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"The Directives to Torture come from the Top": What Is Probably in the Missing Tapes

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To judge from firsthand documents obtained by the ACLU through a FOIA lawsuit, we can guess what is probably on the missing CIA interrogation tapes — as well as understand why those implicated are spinning so hard to pretend the tapes do not document a series of evident crimes. According to the little-noticed but extraordinarily important book *Administration of Torture: A Documentary Record from Washington to Abu Ghraib and Beyond* (Jameel Jaffer and Amrit Singh, Columbia University Press, New York 2007), which presents dozens of original formerly secret documents – FBI emails and memos, letters and interrogator "wish lists," raw proof of the systemic illegal torture of detainees in various US-held prisons — the typical "harsh interrogation" of a suspect in US custody reads like an account of abuses in archives at Yad Vashem.

More is still being hidden as of this writing — as those in Congress now considering whether a special prosecutor is needed in this case should be urgently aware: "Through the FOIA lawsuit," write the authors, "we learned of the existence of multiple records relating to prisoner abuse that still have not been released by the administration; credible media reports identify others. As this book goes to print, the Bush administration is still withholding, among many other records, a September 2001 presidential directive authorizing the CIA to set up secret detention centers overseas; an August 2002 Justice Department memorandum *advising the CIA about the lawfulness of waterboarding* [Italics mine; nota bene, Mr. Mukasey] and other aggressive interrogation methods; documents describing interrogation methods used by special operations forces in Iraq and Afghanistan; investigative files concerning the deaths of prisoners in U.S. custody; and numerous photographs depicting the abuse of prisoners at detention facilities other than Abu Ghraib.'

What we are likely to see if the tapes documenting the interrogation of Abu Zubaydah and Abd Al-Rahim Al-Nashiri are ever recovered is that the "confessions" of the prisoners upon which the White House has built its entire case for subverting the Constitution and suspending civil liberties in this country was obtained through methods such as electrocution, beating to the point of organ failure, hanging prisoners from the wrists from a ceiling, suffocation, and threats against family members ("I am going to find your mother and I am going to fuck her" is one direct quote from a US interrogator). On the missing tapes, we would likely see responses from the prisoners that would be obvious to us as confessions to anything at all in order to end the violence. In other words, if we could witness the drama of manufacturing by torture the many violently coerced "confessions" upon which the whole house of cards of this White House and its hyped "war on terror" rests, it would likely cause us to reopen every investigation, including the most serious ones (remember, even the 9/11 committee did not receive copies of the tapes); shut down the corrupt, Stalinesque Military Commissions System; turn over prisoners, the guilty and the

innocent, into a working, accountable justice system operating in accordance with American values; and direct our legal scrutiny to the torturers themselves — right up to the office of the Vice President and the President if that is where the investigations would lead.

By the way: “The prohibition against torture [in the law] is considered to be a jus cogens norm, meaning that no derogation is permitted from it under any circumstances.”

This is what the FOIA documents report, belying White House soundbites that “we don’t torture” and explaining the intent pursuit on the part of the CIA and the White House of the current apparent obstruction of justice:

Late 2002 — the FBI objects to the illegality of abuses being put into place by the Defense Department in its “special interrogation plan” to use isolation, sleep deprivation and menacing with dogs against prisoners.

Dec 2, 2002 — Defense Secretary Rumsfeld personally issues a directive authorizing the use of stress positions, hooding, removal of clothing, and the terrorizing of inmates at Guantanamo with dogs.

Dec 3, 2002 — at Baghram, interrogators kill an Afghan prisoner “by shackling him by his wrists to the wire ceiling above his cell and repeatedly beating his legs. A postmortem report finds abrasions and contusions on the prisoner’s face, head, neck, arms and legs and determines that the death was a “homicide” caused by “blunt force injuries.”

April 16, 2003 — Rumsfeld approves yet another directive for abusive interrogation.

This directive for Afghanistan restores to the interrogators’ arsenal many forms of torture that had been resisted by the FBI. [Notably, the FBI had resisted complying with the direct commission of torture since as early as 2002 because, as its Behavioral Analysis Unit complained to the Defense Department at that time in an internal email, “*not only are these tactics at odds with legally permissible interviewing techniques* [italics mine: in other words, all concerned know these are apparent war crimes]…but they are being employed by personnel in GTMO who have little, if any, experience eliciting information for judicial purposes.” In other words, as any trained interrogator knows, the abuses are both doubtless illegal and certainly ineffective for getting real intelligence. [Jaffer and Singh, *Timeline of Key Events*, pp. 45-65,op. cit.]

Oct 22 2003 — Final autopsy report relating to death of “52 y/o Iraqi Male, Civilian Detainee” held by U.S. forces in Nasiriyah, Iraq. Prisoner was found to have “died as a result of asphyxia…due to strangulation.”

November 14, 2003 — a sworn statement of a soldier stationed at Camp Red, Baghdad, states that “I saw what I think were war crimes” and that “the chain of command….allowed them to happen.”

May 13, 2004 — a sworn statement of the 302nd Military Intelligence Battalion recounts an incident in which “interrogators abused 17-year-old son of prisoner in order to ‘break’ the prisoner.”

May 18, 2004 — a Privacy Act statement of an Abu Ghraib sergeant notes that prisoners had been forced to stand “naked with a bag over their head, standing on MRE boxes and their

hand[s] spread out…holding a bottle in each hand."

May 24, 2004 — Sworn statement of interrogator who arrived at Abu Ghraib in October 2003, discussing use of military dogs against juvenile prisoners.

June 16, 2004 — Marine Corps document describing abuse cases between September 2001 and June 2004, including "substantiated" incidents in which marines electrocuted a prisoner and set another's hands on fire.

Undated: Sworn statement of screener who arrived at Abu Ghraib in September 2003, indicating that prisoners at Asamiya Palace in Baghdad had been beaten, burned and subjected to electric shocks.

Subsequent internal documents record prisoners being stripped, made to walk into walls blindfolded, punched, kicked, dragged about the room, observed to have bruises and burn marks on their backs, and having their jaws deliberately broken. Still other reports document further incidents classified *by the military itself* as probable murders committed by US interrogators.

The book also reveals an extraordinary original transcript of a Dept. of the Army Inspector General interview with Lieutenant General Randall Marc Schmidt. Lt. Gen. Schmidt had interfaced with MG Geoffrey Miller on the one hand — the most brutal overseer of such abuses, the one who was sent to "Gitmo-ize" other prisons — and the honorable JAG military lawyers on the other hand, over the abuses under investigation at that time. [Lt. Gen. Schmidt advised MG Miller of his rights under Article 31 of the Uniform Code of Military Justice at that time — in other words, those involved know something serious is at stake, p. a-16].

The transcript of this internal document reveals Lt. Gen. Schmidt's own words that it was his understanding that the directives to commit these acts, many of which are apparently war crimes, came right from the top.

The interview was not primarily intended to be a public document:

"An Inspector General" notes the document, "is an impartial fact-finder for the Directing Authority Testimony taken by an IG and reports based on that testimony may be used for official purposes. *Access is normally restricted to persons who clearly need the information to perform their official duties*. [italics mine]. In some cases, disclosure to other persons may be required by law or regulation or may be directed by proper authority." As in the case, clearly, here — though the immense implications of this privately taken testimony have not reverberated fully yet in a public forum: "I thought the Secretary of Defense in good faith was approving techniques," testified Lt. Gen. Schmidt. "In good faith after talking to him twice. I know that — and these weren't interrogations or interviews of him. This was our hour and forty-five minutes and then another hour and fifteen kind of thing were [sic] we sat in there and had these discussions with him." [Testimony of Lt. Gen. Randall M Schmidt, Taken 24 August 2005 at Davis Mountain Air Force Base, Arizona, Dept. of the Army Inspector General, Investigations Division, pp. a-30 to a-53, Jaffer and Singh, op. cit].

So what should Congress know as it decides what is to be done?

We torture, illegally, by directive; the directives come from the top; those who torture know it is probably criminal; when we torture prisoners, the guilty and the innocent, they will tell

us anything they think we want to hear — including implicate themselves falsely, as many reports from Human Rights Watch and other rights organizations testify to — to make the torture stop; and the White House routinely uses that faked or coerced unverifiable "intelligence" to buttress its wholesale assault on our liberties.

As the CIA tries to spin its apparent crimes and claim that its waterboarding and other forms of criminal torture "saved lives" — while conveniently offering no evidence to back that up, and while the administration withholds evidence to the contrary from the lawyers of the detainees — we should bear in mind that the decades of research on torture summarized in the magisterial survey "The Question of Torture" show beyond the shadow of a doubt that prisoners being tortured will indeed "say anything." When American prisoners were tortured by the North Vietnamese, their confessions were phrased in Communist cliches.

We should note too — as the White House tries to muddy the waters by pretending that there has ever been a "debate" about such acts as these — that the US in the past prosecuted waterboarding itself: when the Japanese had waterboarded US prisoners they were convicted with sentences of fifteen years of hard labor.

We should also bear in mind that the Bush White House has deliberately crafted its memos and laws — such as the Bybee/Gonzales "torture memo" and the Military Commissions Act of 2006 — with a keen eye to seeking indemnification of its own guilt regarding having committed evident crimes, because those involved know quite well that acts committed could be criminal acts. (An historical note worth mentioning, when we consider how hyperalert the Bush White House has been to the issue of seeking retroactively to protect itself and its subordinates from prosecution for war and other crimes, is that the Nuremberg Trials eventually swept up influential Nazi industrialists such as Fritz Thyssen of IG Farben — who relied on Auschwitz slave labor — and with whom Prescott Bush had collaborated in amassing the Bush family millions; some of the sentences given to those industrialists found guilty in the postwar trials were severe.) For a moment postwar, the legal spotlight was also about to search out and hold accountable the several prominent US investors who had partnered with Nazi industrialists (see the exhaustively documented study of US/Nazi corporate collaboration, *IBM and the Holocaust*.)

Prosecution for war crimes and other criminal acts, which the administration so clearly recognizes that it may well have committed — which its legislation so clearly shows it realized it may well commit *in advance of the commission* — is the only consequence the Bush team seems to be really afraid of as it attempts its multiple subversions of the rule of law. This is why the nation's grassroots call for a truly independent investigation into possible criminality is so very urgent and so necessary to restore the rule of law in our nation.

Mr. Mukasey could look up his own department's files and understand that waterboarding is a war crime; not only that, *the US Military* prosecuted waterboarding as a war crime itself in 1902 — it had been used against prisoners in the Phillipines — and those Americans who had committed it received convictions *from the military*. It is hopeless to rely on the Justice Department.

An independent special prosecutor must be appointed. The people who are found guilty, in America, must face justice.

Let the investigations begin.

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