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Column

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HEATHER HURLBURT

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By Heather Hurlburt
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Of all the choices America made, all the things that went wrong and all the suffering endured in the years after 9/11, Americans have been more united in wanting to close the book on torture than on anything else. Both in wanting it stopped—they disapproved of it by a 3-to-1 margin when it was disclosed in 2005 and nominated two presidential candidates in 2008 who wanted it banned—but also in wanting it forgotten. The Obama administration has done its best to oblige on both counts. On his second day in office, flanked by more than a dozen military leaders, President Barack Obama staged an impressive signing of an executive order banning torture. And since then he has turned aside suggestions of further investigations or accountability.

It turns out, however, that torture has a hold on the imagination that doesn't go away so easily, as any devotee of "24" and its many subsequent imitators would tell you. Outside the entertainment industry, the post-9/11 descent into government-sanctioned torture got a hold on the Senate Select Committee on Intelligence (SSCI). Perhaps discomfited that torture had occurred under its oversight, the committee launched an investigation in 2008 into what the CIA had done and what it had told its overseers it had done. Dissent over the findings led to a 6,300-page report, completed in 2012, that was "issued" by only the Democrats on the committee.

The scare quotes are because it wasn't actually issued at all—it was classified.

Human rights groups—including the one I work for, Human Rights First—spent years trying to get the committee to vote to declassify the report and the Obama administration to push for doing so. But this required Republican senators to vote in favor of declassifying a report they had opposed, so it was unclear it would ever happen.

Then came allegations that the CIA had secretly searched Senate staff computers being used to conduct the investigation. And counter-allegations that Senate staff had improperly removed documents from the secure CIA viewing room. And counter-counter-allegations that a CIA inspector general had referred the CIA behavior to the Justice Department for possible prosecution. And counter-counter-counter-allegations that the CIA then referred Senate staffers to the Justice Department for possible prosecution.

The SSCI's chair, Democratic Sen. Dianne Feinstein—who has defended the CIA and the intelligence community in general on the Edward Snowden NSA leaks, drone transparency and other controversies—went to the Senate floor and gave an outraged speech that could stand with the best 19th-century Senate rants. CIA Director John Brennan denied that his agency had "hacked" into Senate computers, though he was careful to avoid denying that the CIA had examined them.

The upshot was an 11-3 vote by the SSCI, in which GOP senators joined their Democratic counterparts, to declassify the report. But who gets to declassify it? The answer is the CIA—unless the White House decides otherwise.

Meanwhile, someone decided to leak the contents of the report's executive summary to McClatchy,

which reported them as painting "a picture of an intelligence agency that seemed intent on evading or misleading nearly all of its oversight mechanisms throughout the program, which was launched under the Bush administration after the Sept. 11, 2001, attacks and ran until 2006."

According to McClatchy, some of the other conclusions reached by the Senate report include:

- The CIA used interrogation methods that weren't approved by the Justice Department or CIA headquarters.

- The agency impeded effective White House oversight and decision-making regarding the program.

- The CIA actively evaded or impeded congressional oversight of the program.

- The agency hindered oversight of the program by its own Inspector General's Office.

The Senate has now opened investigations of McClatchy for this leak, even as McClatchy continues to investigate the Senate findings.

Assuming the McClatchy story is correct—and the CIA criticized the leak but did not dispute the contents—we have a worrying reason to doubt the trustworthiness of the CIA, as it seems to have deceived its executive branch political masters and Bush administration colleagues at least as much as its congressional overseers.

This, and not the investigations and counter-counter-investigations that have been front-page news, ought to be a major concern for Americans, and our allies, across partisan lines.

As a judge wrote last week in dismissing a lawsuit challenging the killing of American citizens by drone strikes, agencies that are entrusted with lethal force "must be trusted and expected to act in accordance with the U.S. Constitution."

This trust is especially necessary now that the business of intelligence gathering and analysis has gotten increasingly technical and therefore distant from the layperson's ability to comprehend it. The perception of trust is also vital for our security and for our economic well-being, something that information technology companies perceived to have been complicit with the NSA are now finding out, to their detriment, in global economic deals.

In other words, diminished trust in the strength of U.S. intelligence oversight is a security problem, an economic problem and a rule of law problem.

It has been telling to see opponents of oversight try to switch from that frame of reference back to a "weakness" frame. This is an old trick. In the aftermath of the controversy over the Senate report, Jose Rodriguez, who ran the CIA's clandestine service during the years in question, referred to the post-9/11 push to get authorization for interrogation techniques that constituted torture as getting "everybody in government to put their big boy pants on." Former CIA Director Michael Hayden said that Feinstein was too "emotional" to produce a fair report on CIA practices.

The dozens of senior military leaders, many of whom outranked Hayden, who have criticized torture in terms stronger than Feinstein's would be surprised to hear themselves described as "emotional." Which leads us straight to one of Hurlburt's political maxims: If you are reduced to deriding something as insufficiently masculine, you're losing the argument. (There's also Hurlburt's corollary: If you really think women are less cruel, or less ferocious, than men when faced with imminent threat, you're an idiot.)

For a spy, this showed rather poor tradecraft on Hayden's part. Feinstein first attracted national attention more than 40 years ago when she stepped to a podium in San Francisco's City Hall to announce, calmly, that her colleague Harvey Milk had been gunned down just steps away. She is known not just for her steely demeanor but also for her determination that, as the first woman to oversee the intelligence community, she never be less than fully committed, fully prepared. She had been quite a defender of the intelligence community through its recent travails.

The stories over the allegations and counter-allegations surrounding the Senate report are bound to keep coming, with everyone investigating everyone else. They aren't what matters. The question of whether the U.S. has confidence in the word of our intelligence agencies, and what needs to happen to regain that trust, is the one that really counts. □

Heather Hurlburt is a senior fellow at Human Rights First in Washington. With experience in the White House, Congress, the State Department and overseas, she focuses on the space between diplomacy and domestic politics. Her WPR column, Full-Spectrum Diplomacy, will appear every Monday while Richard Gowan is on leave of absence.

Photo: Sen. Dianne Fienstein, San Fransisco, Aug. 30, 2012 (photo by Flickr user David Lee licensed under the Creative Commons Attribution 2.0 Generic license).