

CIA Rendition, Detention and Interrogation: Senate Committee Face-Off with Obama, CIA on Constitutional Crisis

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“...Congressional oversight of the Intelligence Community was relatively stringent and aggressive and defined by a bipartisan understanding that Congress played a key part in ensuring the intelligence agencies remained competent and acted within the law.”
[“Congressional Oversight of Intelligence is Broken”](#) Center for American Progress, 2006

Senate Select Committee on Intelligence (SSCI) Review of CIA Rendition, Detention and Interrogation (RDI)

Now that the 2014 Congressional mid term election has ceded Senate control to the Republicans, President Barack Obama may assume that any further [investigation](#) into the CIA’s rendition, detention and “enhanced interrogation” (RDI) program and its efforts to block release of the Select Senate Committee on Intelligence (SSCI) report will be stifled – unless that rare individual of conscience steps forward.

What has received modest [media attention](#) and remains under the radar for most Americans is a profoundly significant yet escalating constitutional crisis between the President, the CIA and the Senate committee. At issue are monumental statutory questions of whether the CIA has the right to spy on Congress (albeit all Americans), to sabotage a Congressional investigation into agency activities and to deny a Congressional committee its Constitutional [oversight](#) obligations. The Los Angeles Times referred to the clash as the [‘constitutional equivalent of the Watergate breakin.’](#)

In March, 2009, SSCI Chair Diane Feinstein (D-Cal) and Minority Chair Kit Bond (R-Mo) announced, as the Senate committee with CIA jurisdiction, an oversight review of the agency’s RDI program.

The extended conflict now centers on whether the President will allow the release of the 500 page executive summary (the full 6000 page report completed in December, 2012 will not be released to the public) without Administration redactions that would significantly alter the report’s important revelations and conclusions. Feinstein told the LA Times that the proposed redactions [“eliminate or obscure key facts](#) that support the report’s findings and conclusion.”

In March, 2014, Senator Feinstein took to the [Senate floor](#) and provided the public with a thorough timeline of events including how the 2009 SSCI investigation was initiated and specifically spelling out how the CIA had improperly accessed committee computers, seized

committee files and violated the constitutional separation of powers. Feinstein [described the report](#) as ‘meticulous’ and that it provided a ‘definitive review of the program’ despite White House refusal to relinquish 9,400 documents citing ‘executive branch confidentiality interests.’”

CIA Destroys Interrogation Videotapes

After withholding the existence of ‘enhanced interrogation’ (torture) videos of two al Qaeda operatives from federal courts and a formal 9-11 Commission request, the American public became aware in December, 2007 that the CIA had [destroyed](#) over 90 videotapes of that interrogation recorded in 2005 in a secret black site in Thailand.

In her March Senate speech, Sen. Feinstein explained that the destruction of the tapes in 2005, done over the objections of President Bush’s White House Counsel and the Director of National Intelligence, provided the impetus for SSCI investigators to formally review the operational cable evidence that remained of those interrogations. Their results were ‘chilling’ and confirmed that interrogation and confinement had been considerably [more harsh](#) than previously described to Congress. It was those results that led to the SSCI to launch a comprehensive review of the agency’s RDI program in 2009.

A criminal investigation of the destroyed videos conducted by the Obama Department of Justice decided in 2010 to [not file criminal](#) charges against Jose [Rodriguez](#), former head of clandestine services and other CIA officials after allegations that the perpetrators acted with legally sanctioned approvals provided by the agency. Rodriguez was quoted as suggesting that release of the tapes “would make us look terrible” and would be ‘devastating to us’ (CIA). Further shielding CIA officials, the Obama Administration allowed the five year statute of limitations for prosecutions to [expire](#).

Senate Select Committee on Intelligence (SSCI) Review of CIA Rendition, Detention and Interrogation (RDI)

As described by Sen. Feinstein, at the outset and as the result of a negotiated agreement between the CIA and the committee, the CIA agreed to provide a stand alone computer with its own network drives segregated from the CIA’s RDINet network in order to protect the integrity of the SSCI investigation. This computer system would be accessed only by CIA IT personnel.

In addition, according to Feinstein’s description of an “exceedingly tedious process” with outside contractors, the agency insisted on a review of every one of the millions of pages *prior to* providing those documents to committee investigators; thus ensuring that the agency would not mistakenly provide any inadvertent “classified’ documents.

Once that review process was completed, the agency was not about to make the job easy as committee staffers were inundated with a ‘document dump’ of 6.2 million pages of *unindexed, unorganized* helter-skelter material to be reviewed by Senate investigators.

By May, 2010, SSCI investigators, by now familiar with the bulk of CIA-provided documents, discovered certain pages no longer accessible. The CIA at first denied any knowledge of the missing documents and then blamed the White House having ordered removal of the sensitive documents. The White House denied any knowledge of the vanished pages.

Ultimately, it became apparent that the CIA had hacked into the Committee’s secure

computers and by February, 2010 'electronically removed' 870 pertinent documents previously provided with another 50 documents discovered missing by mid-May 2010.

Upon recognizing the agency's interference in a Congressional investigation, White House General Counsel was contacted and the CIA agreed to no further access of the committee's network or any future removal of documents.

Of special interest was a document entitled 'Internal Panetta Review' (named after then-CIA Director Leon Panetta) which allegedly confirmed 'significant CIA wrongdoing' that committee investigators had already begun to compile. As Feinstein described it, no one could be sure if the Panetta review had been inadvertently included in the 'dump' to the committee (even after the agency's extensive review to prevent exactly such an occurrence) or whether a whistleblower had intentionally slipped the document into the trove to be found by Senate investigators.

Having immediately recognized the value of the Panetta Review as it corroborated SSCI analysis of significant CIA misdeeds, Senate investigators had already copied the document for safe-keeping by the time it went missing. It became apparent that the CIA had hacked into the Committee's computers to retrieve whatever bits and pieces of the Panetta document could be found. By early 2013, [John Brennan](#), a 24 year CIA veteran and former presidential counterterrorism advisor, had taken Panetta's place as CIA Director.

Upon the investigation's conclusion, the report was then sent to the Executive Branch for comment with the Administration and CIA responding with voluminous suggested redactions.

Senate Sergeant at Arms Investigation

In March, 2014, Senate Majority Leader Harry Reid [requested](#) that the [Senate's chief law enforcement officer](#), its Sergeant at Arms, conduct a forensic investigation of allegations that the CIA had improperly searched the SSCI computer.

Reid sent [letters](#) to CIA Director Brennan and Attorney General Erik Holder informing them of his "deep concerns" citing 'grave and unprecedented concerns regarding the constitutional separation of powers.'. Ultimately, the Sergeant at Arms concluded that since it was unable to examine erased computer records (including audit logs), it could not reach a definitive conclusion but did find the SSCI staff not culpable. In addition, it was discovered that CIA personnel had impersonated Senate investigators to gain computer access as they combed through staff files (including personal emails) that could have supported the staff contention that it had observed appropriate protocols in handling all CIA documents.

Subsequently, the CIA accused Committee staff of pilfering classified documents from its possession and the agency requested that the Department of Justice pursue criminal charges against committee investigators which the DOJ declined to do. Senate Committee staffers assert they acted within proper oversight authority.

CIA Inspector General Investigation

On January, 2014, the CIA Inspector General (IG) began an investigation into allegations that CIA personnel had improperly accessed committee files and records on the agency's RDINet computers. As mentioned earlier, the RDINet allowed agency staff to review documents

prior to forwarding them to Committee investigators and “following review of relevant documents by the RDI team, responsive documents were made available to committee staff members.”

In July, 2014, the IG completed its investigation and issued a classified report to the CIA Director. Its [Summary of Report](#) confirmed that five CIA personnel (two attorneys and 3 IT specialists) had improperly accessed majority staff files on the RDINet shared drive. In addition, the IG said that the “three IT staff members demonstrated a *lack of candor* about their activities during interviews by the OIG.” Further the IG found that there was no factual basis to support the Agency’s crime report filed with the DOJ alleging that Senate investigators “*may have improperly accessed Agency information*” on the RDI Net.

“To my knowledge, the CIA has produced no evidence to support its claims that Senate committee staff who have no technical training somehow hacked into the CIA’s highly secure classified networks,” said Majority Leader Reid.

Brennan was forced to [apologize](#) although, in response to Sen. Feinstein’s later written request and in blatant defiance of Congressional authority, [refused to identify](#) agency personnel responsible and provide the CIA’s legal justification for its actions. Senator Mark Udall (D- Co) repeated an earlier call for Brennan’s resignation.

The CIA’s IG then referred the matter to the Department of Justice which *declined* in July, 2014 to open a *criminal investigation*.

Special Task Force on Interrogation and Transfer Policies

Initially meant to function along a comparable path with the SSCI investigation, a Special Task Force on Interrogation and Transfer Policies was established in January, 2009 by Presidential [Executive Order](#) 13491. The Executive Order directed closure ‘as expeditiously as possible’ of any CIA operated “detention facilities” and to allow Red Cross access to any detainee held in a US owned or operated facility and specifically referred to [Army Field Manual](#) 2.22.3 as the authorizing document for guidance in the use of interrogation technique and treatment.

By August, 2009, the Task Force, chaired by Attorney General Holder, issued its [recommendations](#) to the President to “conduct interrogations in a manner that will strengthen national security” and to improve its ability to interrogate the most dangerous terrorists by forming a specialized interrogation group and establish a ‘high value detainee interrogation group (HIG) guided by the [Intelligence Science Board](#).

Intelligence Science Board

The ISB was formed in 2002, with oversight of the Board conducted by the National Security Council, ‘to ensure the humane treatment of individuals in its custody and control” as well as to provide independent advice to the Director of National Intelligence (DNI) on the [psychology of interrogation](#) techniques. The Intelligence Science Board released a [372-page report](#) in 2006 that noted there was no data supporting the claim that torture produces reliable results and summed its report with the following:

“The scientific community has never established that coercive interrogation methods are an effective means of obtaining reliable intelligence information. In essence, there seems to be an unsubstantiated assumption that ‘compliance’ carries the same connotation as

‘meaningful cooperation.’ ”

The Intelligence Science Board was [disbanded](#) in October, 2010 by National Intelligence Director James Clapper who, in January 2014, [perjured himself](#) before Congress regarding the extent of domestic surveillance on citizens. Amid Congressional calls for Clapper’s resignation, the president stated that “Jim Clapper...should have been more careful about how he responded.”

Independent Accountability Board

As a result of the CIA’s IG report, and as if immune to the paradox of having a controversial agency like the CIA investigate itself as if the public can be hoodwinked with another gratuitous gesture, the President established an Independent Accountability Board *within the CIA* to consider whether the agency impeded a Senate investigation and to identify which CIA officials were culpable. Former Sen. Even Bayh (D-Ind) was appointed Chair.

Army Field Manual 2.22.3

In April, 2007, CIA Director Michael Hayden described, in [top secret testimony](#) before the SSCI, why [Section 2.22.3](#) of the Army Field Manual is an ineffective guideline for interrogation positing the conundrum of a democratic society acting more like a police state. Hayden, in effect, disputed why the [non-coercive techniques](#), such as those contained in the Army Field Manual since 1956, are insufficient justification for torture-at-will as his comments became an argument in favor of loosely-worded legal analyses used to validate the application of retention, detention and ‘enhanced interrogation’.

Meant to provide legal guidelines for interrogators, the [2006 manual revision](#) omitted the previously banned use of sleep deprivation and certain stress positions such as prolonged periods of standing, Despite Presidential [Executive Order 13491](#) (“Ensuring Lawful Interrogations”) that any individual held by the US government “shall not be subjected to any interrogation technique or approach...not authorized by and listed in AFM 2.22.3,” [Appendix M](#) focuses primarily on [psychological techniques](#) of torture such as ‘extreme isolation’ from other detainees, solitary confinement and sleep and sensory deprivation practices.

Hayden’s comments:

“The Army Field Manual (FM 2.22.3) governs the interrogation of large numbers of detainees held by the US military, who are captured in the course of traditional military hostilities. It is used by military personnel to help them collect tactical military intelligence from military detainees. Should the CIA be limited only to the interrogation techniques contained in the Army Field Manual, [REDACTED] would not be sufficient to justify continuing a covert CIA detention and interrogation program. The CIA program (enhanced interrogation) has proven to be effective after [REDACTED].”

Hayden made the point that since FM 2.22.3 clearly states the manual is approved for public release,

“Consequently, we must assume that AQ (al Qaeda) and other organizations have or can easily obtain a copy and train their people to resist these

techniques and their methodology. Hence, we have not only laid out our game plan for the taking but have included the entire playbook as well. As a result, should our interrogations of AQ suspects be limited to the techniques in the field manual, we are left with very little offense and relegated to rely primarily on defense.”

“Without approval of EITs [Enhanced Interrogation Techniques] to compliment the techniques in FM 2.22.3, we have severely restricted our attempts to save lives and disrupt operations. Limiting our interrogation tools to those detailed in the field manual will increase the probability that a determined, resilient HVD [high-value detainee] will be able to withhold critical, time-sensitive, actionable intelligence that could prevent an imminent, catastrophic attack. In essence, we would be back to a pre-9/11 posture.”

UN Committee Against Torture

According to the findings of the [1999 Initial Report](#) of the United States submitted by the US Department of State to the U.N. Committee against Torture,

“Torture is prohibited by law throughout the United States. It is categorically denounced as a matter of policy and as a tool of state authority. No official of the (US) government is authorized to commit or to instruct anyone else to commit torture.”

However, the [updated Review](#) of the United States submitted to the United Nations Committee on Torture released September 29, 2014 concludes that:

“Since the United States last reported to the Committee Against Torture in 2006, even more evidence has emerged confirming that civilian and military officials at _____ The highest level created, designed, authorized and implemented a sophisticated, international criminal program of torture.”

The 2014 report was prepared by Advocates for US Torture Prosecution and Harvard Law School’s International Human Rights Clinic.

Noble Peace Prize Winners Petition President

On October 26, 2014, [twelve Noble Peace Prize winners](#) petitioned President Obama to release the unredacted version of the Senate’s Intelligence Committee report in the interests of restoring the US to its ‘special place, as a giant among nations.’

The Laureates cited the specific use of RDI without due process and that ‘when a nation’s leaders condone torture, that nation has lost its way.’ Commenting that the US is at a “crossroads’ as “American leaders have eroded the very freedom and rights..” and need to “recover the standards on which the country was founded, and once again adhere to international conventions.”

One of the signers, [Archbishop Desmond Tutu](#) suggested the letter was inspired by the ‘disturbing’ news that the Obama Administration was considering a pass for the CIA and expressed his “grave sense of sadness and of being let down” by the president.

White House Lobbies for Redactions

In June, 2006, Denis McDonough, current White House Chief of Staff, was the lead author of the introductory quote at the top of this article ([“Congressional Oversight on Intelligence is Broken,”](#) Center for American Progress, 2006). That document stated that Congress must ensure ‘that intelligence operations are conducted consistent with the law and Constitution – Alas, Congress has been negligent ’ and warns of the consequences of bad intel with several examples including

“Decisions leading to the detention, interrogation, and abusive treatment (including rendition) of prisoners in Iraq and elsewhere in the war against terrorists resulted in an outpouring of anger directed at America.”

More recently, [McDonough](#), who reportedly has a ‘cozy’ relationship with CIA Chief John Brennan, has been personally ‘negotiating’ redaction of the 500 page Summary for the last six months while urging Senators to not pursue, presumably forestalling an indictment, Brennan in the expected aftermath of public reaction to the Summary’s release. The White House has sought to stall demands for Brennan’s resignation and has expressed ‘[full confidence](#)’ in the CIA Chief.

Now in a position of influence to adopt his earlier advocacy for increased Congressional oversight, the president’s Chief of Staff is [reportedly hustling](#) Senators to protect the Executive Branch and the CIA’s insistence to redact significant portions of the Summary.

“The McDonough of 2006 has a message for the Senate Intelligence Committee of today: Don’t give up, don’t abdicate — fight for what you believe to be right. That’s the only way to fulfill your responsibilities,” said Steven Aftergood of the Federation of American Scientists’ Project on Government Secrecy.

Sen. Ron Wyden (D-Oregon), a member of the SSCI, said that “We’ve been at this for months and months, and we’ve gone through [ludicrous redactions](#). What this is really all about is trying to bury as many key facts as possible in order to prevent the real accounting.”

Individuals familiar with the SSCI efforts suggest that the [Executive Summary](#) is totally focused on CIA malfeasance and does not assess any responsibility or place any criminal liability on former President George W. Bush – or any of the higher echelon or legal staff within the Bush Administration for their contribution to creating the network that allowed the CIA RDI program to operate with legal impunity outside international law.

In former CIA Director Leon Panetta’s recent memoir, *“Weighty Fights: A Memoir of Leaders in War and Peace,”* he [reported](#) that *“I was summoned down to a meeting in the Situation Room, where I was told I would have to ‘explain’ this deal to Rahm... It did not take long to get ugly.”*

“The president wants to know who the f**k authorized this release to the committees,” Rahm said, slamming his hand down on the table. ‘I have a president with his hair on fire, and I want to know what the f**k you did to f**k this up so bad!’”

Dennis Blair, then Director of National Intelligence, defended Panetta, saying the real cause for concern should be the individual who instigated Obama’s response in the first place. “‘If the president’s hair is on fire,’ he retorted, ‘I want to know who the f**k set his hair on fire,’”

Panetta recalled Blair saying.

Both Blair and Panetta left the Administration in 2010 with Blair reportedly [fired](#) over conflicts with White House staff.

According to Sen. Feinstein “I have concluded the redactions eliminate or obscure key facts that support the report’s findings and conclusions. Until these redactions are addressed to the committee’s satisfaction, the report will not be made public.”

As Tuesday’s election results are indicative of a ‘no confidence’ vote in the President and the Democratic Party, there was nary a mention of constitutional issues and specifically, the Administration’s stonewall of the SSCI report on the campaign trail.

Will the President, who campaigned as a constitutional scholar in 2008 and promised his attorney general would ‘immediately review’ evidence of criminality as ‘[no one is above the law](#),’ allow the redactions to further erode his much-cherished legacy?

Will the fate of the SSCI report further demonstrate that neither Republicans nor Democrats can be trusted to protect the Constitution - or will an as-yet unknown individual of conscience be required to release the full 6,000 page document that should have been released in 2012 when the SSCI completed its work?

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