



## US May Experience Constitutional Crisis, Finds *The Intercept*

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A constitutional crisis may spark up in the US . Alleged conduct of CIA is at the center of the apprehended constitutional crisis. This was observed by a report in *The Intercept* , the English language news website edited by Glenn Greenwald, Laura Poitras, and Jeremy Scahill.

*The Intercept* , a commercial initiative of First Look Media, in the report said: “Two top Senate leaders declared [on March 11, 2014] that the CIA's recent conduct has undermined the separation of powers as set out in the Constitution, setting the stage for a major battle to reassert the proper balance between the two branches.”

The report, “CIA Search of Congressional Computer Sparks Constitutional Crisis” (March 11, 2014) by Dan Froomkin said:

“Intelligence Committee chair Dianne Feinstein (D-Calif.), in a floor speech that Judiciary Committee chair Patrick Leahy (D-Vt.) immediately called the most important he had heard in his career, said the CIA had searched through computers belonging to staff members investigating the agency's role in torturing detainees, and had then leveled false charges against her staff in an attempt to intimidate them.

“I have grave concerns that the CIA's search may well have violated the separation of powers principle embodied in the United States Constitution, including the speech and debate clause', she said. ‘It may have undermined the constitutional framework essential to effective congressional oversight of intelligence activities or any other government function.’

“She concluded: ‘The recent actions that I have just laid out make this a defining moment for the oversight of our intelligence community. How Congress responds and how this is resolved will show whether the Intelligence Committee can be effective in monitoring and investigating our nation's intelligence activities, or whether our work can be thwarted by those we oversee. I believe it is critical that the committee and the Senate reaffirm our oversight role and our independence under the Constitution of the United States .’

“She also accused the CIA of obstructing her committee's torture inquiry in general, and of disputing findings that its own internal inquiry had substantiated.”

The *TI* report cited a document, an internal review by the CIA, at the center of the controversy. Materials of the review were turned over to Feinstein's committee by the CIA during the course of the four-year congressional investigation into the Bush-era torture practices.

According to Feinstein, said the *TI* report, “the document known as the Panetta Review after then-director of the CIA Leon Panetta was first discovered by committee staff using CIA-provided search tools in 2010. It became particularly relevant later, after the committee completed a scathing 6,300-page report in December 2012, and the CIA sent its official response in June 2013. The detailed document is still classified, but it is known to be highly critical of both the CIA's role in the torture regime and its campaign to deceive Congress about it. The CIA vehemently took issue with those conclusions.”

The report by *The Intercept*, launched in February 2014, said:

“Based on the CIA's extensive record of removal and destruction of evidence, which Feinstein detailed in her floor speech, committee staff decided ‘there was a need to preserve and protect’ a copy of the review, which meant bringing it back from the CIA-leased offices in Virginia where staff had been forced to conduct their investigation to secure facilities in a Senate office building.

“Feinstein said that a month later, John Brennan, the current director of the CIA, informed her that CIA personnel had conducted a search of the committee's computers in the Virginia facility, including the standalone network that contained the committee staff's own internal work product and communication.

“The senator was outraged, she said, and fired off a letter expressing her concerns that the action was illegal and unconstitutional.

“‘I have asked for an apology and a recognition that this CIA search of computers used by its oversight committee was inappropriate. I have received neither’, she said.”

The report by *The Intercept* that plans, as short-term mission, to provide a platform to report on the documents provided by Edward Snowden said:

“Besides the constitutional implications, the CIA search may also have violated the Fourth Amendment, the Computer Fraud and Abuse Act, as well as Executive Order 12333, which prohibits the CIA from conducting domestic searches or surveillance.”

According to the *TI* report, Feinstein made it clear that she is eager for her committee's report to become public. “If the Senate can declassify this report, we will be able to insure that an un-American, brutal program in interrogation and distension will never again be permitted.”

Leahy called for dramatic action. “We are supposed to be the conscience of the nation,” he said of the Senate. “Now let's stand up for this country.”

In a statement, Leahy later continued: “This is not just about getting to the truth of the CIA's shameful use of torture. This is also about the core founding principle of the separation of

powers, and the future of this institution and its oversight role. The Senate is bigger than any one Senator. Senators come and go, but the Senate endures. The members of the Senate must stand up in defense of this institution, the Constitution, and the values upon which this nation was founded.”

Brennan, the report said, “[m]isrepresenting Feinstein's charge as one of CIA “hacking”, denied it.

Virginia Sloan, president of The Constitution Project, a bipartisan legal watchdog in the US , in a statement said:

“We are outraged by Senator Feinstein's description of repeated efforts by the CIA to thwart critical and legitimate congressional oversight through delays, attacks, intimidation and attempts to conceal. ... Such conduct strikes at the heart of our nation's constitutional system of separation of powers.”

Sloan said: “The White House cannot allow the CIA to drive this process any longer. The president must ensure that the committee's report is declassified to the fullest extent possible, as well as the CIA's response to the committee's study and the so-called Panetta review.”

Senator Mark Udall (D-Colo.) in a statement said: The CIA tried “to hide the truth from the American people” about its “brutal and ineffective detention and interrogation program”, and “undermine the Senate Intelligence Committee's oversight role by illegally searching committee computers.”

Senator Udall said: “The U.S. Constitution is clear ...: The separation of powers and aggressive oversight are fundamental to our democracy, and Coloradans can count on me to continue to protect these foundational pillars no matter who is in the White House.”

Senator Ron Wyden (D-Ore.) in a statement commended Feinstein “for shining a light on the unprecedented invasion by the CIA into computers used by Senate Intelligence Committee investigators.”

Wyden said: “[T]his search may have violated both federal law and the US Constitution. In addition to the grave implications for the Constitutional separation of powers, I am extremely troubled that the CIA leadership has neither responded to specific questions about this search nor even acknowledged that it was inappropriate. This is simply not acceptable in a democracy.”

The senator said: “[T]he Intelligence Community leadership's misleading statements on interrogation and many other issues has undermined their credibility.”

CIA director John Brennan's decision to search Senate committee computers was such a blatant violation of the constitutional separation of powers that some pro-accountability groups in Washington are starting to seek his ouster.

Dan Froomkin in another report in *The Intercept* said:

Dianne Feinstein “disclosed in a fiery speech on [March 11, 2014] that Brennan told her in January that CIA personnel had conducted a search on computers at a CIA-leased facility that had been reserved for the use of committee staffers investigating the agency's role in the Bush-era torture of detainees.” (“Calls for Brennan's Ouster Emerge Along With Details of CIA Search of Senate Computers”, March 12, 2014)

The report by *The Intercept* that plans to “produce fearless, adversarial journalism across a wide range of issues” in the long term said:

“The [ US ] Constitution clearly gives the legislative branch the authority to investigate the executive branch — and not the other way around.

“More even than the act itself, some critics see Brennan's lack of recognition of the extent of his violation of key constitutional principles to be the biggest cause for him to be fired.

“‘The recent revelation that CIA Director Brennan reported the surveillance directly to Chairman Feinstein is stunning,’ said Angela Canterbury, public policy director of the Project On Government Oversight (POGO).

“‘How can we hold such impunity accountable? Remove Brennan, for starters,’ she said. ‘And then there must be a full investigation that is more independent than one might expect from DOJ.’”

Shahid Buttar, executive director of the Bill of Rights Defense Committee, said: “Given his false assurances to the Senate Intelligence Committee about CIA drone strikes, and his continuing failure to let the public finally know the facts about CIA torture, Brennan should resign or be removed from office so the Committee can examine and confirm new leadership.”

According to the *TI* report, Sen. Udall said on *MSNBC* on [March 11, 2014]: “Some senators appeared to be close to calling for Brennan to go. I've lost confidence in Director Brennan, particularly because he won't acknowledge the misdeeds and misconduct of the CIA”. The senator added: “The CIA has an important role to play, but if the public doesn't trust the CIA, if the Senate overseers don't trust the CIA, I don't know how Director Brennan can continue to lead the agency.”

Froomkin's report said:

“The separation of power principles establish how the three branches of government interact and serve as checks and balances to each other. Congress, for instance, writes laws, which the president can veto or the courts can overrule. The executive branch enforces the laws. As for investigations, as Sen. Martin Heinrich (D-N.M) felt the need to state last week: ‘The Senate Intelligence Committee oversees the CIA, not the other way around’.”

An earlier report by Froomkin in *The Intercept* cited Senator Martin Heinrich (D-N.M): “The Senate Intelligence Committee oversees the CIA, not the other way around”. (“The Inverse of Oversight: CIA Spies On Congress”, March 5, 2014)

*McClatchy News Service* reported on March 11, 2014 that the CIA's inspector general has asked for a criminal investigation into CIA monitoring of computers used by Senate aides who were investigating the agency's prominent role in the Bush-era torture of detainees.

The *TI* report said: In a letter to President Obama on March 11, 2014, Sen. Udall referred to what he called “unprecedented action against the Committee in relation to the internal CIA review,” and described it as “incredibly troubling for the Committee's oversight responsibilities and for our democracy.”

The report said:

“The allegation comes on the heels of a fruitless quest by members of the House and Senate to get NSA officials to confirm or deny whether information on phone calls by members of Congress has been swept up in the agency's metadata dragnet. (Since it's so indiscriminate, presumably they have, but the NSA won't say so.)

“The Senate report at the heart of this confrontation took four years to complete, runs 6,000 pages, and was adopted by the committee in December 2012. It is said to be highly critical of both the CIA's role in the torture regime and its public protestations of innocence. But the White House, under ferocious lobbying by the CIA, has refused to declassify it.

“Most recently, controversy has arisen over an internal CIA report that was reportedly critical of the agency's practices, but was withheld from Senate investigators.

Senator Heinrich, in his statement, complained: “Since I joined the Committee, the CIA has refused to engage in good faith on the Committee's study of the CIA's detention and interrogation program. Instead, the CIA has consistently tried to cast doubt on the accuracy and quality of this report by publicly making false representations about what is and is not in it.”

Froomkin's report said:

“The resistance to oversight about torture mirrors similar problems legislators have experienced when it comes to trying to monitor surveillance programs and other secret activities, with one huge exception: The torture report was championed and endorsed by Senate intelligence committee Chairman Dianne Feinstein (D-Calif.) and other senior members of that committee. By contrast, Feinstein and House Intelligence Committee Chairman Mike Rogers (R-Mich.) have emerged as the strongest defenders of surveillance activity, leaving the so-far-losing battle for disclosure to be fought by more rebellious legislators.

“The consistent theme is that members of Congress are finding themselves at an ever-increasing disadvantage when it comes to even finding out what intelligence agencies are doing — not to mention reining them in.

“More often, the only way members of Congress can pierce the veil of secrecy is through classified briefings. But those briefings are often problematic, some members of Congress say.

First, it's too easy for briefers to give them the runaround — and then they feel circumscribed in what they can say publicly.

For those reasons, some members, like Rep. James Sensenbrenner (R-Wisc.) generally avoid secret briefings.”

The *TI* report said:

“Sen. Sheldon Whitehouse (D-R.I.) said on March 11, 2014 that he felt limited in what he could say in response to documents leaked by former NSA contractor Edward Snowden.

“‘We were stuck, because if you're a member of Congress you are not a declassifier and even if something is out there, unless it has been formally declassified, you can be arrested for commenting on or echoing things, even if they're out in the public domain, because now you're confirming it to be true,' he said.

“Sen. Barbara Mikulski (D-Md.) famously responded to Attorney General Eric Holder's contention that senators had been ‘fully briefed' on surveillance programs at a June 2013 Senate Judiciary subcommittee hearing by saying: “‘Fully briefed’ doesn't mean that we know what's going on.’

The *TI* report referred to a video of Rep. Justin Amash (R-Mich.) describing the futility of getting information in intelligence briefings for members of Congress at the Cato Institute in October 2013: “You'll find that it's just a game of 20 questions,” he said. But “you don't know what questions to ask.... You don't have any idea what kind of things are going on.”

“You have to start just spitting out random questions. Does the government have a moon base? Does the government have a talking bear? Does the government have a cyborg army? If you don't know what kind of things the government might have, you just have to guess and it becomes a totally ridiculous game of twenty questions. If you ask something in slightly the wrong way, they will tell you no. They'll say No, we don't do that. Or NO, that agency doesn't do that. Maybe some other agency does it, but they're not going to tell you that.... Or no, we can't do that under this program, but we can do it under this program. They don't tell you that information... but you don't know what the other programs are.”

The reports, cited here liberally, from *The Intercept* tells nothing but the state of matured bourgeois democracy in the metropolis of the world system, which is adored and idolized by the bourgeois democracy-mongers in the Third and Fourth Worlds.

Separation of power, a political fiction by bourgeois scholars and advertised by status quo-media, again gets exposed with this stream of events as has been exposed many times in other political incidents. Increase in the executive power at the expense of legislature in bourgeois democracies, “a great historical advance in comparison with medievalism” as Lenin writes in 1918 in his pamphlet on Kautsky, is more than a century old fact. The executive power increases as the ruling system increasingly encounter turmoil in its statecraft, competition within ruling classes and in broader society. Looming crises strengthens and accelerates the phenomenon –

aggravation of the ruling reality, which is actually control over production and distribution, and rule over labor and resources.

The lesson is not learned by those scholars in the Third and Fourth Worlds, who have been hired by imperial powers. The way they criticize lumpenocracy – democracy of the Third and Fourth Worlds' lumpen, comprador elites – turns into criticism of only of a part as they hide other parts of the elites, distorts information, even obliterates identity of information sources, and ultimately stands for forces opposed to advancement of respective society. Their mongering for donor-democracy and their partisan propaganda – criticize only a faction – exposes their mercenary character and their work: prepare stage for imperial intervention.