

Bush administration moves to block inquiries into CIA's destruction of torture tapes

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The Bush administration has taken aggressive steps to undermine congressional and judicial inquiries into the CIA's destruction of videotapes showing the torture of at least two prisoners. The move is only the latest demonstration of the administration's lawlessness and contempt for democratic and constitutional norms.

The tapes in question recorded hundreds of hours of interrogation of two alleged Al Qaeda members, Abu Zubaydah and Abd al-Rahim al-Nashiri, both captured by the CIA in 2002. Among the techniques used on the prisoners was water-boarding, a notorious torture method involving the near-drowning of the prisoner. Earlier this month, CIA director Michael Hayden acknowledged that the intelligence agency had destroyed the tapes in November 2005.

Since that admission, it has become clear that the Bush administration and leading congressmen of both parties knew about the CIA torture program and the existence of the tapes for years before the tapes were destroyed. The White House and officials in the Justice Department and CIA are now implicated in both the crime of torture and possible obstruction of justice and perjury in relation to the tapes' destruction.

Even as it works to squelch inquiries into past torture, the White House and its congressional allies have moved to block a bill that would ban the CIA from using "enhanced interrogation techniques," including water-boarding, in the future. Senate Republicans are using a procedural technicality to strip language from a bill passed by the House of Representatives that would require the CIA to follow the same rules as the US military. Bush has threatened to veto the bill if it gets through the House and Senate.

Late last week, the administration indicated that it would not cooperate with inquiries announced by the Judiciary and Intelligence committees in the House and Senate.

In a letter to members of the Senate Judiciary Committee, Attorney General Michael Mukasey made the absurd declaration that any cooperation with congressional investigations would raise questions as to the independence of the Justice Department's own inquiry. "At my confirmation hearing, I testified that I would act independently, resist political pressure and ensure that politics plays no role in cases brought by the Department of Justice," Mukasey wrote. Therefore, "I will not at this time provide further information in response to your letter."

Thus Mukasey, in Orwellian fashion, defends bowing to political pressure from the White House in the name of "resisting political

pressure."

The Senate committee had requested from Mukasey an account of the Justice Department's role in and knowledge of the tapes' destruction. Mukasey was confirmed as attorney general with the support of several key Democratic leaders last month, despite his refusal to condemn water-boarding as torture. Among those voting for Mukasey were key Democrats on the Senate Judiciary Committee—Dianne Feinstein of California and Charles Schumer of New York.

Also last week, the House Intelligence Committee requested testimony from CIA officials, including Jose Rodriguez, the former head of clandestine operations who has been named as the individual who authorized the tapes' destruction, and John Rizzo, the top lawyer at the CIA. The committee has also requested that the CIA turn over documents and e-mails relating to the decision to destroy the videotapes.

The Justice Department responded with a December 14 letter to the committee requesting that it delay any investigation in order to avoid "significant risks" to the joint inquiry being organized by the department and the CIA. The White House also instructed the CIA not to cooperate with congressional requests for information.

The Democratic chairman of the House Intelligence Committee, Silvestre Reyes, and the ranking Republican, Peter Hoekstra, issued a joint statement declaring, "Parallel investigations occur all the time, and there is no basis upon which the attorney general can stand in the way of our work." They threatened to "use all the tools available to Congress, including subpoenas" to continue the congressional investigation.

The administration is also moving to scuttle court requests for information on the tapes' destruction. Lawyers in one case before the US District Court for the District of Columbia filed a motion asking Judge Henry Kennedy to determine whether the destruction of the tapes constitutes a violation of a 2005 order by the judge. The court at that time ordered the government to preserve all evidence regarding the interrogation and torture of prisoners at Guantánamo Bay.

The Justice Department submitted a brief on Friday evening warning that any request for information "could potentially complicate the ongoing efforts to arrive at a full factual understanding of the matter." A judicial inquiry is "both unnecessary and potentially disruptive," the department declared.

The government is claiming that the tapes are not relevant to the investigation because the prisoners in question were not at

Guantánamo Bay at the time of the order. The judge could nevertheless rule that the destruction was a criminal act because the videotapes were of likely significance to a legal case. The Bush administration did not acknowledge the existence of secret overseas CIA prisons, where the two alleged Al Qaeda operatives were tortured, until late 2006, when both Zubaydah and al-Nashiri were transferred to Guantánamo Bay.

In a separate court case filed last Wednesday, the American Civil Liberties Union (ACLU) asked a federal judge in New York to find the CIA in contempt for violating a 2004 court order requiring the CIA to turn over or account for all documents relating to the interrogation of prisoners in US custody, regardless of their location.

“These tapes were clearly responsive to the Freedom of Information Act requests that we filed in 2003 and 2004, and accordingly the CIA was under a legal obligation to produce the tapes to us or to provide a legal justification for withholding them,” said Jameel Jaffer, Director of the ACLU’s National Security Project. “By destroying these tapes, the CIA violated the statute as well as an order of the court. In the circumstances, it would be entirely appropriate for the court to hold the agency in contempt.”

In addition to these cases, the CIA likely violated the law in withholding the videotapes from the 9/11 Commission and from the court involved in the trial of Zacarias Moussaoui, who was ultimately convicted of participating in the planning for 9/11. The tapes were destroyed shortly after a judge in the Moussaoui trial requested that the CIA turn over videotapes of the interrogation of Al Qaeda suspects.

The Bush administration is using the same pretext—the existence of an ongoing investigation—to justify its refusal to make any public comments on the tapes, aside from the declaration that Bush “has no recollection” of the tapes or their destruction.

The administration is essentially arguing that because it is investigating itself and possible crimes that it committed, no other investigations can proceed.

The position of the Bush administration on the current scandal is in line with its previous assertions of unconstrained executive power and the rejection of any accountability for its actions. A major constitutional crisis is possible, though the White House is once again counting on leading Democrats—themselves complicit in the CIA torture program—to back down.

In an interview on “Fox News Sunday,” Peter Hoekstra, the ranking Republican on the House Intelligence Committee, and Democrat Jane Harman, former ranking Democrat on the committee, said their committee would proceed with their investigation despite opposition from the White House and the Justice Department. Hoekstra repeated the threat to subpoena CIA officials to compel their testimony. In the event of a subpoena, the administration might invoke executive privilege, as it has done in the past, to block testimony.

While indicating that the committee would defy the White House, Hoekstra focused most of his ire on the CIA and the intelligence apparatus. “I think it’s important for Congress to hold this community accountable,” he said. “The CIA did not tell us about the existence of these tapes. They did not tell us that they

were going to be destroyed.” Hoekstra said of the CIA that “they don’t believe they are accountable to anybody. They don’t believe that they are accountable to the president.”

Hoekstra’s statement that Congress was never informed of the tapes was immediately contradicted by Harman, who noted that “Congress—specifically, I—warned them not to destroy the videotapes” in 2003. Harman and other leading members of both parties were informed of the CIA’s intention to destroy the tapes, but did nothing to inform the American people about the existence of the tapes or the existence of the CIA torture program.

Both Harman and Hoekstra have rejected the appointment of a special prosecutor, which a few Democrats have called for. Harman voiced concern, however, that any investigation carried out solely by the Justice Department and the CIA would be widely perceived as a whitewash.

“On a bipartisan basis,” she said, “the House Intelligence Committee wants to get to the bottom of this and isn’t going to back off for the attorney general here, who I think...may be doing something that won’t give the public confidence that it was a full and fair investigation.” She and Hoekstra reflected concerns within the political establishment that without a congressional investigation, the demand for a special prosecutor will grow.

Democratic Senator Evan Bayh, a member of the Senate Intelligence Committee, voiced similar concerns on CNN’s “Late Edition.”

“It’s entirely possible there was nothing illegal on those tapes,” he said. “It’s even entirely possible that their destruction was not illegal. But the way they’re going about this makes it look like they’re trying to hide something which may embarrass them when, by being more forthcoming, they could avoid that.” His statement amounted to a plea to the White House that it stop stonewalling and instead cooperate in a joint whitewash.

In their appearance on the CNN program, Bayh and Republican Senator Kit Bond both rejected the naming of a special prosecutor.

Whatever conflicts may develop between Congress and the White House over the destruction of the tapes, both the Democrats and the Republicans are agreed on the need to obscure the fundamental issue involved: that the CIA, with the sanction of both parties and under the direction of the White House, engaged in torture in violation of international and domestic law.



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