

Senate Select Committee on Intelligence

Committee Study of the Central Intelligence Agency's Detention and Interrogation Program



Additional Views

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**SENATOR
UDALL
ADDITIONAL
VIEWS**

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**SEN. UDALL ADDITIONAL VIEWS TO THE EXECUTIVE SUMMARY
OF THE COMMITTEE STUDY ON THE
CIA'S DETENTION AND INTERROGATION PROGRAM**

June 9, 2014

This summary of the Study of the CIA's Detention and Interrogation Program is over five years in the making and highlights the key facts and findings in the much more comprehensive, nearly 6700-page report that the Senate Select Committee on Intelligence voted to initiate in 2009. This Study has been rightly called one of the most significant examples of oversight in the history of the U.S. Senate. It is based on a documentary review of more than 6 million pages of CIA and other records, and raises critical questions about intelligence operations and oversight, many of which remain highly relevant today.

The Committee's Study details the numerous flaws in the CIA's Detention and Interrogation Program. Among them: It was allowed to be shaped and conducted by individuals who didn't understand what they were doing and who had a financial stake in representing the program as effective. It was run by personnel with insufficient training. It was managed incompetently by senior CIA personnel. The "enhanced interrogation techniques" were far more brutal than anyone understood. Perhaps most importantly, these techniques did not work. Nonetheless, the program was sold to the White House, the Department of Justice, the Congress, and the media as a necessary program that provided unique information that "saved lives."

The significance of the Committee Study lies in the words written in its pages. But the history of the Study itself is also an important story that needs to be told.

Chairman Feinstein, who has shouldered the greatest responsibility and deserves the greatest credit for seeing this project to completion, and former Chairman Rockefeller, who served as the Committee's ranking member and then Chairman during the time when the CIA was conducting its program, are best able to speak to the earliest days of the Study and the events that led the Committee to undertake this enormous task. And after five years of courageous leadership in pushing this Study forward, navigating partisan rancor and CIA obstacles, Chairman Feinstein can certainly speak most authoritatively to all the twist and turns on the road to the Study's release.

But as a newer member of the Committee, I also have a perspective to share. And I believe that the history of the CIA's program isn't complete without a full telling of the events that came after the program ended, to include this Committee's efforts – and mine – to complete and declassify the Study of the CIA's Detention and Interrogation Program.

As a new member on the Committee in 2011, I was briefed on the origins and status of the Study and began reading early drafts and discussing the way forward with Committee colleagues. I had always believed that the CIA's program – with its "enhanced interrogation techniques," renditions, and black sites – was a stain on our country's recent past. But I was deeply disturbed to learn specifics about the flaws in the program, the misrepresentations, the brutality. During this time, I also learned about the dedicated Committee staff who were working every day and late into the nights at the CIA-leased off-site facility, where they sifted through millions of CIA records, and in our Committee spaces in the Senate, where they continued to write the thousands of pages that would become the first comprehensive review of the CIA's program.

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By late 2012, the Study was largely complete. In December 2012, I supported the Chairman and other Committee colleagues in voting to approve the Study, which we then provided to the White House and Executive Branch agencies for "review and comment." The CIA took over six months to produce its comments on the Study, during which time I and other Committee members repeatedly requested that CIA personnel meet with Committee staff to discuss the report. The CIA declined all requests to meet with its oversight committee on this matter.

In January 2013, President Obama nominated John Brennan to serve as the next CIA director. I hoped that as a career CIA officer, Brennan would understand the opportunity before him to lead the Agency in correcting the false record that the Committee's Study uncovered and instituting the necessary reforms to restore the CIA's reputation for integrity and analytical rigor. During his nomination hearing, I stressed to Mr. Brennan that this Study isn't just about the past. Acknowledging the flaws of this program is essential for the CIA's long-term institutional integrity – as well as for the legitimacy of ongoing sensitive programs. The findings of this Study directly relate to how other CIA programs are managed today. The CIA cannot be its best unless it faces the serious and grievous mistakes of this program – to include the false representations made to policymakers and others – to ensure these mistakes never happen again.

I also expressed my belief to Mr. Brennan that the government has an obligation to the American people to face its mistakes transparently, help the public understand the nature of those mistakes, and correct them. I asked him whether he believes the CIA has a responsibility to correct any inaccurate information that was provided to the previous White House, the Department of Justice, Congress, and the public regarding the CIA's Detention and Interrogation Program. Mr. Brennan said yes.

Mr. Brennan has yet to make any corrections to the public record. Instead, the CIA engaged in efforts to obstruct and undermine the Committee's oversight efforts. In spring 2013, as the CIA prepared its comments on the Study, we heard through the public statements of unnamed current intelligence officials and named former officials – those who have a clear stake in preserving the myth of the program's value – that the CIA was highly critical of the Committee's report, believing it to be "political" and "biased."

In May 2013, still awaiting the CIA's promised response to the Committee Study, I wrote to President Obama, underlining the importance of correcting the public record if it was determined that inaccurate information had been conveyed to the American people by the U.S. government and urging a swift response from the CIA to the Committee Study. I received no reply.

On June 27, 2013, the CIA finally submitted its 122-page formal response to the Committee, though it was not the correction of the record that many of us hoped it would be. Instead, a CIA spokesman said that although the Agency "agrees with a number of the study's findings," the Study contained "significant errors." A White House spokeswoman noted "factual questions" about the Study. But the CIA only identified one factual error in its response – and it was one that had no impact on the report and was quickly corrected. More worrisome, the CIA continued to cling to false narratives about the effectiveness of the program in its written response – only admitting to the factual errors in its own response in meetings with Committee staff. The Committee requested that the CIA resubmit a written response reflecting corrections to the errors that the CIA acknowledged in meetings, but the CIA submitted no revised response. As such, the last document the CIA submitted to the Committee on this program continues to be riddled with factual errors and misstatements.

In July 2013, as a member of the Senate Armed Services Committee, I attended the nomination hearing of Stephen Preston – then CIA General Counsel – to be General Counsel at the Department of Defense. His

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answers to questions regarding his role in and support of the CIA's June 27, 2013, response concerned me enough that I asked him to answer additional questions for the hearing record. His answers to my additional questions contrasted with statements provided by the CIA in its response to the Committee Study, admitting that the CIA's efforts "fell well short" of current standards for providing information to its oversight committees, as is required by law; that CIA briefings to the Committee included "inaccurate information"; that the CIA's efforts had again fallen "well short of our current practices when it comes to providing information relevant to [the Justice Department's Office of Legal Counsel]'s legal analysis"; and that by reviewing the CIA's records, it would be possible to determine whether information provided after the use of brutal interrogation techniques had already been obtained from other sources, something the CIA continued to officially claim was "unknowable."

But Stephen Preston wasn't the only CIA official to disagree with the standard CIA narrative on its detention and interrogation program. As I discovered in late 2013, an internal CIA review of the program initiated under former Director Panetta corroborates some of the significant findings of the Study and acknowledges significant errors made during the course of the CIA's program – but this internal review conflicts with the CIA's own official response provided to the Committee, which denies or minimizes those same errors.

As Chairman Feinstein so eloquently outlined in her floor speech on March 11, 2014, drafts of the so-called Panetta review had been provided to Committee staff years before – apparently unknowingly or mistakenly by the CIA. When the disparity between its conclusions and the CIA's June 27, 2013, response to the Committee became clear, Committee staff grew concerned that the CIA was knowingly providing inaccurate information to the Committee in the present day – which would be a serious offense and a deeply troubling matter for this Committee, the Congress, the White House, and our country. To preserve evidence of this potential offense, Committee staff securely transported a printed portion of the draft Panetta review from the CIA-leased facility to the Committee's secure offices in the Senate.

At the December 2013 nomination hearing of Caroline Krass – who was slated to replace Preston as the CIA's top lawyer – I asked Ms. Krass to ensure that a final copy of this review would be made available to the Committee, since it raised fundamental questions about why a review the CIA conducted internally years ago – and never provided to the Committee – is so different from the CIA's formal written response and from the many public statements of unnamed and former CIA officials. Chairman Feinstein had made the same request in an earlier letter. Although the Committee had a draft of the review already in its possession, I believed then – as I do now – that it was important to make public the existence of this internal document and its conclusions and to obtain a final version.

In early January 2014, I wrote a letter to President Obama reiterating my request that the final draft of the Panetta review be provided to the Committee. The CIA needed to reconcile the fact that it agreed with the Committee behind closed doors with its continued CIA criticisms of the Study in public. But instead of coming clean, the Agency chose to double down on its denials.

In early March 2014, I wrote another letter to President Obama, restating my interest in the final Panetta review. In that letter, I also alluded to "unprecedented action" that the CIA had recently taken against the Committee, calling it "incredibly troubling for the Committee's oversight responsibilities and for our democracy." As news reports made clear on March 4, 2014, and Chairman Feinstein explained further in her March 11, 2014, speech, that action was the CIA's unauthorized search of the Committee's computers at the off-site facility – a search conducted out of concern that Committee staff already had access to the Panetta review, a document they were fully cleared to see. More troubling, despite admitting to the

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Committee that the CIA conducted the search, Director Brennan publicly referred to “spurious allegations about CIA actions that are wholly unsupported by the facts.”

The CIA never asked the Committee whether or how it had access to the review conducted under Director Panetta. Instead, without notifying the Committee, the CIA searched the Committee computers that the agency had agreed were off limits, and in the process, the CIA may have violated multiple provisions of the Constitution (including both the Speech and Debate Clause and the Fourth Amendment) as well as federal criminal statutes and Executive Order 12333. Director Brennan declined to respond to further questions about the CIA’s actions to the Committee, and instead, the CIA’s acting general counsel – who was involved in the 2005 decision to destroy the CIA’s interrogation videotapes – filed a crimes report with the Department of Justice about the Committee staff’s actions to preserve the Panetta review documents. The CIA’s Inspector General also referred the CIA search to the Department of Justice, and the Senate Sergeant at Arms continues to conduct a forensic review of the Committee’s computers.

The matter of the Panetta Review remains unresolved, but serves to emphasize the fact that the CIA is unwilling or unable to submit itself to honest and transparent oversight by the Congress. The agency not only hasn’t learned from its mistakes of the past, but continues to perpetuate them.

Meanwhile, even as the threat of criminal prosecution and inquiry persisted, Committee staff continued to work at the direction of the Members in preparing the Committee Study for declassification and release. After months spent incorporating comments from the CIA’s June 27, 2013, response – to ensure that the CIA’s views on the Study’s findings were represented – Committee staff completed a revised Committee Study that grew from 6,300 pages to nearly 6,700 pages. On April 3, 2014, in a bipartisan 11 – 3 vote, the Committee moved to submit for declassification the nearly 500-page Executive Summary and 20 findings and conclusions of the Committee Study on the CIA’s Detention and Interrogation Program.

This was a proud day for the Committee – for the Chairman who led this vital effort, for other members who worked alongside her, and for Committee staff, who put their lives on hold for years while completing this seminal work. This was also a proud day for the American people – who deserve to understand this dark chapter in our history and why it is still relevant today.

The American people also deserve to read as much of this history as possible. That is why the Chairman and I and many of our colleagues called repeatedly for the fullest possible declassification of the Executive Summary and the Study’s findings and conclusions, with only redactions as necessary for real national security concerns, not to avoid embarrassment. The American people deserve a proper and accurate accounting of the history, management, operation, and effectiveness of this program – and they have the right to know what the government has done on their behalf. It is my hope that we can soon release not just the Executive Summary, but the entire 6,700 pages of the Committee’s Study, for the American people.

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