirty briefings to Congress).</p>	<p><b><u>As detailed in the responses from Senators Feinstein and Wyden cited above, McLaughlin provided extensive inaccurate information in his op-ed and his contribution to the “Rebuttal” compilation.</u></b></p> <p>CIA records demonstrate the numerous incidents in which the CIA “went beyond [its] authorized interrogation techniques.” The CIA has acknowledged 12 cases in which its enhanced interrogation techniques were used without authorization,<sup>58</sup> acknowledged that the waterboard was used with a frequency that was inconsistent with representations to the Department of Justice,<sup>59</sup> acknowledged that “it would have been prudent to seek guidance from OLC” prior to using dietary manipulation, nudity, water dousing and the abdominal slap,<sup>60</sup> and failed to dispute the use of rectal rehydration and rectal feeding, which were never authorized as interrogation techniques. CIA records, and in some cases CIA acknowledgements, demonstrate that inaccurate information provided to the Justice Department, the White House, Congress, and the American people.</p> <p>The Study, relying on and citing CIA records, includes an extensive factual</p>

<sup>58</sup> See “Note to Readers.”

<sup>59</sup> CIA Response, page 32.

<sup>60</sup> CIA Response, page 57. See page 414 of the Committee Study.

	<p>narrative regarding the “context of the time in which the program was launched,” including the threat reporting that contributed directly to the CIA’s decision to use its enhanced interrogation techniques. The Study also includes extensive information on briefings to Congress and interactions between the CIA and the White House and the Department of Justice. Neither the CIA nor Hayden have identified aspects of this history omitted by the Study.</p>
<p><b>Page 398:</b> Most important, [McLaughlin] (like the agency and Republican rebuttals) challenged the “claim that the CIA’s interrogation program was ineffective in producing intelligence that helped us disrupt, capture, or kill terrorists,” citing multiple examples of its effectiveness, including the bin Laden takedown.</p>	<p><b><u>As detailed in the responses from Senators Feinstein and Wyden cited above, the examples provided by McLaughlin are inaccurate.</u></b></p>
<p><b>P. 398-399:</b> [The Committee Study] particularly focused on my April 2007 testimony, dedicating all of appendix three to pointing out what they believed to be inaccuracies. A lot of the issues had to do with the still raging argument over what Abu Zubaida (the first detainee to be waterboarded) told us, when, and why. Other issues could fairly be described as my briefing the standard and their searching through millions (literally) of pages to find the deviations, most of which were early in the program.</p> <p>Then there was the issue of what constituted the program. I said that the</p>	<p><b><u>CIA records demonstrate the extensive inaccuracies in then-Director Hayden’s testimony. The CIA has acknowledged that Director Hayden’s “testimony contained some inaccuracies.”</u></b><sup>61</sup></p> <p>Pages 462-466 of Appendix 3 of the Committee Study compare Director Hayden’s testimony related to Abu Zubaydah with CIA records. There is no “raging argument” over what Abu Zubaydah said to the CIA and when he said it; those facts are established in undisputed CIA records.</p>

<sup>61</sup> CIA Response, page 37.

<p>program I was briefing was created, at least in part, because of the poor agency performance with early battlefield captures—as thoroughly documented and shared with the SSCI by CIA’s inspector general. The committee knew that Gul Rahman had died in agency custody, for example, but CIA never considered him part of <i>this</i> program.</p> <p>And finally, there is the very real possibility that in two hours of testimony discussing things five years distant and separated from me by the administration of two other directors, I may have just gotten some things wrong. It’s possible.</p>	<p>As detailed below, Director Hayden did not merely brief the “standard,” but rather testified unequivocally about the full history of the program. Many of the “deviations,” (i.e. instances in which CIA actions contradicted Director Hayden’s testimony) were well-known within components of the CIA, particularly as some of them were included in investigations by the Inspector General. As the CIA has acknowledged, “the Agency should have done better in preparing the Director, particularly concerning events that occurred prior to his tenure.”<sup>62</sup></p> <p>Director Hayden’s testimony that Gul Rahman “was not part of this program,” omitted that, at the time, DETENTION SITE COBALT, where Rahman died, was described as a place where the CIA could detain suspected terrorists for the purposes of “intense interrogations” by CIA officers.<sup>63</sup> CIA records demonstrate that Gul Rahman was the subject of an assessment to determine which CIA enhanced interrogation techniques should be used against him, and that he was subjected to what the CIA chief of interrogations described as “coercive techniques without authorization.”<sup>64</sup></p>
<p><b>Page 399:</b> Most important, our purpose for the 2007 session—as well</p>	<p><b><u>This description of then-Director Hayden’s 2007 testimony is</u></b></p>

<sup>62</sup> CIA Response, page 37.

<sup>63</sup> ALEC [REDACTED] [REDACTED]

<sup>64</sup> [REDACTED] 29909 [REDACTED]; ALEC [REDACTED] [REDACTED]; [REDACTED] 29520 [REDACTED]; email dated November [REDACTED], 2002, from CIA interrogator [REDACTED], to CTC/LGL Officer [REDACTED] with the subject line, “Another example of field interrogation using coercive techniques without authorization.” See pages 496-497 of the Committee Study.

as similar sessions with the HPSCI— had *not* been to narrate a definitive history of the RDI program, but to explain its *current* status as a first step in building a consensus on a way ahead. That never happened, of course.

**inaccurate.** The testimony included numerous unqualified assertions about the full history of the RDI program, including:

“Threats of acts of sodomy, the arrest and rape of family members, the intentional infection of HIV or any other diseases have never been and would never be authorized. There are no instances in which such threats or abuses took place.” (Emphasis added. Pages 487-488 of the Committee Study.)

“Punches and kicks are not authorized and have never been employed.” (Emphasis added. Page 489 of the Committee Study.)

“Detainees have never been denied the means – at a minimum, they’ve always had a bucket – to dispose of their human waste.” (Emphasis added. Page 490 of the Committee Study.)

“Health care has always been administered based upon detainee needs. It’s neither policy nor practice to link medical care to any other aspect of the detainee program.” (Emphasis added. Page 491-493 of the Committee Study.)

**The CIA has acknowledged that then-Director Hayden described the history of the program inaccurately.**

As the CIA Response noted, “CIA Hayden sought in the statements made during this session to discuss the

	<p><u>history of the program</u>, the safeguards that had been built into it, and the way ahead.” (Emphasis added.) The CIA Response acknowledged that aspects of that testimony were inaccurate, for example Director Hayden’s testimony that “‘punches’ and ‘kicks’ were not authorized techniques and had never been employed.”<sup>65</sup></p>
<p><b>Pages 399-400:</b> I got wrapped around another axle in the report concerning the number of detainees. According to the report, I “instructed a CIA officer to devise a way to keep the number of CIA detainees at the same number that the CIA had previously briefed to Congress.” The report says that was ninety-eight; I think it was actually ninety-nine.</p> <p>The alleged “incident” took place in January 2009 as I was getting ready to step out the door. One CTC officer suggested that the right number of detainees in the program could be as high as 112. There had always been questions as to who should be counted in the program, and early bookkeeping had been sloppy, but I couldn’t resist offering a half smile and saying, “You people have pushed me out there for three years with ninety-seven or ninety-eight [as we added detainees].”</p> <p>The agency rebuttal reflects the consensus from that meeting that the new CTC numbers were still “somewhat speculative and incomplete.” I said that if there really were new numbers, they better make</p>	<p><b><u>The CIA, in its Note to Readers document, has acknowledged that Director Hayden was told at the time that the CIA had detained “at least 112” individuals, not that the number “could be as high as 112.”</u></b></p> <p><i>“[W]e incorrectly characterized the status of CTC’s count at the time. CTC’s count was <u>at least 112</u> (not “as high as 112”), even without the inclusion of detainees who were no longer in CIA’s custody prior to consolidation of the program in December 2002. Including those earlier detainees would have added to CTC’s count.”</i> (Emphasis in the original.)</p> <p>The incident in which Director Hayden was informed that there were at least 112 CIA detainees was not “alleged.” After briefing Hayden, the CTC officer wrote an email to himself: “I briefed the additional CIA detainees that could be included in RDI numbers. DCIA [Hayden] instructed me to keep the detainee number at 98 – pick whatever</p>

<sup>65</sup> CIA Response, page 37.

<p>sure and then tell the new director to pass them on to Congress.</p> <p>The Feinstein report settled on “at least 119” (not 112) as the right number of detainees to book under the program.</p>	<p>date i [sic] needed to make that happen but the number is 98.”<sup>66</sup></p> <p>The conclusion in the Study that there were “at least 119” CIA detainees is based on CIA records. Appendix 2 of the Committee Study lists those 119 detainees.</p>
<p><b>Page 400:</b> Which, I suppose, again raises the question of motive. Why the report? CIA was out of the interrogation business. It wasn’t going back.</p>	<p>The Committee Study was initiated with a bipartisan 14-1 vote approving the Terms of Reference. The vote occurred on March 5, 2009, after President Obama had formally ended the CIA’s Detention and Interrogation Program. Nonetheless, as the Republican Vice Chairman stated at the time, “we need to compare what was briefed to use by the Agency with what we find out, and we need to determine whether it was within the guidelines of the OLC, the MON, and the guidelines published by the Agency.”<sup>67</sup></p>
<p><b>Page 401:</b> [Agency personnel], of course, disagreed with the report, its narrative, its method, and its conclusions. And they especially disagreed what this was all just about them. If it was just about them, congressional Democrats (those who had been briefed) would have begun their protest in 2002 – when the trauma was recent, the threat seemed imminent, and the future was in doubt—and not in 2014, when it was not.</p>	<p><b><u>This statement is inaccurate.</u></b> Congressional Democrats <u>did</u> begin questioning the use of the CIA’s enhanced interrogation techniques in 2002. At the first briefing for the House Permanent Select Committee on Intelligence (HPSCI) leadership, in September 2002, HPSCI attendees “questioned the legality of these techniques if other countries would use them.” The CIA excised this sentence from its official record of the briefing.<sup>68</sup> Shortly thereafter, Senate</p>

<sup>66</sup> Email from: [REDACTED]; to: [REDACTED] [Himself]; subject: Meeting with DCIA; date: January 5, 2009.

<sup>67</sup> Senate Select Committee on Intelligence, Transcript, business meeting, February 11, 2009.

<sup>68</sup> Email from: [REDACTED]; to: [REDACTED]; bcc: Jose Rodriguez; subject: Re: immediate coord; date: September 6, 2002. See also ALEC [REDACTED] (101607Z SEP 02). Email from: Jose Rodriguez; to: [REDACTED]; subject: Re: immediate coord; date: September 6, 2002, at 2:52 PM.

	<p>Select Committee on Intelligence Graham sought to expand Committee oversight of the CIA’s Detention and Interrogation Program. An internal CIA email, however, indicated that the full Committee would not be told about “the nature and scope of the interrogation process.”<sup>69</sup> Other emails describe efforts by the CIA to identify a “strategy” for limiting the CIA’s responses to Chairman Graham’s requests for more information on the program, specifically seeking a way to “get off the hook on the cheap.”<sup>70</sup> The CIA eventually chose to delay its next update for the Committee leadership on the CIA’s program until after Graham had left the Committee.<sup>71</sup> (Pages 438-439 of the Committee Study.) As detailed in the Study, in the years that followed, the CIA declined to answer questions from Committee members or provide materials requested by Vice Chairman Senator Rockefeller, and provided inaccurate information to Committee leadership.</p>
<p><b>Page 402:</b> Not quite the outcome intended by the Democrats on the intelligence committee.</p>	<p>As noted above, the Committee Study was approved by a bipartisan 9-6 majority, with additional support from <i>ex officio</i> member John McCain (R-AZ).</p>

<sup>69</sup> Email from: [REDACTED]; to: [REDACTED] and [REDACTED]; subject: Sensitive Matters for the SSCI Quarterly CA Briefing; date: November 19, 2002.

<sup>70</sup> Email from: Stanley Moskowitz; to: John Moseman, Scott Muller, James Pavitt; subject: Graham request for oversight into interrogation; date: December 4, 2002, at 05:58:06 PM; email from: Stanley Moskowitz; to: John H. Moseman; cc: Scott Muller and James Pavitt; subject: [attached document] Re: Graham request on interrogations; date: December 9, 2002, at 05:46:11 PM.

<sup>71</sup> Memorandum of December 26, 2002; FOR: Director of Central Intelligence; FROM: Scott W. Muller, General Counsel; SUBJECT: Disposition of Videotapes.

	<p>Among the “outcomes” of the Study was historic anti-torture legislation. 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.</p>
<p><b>Page 402:</b> The country and the CIA would have benefited from a more balanced study of these programs and a corresponding set of recommendations.</p>	<p><b><u>The suggestion that the Study was not accompanied by “serious” recommendations is inaccurate.</u></b> On December 30, 2014, Chairman Feinstein wrote a public letter to President Obama outlining an extensive set of recommendations arising from the Study. Two of those recommendations – establishing the U.S. Army Field Manual as the exclusive set of interrogation techniques and requiring the U.S. government to provide ICRC access to detainees – passed the U.S. Senate by an overwhelming bipartisan majority of 78-21, and were subsequently supported in conference by the House of Representatives and signed into law by the President.</p>