

**MILITARY COMMISSIONS TRIAL JUDICIARY  
GUANTANAMO BAY, CUBA****UNITED STATES OF AMERICA****v.****KHALID SHAIKH MOHAMMAD;  
WALID MUHAMMAD SALIH  
MUBARAK BIN 'ATTASH;  
RAMZI BINALSHIBH;  
ALI ABDUL AZIZ ALI;  
MUSTAFA AHMED ADAM  
AL HAWSAWI****AE 286R (GOV)****Government Notice**Concerning Defense Motion to Compel  
Discovery Of Senate Select Committee on  
Intelligence Study of RDI Program

15 December 2016

**1. Timeliness**

This Notice is timely filed pursuant to the Military Commission's order in AE 286Q issued on 7 December 2016. *See* AE 286Q at 1 ("The Government shall notify the Commission whether the DoD is currently in possession of a copy of the SSCI Report. The notice is due to the Commission on 16 December 2016.").

**2. Notice**

The Prosecution notifies the Commission of the following:

a. The Department of Defense first received a copy of the full version of the Senate Select Committee on Intelligence's (SSCI's) *Study of the CIA's Detention and Interrogation Program* ("SSCI Report") in December 2014, after the SSCI publicly released the declassified Executive Summary of the SSCI Report. The SSCI Report was transmitted with a letter dated December 10, 2014, from Senator Dianne Feinstein, who was then SSCI Chairman. DoD subsequently received a second copy of the final report.

b. DoD has treated the SSCI Report as a congressional record and continues to do so. The Report has not been placed within a DoD system of records, it is stored in secure locations, access to it is limited to a small number of persons with proper clearance and a need to know, and access is strictly controlled by the Under Secretary of Defense for Intelligence.

c. Through inter-agency discussions within the Executive Branch, DoD was aware that the SSCI required that the draft version of the Report could not be integrated with agency record filing systems, and that disposition and control over the records, even after the completion of the Committee's review, lay exclusively with the Committee. With those admonishments in mind, DoD has treated the classified executive summary and this full version similarly.

d. Both copies of the full SSCI Report received by DoD are kept in sensitive compartmented information facilities ("SCIFs").

e. DoD's treatment of the full SSCI Report is consistent with all previous indications from Congress about the use of the Report. DoD interpreted the December 10, 2014 letter from Senator Feinstein as consistent with these caveats, and has continued to treat the Report consistent with the understanding that the Report remains a congressional record.

f. The Prosecution in this case has had access to the full study only via the SSCI itself, and in SSCI facilities, since 27 February 2015, and there has been no curtailment of that access by the SSCI. In reviewing the full study, the Prosecution has confirmed that it has access to all of the underlying Executive Branch documents upon which the authors of the Study expressly rely in forming their opinions and conclusions. Many of these documents are being produced to the Defense in substituted form so as to protect against unauthorized disclosure or dissemination of classified information. *See* 10 U.S.C. § 949p-4; M.C.R.E. 505. As reported in AE 397G (GOV), as of 30 September 2016, the Prosecution provided all of these documents and substitutions to the Commission for its review and dissemination to the Defense.

g. On 9 December 2016, Counsel to the President, W. Neil Eggleston, notified Senator Feinstein that the full SSCI Report will be preserved under the Presidential Records Act. *See* Attachment B.

**3. Attachments**

- A. Certificate of Service, dated 15 December 2016.
- B. Letter from W. Neil Eggleston, Counsel to the President, to Sen. Dianne Feinstein (Dec. 9, 2016).

Respectfully submitted,

\_\_\_\_\_  
//s//  
Clay Trivett  
Managing Trial Counsel

Mark Martins  
Chief Prosecutor  
Military Commissions

# ATTACHMENT A



# ATTACHMENT B

**THE WHITE HOUSE**

WASHINGTON

December 9, 2016

The Honorable Dianne Feinstein  
United States Senate  
Washington, DC 20510

Dear Vice Chairman Feinstein:

Thank you very much for your letter to the President dated November 22, 2016, and your letter to the Vice President dated May 11, 2016 regarding the Senate Select Committee on Intelligence's full Committee Study of the Central Intelligence Agency's Detention and Interrogation Program.

I write to notify you that the full Study will be preserved under the Presidential Records Act (PRA). The determination that the Study will be preserved under the PRA has no bearing on copies of the Study currently stored at various agencies.

Consistent with the authority afforded to him by the PRA, the President has informed the Archivist that access to classified material, among other categories of information, should be restricted for the full twelve years allowed under the Act. At this time, we are not pursuing declassification of the full Study.

Thank you very much for your letters on this important issue. I have sent a similar letter to Chairman Burr.

Sincerely,



W. Neil Eggleston  
Counsel to the President

cc: The Honorable Ron Wyden  
The Honorable Barbara Mikulski  
The Honorable Mark Warner  
The Honorable Martin Heinrich  
The Honorable Angus King  
The Honorable Mazie Hirono