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Another Torture Report and Still No Prosecutions

When Crimes of State Go Unpunished

by JOHN LaFORGE

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It's common knowledge that torture never produces good information. No one needed the Senate Intelligence Committee report on the Cheney torture program to learn that lesson. The revulsion and outrage caused by torture is so universal that the community of nations has adopted the UN Convention Against Torture and the Geneva Conventions on prisoners of war.

But Messrs. Cheney and Bush didn't institute torture to garner information. They did it because the publicized use of torture weakens political opposition. Torture instills such terror and fear in the populace that its use works to keep large numbers of potential government critics quiet, scared, and too intimidated to risk acting or even speaking out against the state. So Cheney is deceptively correct in claiming his torturing "worked" in that even Obama is too afraid to appoint a Special Prosecutor.

The Senate's torture report has raised awareness of the grisly crimes committed by the Bush/Cheney Administration, and the CIA can't escape looking like a gang of coldblooded psychopaths. But it is only the latest of dozens of studies, reports and books on the U.S. torture program. It adds little to the 560-page report of 2013 by the bi-partisan Constitution Project, titled "Detainee Treatment." That study found that U.S. military and CIA abuse of prisoners

“violate[s] U.S. laws and international treaties” and that the “information” extracted under torture was useless, unreliable and insignificant.

Ten years ago a report by Maj. Gen. Antonio Taguba revealed the illegal abuse of prisoners at the Abu Ghraib prison in Iraq and documented “numerous incidents of sadistic, blatant, and wanton criminal abuses ... inflicted on several detainees” by the 800th Military Police Brigade. Gen. Taguba reported: the rape of a female prisoner by a male MP; the use of military dogs without muzzles to terrorize detainees and, at least once, to bite and severely injure a prisoner; the breaking of chemical lights and pouring of the phosphoric liquid on prisoners; death threats against detainees with loaded pistols; beating of prisoners with a broom handle and a chair; threats of rape; and the anal rape of a detainee with a chemical light and perhaps a broom stick.

The international press called the latest revelations, “horrifying,” “depraved,” and “nightmarish.” The London Financial Times reported that, “In some cases, torture was conducted in a ‘nonstop fashion for days and weeks at a time’.” The tortures included prolonged hooding, beatings and isolation, 180-hour-long sleep deprivation, weeks in “crouch cells” (that prevent laying, sitting or standing), prolonged noise immersion, ice-water immersion, “rectal feeding,” “rectal rehydration,” prolonged “stress positions” (chained, standing, naked with hands overhead for 180 hours in one case), and, yes, electrocution on metal bed frames. Other crimes included death threats against prisoners’ family members, mock executions, forced Russian roulette, and terroristic threats using un-muzzled police dogs.

The CIA’s horrifying practices—detailed again in every major paper the world over—are so blatantly criminal that its past and present directors have been trying for years to obscure or bury the Senate investigation. The agency’s criminal hacking into the Senate committee’s computers must have seemed like routine obstruction of justice to the agents doing it, especially when they got off scot free for destroying thousands of videotapes of their torture.

Torture is an international crime, a war crime and a federal crime in the U.S.—under the federal torture statute, the U.S. War Crimes Act, and the Convention Against Torture (a treaty signed by Ronald Reagan in 1988 and ratified by the Senate in 1994). The US torture statute prohibits intentional infliction of severe physical or mental pain or suffering. The war crimes statute criminalizes grave breaches of the Geneva Conventions. Jameel Jaffer, director of the National Security Project, reminds us that in international law, the torturer is considered *hostis humani generis*—the “enemy of all mankind.” So far, no one involved in the CIA torture program has been charged with a crime—except the whistleblower John Kiriakou, who exposed it, Democracy Now reported Dec. 19.

Calls for prosecution and accountability

About the agency’s hacking of Senate Intelligence Committee computers, Sen. Mark Udall, D-Colorado, declared, “This grave misconduct not only is illegal but it violates the U.S. Constitution’s requirement of separation of powers. ...there must be consequences.”

Ben Emmerson, the UN Special Rapporteur on Counter Terrorism and Human Rights, has urged the United States to prosecute those responsible for the crimes. Emmerson says the torture

program was “orchestrated at a high level within the Bush administration, which allowed ... systematic crimes and gross violations of international human rights law.” Perhaps not anticipating that he’d have to eat his words over and over, Obama said Sept. 24, 2009: “International law is not an empty promise, and treaties must be enforced.”

The European Center for Constitutional and Human Rights in Berlin has filed a criminal complaint against the torture program’s architects in the Bush administration. The group has leveled war crime allegations against former CIA Director Tenet and former Pentagon secretary Don Rumsfeld, and has called for immediate investigation by German prosecutors. Wolfgang Kalik, Gen. Secretary of the European Center for Constitutional and Human Rights, said “By investigating members of the Bush Administration, Germany can help insure that those responsible for abduction, abuse and illegal detention do not go unpunished.”

Lawyers in the Office of Legal Counsel were told by Cheney to cockup a few pages explaining why the UN Convention Against Torture and the federal torture statute don’t apply to a president or his men. Attorneys David Addington, John Yoo and Jay Bybee rationalized and “legalized” the torture with bogus memos, and, anticipating criminal prosecutions, they specifically advocated the use of “justification defenses” as a means of avoiding punishment.

Longtime defense attorney Martin Garvis told Amy Goodman, “I think you should go after the lawyers immediately.” And Michael Ratner of the Center for Constitutional Rights said, “They would not have a defense. These memos were facilitated by Cheney and Rumsfeld to accomplish the torture program.”

Change the subject with Cuba announcement

Just as talk of criminal prosecution for the torturing and the cover-up was reaching a critical mass, the White House decided to announce its reformed Cuba policy—successfully ending talk of holding George Bush, Dick Cheney, George Tenet and Don Rumsfeld, the White House lawyers and the military headshrinkers accountable.

Senator Marco Rubio of Miami got red in the face over Obama’s Cuba *deflection* of attention from U.S. torture regime. Rubio said Obama’s opening to Cuba is “part of a long record of coddling dictators and tyrants”. Well, there’s no arguing that Eisenhower coddled dictators in Spain, Iran and Guatemala; that Nixon coddled Pinochet’s dictatorship in Chile; that Reagan coddled tyrants in El Salvador and Nicaragua; that Carter gave asylum to the dictatorial Shah of Iran.

Rubio didn’t intend to recall this list, and he certainly didn’t mean to remind the public that Obama is actively coddling the tyrannical Dick Cheney. (Refusing to support investigations and indictments, Obama has called on the US not to “refight old arguments.”)

Former Florida Governor Jeb Bush weighed in on Obama’s new Cuba policy, saying it “undermines America’s credibility.” No governor, the Guantanamo torture chamber *on Cuba*, accomplished that 13 years ago.

Ignoring high crimes means they'll be repeated

Ordinary crimes can be prosecuted when evidence, witnesses, motive(s), victim(s) and suspects are clear and available. When all these ducks are in a row, prosecutors can usually win a conviction. Confessions make things really easy. But what about crimes of state—like torture or murder, perjury before Congress, destruction of evidence and obstruction of justice?

In the case of Cheney's torture program, we have all the suspects, evidence, witnesses, motives and victims—other than the murdered ones—that a prosecutor could want.

ACLU director Tony Romeo has noted that former CIA Director George Tenet first asked for authority to torture at secret cells worldwide then authorized it—after the National Security Council granted his request. Pentagon head Don Rumsfeld approved of torturing prisoners at Guantanamo Bay. In the case of Bush and Cheney, who oversaw and approved of the crimes, we have book-length confessions and even public bragging. Dick Cheney said on television, Dec. 14, "I'd do it again in a second"—as if he himself had held the power drills, toggle switches and loaded pistols. Bush has claimed "waterboarding saved American lives," and while the Senate report refutes this outright lie, the assertion may qualify as one of Bush's confessions. The memos by attorneys Addington, Yoo and Bybee speak for themselves as conspicuous self-indictments.

Rather than saving lives—as Cheney and Bush hiss through clenched teeth—torture has and will cost countless U.S. lives, at home and abroad, as a self-righteously violent blowback, fueled by tortured minds, spreads in all directions from U.S. dungeons, from CIA drone strike zones, from depleted uranium target areas, and from other U.S. military occupations.

The time for special criminal prosecution is long overdue and putting the responsible individuals on trial is crucial to prevent a repetition of these crimes. As CCR's Ratner said Dec. 19, "Cheney's statement proves why we must prosecute torture. If not held accountable, torture will be practiced again."