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From Bush to Obama, Eyes Wide Shut

The same memo Bush used to wall himself off from the details of CIA torture is keeping Obama's drone war alive.

By Marcy WheelerMarcy

December 12, 2014



On the second day of Barack Obama's presidency, he prohibited most forms of physical torture. On the third, a CIA drone strike he authorized killed up to 11 civilians.

Those two data points explain one of the most remarkable aspects of the Senate Intelligence Committee's summary of its report on torture and also likely point to what should be the report's larger lesson: the purported absence of presidential leadership behind either the torture or the drone programs.

The 525-page executive summary of the Senate's report, which was released to the public on Tuesday, Dec. 9, provides the most comprehensive description of the torture conducted as part of the CIA's rendition, detention, and interrogation program in support of the war on terror. (The full 6,000-page report will remain classified for decades.) The summary portrays brutal torture that was also largely counterproductive for intelligence-gathering purposes. It depicts a program so badly managed that the CIA lost count of detainees and on more than one occasion detained and tortured the wrong suspect.

But the most disturbing part of the report might not be the gruesome abuses or the gross incompetence. At least we can hope those are in the past. The biggest problem for the future that the report reveals consists of claims about the ignorance of President George W. Bush (and to a much lesser extent, Vice President Dick Cheney) about key parts of the program.

The report doesn't describe events in which the White House is known to have been — or almost certainly was — involved in. The report states, for example, that Thailand (which the report refers to as "Detention Site Green" to obscure a widely known fact) "was the last location of a CIA detention facility known to the president or the vice president." The report also states that the CIA first briefed Bush on interrogation techniques on April 8, 2006. "[T]he president expressed concern," the report helpfully explains, "about the 'image of a detainee, chained to the ceiling, clothed in a diaper, and forced to go to the bathroom on himself.'"

In other words, the report leaves the impression that Bush remained ignorant of the goriest details of the torture his administration conducted — for almost two full years after pictures from Abu Ghraib showed abuses just as graphic.

But there are places where the White House's involvement should be included. For example, when the report discusses how John Yoo, then in the Justice Department's Office of Legal Counsel, adopted a "necessity defense" in the 2001 memos finding the torture legal, it says nothing about the role David Addington, Cheney's counsel, played in the process. That is despite the fact that Addington testified to Congress in 2008 that he helped to put the language about the necessity defense back into the memos. The Senate's report thus leaves out one event in which Cheney's office is known to have been involved.

Perhaps the biggest piece of missing information in the report, however, comes in the description of who approved the program. The report describes National Security Council legal advisor John Bellinger telling CIA Director George Tenet's staff on Aug. 2, 2002, that "[National Security Advisor] Dr. [Condoleezza] Rice had been informed that there would be no briefing of the President on this matter, but that [Tenet] had policy approval to employ the CIA's enhanced interrogation techniques." The report never says who decided the president would not be briefed and, absent that, who could authorize a torture program.

The explanation for these silences probably lies, in part, in a subject the report provides significant detail on: The ultimate authorization for the program was not, as commonly believed, the “torture” memos written by the Justice Department, but instead a “Memorandum of Notification” (MON) that Bush signed on Sept. 17, 2001, just days after the 9/11 attacks.

A MON (or “finding”) is what the president uses to notify Congress of operations he orders the CIA to conduct that are not intended to be acknowledged by the U.S. government. According to the 1947 National Security Act, when the president authorizes the CIA to conduct covert operations, he must document what those operations will be and notify the Senate and House Intelligence committees. That process is what America’s democratic society uses to provide spies with legal cover for acts that would otherwise often be considered illegal.

The Senate report doesn’t explain it, but previous reporting (notably in Bob Woodward’s *Bush at War* and Jane Mayer’s *The Dark Side*) describes that in the days after 9/11, Cofer Black, who served as director of the CIA’s counterterrorism center, laid out a program to combat al Qaeda that included not just the detention of top al Qaeda figures but also the outsourcing of torture to the intelligence services of allies like Egypt and Jordan (and even adversaries like Syria and Libya), as well as the targeting of top al Qaeda figures in drone strikes.

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But as the Senate report points out, the MON “made no reference to interrogations or interrogation techniques.” The formal notice that the congressional intelligence committees were supposed to receive about the CIA’s covert counterterrorism operations never mentioned torture. In a briefing in November 2001, James Pavitt, then the CIA’s deputy director of operations, assured the committee that the agency was not going to engage in torture, while leaving open the possibility in case, say, somebody knew of an imminent plot to detonate a nuclear weapon in the United States. In fact, as captured in a letter, the then ranking member of the House Intelligence Committee, Jane Harman (D-Calif.), asked after her first briefing that torture had been used, “Have enhanced techniques been authorized and approved by the president?” Harman’s question suggests how unclear it was to Congress that the MON — and with it, the president himself — authorized the torture. Thus the Senate report and other documents show that the CIA — as well as the Bush administration — wasn’t informing Congress of its operations, as required by the National Security Act.

Other reporting may explain why the report portrays Bush, rightly or wrongly, as so uninvolved in the torture program. Both Woodward and Mayer explain that the Sept. 17, 2001, MON was designed to outsource all the important decision-making to the CIA. “To give the President deniability, and to keep him from getting his hands dirty,” Mayer writes in *The Dark Side*, “the [MON] called for the President to delegate blanket authority to Tenet to decide on a case-by-case basis whom to kill, whom to kidnap, whom to detain and interrogate, and how.” Whether or not Bush had knowledge of what was going on, the very program itself was set up to insulate him

from the dirty work, giving him the ability to claim ignorance of a torture program everyone else knew about. (Later, Bush claimed that he was fully briefed.)

But as we know, this insulation created the conditions for a program that was allowed to spin so horribly out of control that the CIA was able to misplace 29 detainees and not worry all that much.

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The implications of this subterfuge, however, do not end with the torture program. Nor with George W. Bush. This is the same MON that authorizes the CIA's current drone program. Presumably that means the drone program is characterized by the same unaccountable structures.

Indeed, after Obama escalated the CIA's use of drones when he took office, the program suffered from some of the same problems as the torture program. The CIA appears to have misinformed Congress about the details, given claims by people like House Intelligence Committee ranking member Dutch Ruppersberger (D-Md.) that the program had "very minor" civilian casualties, despite the fact that evidence shows that more than 1,000 people have been killed while targeting fewer than 50 terrorists. And like the CIA's detention and torture of the wrong suspects, a number of drone strikes have killed the wrong people — but with even greater frequency.

Top-ranking members of Congress, including Sen. Dianne Feinstein (D-Calif.), the chair of the Senate Intelligence Committee, have long insisted they have more oversight over the drone program than they did over torture. But the number of significant mistakes — take, for example, the attack on a wedding party earlier this year — suggests that oversight isn't preventing the same kind of mistakes that happened with torture. Moreover, as with the torture program, the congressional intelligence committees aren't able to get the information they request from the White House and the CIA. It was only after years of requests that the intelligence committees were allowed to review the administration's justification for having the CIA kill Anwar al-Awlaki, a U.S. citizen, with a drone strike. Worse, the reports that the CIA killed Awlaki's 16-year-old son, Abdulrahman, are also shrouded in secrecy and full of inconsistencies.

Obama appears to want the same benefits on the drone program that Bush had on torture: plausible deniability. While numerous accounts describe Obama micromanaging the drone strikes, his administration also fought for years to hide the Justice Department's legal review of the Awlaki drone strike from both Congress and the public, saying it was legal to kill Awlaki because he posed an imminent threat to the country. (And the administration still hides memos detailing relationships with foreign countries on drone strikes.)

That may be why the White House, while claiming to have an interest in transparency, had the CIA invoke executive privilege to withhold thousands of documents that the Senate Intelligence Committee requested while working on the report. That is, the silences in the report about the Bush White House's real involvement in torture are there in large part because Obama wants them there, too. Whatever the documentation of Bush's knowledge of torture, by asking the CIA to withhold documents involving the White House, Obama has ensured that it remains hidden.

This is why the need to reform the underlying structure that the government has used to fight the war on terror — the MON that has unleashed the CIA, insulated two presidents, and prevented real accountability for either — should be the takeaway lesson. The Senate’s report goes some length to blame those at the CIA who carried out a program that the president authorized with his Sept. 17, 2001, memorandum. But the report was designed to deflect ultimate accountability from where it belongs: with the president elected to implement such policies.