

Cheney Admits to War Crimes, Media Yawns, Obama Turns the Other Cheek

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Global Research, February 19, 2010
[Truthout](#) 20 February 2010

Theme: [Crimes against Humanity](#), [Law and Justice](#)

In-depth Report: [CRIMINALIZE WAR, Prosecute Bush/Cheney](#)

Dick Cheney is a sadist.

On Sunday, in an [exclusive interview](#) with Jonathan Karl of ABC News' "This Week," Cheney proclaimed his love of torture, derided the Obama administration for outlawing the practice, and admitted that the Bush White House ordered Justice Department attorneys to fix the law around the administration's policy interests.

"I was a big supporter of waterboarding," Cheney told Karl, as if he were issuing a challenge to officials in the current administration, including President Barack Obama, who said flatly last year that waterboarding is torture, to take action against him. "I was a big supporter of the enhanced interrogation techniques..."

The former vice president's declaration closely follows admissions he made in December 2008, about a month before the Bush administration exited the White House, when he said he personally authorized the torture of 33 suspected terrorist detainees and approved the waterboarding of three so-called "high-value" prisoners.

"I signed off on it; others did, as well, too," Cheney [said](#) in an interview with the right-wing Washington Times about the waterboarding, a drowning technique where a person is strapped to a board, his face covered with a cloth and then water is poured over it. It is a torture technique dating back at least to the Spanish Inquisition.

The US has long treated waterboarding as a war crime and has prosecuted Japanese soldiers for using it against US troops during World War II. And Ronald Reagan's Justice Department [prosecuted](#) a Texas sheriff and three deputies for using the practice to get confessions.

But Cheney's admissions back then, as well as those he made on Sunday, went unchallenged by Karl and others in the mainstream media. Indeed, the two major national newspapers-[The New York Times](#) and [The Washington Post](#)-characterized Cheney's interview as a mere spat between the vice president and the Obama administration over the direction of the latter's counterterrorism and national security policies.

The Times and Post did not report that Cheney's comments about waterboarding and his enthusiastic support of torturing detainees amounted to an admission of war crimes given that the president has publicly stated that waterboarding is torture.

Ironically, in March 2003, after Iraqi troops captured several US soldiers and let them be

interviewed on Iraqi TV, senior Bush administration officials [expressed outrage](#) over this violation of the Geneva Convention.

“If there is somebody captured,” President George W. Bush told reporters on March 23, 2003, “I expect those people to be treated humanely. If not, the people who mistreat the prisoners will be treated as war criminals.”

Nor did the Times or Post report that the “enhanced interrogation techniques” Cheney backed was, in numerous cases, administered to prisoners detained at Guantanamo and in detention centers in Iraq and Afghanistan who were innocent and simply in the wrong place at the wrong time. The torture methods that Cheney helped implement as official policy was also [directly responsible for the deaths](#) of at least 100 detainees.

Renowned human rights attorney and Harper’s magazine contributor Scott Horton [said](#), “Section 2340A of the federal criminal code makes it an offense to torture or to conspire to torture. Violators are subject to jail terms or to death in appropriate cases, as where death results from the application of torture techniques.”

In addition to Obama, Attorney General Eric Holder said during his confirmation hearing last year that waterboarding is torture.

“Dick Cheney wants to be prosecuted. And prosecutors should give him what he wants,” Horton wrote in a Harper’s dispatch Monday.

Karl also made no mention of the fact that the CIA’s own watchdog concluded in a report declassified last year that the torture of detainees Cheney signed off on did not result in any actionable intelligence nor did it thwart any imminent attacks on the United States. To the contrary, torture led to bogus information, wrongful elevated threat warnings, and [undermined the war-crimes charges](#) against Mohammed al-Qahtani, the alleged “20th hijacker” in the 9/11 attacks because the evidence against him was obtained through torture.

Karl also failed to call out Cheney on a statement the former vice president made during his interview in which he suggested the policy of torture was carried out only after the Bush administration told Justice Department attorneys it wanted the legal justification to subject suspected al-Qaeda prisoners to brutal interrogation methods.

Cheney told Karl that he continues to be critical of the Obama administration “because there were some things being said, especially after we left office, about prosecuting CIA personnel that had carried out our counterterrorism policy or disbarring lawyers in the Justice Department who had — had helped us put those policies together, and I was deeply offended by that, and I thought it was important that some senior person in the administration stand up and defend those people who’d done what we asked them to do.”

In an [interview](#) with Karl on December 15, 2008, Cheney made a similar comment, which Karl also allowed to go unchallenged, stating that the Bush administration “had the Justice Department issue the requisite opinions in order to know where the bright lines were that you could not cross.”

Bush’s Key Line of Defense Destroyed

Those statements, both on Sunday and in his December 2008 interview with Karl, destroys a key line in the Bush administration's defense against war crimes charges. For years, Cheney and other Bush administration officials pinned their defense on the fact that they had received legal advice from Justice Department lawyers that the brutal interrogations of "war on terror" detainees did not constitute torture or violate other laws of war.

Cheney's statements, however, would suggest that the lawyers were colluding with administration officials in setting policy, rather than providing objective legal analysis.

In fact, [as I reported](#) last year, an investigation by the Department of Justice's Office of Professional Responsibility (OPR) determined that DOJ attorneys John Yoo and Jay Bybee blurred the lines between attorneys charged with providing independent legal advice to the White House and policy advocates who were working to advance the administration's goals, according to legal sources who were privy to an original draft of the OPR report.

That was a conclusion Dawn Johnsen reached. Johnsen was tapped a year ago by Obama to head the Office of Legal Counsel (OLC), where Yoo and Bybee worked, but her confirmation has been stuck in limbo.

In a 2006 *Indiana Law Journal* [article](#), she said the function of OLC should be to "provide an accurate and honest appraisal of applicable law, even if that advice will constrain the administration's pursuit of desired policies."

"The advocacy model of lawyering, in which lawyers craft merely plausible legal arguments to support their clients' desired actions, inadequately promotes the President's constitutional obligation to ensure the legality of executive action," said Johnsen, who served in the OLC under President Bill Clinton. "In short, OLC must be prepared to say no to the President.

"For OLC instead to distort its legal analysis to support preferred policy outcomes undermines the rule of law and our democratic system of government. Perhaps most essential to avoiding a culture in which OLC becomes merely an advocate of the Administration's policy preferences is transparency in the specific legal interpretations that inform executive action, as well as in the general governing processes and standards followed in formulating that legal advice."

In a 2007 [UCLA Law Review article](#), Johnsen said Yoo's Aug. 1, 2002, torture memo is "unmistakably" an "advocacy piece."

"OLC abandoned fundamental practices of principled and balanced legal interpretation," Johnsen wrote. "The Torture Opinion relentlessly seeks to circumvent all legal limits on the CIA's ability to engage in torture, and it simply ignores arguments to the contrary.

"The Opinion fails, for example, to cite highly relevant precedent, regulations, and even constitutional provisions, and it misuses sources upon which it does rely. Yoo remains almost alone in continuing to assert that the Torture Opinion was 'entirely accurate' and not outcome driven."

The original draft of the OPR report concluded that Yoo and Bybee violated professional standards and recommended a referral to state bar associations where they could have

faced disciplinary action and have had their law licenses revoked.

The report's findings could have influenced whether George W. Bush, Cheney and other senior officials in that administration were held accountable for torture and other war crimes. But two weeks ago, [it was revealed](#) that officials in Obama's Justice Department backed off the earlier recommendation and instead altered the misconduct findings against Yoo and Bybee to "poor judgment," which means neither will face disciplinary action. The report has not yet been released.

For his part, Yoo had already [admitted](#) in no uncertain terms that Bush administration officials sought to legalize torture and that he and Bybee fixed the law around the Bush administration's policy.

As [I noted in a report last year](#), in his book, "[War by Other Means: An Insider's Account on the War On Terror](#)," Yoo described his participation in meetings that helped develop the controversial policies for the treatment of detainees.

For instance, Yoo wrote about a trip he took to Guantanamo Bay, Cuba, with other senior administration officials to observe interrogations and to join in discussions about specific interrogation methods. In other words, Yoo was not acting as an independent attorney providing the White House with unbiased legal advice but was more of an advocate for administration policy.

The meetings that Yoo described appear similar to those [disclosed](#) by ABC News in April 2008.

"The most senior Bush administration officials repeatedly discussed and approved specific details of exactly how high-value al-Qaeda suspects would be interrogated by the CIA," ABC News reported at the time, citing unnamed sources.

"The high-level discussions about these 'enhanced interrogation techniques' were so detailed, these sources said, some of the interrogation sessions were almost choreographed - down to the number of times CIA agents could use a specific tactic.

"These top advisers signed off on how the CIA would interrogate top al-Qaeda suspects - whether they would be slapped, pushed, deprived of sleep or subjected to simulated drowning, called waterboarding," according to unnamed sources quoted by ABC News.

Torture Preceded Legal Advice

If ABC's Karl had a firmer grasp on the issues he queried Cheney about he would have known that as recently as last week, three UK high-court judges released seven paragraphs of a previously classified intelligence document that proved [the CIA tortured Binyam Mohamed](#), a British resident captured in Pakistan in April 2002 who was falsely tied to a dirty bomb plot, months before the Bush administration obtained a memo from John Yoo and Jay Bybee at the Justice Department's Office of Legal Counsel (OLC) authorizing specific methods of torture to be used against high-value detainees, further undercutting Cheney's line of defense.

The document stated bluntly that Mohamed's treatment "could readily be contended to be

at the very least cruel, inhuman and degrading treatment by the United States authorities.”

Obama Turns A Blind Eye to Crimes

Under the United Nations Convention Against Torture, the treatment of Mohamed and the clear record that the Bush administration used waterboarding and other brutal techniques to extract information from detainees should have triggered the United States to conduct a full investigation and to prosecute the offenders. In the case of the US’s refusal to do so, other nations would be obligated to act under the principle of universality.

However, instead of living up to that treaty commitment, the Obama administration has time and again resisted calls for government investigations and has gone to court to block lawsuits that demand release of torture evidence or seek civil penalties against officials implicated in the torture.

Though it’s true, as Vice President Joe Biden stated Sunday on “Meet the Press,” that Cheney is rewriting history and making “factually, substantively wrong” statements about the Obama administration’s track record and approach to counterterrorism, it’s difficult, if not near impossible, to defend this president from the likes of Cheney because he has steadfastly refused to hold anyone in the Bush administration accountable for the crime of torture.

Case in point: last week the Obama administration treated the disclosure by British judicial officials of Mohamed’s torture as a security breach and threatened to cut off an intelligence sharing arrangement with the UK government.

In what can only be described as a [stunning response](#) to the revelations contained in the intelligence document, White House spokesman Ben LaBolt said “the [UK] court’s judgment will complicate the confidentiality of our intelligence-sharing relationship with the UK, and it will have to factor into our decision-making going forward.”

“We’re deeply disappointed with the court’s judgment today, because we shared this information in confidence and with certain expectations,” LaBolt said, making no mention of Mohamed’s treatment nor even offering him an apology for the torture he was subjected to by the CIA over the course of several years. Mohamed was released from Guantanamo last year and returned to the UK.

As an aside, as revelatory as the disclosures were, news reports of Mohamed’s torture were buried by the mainstream print media and went unreported by the cable news outlets, underscoring how the media’s interest in Bush’s torture policies has waned.

The Obama administration’s decision to ignore the past administration’s crimes has alienated civil liberties groups, who he could once count on for support.

Last December, on the day Obama received a Nobel Peace prize, Jameel Jaffer, director of the ACLU’s National Security Project, [told reporters](#) “on every front, the [Obama] administration is actively obstructing accountability. This administration is shielding Bush administration officials from civil liability, criminal investigation and even public scrutiny for their role in authorizing torture.”

Cheney’s Attacks Unfounded

That being the reality is what makes Cheney’s claim on Sunday that the Obama administration is attempting to prosecute “CIA personnel that had carried out our counterterrorism policy or disbaring lawyers” laughable.

Last year, Holder [expanded the mandate of John Durham](#), a federal prosecutor from Connecticut appointed by former Attorney General Michael Mukasey to investigate the destruction of CIA torture tapes, to include a “preliminary review” of less than a dozen torture cases previously closed by Justice Department attorneys for unknown reasons. That hardly amounts to a prosecution. It’s not even an investigation.

And “disbaring lawyers, a clear reference to Yoo and Bybee, which is beyond the scope of the Justice Department watchdog’s authority to begin with, is no longer a possibility given that the OPR report reportedly does not recommend disciplinary action.

In a statement, the ACLU said, “to date, not a single torture victim has had his day in court.”

As Jane Mayer [reported](#) in a recent issue of the New Yorker, Holder’s limited scope authorization to Durham did not go over well with the White House and Obama’s Chief of Staff Rahm Emanuel made sure Holder knew where the administration stood.

“Emanuel worried that such investigations would alienate the intelligence community...” Mayer wrote. “Emanuel couldn’t complain directly to Holder without violating strictures against political interference in prosecutorial decisions. But he conveyed his unhappiness to Holder indirectly, two sources said. Emanuel demanded, ‘Didn’t he get the memo that we’re not re-litigating the past?’

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