

US Justice Department memos: the specter of military dictatorship

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A set of nine secret memos released by the US Justice Department Monday reveal that in the weeks and months after the September 11, 2001, terrorist attacks the US government began erecting the legal scaffolding for a full-blown military dictatorship.

Attorney General Eric Holder declared that the release of the documents, which were posted on the Justice Department's [web site](#), signaled a new era of "transparency and openness." The actions of the Obama administration in recent weeks, however, including the invocation of national security and state secrets to quell lawsuits challenging the worst abuses of the Bush era, make it clear that the threat revealed in these memos is far from over.

The thrust of the memos, written by former Deputy Assistant Attorney General John Yoo, then-Assistant Attorney General Jay Bybee and others in the Justice Department's Office of Legal Counsel, was that the president, as commander-in-chief in the "global war on terrorism," had the right to suspend the Constitution and treat American citizens on US soil as if they were soldiers in an invading foreign army.

In a September 25, 2001, memo, Yoo argued for the unfettered right of the White House to carry out warrantless domestic wiretapping. He insisted that the Fourth Amendment's protection against unreasonable searches and seizures was inoperative in the context of the war on terror, which had "changed the calculus of a reasonable search."

In response to an inquiry from the White House concerning its authority to deploy US troops within the United States itself, Yoo and then-Special Counsel Robert Delahunty issued an October 23, 2001, memo insisting that nothing in the Constitution or the law could stop him.

In the document, Yoo and Delahunty acknowledged that what was under consideration included "deploying troops and military equipment to monitor and control the flow of traffic into a city; attacking civilian targets, such as apartment buildings, offices, or ships where suspected terrorists were thought to be."

The Justice Department officials admitted that the use of military forces against US citizens on American soil raised "novel and difficult questions of constitutional law," but argued that such forces would not be bound to respect constitutional rights, allowing them to search houses and seize suspects, without the need for court approval or a search warrant.

In the same memo, they made the case that calling out the military on US soil could be joined with a sweeping suppression of freedom of speech. "First Amendment speech and press rights may also be subordinated to the overriding need to wage war successfully,"

they wrote.

Other memos explicitly rejected any power of the courts or Congress to limit the president's actions. This included a finding that Congress had no right to restrict the president's treatment of detainees or their transfer to other countries, a practice known as rendition that was used to subject them to interrogation under torture. They also asserted that the president was not bound to obey laws requiring court approval for wiretapping.

Included in the released documents was a January 15, 2009, memo—issued just five days before Bush left office—signed by the outgoing head of the Office of Legal Counsel, Steven Bradbury. In it, Bradbury claimed that a number of the legal opinions expressed in the earlier memos were no longer operative and had been secretly “withdrawn or superseded.”

This document had the character of a legal cover for the government attorneys who are clearly complicit in the criminal activities of the Bush administration, including domestic spying, torture and extra-legal detentions.

This cover-up is essentially taken as good coin by the Obama administration and the Democrats in Congress. The administration treats the earlier memos as “mistakes,” while Senator Patrick Leahy, chairman of the Senate Judiciary Committee, said that the memos exposed “the Bush administration's misguided national security policies.”

Involved here were not “misguided” policies in an otherwise legitimate “war on terror,” but rather a deliberate and frontal assault on the Constitution and democratic rights. No one, either in the Obama administration or in the Democratic congressional leadership, suggests that those responsible for these illegal policies should be held accountable, including by means of criminal prosecutions.

The American Civil Liberties Union, whose lawsuits were at least partially responsible for the release of the memos, welcomed their publication, but noted pointedly that “dozens of other OLC memos, including memos that provided the basis for the Bush administration's torture and warrantless wiretapping policies, are still being withheld.”

Indeed, far from “turning the page” on the government criminality and dictatorial actions of the Bush administration, the Obama Justice Department is defending them. In two cases before the Ninth Circuit Court of Appeals in California—one involving the rendition of suspects to torture centers overseas, and the second, the illegal wiretapping of US citizens—Obama's attorneys have invoked the “state secrets privilege,” arguing that even to allow the cases to be heard would pose a threat to national security.

In the wiretapping case, a judge last Friday ruled against the government, ordering that a classified document proving that the National Security Agency illegally spied on an Islamic charity and its lawyers be released to the plaintiffs. The Obama Justice Department responded with the extraordinary argument that the court had no right to release the document, and that the decision of the Director of National Intelligence to keep it secret could not be questioned.

In making this argument, the Obama administration is defending both illegal domestic spying—which continues to this day—and the principle of unchallengeable executive power, which was at the heart of the dictatorial conceptions laid out in the Bush Justice Department memos.

Continuity rather than change is what characterizes the Obama administration's actions. The Democratic Party and its congressional leaders were, after all, direct accomplices in the criminal actions of the Bush administration, from illegal wars of aggression, to domestic spying, rendition and torture.

More fundamentally, the turn towards police state methods of rule is driven not by an overarching fear of terrorism, but by the explosive tensions building up within American society itself, which is characterized above all by the highest levels of social inequality since before the last Great Depression.

Democratic forms are increasingly irreconcilable with the immense gulf dividing the masses of working people from the narrow financial elite that controls both major parties and all the institutions of government. Under conditions of the unfolding meltdown of the capitalist economy, the tendencies toward dictatorial methods of rule will only accelerate, under Obama just as surely as they would have under Bush.

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