

Lincoln or Ford? The Torture Trail starts and ends in the White House

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The question now swirling around political corridors is whether Obama will fight the monsters or let them off the hook.

In response to a Freedom of Information Act request by the American Civil Liberties Union (ACLU), United States President Barack Obama authorised the release by the US Justice Department of four detailed memos describing and justifying torture techniques used by the CIA to gather information from prisoners. Bush's Office of Legal Counsel (OLC) framed 14 techniques, such as waterboarding, forced nudity, and prolonged sleep deprivation, to appear legal despite the prohibition in international law against "cruel, inhuman or degrading" treatment.

It's as if Hitler and his henchmen arranged for compliant lawyers to produce legal opinions arguing that what the Gestapo was doing was OK so German leaders would not fear prosecution later. The lawyers would be let off the hook because they were just issuing legal opinions, not committing the actual brutality and murder, and the lowly Gestapo functionaries were, of course, just following orders. The question then becomes: is America any different?

The torture trail starts and ends in the White House, beginning with Bush deciding in February 2002 that Common Article 3 of the Geneva Conventions did not apply to Al-Qaeda or Taliban detainees. This is confirmed again and again in the OLC memoranda, a newly declassified report of the Senate Armed Services Committee (SASC), yet another one by the Senate Intelligence Committee (SIC), and finally a May 2002 document Attorney General Eric Holder just released showing CIA-White House coordination in the approval of the torture techniques that Cheney protégé John Yoo promoted at the time as the "Bush Program". Holder in effect points the finger at then-attorney general John Ashcroft, national security adviser Condoleezza Rice, deputy national security adviser Stephen Hadley, legal adviser to the National Security Council (NSC) John Bellinger, and counsel to the president Alberto Gonzales (who achieved his greatest notoriety later as attorney general). It is impossible that Bush was not involved.

The SIC report shows that dissenting legal views about the use of torture were brushed aside repeatedly. The SASC report, the result of a two-year investigation begun after the Democrats regained a majority in the Senate, details direct links between the CIA torture of prisoners at Guantanamo Bay, in Afghanistan and at Iraq's Abu Ghraib prison. The report found that Rumsfeld, Rice, and other former senior Bush administration officials were directly responsible for the torture used at Guantanamo and in Iraq and Afghanistan.

The report is “a condemnation of both the Bush administration’s interrogation policies and of senior administration officials who attempted to shift the blame for abuse ... to low-ranking soldiers,” SASC Chairman Carl Levin told reporters. It confirms that the Bush administration began preparing for what came to be known as “enhanced interrogation” techniques just a few months after 11 September 2001, before the memos approving such practices and despite warnings from experts that such methods were likely to yield “less reliable” results than less aggressive methods. Rice personally conveyed the administration’s approval for waterboarding of Zubaydah to then-CIA director George Tenet in July 2002. Last year, Rice acknowledged to the SASC only that she had attended meetings where the CIA interrogation request was discussed, omitting her direct role in approving the programme in her written statement to the committee.

Former US secretary of state Colin Powell himself has repeatedly noted that the National Security Council was the centre of activity with respect to the introduction of torture and has urged those pursuing the issue to press for full disclosure of NSC materials. This would put him at the centre of the inquiry as well, suggesting the battle over Bush’s legacy has begun with a vengeance, so to speak. All this threatens to upstage Obama’s legislative programme, but quashing the growing outrage and preventing a thorough independent inquiry would be a dangerous sign to the world that the Bush legacy is alive and well.

There is now no question that Bush and company are guilty before the world of enthusiastically embracing a policy of torture in defiance of US law and the Geneva Conventions. Cheney’s counterattack is to argue it works, despite the Pentagon’s own Joint Personnel Recovery Agency arguing in July 2002 that it would produce “unreliable information” and “could be used by our adversaries as justification for the torture of captured US personnel.” It produced the “proof” of collusion between Saddam Hussein and Al-Qaeda which led to invasion of Iraq and an orgy of torture. In case anyone has forgotten the now legendary photos from there, on 28 May the Defense Department will release hundreds more pictures depicting abuse of prisoners by US personnel in Iraq and Afghanistan.

A former senior US intelligence official said that Cheney and Rumsfeld were “demanding proof of the links between Al-Qaeda and Iraq that (former Iraqi exile leader Ahmed) Chalabi and others had told them were there. They were told repeatedly that “no such ties were likely because the two were fundamentally enemies, not allies.” The madness did not end with the 2003 invasion of Iraq. Former US Army psychiatrist Charles Burney, told Army investigators as late as 2006 that interrogators at the Guantanamo Bay detention facility were under “pressure” to produce evidence of ties between Al-Qaeda and Iraq. It should be remembered that Cheney avoided the draft through repeated deferments during his salad days and has no military experience — other than launching wars and promoting torture.

Obama will have a hard time burying the issue. Former officials other than Powell and Burney and many anonymous ones are coming out of the woodwork. The highest ranking official so far to have taken any rap, Army Reserve Brigadier General Janis Karpinski, who was in charge of Abu Ghraib prison in Iraq when the infamous torture photographs were taken, was reprimanded and demoted to colonel for her failure to properly supervise the prison guards. In a recent interview, she said, “I just find it incredible that the system — the Pentagon and the Judicial System — can continue to keep those soldiers in jail when there are simply volumes of documents and information that is emerging, and continues to emerge, that says exactly what one, in particular, Graner, was saying all along: that he was

ordered to do these things by the Military Intelligence people and the interrogators ... And it's been substantiated through an investigation that these torture practices were developed and implemented down in Guantanamo Bay and then they were imported to Abu Ghraib ... directed by the highest level of this administration."

The same anger sweeping America has taken hold in Britain, where the chief justice ordered the government to obtain the release of classified information about the torture of a British resident imprisoned at Guantanamo. Efforts to bring to trial US officials are underway in Spain and will no doubt be launched elsewhere.

Pressure on Obama will continue to mount to follow the course of justice in the US itself. "The last administration justified torture, presided over the abuses at Abu Ghraib, destroyed tapes of harsh interrogations," said Senator Patrick Leahy, chairman of the Senate Judiciary Committee. "How can we restore our moral leadership and ensure transparent government if we ignore what has happened?" Any decision not to prosecute CIA agents who used torture is a violation of international law, said UN special rapporteur on torture Manfred Nowak, since the US is bound under the UN Convention against Torture to prosecute those who engage in it. Diane Feinstein, chair of SIC has requested the Obama Administration to withhold decisions on prosecution until the committee is able to conduct a thorough investigation.

Obama originally said no prosecutions would be undertaken. He now says that he would support a congressional investigation over the issue if it were conducted in a bipartisan manner. House Judiciary Committee Chairman John Conyers will be sure to take him up on this. His committee just issued a report proposing extending to 10 years the statute of limitations on war crimes, torture, domestic surveillance and other crimes. "To be clear, torture is currently banned under US laws (under the anti-torture statute, the War Crimes Act, the Geneva Conventions, and the Detainee Treatment Act)," states the Congressional report firmly.

A commission will be required to declassify and publish the still hidden documents concerning the NSC process and what went on in the Justice Department, the Pentagon, and the CIA. A special prosecutor will then have to decide who should be charged for criminal wrongdoing. Cheney has laid down the gauntlet with his self-serving claims that "torture works" and requests for making public two CIA briefs that support his case. Obama should pick it up.

Last week, a coalition of 30 organisations presented 250,000 petition signatures to Holder requesting that he appoint a special prosecutor. The neocons — apart from Cheney — are trying to calm the waters. *New York Times* journalist Roger Cohen says this is "no time for retribution, ... that it's time for America to move forward." Obama says he doesn't want prosecutions to slow down his agenda. But if the criminals aren't prosecuted now, when will they be? Not acting is effectively giving them amnesty and cementing the popular view that the US condones torture and that Obama is merely Bush-lite, which his support of rendition already suggests.

Is Obama waiting for an even greater groundswell to justify "moving forward" — that is, with the prosecutions? This could lead to impeachment of Bush (to disqualify him from future office or from his presidential perks) — the first time a president and his underlings are impeached over a serious political policy issue since Lincoln's vice president Andrew Johnson was impeached over attempts at reconciliation with the South. Recall Watergate

was about election shenanigans and Lewinskygate was over sexual peccadilloes. This could be the defining moment in Obama's presidency. By boldly leading the charge and routing the criminals who tore up the Constitution, he will provide a warning to others eager to dismantle America's civil society.

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