



**Your on the  
Street Reporter**



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**The Watchdogs are Watching the Watchdogs**

## The Watch Dogs are Watching the Watch Dogs

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Hello from Your on the Street Reporter. This report continues the series on Internet privacy and security specifically, and privacy and security in America generally. It also expands beyond these subjects into the issue of the intelligence community snooping and altering a congressional intelligence oversight committee database.

Recently released information from Congress indicates the CIA has been monitoring Congress. (This subject is introduced in Report IV, “Who are the Watch Dogs Watching?”)

Summarizing this XII report: The watch dogs are being watched by the dogs they are watching. And the dogs are suing the watch dogs for watching too much. On the surface, it is a comical situation: A snoop snoops on another snoop, who in return, gets snooped by the snoop who was being snooped.

Beneath the surface, it is not so funny. As this series has maintained, intelligence gathering with oversight that is subject to legal rights and restraints is a vital part of a modern republic. But intelligence gathering without this oversight poses a danger to a republic’s foundations and principles. Last week, Senator Feinstein gave a speech about this subject:

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.<sup>1</sup>

With this introduction in mind, here is the organization of this report. The introductory statement above is followed by direct quotes from the senator’s speech, identified by quote “**One**,” “**Two**,” and so on. My comments are identified with red text. The “**Notes**” in red text are also my additional comments

**One:** “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 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.” **In a democracy, shared powers and oversights are essential to a democracy’s proper functioning. Yet, it was four years before the full oversight committee was made aware of this program.**

**Two:** “A little more than a year later, on December 6, 2007, a *New York Times* article revealed the troubling fact that the CIA had destroyed videotapes of some of the CIA’s first interrogations

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<sup>1</sup> Dianne Feinstein, (D-CA), Statement, Floor of the U.S. Senate, March, 11, 2014.

using so-called “enhanced techniques.” **Tapes that contain legal evidence about a possible crime or breach of stated promises should not be destroyed. It is political and legal suicide. Ask Richard Nixon.** We learned that this destruction was over the objections of President Bush’s White House Counsel and the Director of National Intelligence.” **The CIA does not operate under the direct control of Congress. It is under the Executive Branch. The CIA undertook these actions against the objections of their boss, the President of the United States. Who was sacked for this breach? As of this writing, no one.**

**Three:** “After we read about the tapes’ 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 cables describing the detention conditions and the day-to-day CIA interrogations.” **Paper descriptions cannot depict the realism of an event nearly as well as its visual enactment. A visual image is a different kind of evidence than the written word.** “The CIA director stated that these cables were “a more than adequate representation” of what would have been on the destroyed tapes.” **Why not destroy the cables instead? I’ll answer my own question: See the next point:**

**Four:** **Why had they been destroyed? The alleged reason (with no judgment about interrogation techniques made here) was the following:** “The resulting staff report was chilling. 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.” **Again, I make no comment on whether these actions are legal or illegal, moral or immoral. We’ve enough on our plates with the immediate subject.** “In March 5, 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.”

**An agreement was reached for the CIA to furnish the material via a secure disk in a secure site, in which the system would be “segregated from CIA networks” and only accessed by CIA technology personnel (geeks) who could not share this information with other CIA personnel.**

“The information was made available to the Senate committee staff on hard disk at a CIA leased facility. The number of pages ran into millions... .” **Big Data in action.**

**Five:** “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 final 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.”

**Six:** “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 pages of documents that were removed in February 2010, and secondly roughly another 50 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.” **Who was sacked for this breach? As of this writing, no one. Even more to the point, who was indicted for suppression of evidence? As of this writing, no one.**

**Seven:** “I went up to the White House to raise this issue with the then-White House Counsel, in May 2010. He recognized the severity of the situation, and the grave 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.”

**Let’s pose a similar scenario, but with you in the picture. You wish to uncover illegal (perhaps “merely” unethical) activities being committed by your government. You make an “unauthorized access” to a Senate committee file. In less than the time it is taking me to write this report, after you had been discovered, you would be arrested and indicted for a crime. The details cited above are yet another example of the dual rules that exist for those inside the Capital Beltway and for you. You reside outside the Capital Beltway. Thus, your affair is “resolved” by Uncle Sam incarcerating you as an unpatriotic malcontent. In some circles, you are considered a quasi-terrorist. For Beltway insiders, the matter is “resolved.”**

“On May 17, 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 incident aside.” **This “unauthorized access” was a breach in the separation of powers doctrine. It was an indication of the arrogance of CIA and the CIA’s disdain of an *authorized* party to interfere into the CIA’s operations. No indictments, no one arrested.**

**But again, why would the CIA take this risk? As I was reading the speech, my question was answered, as described below.**

**Notes:** As events unfolded, the press got-hold of a rumor that the Senate committee had obtained documents furnished by the CIA by hacking CIA databases. These documents were given to the committee. As mentioned above, they were critical of the CIA’s Detention and Interrogation program and were at odds with the CIA’s public comments on its activities.

**Eight:** “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 [documents that criticized the CIA’s programs] 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.”

**Nine:** “Two days after the meeting, on January 17, 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.” **The Senator wrote another letter and had a meeting with Mr. Brennan. She did not get an answer about who authorized the search and deletion of data on the Senate file.**

**Senator Feinstein and the committee---after discovering the Internal Panetta Review documents had been removed from the committee’s files---decided to copy and protect this information (what it still had) onto the committee’s secure system at the Capitol. This transfer, as the Senator says, “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.”**

**Notes:** After meeting with the CIA head, the senator discovered the CIA inspector general referred the matter to the Department of Justice. The reason: the possibility of a criminal violation by CIA personnel. However:

**Ten:** “Weeks later, I was also told that after the inspector general referred the CIA’s activities to the Department of Justice, the acting general counsel 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.”

**Hold on to your seats citizens. A few days ago (sourced from a Google search):**

**Eleven:** On Wednesday, White House spokesman Jay Carney confirmed that CIA acting general counsel Robert EATINGER also was one of two senior spy agency officials who informed administration lawyers earlier this year about plans to file a criminal complaint against Senate Intelligence Committee staffers.

And the senator’s reaction in her speech: “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.”

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I'll continue the red text to avoid confusion with the senator's material in black text. The CIA acting general counsel may be innocent from any tampering. Let's let the process unfold. The individual himself is a minor point. Once again, regardless of individual culpability, America's intelligence apparatus is not being sufficiently monitored and controlled.

Even worse, its officials seemed to have taken on the role of "we know best" what is right for the American people. Even the President of the United States is disregarded, as discussed above. One of my book editors, who graciously edits these essays before I send them to you writes: "It seems to be much worse than "we know what is best for the American people." It seems that they are above the law and have their own set of rules, such as "we do what we please in spite of the President and the committee."

But then, if I were working in one of these agencies, and my legal ass was on the line, dissing Obama is the least of my worries.

Again, my editor took liberties beyond checking comma problems to say: "Do you think they are worried? Why file a criminal complaint? Do you think the committee fears for their own possible harm? This could be much worse than it seems. People have been "redacted" over less."