

Torture Revealed Yet Again

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Global Research, March 16, 2009

afterdowningstreet.org 16 March 2009

Region: [USA](#)

Theme: [Law and Justice](#)

As with the evidence that Bush, Cheney, and gang intentionally lied us into a war, or the evidence of illegal and unconstitutional spying, each time a major new piece of evidence of torture emerges, it is impossible not to hope that this is the one that will compel the Justice Department or Congress or the courts or the American people to act decisively. Certainly I hope that, right now, the day after Mark Danner [reported on](#) a report from the International Committee of the Red Cross.

But let's not kid ourselves. Everyone has known that the United States was torturing for years. Congress has known it so well that it has both attempted to legislate immunity for the torturers (through the McCain Amendment to the Detainee Treatment Act and through the Military Commissions Act) and put on a show of attempting to "ban" torture, despite its having already been illegal under U.S. law and treaties to which the United States is a party. We've witnessed high profile lobbying competitions over whether or not Congress should "ban" torture again. We've seen President Bush declare his right to torture in signing statements. And we've seen Congress respond to those with renewed proposals to yet again "ban" torture. President Obama was elected promising to stop the torturing, and has announced that he is doing so, as well as that he will someday close one of the many places we illegally detain people without charge. But torture in that place (Guantanamo) has reportedly worsened, and Obama is not letting independent groups in to observe.

There are publicly available videotapes of Bush (April 11, 2008; Jan. 11, 2009) and Cheney (Dec. 15, 2008) confessing to authorizing torture. There are reports and photographs and videotapes from Abu Ghraib, some of which certain members of Congress have seen but the public has not. There are reports from dozens and dozens of victims, and from torturers and jailers. There are dozens of dead bodies, victims of torture, identified, and the torture techniques used to kill them identified. (This is separate from Cheney's assassination squad recently reported on by Seymour Hersh, which may not have used torture as its murder technique.) There are full-blown public scandals in nearby and allied nations like Canada, Britain, and Germany, over our torture of their citizens. Italy is trying members of our secret government in absentia for kidnapping a man in their country and having him tortured. Victims from around the world are suing former members of our government and corporations involved in the crimes, and Eric Holder's Justice Department is opposing those efforts, seeking to keep information secret and prevent accountability for crimes. Obama's administration is threatening the British government in order to do the same.

"Five Years of My Life: An Innocent Man in Guantanamo," by Murat Kurnaz resulted in [this one victim](#) of torture speaking to a largely empty U.S. Congressional committee hearing via satellite. After he'd told part of his story, Congressman Dana Rohrabacher told him that the United States was at war and needed to protect itself even at the price of making some errors.

Publicly available are numerous memos, orders, and directives through which President Bush authorized torture and obtained “legal” views that illegality was now legal. Here are two collections: [One](#), [Two](#). Many more such documents are already [known and identified](#), but not yet released by Bush or Obama. We have reports from torturers and [participants](#) on the US side. We have [reports](#) that draw on the testimony of both participants and victims. We have books that draw on the testimony of participants and the findings of secret government reports, books like Jane Mayer’s “The Dark Side”, Philippe Sands’ “The Torture Team”, Jack Goldsmith’s “The Terror Presidency”, Steven Wax’s “Kafka Comes To America”, and Andy Worthington’s “The Guantanamo Files”. We have [reports](#) that organize and summarize the information in these books. We have a [report](#) from the Senate Armed Services Committee detailing the authorization of torture by Bush and his subordinates, and rumors that a stronger report has been kept secret. We have [reports](#) that a Department of Justice report that is being kept secret contains Emails in which the White House asked the Department of Justice for its illegal “legal” opinions. (Activists are demanding a special prosecutor investigation, while just releasing that report would hammer home the fact that no investigation is needed prior to indictments.) We know that the CIA destroyed [92 “interrogation” tapes](#), and we have a good idea from Danner’s report on the Red Cross report what’s on most of the tapes.

Danner [reports](#) in the New York Times and the New York Review of Books on the accounts given to the Red Cross by 14 victims of US torture in secret foreign sites who were later transferred to Guantanamo. Each use of torture was approved from Washington by such people as Dick Cheney, Condoleezza Rice, and John Ashcroft, who were briefed almost daily by George Tenet. Danner draws some obvious conclusions, none of which are new:

“1. Beginning in the spring of 2002 the United States government began to torture prisoners. This torture, approved by the President of the United States and monitored in its daily unfolding by senior officials, including the nation’s highest law enforcement officer, clearly violated major treaty obligations of the United States, including the Geneva Conventions and the Convention Against Torture, as well as US law.

“2. The most senior officers of the US government, President George W. Bush first among them, repeatedly and explicitly lied about this, both in reports to international institutions and directly to the public. The President lied about it in news conferences, interviews, and, most explicitly, in speeches expressly intended to set out the administration’s policy on interrogation before the people who had elected him.

“3. The US Congress, already in possession of a great deal of information about the torture conducted by the administration—which had been covered widely in the press, and had been briefed, at least in part, from the outset to a select few of its members—passed the Military Commissions Act of 2006 and in so doing attempted to protect those responsible from criminal penalty under the War Crimes Act.

“4. Democrats, who could have filibustered the bill, declined to do so—a decision that had much to do with the proximity of the midterm elections, in the run-up to which, they feared, the President and his Republican allies might gain advantage by accusing them of ‘coddling terrorists.’ One senator summarized the politics of the Military Commissions Act with admirable forthrightness:

“‘ Soon, we will adjourn for the fall, and the campaigning will begin in earnest. And there will be 30-second attack ads and negative mail pieces, and we will

be criticized as caring more about the rights of terrorists than the protection of Americans. And I know that the vote before us was specifically designed and timed to add more fuel to that fire.'

"Senator Barack Obama was only saying aloud what every other legislator knew: that for all the horrified and gruesome exposés, for all the leaked photographs and documents and horrific testimony, when it came to torture in the September 11 era, the raw politics cut in the other direction. Most politicians remain convinced that still fearful Americans—given the choice between the image of 24 's Jack Bauer, a latter-day Dirty Harry, fantasy symbol of untrammelled power doing "everything it takes" to protect them from that ticking bomb, and the image of weak liberals "reading Miranda rights to terrorists"—will choose Bauer every time. As Senator Obama said, after the bill he voted against had passed, "politics won today."

"5. The political damage to the United States' reputation, and to the 'soft power' of its constitutional and democratic ideals, has been, though difficult to quantify, vast and enduring. In a war that is essentially an insurgency fought on a worldwide scale—which is to say, a political war, in which the attitudes and allegiances of young Muslims are the critical target of opportunity—the United States' decision to use torture has resulted in an enormous self-administered defeat, undermining liberal sympathizers of the United States and convincing others that the country is exactly as its enemies paint it: a ruthless imperial power determined to suppress and abuse Muslims. By choosing to torture, we freely chose to become the caricature they made of us."

Point #4 above has a certain weakness as framed by Danner. He does not note the role of the news media in shaping public opinion. Nor does he note the stunning resistance of the public to that shaping, as found in a recent [USA Today / Gallup poll](#) showing that Americans favor holding accountable those who authorized torture. Nor does he sufficiently point out that Obama is evidence against his own claim: he voted No on the Military Commissions Act and was elected president. Nor does Danner mention that Democrats in the House could have voted No as well as filibustering in the Senate. It would be interesting to know how long the New York Times has sat on this story, as well as how long it took the Red Cross to leak the report (over two years?).

Another important point that this misses is that many of those who have been tortured were not terrorists, at least prior to being tortured. Andy Worthington has [documented](#) that "[A]t least 93 percent of the 779 men and boys in [Guantanamo]— were either completely innocent people, seized as a result of dubious intelligence or sold for bounty payments, or Taliban foot soldiers, recruited to fight an inter-Muslim civil war that began long before the terrorist attacks of September 11, 2001, and that had nothing to do with al-Qaeda, Osama bin Laden or international terrorism."

Danner points out that there is no evidence that useful information has been obtained by torture. He leaves open the possibility that some has, but I find this highly dubious. If such evidence of the utility of torture existed, it would have been trumpeted from the rooftops by now. The important point is #5 above. Whether or not any torturer has learned anything accurate and useful, huge damage has been done that certainly outweighs whatever it was — even as calculated from a moral standpoint in which only American lives have value. But Danner fails to fully expand on his point. Not only has U.S. torture been the single biggest recruiting tool for anti-U.S. terrorist groups, but U.S. abuse of human rights has encouraged other nations to follow suit. And this blatant disregard for the law has encouraged other

leaders at home and abroad to feel more comfortable disregarding other laws as well.

The New York Review of Books yesterday admitted the obvious in point #1 above: our president was a criminal. But Danner and others suggest that perhaps that's not enough, that we must first persuade a majority of Americans to oppose torture before action can be taken to seriously deter its future use. As I've already noted, this misses the fact that a majority of Americans want action now. But it is also a strangely selective transformation of our Constitutional republic into a direct democracy. A majority of Americans disapprove of our punitive system for drug use, but the prosecutions continue. A majority of Americans want an end to corporate tax loopholes, but the holes go right on looping. A majority of Americans think taxes are too high on working people, yet the tax bills keep coming. A majority of Americans want a higher minimum wage, but they can't get employers to pay it. A majority of Americans want habeas corpus maintained for everyone, but it isn't. Almost all Americans want higher auto fuel efficiency standards, but gas guzzlers keep coughing out black smoke. [And so on](#). Why is it that when very important people's crimes are involved, we suddenly throw out laws and institute direct democracy (and then ignore the will of the people to boot)?

Enforcement of the law is not legally an option, and is required by treaty obligations. Attorney General Eric Holder effectively admitted awareness of the crimes at his confirmation hearing. Not to do so would have brought into question whether he'd been conscious the last several years. And yet his loyalty is clearly to Obama, not the law.

The Detainee Treatment Act and Military Commissions Act do not provide an excuse. Article VI of our Constitution makes treaties we ratify the supreme law of the land. Torture cannot be legalized and torturers cannot be immunized. Even assuming such things to be possible, these legislative attempts at immunity left holes, as Larry Velvel has pointed out, including for cases in which the victims were citizens, and cases in which the victims are not "enemy combatants." Many victims were never determined to be "enemy combatants," a court could easily throw out the term as legally meaningless, and Obama's administration has ceased using it (even while continuing the policies of detention and rendition).

Keeping secret agencies secret is not an excuse. Holder could create a prosecutor for torture by the military if he wanted to let the CIA off. Or he could target Bush, Cheney, and other top officials, leaving the underlings alone. But the secrecy of government operations is what facilitates criminal behavior, and therefore makes a lousy excuse for not punishing it.

In June 2008, 56 Democratic Congress members, led by Congressman John Conyers, [wrote](#) to Attorney General Mukasey asking for a Special Prosecutor. Conyers and Congressman Jerrold Nadler [wrote](#) to Mukasey again in December 2008. Nadler [said](#) weeks ago that he was drafting a new letter. Just as with Holder, Congress members tend to obey people, not laws or moral requirements. Nadler is unlikely to act without Conyers. Conyers is unlikely to act without Nancy Pelosi. And Pelosi shares blame because she and a handful of other top Congress members were privately told to some extent about the torture early on and kept silent. Pelosi's comments in the media suggest that she would prefer prosecutions to public hearings, but there is no doubt that her first choice would be neither, and as long as Democrats join Republicans in opposing calls by Conyers and Senator Patrick Leahy to create "truth commissions," and as long as powerful members of government all refrain from asking Holder to enforce the law, the option of doing nothing will remain available.

The Senate Intelligence Committee is holding secret hearings, or claiming to. But the value

of that may be nil, and the point may be to weaken the push for a commission by the Senate Judiciary Committee or to assert jurisdiction over CIA materials that the Judiciary Committee could conceivably make public. Meanwhile, the proposals by the two Judiciary Committee chairs (Leahy and Conyers) appear counterproductive unless usable as tools for scaring up support for prosecutions instead. Investigations substituted for impeachment for two full years. Actually holding a “truth and reconciliation” commission as a substitute for prosecution would be counterproductive, as argued by [Jonathan Turley](#), [Peter Dyer](#), [David Swanson](#), [Bob Fertik](#), and [Martin Garbus](#). The Justice Department itself [has argued](#) for “state secrets” blocks on prosecutions on the grounds that commissions can substitute for enforcing laws. They cannot. And they are unlikely to reveal as much information as are whistleblowers and the occasional journalists who do their jobs.

The truth that I think we should all insist upon is that Bush and Cheney committed serious crimes and have yet to be held accountable, and that we risk a slide into [presidential dictatorship](#) if we allow our nation to become reconciled to that.

There are [several easy steps](#) anyone can take to correct this situation.

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