

Torture Comes Home to Roost

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"Maybe there is a beast. Maybe it's only us." — William Golding (1911-1993), "Lord of the Flies"

Hidden within some folks are the souls of saints. Hidden within others are the souls of beasts. Torture unleashes the beasts.

Nothing is more destructive of human decency, nothing is less fruitful in seeking truth, nothing is more totalitarian and nothing so undermines the government's own cases as its use of torture.

Yet, torture is universally condoned by the government.

Last week, at the U.S. Naval Base at Guantanamo Bay, Cuba, torture came home to roost when the government suffered serious setbacks in two cases.

In one, a military judge suppressed the confessions of Abd al-Rahim al-Nashiri — the alleged mastermind of the bombing of the USS Cole in 2000, which killed 17 American sailors — because he found that the confessions were obtained under torture. In the other, government lawyers reluctantly agreed to enter into a plea agreement with Khalid Sheikh Mohammed — whom the government says planned the 3,000 murders of 9/11 — in order to avoid defending the tortures that the CIA inflicted upon him.

In the former, the government is unlikely to appeal and is now stuck with the most adverse ruling it has received in 21 years at Gitmo. In the latter, President Joe Biden has apparently authorized Mohammed's plea deal and the government is now trying to explain it to surviving family members.

In both cases, the evidence of guilt discoverable without torture was substantial. Yet, the sickening lust for government-inflicted pain fomented by the morally challenged and ethically obtuse President George W. Bush materially weakened the government's cases.

The government effectively tortured its own prosecutions.

Here is the backstory.

At Nashiri's pretrial hearing at Gitmo last year, the psychologist in charge of interrogating him described in vivid detail both the modern and the medieval techniques of torture used upon him.

The psychologist was called as a defense witness in order to demonstrate to the court that a good deal of the evidence that prosecutors plan to introduce against Nashiri was obtained directly or indirectly through, or was tainted by, his torture and thus cannot lawfully be used at his trial.

Torture committed by government officials and their collaborators upon a person restrained by the government is a felony punishable by up to 20 years in a federal prison, and its fruits are inadmissible in all courts.

For many years, the CIA documented torture through videos of its masked agents and contractors torturing its captives so it would have a record of the events without the need for revealing the participants' identity. But the tapes of Nashiri's torture were destroyed either by the chief CIA official in the United States in charge of torture or his then-chief of staff. That chief of staff, Gina Haspel, nicknamed by her colleagues "Bloody Gina," would go on to become the director of the CIA.

Image is from Strategic Culture Foundation



What caught the eyes of those of us who monitor these events was the mention of the name of the CIA official under whose watch Nashiri's torture occurred and who wrote detailed, graphic descriptions of it to her bosses. That official is the same Gina Haspel. She was the head of the CIA station at Thailand in 2002, at which Nashiri was tortured, and she was the senior member of the torture team.

After nearly drowning and severely beating him repeatedly, locking him in a coffin and raping him for months, Bloody Gina's team suspended Nashiri by his wrists secured behind his back until his arms were nearly pulled out of their shoulder sockets.

Nashiri's torture went on in Afghanistan, Thailand, Poland and at Gitmo. Afterward, the interrogation team concluded that Nashiri was being truthful and essentially said the same things under torture as he told interrogators after the torture. Thus, his torture was fruitless except to undermine the government's case. Why? If a defendant says under torture "I did it," and then says the same not under torture, neither statement may legally be used

against him.

Bush and his lawyers and torturers did not know Criminal Procedure 101.

Nashiri, who has the same speedy trial rights as anyone being prosecuted by the government, has been waiting for his trial for 16 years. He is on his second team of military and civilian defense lawyers. His first team quit when they discovered that their communications with their client had been secretly recorded by federal agents — an unprosecuted felony.

Civilian judges would have dismissed the charges against Nashiri because of the torture. But at Gitmo, where the judge and the prosecutors have the same boss — the Secretary of Defense — the niceties of due process are sometimes overlooked.

Thus, the significance of the ruling preventing prosecutors from using anything that Nashiri told them is profound. This is the first time in Gitmo's gruesome, 21-year history that the feds have suffered such a setback and due process has enjoyed such a triumph.

In Mohammed's case, his defense team has told the judge and the prosecutors that it will call his torturers as witnesses. They will be forced to describe under oath the crimes that they committed upon Mohammed. Fearing the public response to torture, and unable ethically to defend it, the military and civilian prosecutors earlier this month entered into a preliminary plea agreement that will avoid a trial, eliminate the death penalty and avoid government embarrassment.

Torture — no matter the goal — is the most tyrannical government overreach imaginable. It presumes that there are no natural rights or moral standards; it utterly negates the personhood of the victim; it reveals that there is no end to what the government can do and get away with. It is expressly prohibited by the Constitution and federal law.

Torture is government by beasts. A government that unleashes beasts — the American government — recognizes no limits on its powers.

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