

United States Senate
WASHINGTON, DC 20510

November 5, 2015

The Honorable Loretta Lynch
United States Attorney General
Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

The Honorable James Comey
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Washington, D.C. 20535-0001

Dear Attorney General Lynch and Director Comey:

We firmly believe that appropriate DOJ and FBI officials must read the full 6,700-page Senate Intelligence Committee Study of the CIA's Detention and Interrogation Program in order to understand what happened and draw appropriate lessons. This is exactly what Director Comey promised during his testimony before the Senate Appropriations Committee on March 12, 2015, when he said he would designate FBI officials to read the full, final version of the Committee's Study and consider the lessons that can be learned from it. Director Comey also acknowledged that former FBI Director Bob Mueller ordered FBI agents not to participate in the CIA program. Unfortunately, as the executive summary of the Study makes clear, the Department of Justice was among those parts of the Executive Branch that were misled about the program, and DOJ officials' understanding of this history is critical to its institutional role going forward.

We are gravely disappointed that, according to Assistant Attorney General Peter Kadzik's letter dated August 5, 2015, the Department of Justice is citing a Freedom of Information Act (FOIA) case, *ACLU v. CIA*,¹ as an excuse to refuse to allow Executive Branch officials to review the full and final Study. This DOJ decision prevents the FBI and other parts of the Executive Branch from reading the full 6,700-page Study and learning from the mistakes of the past to ensure that they are not repeated. Further, personnel at the National Archives and Records Administration have stated that, based on guidance from the Department of Justice, they will not respond to questions about whether the Study constitutes a federal record under the Federal Records Act because the FOIA case is pending.

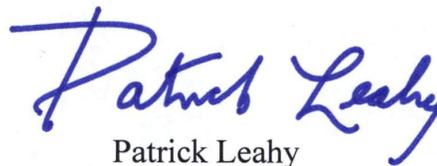
¹ No. 1:13-cv-01870 (D.D.C. 2014).

The record in the FOIA case does not support DOJ's decision. According to the court filings in the FOIA case, DOJ represented that it would "preserve the status quo" pending appeal, but the context in which that commitment arose makes clear that DOJ was agreeing not to return the Study to the Senate Intelligence Committee.² DOJ's commitment not to return the Study while the FOIA litigation is pending in no way precludes appropriately cleared individuals in the Executive Branch from reading the Study. We urge that you reconsider your position and disseminate the full and final Committee Study to appropriately cleared senior individuals in the Department of Justice and FBI, and instruct other appropriate federal departments to take the same position. For the same reason, we urge you to explicitly commit to retaining copies of the full 6,700-page Study.

We hope you agree that the legacy of this historic report cannot be buried in the back of a handful of Executive Branch safes, never to be reviewed by those who most need to learn from it. We look forward to hearing from you on this important issue.

Sincerely,


Dianne Feinstein


Patrick Leahy

² The commitment was made in response to an emergency motion by plaintiffs that asked the court to enjoin the government "from transferring the Final Full Report to Senator Burr while this action is pending." Pls.' Emergency Mot. for an Order Protecting This Court's Jurisdiction, *ACLU v. CIA*, No. 1:13-cv-01870 (D.D.C. Jan. 27, 2015), ECF No. 41, at 2. The Department responded that the plaintiffs had no evidence that defendants would return the report, and stated that the government would "preserve the status quo." Defs.' Response to Pls.' Emergency Mot., *ACLU v. CIA*, No. 1:13-cv-01870 (D.D.C. Feb. 6, 2015), ECF No. 42, at 3 ("[P]laintiffs had no evidence that any of the defendant agencies were planning to return the Full Report to SSCI. Moreover, the government can now assure the Court that it will preserve the status quo either until the issue of whether the Full Report is a congressional document or an agency record is resolved. . . ."). None of these emergency motion filings stated that government officials also would not review the report.