



Written by [Thomas R. Eddlem](#) on March 12, 2014

Sen. Feinstein: CIA Smashed Constitution, Separation of Powers

Senate Select Intelligence Committee Chairman Dianne Feinstein (shown, D-Calif.) publicly charged the CIA with repeatedly spying on her committee staffers conducting oversight of the agency, and of deleting files from committee computers. Feinstein [spoke on the floor of the U.S. Senate](#) March 11 to denounce the agency and claimed the “CIA’s search may well have violated the separation of powers principle embodied in the United States Constitution, including the speech and debate clause. It may have undermined the constitutional framework essential to effective congressional oversight of intelligence activities or any other government function.”



Feinstein stated in her Senate speech that several CIA officials had acknowledged the surveillance and interference with the committee’s efforts to draft a report on the CIA’s unconstitutional prisons abroad during the Bush era. According to Feinstein, the committee concluded “the interrogations and the conditions of confinement at the CIA detentions sites were far different and far more harsh than the way the CIA had described them to us.”

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Despite Feinstein’s contention that the CIA had acknowledged the scan of Intelligence Committee computers — and removal of classified materials the CIA had previously given to the committee — CIA Director John Brennan responded to with a public denial. “As far as the allegations of the CIA hacking into Senate computers,” Brennan [told](#) NBC’s Andrea Mitchell in an interview at the Council on Foreign Relations, “nothing could be further from the truth. We wouldn’t do that. That is just beyond the scope of reason in terms of what we would do.”

The *New Yorker* [reported](#) back on October 17, 2013 that “Democrats on the Senate Intelligence Committee, including Chairwoman Dianne Feinstein, are pushing to declassify and publicly release it [the report]. But John Brennan, the agency’s director, a career C.I.A. officer, and an Obama confidant, is apparently resisting disclosure, and challenging many of the report’s conclusions.”

Feinstein in her speech said that the five-year investigation of the CIA’s torture program was delayed by CIA bureaucratic resistance, spurious claims of “executive privilege,” outright misrepresentation and deceit, and career protectionism on behalf of the Acting CIA General Counsel Robert Eatinger. “I should note that for most if not all of the CIA’s detention and interrogation program, the now-acting general counsel was a lawyer in the CIA’s counterterrorism center, the unit within which the CIA managed and carried out this program. From mid-2004 until the official termination of the detention and interrogation program in January 2009, he was the unit’s chief lawyer. He is mentioned by name more



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than 1,600 times in our study,” she said.

On March 11, CIA Director Brennan sent an internal letter to CIA staff defending the agency’s defensive stance, in which he hinted at trying to save the careers of those who covered up the torture, [saying](#). “We also owe it to the women and men who faithfully did their duty in executing this program to try to make sure any historical account of it is balanced and accurate.”

The unconstitutional bureaucratic intransigence to congressional oversight has not damaged the careers of CIA officials involved thus far. The Obama administration last fall [promoted](#) CIA General Counsel Stephen W. Preston to general counsel for the Defense Department. This appointment was approved by the U.S. Senate despite Preston’s acknowledgment to Senate Select Committee on Intelligence members that “briefings to the Committees included inaccurate information related to aspects of the program of express interest to Members” on the issue of the CIA’s “extra-constitutional” detention and torture programs.

Among the purloined documents was a CIA internal review called the “Panetta Review” of the torture/detention program that mirrored the conclusions of Senate investigators, and backed up the conclusions of the still-classified 6,000-page Senate report. Feinstein noted that “Some of these important parts that the CIA now disputes in our committee study are clearly acknowledged in the CIA’s own internal Panetta review.” The Senate Report reportedly has a 298-page section contrasting the official CIA response to the Senate Report with the Panetta Review.

Feinstein stated on the Senate floor that “When the internal Panetta Review documents disappeared from the committee’s computer system, this suggested once again that the CIA had removed documents already provided to the committee, in violation of CIA agreements and White House assurances that the CIA would cease such activities. As I have detailed, the CIA has previously withheld and destroyed information about its detention and interrogation program, including its decision in 2005 to destroy interrogation videotapes over the objections of the Bush White House and the director of national intelligence. Based on the above, there was a need to preserve and protect the internal Panetta Review in the committee’s own secure spaces.”

The Obama administration has refused to provide a copy of the Panetta Review to Senate investigators, though the committee is keeping a partial copy of the document in its Hart Office Building headquarters.

No Oversight

The most important lesson of Senator Feinstein’s speech is how thoroughly inept congressional oversight of federal intelligence agencies has been over the past decade. Feinstein’s speech noted that:

1. Senate intelligence committee members didn’t know about the CIA’s secret torture prisons until hours before the American people did: “The origin of this study, the CIA’s detention and interrogation program, began operations in 2002, though it was not until September, 2006 that members of the intelligence committee, other than the chairman and the vice chairman were briefed. In fact, we were briefed by then-CIA Director Hayden only hours before President Bush disclosed the program to the public.”
2. The CIA refused to provide documents to the committee directly, and insisted upon an indirect portal: “Then-Director Panetta and I agreed in an exchange of letters that the CIA was to provide a ‘stand-alone computer system’ with a ‘network drive segregated from CIA networks’ for the committee that would only be accessed by information technology personnel at the CIA who would



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‘not be permitted to share information from the system with other CIA personnel, except as otherwise authorized by the committee.’” Feinstein’s lapdog committee supinely acceded to CIA demands.

3. The CIA delayed putting documents into this indirect portal: “The CIA also insisted on conducting a multi-layered review of every responsive document before providing the document to the committee.” Feinstein noted that “we viewed this as unnecessary, and raised concerns that it would delay our investigation.” And it did.

4. The CIA committed three different redactions of documents surreptitiously in 2010, and then gave committee members a bureaucratic run-around: “Staff approached the CIA personnel at the off-site location, who initially denied that documents had been removed.... And then the CIA stated that the removal of the documents was ordered by the White House.... When the committee approached the White House, the White House denied giving the CIA any such order.”

5. The CIA searched committee computers in January 2014 while it looked for the Panetta Review and other documents.

6. The CIA continues to this day to be unresponsive to Feinstein’s requests: “The CIA has refused to answer the questions in my January 23rd letter.”

Senator Feinstein, head of the “Intelligence Committee,” waited until after some five years of delays and misinformation from the CIA in order to make this information public, and the toughest response she has given was the following statement:

I have grave concerns that the CIA’s search may well have violated the separation of powers principle embodied in the United States Constitution, including the speech and debate clause. It may have undermined the constitutional framework essential to effective congressional oversight of intelligence activities or any other government function.

But the reality is that the Senate Select Committee on Intelligence — along with its even less effective House of Representatives counterpart, the House Permanent Select Committee on Intelligence — gave up on oversight of the federal government’s intelligence agencies more than a decade ago.

Senator Feinstein is trying to get the Obama administration to declassify the Senate report, but over the past five and a half years President Obama has deferred his judgment to CIA leadership. And the CIA views its crimes as state secrets, and the coverups of its crimes as top state secrets.

Photo of Senator Dianne Feinstein (D-Calif.): AP Images

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