

A criminal conspiracy

White House, CIA hid torture tapes from 9/11 Commission

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The CIA withheld videotapes of the abuse of suspected Al Qaeda members from the 9/11 Commission despite repeated requests for information on interrogations directed to top CIA and White House officials, according to the executive director of the commission. The CIA has acknowledged that in November 2005, more than a year after the requests were made, it destroyed tapes of CIA interrogations of two alleged Al Qaeda leaders, Abu Zubaydah and Abd al-Rahim al-Nashiri.

The history of the commission's interactions with the CIA on the issue is outlined in a memo from the executive director of the commission, Philip Zelikow, to the chairman, former Republican governor of New Jersey, Thomas Kean, and the vice chairman, former Democratic Congressman Lee Hamilton. The memo is dated December 13, 2007 and was released to the news media on Friday. (See "An analysis of the 9/11 Commission memo on interrogation tapes.")

Zelikow's account is a damning indictment of White House and CIA officials, and it comes from a prominent Republican with close ties to the intelligence establishment. (Zelikow served on the National Security Council in the administration of the senior George Bush and co-authored a book with current Secretary of State Condoleezza Rice). According to the memo, in 2003 and 2004 the commission made "repeated requests for very detailed information about the context" of the CIA interrogations, including those of the two individuals whose interrogations were recorded on the destroyed videotapes.

Videotapes of the interrogations would have clearly been relevant to the inquiry. However, according to Zelikow, the commission was never informed of the existence of the videotapes and was allowed access only to CIA summaries of the interrogations. Zelikow indicated that withholding the information was likely illegal, but he concluded, "Further investigation is needed to determine whether these nondisclosures violated federal law."

Among those named by Zelikow as involved in the discussions with the 9/11 Commission were: Alberto Gonzales, who was then the White House counsel and would later take the post of attorney general, Secretary of Defense Donald Rumsfeld, Undersecretary of Defense Stephen Cambone, CIA Director George Tenet, CIA General Counsel Scott Muller and CIA Deputy Director of Intelligence John McLaughlin.

The CIA responded to the memo over the weekend with a series of lies and obfuscations. CIA spokesman Mark Mansfield said that the tapes would have been turned over if the commission had asked for them. "Because it was thought the commission could ask about the tapes at some point, they were not destroyed while the commission was active," he said. Mansfield did not explain how the tapes could be requested if there was no acknowledgement until this month that they even existed.

The *New York Times*, in an article on Saturday, reported that in interviews with Hamilton and Kean, the commission leaders "said their

reading of the [Zelikow] report had convinced them that the agency had made a conscious decision to impede the Sept. 11 commission's inquiry."

Zelikow's memo is further evidence that the refusal to inform the 9/11 Commission of the existence of the tapes and subsequent decision to destroy them were part of a high-level cover-up of the administration's policy of using sadistic methods in interrogations that are clearly banned under international and national laws against torture. Last week, the *New York Times* reported that at least four senior administration lawyers were involved in discussions on whether or not the tapes should be destroyed. The discussions were held between 2003 and 2005, the very period when the 9/11 Commission was making requests for documents on interrogation.

The four lawyers named by the *Times* include Gonzales; Harriet Miers, Gonzales' successor as White House counsel; David Addington, counsel and later chief of staff to Vice President Dick Cheney; and John Bellinger III, the top lawyer at the National Security Council. The *Times* cited one former intelligence official as saying that there was "vigorous sentiment" among some of the lawyers that the tapes should be destroyed.

The fact that, at the very least, Gonzales—a close Bush confidant—participated in both discussions strongly suggests that Bush and Cheney themselves were aware of and acquiesced in the concealment and subsequent destruction of the tapes. During the same period as the 9/11 Commission investigation, several federal courts issued orders for the preservation of evidence relating to the interrogation and possible torture of prisoners held by the US.

It is almost certain that Bush was aware of the videotapes from the very beginning, and it is quite possible that he personally viewed at least some of them. When Zubaydah was arrested in 2002, he was seen within the administration as a test case for "harsh interrogation techniques"—i.e., torture—which Bush was eager to implement.

An article in the *Times of London* on Sunday ("CIA Chief to Drag White House into Torture Cover-Up Storm") cited Vincent Cannistraro, former head of counterterrorism at the CIA, as saying it was impossible that Jose Rodriguez, the former head of clandestine operations at the CIA, acted on his own. Rodriguez has been named in the media as having given the order to destroy the tapes.

"If everybody was against the decision, why in the world would Jose Rodriguez—one of the most cautious men I have ever met—have gone ahead and destroyed them?" Cannistraro asked.

There are indications that Rodriguez may implicate the White House when he testifies before the House Intelligence Committee next month. Rodriguez requested and was granted a subpoena to compel his testimony, which will likely be accompanied by immunity from prosecution for what he says.

The newspaper also cited Larry Johnson, another former CIA official, as

strongly implicating the White House. “The CIA and Jose Rodriguez look bad, but he’s probably the least culpable person in the process,” Johnson said. “He didn’t wake up one day and decide, ‘I’m going to destroy the tapes.’ He checked with a lot of people and eventually he is going to get his say.”

“It looks increasingly as though the decision was made by the White House,” Johnson said. The *Times of London* reported that Johnson “believes it is ‘highly likely’ that Bush saw one of the videos, as he was interested in Zubaydah’s case and received frequent updates on his interrogation from George Tenet.”

New York Times national security correspondent James Risen, in his 2006 book *State of War*, cites one well-placed source as telling him, “George Bush was taking a very personal interest in the Zubaydah case” in 2002. According to Risen’s account, when CIA Director Tenet told Bush that no information had yet been gleaned from Zubaydah because he was too groggy from painkillers, Bush is said to have replied, “Who authorized putting him on pain medication?”

The torture of Zubaydah was initiated soon after this conversation, and the treatment of Zubaydah then became a precedent for the torture of other prisoners—at secret CIA prisons, at Guantánamo Bay and later at the Abu Ghraib prison in Iraq.

Tenet, in his 2007 book, *At the Center of the Storm*, records that when Zubaydah was captured, “we opened discussions within the National Security Council as to how to handle him.” The NSC includes the president, the vice president, the secretary of state, the secretary of the treasury, the secretary of defense, and other top officials. The suggestion that there was such high-level involvement in the interrogation of Zubaydah renders absurd the notion that administration officials were not aware that it was being videotaped.

It should be recalled that the infamous “torture memo,” written by the Justice Department’s Office of Legal Counsel to justify illegal interrogation methods, was produced on August 1, 2002, in the midst of the CIA’s interrogation of Zubaydah. The memo was written partially in response to CIA concerns that methods ordered by the administration could subject intelligence agents to future prosecution.

The revelation of the existence of the torture tapes and their destruction has become a focal point of intense divisions within the political and intelligence establishment.

In a separate development, the CIA has asked the Justice Department to investigate whether John Kiriakou, a former CIA officer, illegally disclosed classified information when he told the media earlier this month that water-boarding had been used against Abu Zubaydah. Kiriakou said he considered water-boarding to be torture, but he has also sought to legitimize such methods, saying the treatment of Zubaydah was necessary to “save lives.”

Kiriakou speaks for elements within the agency who insist that top administration officials authorized all aspects of the interrogation. Kiriakou’s attorney, Mark Zaid, issued a warning to the Justice Department. He told the *Washington Post*, “If they do pursue [an investigation into his client], they will open a Pandora’s box that will put the spotlight on whether the interrogations were lawful, and the extent to which they have been fully revealed by federal officials.”

Under these conditions, the administration is seeking to contain a scandal that threatens to get out of its control and that of leading congressional figures from both parties who are also complicit in the cover-up.

Last week, Bush continued his obfuscation over his knowledge of the tapes’ destruction. At a Thursday White House press conference, an Associated Press reporter posed the following question: “There’s ambiguity in the statement that you have no recollection about the existence and destruction of the CIA interrogation tapes. Why can’t you say yes or no about the tapes and their destruction?”

Bush replied by merely repeating that his “first recollection” of the tapes is when CIA Director Michael Hayden spoke to him about them earlier this month. The White House has avoided making any direct statement that this was, in fact, the first time Bush heard about the tapes. It has stonewalled reporters’ questions with the statement that the White House will not speak about the matter because of ongoing internal investigations by the CIA and the Justice Department.

In a hearing before the US District Court for the District of Columbia on Friday, the government urged Judge Henry Kennedy to deny a motion for a hearing into the destruction of the videotapes. Kennedy issued a court order in 2005 directing the government to preserve all evidence related to the interrogation of prisoners held at Guantánamo Bay. Lawyers for Guantánamo prisoners petitioning his court for a review of their detention are arguing that the destruction of the videotapes may have violated the judge’s order.

The government repeated its argument that it “would be unwise and imprudent” for the judge to investigate further, pending the government’s own investigations. Joseph Hunt, a lawyer for the government, issued a promise that the court would be informed of any results of this self-investigation, and inform the court if any rules were violated.

Hunt also argued that the tapes were immaterial to the case at hand, since the individuals involved in the taped interrogations—Zubaydah and al-Hashimi—were not at Guantánamo Bay at the time of the court order.

Whether or not they were at Guantánamo Bay, they may well have named or otherwise provided information about the defendants whose case is before the court. Even if the people who appear on CIA tapes did not say anything that directly pertains to the defendants, documentary evidence that the US tortured people under interrogation and used the information extracted to conduct their military prosecutions would be highly damaging to the drumhead military commissions operating at Guantánamo.

All of these revelations—and there can be no doubt that the truth goes far beyond what has been revealed so far—demonstrate a level of criminality that exceeds Watergate, Iran-contra and other past scandals.

The administration is depending heavily upon the Democratic Party to prevent the scandal from spiraling out of control. Calls for investigations have thus far been extremely muted, and they will be held largely under the control of Democratic legislators who have known about the tapes and the CIA torture program for years.



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