

Courthouse News Service



Obama Opts to Archive, not Declassify, Torture Report

Britain Eakin

December 13, 2016

A Senate report on torture and other harsh interrogation tactics that the CIA used in the war on terror will remain secret into the next administration, the White House revealed Monday.

Though he will not declassify the 6,700-page report that took six years to compile, President Barack Obama will have the report archived for 12 years as part of the official records at his presidential library.

This means that Senate Intelligence Committee Chairman Richard Burr will be prevented from destroying any existing copies. Burr has been highly critical of the report, and tried to issue a mass recall of all existing copies from executive agencies.

Notice of the report's archival came in response to pressure from human-rights advocates and Capitol Hill, including Sen. Dianne Feinstein, a California Democrat who oversaw compilation of the report as then-chairwoman of the Senate Intelligence Committee. Feinstein had a 524-page **summary** of the report released in 2014.

White House counsel Neil Eggleston said in a Dec. 9 letter the full report will be preserved under the Presidential Records Act.

"Consistent with the authority afforded to him by the PRA, the president has informed the archivist that access to classified material, among other categories of information, should be restricted for the full twelve years allowed under the act," Eggleston's letter says.

"At this time we are not pursuing declassification of the full study," it continues.

Feinstein saw a silver lining in the decision to archive.

"The president has refused to do so at this time, but I'm pleased the report will go into his archives as part of his presidential records, will not be subject to destruction and will one day be available for declassification," Feinstein said in a statement.

Attorneys for the men facing trial before the 9/11 military commissions at Guantanamo Bay have sought access to the report in preparation of defenses for their clients, all of whom face the death

penalty and were tortured in CIA custody. They have launched a parallel effort to get the report declassified.

“This is a positive step, but it’s the least that this administration could do, which frankly, makes me question this president’s dedication to eradicating torture,” said Alka Pradhan, human-rights counsel for accused 9/11 plotter Ammar al-Baluchi, in a phone interview.

“The president has always framed this as looking forward, learning from lessons and not looking backward,” Pradhan added. “That’s the completely wrong way to frame it.”

Pradhan said the entire report should have been declassified years ago.

Al Baluchi’s defense team has the appropriate security clearances to access the full report, but it has been up to Congress, and Senate Intelligence Committee Chairman Sen. Richard Burr in particular, to grant that access, Pradhan said.

He has so far refused, she noted.

Al-Baluchi’s team has since tried to gain access to the copy maintained by the Department of Defense.

Pradhan said that chief prosecutor Army Brig. Gen. Mark Martins could not tell the court during pretrial hearings at Guantanamo last week, however, whether the DOD has a copy. Army Judge Col. James Pohl has given the prosecution until this Friday to determine if it does.

Pradhan said she respects Feinstein but is disappointed in her satisfaction with preservation instead of declassification, which will exempt it from Freedom of Information Act requests for 12 years.

“It’s ridiculous,” she said, adding that all opponents of torture, including Sen. John McCain, should push harder to at least preserve it where it can be accessed by Guantanamo defense counsel, and to have it declassified a lot sooner than in 12 years.

Patrick Eddington with the CATO Institute noted that President Obama’s move ensures that at least one copy of the report will be preserved, but he criticized Feinstein for not pushing harder from the get-go for full declassification.

“I think they should have really pressed the White House very aggressively – and I mean very aggressively – to get the entire torture report vetted,” Eddington said in a phone interview.

“And I would also argue that the other mistake that Feinstein made was in even submitting those materials to the executive branch for any kind of review, because constitutionally she was under absolutely no obligation to do so,” he added.

The summary and full report should have been released at the same time, he said. The “lurid detail” contained in the full report would make it more difficult for the incoming administration to try to revive the torture report, Eddington said.