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America in decline?

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By Charles R. Church

On Dec. 15, 2014, the Pew Center for the People & the Press published the results of its national survey taken not long after release by the Senate Select Committee on Intelligence (SSCI) of the Executive Summary (ES) for its 6,700 page report on its study of the CIA's Detention and Interrogation Program. Pew found that 51 percent believe the agency's interrogation methods justified, while only 29 percent disagree (an NBC News/Wall Street Journal poll's findings were almost identical on this point); and 56 percent consider that they provided intelligence that helped prevent terrorist attacks (contrary to an explicit finding of the ES), while merely 28 percent do not. A nearly simultaneous Washington Post/ABC News Poll shows that a shocking 59 percent consider the CIA's treatment of suspected terrorists justified, but otherwise resembles Pew's findings, as do the CBS News survey results.

How do we deal with such stunning data, which fly directly in the face of the ES which — if expectations had been realized — at long last would have convinced Americans of the atrocities we have perpetrated? To be sure, plenty of pushback has muddied the waters. But neither the 100-plus page statement of the SSCI minority's views nor the similarly lengthy response by the CIA denies that we tortured plenty of people. However, nearly everything in the ES is disputed in the media blitz by Dick Cheney (highlighted by his classy "The report is full of crap," uttered though he hadn't read it), Michael Hayden and others, plus — naturally, in this digital world — a sophisticated and well-financed website, www.ciasavedlives.com ^[3], which features a parade of quotes, a timeline, cherry-picked news breaks and the like, all "proving" that the CIA's interrogations were authorized, legal and effective. (No surprise, some of the staunchest defenders in the media campaign bear responsibility for the torture they struggle to deny.) I'd wager that not a single person polled had read a word of the ES or the SSCI minority's and CIA's partial rebuttals, except perhaps in quotes in news articles; none of the polls bothered to ask. (If so, SSCI Chair Dianne Feinstein may have been right when she stated: "Anybody who reads this is going to never let this happen again," but not in the way she intended.) But the naysaying media blitz, I think, has been far more effective in shaping public opinion than the ES and the publicity it generated, and largely explains the polls. And that really worries me.

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President Obama, on day two of his first term, signed Executive Order 13491, banning torture of persons detained in any armed conflict, and confining interrogation techniques to those listed in Army Field Manual 2-22.3. But recall that Mitt Romney in a September 2011 news conference

opined that waterboarding is not torture (forgetting, it seems, that we criminally prosecuted some Japanese after World War II for doing it), and promised to use enhanced interrogation techniques not allowed by the Manual. And Senator Richard Burr, the North Carolina Republican who soon will replace Dianne Feinstein as chair of the SSCI, declined to rule out resorting to torture in the event of a new 9/11 attack, says a Dec. 18, 2014, News & Record report. Most crucially, Obama's order can be revoked by a stroke of a future president's pen, and replaced by far different rules.

As for existing statutes forbidding torture or even criminalizing such conduct, the Convention Against Torture, and the Geneva Conventions, recall that the April 2013 landmark report of the Constitution Project's blue-ribbon and bi-partisan Task Force on Detainee Treatment, whose findings on torture coincide with those of the ES, stated: "To deal with the regime of laws and treaties designed to prohibit and prevent torture, the (Bush Department of Justice) lawyers provided novel, if not acrobatic interpretations to allow the mistreatment of prisoners." As Human Rights Watch's John Sifton warned in his December 18, 2014 guest post on www.justsecurity.org: [4]

"[T]here is little to stop a future president, in the wake of an extraordinary national security event like the 9/11 attacks, from unearthing unethical lawyers to revoke Obama's 2009 executive order, throw established law out the window, revive the twisted reasoning behind the old torture memos, and fashion a new "neo-torture" memo or other legal document to justify the CIA's old methods again."

If the ES fails, at day's end, to convince our nation of the terrible wrongs we have committed, I doubt that publishing the entire 6,700-page report that stands behind it will do much better, especially because it surely will prompt another propaganda counter-offensive. Even now, our nation is violating the Convention Against Torture every day by failing to take into custody and prosecute those who tortured, or who ordered or otherwise participated in it. Obama may have been politically sensible in making his historic decision to "look forward, not backward," thereby conserving his political capital for more attainable goals than prosecuting Bush Administration officials, but history will judge him harshly — and all of us, too — for failing to do, and to demand, more.

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What might that "more" look like? Despite the new round of pleas for criminal prosecutions, I doubt that even the reinvigorated Obama would reverse a central tenet of his administration on not dealing with our past sins. Surely not foreign prosecutions that already have prompted potential defendants to think twice before traveling abroad; reckonings cannot be based on justice imposed by outsiders. Early in 2009, Obama rejected forming an independent commission to ferret out the truth about torture. U.S. Sen. Patrick Leahy (D-Vt.) called for a commission along the lines of South Africa's Truth and Reconciliation Commission, but his efforts perished in the cradle.

I hope that civil suits for damages may be one avenue leading toward the historic reckoning we desperately need. Though the Alien Torture Statute (ATS) is venerable, its words on their face provide federal court jurisdiction for such claims, and the Supreme Court's presumption against applying the ATS to extraterritorial crimes should readily be overcome where our government and military authorized and planned them, and its own agents carried them out. And the state secrets privilege that has been deployed to stifle so many suits brought by those severely damaged by Bush's largely ill-conceived "War Against Terror" should not apply now, since the

grisly details of our torture have been officially “owned” by our government, including the SSCI minority and the CIA; they simply are not secret any longer. Other defenses will have to be overcome, and the litigation doubtless will be ferocious. But civil litigation has been known to change American behavior in significant ways. Consider, for example, the tobacco cases. Many large judgments will be needed, however, to even start to convince our citizenry to open their eyes.

From its infancy, America’s aspirations have been lofty. John Winthrop, while sailing to the New World in 1630, preached to his fellow Puritans of creating a “City Upon a Hill (with) the eyes of all people upon us.” And Tom Paine wrote in “Common Sense” that: “We have it in our power to begin the world over again.” But fast-forward about 175 years, when the sage Reinhold Niebuhr warned that its good fortune and a power in the world placed the United States “under the most grievous temptation to self-adulation.” The U.S. succumbed to this Faustian temptation enthusiastically, as evidenced by our self-congratulatory references to American exceptionalism, which only seem to have intensified in this new century in which we have lost our way so profoundly. Niebuhr also wrote about that:

“One of the most pathetic aspects of human history is that every civilization expresses itself most pretentiously ... and claims immortality for its finite existence at the very moment when the decay which leads to death has already begun.”

Is that where we stand now? If people continue to swallow the naysayers’ baloney that the atrocities committed by the CIA were not really torture despite the terrible and undeniable contrary evidence reported first by the Constitution Project’s Task Force on the basis of interviewing 100 people and thoroughly examining public records over nearly three years, and now the SSCI’s ES, which distills the 6,700-page official report written from reviewing over six million pages of CIA materials, or approve the CIA’s actions even if they depended on torture, then our nation has lost its way. There can be no denying that we tortured many alien people, a fair number of which were wholly innocent; even the CIA and the SSCI minority concede that. And CIA Director Brennan concedes that “whether intelligence obtained from (tortured) detainees could have been obtained through other means or from other individuals ... is and will forever remain unknowable.” What remains is for us to own up to these failings and vow never to repeat them.

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Committing these brutal acts while clinging to our failure to acknowledge and repent our failings smacks of the decay Niebuhr spoke about. The loss of much of the moral standing we once enjoyed in the world is and will continue to be an inevitable cost. Director Brennan himself avowed that the CIA’s former interrogation program “impairs our ability to continue to play a leadership role in the world.” As the human rights icon Harold Koh wrote in Foreign Policy on Dec. 12, 2014, the torture program “helped terrorist recruiting, devastated our international standing, and damaged our alliances. It punctured the faith of so many who wanted to believe in America’s exceptional leadership..... Great nations admit and learn from their mistakes.” Finally, the Task Force concluded: “Democracy and torture cannot peacefully coexist in the same body politic.”

Addressing the UN Committee Against Torture in Geneva last November, our representative declared: “We believe that torture, and cruel, inhuman and degrading treatment and punishment are forbidden in all places, at all times, with no exceptions.” If we don’t turn our backs on torture — now and forever — we will indeed be exceptional. Exceptional hypocrites of dubious morals,

not fit to be a world leader.

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