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Accountability...and Its Opposite

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For the past eight years, Democratic members of Congress have been issuing pleas for greater transparency, accountability. At the same time, the administration has been throwing up a wall of secrecy around the government's policies to ensure de public reckoning. Against that backdrop, observers of the current political scene may be forgiven if they suffered a sinking :

The principle of accountability held sway at Georgetown University, where Senator Patrick Leahy lent his dignified voice to and outside government calling for an independent commission to investigate the worst alleged abuses of the past administration. The commission would be drawn from a pool of individuals "universally recognized as fair minded, and without axes to grind." The powers, if necessary, and possibly even the authority to confer immunity on witnesses. Their "straightforward mission" would be behind the administration's policy of extraordinary rendition, the truth behind the CIA's own interrogation practices, the truth program of warrantless wiretapping.

The proposal is measured, modest, and eminently reasonable. No one can credibly dispute the need for fact-finding, since successful in shielding the facts from the courts, Congress, and the public. The information that did make it into the public realm released by the Bush administration itself, is more than enough to raise the possibility that the administration acted outside triggers not only the need, but the affirmative obligation to learn exactly what happened.

This isn't about laying the groundwork for criminal prosecutions. Senator Leahy seems to have accepted Obama's political have the stomach for such an approach. But, as the Senator appreciates, criminal prosecution is not the only tool that a de principles of accountability and adherence to the rule of law. A public airing of the truth can vindicate these principles in any few, it can highlight systemic problems that can be corrected through legislation; it can motivate voters to organize behind demand better conduct by their elected representatives; it can serve as a message to the world about what the nation star warning to those who would stray from the rule of law in the future.

One might hope that the themes of transparency, accountability, and the rule of law underlying Senator Leahy's proposal w administration. After all, President Obama announced on the first full day in office that "[t]ransparency and the rule of law v presidency." But even as Senator Leahy was sounding these themes at Georgetown, administration lawyers were singing federal appeals courtroom in California.

In that courtroom, Department of Justice attorneys stated that the Obama administration agreed fully with the Bush administration extraordinary rendition -- the alleged CIA practice of kidnapping individuals and flying them to other countries to be tortured means, according to President Obama, no court can even look at the question of whether this activity has occurred. Period accountability; no rule of law -- just a blanket of secrecy draped around the subject matter, and an effective grant of immunity took place.

What's shocking here is not that the Obama administration invoked the state secrets doctrine. The Supreme Court has long appropriately be withheld in litigation where public disclosure of the evidence could jeopardize national security. But the not

of a lawsuit could be a state secret, such that a law-free zone is created for that subject matter, is a highly controversial notion that is utterly toxic to the rule of law. And the district court decision that the Obama administration is now defending is extreme. It concluded that the CIA cannot be held accountable in a court of law for any actions it takes in connection with its entire purpose of the CIA is to conduct foreign operations, it is not too much of a stretch to say that the court's decision was within the reach of the law -- even if the CIA is doing something as illegal and reprehensible as outsourcing torture.

Why did the Obama administration choose to defend this extreme position? A pessimistic explanation is that the administration practices extraordinary rendition, and would like to do so free of judicial oversight. After all, the executive order putting a stop to "enhanced interrogation techniques" by U.S. personnel conspicuously failed to put a stop to the practice of rendering detainees to other countries for

But one need not conclude anything about the administration's substantive policy plans to be very worried about the position at this time when many believed that the opportunity was finally at hand to obtain a public reckoning for extraordinary rendition and the administration was presented with an important test case, and it cast its lot emphatically against transparency and accountability. Rejecting these dangerous ideas and restoring the principles of transparency and accountability is more important than any administration may choose to endorse or forego. The Obama administration should rethink its decision to continue the Bush tradition of extraordinary rendition from the realm of public knowledge and judicial oversight. And the American people should rally behind Senator Leahy's call for reform. If we don't, we may be stuck with "déjà vu" for a long time to come.

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