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The Rise to Power of the National Security State

By Tom Engelhardt

August 3, 2014

As every schoolchild knows, there are three check-and-balance branches of the U.S. government: the executive, Congress, and the judiciary. That's bedrock Americanism and the most basic high school civics material. Only one problem: it's just not so.

During the Cold War years and far more strikingly in the twenty-first century, the U.S. government has evolved. It sprouted a fourth branch: the national security state, whose main characteristic may be an unquenchable urge to expand its power and reach. Admittedly, it still lacks certain formal prerogatives of governmental power. Nonetheless, at a time when Congress and the presidency are in a check-and-balance ballet of inactivity that would have been unimaginable to Americans of earlier eras, the Fourth Branch is an ever more unchecked and unbalanced power center in Washington. Curtained off from accountability by a penumbra of secrecy, its leaders increasingly are making nitty-gritty policy decisions and largely doing what they want, a situation illuminated by a recent controversy over the possible release of a Senate report on CIA rendition and torture practices.

All of this is or should be obvious, but remains surprisingly unacknowledged in our American world. The rise of the Fourth Branch began at a moment of mobilization for a global conflict, World War II. It gained heft and staying power in the Cold War of the second half of the twentieth century, when that other superpower, the Soviet Union, provided the excuse for expansion of every sort.

Its officials bided their time in the years after the fall of the Soviet Union, when "terrorism" had yet to claim the landscape and enemies were in short supply. In the post-9/11 era, in a phony "wartime" atmosphere, fed by trillions of taxpayer dollars, and under the banner of American "safety," it has grown to unparalleled size and power. So much so that it sparked a building boom in and around the national capital (as well as elsewhere in the country). In their 2010 *Washington Post* series "Top Secret America," Dana Priest and William Arkin offered this thumbnail summary of the extent of that boom for the U.S. Intelligence Community: "In Washington and the surrounding area," they wrote, "33 building complexes for top-secret intelligence work are under construction or have been built since September 2001. Together they occupy the equivalent of almost three Pentagons or 22 U.S. Capitol buildings – about 17 million square feet of space." And in 2014, the expansion is ongoing.

In this century, a full-scale second "Defense Department," the Department of Homeland Security, was created. Around it has grown up a mini-version of the military-industrial complex, with the usual set of consultants, K Street lobbyists, political contributions, and power relations: just the sort of edifice that President Eisenhower warned Americans about in his famed farewell address in 1961. In the meantime, the original military-industrial complex has only gained strength and influence.

Increasingly, post-9/11, under the rubric of "privatization," though it should more accurately have been called "corporatization," the Pentagon took a series of crony companies off to war with it. In the process, it gave "capitalist war" a more literal meaning, thanks to its wholesale financial support of, and the shrugging off of previously military tasks onto, a series of warrior corporations.

Meanwhile, the 17 members of the U.S. Intelligence Community – yes, there are 17 major intelligence outfits in the national security state – have been growing, some at prodigious rates. A number of them have undergone their own versions of corporatization, outsourcing many of their operations to private contractors in staggering numbers, so that we now have "capitalist intelligence" as well. With the fears from 9/11 injected into society and the wind of terrorism at their backs, the Intelligence Community has had a remarkably free hand to develop surveillance systems that are now essentially "watching" everyone – including, it seems, other branches of the government.

Think of Edward Snowden, the former CIA employee who went over to the corporate side of the developing national security economy, as the first blowback figure from and on the world of "capitalist intelligence." Thanks to him, we have an insider's view of the magnitude of the ambitions and operations of the National Security Agency. The scope of that agency's surveillance operations and the range of global and domestic communications it now collects have proven breathtaking – with more information on its reach still coming out. And keep in mind that it's only one agency.

We know as well that the secret world has developed its own secret body of law and its own secret judiciary, largely on the principle of legalizing whatever it wanted to do. As the *New York Times*'s Eric Lichtblau has reported, it even has its own Supreme Court equivalent in the Foreign

Intelligence Surveillance Court. And about all this, the other branches of government know only limited amounts and American citizens know next to nothing.

From the Pentagon to the Department of Homeland Security to the labyrinthine world of intelligence, the rise to power of the national security state has been a spectacle of our time. Whenever news of its secret operations begins to ooze out, threatening to unnerve the public, the White House and Congress discuss "reforms" which will, at best, modestly impede the expansive powers of that state within a state. Generally speaking, its powers and prerogatives remain beyond constraint by that third branch of government, the non-secret judiciary. It is deferred to with remarkable frequency by the executive branch and, with the rarest of exceptions, it has been supported handsomely with much obeisance and few doubts by Congress.

And also keep in mind that, of the four branches of government, only two of them – an activist Supreme Court and the national security state – seem capable of functioning in a genuine policymaking capacity at the moment.

"Misleading" Congress

In that light, let's turn to a set of intertwined events in Washington that have largely been dealt with in the media as your typical tempest in a teapot, a catfight among the vested and powerful. I'm talking about the various charges and countercharges, anger, outrage, and irritation, as well as news of acts of seeming illegality now swirling around a 6,300-page CIA "torture report" produced but not yet made public by the Senate Intelligence Committee. This ongoing controversy reveals a great deal about the nature of the checks and balances on the Fourth Branch of government in 2014.

One of the duties of Congress is to keep an eye on the functioning of the government using its powers of investigation and oversight. In the case of the CIA's program of Bush-era rendition, black sites (offshore prisons), and "enhanced interrogation techniques" (a.k.a. torture), the Senate Intelligence Committee launched an investigation in March 2009 into what exactly occurred when suspects in the war on terror were taken to those offshore prisons and brutally interrogated. "Millions" of CIA documents, handed over by the Agency, were analyzed by Intelligence Committee staffers at a "secure" CIA location in Northern Virginia.

Among them was a partial copy of a document known as the "Internal Panetta Review," evidently a report for the previous CIA director on what the Senate committee might find among those documents being handed over to its investigators. It reportedly reached some fairly strong conclusions of its own about the nature of the CIA's interrogation overreach in those years. According to Democratic Senator Dianne Feinstein, the committee head, this document was among the mass of documentation the CIA turned over – whether purposely, inadvertently, or thanks to a whistleblower no one knows. (The CIA, on the other hand, claimed, until recently, that committee staffers had essentially stolen it from its computer system.)

The Agency or its private contractors (intelligence capitalism strikes again!) reportedly worked in various ways to obstruct the committee's investigation, including by secretly removing previously released documents from the committee's "secure" computer system. Nonetheless, its

report was completed in December 2012 and passed on to the White House "for comment" – and then the fun began.

Though relatively few details about its specific contents have leaked out, word has it that it will prove devastating. It will supposedly show, among other things, that those "enhanced interrogation techniques" the CIA used were significantly more brutal than what was described to Congressional overseers; that they went well beyond what the "torture memo" lawyers of the Bush administration had laid out (which, mind you, was brutal enough); that no plots were broken up thanks to torture; and that top figures in the Agency, assumedly under oath, "misled" Congress (a polite word for "lied to," a potential criminal offense that goes by the name of perjury). Senators knowledgeable on the contents of the report have repeatedly insisted that when it goes public, Americans will be shocked by its contents.

Let's keep in mind as well that committee head Feinstein was previously known as one of the most loyal and powerful supporters of the national security state and the CIA. Until recently, she has, in fact, essentially been the senator from the national security state. She and her colleagues, themselves shocked by what they had learned, understandably wanted their report declassified and released to the American people with all due speed. It naturally had to be vetted to ensure that it contained no names of active agents and the like. But two and a half years later, after endless reviews and a process of vetting by the CIA and the White House that gives the word "glacial" a bad name, it has yet to be released (though there are regular reports that this will – or will not – happen soon).

During this time, the CIA seemed to go to Def Con 2 and decided to turn its spying skills on the committee and its staffers. Claiming that those staffers had gotten the Panetta Internal Review by "hacking" the CIA's computers, it essentially hacked the committee's computers and searched them. In the meantime, its acting general counsel, Robert EATINGER, who had been the chief lawyer for the counterterrorism unit out of which the CIA interrogation programs were run, and who was mentioned 1,600 times in the Senate report, filed (to quote Feinstein) a "crimes report to the Department of Justice on the actions of congressional staff – the same congressional staff who researched and drafted a report that details how CIA officers – including the acting general counsel himself – provided inaccurate information to the Department of Justice about the program." (Back in 2005, EATINGER had also been one of two lawyers responsible for not stopping the destruction of CIA videotapes of the brutal interrogations of terror suspects in its secret prisons.)

In addition, according to Feinstein, CIA Director John Brennan met with her, lied to her, and essentially tried to intimidate her by telling her "that the CIA had searched a 'walled-off committee network drive containing the committee's own internal work product and communications' and that he was going to 'order further forensic evidence of the committee network to learn more about activities of the committee's oversight staff.'" In other words, the overseers were spying upon and now out to get the overseers. And more than that, based on a single incident in which one of its greatest supporters in Congress stepped over the line, the Agency was specifically out to get the senator from the national security state.

There was a clear message here: oversight or not, don't tread on us.

By the way, since the CIA is the injuring, not the injured, party, there is no reason to take seriously the self-interested words of its officials, past or present, on any of this, or any account they offer of events or charges they make. We're talking, after all, about an outfit responsible for the initial brutal acts of interrogation, for false descriptions of them, for lying to Congress about them, for destroying evidence of the worst of what it had done, for spying on a Senate committee and its computer system, and for somehow obtaining "legally protected email and other unspecified communications between whistleblower officials and lawmakers this spring relating to the Agency and the committee's report." In addition, according to a recent front-page story in the *New York Times*, its former director from the Bush years, George Tenet, has been actively plotting "a counterattack against the Senate committee's voluminous report" with the present director and various past Agency officials. (And keep in mind that "roughly 200 people under [Tenet's] leadership [who] had at some point participated in the interrogation program" are still working at the Agency.)

The Age of Impunity in Washington

In December 2012, the report began to wend its way through a "review and declassification" process, which has yet to end. Once again, the CIA stepped in. The Senate was eager to declassify the report's findings, conclusions, and its 600-page executive summary. The CIA, which had already done its damndest to block the Senate investigation process, now ensured that the vetting would be interminable.

As a start, the White House vested the CIA as the lead agency in the review and vetting process, which meant that it was to be allowed to slow things to a crawl, stop them entirely, or alternatively remove crucial and damning material from the report via redaction. If you want a gauge of just how powerful the various outfits that make up the Fourth Branch have become in Washington (and what limits on them still remain), look no further.

Fourteen years into the twenty-first century, we're so used to this sort of thing that we seldom think about what it means to let the CIA – accused of a variety of crimes – be the agency to decide what exactly can be known by the public, in conjunction with a deferential White House. The Agency's present director, it should be noted, has been a close confidant and friend of the president and was for years his key counterterrorism advisor. To get a sense of what all this really means, you need perhaps to imagine that, in 2004, the 9/11 Commission was forced to turn its report over to Osama bin Laden for vetting and redaction before releasing it to the public. Extreme as that may sound, the CIA is no less a self-interested party. And this interminable process has yet to end, although the White House is supposed to release something, possibly heavily redacted, as early as this coming week or perhaps in the dog days of August.

Keep in mind again that we're still only talking about the overwhelming sense of power of one of the 17 agencies that make up the Intelligence Community, which itself is but part of the far vaster national security state. Just one. Think of this, nonetheless, as a kind of litmus test for the shifting state of power relations in the new Washington. Or think of it this way: on the basis of a single negative Senate report about its past operations, the CIA was willing to go after one of the national security state's most fervent congressional supporters. It attempted to intimidate her, tried to bring charges against her staffers, and so drove her "reluctantly" and in a kind of

desperation to the Senate floor, where she offered a remarkable denunciation of the agency she had long supported. In its wake, last week, the CIA director dramatically backed off somewhat, perhaps sensing that there was a bridge too far even in Washington in 2014. Amid Senate calls for his resignation, he offered an “apology” for the extreme actions of lower level Agency employees. (But don’t hold your breath waiting for real reform at the CIA.)

In her Senate speech, Feinstein accused the Agency of potentially breaching both the law and the Constitution. "I have grave concerns," she said, "that the CIA’s search [of the committee’s computer system] may well have violated the separation of powers principles embodied in the United States Constitution, including the Speech and Debate clause. It may have undermined the constitutional framework essential to effective congressional oversight of intelligence activities or any other government function... Besides the constitutional implications, the CIA’s 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."

In the process, she anatomized an agency covering its tail and its trail, unwilling to admit to error of any sort or volunteer crucial information, while it attempted to block or even dismantle the oversight power of Congress. Her sobering speech should be read by every American, especially as it comes not from a critic but a perennial supporter of the Fourth Branch.

In retrospect, this "incident" may be seen as a critical moment in the still-unsettled evolution of governing power in America. Her speech was covered briefly as a kind of kerfuffle in Washington and then largely dropped for other, more important stories. In the meantime, the so-called vetting process on the Senate report continued for yet more months in the White House and in Langley, Virginia, as if nothing whatsoever had occurred; the White House refused to act or commit itself on the subject; and the Justice Department refused to press charges of any sort. While a few senators threatened to invoke Senate Resolution 400 – a 40-year-old unused power of that body to declassify information on its own – it was something of an idle threat. (A majority of the Senate would have to agree to vote against the CIA and the White House to put it into effect, which is unlikely indeed.)

Whatever happens with the report itself and despite the recent CIA apology, don’t expect the Senate to bring perjury charges against former CIA leaders for any lies to Congress. (It didn’t do so, after all, in the earlier case of Director of National Intelligence James Clapper.) And don’t expect prosecutions of significant figures from a Justice Department that, in the Obama years, refused to prosecute even those in the CIA responsible for the deaths of prisoners.

The fact is that, for the Fourth Branch, this remains the age of impunity. Hidden in a veil of secrecy, bolstered by secret law and secret courts, surrounded by its chosen corporations and politicians, its power to define policy and act as it sees fit in the name of American safety is visibly on the rise. No matter what setbacks it experiences along the way, its urge to expand and control seems, at the moment, beyond staunching. In the context of the Senate’s torture report, the question at hand remains: Who rules Washington?