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United States Senate

SELECT COMMITTEE ON INTELLIGENCE
WASHINGTON, DC 20510-6475

December 30, 2014

The President
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President,

As you know, on December 9, 2014, the Senate Select Committee on Intelligence released the Findings and Conclusions and the Executive Summary of its Study of the CIA's Detention and Interrogation Program. I write today to describe and transmit the recommendations derived from the Committee's report.

These recommendations are intended to make sure that the United States never again engages in actions that you have acknowledged were torture. I believe that several of the Committee's findings should prompt additional oversight and better sharing of information for all covert action and significant intelligence collection programs.

The recommendations below are divided into the following three categories:

I. Changes to U.S. law that I will propose in the beginning of the next Congress;

II. Additional recommendations that can be implemented through Executive Branch administrative action; and

III. Those recommendations or reforms that were previously proposed by the CIA in its June 2013 response to the Committee's report, several of which were repeated recently by Director Brennan in his December 11, 2014, press conference.

I. LEGISLATIVE RECOMMENDATIONS

I will introduce the first four recommendations as legislation in the beginning of the 114th Congress; some of them would codify your January 22, 2009 Executive Order (No. 13491) entitled, "Ensuring Lawful Interrogations."

1. Close All Torture Loopholes – The U.S. domestic law prohibiting torture and the Detainee Treatment Act of 2005 were both interpreted by the Office of Legal Counsel to allow the CIA to use coercive and abusive interrogation techniques. New legislation will make clear that such interrogation techniques are prohibited.

2. Establish the U.S. Army Field Manual as the Exclusive Set of Interrogation Techniques – The Detainee Treatment Act of 2005 limited the interrogation techniques available to U.S. Department of Defense personnel to those explicitly listed in the Army Field Manual. New legislation will expand this limitation to U.S. Intelligence Community personnel as well, consistent with Executive Order 13491 (January 22, 2009).

3. Require the U.S. Government to Notify the Red Cross and Provide Timely Access to All Captured Detainees – New legislation will require the U.S. Government to provide notification of new detainees to the International Committee of the Red Cross and provide access to those detainees as soon as is practicable, consistent with Executive Order 13491 (January 22, 2009).

4. Prohibit CIA Detention of Detainees. New legislation will prohibit the authority of the CIA to hold detainees beyond a short-term, transitory basis, consistent with Executive Order 13491 (January 22, 2009).

II. ADMINISTRATIVE RECOMMENDATIONS

The second set of recommendations can be implemented administratively. Those eleven recommendations are listed below and are grouped into the following categories:

Strengthening Covert Action and Other Intelligence Oversight within the Executive Branch

1. ***Recommendation***: **The National Security Council (NSC) should improve its oversight of covert action programs and lead more formal, rigorous, interagency evaluations—at least on an annual basis—to determine whether all elements of covert action programs are effective, appropriate, and should be continued. These evaluations must be independent and not reliant upon the CIA for an assessment of its own activities.**

- **NSC Principals should be informed of all significant covert action undertakings and have access to all relevant information necessary to evaluate these programs.**

- **Further, subordinates of NSC Principals, to include regional Assistant Secretaries of State and attorneys at the State Department's Office of the Legal Advisor, as well as National Security Division (NSD) attorneys at the Department of Justice (DOJ), should have access to all relevant information on covert action and other significant intelligence programs in order to carry out their official duties.**

- **NSD attorneys should also support the DOJ's Office of Legal Counsel (OLC) by ensuring that OLC opinions on covert action and other intelligence activities are based on complete and accurate information.**

- **As the President's representative, and pursuant to 22 U.S.C. § 3927(a), the U.S. Chief of Mission has "full responsibility for the direction, coordination, and supervision of all Government executive branch employees in that country," and shall be kept "fully and currently informed with respect to all activities and operations of the Government within that country." Therefore, U.S. Chiefs of Mission should be kept fully and currently informed with respect to all CIA activities in the country, including negotiations with host countries as well as CIA intelligence operations. Chiefs of Mission should also be permitted to discuss CIA activities within their area of responsibilities with appropriate State Department policymakers.**

Rationale: As described in Finding #7 of the Study, "*The CIA impeded effective White House oversight and decision-making.*" Part of Finding #7 also states, "*The CIA provided extensive amounts of inaccurate and incomplete information related to the operation and effectiveness of the CIA's Detention and Interrogation Program to the White House, the National Security Council principals, and their staffs. This prevented an accurate and complete understanding of the program by Executive Branch officials, thereby impeding oversight and decision-making.*"

Improving CIA Management and Accountability

2. ***Recommendation*: The CIA Director, in consultation with the Director of National Intelligence, should formally designate a specific CIA official to be responsible for each covert action program and significant intelligence activity carried out by the CIA. This CIA official should be responsible and accountable for the conduct of such programs and activities.**

   Rationale: As described as part of Finding #12 of the Study, "*The CIA's management and operation of its Detention and Interrogation Program was deeply flawed throughout the program's duration.*" For example, the CIA placed individuals with no applicable experience or training in senior detention and interrogation roles, and provided inadequate linguistic and analytical support to conduct effective questioning of CIA detainees, resulting in diminished intelligence.

3. ***Recommendation*: The DNI should designate an official or office within the Intelligence Community to review key assessments and representations made about intelligence programs and activities to other parts of the government and to the American public in order to ensure that they are accurate. The DNI should further establish an official process by which employees of the Intelligence Community are obligated to correct any inaccurate representations they make.**

   Rationale: As described as part of Finding #2 of the Study, the Committee reviewed 20 of the most frequent and prominent examples of purported counterterrorism successes that the CIA has attributed to the use of its coercive interrogation

techniques, and the examples provided by the CIA included numerous factual inaccuracies. The Committee found them to be wrong in fundamental respects. For example, in some cases, there was no relationship between the cited counterterrorism success and any information provided by detainees during or after the use of the CIA's enhanced interrogation techniques.

4. ***Recommendation*: The DNI should ensure that all intelligence agencies have an adequate process in place for screening and selecting appropriate personnel for sensitive intelligence and covert action programs**. The process for selection and screening should include review of information in an employee's background, as well as an employee's performance evaluations.

   Rationale: As described as part of Finding #12 of the Study, "*Numerous CIA officers had serious documented personal and professional problems—including histories of violence and records of abusive treatment of others—that should have called into question their suitability to participate in the CIA's Detention and Interrogation Program, their employment with the CIA, and their continued access to classified information. In nearly all cases, these problems were known to the CIA prior to the assignment of these officers to detention and interrogation positions.*"

5. ***Recommendation*: The DNI should issue new directives to ensure contractors do not carry out inherently governmental functions as part of covert action programs. These directives should include ways to enforce prohibitions on contractors conducting interrogations, directing operations, evaluating programs, and managing intelligence programs.**

   Rationale: As described in Finding #13 of the Study, the two psychologists that CIA contracted with to develop and operate its coercive interrogation program carried out inherently governmental functions, such as acting as liaison between the CIA and foreign intelligence services, assessing the effectiveness of the interrogation program, and participating in the interrogation of detainees held in foreign government custody. This was in violation of existing prohibitions on contractors carrying out these activities. By 2008, contractors made up 85% of the workforce of the CIA detention and interrogation operations. The DNI should improve the

enforcement of the existing prohibitions and determine if further restrictions should be implemented.

6. ***Recommendation*: CIA Accountability Boards should review management problems and failures of CIA leadership, as well as address systemic or structural problems at CIA, in addition to evaluating specific alleged wrongdoing by individuals. Pursuant to Section 102A of the National Security Act and Intelligence Community Directive No. 111, the Committee also recommends that the DNI should be more involved in conducting accountability reviews, especially those that may involve senior CIA leaders, including the Director.**

   Rationale: As described in Finding #17 of the Study, *"The CIA rarely reprimanded or held personnel accountable for serious and significant violations, inappropriate activities, and systemic and individual management failures."* Under current practice, CIA Accountability Boards rarely examine possible management failures or systemic and structural problems at CIA.

Reforms to Detention and Interrogation Policy

7. ***Recommendation*: The Attorney General, in consultation with the Secretary of Defense and the DNI, should issue a new directive to make permanent an interagency center of expertise for information on interrogation best practices.**

   Rationale: The Special Task Force on Interrogations and Transfer Policies, which was created pursuant to Executive Order 13491 on January 22, 2009, recommended the creation of an interagency team of experts to conduct interrogations of high-value detainees. The Attorney General chaired the interagency Special Task Force and announced its recommendation on August 24, 2009, to create a High-Value Detainee Interrogation Group (HIG), which draws expertise from the FBI, CIA, and U.S. military. This integrated interagency approach has clear advantages over the one-agency approach that was used to interrogate many high-value detainees from 2002 to 2008.

8. ***Recommendation*: The Attorney General and DNI should issue a new directive to require that all national security interrogations are videotaped, based on the May 12, 2014 Department of Justice requirement.**

   Rationale: Creating and retaining a video record of interrogations will ensure that there is an objective record of key investigations and interactions with individuals who are held in U.S. custody. It will also provide federal authorities clear and indisputable records of important statements and confessions made by individuals who have been detained by the U.S. government.

Improving CIA Office of Inspector General Oversight

9. ***Recommendation*: The CIA Director should issue a new directive to require that the CIA Inspector General be informed promptly of all new covert action programs (including the signing of new Presidential Findings or Memoranda of Notification), the significant expansion or modification of existing covert action programs, and any other covert action or intelligence collection operations that could raise new issues relevant to oversight. The CIA Office of the Inspector General should also verify the information provided by CIA and have complete access to all documentation, including intelligence and sourcing cables, necessary to verify that information provided and to conduct effective oversight.**

   Rationale: As described as part of Finding #9 of the Study, "*The CIA avoided, resisted, and otherwise impeded oversight of the CIA's Detention and Interrogation Program by the CIA's Office Inspector General (OIG). The CIA did not brief the OIG on the program until after the death of a detainee, by which time the CIA had held at least 22 detainees at two different CIA detention sites.*" Another part of Finding #9 of the Study states, "*During the OIG reviews, CIA personnel provided OIG with inaccurate information on the operation and management of the CIA's Detention and Interrogation Program, as well as on the effectiveness of the CIA's enhanced interrogation techniques. The inaccurate information was included in the final May 2004 Special Review, which was later declassified and released publicly, and remains uncorrected.*"

Strengthening Congressional Oversight

10. ***Recommendation*: Restrictions on the ability of Members of the congressional intelligence committees to access information from the Intelligence Community should be limited to time-sensitive operational details of covert action programs. Adequate staff access, as determined by the committees, should be provided to ensure that the committees as well as individual Members can carry out their oversight responsibilities. The committees should have access, upon request, to any documentation required to conduct effective oversight, including intelligence and sourcing cables.**

    Rationale: As described in Finding #6 of the Study, the CIA actively avoided or impeded congressional oversight of the program, in part, because access to information on the program was restricted to the chairman and vice chairman of the Committee until 2006.

Improving the Declassification Process

11. ***Recommendation*: The DNI should establish a formal declassification review process to declassify information quickly when requested by Congress.**

    Rationale: Members of the Committee have found the declassification process to be slow and disjointed, even for information that Congress has identified as being of high public interest. Declassification of the Executive Summary and Findings and Conclusions of the Committee's final report took approximately eight months, and significant parts of the declassification process were inconsistent and negotiated while the process was ongoing, instead of being determined in advance.

III. CIA-PROPOSED RECOMMENDATIONS

Finally, I agree with the recommendations made by the CIA in its June 2013 response to the Committee's report,[1] many of which overlap with the recommendations above. The CIA recommended the following:

[1] The CIA has made this response to the Committee's report available at: https://www.cia.gov/library/reports/CIAs_June2013_Response_to_the_SSCI_Study_on_the_Former_Detention_and_Interrogation_Program.pdf. See

(1) Improve management's ability to manage risk by submitting more covert action programs to a special review process.

(2) Better plan covert actions by explicitly addressing at the outset the implications of leaks, an exit strategy, lines of authority, and resources.

(3) Revamp the way in which CIA assesses the effectiveness of covert actions.

(4) Ensure that all necessary information is factored into the selection process for officers being considered for the most sensitive assignments.

(5) Create a mechanism for periodically revalidating OLC guidance on which the Agency continues to rely.

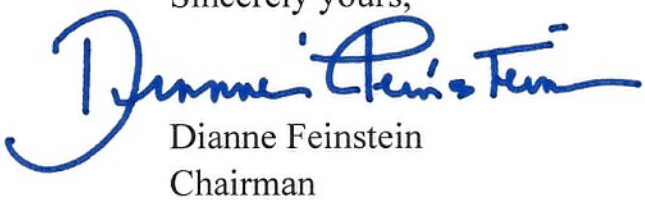
(6) Broaden the scope of accountability reviews.

(7) Improve recordkeeping for interactions with the media.

(8) Improve recordkeeping for interactions with Congress.

I look forward to working with you to implement these recommendations and ask that you publicly support them when I publicly release this letter in early January.

Sincerely yours,



Dianne Feinstein
Chairman

cc: The Honorable James Clapper, Director of National Intelligence
The Honorable John Brennan, Director, Central Intelligence Agency
The Honorable Eric Holder, Attorney General
The Honorable Chuck Hagel, Secretary of Defense
The Honorable John F. Kerry, Secretary of State

"Recommendations" on pp. 16-18 (pp. 22-24 of the PDF file). The CIA has not provided the Committee with an update on the implementation status of these recommendations.