

US exonerates authors of Bush torture memos

Kate Randall
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Bush administration lawyers whose secret memos justified waterboarding and other forms of torture will not be referred to authorities for possible sanctions, according to a forthcoming ethics report.

Unnamed sources who spoke to *Newsweek* magazine said the Obama Justice Department's Office of Professional Responsibility (OPR) has concluded that John Yoo and Jay Bybee, who penned the infamous memos, used "poor judgment" but will not be subject to disciplinary action. Yoo and Bybee worked in the Justice Department's Office of Legal Counsel, along with Steven Bradbury, who is also named in the report.

The conclusions of the OPR report provide yet another demonstration of President Barack Obama's defense of the anti-democratic and criminal practices of the Bush administration in the "war on terror," and the current administration's resolve that no one—especially those at the highest levels of government—will be held to account.

An earlier version of the OPR report completed in December 2008 concluded that Yoo, presently a University of California at Berkeley law professor, and Bybee, now a federal appeals court judge on the 9th Circuit, violated professional standards when they drafted an August 2002 legal opinion authorizing brutal methods by the CIA in the interrogation of suspected terrorist detainees.

The OPR recommended referral of their cases to state bar associations, which could have revoked their law licenses. Bybee also could have faced an impeachment inquiry before Congress. However, under a new review of the OPR report ordered by Attorney General Eric Holder shortly after he took charge of the Justice Department, the two will not face even these weak sanctions.

In early 2009, the Obama Justice Department began to water down the conclusions of the OPR probe, which

was initiated in mid-2004 during the Bush administration following disagreements between the Office of Legal Counsel and White House lawyers over the Bush administration's defense of "enhanced interrogation" techniques justified by the Yoo-Bybee opinions.

David Margolis, a 34-year career prosecutor at the Justice Department, was eventually tasked by Holder with reviewing the final version of the OPR report. It was reportedly Margolis who downgraded the report's initial findings against Yoo and Bybee from "professional misconduct" to "poor judgment."

As recently as December, Obama administration lawyers under the direction of Holder supported the dismissal of a case brought against Yoo by Jose Padilla, the US citizen held incommunicado and tortured for more than two years after his arrest at Chicago's O'Hare Airport.

Earlier last year, Obama administration attorneys supported the dismissal of suits brought by a wide range of victims, including those subject to "extraordinary rendition," targets of government eavesdropping, and detainees transported from the Middle East to US military bases in Afghanistan.

The Justice Department's defense of Yoo and Bybee testifies to the Obama administration's continuation of the police-state structures developed under Bush. The memos drafted by Yoo, Bybee and Bradbury were solicited by the Bush White House to provide pseudo-legal justification for systematic torture that was already being carried out by CIA interrogators.

The memos made the gruesome and legally absurd argument that "enhanced interrogation techniques" such as waterboarding, threats of death, sleep deprivation, extreme variations of temperature, and the use of psychotropic drugs do not rise to the level of torture unless they inflict pain equivalent to "major organ failure" or death.

Since authoring the memos, Yoo has gone on to write three books in which he defends his doctrine that the president as the “Commander in Chief” in wartime possesses unlimited powers, including the right to authorize torture and other illegal acts. In one of his August 2002 memos, he asserted that CIA agents accused of torturing Al Qaeda suspects could claim they were acting in “self-defense” to prevent future terror attacks.

Newsweek notes that the OPR report is “sharply critical” of the “legal reasoning used to justify waterboarding” and other torture methods used by CIA interrogators after September 11, and that it will provide “many new details about how waterboarding was adopted and the role that top White House officials played in the process.”

This is, however, merely window dressing for a cover-up of war crimes and crimes against the democratic rights of the American people and tacit sanction for the continuation of such practices. Obama has frequently touted his “ban” on torture, but this remains an empty and cynical gesture under conditions where the government protects former government officials who authorized these crimes.

There are two major reasons why the Obama administration continues to block any prosecution of those responsible for authorizing torture. First, the Democratic Party is complicit in the crimes of the Bush administration. Democratic congressional leaders were briefed by Bush officials on the torture practices and violations of democratic rights and international law, and supported them.

Second, such policies continue under the current administration.

One year after assuming office, Obama has broken his pledge to close the Guantánamo detention camp and blocked suits by Guantánamo detainees challenging their detention. He has explicitly defended the Bush administration policies of indefinite detention, extraordinary rendition, and military tribunals. The US military prison at Bagram Air Base in Afghanistan continues to hold hundreds of prisoners, without charge or trial, under barbaric conditions.

Obama is going one step further than Bush by seeking to establish a military prison in Illinois where prisoners will be held indefinitely without charge or trial and subjected to treatment defined by international

and US law as torture. He is thereby institutionalizing on US soil the illegal, police-state methods improvised by Bush.

Obama has moreover upheld the Bush doctrine of pre-emptive war, with Yemen becoming the latest target of US threats, along with Iran.

The administration’s de facto support for John Yoo and his torture memo accomplices is of a piece with these policies, which are supported by both big business parties. Under conditions of expanding militarism abroad and deepening social inequality at home, there is no section of the political establishment committed to the defense of democratic rights.

Democratic rights can be defended only through the independent mobilization of the working class against the Obama administration, the Democrats and Republicans, and the capitalist system which is the source of war and repression.

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