

NOT THREE BRANCHES, NOT TWO BRANCHES, JUST ONE BRANCH OF GOVERNMENT

Apparently, in addition to sending out a chain letter stating "butt out" to five or six members of Congress yesterday, DOJ also sent a letter to Judge Henry Kennedy, telling him not to get involved in the torture tape question (h/t Scarecrow).

The Bush administration told a federal judge it was not obligated to preserve videotapes of CIA interrogations of suspected terrorists and urged the court not to look into the tapes' destruction.

In court documents filed Friday night, government lawyers told U.S. District Judge Henry H. Kennedy that demanding information about the tapes would interfere with current investigations by Congress and the Justice Department.

Now, BushCo is apparently claiming—to Kennedy, at least—that the CIA was free to destroy the torture tapes since the tapes didn't come from Gitmo.

Kennedy ordered the administration in June 2005 to safeguard "all evidence and information regarding the torture, mistreatment, and abuse of detainees now at the United States Naval Base at Guantanamo Bay."

Five months later, the CIA destroyed the interrogation videos. The recordings involved suspected terrorists Abu Zubaydah and Abd al-Rahim al-Nashiri

Government lawyers told Kennedy the tapes were not covered by his court order because Zubaydah and al-Nashiri

were not at the Guantanamo military prison in Cuba. The men were being held overseas in a network of secret CIA prisons. By the time President Bush acknowledged the existence of those prisons and the prisoners were transferred to Guantanamo, the tapes had been destroyed.

Of course, such sophistry won't work for Leonie Brinkema—whose questions about interrogation tapes would seem to have included the Abu Zubaydah tapes. Nor should they cover the FOIA court battle in Alvin Hellerstein's court, which pertain to all detainees held abroad.

When word of mistreatment of detainees surfaced, the ACLU filed a Freedom of Information Act request targeting the CIA and others on October 7, 2003 and May 25, 2004, seeking records concerning the treatment of all detainees apprehended after September 11, 2001 and held in U.S. custody abroad. This, of course, would mean not only in Guantanamo but in the secret prisons in Eastern Europe operated by the CIA.

That is, either Kennedy's order or Hellerstein's order must have applied to those tapes when they were destroyed.

But apparently, DOJ is going to tell every other branch the same thing: interviewing people from the CIA might complicate the joint DOJ/CIA investigation of the torture tape destruction.

Funny. Less than a decade ago, I seem to remember, we had three full and independent branches of government.