

THE BUSH ADMINISTRATION DID NOT GIVE LEGALLY- REQUIRED PRIOR NOTIFICATION TO CONGRESS

We know, because Michael Hayden confirmed it the other day, that the torture program started as a covert operation (at 1:45).

By law, covert operations must be supported by a Presidential Finding (or Memorandum of Notification, which is reportedly what was used here) and require prior notification to Congress.

Congressional Notification

▪ *The Requirement to Notify Congress*

Consistent with section 501 of the National Security Act of 1947, as amended (50 U.S.C. 413), and unless the President otherwise directs in writing pursuant to his constitutional authorities and duties, Congress shall be notified on the President's behalf of all special activities in accordance with this Directive.

▪ *Contents of Notification*

In all cases, notification to Congress as provided herein shall include a copy of the Finding or associated MON, if any, as signed by the President, and the statement described in section II.A.3 hereof.

▪ ***Prior Notification***

Consistent with the expectation of prior notification to Congress, **in all but extraordinary circumstances** as specified herein, **the DCI**, or head of such other Executive department agency, or entity authorized to conduct a special activity, **shall notify Congress, on the President's behalf, through the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives (hereinafter collectively referred to as the "Intelligence Committees"), prior to initiation of each special activity authorized by a Finding and associated MON**, if any. In extraordinary circumstances affecting the vital interests of the United States, the DCI, or head of such other Executive department, agency, or entity authorized to conduct a special activity, shall notify Congress, on the President's behalf, through the Majority and Minority Leaders of the Senate the Speaker and Minority Leader of the House of Representatives, and the Chairman and Vice Chairman of the Senate Select Committee on Intelligence, and the Chairman and Ranking minority Member of the Permanent Select Committee on Intelligence of the House of Representatives, prior to initiation of a special activity authorized by a Finding and associated MON, if any.

▪ ***Extraordinary Circumstances***

If the President determines that it is necessary, in order to meet rare, extraordinary circumstances, to delay notification until after the initiation of a special activity, the DCI, or head

of such other Executive department, agency, or entity authorized to conduct a special activity, shall delay notification consistent with section 501(b) at the direction of the President. Unless the President otherwise directs, not later than two working days after the President signs a Finding or associated MON, if any, the Intelligence Committees shall be notified in accordance with established procedures. In all such cases, notification shall include the reasons for not giving prior notice to the Intelligence Committees. In the event the President directs that notification to Congress be delayed beyond two working days after presidential authorization of a special activity as provided herein, the grounds for such delay shall be memorialized in writing and shall be re-evaluated by the NSPG not less frequently than every ten (10) days. [my emphasis]

We know from the SSCI Torture Narrative that this notification did not happen until after they were done waterboarding Abu Zubaydah.

In the fall of 2002, **after the use of interrogation techniques** on Abu Zubaydah, CIA records indicate that the CIA briefed the Chairman and Vice Chairman of the Committee on the interrogation.

[snip]

Just as the statement does not purport to identify all Executive Branch meetings and documents on the CIA detention and interrogation program, the statement does not purport to describe either all Executive Branch communications or briefings to the Committee about, or the limitations on the Committee's use of and access to

information about, the CIA's program.
[my emphasis]

And when introducing that narrative, Jello Jay emphasized that "essential information" was withheld from Congress. (h/t Steve Aftergood)

But we now know that essential information was withheld from the Congress on many matters and decisions were made in secret by senior Bush administration officials to obscure the complete picture.

Now, one thing the SSCI Torture Narrative makes clear is that the NSC discussions about this activity started in April 2002. And Condi gave approval for the torture program (subject to legal approval) on July 17, 2002. We know from the SASC report that the Administration was considering reverse engineering the SERE techniques as early as December 2001. That would seem to exclude any claim of exigency that might excuse the Administration from notifying Congress for three months (or five months, or nine months).

But that's not all. Jane Harman's explicit, written inquiry—made in 2003—into whether Bush had personally authorized the torture techniques suggests she had not, after her first briefing on the torture program as the Ranking Member of the HPSCI, seen any presidential finding.

I would like to know what kind of policy review took place and what questions were examined. In particular, I would like to know whether the most senior levels of the White House have determined that these practices are consistent with the principles and policies of the United States. **Have enhanced techniques been authorized and approved by the President?** [my emphasis]

The report that George Tenet demanded and

finally got a policy document supporting torture in 2003 supports the notion that Bush **never** issued a finding (or MON) laying out the torture techniques to be used until 2003. While Congress had been informed, it appears that it never got the formal documentation—with Bush's signature—required by law until long after the torture program began.

Now, Bush will undoubtedly claim that these were "extraordinary circumstances" that required this much secrecy. But there is one problem with that (and it may explain why Porter Goss is so panicky). The President has to, by law, memorialize **why** he's not telling Congress about CIA's activities.

In the event the President directs that notification to Congress be delayed beyond two working days after presidential authorization of a special activity as provided herein, the grounds for such delay shall be memorialized in writing and shall be re-evaluated by the NSPG not less frequently than every ten (10) days.

If this memorialization doesn't exist, Bush still broke the law.

This is Iran-Contra territory—the Administration conducting covert ops without proper notification to Congress. Now, given Sy Hersh's report that Dick Cheney convened a "lessons learned" meeting at about the same time Bush issued the MON giving CIA the authority to interrogate on September 17, 2001, I'm sure PapaDick believes he's found some way around the laws requiring Congressional authorization.

But from the record produced so far, it appears the Administration broke the law in an effort to avoid leaving a legal paper trail of their support for torture.