

History Will Not Absolve Us: Leaked Red Cross report sets up Bush team for international war-crimes trial

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If and when there's the equivalent of an international Nuremberg trial for the American perpetrators of crimes against humanity in Guantánamo, Iraq, Afghanistan, and the CIA's secret prisons, there will be mounds of evidence available from documented international reports by human-rights organizations, including an arm of the European parliament-as well as such deeply footnoted books as Stephen Grey's *Ghost Plane: The True Story of the CIA Torture Program* (St. Martin's Press) and Charlie Savage's just-published *Takeover: The Return of the Imperial Presidency and the Subversion of American Democracy* (Little, Brown).

While the Democratic Congress has yet to begin a serious investigation into what many European legislators already know about American war crimes, a particularly telling report by the International Committee of the Red Cross has been leaked that would surely figure prominently in such a potential Nuremberg trial. The Red Cross itself is bound to public silence concerning the results of its human-rights probes of prisons around the world-or else governments wouldn't let them in.

But *The New Yorker's* Jane Mayer has sources who have seen accounts of the Red Cross interviews with inmates formerly held in CIA secret prisons. In "The Black Sites" (August 13, *The New Yorker*), Mayer also reveals the effect on our torturers of what they do-on the orders of the president-to "protect American values."

She quotes a former CIA officer: "When you cross over that line of darkness, it's hard to come back. You lose your soul. You can do your best to justify it, but . . . you can't go back to that dark a place without it changing you."

Few average Americans have been changed, however, by what the CIA does in our name. Blame that on the tight official secrecy that continues over how the CIA extracts information. On July 20, the Bush administration issued a new executive order authorizing the CIA to continue using these techniques-without disclosing anything about them.

If we, the people, are ultimately condemned by a world court for our complicity and silence in these war crimes, we can always try to echo those Germans who claimed not to know what Hitler and his enforcers were doing. But in Nazi Germany, people had no way of insisting on finding out what happened to their disappeared neighbors.

We, however, have the right and the power to insist that Congress discover and reveal the details of the torture and other brutalities that the CIA has been inflicting in our name on

terrorism suspects.

Only one congressman, Oregon's Democratic senator Ron Wyden, has insisted on probing the legality of the CIA's techniques-so much so that Wyden has blocked the appointment of Bush's nominee, John Rizzo, from becoming the CIA's top lawyer. Rizzo, a CIA official since 2002, has said publicly that he didn't object to the Justice Department's 2002 "torture" memos, which allowed the infliction of pain unless it caused such injuries as "organ failure . . . or even death." (Any infliction of pain up to that point was deemed not un-American.) Mr. Rizzo would make a key witness in any future Nuremberg trial.

As Jane Mayer told National Public Radio on August 6, what she found in the leaked Red Cross report, and through her own extensive research on our interrogators (who are cheered on by the commander in chief), is "a top-down-controlled, mechanistic, regimented program of abuse that was signed off on-at the White House, really-and then implemented at the CIA from the top levels all the way down. . . . They would put people naked for up to 40 days in cells where they were deprived of any kind of light. They would cut them off from any sense of what time it was or . . . anything that would give them a sense of where they were."

She also told of the CIA interrogation of Abu Zubaydah, who was not only waterboarded (a technique in which he was made to feel that he was about to be drowned) but also "kept in . . . a small cage, about one meter [39.7 inches] by one meter, in which he couldn't stand up for a long period of time. [The CIA] called it the dog box."

Whether or not there is another Nuremberg trial-and Congress continues to stay asleep-future historians of the Bush administration will surely also refer to Leave No Marks: Enhanced Interrogation Techniques and the Risk of Criminality, the July report by Human Rights First and Physicians for Social Responsibility.

The report emphasizes that the president's July executive order on CIA interrogations-which, though it is classified, was widely hailed as banning "torture and cruel and inhuman treatment"-fails explicitly to rule out the use of the 'enhanced' techniques that the CIA authorized in March, 2002, "with the president's approval (emphasis added).

In 2002, then-Secretary of State Colin Powell denounced the "torture" memos and other interrogation techniques in internal reports that reached the White House. It's a pity he didn't also tell us. But Powell's objections should keep him out of the defendants' dock in any future international trial.

From the Leave No Marks report, here are some of the American statutes that the CIA, the Defense Department, and the Justice Department have utterly violated:

In the 1994 Torture Convention Implementation Act, we put into U.S. law what we had signed in Article 5 of the UN Convention Against Torture, which is defined as "an act 'committed by an [officially authorized] person' . . . specifically intended to inflict severe physical or mental pain or suffering . . . upon another person within his custody or physical control."

The 1997 U.S. War Crimes Act "criminalizes . . . specifically enumerated war crimes that the legislation refers to as 'grave breaches' of Common Article 3 [of the Geneva Conventions], including the war crimes of torture and 'cruel or inhuman treatment.'"

The Leave No Marks report very valuably brings the Supreme Court- before Chief Justice John Roberts took over-into the war-crimes record of this administration. I strongly suggest that Human Rights First and Physicians for Social Responsibility send their report-with the following section underlined-to every current member of the Supreme Court and Congress:

“The Supreme Court has long considered prisoner treatment to violate substantive due process if the treatment ‘shocks the conscience,’ is bound to offend even hardened sensibilities, or offends ‘a principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.’”

Among those fundamental rights cited by past Supreme Courts, the report continues, are “the rights to bodily integrity [and] the right to have [one’s] basic needs met; and the right to basic human dignity” (emphasis added).

If the conscience of a majority on the Roberts Court isn’t shocked by what we’ve done to our prisoners, then it will be up to the next president and the next Congress-and, therefore, up to us-to alter, in some respects, how history will judge us. But do you see any considerable signs, among average Americans, of the conscience being shocked? How about the presidential candidates of both parties?

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