Bush administration acknowledges and defends use of torture technique

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The White House publicly acknowledged on Wednesday that President Bush has authorized the use of waterboarding, and that he may do so again in the future. The statements amount to an open admission of criminal activity on the part of the US government.

The acknowledgement from White House deputy spokesman Tony Fratto came a day after testimony from CIA Director Michael Hayden before the Senate Intelligence Committee. For the first time, Hayden officially stated that the Bush administration had used waterboarding on three prisoners in 2002 and 2003.

Waterboarding is a form of torture used since the Spanish Inquisition. It involves pouring water over a prisoner's head to cause drowning, and has been prosecuted as torture by the United States government in the past. While the Bush administration is now stretching language and credulity to claim that it should not be categorized as torture, the director of national intelligence, Mike McConnell, acknowledged on Wednesday that "taken to its extreme, [the consequences of waterboarding] could be death; you could drown someone."

Fratto said that whether or not the president would approve waterboarding would "depend on the circumstances," including whether or not "an attack might be imminent." Fratto insisted that waterboarding "was brought before the Department of Justice and they made a determination that its use under specific circumstances and with safeguards was lawful."

The administration feels able to come out openly in defense of waterboarding because it is confident that there will be no serious challenge from within the Democratic Party and the political establishment as a whole.

So far, the only response from Democrats has been a muted call by Senator Dick Durbin for a Justice Department investigation into the legality of waterboarding. That is, Durbin has called for another self-investigation by the administration. The investigation would be carried out under the authority of Attorney General Michael Mukasey, who was confirmed by a Democratic-controlled Congress despite his refusal to condemn waterboarding as torture.

The Justice Department is currently investigating the CIA's destruction of videotapes depicting waterboarding. Since this investigation was announced last month, the Democratic-controlled Congress has shelved its own inquiries. The Justice Department investigation, designed from the outset to be a whitewash, explicitly excludes any examination of the legality of waterboarding itself.

On Tuesday, Hayden named the three prisoners subjected to waterboarding: Khalid Sheikh Mohammed, Abu Zubaydah and Abd al-Rahim al-Nashiri. In December, Hayden acknowledged that in November 2005 the CIA had destroyed videotapes depicting the interrogation of Zubaydah and al-Nashiri.

As the comments by Fratto indicate, the Bush administration is developing the argument that the use of the torture technique was legal because of the specific circumstances under which it was employed. "We used it against three detainees because of the circumstances at the time," Hayden said. "There was the belief that additional catastrophic attacks against the homeland were inevitable. And we have had limited knowledge about Al Qaeda and its workings." Hayden claimed that the circumstances had now changed, but that waterboarding could be used again in the future.

McConnell echoed Hayden on Tuesday, saying that waterboarding "is a legal technique used in a specific set of circumstances. You have to know the circumstances to be able to make the judgment."

Both McConnell and Mukasey have said that waterboarding would be illegal torture if carried out on them personally, but have refused to condemn it as torture when used by the US government. In testimony before the

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Senate Judiciary Committee last week, Mukasey declined to say under what conditions waterboarding would be torture, and he refused to release the secret Justice Department opinions that justify the technique.

In attempting to justify torture, the Bush administration appears to be making it up as it goes along. The "circumstance" argument is a lie and is in direct conflict with international law. According to Article 2 of the United Nations Convention Against Torture, to which the United States is a signatory, "No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture."

Manfred Nowak, the UN special rapporteur on torture, said on Wednesday that waterboarding is "absolutely unacceptable under international human rights law." He noted that the legal evidence that waterboarding is torture and illegal is clear: "I'm not willing anymore to discuss these questions with the US government, when they still say that this is allowed. It's not allowed."

While claiming that only three individuals have been subject to waterboarding, Hayden said that "fewer than one third" of 100 detainees he acknowledged had been held by the CIA had been subject to what he called "enhanced interrogation techniques." These techniques presumably include the use of stress positions, sensory overload, sleep deprivation, and other methods that would also be categorized as torture and cruel and inhumane treatment under international law.

The term "enhanced interrogation techniques" is a virtual translation of the Gestapo term, *Verschärfte Vernehmung*, used as a euphemism for torture.

In defending waterboarding, McConnell attempted to explain away comments made to the *New Yorker* magazine last month. He was quoted at the time as saying that waterboarding would be torture if used on him.

Before the Senate Intelligence Committee on Tuesday, McConnell said that the discussion with the *New Yorker* reporter "was framed around being a water-safety instructor" as a youth. McConnell said that if water went up his nose when his head went under water, "that'd be torturous. It'd be very painful for me." He insisted on Tuesday, "I made no statement or judgment regarding the legality of waterboarding."

Thus, according to the director of national security, it is torture to have water go up one's nose while swimming, but it is not torture to strap someone upside down to a board and induce drowning, possibly to the point of death.

In the course of their testimony, McConnell and Hayden also called on Congress to make permanent the National Security Agency's warrantless domestic spying program, and called for retroactive immunity for telecommunications companies that have facilitated the illegal government program. The Senate is currently debating a bill that would provide immunity. The House passed one that would not provide immunity but would extend the spying program, which Bush has pledged to veto.

The statements by Hayden and Fratto were the product of a calculated decision on the part of the White House to come out openly in defense of waterboarding. Until this week, the administration has carefully avoided making such a statement. It has likely received explicit guarantees from leading Democratic members of Congress that no investigation will be carried out.

The Senate Intelligence Committee, before which Hayden and McConnell delivered their remarks, is chaired by Democratic Senator Jay Rockefeller, who has been complicit in the CIA torture program since it was launched. Rockefeller was one of six legislators who were briefed on the torture program in 2002-2003, when waterboarding was being practiced. Democrat Nancy Pelosi, the current House speaker, was also included in the briefing.

The White House has certainly also taken notice of the way in which the Democrats have quickly buried any discussion on the CIA's destruction of the torture tapes—a clear violation of the law and an impeachable offense. The issue has not been raised in the course of the primaries, and it is clear that the leading Democrats have no desire to make opposition to torture a component of their campaigns.

That the government can come out openly in defense of torture techniques with no fear of serious criticism from within the political establishment is testament to the deep decay of democratic rights in the United States. Regardless of who becomes president after the November elections, these antidemocratic policies will continue.

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