

# USA Counterterrorism and the CIA Detention and Interrogation Program – between Legislative Constraint and Exceptional Permissiveness

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## Abstract

In the war launched against terrorism of Islamic fundamentalist origin in the wake of the terrorist attacks of September 11, 2001 (9/11), the US was under pressure of time to implement a series of exceptional measures to combat terrorists and protect the security of the American state.

To that end, US counterterrorism, in a time race against terrorists, was coordinated by the CIA through the operationalization of a series of enhanced interrogation techniques, an integral part of the Detention and Interrogation Program developed by the Agency.

Through the qualitative method of document analysis, this research aims to assess the effectiveness of the enhanced interrogation techniques developed by the CIA, simultaneously relying on a dual content analysis: on the one hand, an analysis of the first 10 findings of the Report of the US Senate Select Committee on Intelligence on the CIA's Detention and Interrogation Program and, on the other hand, an analysis of the evidence provided by top policy makers and former US intelligence operatives.

The novelty of the subject of this scientific contribution for the Romanian literature on American counterterrorism resides in the fact that, in order to maximize the degree of objectivity in assessing the effectiveness of the Agency's enhanced interrogation techniques, it confronts the legislative dimension highlighted by the Commission Report and the information-operational dimension supported by factual elements selected from key actors within the American intelligence.

## Keywords:

CIA; USA; counterterrorism; enhanced interrogation;  
intelligence; legislation; exceptionality.

## Article info

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## 1. Conceptual delimitations and methodological instruments

Considering the numerous existing definitions of the concept of terrorism in political science research, without “any of them being unanimously recognized” (Bourdillon 2007, 45), this paper will work with the signified of terrorism, in the Saussurean sense, by referring to four defining elements retained from Bourdillon – a highly elaborated technique that uses violence to generate fear among a significant number of people. Terrorism is thus equated with an atypical, asymmetrical war: “It is a war without war, that is, without an identified front, without rules, without prisoners, in which everyone takes part, whether they want to or not” (Bourdillon 2007, 50).

At the same time, it is noteworthy that the political-religious motivations underlying the action of the perpetrators of this atypical war rather place terrorism under the sign of a “political-religious utopia” (Cusson 2018, 21). Hence, the success of a terrorist attack depends on the linguistic mastery with which the terrorist manages to verbalize the claim of political-religious victory, which means that we are dealing with terrorism that is “secretive in deeds and abundant in words” (Pascallon 2018, 46).

As regards the complexity of the terrorism typology, this research focuses on terrorism of Islamic fundamentalist origin in line with research in the field of security studies, which emphasizes a terminological mismatch between Islamic religion and terrorism: “It should be noted that, essentially, Islamic religion and terrorism are two conflicting terms. Islam condemns and rejects all forms of terror. Thus, it is not feasible to use certain expressions such as Islamic terrorism. Attempts to equate Islamic religion with terrorism are not only groundless and flawed, but also purely propagandistic and malicious” (Barna and Popa 2021, 32).

Counterterrorism, or what could be the antidote against terrorism of Islamic fundamentalist origin, will be understood throughout the entire scientific approach in the meaning proposed by *Law no. 535 of 25 November 2004 on preventing and combating terrorism, as subsequently amended and supplemented*, according to Article 4, as “all offensive measures carried out in the event of a terrorist act, aimed at releasing hostages, capturing or annihilating terrorists, neutralizing the devices used by them, freeing attacked or occupied targets and restoring law and order.”

In terms of the methodological instruments used, this article is the result of a predominantly qualitative research, which chose to use the document analysis method. The research used the technique of both qualitative and quantitative content analysis, applied to the first 10 conclusions of the Commission Report, in order to make an inventory of the main arguments based on which the Commission measured mostly the ineffectiveness of the enhanced interrogation techniques developed by the CIA. A qualitative content analysis will be devoted to the pleadings of former top decision-makers and US intelligence operatives directly or indirectly involved in the Agency’s counterterrorist actions in order to identify the main elements that led them to support the effectiveness of the Agency’s enhanced interrogation techniques.

The overarching aim of the research will thus be to determine the degree of effectiveness of US counterterrorism operationalized by the CIA under exceptional circumstances immediately after 9/11.

To this end, the analysis proposed by this paper will materialize against the background of the tension between two dimensions – on the one hand, the legislative dimension to which the Commission Report belongs, and on the other hand, the information-operational dimension to which the selection of relevant elements provided by former top decision-makers and operatives in the American intelligence is circumscribed.

Thus, the effectiveness of the Agency's enhanced interrogation techniques will be assessed by the extent to which their application produced or failed to produce intelligence, and whether or not they ultimately yielded counterterrorist successes.

## **2. Background of the preparation of the US Senate Select Committee on Intelligence Report on the CIA Detention and Interrogation Program**

The 9/11 terrorist attacks in the US represented a zero time in resetting American counterterrorism in that the CIA, under exceptional circumstances and time pressure, operationalized a series of so-called enhanced interrogation techniques in the war on terrorism against the backdrop of strong social emotion: "This despicable attack killed nearly 3,000 people and shocked the American public, which was consumed with a burning desire for revenge" (Petraeus and Roberts 2025, 227).

The reset of American counterterrorism also entailed a fundamental reform of the American intelligence community with the *Intelligence Reform and Terrorism Prevention Act of 2004* when "Congress had mandated domestic intelligence collection" (Hayden 2018, 190) and the position of *Director of National Intelligence* (DNI) was established to replace the *Director of Central Intelligence* (DCI).

After Washington Post journalist Dana Priest began a so-called "Pulitzer parade with an expose of the CIA's detention and interrogation program in 2005" (Hayden 2018, 195), two years later, in 2007, former CIA Director Michael Hayden decided to release to members of the US Senate Select Committee on Intelligence the videotapes of detainees Abu Zubaydah and Abd al-Rahim al Nahiri at CIA headquarters (MacArthur and Horton 2015, 77). In 2009, the Commission launched an investigation into how enhanced interrogation techniques had been used by the CIA in the US-led war on terrorism: "on March 5, 2009, by a vote of 14 to 1, the Commission approved the task order of an inquiry into the CIA's Detention and Interrogation Program" (MacArthur and Horton 2015, 77).

In December 2012, 3 years after the start of the investigation and following intense analytical work on the CIA-operated detention and interrogation program, the report, including 20 findings and conclusions, was approved by a majority vote

of the Commission, chaired by Dianne Feinstein. In 2014, by a majority vote, the Commission submitted to the President “the revised version of the findings and conclusions and the executive summary of the report for declassification and public release” (MacArthur and Horton 2015, 80).

Thus, the “exceptional powers in combating the terrorist threat” (Rodriguez JR 2014, 164) that the CIA made use of will be specifically analyzed in this paper.

Furthermore, the analysis of the first 10 findings and conclusions of the Report of the US Senate Select Committee on Intelligence on the CIA Detention and Interrogation Program appears to be relevant also from the perspective of addressing the tension between legislative constraint/ethics versus exceptional permissiveness in the name of the US fight against terrorism.

### **3. Conclusions of the Report of the US Senate Select Committee on Intelligence regarding the CIA Detention and Interrogation Program**

**3.1. “The CIA’s use of its enhanced interrogation techniques was not an effective means of acquiring intelligence or gaining cooperation from detainees”** (United States Senate 2014, 12).

By using the word “intelligence” seven times in the first conclusion of the Report, the Commission gradually tries to tip the balance towards the ineffectiveness of the Agency’s enhanced interrogation techniques.

The key element on which the Commission reinforces its argument is the fact that the Agency applied said techniques on seven of the 39 detainees, and failed to obtain relevant intelligence.

The generalization of the ineffectiveness of enhanced interrogation techniques to an insignificant sample of seven out of a total of 39 Agency detainees is more indicative of a manifestly political intention of the Commission to dictate, from the very first conclusion, an approach that seems to tend towards rejecting the effectiveness of the CIA Program.

The Commission considers that the ineffectiveness of the CIA’s enhanced interrogation techniques is psychologically justified by the fact that detainees, when regularly subjected to brutal, coercive treatment, often choose to communicate false or partially truthful information meant to confuse the interviewer and persuade him of the authenticity of what they are relating.

The review of the content of the paragraphs of this first conclusion did not reveal any concrete elements supporting the ineffectiveness of the Agency’s techniques from the psychological point of view and in terms of false or partially truthful information.

In contrast, from the argument of former CIA Director Michael Hayden, which abounds in factual data, one will note that, based on the counterterrorist instrumentation operationalized by the CIA, almost 8,000 reports were produced,

with direct relevance to strengthening US security and deciphering the complex terrorist network (Hayden 2018, 427). A review of the very accurate, even mathematical argument of the former CIA director reveals an obvious refutation of the ineffectiveness of the Agency's enhanced interrogation techniques.

The exceptional quality of the intelligence obtained from the Agency's enhanced interrogations is additionally supported with field data by Jose A. Rodriguez Jr, former CIA counterterrorism chief: "The intelligence obtained from KSM, like that previously obtained from AZ, proved to be invaluable. 441 of the 1,700 footnotes in the 9/11 Commission Report came from interrogations of Al-Qaeda leaders" (Rodriguez JR 2014, 134).

But the pinnacle of the inestimable value of the intelligence obtained through the Agency's enhanced interrogation techniques led to the killing of Osama bin Laden on May 2, 2011, which de facto represented "the culmination of over a decade of intelligence work that had finally located him" (Petraeus and Roberts 2025, 255).

**3.2. "The CIA's justification for the use of its enhanced interrogation techniques rested on inaccurate claims of their effectiveness" (United States Senate 2014, 12-13).**

The reference to five of the most important institutions of the American state – the White House, the National Security Council, the Department of Justice, the Office of the Inspector General of the CIA and Congress – in the second conclusion reinforces the Commission's plea regarding the ineffectiveness of the Agency's enhanced interrogation techniques and, at the same time, textually takes the form of a direct accusation made by the Commission against the CIA regarding the questionable legality of the counter-terrorist instruments operationalized under exceptional circumstances.

The textual tension gradually builds, with the Commission going so far as to assert that "the CIA's solution was simple – lie" (MacArthur and Horton 2015, 20) so as not to be legally prevented from implementing its arsenal of enhanced interrogation techniques.

Nevertheless, the factual arguments put forward by Jose A. Rodriguez Jr, head of the CIA's post-9/11 Counterterrorism Center, translate the indisputable effectiveness of the Agency's enhanced interrogation techniques: "Once he began to cooperate, the information willingly provided by AZ was some of the most important intelligence collected after 9/11" (Rodriguez JR 2014, 109).

**3.3. "The interrogations of CIA detainees were brutal and far worse than the CIA represented to policymakers and others" (United States Senate 2014, 13-14).**

The Commission's predilection for the use of terms from the semantic field of brutality in the wording of its conclusion (such as "coercive", "physically harmful", "physical injury", "sleep deprivation", "waterboarding technique") can be interpreted as the Commission's intention to emphasize the inefficiency of the Agency's enhanced interrogation techniques.

In contrast to the above, when examining the arguments put forward by Jose A. Rodriguez Jr, former head of counterterrorism at the CIA, we will note the concrete example of the walling technique, which translates a categorical rejection of the so-called brutality of interrogations, as he proves with field data that “many of the techniques are essentially bluffing.” (Rodriguez JR 2014, 103).

**3.4. “The conditions of confinement for CIA detainees were harsher than the CIA had represented to policymakers and others”** (United States Senate 2014, 14).

The examination of the content of this conclusion reveals the Commission’s predilection for the use of terms that fall within the semantic field of detention (such as “poor”, “complete darkness”, “isolated cells”, “dungeon”, “lack of human contact”), which could be interpreted as a direct accusation against the Agency by the Commission, which criticizes the CIA for having concealed the truth about the actual conditions of detention and the questionable psychological training of the interviewers who posed an extreme threat to the detainees’ lives.

On the other side of the barricade, when analyzing the pleadings of Jose A. Rodriguez, Jr., the fallacy of the Commission’s conclusion gradually becomes apparent, being strengthened by the former operative through the concrete example of the medical check-up: “[...] they were subjected to a thorough medical check-up to see if they had any medical condition that would have prevented, in their case, the safe application of the techniques” (Rodriguez JR 2014, 104).

**3.5. “The CIA repeatedly provided inaccurate information to the Department of Justice, impeding a proper legal analysis of the CIA’s Detention and Interrogation Program”** (United States Senate 2014, 14-15).

The Commission’s predilection for using terms from the semantic field of legality (such as “justice”, “incorrect”, “verification”, “torture”, “prohibition”, “memorandum”) in the substantiated text of this conclusion once again highlights the Commission’s accusation towards the CIA Program’s questionable legality.

Based on the evidence emerging from the review of the official documents made available to them, the members of the US Senate Select Committee on Intelligence on the CIA’s Detention and Interrogation Program raise a series of incriminating arguments against the Agency, claiming that “CIA legal experts lied in every instance to deceive the Office of Legal Counsel within the Justice Department, ostensibly to get the approval they needed” (MacArthur and Horton 2015, 17).

In return, the defense of the former operative Jose A. Rodriguez Jr. based on concrete legislative elements tips the scales in favor of the legality of the Agency’s Program, revealing that “the approval of the interrogation techniques came to us in the form of a memo from the Office of Legal Counsel within the Department of Justice” (Rodriguez JR 2014, 104).



**3.6. "The CIA has actively avoided or impeded congressional oversight of the program"** (United States Senate 2014, 15-16).

The insistent use of the word "inaccurate", four times in the last but one paragraph of this conclusion, simply translates the Commission's accusations about the questionable legality of the instruments used by the CIA under the Detainee Detention and Interrogation Program approved by former US President George W. Bush.

By using negative verb forms (such as – "the CIA did not brief", "the CIA did not respond") as well as terms that can be categorized as belonging to the semantic field of rejection ("resisted", "refusing", "declined to answer"), in the content of this conclusion, the Commission manages to even more obviously reinforce its accusations against the Agency on the unclear legal framework surrounding enhanced interrogation techniques.

In opposition to the Commission, in analyzing Jose A. Rodriguez Jr.'s argument, one will note the reference to Presidential Executive Order MON, by which former President Bush granted exceptional powers to the CIA after 9/11 to wage the war on terrorism (Rodriguez JR 2014, 164). At the same time, former CIA Director Hayden, by textually employing a presentative construction, merely highlights the importance of the exceptionality of the instrumentalization of enhanced interrogation techniques that is above and beyond any accusation regarding the questionable quality of the legislative framework, in light of what happened on 9/11: "This is not the President's program. This is America's program."

**3.7. "The CIA impeded effective White House oversight and decision-making"** (United States Senate 2014, 16-17).

The symmetrical use of the terms "inaccurate" and "incomplete" in the first and last paragraphs of this conclusion indicates a gradual textual tension which effectively translates a kind of indictment of the Commission against the Agency for incomplete and inaccurate information to the White House on the effectiveness of enhanced interrogation techniques.

This conclusion of the Commission could also be contradicted by reference to Jose A. Rodriguez Jr' defense, of which the example of the presidential authorization coming from the White House will be noted, which reflects a reinforcement of the legality of the counterterrorist instruments operated by the CIA in exceptional circumstances after 9/11: "Less than a week after the September 11 attacks, the President formally authorized us to capture, extradite, and interrogate terrorists" (Rodriguez JR 2014, 71).

**3.8. "The CIA's operation and management of the program complicated, and in some cases impeded, the national security missions of other Executive Branch agencies"** (United States Senate 2014, 17-18).

From the review of the content of this conclusion, it gradually emerges that a semantic field of constraint ("complicated", "impeded", "restricted", "denied", "blocked") is taking shape, which translates the Commission's strong criticism

of the exceptional powers bestowed on the CIA by former President Bush to fight terrorism, by putting into practice the tools of enhanced interrogation techniques. The Commission is opposed to the exceptionality of action granted to the Agency, pointing out that the FBI is also part of the US intelligence community and therefore can successfully execute counterterrorism missions on behalf of the US.

From the review of the factual arguments put forward by former CIA counterterrorism chief Jose A. Rodriguez Jr., it is obvious that he is firmly opposed to the Commission's above argument, and is clearly in favor of the exceptional powers granted to the Agency in the war on terrorism: "The FBI's mindset is to gather information that can be used to prove a crime in court. CIA officers focus on gathering intelligence to prevent new acts of terrorism" ([Rodriguez JR 2014](#), 93).

**3.9. "The CIA impeded oversight by the CIA's Office of Inspector General" ([United States Senate 2014](#), 18).**

The progressive build-up of a semantic field of reticence ("avoided", "resisted", "impeded") as well as the repeated use of the term "inaccurate" in the second paragraph, textually captures the accusatory position of the Commission chaired by Dianne Feinstein on the legality of the CIA's enhanced interrogation techniques, alleging the inexistence of oversight of the Agency's Program by the CIA's Office of Inspector General.

From the analysis of Jose A. Rodriguez Jr's pleading, it becomes apparent that he is in antithesis to what the Commission claims, as the former CIA operative delivers specific arguments in favor of the legality of the CIA's enhanced interrogation techniques: "Less than a week after the September 11 attacks, the president formally authorized us to capture, extradite, and interrogate terrorists" ([Rodriguez JR 2014](#), 71).

**3.10. "The CIA coordinated the release of classified information to the media, including inaccurate information concerning the effectiveness of the CIA's enhanced interrogation techniques" ([United States Senate 2014](#), 18-19).**

The repetitive use of the word "inaccurate" in the last paragraph of the conclusion highlights the Commission's strongly incriminating position towards the Agency, which is being harshly accused of leaking false classified information to the media, obviously intended to strengthen the notable successes in US counterterrorism achieved by the operationalization of the CIA's enhanced interrogation techniques approved under exceptional circumstances at presidential level.

The analysis of Jose A. Rodriguez Jr's argumentation reveals the very direct and tough manner in which he firmly rejects the fact that the Agency is responsible for a possible leak of classified information to the media and admits that such speculation seriously damages the CIA's image ([Rodriguez JR 2014](#), 227), a position that former CIA Director Hayden seems to visibly adhere to, as it emerges from the examination of the specific arguments he delivers: "I have told journalists that a recent avalanche



of articles has cost us five promising counterterrorism and counterproliferation sources who feared we could not guarantee their security. [...] When a covert CIA presence in a no-go zone was revealed in the media, two local sources were arrested and executed" ([Hayden 2018](#), 137).

## Conclusions

In order to maximize objectivity in assessing the degree of effectiveness of the enhanced interrogation techniques operationalized by the CIA after 9/11, this research concurrently focused on a double analysis: on the one hand, the analysis of the first 10 conclusions of the Report of the Commission chaired by Diane Feinstein and, on the other hand, the analysis of the arguments of former key players at the top of the CIA leadership.

Against the backdrop of the textual-discursive tension between the political-legislative dimension in which the conclusions of the Senate Committee Report fall and the informative-operational dimension that includes the arguments of important former CIA actors, the evaluation of the degree of efficiency of the CIA's enhanced interrogation techniques led to the highlighting of two polarized camps: on one side are those on the Senate Committee chaired by Feinstein, who argue for the ineffectiveness of the CIA's enhanced interrogation techniques; they are opposed by former key players and operatives who argue for the effectiveness of the counterterrorism operationalized by the CIA after 9/11.

Without in any way discounting the procedural shortcomings from a legislative point of view in the operationalization of the CIA's enhanced interrogation techniques under exceptional conditions, against the clock, and considering that the Agency's interrogations produced extremely useful intelligence that was subsequently used and led to the killing of Osama bin Laden on May 2, 2011, it can be concluded that the CIA's enhanced interrogation techniques produced intelligence and ultimately proved to be effective in achieving their ultimate goal.

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