

by the way, on a partisan basis, even when there are differences. But the aisle sort of disappears when it comes to the Defense authorization bill, and that is the way it should be.

I yield the floor.

Mr. INHOFE. Mr. President, let me reclaim my time just to make one other comment. The two people who are sitting here, Peter Levine on your side and John Bonsell on our side, their compatibility in working together is also unprecedented. It doesn't happen very often. I can't speak for the Senator from Michigan, but I can speak for myself, to say that without these two working together I sure could not have participated in a meaningful way. So I thank them as well.

Mr. LEVIN. The Senator from Oklahoma is speaking for both of us, I can assure him, with his comments and so many other comments he made.

I will yield to the Senator from Colorado, but first I wish to thank him for the great contribution he has made to our committee. I think he is planning on speaking on a different subject. He has played a major role on the Intelligence Committee. I look forward to reading, if not hearing, his remarks on the subject on which I know he has spent a good deal of time. Although he has had perhaps more visibility in terms of the Intelligence Committee, he has been a major contributor on the Armed Services Committee. I can't say we will miss him because I will not be here, but they will miss the Senator from Colorado.

The PRESIDING OFFICER (Ms. HEITKAMP). The Senator from Colorado.

Mr. UDALL of Colorado. Madam President, before I start my remarks on the historic day which was yesterday—when it comes to the publication of our long-in-the-making report on the CIA's torture program—I wish to thank the chairman for his leadership, his mentorship, and his friendship. I also am proud obviously to be a part of the Armed Services Committee and to have chaired the Strategic Forces Subcommittee. Again, I extend my thanks to the good men and women in uniform, as did my good friend from Oklahoma. The NDAA bill is a crucial task in front of us. I look forward to one of my last votes as a Senator from the great State of Colorado, and I look forward to casting a vote in favor of the Defense authorization bill.

Again, I wish to thank my two friends who have mentored me and who have led our committee with great elan and intelligence.

SSCI STUDY OF THE CIA'S DETENTION AND INTERROGATION PROGRAM

Yesterday was a historic day. Almost 6 years after the Senate Intelligence Committee voted to conduct a study of the CIA's detention and interrogation program and nearly 2 years after approving the report, the American people will finally know the truth about a very dark chapter in our Nation's history.

My goal from the start has been two-fold. First, I have been committed to correcting the public record on the CIA's multiple misrepresentations to the American people, to other agencies in the executive branch, the White House, and to Congress. Second, my goal has been to ensure that the full truth comes out about this grim time in the history of the CIA and of our Nation so that neither the CIA nor any future administration repeats the grievous mistakes this important oversight work reveals.

The process of compiling, drafting, redacting, and now releasing this report has been much harder than it needed to be. It brings no one joy to discuss the CIA's brutal and appalling use of torture or the unprecedented actions that some in the intelligence community and administration have taken in order to cover up the truth.

A number of my colleagues who have come to the floor over the past 24 hours and discussed this report have referred to 9/11. I, too, will never forget the fear, the pain, and the anger we all felt on that day and in the days that followed. Americans were demanding action from our government to keep us safe. Everyone, myself included, wanted to go to the ends of the Earth to hunt down the terrorists who attacked our Nation and to make every effort to prevent another attack. Although we all shared that goal, this report reveals how the CIA crossed a line and took our country to a place where we violated our moral and legal obligations in the name of keeping us safe. As we know now, this was a false choice. Torture didn't keep us safer after all. By releasing the Intelligence Committee's landmark report, we reaffirm we are a nation that does not hide from its past but must learn from it and that an honest examination of our shortcomings is not a sign of weakness but the strength of our great Republic.

From the heavily redacted version of the executive summary first delivered to the committee by the CIA in August, we made significant progress in clearing away the thick, obfuscating fog these redactions represented.

As Chairwoman FEINSTEIN has said, our committee chipped away at over 400 areas of disagreement with the administration on redactions down to just a few.

We didn't make all the progress we wanted to and the redaction process itself is filled with unwarranted and completely unnecessary obstacles. Unfortunately, at the end of the day, what began as a bipartisan effort on the committee did not end as such, even after my colleagues on the other side of the aisle were repeatedly urged to participate with us as partners.

As my friends in the Senate know, I am a legislator who goes out of his way to form bipartisan consensus. However, it became clear that was not possible here and that is regrettable.

But all told, after reviewing this final version of the committee's study,

I believe it accomplishes the goals I laid out and it tells the story that needs to be told.

It also represents a significant and essential step for restoring faith in the crucial role of Congress to conduct oversight. Congressional oversight is important to all of government's activities, but it is especially important for those parts of the government that operate in secret, as the Church Committee discovered decades ago. The challenge the Church Committee members discovered are still with us today: how to ensure that secret government actions are conducted within the confines of the law. The release of this executive summary is testament to the power of oversight and the determination of Chairman FEINSTEIN and the members of this committee to doggedly beat back obstacle after obstacle in order to reveal the truth.

There are a number of thank-yous that are in order. I start by thanking the chairman for her courage and persistence. I also thank the committee staff director, David Grannis; the staff lead for the study, Dan Jones; and his core study team, Evan Gottesman and Chad Tanner. They toiled for nearly 6 years to complete this report. They then shepherded it through the redaction process, all the while giving up their nights, weekends, vacations, and precious time with family and friends in an effort to get to the truth of this secret program for the members of the committee, the Senate, and now the American people.

They have been assisted by other dedicated staff, including my designee on the committee, Jennifer Barrett. We would not be where we are today without them. I am grateful, beyond words, for their service and dedication. I want them to know our country is grateful too.

Let me turn to the study itself. Much has been written about the significance of the study. This is the study. It is a summary of the CIA's detention and interrogation program. I want to start by saying I believe the vast majority of CIA officers welcome oversight and believe in the checks and balances that form the very core of our Constitution.

I believe many rank-and-file CIA officers have fought internally for and supported the release of this report. Unfortunately, again and again, these hard-working public servants have been poorly served by the CIA's leadership. Too many CIA leaders and senior officials have fought to bury the truth while using a redaction pen to further hide this dark chapter of the Agency's history.

The document we released yesterday is the definitive, official history of what happened in the CIA's detention and interrogation program. It is based on more than 6 million pages of CIA and other documents, emails, cables, and interviews. This 500-page study, this document, encapsulates the facts drawn from the 6,700-page report, which is backed up by 38,000 footnotes.

This is a documentary that tells of the program's history based on the CIA's own internal records. Its prose is dry and spare, as you will soon see for yourself. It was put together methodically, without exaggeration or embellishment. This study by itself—using the CIA's own words—brings the truth to light, and that is what it was intended to do.

The study looked carefully at the CIA's own claims—most notably that the so-called enhanced interrogation techniques used on detainees elicited unique, otherwise unobtainable intelligence that disrupted terrorist plots and saved lives. It debunks those claims conclusively.

The CIA repeatedly claimed that using these enhanced interrogation techniques against detainees was the only way to yield critical information about terrorist plotting. But when asked to describe this critical information and detail which plots were thwarted, the CIA provided exaggerated versions of plots and misattributed information that was obtained from traditional intelligence collection, claiming it came from the use of interrogation techniques that are clearly torture.

This study shows that torture was not effective, that it led to fabricated information, and its use—even in secret—undermined our security and our country more broadly. Our use of torture and I believe the failure to truly acknowledge it continues to impair America's moral leadership and influence around the world, creates distrust among our partners, puts Americans abroad in danger, and helps our enemies' recruitment efforts.

Senior CIA leaders would have you believe their version of the truth—promoted in CIA-cleared memoirs by former CIA Directors and other CIA and White House officials—that while there was some excesses in its detention and interrogation program, the CIA did not torture. Their version would have you believe that the CIA's program was professionally conducted, employing trained interrogators to use so-called enhanced interrogation techniques on only the most hardened and dangerous terrorists.

But as Professor Darius Rejali writes in his book "Torture and Democracy," "To think professionalism is a guard against causing excessive pain is an illusion. Instead, torture breaks down professionalism" and corrupts the organizations that use it.

This is exactly what happened with the CIA's detention and interrogation program. Without proper acknowledgement of these truths by the CIA and the White House, it could well happen again.

In light of the President's early Executive order disavowing torture, his own recent acknowledgement that "we tortured some folks" and the Assistant Secretary of State Malinowski's statements last month to the U.N. Committee Against Torture that "we hope

to lead by example" in correcting our mistakes, one would think this administration is leading the efforts to right the wrongs of the past and ensure the American people learn the truth about the CIA's torture program. Not so.

In fact, it has been nearly a 6-year struggle—in a Democratic administration no less—to get this study out. Why has it been so hard for this document to finally see the light of day? Why have we had to fight tooth and nail every step of the way? The answer is simple: Because the study says things that former and current CIA and other government officials don't want the American public to know. For a while I worried that this administration would succeed in keeping this study entirely under wraps.

While the study clearly shows that the CIA's detention and interrogation program itself was deeply flawed, the deeper, more endemic problem lies in the CIA, assisted by a White House that continues to try to cover up the truth. It is this deeper problem that illustrates the challenge we face today: reforming an agency that refuses to even acknowledge what it has done. This is a continuing challenge that the CIA's oversight committees need to take on in a bipartisan way. Those who criticize the committee's study for overly focusing on the past should understand that its findings directly relate to how the CIA operates today.

For an example of how the CIA has repeated its same past mistakes in more recent years, look at the section of the executive summary released yesterday that deals with the intelligence on the courier that led to Osama bin Laden. That operation took place under this administration in May of 2011. After it was over, the CIA coordinated to provide misinformation to the White House and its oversight committees suggesting the CIA torture program was the tipoff information for the courier. That is 100 percent wrong and signifies the Agency leadership's persistent and entrenched culture of misrepresenting the truth to Congress and the American people. This example also illustrates again the dangers of not reckoning with the past. So while I agree with my colleagues on the committee who argue that doing oversight in real time is critical, I believe we cannot turn a blind eye to the past when the same problems are staring us in the face in the present. Oversight by willful ignorance is not oversight at all.

In Chairman FEINSTEIN's landmark floor speech earlier this year, she laid out how the CIA pushed back on our committee's oversight efforts. Thanks to her speech, we know about the history of the CIA's destruction of interrogation videotapes and about what motivated her and her colleagues to begin the broader committee study in 2009. We know about the CIA's insistence on providing documents to the committee in a CIA-leased facility and the millions of dollars the CIA spent on

contractors hired to read, multiple times, each of the 6 million pages of documents produced before providing them to the committee staff. We know about the nearly 1,000 documents that the CIA electronically removed from the committee's dedicated database on two occasions in 2010, which the CIA claimed its personnel did at the direction of the White House. Of course we know about the Panetta review.

I turn to the Panetta review. I have provided more information on the events that led up to the revelation included in the Panetta review in a set of additional views that I submitted for the committee's executive summary, but I will summarize them.

From the beginning of his term as CIA Director, John Brennan was openly hostile toward and dismissive of the committee's oversight and its efforts to review the detention and interrogation program. During his confirmation hearing, I obtained a promise from John Brennan that he would meet with committee staff on the study once confirmed. After his confirmation, he changed his mind.

In December 2012, when the classified study was approved in a bipartisan vote, the committee asked the White House to coordinate any executive branch comments prior to declassification. The White House provided no comment. Instead, the CIA responded for the executive branch nearly 7 months later, on June 27, 2013.

The CIA's formal response to the study under Director Brennan clings to false narratives about the CIA's effectiveness when it comes to the CIA's detention and interrogation program. It includes many factual inaccuracies, defends the use of torture, and attacks the committee's oversight and findings. I believe its flippant and dismissive tone represents the CIA's approach to oversight—and the White House's willingness to let the CIA do whatever it likes—even if its efforts are armed at actively undermining the President's stated policies.

It would be a significant disservice to let the Brennan response speak for the CIA. Thankfully, it does not have to. There are some CIA officials and officers willing to tell it straight. In late 2013, then-CIA General Counsel Stephen Preston answered a series of questions that I asked about his thoughts on the Brennan response as part of his Armed Services Committee nomination hearing to be General Counsel of the Defense Department.

His answers to the questions about the program contrasted sharply with the Brennan response. For instance, he stated matter of factly that from his review of the facts, the CIA provided the committee with inaccurate information regarding the detention and interrogation program. I have posted on line my questions to Mr. Preston, along with his answers.

Stephen Preston was not alone in having the moral courage to speak frankly and truthfully about the CIA's

torture program. There were also other CIA officers willing to document the truth. In March 2009, then-CIA Director Leon Panetta announced the formation of a Director's review group to look at the agency's detention and interrogation program. As he stated at the time, "The safety of the American people depends on our ability to learn lessons from the past while staying focused on the threats of today and tomorrow."

The Director's review group looked at the same CIA documents that were being provided to our committee. They produced a series of documents that became the Panetta review. As I discussed in late 2013, the Panetta review corroborates many of the significant findings of the committee's study. Moreover, the Panetta review frankly acknowledges significant problems and errors made in the CIA's detention and interrogation program. Many of these same errors are denied or minimized in the Brennan response.

As Chairman FEINSTEIN so eloquently outlined in her floor speech on March 11 of this year, drafts of the Panetta review have been provided by the CIA unknowingly to our committee staff years before within the 6 million pages of documents it had provided.

So when the committee received the Brennan response, I expected a recognition of errors and a clear plan to ensure that the mistakes identified would not be repeated again. Instead—this is a crucial point—instead, the CIA continued not only to defend the program and deny any wrongdoing but also to deny its own conclusions to the contrary found in the Panetta review.

In light of those clear factual disparities between the Brennan response and the Panetta review, committee staff grew concerned that the CIA was knowingly providing inaccurate information to the committee in the present day, which is a serious offense, and a deeply troubling matter for the committee, the Congress, the White House, and our country.

The Panetta review was evidence of that potential offense. So to preserve that evidence, committee staff securely transported a printed portion of the Panetta review from the CIA-leased facility to the committee's secure offices in the Senate. This was the proper and right thing to do, not only because of the seriousness of the potential crime, but also in light of the fact that the CIA had previously destroyed interrogation videotapes without authorization and over objections of officials in the Bush White House.

In my view, the Panetta review is a smoking gun. It raises fundamental questions about why a review the CIA conducted internally years ago and never provided to the committee is so different from the official Brennan response and so different from the public statements of former CIA officials. That is why I asked for a complete copy of the Panetta review at a December 2013 Intelligence Committee hearing.

Although the committee now has a portion of the review already in its possession, I believed then, as I do now, that it is important to make public its existence and to obtain a full copy of the report. That is why I am here today, to disclose some of its key findings and conclusions on the Senate floor for the public record, which fly directly in the face of claims made by senior CIA officials past and present.

For example, as I mentioned earlier, on a number of key matters, the Panetta review directly refutes information in the Brennan response. In the few instances in which the Brennan response acknowledges imprecision or mischaracterization relative to the detention interrogation program, the Panetta review is refreshingly free of excuses, qualifications, or caveats.

The Panetta review found that the CIA repeatedly provided inaccurate information to the Congress, the President, and the public on the efficacy of its coercive techniques. The Brennan response, in contrast, continues to insist the CIA's interrogations produced unique intelligence that saved lives. Yet the Panetta review identified dozens of documents that include inaccurate information used to justify the use of torture and indicates that the inaccuracies it identifies do not represent an exhaustive list. The Panetta review further describes how detainees provided intelligence prior to the use of torture against them.

It describes how the CIA, contrary to its own representations, often tortured detainees before trying any other approach. It describes how the CIA tortured detainees, even when less coercive methods were yielding intelligence. The Panetta review further identifies cases in which the CIA used coercive techniques when it had no basis for determining whether a detainee had critical intelligence at all.

In other words, CIA personnel tortured detainees to confirm they did not have intelligence, not because they thought they did. Again, while a small portion of this review is preserved in our committee spaces, I have requested the full document. Our request has been denied by Director Brennan. I will tell you, the Panetta review is much more than a "summary" and "incomplete drafts," which is the way Mr. Brennan and former CIA officials have characterized it, in order to minimize its significance. I have reviewed this document. It is as significant and relevant as it gets.

The refusal to provide the full Panetta review and the refusal to acknowledge facts detailed in both the committee study and the Panetta review lead to one disturbing finding: Director Brennan and the CIA today are continuing to willfully provide inaccurate information and misrepresent the efficacy of torture. In other words, the CIA is lying. This is not a problem of the past but a problem that needs to be dealt with today.

Let me turn to the search of the Intelligence Committee's computers.

Clearly the present leadership of the CIA agrees with me that the Panetta review is a smoking gun. That is the only explanation for the CIA's unauthorized search of the committee's dedicated computers in January. The CIA's illegal search was conducted out of concern that the committee staff was provided with the Panetta review. It demonstrates how far the CIA will go to keep its secrets safe. Instead of asking the committee if it had access to the Panetta review, the CIA searched, without authorization or notification, the committee computers that the agency had agreed were off limits.

In so doing, the agency might have violated multiple provisions of the Constitution as well as Federal criminal statutes and Executive Order 12333.

More troubling, despite admitting behind closed doors to the committee that the CIA conducted the search, Director Brennan publicly referred to "spurious allegations about CIA actions that are wholly unsupported by the facts."

He even said such allegations of computer hacking were beyond "the scope of reason." The CIA then made a criminal referral to the Department of Justice against the committee staff who were working on the study. Chairman FEINSTEIN believed these actions were an effort to intimidate the committee staff, the very staff charged with CIA oversight. I strongly agree with her point of view.

The CIA's inspector general subsequently opened an investigation into the CIA's unauthorized search and found, contrary to Director Brennan's public protestations, that a number of CIA employees did, in fact, improperly access the committee's dedicated computers. The investigation found no basis for the criminal referral on the committee staff. The IG also found that the CIA personnel involved demonstrated a "lack of candor" about their activities to the inspector general.

However, only a 1-page unclassified summary of the IG's report is publicly available. The longer classified version was only provided briefly to Members when it was first released. I had to push hard to get the CIA to provide a copy for the committee to keep in its own records. Even the copy in committee records is restricted to committee members and only two staff members, not including my staff member.

After having reviewed the IG report myself again recently, I believe even more strongly that the full report should be declassified and publicly released, in part because Director Brennan still refuses to answer the committee's questions about the search.

In March, the committee voted unanimously to request responses from Director Brennan about the computer search. The chairman and vice chairman wrote a letter to Director Brennan, who promised a thorough response

to their questions after the Justice Department and CIA IG reviews were complete. The Chair and Vice Chair then wrote two more letters, to no avail. The Director has refused to answer any questions on this topic and has again deferred his answers, this time until after the CIA's internal accountability board review is completed, if it ever is.

So from March until December, for almost 9 months, Director Brennan has flat out refused to answer basic questions about the computer search; whether he suggested a search or approved it; if not, who did. He has refused to explain why the search was conducted, its legal basis, or whether he was even aware of the agreement between the committee and the CIA laying out protections of the committee's dedicated computer system. He has refused to say whether the computers were searched more than once, whether the CIA monitored committee staff at the CIA-leased facility, whether the agency ever entered the committee's secure room at the facility, and who at the CIA knew about the search both before and after it occurred.

I want to turn at this point to the White House. To date, there has been no accountability for the CIA's actions or for Director Brennan's failure of leadership. Despite the facts presented, the President has expressed full confidence in Director Brennan and demonstrated that trust by making no effort at all to rein him in.

The President stated it was not appropriate for him to weigh into these issues that exist between the committee and the CIA. As I said at the time, the committee should be able to do its oversight work consistent with our constitutional principle of the separation of powers, without the CIA posing impediments or obstacles as it has and as it continues to do today. For the White House not to have recognized this principle and the gravity of the CIA's actions deeply troubles me today and continues to trouble me.

Far from being a disinterested observer in the committee-CIA battles, the White House has played a central role from the start. If former CIA Director Panetta's memoir is to be believed, the President was unhappy about Director Panetta's initial agreement in 2009 to allow staff access to operation cables and other sensitive documents about the torture program.

Assuming its accuracy, Mr. Panetta's account describes then-Counterterrorism Adviser John Brennan and current Chief of Staff Denis McDonough—both of whom have been deeply involved in the study redaction process—as also deeply unhappy about this expanded oversight.

There are more questions that need answers about the role of the White House in the committee's study.

For example, there are the 9,400 documents that were withheld from the committee by the White House in the course of the review of the millions of

documents, despite the fact that these documents are directly responsive to the committee's document request. The White House has never made a formal claim of executive privilege over the documents, yet it has failed to respond to the chairman's request to the documents or to compromise proposals she has offered to review a summary listing of them. When I asked CIA General Counsel Stephen Preston about the documents, he noted that "the Agency has deferred to the White House and has not been substantially involved in subsequent discussions about the disposition of these documents."

If the documents are privileged, the White House should assert that claim. But if they are not, White House officials need to explain why they pulled back documents that the CIA believed were relevant to the committee's investigation and responsive to our direct request.

The White House has not led on this issue in the manner we expected when we heard the President's campaign speeches in 2008 and read the Executive order he issued in January 2009. To CIA employees in April 2009, President Obama said:

What makes the United States special, and what makes you special, is precisely the fact that we are willing to uphold our values and ideals even when it's hard—not just when it's easy; even when we are afraid and under threat—not just when it's expedient to do so. That's what makes us different.

This tough, principled talk set an important tone from the beginning of his Presidency. However, let's fast forward to this year, after so much has come to light about the CIA's barbaric programs, and President Obama's response was that we "crossed a line" as a nation and that "hopefully, we don't do it again in the future."

That is not good enough. We need to be better than that. There can be no coverup. There can be no excuses. If there is no moral leadership from the White House helping the public to understand that the CIA's torture program wasn't necessary and didn't save lives or disrupt terrorist plots, then what is to stop the next White House and CIA Director from supporting torture.

Finally, the White House has not led on transparency, as then Senator Obama promised in 2007. He said then this:

We'll protect sources and methods, but we won't use sources and methods as pretexts to hide the truth. Our history doesn't belong to Washington, it belongs to America.

In 2009 consistent with this promise, President Obama issued Executive Order 13526, which clarified that information should be classified to protect sources and methods but not to obscure key facts or cover up embarrassing or illegal acts.

But actions speak louder than words. This administration, like so many before, has released information only when forced to by a leak or by a court order or by an oversight committee.

The redactions to the committee's executive summary on the CIA's detention and interrogation program have been a case study in its refusal to be open. Despite requests that both the chairman and I made for the White House alone to lead the declassification process, it was given by the White House to the CIA—the same Agency that is the focus of this report. Predictably, the redacted version that came back to the committee in August obscured key facts and undermined key findings and conclusions of the study.

The CIA also included unnecessary redactions to previously acknowledged and otherwise unclassified information. Why? Presumably, to make it more difficult for the public to understand the study's findings. Content that the CIA has attempted to redact includes information in the official, declassified report of the Senate Armed Services Committee, other executive branch declassified official documents, information in books and speeches delivered by former CIA officers who were approved by the CIA's Publication Review Board, news articles, and other public reports.

It is true that through negotiations between the committee, the CIA, and the White House, many of these issues were resolved. However, at the end of the day, the White House and CIA would not agree to include any pseudonyms in the study to disguise the names of CIA officers. In 2009 the CIA and the committee had agreed to use CIA-provided pseudonyms for CIA officials, but in the summary's final version, the CIA insisted that even the pseudonyms should be redacted.

For an agency concerned about morale, this is the wrong approach to take, in my view. By making it less possible to follow a narrative thread throughout the summary, this approach effectively throws many CIA personnel under the bus. It tars all of the CIA personnel by making it appear that the CIA writ large was responsible for developing, implementing, and representing the truth about the CIA's detention and interrogation program. In fact, a small number of CIA officers were largely responsible.

Further, there is no question that the identities of undercover agents must be protected, but it is unprecedented for the CIA to demand—and the White House to agree—that every CIA officer's pseudonym in the study be blacked out. U.S. Government agencies have used pseudonyms to protect officers' identities in any number of past reports, including the 9/11 Commission report, the investigation of the Abu Ghraib detention facility, and the report of the Iran-Contra affair.

We asked the CIA to identify any influences in the summary wherein a CIA official mentioned by pseudonym would result in the outing of any CIA undercover officer, and they could not provide any such examples.

Why do I focus on this? The CIA's insistence on blacking out even the fake

names of its officers is problematic because the study is less readable and has lost some of its narrative thread.

But as the chairman has said, we will find ways to bridge that gap. The tougher problem to solve is how to ensure that this and future administrations follow President Obama's pledge not to use sources and methods as pretexts to hide the truth.

What needs to be done? Chairman FEINSTEIN predicted in March—at the height of the frenzy over the CIA's spying on committee-dedicated computers—that “our oversight will prevail,” and generally speaking, it has. Much of the truth is out, thanks to the chairman's persistence and the dedicated staff involved in this effort. It is, indeed, a historic event.

But there is still no accountability, and despite Director Brennan's pledges to me in January 2013, there is still no correction of the public record of the inaccurate information the CIA has spread for years and continues to stand behind. The CIA has lied to its overseers and the public, destroyed and tried to hold back evidence, spied on the Senate, made false charges against our staff, and lied about torture and the results of torture. And no one has been held to account.

Torture just didn't happen, after all. Contrary to the President's recent statement, “we” didn't torture some folks. Real actual people engaged in torture. Some of these people are still employed by the CIA and the U.S. Government. There are, right now, people serving in high-level positions at the Agency who approved, directed or committed acts related to the CIA's detention and interrogation program. It is bad enough not to prosecute these officials, but to reward or promote them and risk the integrity of the U.S. Government to protect them is incomprehensible.

The President needs to purge his administration of high-level officials who were instrumental to the development and running of this program. He needs to force a cultural change at the CIA.

The President also should support legislation limiting interrogation to noncoercive techniques—to ensure that his own Executive order is codified and to prevent a future administration from developing its own torture program.

The President must ensure the Panetta review is declassified and publicly released.

The full 6,800-page study of the CIA's detention and interrogation program should be declassified and released.

There also needs to be accountability for the CIA spying on its oversight committee, and the CIA inspector general's report needs to be declassified and released to the public.

A key lesson I have learned from my experience with the study is the importance of the role of Congress in overseeing the intelligence community. It is always easier to accept what we are told at face value than it is to ask

tough questions. If we rely on others to tell us what is behind their own curtain instead of taking a look for ourselves, we can't know for certain what is there.

This isn't at all to say that what the committee found in its study is a culture and behavior we should ascribe to all employees of the CIA or to the intelligence community. The intelligence community is made up of thousands of hard-working patriotic Americans. These women and men are consummate professionals who risk their lives every day to keep us safe and to provide the their best assessments regardless of political and policy considerations.

But it is incumbent on government leaders—it is incumbent on us—to live up to the dedication of these employees and to make them proud of the institutions they work for. It gives me no pleasure to say this, but as I have said before, for Director Brennan that means resigning. For the next CIA director that means immediately correcting the false record and instituting the necessary reforms to restore the CIA's reputation for integrity and analytical rigor.

The CIA cannot not be its best until it faces its serious and grievous mistakes of the detention and interrogation program. For President Obama, that means taking real action to live up to the pledges he made early in his Presidency.

Serving on the Senate Intelligence Committee for the past 4 years opened my eyes and gave me a much deeper appreciation of the importance of our role in the balancing of power in our great government. It also helped me understand that all Members of Congress, not only Intelligence Committee members, have an opportunity and an obligation to exercise their oversight powers.

Members who do not serve on the Intelligence Committee can ask to read classified documents, call for classified briefings, and submit classified questions.

This is my challenge today to the American people. Urge your Member of Congress to be engaged, to get classified briefings, and to help keep the intelligence community accountable. This is the only way that secret government and democracy can coexist.

We have so much to be proud of in our great Nation, and one of those matters of pride is our commitment to admit mistakes, correct past actions, and move forward knowing that we are made stronger when we refuse to be bound by the past.

We have always been a forward-looking Nation, but to be so we must be mindful of our own history. That is what this study is all about. So I have no doubt that we will emerge from a dark episode with our democracy strengthened and our future made brighter.

It has been an honor to serve on this committee, and I will miss doing its important work more than I can say.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

FAREWELL TO THE SENATE

Mr. WALSH. Madam President, I rise today to speak to this body and my fellow Montanans about service.

In preparing to leave the Senate, I add my voice to the voices of many other departing Members who have called for a return to civility in Washington, DC. Politics today is too full of pettiness. Public servants—you and I, as well as those elected to serve in the next Congress—should set the standard with better words and better actions, but we should also lead from the front. I am not saying anything that hasn't already been said, but more of us need to say it. If we are lucky, which we are, we are even blessed to stand in this room and do what we do on behalf of our fellow citizens.

Everyone in this Chamber has a unique story about their roots and their path to public service. Mine began in Butte, MT. I was the son of a union pipefitter in a struggling blue-collar town, and my path led to the military. I enlisted out of high school in the Montana National Guard and soon found a career serving my neighbors and family.

The National Guard—the great citizen wing of our Armed Forces—was a home for me. Leading my fellow soldiers into combat in Iraq in 2004–2005 was a defining experience in my life. Overseeing two successful elections for the Iraqis added a new perspective to my view on democracy. Fighting insurgents drove home how fortunate we are to live in the United States of America and to enjoy the freedoms we often take for granted.

The men of Task Force GRIZ who unfortunately didn't come home with me and the men and women who came back with visible and invisible wounds have truly defined the cost of war for me, and they remind me every single day of the cost of public servants getting it wrong when it comes to our national defense. I have devoted much of my professional life since returning home to accounting for the true cost of war.

Today, from my perspective, the debts are stacked against the democratic process in America in many ways. There is too much money, too much noise, and too little commitment to finding common ground. Anonymous money masquerading as free speech can poison campaigns. It silences the voices of the majority of American citizens. The concentration of wealth in fewer hands is bad for our society, just as the ability for a handful of the wealthy to carry the loudest megaphones in our elections is bad for our democracy. Elections are starting to look much like auctions. Dark money and circus politics shouldn't prevent the U.S. Senate from honorably living up to the power we have been given.

Growing up in a little house that shook twice a day from the dynamite

blasts at the copper mine nearby, I never thought I would be involved in public service. I aspired to have a decent job. I aspired to get an education. I aspired to having the time to fish the lakes and streams I fished with my father. Just the normal stuff. And that normal stuff is what I think most Americans still want today and too often can't achieve.

Public service—becoming a soldier—was my ticket to a better life: a job and a college education. After only a small taste, I discovered that I loved public service. I loved being devoted to something bigger than myself.

We should all remember that Congress can always use more Americans from more walks of life who have discovered public service through unlikely means.

It is the privilege of my life to serve the people of Montana in the seat of Senators Lee Metcalf and Max Baucus. Lee, along with Mike Mansfield, was my Senator while I was growing up in Butte, MT. The great citizen conservationist Cecil Garland said:

It was typical of Lee to fight to give the little guy a voice in government decisions.

In my time in this Chamber, I have tried to follow Lee's example.

The people who need a voice in this Chamber are the ranchers and hardware store owners like Cecil in towns like Lincoln and Dillon. The person who needs a voice in this Chamber is the mother in Troy, MT, who became the primary bread winner when her husband lost his job cutting timber. The person who needs a voice here is the young woman in Shelby, MT, who has done everything right—studied hard and earned her degree—only to be squeezed by too much student debt and too few opportunities. The people who need voices are the servicemembers from Laurel and Great Falls, MT, who returned from the war in Afghanistan and Iraq with delayed onset PTSD and have fallen through the cracks at the VA. They are the entrepreneurs in Big Fork and Bozeman, MT, who have opened small distilleries and faced the tangle of redtape. They are the committed couples across Montana—your neighbors, my family, my friends—who are treated like second-class citizens because of whom they love.

So today I urge my colleagues to lend people like this in each of your States your voice as a Senator in this Chamber.

I am humbled by the number of challenges that face the next Congress. I urge my colleagues to continue to fight to protect Americans' civil liberties. I leave the Senate dismayed by the scope of government surveillance in our everyday life. Congress must always—and I emphasize always—protect the privacy of our citizens.

I remain deeply concerned about the National Security Agency's unconstitutional spying on Americans' communications, the secret backdoors into the Department of Commerce encryption standards, and the gag or-

ders under the FBI national security letter program.

I urge my colleagues to continue fighting for rural America. We need stronger voting rights and more jobs in Indian Country to promote tribal sovereignty and prosperity. We need to keep our farm safety net strong and address brucellosis to protect the livestock industry. We need a stronger commitment to fund and reform the Payment in Lieu of Taxes Program and its sister programs. Small county budgets, schools, and roads depend on them. These same rural communities need better management of our national forests—something Congress and the Forest Service need to focus on.

We need an honest conversation and urgent solutions to the incredible challenge posed by climate change. As I said earlier from this same podium, we cannot put our heads in the sand and continue with business as usual.

Members of Congress should be taking responsibility and upholding the oaths we all swore. We should agree with science—climate change is a clear enemy, and Congress must take steps to stop it.

The next Congress should be thoughtful about women and families—from health care decisions to paycheck fairness.

Finally, I implore all of Congress, all of you, to redouble your attention to the crisis of suicide among our veterans. Yesterday the House of Representatives passed the Clay Hunt Suicide Prevention for American Veterans Act. That bill now sits before this body, and we have an opportunity to act. We have an opportunity to pass it. I mentioned the invisible wounds of war already, but if this country were losing 22 servicemembers a day on the battlefield, Americans would be on the streets protesting. Congress would be demanding action. But that is exactly the number of veterans who die by suicide each and every day from across our country. Veteran suicide is an urgent crisis facing our communities, and congressional action is long overdue.

I believe extending the eligibility for combat veterans at the VA is one essential way to address delayed-onset PTSD and reduce the suicide rate among our veterans. This simple fix and other solutions that improve access to mental health for veterans should continue to be a top priority for the next Congress.

It is fitting that in the last days of the 113th Congress, the Senate is sending the President a bill that carries on the public lands legacy of Senators Lee Metcalf and Max Baucus and the thousands of Montanans who worked together to find common ground.

In the words of Randolph Jennings, Senator ROCKEFELLER's predecessor from West Virginia, Lee "was a tireless champion of preserving and protecting our nation's natural heritage for succeeding generations to use and enjoy."

After Lee's death, Max and the rest of the Montana delegation carried on

his legacy by passing wilderness designations for the Absaroka-Beartooth, Great Bear, and the Lee Metcalf wilderness areas. In the same spirit, I am honored to join Senator JON TESTER and Senator-elect STEVE DAINES in carrying on their legacy by passing the North Fork Watershed Protection Act and the Rocky Mountain Front Heritage Act. We took a page from Montanans. We sat down together, and we worked out an agreement that protected almost 700,000 acres of the Crown of the Continent. This is how democracy should work.

Forty-two years after the first citizen-driven wilderness, this week Congress is expanding the Scapegoat and Bob Marshall Wilderness areas in Montana. Thirty-eight years after the Flathead River was protected from schemes to dam it and divert it, this week Congress is protecting the Flathead and Glacier National Park forever from efforts to mine it and drill it. Montanans came together. Farmers, ranchers, small business owners, conservationists, hunters, anglers—all worked together to find common ground. Montanans went there first, and their representatives in Congress followed.

When Congress rewards the work of citizens who collaborate, when we finally reach the critical mass in this Chamber to be responsive, that is the day we earn the title of "public servant." Montanans can be hopeful today that government by them and for them still works. They can still effect change. The Senate still listens and serves.

When President Eisenhower left office in 1961, Congress passed legislation at his request that restored his military title. He wanted to be remembered as a career soldier rather than the Commander in Chief.

My 33 years in uniform defined my life. I will always be a soldier. As a soldier, as a husband to my wonderful wife Janet, who has been my partner for 31 years, and as the proud dad of Michael and Taylor, as the father-in-law to my wonderful daughter-in-law April, and as the grandfather of a little girl named Kennedy, who will inherit this great Nation, I will return to civilian life with great hope for the United States Senate and for the United States of America.

I, along with millions of others, will be watching closely and imploring Members in this Chamber to check politics at the door and instead focus on the future. Honor veterans and their families who sacrifice so much. Honor seniors who have heard promises from you. Honor the most vulnerable amongst us. They are who we always should fight for.

Madam President, I am forever grateful to have served the people of Montana in this building standing side by side with each and every one of you. God bless each and every one of you, and may God continue to bless the United States of America.

Madam President, I yield the floor, and I suggest the absence of a quorum.

**Senate Armed Services Committee  
Questions for the Record for the  
Honorable Stephen W. Preston, CIA General Counsel,  
Nominated to be the General Counsel of the Department of Defense  
August 9, 2013**

**Senator Mark Udall**

Our great nation is based on a system of checks and balances. I believe that it is essential that the Congress be able to exercise appropriate oversight of executive branch agencies and that agencies appropriately respond to congressional requests. Most executive branch agencies work hard to provide Congress with the information needed to conduct effective oversight. It is important that such best practices be replicated throughout the government. Likewise, it is essential that such practices as unacceptable responses to congressional requests and oversight do not spread to other agencies.

As you know, I have concerns regarding the CIA's recent engagement with the congressional oversight process, to include periods of time during which you have served as General Counsel of the CIA. In your testimony to the Senate Armed Services Committee, you stated that you believed the CIA's response to the Senate Select Committee on Intelligence's *Study on the CIA Detention and Interrogation Program* (the *Committee Study*) was "appropriate," and that you accepted the conclusions of the CIA response. You also stated that you had some involvement in the CIA's response, noting, "For my part, I don't believe there's anything legally objectionable. That's the determination I need to make."

*In responding to the questions below, I note the following:*

*I strongly agree that it is essential that the Congress be able to exercise appropriate oversight of Executive branch agencies and that agencies appropriately respond to congressional requests. Doing a better job of congressional notification and ensuring the proper provision of information concerning covert action and other intelligence activities to the Intelligence Committees has been a top priority of the Directors under which I have served, starting with Director Panetta, and one that I have fully supported. As I stated at this Committee's hearing on my nomination, if confirmed, I will be fully committed to ensuring that the Armed Services Committees are kept properly informed in furtherance of their critical oversight responsibilities vis-à-vis the Department of Defense.*

*My role with respect to the Agency's response to the SSCI's study is perhaps best understood in the context of my broader role as General Counsel of the CIA. For the past four-plus years, my highest priority as General Counsel has been working to ensure that the Agency is and remains in full compliance with all applicable law in the conduct of intelligence activities, with particular attention to ongoing counterterrorism programs. With respect to the former detention and interrogation program, which was ended by Executive Order prior to my arrival, the primary focus of the Office of General Counsel during my tenure has been on supporting the work of the*

*Department of Justice and the SSCI in their respective reviews of the former program, with particular emphasis on the document production process, as well as supporting the U.S. Government's efforts to criminally prosecute terrorist detainees.*

*The preparation of Agency comments following receipt of the SSCI report was undertaken at the direction of the Acting Director and performed by a team of senior career officers. The product of their work was ultimately submitted to the Director, via the Deputy Director, for approval. My involvement in this process was limited. I did not personally participate in the team's formulation of substantive comments, nor did I independently review the factual basis for their findings and conclusions. I reviewed the comments, with particular attention to the recommendations, and made suggestions, chiefly as to presentation, in hopes of enhancing the utility of the comments, to the Agency and the Committee, in the discussion between them that would follow. My role was principally one of advising the Director and the Deputy Director as they considered how best to engage with the Committee in light of its report and, of critical importance, how to improve the Agency's conduct and oversight of other sensitive programs going forward.*

*In its response, the Agency confirmed its agreement with a number of the study's conclusions, acknowledged shortcomings, and set forth Director-approved remedial measures to address them. The response does not defend the historical policy decision to use enhanced interrogation techniques as part of the former program. In submitting the response, moreover, Director Brennan made clear his view that enhanced interrogation techniques are not an appropriate method to obtain intelligence and his agreement with the President's decision to ban their use. My views are exactly the same as Director Brennan's in both respects. Insofar as the Agency's response also identifies areas of disagreement with the SSCI's study, I see the response not as a rebuttal to the study or any kind of counter-report, but as comments on the study for the Committee's consideration as it seeks to ensure an accurate record of the former detention and interrogation program. In my view, as previously indicated, the preparation of comments by Agency officers and the Director's submission of such comments for the Committee's consideration was a lawful and appropriate step in the ongoing dialogue between CIA and its congressional overseers. There is now underway an important discussion between the Agency and the Committee – between the Director and Committee leadership, and between the respective staff members most familiar with the facts. I am prepared to abide the outcome of that process.*

### **Views on the Responsibilities of Government Agencies to Respond to Congressional Oversight Requests—CIA Response to the Senate Select Committee on Intelligence**

1. As you know, on December 14, 2012, the Senate Select Committee on Intelligence provided a nearly 6,300-page *Study on the CIA Detention and Interrogation Program* to the CIA and other agencies for “review and comment.” The CIA's response was requested by February 15, 2013. The Committee did not receive the CIA's response until June 27, 2013. During this more than six-month period, Committee Members repeatedly requested that CIA personnel meet with the Committee staff to discuss the *Committee Study*. The CIA declined all requests to meet with its oversight committee on this matter. In your previous response to questions on your role in the CIA's response to the *Committee Study*, you stated: “My role



*was principally one of advising the Director and the Deputy Director as they considered how best to engage with the Committee in light of its report and, of critical importance, how to improve the Agency's conduct and oversight of other sensitive programs going forward."*

- a. Please elaborate on your specific role in the CIA's decision to decline to meet or communicate with the Members and staff of the CIA's oversight committee on this matter of "critical importance" for more than six months. Did you object to the CIA's decision not to meet with the Committee or its staff? Do you believe this decision was reasonable and appropriate given the "critical importance" of the matter and the repeated requests by multiple Members of the Committee for CIA personnel to meet with Committee staff?
- b. If confirmed as General Counsel of the Department of Defense, will you ensure, to the best of your ability, that the Department will communicate and meet with the Senate Armed Services Committee Members and its staff in a timely and reasonable manner?

*The SSCI's study was formally adopted by the Committee and provided to the Agency for response in December 2012. At that point, the Agency undertook to review the study and prepare comments for the Committee's consideration. Agency leadership determined that it would be most productive to review the report and digest its findings and conclusions before trying to reengage with the Committee in the nature of a substantive response. As any comments on the SSCI's study would not be the Agency's considered response unless and until such comments were reviewed and adopted by the Director, Agency leadership also determined that it would be premature and potentially counterproductive to have substantive discussions at a staff level prior to that time. In my view, leadership's judgment in this regard was not unreasonable.*

*The process took longer than the 60 days originally allotted by the Committee for the Agency's response. This was due in part to the volume of the report, but also to the change in leadership at the Agency, with the nomination and confirmation of a new Director in the first quarter of this year. The Acting Director sought to keep Committee leadership apprised of the Agency's progress and, on at least one occasion during the process, met with the Chairman and Vice Chairman to foreshadow the Agency's preliminary views thus far developed. Following his appointment, the Director also sought to keep Committee leadership apprised of the Agency's progress, and he and the Deputy Director met with Committee leadership in June to walk through the Agency's response to the SSCI's study. As agreed at that meeting, extensive staff-level meetings ensued, and those discussions continue.*

*If confirmed, I will certainly do everything in my power to ensure that the Department of Defense communicates and meets with Senate Armed Services Committee Members and staff in a timely and reasonable manner. As noted above, I have fully supported efforts to ensure the proper provision of information to the Intelligence Committees, and, if confirmed, I will be fully committed to such efforts with respect to the Armed Services Committees. This would include communicating and meeting with this Committee on a timely and reasonable basis.*

#### **CIA Response to the Senate Select Committee on Intelligence**

2. In your testimony to the Senate Armed Services Committee, you stated that you believed the CIA's response to the Senate Select Committee on Intelligence's *Study on the CIA Detention and Interrogation Program* was "appropriate." The CIA response largely responds to a small summary portion of the *Committee Study*, not to the material in the 300-page Executive Summary, or to the larger 6,300-page document. CIA personnel have confirmed that when the CIA response makes an affirmative statement about what the CIA believes is *not* in the *Committee Study*, the CIA response is merely referencing bullet points in a short 50-page section of the *Committee Study* that precedes the Executive Summary, not the larger *Committee Study* or its full Executive Summary. CIA personnel have further relayed that no one person at the CIA has read the full 6,300-page *Committee Study*.
  - a. Given Director Brennan's statement at his Senate confirmation hearing that he looked forward "to reading the entire 6000-page volume, because it is of such gravity and importance;" the additional four months beyond the February 15, 2013, deadline the CIA took to respond to the *Committee Study*; as well as Director Brennan's testimony to the House Permanent Select Committee on Intelligence that the CIA was taking the extra time to provide a thorough response, do you believe it was appropriate for the CIA to largely respond only to a small section of the *Committee Study* that precedes the Executive Summary?

*The Agency undertook to review and respond to the SSCI report to the full extent believed possible given its volume and that of the underlying record material, and given very limited time constraints, imposed originally by the Committee's 60-day deadline and, once that was exceeded, by the practical imperative to respond expeditiously following the appointment of a new Director. In light of these circumstances, the Acting Director adopted a team approach, relying on a group of experienced intelligence officers, rather than a single individual, to conduct the review and prepare comments. He deemed it impractical to respond on a line-by-line basis to the 6,300-page report in any reasonable timeframe, so he directed the team to focus on the study's 20 conclusions and conduct a "deep dive" on a substantial portion of the study viewed as the basis for a number of the study's central conclusions. I understand that the members of the team divided up the substantive matters identified and, in the course of formulating their comments, sought to review those portions of the report and underlying record material relating to the subjects as assigned. Accordingly, while the response is organized in terms of and seeks to address the study's conclusions, my understanding is that the review and resulting comments were not confined to the bare statement of conclusions or even the summary volume of the report. To be sure, the Agency's response does not constitute an encyclopedic treatment of the SSCI's study. To the extent that there are matters apparently not addressed and believed to be important to an understanding of the former program, they would be entirely appropriate for discussion in the staff-level meetings currently in progress.*

### **Views on Responsive Document Production Pursuant to Committee Oversight Requests**

3. On July 19, 2013, the New York Times reported that the Senate Select Committee on Intelligence's *Study of the CIA Detention and Interrogation Program* "took years to complete and cost more than \$40 million." In your previous response to questions on your role in the CIA's response, you stated: "My role was principally one of advising the Director and the Deputy Director as they considered how best to engage with the Committee in light of its

*report and, of critical importance, how to improve the Agency's conduct and oversight of other sensitive programs going forward."*

- a. The CIA declined to provide the Senate Select Committee on Intelligence with access to CIA records at the Committee's secure office space in the Hart Senate Office Building. Instead, the CIA insisted that the Committee review documents at a government building in Virginia. Once the CIA produced relevant documents related to the CIA detention and interrogation program, the CIA then insisted that CIA personnel—and private contractors employed by the CIA—review each document multiple times to ensure unrelated documents were not provided to a small number of fully cleared Committee staff. What role did you play in the decision to employ these unnecessary multi-layered review steps that delayed CIA document production to the Committee at significant governmental expense?
- b. During the CIA's document production of more than six million pages of records, the CIA removed several thousand CIA documents that the CIA believed could be subject to executive privilege claims by the President. While the documents represent an admittedly small percentage of the total number of records produced, the documents—deemed responsive—have nonetheless not been provided to the Committee. What role did you, and other members of CIA leadership, play in the decision to withhold these responsive documents from the Committee? Do you believe it is proper for a federal agency to deny the production of responsive documents to a congressional oversight committee for significant periods of time absent an executive privilege claim by the President?
- c. If confirmed as General Counsel of the Department of Defense, will you ensure, to the best of your ability, that the Department will provide responsive documents as requested by the Senate Armed Services Committee absent an executive privilege claim by the President?

*During its review of the former detention and interrogation program, the Committee was provided access to highly sensitive CIA materials, including operational cable traffic, internal electronic communications and other information. All told, the Committee was provided access to more than six million pages of materials, some in a large initial production to the Committee in 2009 and the rest in follow-on tranches in response to hundreds of staff requests over the next three years. It is my understanding that the particular arrangements for access – including scope, location and associated limitations – stemmed from discussions between the Agency and the Committee, initially between Director Panetta and the Chairman and then at a staff level over time. While in most instances I was not directly involved, I believe that the judgments underlying these arrangements were made in a good faith effort to provide adequate protection for particularly sensitive national security information, to ensure access to the materials needed by the Committee to perform its oversight function and otherwise to facilitate the review, and to follow conventional document collection/review/production practices as applicable under the circumstances.*

*With specific reference to documents potentially subject to a claim of executive privilege, as noted in the question, a small percentage of the total number of documents produced was set aside for further review. The Agency has deferred to the White House and has not been substantively involved in subsequent discussions about the disposition of those documents.*

*If confirmed, I will certainly do everything in my power to ensure that the Department of Defense will provide responsive documents as requested by the Senate Armed Services Committee, and I will consult with the Committee regarding the basis for any good faith delay or denial in providing such documents.*

### **The Provision of Accurate Information by Federal Agencies to the Department of Justice**

4. In your previous response to questions on your role in the CIA's response to the Senate Select Committee on Intelligence's *Study of the CIA Detention and Interrogation Program*, you stated that you had some involvement in the CIA's response, noting, "For my part, I don't believe there's anything legally objectionable. That's the determination I need to make." The CIA response states: "we found no evidence that any information was known to be false when it was provided [to the Department of Justice] or that additional or more frequent updates would have altered OLC's key judgments." You have written in response to a question on this matter:

"My understanding is that DOJ did not always have accurate information about the detention and interrogation program in that the actual conduct of that program was not always consistent with the way the program had been described to DOJ. Of particular note, I understand that, in a number of instances, enhanced interrogation techniques, specifically waterboarding, were applied substantially more frequently than previously had been described to DOJ. I cannot say what DOJ would or would not have considered material at the time. I can tell you that, if I were in a comparable situation, I would consider information of this nature to be material."

The information you have referenced above regarding the discrepancies between the actual use of the waterboard and the description of its use that CIA provided to the Department of Justice—while significant and material—was known prior to the *Committee Study*. Volume II of the *Committee Study*, specifically a 128-page section entitled, *CIA Representations to the Department of Justice Related to Intelligence, Effectiveness, and Operation of the Interrogation Program*, details how far more inaccurate information was provided to the Department of Justice.

- a. In light of the critical nature of this subject, please review the *CIA Representations* section (referenced above) of the *Committee Study* and describe your views on whether the factual record as recounted in the *Committee Study* supports the CIA's legal conclusion that accurate, timely and complete information would not have "altered OLC's key judgments."
- b. As noted above, you have stated in your previous response to a Question for the Record that "I cannot say what DOJ would or would not have considered

material at the time. I can tell you that, if I were in a comparable situation, I would consider information of this nature to be material.” After reviewing discrepancies between the factual record and OLC key judgments, do you agree with the CIA’s response that “revisiting its factual representations and updating them as necessary... would not have had a practical impact on the outcome”? Please explain whether your position differs from the CIA’s conclusion that OLC key judgments would not have been altered. For reference, you might review key judgments in the following documents:

- *Memorandum Regarding Interrogation of al Qaeda Operative* (August 1, 2002);
  - Letters from the Department of Justice related to the interrogation of individual detainees, including to the Acting Director of Central Intelligence, dated July 22, 2004; to the CIA Acting General Counsel, dated August 6, 2004; to the CIA Acting General Counsel, dated August 26, 2004; to the CIA Acting General Counsel, dated September 6, 2004; and to the CIA Acting General Counsel, dated September 20, 2004;
  - *Memorandum Regarding Application of 18 U.S.C. §§ 2340-2340A to Certain Techniques That May be Used in the Interrogation of a High Value al Qaeda Detainee* (May 10, 2005);
  - *Memorandum Regarding Application of 18 U.S.C. §§ 2340-2340A to the Combined Use of Certain Techniques in the Interrogation of High Value al Qaeda Detainees* (May 10, 2005)
  - *Memorandum Regarding Application of United States Obligations Under Article 16 of the Convention Against Torture to Certain Techniques that May Be Used in the Interrogation of High Value al Qaeda Detainees* (May 30, 2005)
  - *Memorandum Regarding Application of the Detainee Treatment Act to Conditions of Confinement at Central Intelligence Agency Detention Facilities* (August 31, 2006)
  - *Memorandum Regarding Application of the War Crimes Act, the Detainee Treatment Act, and Common Article 3 of the Geneva Conventions to Certain Techniques that May Be Used by the CIA in the Interrogation of High Value al Qaeda Detainees* (July 20, 2007)
- c. The CIA response to the *Committee Study* states: “while it would have been prudent to seek guidance from OLC on the complete range of techniques prior to their use, we disagree with any implication that, absent prior OLC review, the use of the ‘unapproved’ techniques was unlawful or otherwise violated policy.” Please state whether you agree with this legal determination and explain your legal reasoning.
- d. You have stated in your previous response to a Question for the Record that: “While I have been General Counsel of the CIA, the relationship between the Agency and DOJ’s Office of Legal Counsel (OLC) has been characterized by frequent and candid communication concerning the Agency’s sensitive programs, with particular attention to ensuring that the OLC is provided complete and accurate information on which to base its legal advice to the Agency. In addition, the Agency is developing an internal

mechanism for periodically and systematically reviewing OLC opinions regarding sensitive programs to ensure that OLC is informed of any material changes in facts or circumstances.” Please describe your views on the importance of federal agencies conveying and ensuring the OLC is properly informed of relevant information. How will you approach your interactions with the Office of Legal Counsel if confirmed as General Counsel of the Department of Defense?

*Departments and agencies rely on OLC for authoritative legal guidance on a variety of difficult and consequential issues in an effort to ensure that their programs and operations are entirely lawful. This system works if and to the extent that OLC is properly informed of the information needed to address the legal issues presented. In my view, this is of fundamental importance. During my tenure as CIA General Counsel, I have worked to ensure that the Agency provides the full range of relevant information to OLC. If confirmed, I will do likewise at the Department of Defense, continuing to engage, in an atmosphere of transparency, with my OLC colleagues.*

*With reference to the factual representations concerning the former detention and interrogation program, it would be difficult to determine with certainty what information DOJ officials years ago would have regarded as outcome determinative. That notwithstanding, I have reviewed the section of the SSCI’s study (and the other material) identified in the question, and I believe CIA’s efforts fell well short of our current practices when it comes to providing information relevant to OLC’s legal analysis. If CIA had adhered to what we regard as proper practice today, it would have ensured that its representations to OLC on matters relating to the former program were and remained complete and accurate – updated as necessary on a timely basis – as we do today. In sum, I believe timely disclosure of all relevant facts to OLC is a necessary predicate to obtaining its authoritative legal guidance. Providing such disclosure is the current practice of the Agency, and it will certainly be my practice at the Department of Defense, if I am confirmed.*

*On the particular point raised in (c) of the question, I also agree that CIA should have sought guidance from OLC with regard to the complete range of interrogation techniques prior to their use. I understand the Agency’s response to the SSCI’s study to acknowledge this point, noting only that failure to so engage with OLC did not, in and of itself, render any given technique unlawful.*

### **Responding to Congressional Oversight**

5. The CIA response to the Senate Select Committee on Intelligence’s *Study of the CIA Detention and Interrogation Program* states that “We disagree with the *Study*’s conclusion that the Agency actively impeded Congressional oversight of the CIA detention and interrogation program.”
  - a. In light of the critical nature of this subject, and its direct relevance to your nomination, please review the 298-page section in Volume II of the *Committee Study*, entitled, *CIA Representations on the CIA Interrogation Program And the Effectiveness of the CIA’s Enhanced Interrogation Techniques To Congress*, as well as any other appropriate sections, and state whether you concur with the CIA’s response.

- b. The CIA response states that the White House had the “responsibility” for determining whether the CIA would brief the full Committee or only the Chairman and Vice Chairman. The CIA response also notes that “We do not want to suggest that CIA chafed under these restrictions; on the contrary, it undoubtedly was comfortable with them.” Do you believe that the limitations on briefings to the Committee Chairman and Vice Chairman for nearly four and a half years was appropriate, or adhered to the letter or spirit of the *National Security Act of 1947, as amended*, regardless of White House direction at the time?
- c. Based on your review of the aforementioned 298-page section, and other associated sections of the *Committee Study*, do you believe that the briefings provided to the Committee Chairman and Vice Chairman prior to September 6, 2006, fulfilled the CIA’s obligation, under the *National Security Act*, to keep the congressional intelligence committees “fully and currently informed of the intelligence activities of the United States, including any significant anticipated intelligence activity”? In your response, please provide your assessment of whether the record indicates that information provided to the Committee Chairman and Vice Chairman was accurate, complete, or timely.
- d. Based on your review of the 298-page section, and other associated sections of the *Committee Study*, do you believe that the briefings provided to the full Committee beginning on September 6, 2006, fulfilled the CIA’s obligation, under the *National Security Act*, to keep the congressional intelligence committees “fully and currently informed of the intelligence activities of the United States, including any significant anticipated intelligence activity”? In your response, please address whether information provided to the Committee was accurate, complete, or timely.
- e. To what extent do you view the CIA’s past engagement with the Senate Select Committee on Intelligence on the CIA’s Detention and Interrogation program—as well as the CIA’s most recent response and engagement with the Committee on this matter—as a model for the Department of Defense’s engagement with the Senate Armed Services Committee?

*I have reviewed the section of the SSCI’s study identified in the question, and I believe CIA’s efforts in this regard fell well short of our current practices when it comes to congressional reporting. I would not regard them as a model for the Department of Defense’s engagement with this Committee. Had the Executive understood and discharged its congressional reporting obligations as we have in my experience since 2009, I do not believe that the briefings on a program of this nature, magnitude and duration would have continued on a limited, leadership-only basis. Moreover, as discussed in the Agency’s response and further explored in the staff-level discussions, briefings to the Committees included inaccurate information related to aspects of the program of express interest to Members. What we regard as proper practice today is driven by faithful application of the National Security Act of 1947. It is also informed by the very high priority the Directors under which I have served have placed on doing a better job of congressional notification and ensuring the proper provision of information concerning covert action and other intelligence activities to the Intelligence Committees. To repeat, I have fully*

*supported these efforts and, if confirmed, will be fully committed to such efforts with respect to the Armed Services Committees.*

### **Section 331 of the Intelligence Authorization Act**

6. The CIA response to the *Committee Study* states that “We disagree with the Study’s contention that limiting access is tantamount to impeding oversight.” To support this conclusion, the CIA response states that the narrative of the *Committee Study* “does not reflect mutually agreed upon past or current practices for handling restricted access programs.” The CIA response continues: “Indeed, the Committee codified, as part of the FY12 Intelligence Authorization Act, the practice of briefing sensitive matters to just the Chairman and Ranking Member [sic], along with notice to the rest of the Committee that their leadership has received such a briefing.”
  - a. Is the statement above a reference to Section 331 (“Notification procedures.”) of the FY10 Intelligence Authorization Act, reported out by the Committee on July 22, 2009, and again, on July 15, 2010? If not, please identify the provision in the FY12 Intelligence Authorization Act to which the CIA response is referring in this statement.
  - b. Please confirm your understanding that the language and intent of that legislation was not to “codify... mutually agreed upon past or current practices,” but rather, as the Committee report states, to provide for the “improvement of notification” by ensuring that, “[i]n the event the DNI or head of an Intelligence Community element does not provide [notification] to the full congressional intelligence committees,” the full committee shall be provided notice of this fact. If this is not your understanding, please provide an explanation for the conflict between the sponsors’ and Committee’s legislative intent to improve full Committee notification and the CIA’s alternative interpretation of this law as expressed in the CIA’s response.

*The statement quoted above from the Agency’s response to the SSCI’s study refers to section 331 of the FY10 Intelligence Authorization Act, but I believe the statement was inartfully drawn to the extent that it can be read to suggest that, in enacting this legislation, the Congress or the Committee intended to endorse or embrace the Executive’s practice of limited notification of certain sensitive matters to Committee leadership. My understanding of the legislation is that it makes provision for situations in which the Executive determines to provide notification to fewer than all Committee Members (“If the President determines that ..., the finding may be reported to ...”) and, specifically, puts into law the requirement of notice to all Committee Members of the fact of the limited notification (“In any case where ..., the President shall provide to ...”) As I understand it, such notice to all Committee Members was not the pre-existing practice, but rather was an improvement put into place by the legislation. In short, the requirements of section 331 are as stated in the plain language of the provision, and the legislative intent is as stated in the legislative history of the Act, to include specifically the views expressed by Senator Rockefeller.*

### **Previous Responses to Questions for the Record**



7. You were asked in a previous Question for the Record about the CIA's past representations that information obtained from the CIA's enhanced interrogation techniques was "otherwise unavailable" to the United States Government, and the CIA's response, which states the CIA now believes these representations were "inherently speculative." The CIA response further states, "it is unknowable whether, without enhanced techniques, CIA or non-CIA interrogators could have acquired the same information from those detainees." In your response, you stated, "I understand this to be saying that information was provided by detainees following the application of enhanced interrogation techniques and that it is not possible to know whether the same information would have been obtained had other interrogation methods been used, because there is no way to turn the clock back and question these detainees all over again in a different fashion. In this sense, it is unknowable."
- a. As you know, in its cataloging of intelligence in U.S. government databases, the Committee accepted the CIA's broad definition of information obtained from CIA enhanced interrogation techniques – to include all information a detainee provided during or after CIA enhanced interrogation techniques, even if that information was provided several years after the use of enhanced interrogation techniques – as information derived from the techniques. Instead of speculating on what might have resulted if the CIA had tried to "turn the clock back and question these detainees all over again in a different fashion," the Committee sought to confirm CIA representations that information the CIA claimed was derived from enhanced interrogation techniques was, as the CIA represented, otherwise unavailable to the U.S. government through other intelligence sources.

Referencing the same standard, in a previous response you relayed that "otherwise unavailable" meant "otherwise unavailable to the Agency through other sources." This interpretation of "otherwise unavailable" is consistent with CIA representations to the CIA Office of Inspector General, Congress, and the Department of Justice, among others. For example, see the May 30, 2005, Office of Legal Counsel Memorandum, which describes CIA representations on effectiveness and the need to obtain "otherwise unavailable intelligence" to protect the nation.

Using the term "otherwise unavailable," as you stated, "otherwise unavailable to the Agency through other sources," which is consistent with past CIA representations, do you agree that a review of intelligence community records could determine whether information the CIA claims resulted from enhanced interrogation techniques was either "otherwise unavailable," or previously available "to the Agency through other sources"?

*For purposes of this question, I understand "otherwise unavailable" to focus not on whether conventional interrogation techniques would have produced information different from that obtained following application of enhanced interrogation techniques, but on whether the information obtained was in fact available from sources other than the detainee subjected to such enhanced techniques. Understood in this way, I agree that it may be possible to make a determination as to whether information obtained following application of enhanced interrogation techniques was "otherwise unavailable," depending of course on the state and*

*content of the record. My understanding is that differing views of the record in this regard are being discussed in the staff-level meetings currently in progress.*

## **Attachment: Intelligence Authorization Act of Fiscal Year 2010**

### ADDITIONAL VIEWS OF SENATOR ROCKEFELLER

The Congressional notification provisions in the bill that we are reporting out today constitute an important improvement over the status quo. They require that the congressional intelligence committees and the President establish written procedures regarding the details of notification processes and expectations; that the President provide written notice about intelligence activities and covert actions, including changes in covert action findings and the legal authority under which an intelligence activity or a covert action is or will be conducted; that the President provide written reasons for limiting access to notifications to less than the full committee; and that the President maintain records of all notifications, including names of Members briefed and dates of the briefings.

I support these provisions because I expect that they will go a long way toward correcting past deficiencies. However, I believe that additional clarity is needed regarding whether or not the full committee will be aware of three critical facts in circumstances of less-than-full-committee notifications: (1) the fact that such a limited access notification has occurred, (2) the general subject of the limited notification, and (3) the reasons for limiting access.

There are situations in which a limited notification is appropriate and even necessary, but those situations are rare. Congressional notification procedures—and practices—should reflect that rarity. Most importantly, they should prevent limited notification from impeding the committees' oversight responsibilities, because effective congressional oversight of intelligence activities is critical to the national security interests of the United States.

As Senator Snowe and I noted in our additional views to the Committee's July 22, 2009 report of an earlier version of this bill, the Committee has supported clarity on these matters in four consecutive intelligence authorization bills. I will continue to work with my colleagues in establishing written notification procedures that resolve any ambiguities in favor of full committee awareness.

The Congressional notification provisions in the bill that we are reporting out today are a good first step—but only a first step.

JOHN D. ROCKEFELLER, IV.