

v.

KHALID SHAIKH MOHAMMAD, WALID
MUHAMMAD SALIH MUBARAK BIN
'ATTASH, RAMZI BIN AL SHIBH, ALI
ABDUL-AZIZ ALI, MUSTAFA AHMED
ADAM AL HAWSAWI

Defense Motion to Compel Discovery
Of Senate Select Committee on Intelligence
Study of RDI Program and Related Documents

2 April 2014

1. **Timeliness:** This motion is timely filed within the Trial Judiciary Rules of Court, Rule 3.7(b).

2. **Relief Sought:** Mr. al Baluchi respectfully requests that the Commission compel production of full, un-redacted versions of the Senate Select Committee on Intelligence Study of the CIA's Detention and Interrogation Program, the CIA internal review of the program known as the "Panetta Review," the CIA's official response to the Senate committee study, and underlying documents referring or relating to Mr. al Baluchi.

3. **Overview:** The Senate Select Committee on Intelligence (SSCI) study is the most comprehensive accounting of the CIA's activities related to the rendition, detention, and interrogation of al Qaeda suspects—including Mr. al Baluchi—between 2002 and 2006. It encompasses the creation and operation of the program, veracity of information provided to the committee about the program, legal guidance and compliance. The final report is approximately 6,300 pages long, including findings and conclusions by the Committee, and based on the review of 6.2 million pages of records.

In June 2012, the CIA provided an official response to the Senate investigation, but it apparently also created a parallel unofficial response. On 11 March 2014, Senator Feinstein addressed the Senate to explain that the CIA had surreptitiously removed from SSCI control the

“Panetta Review,” an internal CIA investigation which contradicted the CIA’s official response to the SSCI report and confirmed the findings by the Committee.¹

Mr. al Baluchi asks this Commission to compel the Government to turn over these documents as they are vital to his defense. Furthermore, the Panetta Review controversy demonstrates that prosecution representations about the universe of CIA documents cannot be trusted, as recent revelations demonstrate a concerted effort by the CIA to cover up what happened to Mr. al Baluchi and others; if the CIA is willing to remove inconvenient documents from the control of the Senate, there is every reason to believe they would deny access to the prosecution.

4. **Burden of proof:** The burden of persuasion on this motion to compel discovery rests with the defense.²

5. **Facts:**

a. On 21 May 2013,³ Mr. al Baluchi submitted a discovery request for Senate Select Committee on Intelligence Study of the CIA’s Detention and Interrogation Program and all documents referring or relating to Mr. Baluchi referred to in the SSCI report.

b. On 15 July 2013,⁴ Mr. al Baluchi submitted a discovery request for all documents responding to the Senate Select Committee on Intelligence Study of the CIA’s Detention and Interrogation Program, including any documents that refer or relate to Mr. Al Baluchi.

c. To date Mr. al Baluchi has received no response from the prosecution on either of the above requests.⁵

¹ Attachment D, Statement of Senator Feinstein, 11 March 2014.

² RMC 905(c)(2).

³ Attachment B, DR-051-AAA, 21 May 2013.

⁴ Attachment C, DR-078-AAA, 15 July 2013.

⁵ This refusal to respond is a constructive denial of the discovery requests. See AE245.

6. Law and Argument:

The SSCI has prepared a 6,300-page report on the rendition, detention, and interrogation of Mr. al Baluchi and others, based on the review of 6.2 million original government documents. According to Senator Feinstein, the results of the staff report were “chilling,” as “the interrogations and the conditions of confinement at the CIA detention[] sites were far different and far more harsh than the way the CIA had described them to us.”⁶

Mr. al Baluchi is entitled to the requested material under the Military Commissions Act of 2009 (“MCA”), the Rules for Military Commissions (“RMC”), and the Fifth and Eighth Amendments to the Constitution. The contents of the SSCI report, the CIA’s response to the Committee, and the “Panetta Review” are both “material to preparation of the defense”⁷ and “helpful to the defense”⁸ for both the case in chief and at sentencing, if necessary.⁹

Under Director Panetta, the CIA provided SSCI “literally millions of pages of operational cables, internal emails, memos and other documents”¹⁰ to review. In contrast, the prosecution has produced to the defense exactly 215 pages of summarized, sanitized documents created specifically for litigation eight or more years after the fact. Senator Feinstein, in her statement, recounted being assured by then-Director Michael Hayden that destroying tapes of interrogations were not destruction of evidence because “detailed records of the interrogations existed on paper in the form of CIA operational cables describing the detention conditions and the day-to-day CIA

⁶ Attachment D at 2.

⁷ RMC 701(c)(1).

⁸ *United States v. Yunis*, 867 F.2d 617, 623 (D.C. Cir. 1989).

⁹ Mr. al Baluchi explained the significance of information about torture in depth in AE112 Motion to Compel Discovery Related to White House and DOJ Consideration of the CIA Rendition, Detention and Interrogation Program, incorporated by reference here.

¹⁰ Attachment D at 2.

interrogations.”¹¹ These documents reveal “the horrible details of a CIA program that never, never, never should have existed.”¹² There can be no doubt that the SSCI report and the underlying documents relating to Mr. al Baluchi contain information critical to his defense.

Among these documents is the “Panetta Review,” based on the same information that the CIA provided to the SSCI. Senator Feinstein notes that what made the Panetta Review interesting was the “analysis and acknowledgment of significant CIA wrongdoing.”¹³ She further revealed that the Panetta Review contained some of the same troubling information uncovered by Committee staff.¹⁴ Senator Feinstein has explained that the CIA had surreptitiously removed the Panetta Review from SSCI control after they had reviewed it.¹⁵

The Panetta Review contradicts what the CIA delivered to SSCI in the form of its official response. Senator Feinstein asked the question directly, “How can the CIA’s official response to our study stand factually in conflict with its own internal review?”¹⁶ The Panetta Review is far more than helpful to Mr. al Baluchi’s defense, as it provides an unvarnished, internal assessment of the RDI program by the CIA itself. According to Senator Feinstein, the Panetta document corroborates critical information in the SSCI report, which the “CIA’s official response objects to, denies, minimizes or ignores.”¹⁷

In addition to the importance of the SSCI and CIA documents on their face, the CIA efforts to hide information it previously provided to oversight authorities are important to the discovery process in this case. If the CIA is willing to pull the wool over the eyes of what could

¹¹ Attachment D at 2.

¹² *Id.* at 8.

¹³ *Id.* at 4.

¹⁴ *Id.*

¹⁵ *Id.* at 5.

¹⁶ *Id.*

¹⁷ *Id.*

easily be called a friendly oversight committee, how can Mr. al Baluchi expect that it will be forthcoming to the prosecution with information detailing his torture? Senator Feinstein said that “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.”¹⁸ Comparison of the official CIA response and the Panetta Review will demonstrate that the CIA will go to whatever lengths are necessary to protect itself, including suppressing and destroying government records.

Separate from the underlying information, the SSCI and CIA characterization of Mr. al Baluchi’s torture is itself a mitigating factor. Under the Eighth Amendment, “the sentencer . . . [may] not be precluded from considering, as a mitigating factor, any aspect of a defendant’s character or record . . . that the defendant proffers as a basis for a sentence less than death.”¹⁹ The SSCI study seeks “to ensure that an un-American, brutal program of detention and interrogation will never again be considered or permitted.”²⁰ Using the SSCI study and the Panetta Review, Mr. al Baluchi can offer the panel a powerful reason not to sentence Mr. al Baluchi to death: “to ensure that an un-American, brutal program of detention and interrogation will never again be considered or permitted.”²¹

While Mr. al Baluchi supports the goal of having the entire SSCI report declassified, so that the world may judge the CIA’s actions, he cannot wait even longer for information vital to defend his life in court. Therefore, Mr. al Baluchi respectfully asks the Commission to compel the production of the SSCI report, the official CIA response, and the Panetta Review and related

¹⁸ Attachment D at 6.

¹⁹ *Eddings v. Oklahoma*, 455 U.S. 104, 110 (1982) (quoting *Lockett v. Ohio*, 438 U.S. 586, 604 (1978) (emphasis original)).

²⁰ Attachment D at 8.

²¹ *Id.*

documents forthwith.

7. **Request for Oral Argument:** The defense requests oral argument.

8. **Request for Witnesses:**

Robert Eatinger

Leon Panetta

Robert F. Bauer

Greg Craig

John Brennan

David B. Buckley

Stephen W. Preston

Michael J. Morell

9. **Certificate of Conference:** The prosecution states its position as follows: “The Prosecution will - as it has in the past and continues to do - produce all relevant, material, and responsive information in accordance with the Military Commissions Act of 2009 ("M.C.A."), 10 U.S.C. §§ 948a et seq., Rules for Military Commissions ("R.M.C.") 701 and 703, Military Commissions Rule of Evidence ("M.C.R.E.") 505, and other applicable law. However, in regard to the defense request for a copy of production of the SSCI RDI report and related documents, the Prosecution can neither grant nor deny the request at this time. The report, which is a Legislative Branch document, has yet to be finalized and has not been made available to the Prosecution.”

10. **Attachments:**

A. Certificate of Service;

B. Defense Request for Discovery (DR-051-AAA), 21 May 2013;

- C. Defense Request for Discovery (DR-078-AAA), 15 July 2013;
- D. Transcript of Senator Diane Feinstein's statement on the Senate Floor, 11 March 2014.

Very respectfully,

//s//
JAMES G. CONNELL, III
Detailed Learned Counsel

Counsel for Mr. al Baluchi

//s//
STERLING R. THOMAS
Lt Col, USAF
Detailed Military Defense Counsel

CERTIFICATE OF SERVICE

I certify that on the 2nd day of April, 2014, I electronically filed the foregoing document with the Clerk of the Court and served the foregoing on all counsel of record by email.

//s//

JAMES G. CONNELL, III

Learned Counsel

Attachment B



UNCLASSIFIED//FOR PUBLIC RELEASE
DEPARTMENT OF DEFENSE
OFFICE OF THE CHIEF DEFENSE COUNSEL
OFFICE OF MILITARY COMMISSIONS
1620 DEFENSE PENTAGON
WASHINGTON, DC 20301-1620

21 May 2013

MEMORANDUM FOR Trial Counsel

FROM: Sterling R. Thomas, Lt Col, USAF, Military Defense Counsel for Mr. al Baluchi

SUBJECT: DEFENSE REQUEST FOR DISCOVERY (**DR-051-AAA**)

Defendant, by and through undersigned counsel pursuant to RMC 701, the Due Process Clause of the Fifth Amendment, the Confrontation Clause to the Sixth Amendment, and the Compulsory Process Clause of the Sixth Amendment to the United States Constitution, hereby submits the following discovery requests.

(1) Please produce the Senate Select Committee on Intelligence Study of the CIA's Detention and Interrogation Program in full without abridgment, abbreviation, expurgation, and/or redaction of any kind.

(2) Please produce all documents and communications of any kind referring or relating to Ali Abdul Aziz Ali, Ammar al Baluchi, or any other names or aliases for the same individual, that are referred to in or provide source material for the Senate Select Committee on Intelligence Study of the CIA's Detention and Interrogation Program, in full without abridgment, abbreviation, expurgation, and/or redaction of any kind.

Please do not hesitate to contact me with any questions or concerns.

Very respectfully,

//s//

Sterling R. Thomas,

Lieutenant Colonel, USAF

Military Defense Counsel for Mr. al Baluchi

DR-051-AAA
2013-05-21

Attachment C



UNCLASSIFIED//FOR PUBLIC RELEASE
DEPARTMENT OF DEFENSE
OFFICE OF THE CHIEF DEFENSE COUNSEL
OFFICE OF MILITARY COMMISSIONS
1620 DEFENSE PENTAGON
WASHINGTON, DC 20301-1620

15 July 2013

MEMORANDUM FOR Trial Counsel

FROM: Sterling R. Thomas, Lt Col, USAF, Military Defense Counsel for Mr. al Baluchi

SUBJECT: DEFENSE REQUEST FOR DISCOVERY (**DR-078-AAA**)

Defendant, by and through undersigned counsel pursuant to RMC 701, the Due Process Clause of the Fifth Amendment, the Confrontation Clause to the Sixth Amendment, and the Compulsory Process Clause of the Sixth Amendment to the United States Constitution, hereby submits the following discovery requests.

(1) Please produce all documents mentioning or responding to the Senate Select Committee on Intelligence Study of the CIA's Detention and Interrogation Program in full without abridgment, abbreviation, expurgation, and/or redaction of any kind.

(2) Please produce all documents and communications of any kind referring or relating to Ali Abdul Aziz Ali, Ammar al Baluchi, or any other names or aliases for the same individual, that are referred to in or provide source material for all documents mentioning or responding to the Senate Select Committee on Intelligence Study of the CIA's Detention and Interrogation Program, in full without abridgment, abbreviation, expurgation, and/or redaction of any kind.

Please do not hesitate to contact me with any questions or concerns.

Very respectfully,

//s//

Sterling R. Thomas,
Lieutenant Colonel, USAF
Military Defense Counsel for Mr. al Baluchi

DR-078-AAA
2013-07-15

Attachment D



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Transcript: Sen. Dianne Feinstein says CIA searched Intelligence Committee computers

Published: March 11

Sen. Dianne Feinstein on Tuesday morning accused the CIA of violating federal law, detailing how the agency secretly removed documents from computers used by the Senate Intelligence Committee. The following is a complete transcript of Feinstein's speech, courtesy of Federal News Service.

[Read more about what she said here.](#)

Good morning. Over the past week, there have been numerous press articles written about the Intelligence Committee's oversight review of the detention and interrogation program of the CIA. Specifically, press attention has focused on the CIA's intrusion and search of the Senate Select Committee's computers, as well as the committee's acquisition of a certain internal CIA document known as the "Panetta Review." I rise today to set the record straight and to provide a full accounting of the facts and history.

Let me say up front that I come to the Senate floor reluctantly. Since January 15th, 2014, when I was informed of the CIA search of this committee's network, I've been trying to resolve this dispute in a discreet and respectful way.

I have not commented in response to media requests for additional information on this matter, however the increasing amount of inaccurate information circulating now cannot be allowed to stand unanswered.

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.

A little more than a year later, on December 6th, 2007, a New York Times article revealed the troubling fact that the CIA had destroyed video tapes of some of the CIA's first interrogations using so-called enhanced techniques. We learned that this destruction was over the objections of President Bush's White House counsel and the director of national intelligence.

After we read -- excuse me -- read about the tapes of the destruction in the newspapers, Director Hayden briefed the Senate Intelligence Committee. He assured us that this was not destruction of evidence, as detailed records of the interrogations existed on paper in the form of CIA operational tables describing the detention conditions and the day-to-day CIA interrogations.

The CIA director stated that these cables were, quote, a more than adequate representation, end quote, of what would have been on the destroyed tapes. Director Hayden offered at that time, during Senator Jay Rockefeller's chairmanship of the committee, to allow members or staff review these sensitive CIA operational cables, that the videotapes -- given that the videotapes had been destroyed.

Chairman Rockefeller sent two of his committee staffers out to the CIA on nights and weekends to review thousands of these cables, which took many months. By the time the two staffers completed their review into the CIA's early interrogations in early 2009, I had become chairman of the committee and President Obama had been sworn into office.

The resulting staff report was chilling. 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.

As a result of the staff initial report, I proposed and then-Vice Chairman Bond agreed and the committee overwhelmingly approved that the committee conduct an expansive and full review of the CIA's detention and interrogation program.

On March 5th, 2009, the committee voted 14-1 to initiate a comprehensive review of the CIA detention and interrogation program.

Immediately, we sent a request for documents to all relevant executive branch agencies, chiefly among them the CIA. The committee's preference was for the CIA to turn over all responsive documents to the committee's office, as had been done in previous committee investigations.

Director Panetta proposed an alternative arrangement, to provide literally millions of pages of operational cables, internal emails, memos and other documents pursuant to a committee's document request at a secure location in northern Virginia. We agreed, but insisted on several conditions and protections to ensure the integrity of this congressional investigation.

Per an exchange of letters in 2009, then-Vice Chairman Bond, then-Director Panetta and I agreed in an exchange of letters that the CIA was to provide a, quote, stand-alone computer system, end quote, with a, quote, network drive segregated from CIA networks, end quote, for the committee that would only be accessed by information technology personnel at the CIA who would, quote, not be permitted to share information from the system with other CIA personnel, except as otherwise authorized by the committee, end quote.

It was this computer network that notwithstanding our agreement with Director Panetta was searched by the CIA this past January -- and once before, which I will later describe.

In addition to demanding that the documents produced for the committee be reviewed at a CIA facility, the CIA also insisted on conducting a multi-layered review of every responsive document before providing the document to the committee. This was to ensure the CIA did not mistakenly provide documents unrelated to the CIA's detention and interrogation program or provide documents that the president could potentially claim to be covered by executive privilege.

While we viewed this as unnecessary, and raised concerns that it would delay our investigation, the CIA hired a team of outside contractors who otherwise would not have had access to these sensitive documents to read multiple times each of the 6.2 million pages of documents produced before providing them to fully cleared committee staff conducting the committee's oversight work. This proved to be a slow and very expensive process.

The CIA started making documents available electronically to the committee's staff at the CIA leased facility in mid-2009. The number of pages ran quickly to the thousands, tens of thousands, the hundreds of thousands and then into the millions. The documents that were provided came without any index, without any organizational structure. It was a true document dump that our committee staff had to go through and make sense of.

In order to piece together the story of the CIA's detention and interrogation program, the committee staff did two things that will be important as I go on. First, they asked the CIA to provide an electronic search tool so they could locate specific relevant documents for their search among the CIA-produced documents, just like you would use a search tool on the Internet to locate information.

Second, when the staff found a document that was particularly important or that might be referenced in our file report, they would often print it or make a copy of the file on their computer so they could easily find it again. There are thousands of such documents in the committee's secure spaces at the CIA facility.

Now, prior removal of documents by CIA. In early 2010, the CIA was continuing to provide documents and the committee staff was gaining familiarity with the information it had already received. In May of 2010, the committee staff noticed that the documents had been provided for the committee -- that had been provided for the committee's review were no longer accessible.

Staff approached the CIA personnel at the off-site location, who initially denied that documents had been removed. CIA personnel then blamed information technology personnel, who were almost all contractors, for removing the documents themselves without direction or authority.

And then the CIA stated that the removal of the documents was ordered by the White House. When the White -- when the committee approached the White House, the White House denied giving the CIA any such order.

After a series of meetings, I learned that on two occasions CIA personnel electronically removed committee access to CIA documents after providing them to the committee. This included roughly 870 documents or page of documents that were removed in February 2010; and secondly, roughly another 50 that were removed in mid-May 2010. This was done without the knowledge or approval of committee members or staff, and in violation of our written agreements. Further, this type of behavior would not have been possible had the CIA allowed the committee to conduct the review of documents here in the Senate. In short, this was the exact sort of CIA interference in our investigation that we sought to avoid at the outset.

I went up to the White House to raise the issue with the then- White House counsel. In May 2010, he recognized the severity of the situation and the great implications of executive branch personnel interfering with an official congressional investigation. The matter was resolved with a renewed commitment from the White House counsel and the CIA that there would be no further unauthorized access to the committee's network or removal of access to CIA documents already provided to the committee.

On May 17th, 2010, the CIA's then-director of congressional affairs apologized on behalf of the CIA for removing the documents. And that as far as I was concerned put the incidents aside. This event was separate from the documents provided that were part of the internal Panetta review, which occurred later and which I will describe next.

At some point in 2010, committee staff searching the documents that had been made available found draft versions of what is now called the internal Panetta review. We believe these documents were written by CIA personnel to summarize and analyze the materials that had been provided to the committee for its review. The Panetta review documents were no more highly classified than other information we had received for our investigation. In fact, the documents appeared based on the same information already provided to the committee. What was unique and interesting about the internal documents was not their classification level but rather their analysis and acknowledgement of significant CIA wrongdoing.

To be clear, the committee staff did not hack into CIA computers to obtain these documents, as has been suggested in the press.

The documents were identified using the search tool provided by the CIA to search the documents provided to the committee. We have no way to determine who made the internal Panetta review documents available to the committee. Further, we don't know whether the documents were provided intentionally by the CIA, unintentionally by the CIA or intentionally by a whistle-blower.

In fact, we know that over the years, on multiple occasions, the staff have asked the CIA about documents made available for our investigation. At times the CIA has simply been unaware that these specific documents were provided to the committee. And while this is alarming, it is also important to note that more than 6.2 million pages of documents have been provided. This is simply a massive amount of records.

As I described earlier, as part of its standard process for reviewing records the committee staff printed copies of the internal Panetta review and made electronic copies of the committee's computers at the facility. The staff did not rely on these internal Panetta review documents when drafting the final 6,300-page committee study. But it was significant that the internal Panetta review had documented at least some of the very same troubling matters already uncovered by the committee staff, which is not surprising in that they were looking at the same information.

There is a claim in the press and elsewhere that the markings on these documents should have caused the staff to stop reading them and turn them over to the CIA. I reject that claim completely. As with many other documents provided to the committee at the CIA facility, some of the internal Panetta-reviewed documents -- some -- contained markings indicating that they were, quote, "deliberative," end quote, and/or, quote, "privileged," end quote.

This was not especially noteworthy to staff. In fact, CIA has provided thousands of internal documents to include CIA legal guidance and talking points prepared for the CIA director, some of which were marked as being deliberative or privileged. Moreover, the CIA has officially provided such documents to the committee here in the Senate. In fact, the CIA's official June 27, 2013 response to the committee's study, which Director Brennan delivered to me personally, is labeled, quote, "deliberative, processed, privileged document," end quote.

We have discussed this with the Senate legal counsel who have confirmed that Congress does not recognize these claims of privilege when it comes to documents provided to Congress for our oversight duties. These were documents provided by the executive branch pursuant to an authorized congressional oversight investigation. So we believe we had every right to review and keep the documents.

There are also claims in the press that the Panetta internal review documents, having been created in 2009 and 2010, were outside the date range of the committee's document request or the terms of the committee study. This too is inaccurate. The committee's document requests were not limited in time. In

fact, as I have previously announced, the committee study includes significant information on the May, 2011 Osama bin Laden operation, which obviously post-dated the detention and interrogation program.

At some time after the committee staff identified and reviewed the internal Panetta review documents, access to the vast majority of them was removed by the CIA. We believe this happened in 2010, but we have no way of knowing the specifics. Nor do we know why the documents were removed. The staff was focused on reviewing the tens of thousands of new documents that continued to arrive on a regular basis.

Our work continued until December 2012, when the Intelligence Committee approved a 6,300-page committee study of the CIA's detention and interrogation program, and sent the executive report to the executive branch for comment. The CIA provided its response to the study on June 27th, 2013. As CIA Director Brennan has stated, the CIA officially agrees with some of our study, but has been reported the CIA disagrees and disputes important parts of it.

And this is important. 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. To say the least, this is puzzling. How can the CIA's official response to our study stand factually in conflict with its own internal review?

Now, after noting the disparity between the official CIA response to the committee study and the internal Panetta review, the committee staff securely transported a printed portion of the draft internal Panetta review from the committee's secure room at the CIA-leased facility to the secure committee spaces in the Hart Senate office building. And let me be clear about this: I mentioned earlier the exchange of letters that Senator Bond and I had with Director Panetta in 2009 over the handling of information for this review. The letters set out a process whereby the committee would provide specific CIA documents to CIA reviewers before bringing them back to our secure offices here on Capitol Hill. The CIA review was designed specifically to make sure that committee documents available to all staff and members did not include certain kinds of information -- most importantly, the true names of nonsupervisory CIA personnel and the names of specific countries in which the CIA operated detention sites.

We had agreed up front that our report didn't need to include this information and so we agreed to redact it from materials leaving the CIA's facility. Keeping with the spirit of the agreement, the portion of the internal Panetta review at the Hart Building in our safe has been redacted. It does not contain names of nonsupervisory CIA personnel or information identifying detention site locations. In other words, our staff did just what the CIA personnel would have done had they reviewed the document.

There are several reasons why the draft summary of the Panetta review was brought to our secure spaces at the Hart Building. Let me list them: One, the significance of the internal review, given disparities between it and the June 2013 CIA response to the committee study. The internal Panetta review summary, now at the secure committee office in Hart, is an especially significant document as it corroborates critical information in the -- in the committee's 6,300- page study, that the CIA's official response either objects to, denies, minimizes or ignores.

Unlike the official response, these Panetta review documents were in agreement with the committee's findings.

That's what makes them so significant and important to protect.

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.

Now, the relocation of the internal Panetta Review was lawful and handled in a manner consistent with its classification. No law prevents the relocation of a document in the committee's possession from a CIA facility to secure committee offices on Capitol Hill. As I mentioned before, the document was handled and transported in a manner consistent with its classification, redacted appropriately, and it remains secured, with restricted access in committee spaces.

Now, the January 15th 2014 meeting with Director John Brennan. In late 2013, I requested in writing that the CIA provide a final and complete version of the internal Panetta review to the committee as opposed to the partial document the committee currently possesses.

In December, during an open committee hearing, Senator Mark Udall echoed this request. In early January 2014, the CIA informed the committee it would not provide the internal Panetta review to the committee, citing the deliberative nature of the document. Shortly thereafter, on January 15th, 2014, CIA Director Brennan requested an emergency meeting to inform me and Vice Chairman Chambliss that without prior notification or approval, CIA personnel had conducted a search -- that was John Brennan's word -- of the committee computers at the off-site facility.

This search involved not only a search of documents provided by the committee by the CIA, but also a search of the standalone and walled-off committee network drive containing the committee's own internal work product and communications. According to Brennan, the computer search was conducted in response to indications that some members of the committee staff might already have had access to the internal Panetta review.

The CIA did not ask the committee or its staff if the committee had access to the internal review or we obtained it.

Instead the CIA just went and searched the committee's computers. The CIA has still not asked the committee any questions about how the committee acquired the Panetta review.

In place of asking any questions, the CIA's unauthorized search of the committee computers was followed by an allegation, which we now have seen repeated anonymously in the press, that the committee staff had somehow obtained the document through unauthorized or criminal means, perhaps to include hacking into the CIA's computer network.

As I have described, this is not true. The document was made available to the staff at the off-site facility, and it was located using a CIA-provided search tool running a query of the information provided to the committee pursuant to its investigation. Director Brennan stated that the CIA search had determined that the committee staff had copies of the internal Panetta review on the committee staff shared drive and had accessed them numerous times. He indicated at the meeting that he was going to order further forensic investigation of the committee network to learn -- to learn more about activities of the committee's oversight staff.

Two days after the meeting, on January 17th, I wrote a letter to Director Brennan objecting to any

further CIA investigation, due to the separation of powers constitutional issues that the search raised.

I followed this with a second letter on January 23rd to the director asking 12 specific questions about the CIA's actions -- questions that the CIA has refused to answer. Some of the questions in my letter related to the full scope of the CIA's search of our computer network. Other questions related to who had authorized and conducted the search and what legal basis the CIA claimed gave it authority to conduct the search. Again, the CIA has not provided answers to any of my questions.

My letter also laid out my concern about the legal and constitutional implications of the CIA's actions. Based on what Director Brennan has informed us, 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.

I have asked for an apology and a recognition that this CIA search of computers used by its oversight committee was inappropriate. I have received neither.

Besides the constitutional implications, the CIA search may also have violated the Fourth Amendment, the Computer Fraud and Abuse Act, as well as Executive Order 12333, which prohibits the CIA from conducting domestic searches or surveillance.

Days after the meeting with Director Brennan, the CIA inspector general, David Buckley, learned of the CIA's search and began an investigation into CIA's activities. I have been informed that Mr. Buckley has referred the matter to the Department of Justice, given the possibility of a criminal violation by CIA personnel.

Let me note because the CIA has refused to answer the questions in my January 23rd letter and the CIA inspector general is ongoing, I have limited information about exactly what the CIA did in conducting its search.

Weeks later, I was also told that after the inspector general reviewed the CIA's activities to the Department of Justice -- excuse me, referred the CIA's activities to the Department of Justice, the acting counsel general of the CIA filed a crimes report with the Department of Justice concerning the committee staff's actions. I have not been provided the specifics of these allegations, or been told whether the department has initiated a criminal investigation based on the allegations of the CIA's acting general counsel.

As I mentioned before, our staff involved in this matter have the appropriate clearances, handled this sensitive material according to established procedures and practice to protect classified information, and were provided access to the Panetta Review by the CIA itself.

As a result, there is no legitimate reason to allege to the Justice Department that Senate staff may have committed a crime. I view the acting counsel general's referral as a potential effort to intimidate this staff, and I am not taking this lightly.

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 than 1,600 times in our study.

And now, this individual is sending a crimes report to the Department of Justice on the actions of Congressional staff -- the same Congressional staff who researched and drafted a report that details how CIA officers, including the acting general counsel himself, provided inaccurate information to the Department of Justice about the program.

Mr. President, let me say this: All senators rely on their staff to be their eyes and ears and to carry out our duties. The staff members of the intelligence committee are dedicated professionals who are motivated to do what is best for our nation. The staff members who have been working on this study and this report have devoted years of their lives to it, wading through the horrible details of a CIA program that never, never, never should have existed.

They have worked long hours and produced a report unprecedented in its comprehensive attention to detail in the history of the Senate. They are now being threatened with legal jeopardy just as final revisions to the report and being made so that parts of it can be declassified and released to the American people.

Mr. President, I felt that I needed to come to the floor today to correct the public record and to give the American people the facts about what the dedicated committee staff have been working so hard for the last several years as part of the committee's investigation.

I also want to reiterate to my colleagues my desire to have all updates to the committee report completed this month and approved for declassification. We're not going to stop. I intend to move to have the findings, conclusions and the executive summary of the report sent to the president for declassification as release to the American people. The White House has indicated publicly and to me personally that it supports declassification and release.

If the Senate can declassify this report, we will be able to ensure that an un-American, brutal program of detention and interrogation will never again be considered or permitted. But, Mr. President, the recent actions that I have just laid out make this a defining moment for the oversight of our Intelligence Committee. How Congress and how this will be resolved will show whether the Intelligence Committee can be effective in monitoring and investigating our nation's intelligence activities or whether our work can be thwarted by those we oversee.

I believe it is critical that the committee and the Senate reaffirm our oversight role and our independence under the Constitution of the United States.

Mr. President, I thank you very much for your patience, and I yield the floor.

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