

Constitutional Conflict Escalates between US Senate and CIA

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In twin letters sent Wednesday to the Justice Department and the Central Intelligence Agency, Senate Majority Leader Harry Reid renewed charges of unconstitutional CIA spying on the Senate, first made in a speech March 11 by the chair of the Senate Intelligence Committee, Dianne Feinstein.

Reid's letters represent a significant escalation of the constitutional conflict that has erupted since the public exposure of CIA spying on the Senate committee, which is charged with the legal responsibility of overseeing the intelligence agency.

The CIA was seeking to track down how the committee came into possession of an internal CIA report, the so-called "Panetta Review," which acknowledged CIA torture in secret overseas prisons, and a subsequent cover-up by CIA operatives that has also implicated the White House. The Senate panel has prepared a 6,300-page draft report on the torture program, which began in 2002 under Bush and was officially ended under Obama in January 2009. The CIA has been fighting to prevent publication of the report for more than a year.

In the letter to Attorney General Eric Holder, the top official of the Justice Department, Reid noted the CIA's own admission that it had accessed files on a computer network reserved for the use of the Intelligence Committee staff. He then declared: "The CIA's decision to access the resources and work product of the legislative branch without permission is absolutely indefensible, regardless of the context. This action has serious separation of powers implications."

Reid denounced the decision of the CIA acting general counsel, Robert Eatinger, to file a criminal referral with the Justice Department over possession of the Panetta Review document, which he called "a transparent attempt to intimidate the Committee and undermine its oversight of the Agency." The letter notes that Eatinger is named 1,600 times in the draft report on the torture program, and has "a clear conflict of interest" in investigating issues relating to it.

Reid pointed out that the charges of misconduct by the Senate committee staff have no foundation: "To my knowledge, the CIA has produced no evidence to support its claims. The allegation that Senate committee staff who have no technical training somehow hacked into the CIA's highly secure classified networks is so absurd as to be comical."

The letter concludes by summarizing the basic constitutional issue: "The CIA has not only interfered with the lawful congressional oversight of its activities, but has also seemingly attempted to intimidate its overseers by subjecting them to criminal investigation. These

developments strike at the heart of the constitutional separation of powers between the legislative and executive branches. Left unchallenged, they call into question Congress's ability to carry out its core constitutional duties and risk the possibility of an unaccountable Intelligence Community run amok."

The second letter, addressed to CIA Director John Brennan, repeats much of the same language, while informing Brennan that Reid has instructed the Senate Sergeant-at-Arms, Terrance W. Gainer, to conduct "a forensic examination of the computers and computer network" assigned for use of the Senate Intelligence Committee staff, to determine how the Panetta Review came into their possession.

The letter requests Brennan to "take whatever steps necessary to ensure that CIA personnel refrain from further interaction relating to this issue with Senate staff other than the Sergeant-at-Arms staff conducting the examination while the examination is underway."

The language is restrained, but the meaning is stark: the leader of the Senate is asking the CIA director to halt any ongoing CIA efforts to conduct further surveillance of the operations of the Senate committee, or to spy on any other activities of the Senate.

The Obama administration is clearly aligned with the CIA in the conflict with the Senate. White House officials confirmed last week that Obama had agreed to withhold thousands of documents from the Senate committee, at the CIA's request, and that the president had been notified of the criminal referral to the Justice Department—what Reid's letter called "a transparent attempt to intimidate"—before it happened.

Obama has blocked any prosecution of either CIA operatives who were engaged in the torture program or top Bush administration officials, up to and including the former president, who authorized, approved or provided legal rationales for torture. There is little doubt that the same practices continue under the Obama administration, albeit with greater secrecy and "deniability" for the president, and the same powers are claimed by Obama to justify the administration's global assassination program.

At his daily press briefing Thursday, White House spokesman Jay Carney danced around a question about the Reid letters. A reporter asked him directly, citing the criticisms by Reid and Feinstein, "does the President feel the need to take any action to rein in the CIA or to address this difference between" the legislative and executive branches.

Carney's full reply: "The disputes around the protocols established in 2009 for the provision of documents to the committee are being reviewed by an independent inspector general as well as the Department of Justice. So I think that's appropriate, and I'm not going to comment on what are ongoing reviews. So I have nothing new to add to that discussion."

Similar obfuscation came from Attorney General Holder, asked Wednesday about the issue during a press briefing on an unrelated matter. "We get referrals all the time," he told reporters, a cynical remark that suggests that no one should get unduly exercised about mutual charges of illegal activities by the Senate and the CIA. A Justice Department spokesman, asked later about the Reid letter, would say only, "We are reviewing the letter."

The US media is playing a critical role in support of the Obama administration and the spy agency, with press coverage generally portraying the conflict between the Senate and the CIA as a Washington "power struggle," which is "arcane in its particulars" and of no great

significance—"spat" and "tussle" were two of the words used to describe what is one of the most blatant violations of constitutional norms since the Iran-Contra and Watergate affairs.

The *New York Times*, which generally sets the agenda for the television networks and the rest of the corporate-controlled media, relegated its report on the Reid letter to the bottom of page A17, the very last item in its coverage of national news on Friday.

The next stage in the conflict between the Senate and the CIA is likely to follow a vote next week by the Senate Intelligence Committee calling on the White House to declassify either the full torture report or a shorter, 400-page summary.

The letters from Reid and the earlier remarks from Feinstein are a reaction by the Senators to the extraordinary incursions of the CIA into the prerogatives of Congress, incursions that point to the unchecked powers exercised by the military-intelligence apparatus and its contempt for basic constitutional restraints. However, Reid and Feinstein, along with the entire political establishment, have sanctioned and supported the growth of these powers.

Despite the sharp language of the Reid letters, the real position of the Senate Democrats is one of political prostration. Both the Democrats and the Republicans are parties of American imperialism, committed to the state machinery of violence, spying and provocation.

This subservience was expressed in particularly cringing fashion in a letter sent to Obama Thursday by Senator Mark Udall, a member of the Intelligence Committee and a leading "critic" of CIA abuses. Udall hailed Obama's weasel-worded promise of last week, to support declassification of the torture report "as soon as the report is completed." Given that the report will not be "complete" until the CIA says so, this assurance is worthless.

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