

US Justice Department report urges no prosecution over torture memos

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7 May 2009

A draft report by the US Justice Department on the conduct of department lawyers who wrote memos justifying torture has reportedly been embraced by the Obama administration as a means of precluding any attempt to hold them or other Bush administration officials accountable for their crimes.

The report by the department's Office of Professional Responsibility, which is charged with investigating misconduct by government attorneys, was completed last December before the Bush administration left office and handed over to the incoming Obama administration for final review and implementation.

According to press reports citing unnamed government officials, the 220-page draft focuses on three lawyers in the Justice Department's Office of Legal Counsel—John Yoo, Jay Bybee and Steven Bradbury—who signed legal opinions, known as the “torture memos,” justifying the torture of detainees held and interrogated by the US in its “global war on terror.”

The draft reportedly finds the attorneys guilty of poor judgment and failure to provide “reasonable legal advice,” but not of conspiracy to violate US and international laws against torture.

It does not call for criminal prosecution, but rather suggests that state bar associations consider disciplinary action, at least against Yoo and Bybee. Such action could range from a formal reprimand to disbarment. Yoo is currently a law professor at the University of California at Berkeley, while Bybee is a federal appeals court judge in San Francisco.

In an article citing law professors and lawyers involved in disciplinary cases, the *Washington Post* reported Wednesday that state bar associations would confront “nearly insurmountable challenges” in trying to hold Yoo and Bybee accountable for their actions at the Justice Department.

According to press reports, the Obama administration is prepared to adopt these recommendations and thereby move to quash any attempt to place the authors of the torture memos on trial.

The *New York Times* said that administration officials who spoke on condition of anonymity said that “it is possible that the final report might be subject to further revision but that they did not expect major alterations in its main findings or recommendations.”

A decision by the Obama administration to accept the report's recommendations would represent another attempt to bury the issue, thereby protecting those who adopted and implemented a state policy of torture.

Last month, Obama was compelled by a court order to release

previously classified memos from 2002 and 2005 that justify and support methods of torture. The memos describe these methods in excruciating detail, from waterboarding, to banging a detainee's head against a wall 30 times in a row, to shackling detainees in painful positions for up to 180 hours, to confining them for hours on end in small dark boxes with insects.

Obama immediately made clear that his intention was to utilize the release of the memos to provide an appearance of “change” from the Bush era, while at the same time guaranteeing that those at the CIA who carried out these torture methods would be immunized against prosecution.

While administration officials subsequently extended this guarantee to the Justice Department lawyers who drafted the torture memos and the Bush administration officials who solicited them, Obama felt compelled to distance himself from this blanket coverup of a crime punishable under both US and international law. His fallback position was that it is not the president's job to prosecute crimes, but rather that of his attorney general, Eric Holder, to whom he would defer.

He was undoubtedly well aware at the time of the contents of the internal Justice Department report and counted on using it to justify its preordained decision to block any criminal prosecution. His aim was to placate a national security and intelligence establishment that has grown increasingly restive over the release of the torture memos and the resulting demands that those responsible be held accountable.

There is every indication that the draft report is itself politically tainted. Not only was it prepared under the Bush administration, which was responsible for the policy of torture, but its principal targets were allowed to review and comment on it before it was completed.

In March, Democratic Senators Dick Durbin and Sheldon Whitehouse, who have pressed for the release of the report, responded to a Justice Department letter revealing that it had been given to Bybee, Yoo and Bradbury.

“We are concerned that the attorney general and deputy attorney general, and ultimately Congress, will review a report that has undergone significant revisions at the behest of the subjects of the investigation,” wrote Durbin and Whitehouse, both members of the Senate Judiciary Committee.

Another attempt to influence the report was made by Bush's outgoing attorney general, Michael Mukasey, and Deputy Attorney General Mark Filip, who co-wrote a 14-page letter sharply

criticizing the initial draft, arguing that the memos had to be placed in the context of the 9/11 attacks and the prospect of another terrorist strike in the US.

However, as a recent report issued by the Senate Armed Services Committee confirmed, a major aim of the torture was not to uncover intelligence about an imminent act of terrorism, but to extract confessions of ties between Al Qaeda and Saddam Hussein in order to bolster one of the Bush administration's phony pretexts for a war of aggression against Iraq.

Meanwhile, the *Washington Post* reported Wednesday that former Bush administration officials have mounted a major campaign of political pressure to force a further watering down of the internal report. "Representatives for John C. Yoo and Jay S. Bybee, subjects of the ethics probe, have encouraged former Justice Department and White House officials to contact new officials at the department to point out the troubling precedent of imposing sanctions on legal advisers, said the sources," the *Post* reported.

No doubt, there is also considerable pressure to ensure that the final report does not include information that would further implicate top former Bush administration officials.

As the *New York Times* reported Wednesday: "The draft report is described as very detailed, tracing e-mail messages between the Justice Department lawyers and officials at the White House and the Central Intelligence Agency. Among the questions it is expected to consider is whether the memos were an independent judgment of the limits of the federal anti-torture statute or were deliberately skewed to justify the use of techniques proposed by the CIA."

In a letter sent Monday to senators Durbin and Whitehouse, Assistant Attorney General Ronald Weich revealed that the report has been submitted to the CIA itself for "substantive comment" before any declassification of the document. In a joint statement, the two Democratic senators questioned the "reasons why an outside agency would have such comment on an internal disciplinary matter."

The CIA's role will be to ensure that the most incriminating evidence in the report never sees the light of day, demanding that it be redacted in the interests of "national security."

It is clear that the memos drafted by Bybee, Yoo and Bradbury were written to order, solicited by the White House to provide a pseudo-legal justification for a policy of systematic torture that was already being implemented.

This accounts for the absurd and grotesque argument that "enhanced interrogation techniques" did not rise to the level of torture unless they inflicted pain equivalent to "major organ failure" or death, as well as the failure of the authors to review any of the cases in which waterboarding, which the memos approved, had been prosecuted as an act of torture when carried out by US authorities or Japanese interrogators during World War II.

Those responsible for ordering torture and commissioning the memos include the Bush administration's so-called Principals Committee, which included Vice President Dick Cheney, Attorney General John Ashcroft, Secretary of State Colin Powell, CIA Director George Tenet and National Security Advisor Condoleezza Rice. Defense Secretary Donald Rumsfeld approved the torture

techniques and supervised their implementation against detainees held in military prisons like Abu Ghraib. Obviously, presiding over the entire policy was Bush himself.

In response to the reports on the Justice Department's internal ethics report, Caroline Fredrickson of the American Civil Liberties Union pointed to the anomaly of concentrating on the attorneys who wrote the memos rather than those whose actions they were meant to justify.

"More than five years after the first disclosures of torture, it should concern all Americans that there is a 200-page draft government report on the role of three lawyers, but absolutely no Justice Department investigation of their clients—those top White House and CIA officials who asked for the opinions and reportedly made decisions on what torture tactics to use on which detainees," she said.

The failure of the Obama administration to initiate such an investigation and its covering before the CIA and the rest of the national security apparatus only confirms that there exists no real constituency within any section of the US ruling elite for the defense of democratic rights.

The Obama administration is opposed to pursuing an investigation that would lead to the prosecution of Bush and his cabinet members in part because the Democratic Party, like the media and virtually every other institution of the American establishment, is deeply implicated not only in torture, but in the policy of aggressive war with which it is linked. Leading Democrats in Congress, including House Speaker Nancy Pelosi, were briefed on the torture methods and there is no indication that they objected.

Moreover, the Obama administration, like its predecessor, is committed to upholding the interests of a financial oligarchy at the expense of the broad mass of working people in the US and around the world. This cannot be achieved by democratic means. It requires a continuation of the policy of aggressive war abroad—with the administration's military escalation in Afghanistan and Pakistan—and a continuation of the assault on basic democratic rights at home.

The fight to put an end to wars of aggression, torture, extraordinary rendition and the other crimes with which the US government is identified all over the world cannot be advanced without holding accountable those responsible for these practices.

Neither the Obama administration nor the Democratic Party has any intention of pursuing such a course. Only an independent political movement of working people directed against the entire ruling establishment can carry forward the defense of democratic rights, including the criminal prosecution of all those responsible for torture and other war crimes carried out under both the Bush and the Obama administrations.



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