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The CIA's torturers and the leaders who approved their actions must face the law

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Successful intelligence gathering through interrogation and other forms of human interaction by conventional means can be – and more often than not are – very successful. But, even though interrogation by less conventional methods might get glorified in popular culture – in television dramas like Law and Order: Criminal Intent, 24 and The Closer and movies like Zero Dark Thirty – torture and the mistreatment of detainees in the custody of intelligence personnel is, was and shall continue to be unethical and morally wrong. Under US law, torture and mistreatment of detainees is also very illegal.

Even the most junior level intelligence officials know that this is, and has been, the case for decades.

Yet, despite such knowledge, in response to the horrific attacks on the US in New York, Virginia and over Pennsylvania on 9/11, the US developed and applied techniques (now public knowledge due to the recent US Senate report commonly referred to as the Senate Torture Report) that sought to inflict severe mental pain and suffering, or the threat of pain and suffering, on detainees in the custody of the CIA and portions of the Department of Defense. These programs were administered by officers acting under the color of law.

According to numerous public reports, including the Senate Torture Report, these programs were authorized at the highest levels of government, and carried out in far-flung foreign places to avoid domestic detection and to muddy the issues of custody status and jurisdiction. This clearly shows a premeditated and intentional conspiracy to knowingly violate US law, and to avoid any oversight and criminal liability.

The actions by CIA officers – both the ones discussed in the Senate Torture Report and the ones that might have not yet come to light – have gravely damaged the credibility of the US intelligence community for decades to come. More worryingly, they also may have prevented the US from being able to quickly and effectively prosecute the very terrorists who these officers sought to help fight against. This is evident by the unending stalemate in the military commissions taking place at Guantanamo Bay, Cuba.

In my experience working as an intelligence analyst with my own pool of sources numbering close to 100, by far the most effective forms of human intelligence collection are rapport-building and direct questioning. As outrageously counter-intuitive as this might seem, the most hardened terrorists and criminals are often extremely willing to brag about the terrible things they've done, the unlikely places that they have been hiding, the important people that they know and deal with and the plans they have been working on for the future. Not only do these captured terrorists – even the hardened ones – sing, they often like to sing loudly and proudly. But, I am also wary of such embellishments.

And, even if detainees are not as cooperative, then the most legal coercive interrogation techniques often used by conventional law enforcement are just as effective against terrorists as they have been in typical murder and kidnapping investigations. Torture then – at least in my experience – has never been a part of the big picture of intelligence collection. It seems that smart and conventional methods are sufficient.

But regardless of whether these techniques were ineffective and counterproductive, the techniques outlined in the Senate torture report were far outside the boundaries of what is acceptable for the US intelligence community. Their supposed effectiveness is irrelevant to the fact that torture is wrong.

It is important to hold the officers, supervisors and, to a lesser extent, the politicians involved in creating and executing these programs, accountable. To let their horrific actions go unanswered would send an awful message to the world: it is wrong to torture and mistreat people, except when those doing it have the supposed blessing of the law and with the permission of high-ranking supervisors and politicians.

Even after internal reports by inspectors general and investigation by the criminal division of the US Department of Justice – a department that had a moral, ethical and more importantly legal obligation to investigate and charge the officers involved under criminal statutes – the government declined to commit itself to criminal charges against those who either committed or authorized acts of torture.

Now, even though the possibility of holding the officers, supervisors and politicians involved accountable before the US courts may be passing in America, this should not be the end of the road. For example, the German Code of Crimes against International Law allows for the prosecution of individuals and crimes outside the territory of Germany by the German Federal Public Prosecutor. Such charges are now being requested by the European Center of Constitutional and Human Rights – though, currently, they name select high ranking officials. If such charges are actually filed, the German government could request for the extradition of these officers for trial.

The extradition treaty between the US and Germany outlines the offenses under which the extradition can occur as: those that are “punishable under the laws” of both nations; those that are punishable by “deprivation of liberty for a maximum period exceeding one year”; and for “attempts to commit, conspiracy to commit, or participation in” such offenses. Torture is clearly defined as one of these offenses. And, while the treaty precludes extradition for offenses that are deemed as “a political offense”, it also excludes “murder or other wilful crime, punishable under the laws of both [nations] with a penalty of at least one year”. Torture, then, is not deemed a political offense.

However, while the treaty does not bind either nation to extradite its own citizens – making automatic extradition impossible – under the law, the US Secretary of State has the power to order the surrender of any US citizen whose extradition has been requested. I believe that if such a request should come before the Secretary of State, then he (or she) is morally and ethically obligated to grant it or risk further degrading the credibility of the US before the rest of the world and implicitly endorsing other countries that still use torture as a political weapon against their own citizens.