

Obama open to inquiry on CIA tactics

He reaffirms that agents won't be prosecuted, but says those who shaped the legal framework might.

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REPORTING FROM WASHINGTON

President Obama said Tuesday that he would not rule out prosecuting senior Bush administration officials who provided the legal rationale for harsh interrogation techniques used against detainees in the war on terrorism.

He also laid out a blueprint for using an independent commission to examine those policies carried out by CIA officers in secret prisons overseas.

Obama reiterated personal assurances that there would be no prosecutions of CIA agents who applied the rough techniques, which included striking prisoners in the face, confining them in coffin-sized boxes and subjecting them to simulated drowning known as waterboarding.

"For those who carried out some of these operations within the four corners of legal opinions or guidance that had been provided from the White House, I do not think it's appropriate for them to be prosecuted," Obama told reporters in the Oval Office on Tuesday.

But he added: "With respect to those who formulated those legal decisions, I would say that that is going to be more of a decision for the attorney general

within the parameters of various laws, and I don't want to prejudge that."

Obama's comments represented a shift from his administration's position of trying to keep the focus on the future and avoid a partisan fight.

But pressure from human rights groups and many liberals — who consider the Bush administration tactics an illegal and immoral use of torture — made that position untenable.

The demands for an investigation have grown more intense since the release last week of memos prepared by the Justice Department under President George W. Bush that set out in graphic detail what methods were permissible.

Obama's comments Tuesday triggered anxiety at the CIA and raised the prospect that Bush officials could remain under a cloud for months or years.

Within hours, employees at the agency were sending one another anxious e-mails, according to a former senior U.S. intelligence official.

"What the president said today will send a chill inside the agency," said the former official, speaking on condition of anonymity because he was not authorized to discuss intelligence issues.

In the past, Obama has allowed for the possibility of prosecution where clear violations of law were found regarding detainee treatment. But his emphasis was always on moving forward, on banning torture and other harsh interroga-

tion methods in his administration.

When he released the Bush-era memos, Obama said: "This is a time for reflection, not retribution.... Nothing will be gained by spending our time and energy laying blame for the past."

On Sunday, White House Chief of Staff Rahm Emanuel said in a television interview that no prosecutions were envisioned for those who provided the legal justification for the harsh tactics.

With members of Congress stepping up plans to conduct investigations, however, Obama suggested that any inquiry might better be handled outside the normal Capitol Hill hearing mechanisms to avoid partisanship. The responsibility, he said, could go to an independent panel whose members "are above reproach and have credibility."

On Tuesday, the liberal group MoveOn.org circulated a petition urging Atty. Gen. Eric H. Holder Jr. to appoint a special prosecutor to investigate the interrogation policies.

"So far, there's been no accountability for the architects of Bush's torture program," MoveOn wrote.

The Justice Department already has an investigation under way. Its Office of Professional Responsibility has been conducting a review of the memos "to determine whether they were consistent with the professional standards that apply to department attorneys," spokesman Matthew Miller said.

The investigation could lead to a variety of recommended disciplinary actions — including disbarment and criminal prosecution — against several lawyers who once worked in the Bush Justice Department, including Jay S. Bybee and his subordinate John C. Yoo.

The Justice Department inquiry is expected to issue sharp criticism but not recommend anything as serious as criminal charges, according to current and former Justice Department officials.



Calls mounted from legal scholars and human rights advocates for the lawyers to be brought to account for their actions — in particular Bybee, who provided legal justification for waterboarding and other controversial interrogation techniques during his tenure as assistant attorney general.

Bybee, who was given a lifetime appointment to the U.S. 9th Circuit Court of Appeals by Bush in 2003, did not return calls seeking comment.

Yoo, a visiting professor at Chapman University School of Law, faced protesters Tuesday as he spoke about his role in crafting the interrogation memos.

He told a packed auditorium that the legal advice was correct and necessary in the fearful days after the Sept. 11 terrorist attacks. He credited the enhanced interrogation techniques with preventing other attacks on U.S. soil for more than seven years.

Fellow law professors at Chapman, however, accused Yoo and Bybee of “torturing” the law to justify illegal exercise of power and abuse of prisoners.

“It is clear those memos were designed to permit the use of waterboarding,” professor Katherine Darmer said.

She joined appeals from Common Cause, the Society of

American Law Teachers and the Center for Constitutional Rights in saying that Bybee should resign his judgeship.

“Jay Bybee,” Darmer said, “has not been held accountable for his central role in this.”

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— PRESIDENT OBAMA,
on whether those who wrote the
memos would be prosecuted