

MUKASEY'S STATEMENT

Here's Mukasey's statement on the criminal probe into the torture tape destruction.

Following a preliminary inquiry into the destruction by CIA personnel of videotapes of detainee interrogations, the Department's National Security Division has recommended, and I have concluded, that there is a basis for initiating a criminal investigation of this matter, and I have taken steps to begin that investigation as outlined below.

This preliminary inquiry was conducted jointly by the Department's National Security Division and the CIA's Office of Inspector General. It was opened on December 8, 2007, following disclosure by CIA Director Michael Hayden on December 6, 2007, that the tapes had been destroyed. A preliminary inquiry is a procedure the Department of Justice uses regularly to gather the initial facts needed to determine whether there is sufficient predication to warrant a criminal investigation of a potential felony or misdemeanor violation. The opening of an investigation does not mean that criminal charges will necessarily follow.

An investigation of this kind, **relating to the CIA**, would ordinarily be conducted under the supervision of the United States Attorney for the Eastern District of Virginia, the District in which the CIA headquarters are located. However, in an abundance of caution and **on the request of the United States Attorney for the Eastern District of Virginia, in accordance with Department of Justice policy, his office has been recused from the investigation** of this matter, in order to avoid any possible

appearance of a conflict with other matters handled by that office.

As a result, I have asked John Durham, the First Assistant United States Attorney in the United States Attorney's Office for the District of Connecticut, to serve as Acting United States Attorney for the Eastern District of Virginia for purposes of this matter. Mr. Durham is a widely respected and experienced career prosecutor who has supervised a wide range of complex investigations in the past, and I am grateful to him for his willingness to serve in this capacity. As the Acting United States Attorney for purposes of this investigation, Mr. Durham will report to the Deputy Attorney General, as do all United States Attorneys in the ordinary course. I have also directed the FBI to conduct the investigation under Mr. Durham's supervision.

Earlier today, the Department provided notice of these developments **to Director Hayden and the leadership of the Judiciary and Intelligence Committees of the Congress.** [my emphasis]

Some interesting points: First, note that ED VA, Chuck Rosenberg, asked to be recused from the investigation. That's almost certainly because of the Moussaoui investigation, in which the tapes should have been turned over to Leonie Brinkema. But Mukasey has not recused himself for his involvement in Padilla (though he may well know that the tapes were taken after he approved Padilla's arrest); Durham will report to the Deputy AG. I forget, do we have a DAG?

Also note who got an official notice of this: the Intelligence Committees (no doubt because they're going to have to ask Durham before they offer Rodriguez or anyone else immunity, but also because Mukasey is trying to make up for his stonewalling in December), and CIA. No

apparent official notice to the White House.

For the moment, this looks like an investigation primarily of CIA (otherwise, having DC USA Jeff Taylor oversee it might have worked), and not, specially, David Addington.

Update: From the WaPo, Michael Hayden and John Helgerson have recused themselves as well:

Hayden said in a statement today that he was recusing himself from any involvement in the new Justice investigation because of his past role in reviewing the tape destruction. "It is important to avoid the conflict of interest, or even the appearance of conflict of interest, that surely would arise if I were also involved in the ongoing investigation," Hayden said.

CIA Inspector General John L. Helgerson announced that he also would recuse himself from the criminal inquiry to avoid a conflict of interest. **Helgerson said he and his staff had "reviewed the tapes at issue some years ago," during the time when agency officials were debating whether to destroy them.**

"During the coming weeks I anticipate describing fully the actions I and my office took on this matter to investigators from the executive and legislative branches," Helgerson said in a statement. "It is important to avoid the conflict of interest, or even the appearance of conflict of interest, that surely would arise if I were also involved in the ongoing investigation."
[my emphasis]

If Helgerson's conflict was so obvious (and it was), I wonder why he didn't already recuse himself. Though given how long he has been fighting this battle with the CIA, I'm sure he wanted to nail them.

Also, when Helgerson says he "reviewed the tapes at issue," do you think he means he reviewed the copies of the tapes that were cabled back to CIA, he reviewed the actual tapes in the country where they purportedly remained, or just reviewed the general idea of the tapes?

Update: Conyers, who has served on HJC most of my life, notes what many of us have noted—this is an investigation that looks independent, but really isn't.

While I certainly agree that these matters warrant an immediate criminal investigation, it is disappointing that the Attorney General has stepped outside the Justice Department's own regulations and declined to appoint a more independent special counsel in this matter. Because of this action, the Congress and the American people will be denied – as they were in the Valerie Plame matter – any final report on the investigation.

Equally disappointing is the limited scope of this investigation, which appears limited to the destruction of two tapes. The government needs to scrutinize what other evidence may have been destroyed beyond the two tapes, as well as the underlying allegations of misconduct associated with the interrogations.

The Justice Department's record over the past seven years of sweeping the administration's misconduct under the rug has left the American public with little confidence in the Administration's ability to investigate itself. Nothing less than a special counsel with a full investigative mandate will meet the tests of independence, transparency and completeness. Appointment of a special counsel will allow our nation to begin to restore our credibility and moral

standing on these issues.

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