

US Justice Department opens criminal investigation into CIA tape destruction

Joe Kay
4 January 2008

US Attorney General Michael Mukasey announced on Wednesday that the Justice Department would carry out a criminal investigation into the CIA's destruction of videotapes showing the interrogation and torture of two prisoners.

The move was quickly hailed by leading Democrats. There is every indication, however, that the decision by the White House is an attempt to contain any investigation into the destruction of the torture tapes and other criminality, while dragging the process out beyond the end of the Bush administration.

The videotapes in question include hundreds of hours of interrogation of two alleged members of Al Qaeda, Abu Zubaydah and Abd al-Rahim al-Nashiri, who were subjected to waterboarding and other forms of torture by the CIA in 2002. The videotapes were secretly destroyed in November 2005, after extensive discussion among White House lawyers and the CIA.

The Justice Department investigation will not address the legality of the methods used by the CIA—practices that CIA officials have said were ordered by the White House—but only the legality of the decision to destroy the tapes. The tapes were destroyed in the midst of several relevant pending court cases, including the trial of Zacarias Moussaoui—the so-called 20th hijacker in the September 11, 2001 terror attacks—and their existence was kept from defendants and their attorneys. The tapes were also withheld from the 9/11 Commission.

Mukasey said that the decision was necessary because there was sufficient cause to investigate whether or not a crime was committed. He emphasized, however, “The opening of an investigation does not mean that criminal charges will necessarily follow.” In announcing the move, the Justice Department implicitly rejected calls by a few Democrats for the appointment of an independent prosecutor who would operate outside the authority of the administration.

Mukasey noted that an investigation would normally be carried out under the authority of the US Attorney for the Eastern District of Virginia, where the CIA headquarters is located. The office had recused itself “in order to avoid any possible appearance of a conflict with other matters handled by that office,” he said.

Though Mukasey did not state so explicitly, this “conflict” refers to the fact that the Eastern District of Virginia is the district in which Moussaoui was prosecuted. The prosecuting attorneys repeatedly sidestepped requests by the judge in the case to turn over videotapes of the interrogation of Al Qaeda prisoners, including a request in November 2005, the month the tapes were destroyed.

The prosecutor who will be in charge of the case is John Durham, a deputy US attorney from Connecticut. Mukasey said that Durham will serve as the “Acting United States Attorney for the Eastern District of Virginia,” and that he will “report to the Deputy Attorney General,” who will in turn report to Mukasey. In other words, Durham will not have the powers of a special prosecutor or independent counsel, and his findings will be filtered through the Justice Department

The deputy attorney general to whom Durham will report will almost certainly be Mark Filip, whose confirmation hearings before the Senate were held last month. During the hearings, Filip refused to declare whether or not he considered waterboarding to be torture. In doing so, he was following the lead of his future boss, Mukasey, whose confirmation hearings were dominated by his obfuscation over torture and waterboarding.

Durham has been universally described in the media as a “tough” prosecutor who will be a credible “outside” investigator. In an article in the *Washington Post* on Thursday (“Probe Leader Called A Tough Prosecutor”), the newspaper noted that Durham “oversaw corruption charges against a Republican governor in Connecticut, put away FBI agents in Boston and prosecuted many of New England’s Mafia bosses.” He is “known for seeking maximum sentences, shunning plea bargains and avoiding the spotlight.”

A companion editorial in the *Post* described Durham as “a veteran prosecutor...with an impressive track record on tough cases.” The suggested implication is that Durham will go after the CIA and the administration and get to the bottom of any criminal activity.

These claims are belied by the fact that Durham, a registered Republican, will be operating under the direction of the Justice Department, and therefore cannot be described as an “outsider.” Mukasey had to select a prosecutor from outside Virginia only because the prosecuting office in Virginia is implicated in the crime being investigated. In fact, this in no way removes the conflict of interest, since the administration as a whole is implicated in the crime.

The same article in the *Post* also went on to note that Durham “was recommended for his assignment by his former boss, Kevin J. O’Connor, who was the US attorney in Connecticut until he became an assistant to Attorney General Alberto Gonzales shortly before Gonzales resigned last year.” O’Connor also served briefly as Gonzales’ chief of staff.

As White House counsel before becoming attorney general, Gonzales was one of the lawyers involved in the discussions preceding the destruction of the CIA tapes.

The criminal investigation smells strongly of a cover-up, one with which the Democrats are preparing to cooperate.

When the revelation of the destroyed tapes first came out in early December, the response of the Bush administration was to quickly announce a joint CIA-Justice Department inquiry into the matter, and Mukasey’s announcement is the outcome of this inquiry. The inquiry has been used as a pretext for the administration to refuse to answer any media questions on the role of the White House in the decision to destroy the tapes.

The inquiry was also cited by the Justice Department to try to scuttle separate investigations begun by Congressional committees, and it was cited in a court case to argue that a federal judge should not open his own inquiry into whether or not the tapes’ destruction violated a court order. The argument of the administration has been that separate investigations

could impede the government's own inquiry. This argument will no doubt be repeated now that the inquiry has become an official criminal investigation.

At the same time, the White House has moved aggressively to squash any suggestion that the White House played a major role in the decision to destroy the tapes. A key episode was its demand that the *New York Times* publish a "correction" of a secondary headline that appeared on December 19 article exposing the fact that the destruction of the tapes followed discussions involving at least four top administration lawyers, including Gonzales. The article, which included a sub-headline, "White House Role Was Wider Than It Said," cited a senior intelligence official saying there had been "vigorous sentiment" from some of these lawyers to destroy the tapes.

The *Times* issued a retraction, with the cowardly justification that since the White House had not officially said anything, its role could not be "wider than it said." This cave-in by the *Times* made it clear that the liberal media and behind it the Democratic Party would do nothing to seriously challenge the abuse of state power by the administration and to defend the democratic rights of the population.

While the White House has sought to completely suppress the entire issue of the tapes' destruction, there are elements within the political establishment that have been pushing for some sort of investigation. This is the significance of recent comments by 9/11 Commission Chair Thomas Kean and Vice Chair Lee Hamilton, including those published in an opinion piece in the *New York Times* on Wednesday.

Kean and Hamilton are acutely aware that the revelation of the existence and destruction of the tapes calls into further question the legitimacy of their entire investigation, which from the beginning was intended as a whitewash and cover-up of the role of the government in the 9/11 attacks. Large parts of the 9/11 Commission report were based on the interrogation of Al Qaeda suspects.

The destruction of the tapes, in addition to eliminating evidence of torture, also destroyed the record of what the prisoners actually said. Zubaydah, for example, reportedly fingered as collaborators several members of the Saudi royal family and at least one official in Pakistani intelligence, both of which have close ties to the US government.

In their opinions piece, Lee and Hamilton insisted, "those who knew about those videotapes—and did not tell us about them—obstructed our investigation. There could have been absolutely no doubt in the mind of anyone at the CIA—or the White House—of the commission's interest in any and all information related to Qaeda detainees involved in the 9/11 plot. Yet no one in the administration ever told the commission of the existence of videotapes of detainee interrogations."

The opinion piece concluded with the statement, "As a legal matter, it is not up to us to examine the CIA's failure to disclose the existence of these tapes. That is for others. What we do know is that government officials decided not to inform a lawfully constituted body, created by Congress and the president, to investigate one of the greatest tragedies to confront this country. We call that obstruction."

As leading figures in the 9/11 Commission, Kean and Hamilton are well schooled in the politics of damage control and cover-up. Their column indicates that at least some sections of the political establishment feel that something has to be done to give the appearance of an investigation, and that some individuals may have to be held accountable as scapegoats for a crime in which the entire political establishment is implicated.

Mukasey announced the appointment of Durham on the day the Kean and Hamilton column was published and two weeks after a memo from the commission's executive director, Philip Zelikow, detailing the repeated requests by the commission to the CIA for documents related to the interrogation of the prisoners.

The response of Democrats to Mukasey's announcement was quick and full of praise. Senate Majority Leader Harry Reid said he was

"encouraged" that Mukasey "appointed a career prosecutor from outside the Justice Department headquarters to lead the investigation."

Senator Edward Kennedy called the move "an important step towards a full and independent investigation," an indication that Kennedy would not continue to call for a special prosecutor—a call that has already been rejected by most leading Democrats. Senator John Rockefeller IV, chairman of the Senate Intelligence Committee, said that Mukasey had "made the right decision to begin a criminal investigation and place it in the hands of a career prosecutor."

House Intelligence Committee chairman Silvestre Reyes said, "I am pleased to see that the Attorney General is taking the issue seriously." Reyes indicated that his committee would continue with its own investigation. This investigation is scheduled to include testimony from Jose Rodriguez, the former head of clandestine operations at the CIA and the figure cited in the media as directly responsible for the destruction of the tapes. Rodriguez is scheduled to testify later this month.

All of these figures are accepting the legitimacy of an investigation that is being carried out under the authority of those directly implicated in the crime itself.

Editorials Thursday in the liberal media were no less praiseworthy. The *Washington Post* called Mukasey's announcement a "welcome sign that the department is moving seriously and expeditiously on the matter." The *New York Times*, under the headline, "The Right Move on the CIA Tapes," called the decision "a heartening, and unaccustomed, sign that the attorney general is doing his duty to get to the bottom of a roiling scandal."

Given the gravity of the crimes involved—torture, destruction of evidence, conspiracy, obstruction of justice—and the almost certain involvement of the highest levels of the Bush White House, what is most remarkable is the way in which the entire issue has been downplayed by the Democratic Party. There has been no attempt to make it a major public issue, and none of the major Democratic presidential candidates have spoken out on the question.

The Democratic Party and liberal establishment have no more interest in a serious investigation than does the Bush administration.

Leading Democrats have known since 2002 of the CIA's use of waterboarding and other forms of torture. They knew of the existence of the tapes at least as early as 2003, and knew of the destruction of the tapes by 2006. They did nothing, however, to inform the American people or expose the criminal practices of the Bush administration. In fact, they have supported the CIA program of torture from the very beginning and have participated in the 9/11 cover-up.

The investigations that have been announced have largely stalled. There have been no calls for subpoenaing administration officials, including the lawyers involved in the discussion on the videotapes.

Whether or not the Bush administration is successful is continuing to cover up its crimes, the reaction of the political establishment is testament to the deep decay of democratic forms of rule in the United States.



To contact the WSWWS and the Socialist Equality Party visit:

wsws.org/contact