



→ Online NewsHour

REGION: North America
TOPIC: Politics

TRANSCRIPT

Originally Aired: April 20, 2009

Analysis

Obama Defends Decision to Release Interrogation Memos

President Obama spoke at CIA headquarters Monday, defending his decision to release Bush-era memos on controversial interrogation tactics. Former CIA official Jeffrey Smith and Michael Ratner of the Center for Constitutional Rights examine how the memos were handled.



[Download](#) [Streaming Video](#)

JIM LEHRER: President Obama's defense of his decisions about the so-called torture memos. He spoke this afternoon at CIA headquarters at Langley, Virginia, outside Washington.

BARACK OBAMA, President of the United States: I have put an end to the interrogation techniques described in those OLC memos, and I want to be very clear and very blunt.

I've done so for a simple reason: because I believe that our nation is stronger and more secure when we deploy the full measure of both our power and the power of our values, including the rule of law. I know I can count on you to do exactly that.

You know, there have been some conversations that I've had with senior folks here at Langley in which I think people have expressed understandable anxiety and concern, so I want to make a point that I just made in the smaller group. I understand that it's hard when you are asked to protect the American people against people who have no scruples and would willingly and gladly kill innocents.

JIM LEHRER: Now a debate over how -- or let's take a look now at the president has handled the memos and his decision not to prosecute CIA operatives.

Jeffrey Smith was the general counsel of the Central Intelligence Agency during the Clinton administration. He's now a partner in the Washington law firm Arnold & Porter. Michael Ratner is president of the Center for Constitutional Rights, a nonprofit legal organization dedicated to advancing human rights.

Gentlemen, first, let's go through these questions one at a time. Mr. Smith, was the president correct to make public the CIA's top secret memos on torture?

JEFFREY SMITH, Former CIA Official: Well, they were not the CIA's memos. They were memos written by the legal counsel at the Department of Justice. But I do believe he was correct in releasing them, yes.

JIM LEHRER: Mr. Ratner, do you agree? I'm sorry. I can't -- there we go.

MICHAEL RATNER, Center for Constitutional Rights: Mr. Smith and I agree on that issue. Those memos should have been released. And even more, all of the memos, all of the information that is really covering up the torture program of the United States, I think, must see public light.

I think the president should no longer be taking state secrets and lawsuits that my office and others have brought when we try and get to the bottom in civil cases around the torture issue. They're still taking that position.

But, certainly, these memos were a first step. But I would hope that all of the documents regarding torture are revealed.

Different views on prosecution

JIM LEHRER: Mr. Smith, you favor their release for the same reason Mr. Ratner does? You just think it all should be out there and people should know about it, the public should know about it?

JEFFREY SMITH: There may be some things that are still secret, but I think the president was correct when he decided that the continuing justification that they not be disclosed -- mainly that they are classified -- that no



Jeffrey Smith
Former CIA Official

“ The CIA got the message; everybody in the executive branch got the message. We're not going to do these things going forward. And I don't think there's a realistic concern that prosecuting someone is the way to deter future conduct. ”

longer really obtained. And I think the president was right to get this out there. We need to put this behind us, and we need to move on.

JIM LEHRER: Now, to what the two of you disagree on, which was, does the president -- do you agree with the president's decision not to prosecute any agents who may have committed torture or what legally constitutes torture in their previous duties?

JEFFREY SMITH: I believe the president was correct when he says that those officers of the CIA who operated within the guidelines that were approved by the Department of Justice should not be prosecuted. I believe that is the correct decision.

JIM LEHRER: If they went beyond the guidelines, that's a different matter?

JEFFREY SMITH: If they went beyond them, that is a different matter. And we don't know the facts yet of what happened. That's being, as you know, looked at by the Senate Intelligence Committee.

But, clearly, in my judgment, the president was correct when he decided that people who operated within those guidelines should not be prosecuted. If they go beyond it, different question.

JIM LEHRER: Mr. Ratner, where do you come down on the issue, first of all, those agents who complied with the guidelines?

MICHAEL RATNER: Well, you know, we have both the agents and, of course, we have the authorities who set up the torture program.

JIM LEHRER: Sure.

MICHAEL RATNER: And, you know, they both, in my view, need to be prosecuted. I mean, the problem here -- at least certainly criminally investigated.

The problem here is you have Obama saying, "We believe in the rule of law." These are important values, that we have to do this even in difficult times. And then you have a set of people who violated the law or ostensibly violated the law, both as the architects, as well as the agents who actually did the waterboarding, et cetera.

And my question really is, going forward, how do you -- when another president comes into office, or even this one conceivably, and simply writes a different executive order and says, "Now we can go back to these techniques," how do you deter torture in the future if you allow impunity for torture in the past?

And I don't think Obama's answers to that -- "I'm looking forward, not backward" -- are good enough because I think looking forward is exactly what prosecutions for torture do. They ensure we won't have torture in the future.

JIM LEHRER: Mr. Smith?

JEFFREY SMITH: Well, prosecutions do not always deter. There are other ways of deterring things. It's very difficult for me to believe that, in any conceivable situation in the future, that CIA will again be authorized to do these things.

But I do not believe that prosecuting officers who acted in good faith within those guidelines is appropriate. The CIA got the message; everybody in the executive branch got the message. We're not going to do these things going forward. And I don't think there's a realistic concern that prosecuting someone is the way to deter future conduct.

President 'has drawn a line'

JIM LEHRER: What about Mr. Ratner's point about not only the agents who may have committed these acts, but the architects of those acts themselves, what about them?

JEFFREY SMITH: Well, the president has drawn a line, and I think it's appropriate. The individual officers who carried out these acts will not be prosecuted. He has been silent with respect to others.



Michael Ratner
Center for Constitutional Rights

“ I have no doubt that the people who wrote the memos, as well as the principal committee people, like Rumsfeld, Tenet, who was head of the CIA, Porter Goss, when all of the torture program occurred, should be criminally investigated. ”

As we know, the Department of Justice, the Office of Professional Responsibility is looking at those persons in the Justice Department who wrote those opinions, and I think we need to let that process play out.

The Senate Intelligence Committee is also looking at this. So we'll know more over the coming months.

I think it's premature to say that those people should be prosecuted or shouldn't be prosecuted. I agree with Mr. Ratner. We need to find out more facts. There's a lot we don't know at this point.

JIM LEHRER: Mr. Ratner, do you believe those folks who wrote the memos, et cetera -- not the agents themselves, but the others -- are legally culpable and should be held criminally responsible?

MICHAEL RATNER: I have no doubt that the people who wrote the memos, as well as the principal committee people, like Rumsfeld, Tenet, who was head of the CIA, Porter Goss, when all of the torture program occurred, should be criminally investigated.

I think the evidence is clear. It's actually screaming at us from the page. When Dick Cheney says, "I was one of the people who approved waterboarding and I would do it again," you realize why you need prosecution for deterrence. There's no issue.

And I do want to say that Obama has -- while he has not completely precluded prosecution of the architects, he has made statements that make you very, very worried, statements like, "We shouldn't seek retribution," that we shouldn't look backward, that we should look forward, that "I'm stopping torture." Those kinds of statements don't just apply to the agents who did it, but who apply to the upper-level people who were the architects.

JIM LEHRER: Mr. Ratner, your use of the word -- you said it may not be a deterrence issue -- do you think it's a punishment issue? In other words, should these people be punished whether or not it's a deterrence for future conduct or not?

MICHAEL RATNER: Look, I'm less concerned about punishment, vengeance, whatever word you want to use, deterrence.

JIM LEHRER: OK.

MICHAEL RATNER: I'm concerned -- punishment. I'm really concerned about deterrence. I just worry very deeply that another president can simply say, "Let's do this again."

And one of the interesting things when we talk about this, you know, two of the people -- and that was one of the disturbing things about Obama's speech -- two of the people who he began the speech with...

JIM LEHRER: You mean today, the speech today at the CIA?

MICHAEL RATNER: Yes, the speech today, Steve Kappes and John Brennan are two people who were at the agency in important roles when the torture program was being carried out by the CIA, and these are people who Obama said he is currently getting advice from. I don't find that reassuring when I think about how is this country going to be torture-free going forward.

CIA must do 'unpleasant' things

JIM LEHRER: Mr. Smith, are you worried about the future for the same reason Mr. Ratner is?

JEFFREY SMITH: No. First of all, Steve Kappes and John Brennan are people I've known a long time. They are terrific public servants, and I -- I don't...

JIM LEHRER: Tell us -- remind us what their jobs were and are.

JEFFREY SMITH: I'm sorry. Steve Kappes is now the deputy director of CIA, a long-time...

JIM LEHRER: Number-two right under Leon Panetta.

JEFFREY SMITH: Under Panetta, that's correct. John Brennan...



Jeffrey Smith
Former CIA Official

“ This is not like Nixon and Watergate, where he was trying to protect his own political skin. These were people making decisions to protect the American public. ”

JIM LEHRER: Long-time career CIA agent.

JEFFREY SMITH: Long-time career, as is John Brennan, who was the head of the National Counterterrorism Center and is now President Obama's homeland security adviser. These are two dedicated public servants. And I, for one, am pleased that the president has asked them to stay on.

I think it's important to understand that the CIA is asked to do terribly unpleasant things, that we were attacked by al-Qaida and they killed 3,000 American people. And I think what Admiral Blair said in his statement, that looking back...

JIM LEHRER: He's the new head of national intelligence.

JEFFREY SMITH: Thank you. Yes, the director of national intelligence. Looking back, on a clear day in April, it's easy to be critical.

I'm very critical of those decisions, and I'm, frankly, disturbed at what happened. But I don't think it's right to prosecute the people who did it. We need to have an understanding. We need to bear in mind that they did these things to protect the nation.

This is not like Nixon and Watergate, where he was trying to protect his own political skin. These were people making decisions to protect the American public.

We can be deeply troubled by what happened, as I am. But I think we need to understand that the president and the people around him did it for good purposes.

Respect for the law

JIM LEHRER: Mr. Ratner, you don't see the same distinction?

MICHAEL RATNER: No, I mean, how can you really see that distinction? If you can break the law and torture people in the name of national security, there's no end to breaking the law. That's the excuse that the Pinochets of the world used in Chile, that torture is everywhere used, that we're doing it for national security.

The reason you have the law is even Obama said is not for the easy times. It's for the hard times. And the excuse that you did this to protect the American public just doesn't carry any water.

In fact, it may be -- maybe you can argue something in mitigation, but those guys have to be criminally investigated. Otherwise, all of Obama's words about rule of law are meaningless.

If people, in the high levels of government, can break the law, what kind of example does that send, first, to the American people, who want to comply with the law, and, secondly, to nations of the world that say, "Well, the Americans did this when they had a terrorist attack. Why can't we?" and then just give people some legal memos and a slap on the wrist at best, if that, and let them off.

You just can't have a lawless world, and that's what we have here.

JIM LEHRER: Mr. Smith, do we have a lawless world?

JEFFREY SMITH: We have a lawless world, and I believe very much that the United States needs to stand up for the rule of law.

This is a difficult decision, and I think the president made the right one. I think, as you weigh all of these things, had he decided that he was going to open this up and prosecute them, who knows where it might have led? I think it could have been enormously destructive to the CIA, and I think our national security is enhanced by what the president did. And I think we should let him continue to do as he wants to do.

JIM LEHRER: All right, Mr. Smith, Mr. Ratner, thank you both very much.

MICHAEL RATNER: Thank you.



Michael Ratner
Center for Constitutional Rights

“ If you can break the law and torture people in the name of national security, there's no end to breaking the law. ”

Funded, in part, by:



Support the kind of journalism done by the NewsHour...[Become a member of your local PBS station.](#)

[PBS Online Privacy Policy](#)

Copyright ©1996- 2009 MacNeil/Lehrer Productions. All Rights Reserved.