

# Senate torture report confirms Bush, top officials guilty of war crimes

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**13 December 2008**

A report issued Thursday by the Senate Armed Services Committee has provided official and bipartisan confirmation that the infamous acts of torture carried out by US personnel at Abu Ghraib and Guantánamo were planned, ordered and orchestrated by the highest-ranking officials in the US government. Based on the Senate's own conclusions, those named in the document, including President George W. Bush, former Defense Secretary Donald Rumsfeld, and Secretary of State Condoleezza Rice, are guilty of war crimes.

The key findings of the Senate panel's report on "Treatment of Detainees in US Custody" [PDF] are summed up in the introduction to its 29-page executive summary:

"The abuse of detainees in US custody cannot simply be attributed to the actions of 'a few bad apples' acting on their own. The fact is that senior US officials in the United States government solicited information on how to use aggressive techniques, redefined the law to create the appearance of their legality, and authorized their use against detainees."

The product of multiple hearings and interviews carried out by committee staff members with more than 70 people over the course of 18 months, the final report was approved late last month. While the panel has not identified the 17 (out of 25) members present for the vote, given the committee's composition, at least four Republicans voted to endorse the findings, while none sought to register opposition.

Most of the information contained in the report had previously been made public, either through official testimony or media exposures. Nonetheless, the compilation of this information in a report endorsed by a Senate committee without dissent has undeniable significance. It amounts to official recognition that the US government followed a deliberate and systemic policy of torture.

The report begins by placing principal responsibility for torture on Bush himself in a section somewhat delicately entitled "Presidential order opens the door to considering aggressive techniques."

The reference is to a February 2002 memorandum signed by Bush, which announced to the world that Washington would not be bound by the Third Geneva Convention in its treatment of prisoners taken in its war in Afghanistan.

Bush's unilateral and extralegal proclamation that those captured in the so-called "war on terrorism" were not covered by the Geneva Conventions was the essential preparation for a regime of torture directed from the top. The administration was signaling that it would not be bound by the terms of an international statute that stated explicitly, "No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war."

The timeline provided by the report makes clear that Bush's declaration followed less than two months after Defense Secretary Rumsfeld had initiated a program to "reverse engineer" techniques used by the Pentagon's Joint Personnel Recovery Agency, an outfit assigned to train military personnel to hold out against interrogation by regimes acting in

violation of the Geneva Conventions.

These methods were derived largely from the experience of US POWs captured during the Korean War, whose treatment Washington at the time denounced as "torture" and "brainwashing." The Senate report comments: "It is particularly troubling that senior officials approved the use of techniques that were originally designed to simulate abusive tactics used by our enemies against our own soldiers and that were modeled, in part, on tactics used by the Communist Chinese to elicit false confessions from US military personnel."

The training used in the agency's Survival Evasion Resistance and Escape (SERE) course, as the Senate report recounts, includes "stripping students of their clothing, placing them in stress positions, putting hoods over their heads, disrupting their sleep, treating them like animals, subjecting them to loud music and flashing lights, and exposing them to extreme temperatures." The Navy's SERE course also included waterboarding.

These are precisely the methods that became "standard operating procedure" at Guantánamo, in Iraq, Afghanistan and elsewhere, some of which were captured in the Abu Ghraib photographs that provoked worldwide revulsion and outrage.

## White House discussions of torture techniques

The report goes on to establish that these torture methods were discussed and approved by Bush's cabinet members and other senior officials during White House meetings of the National Security Council's "principals" in the spring of 2002. Leading these sessions was Secretary of State Condoleezza Rice, then Bush's national security adviser. Also participating were Rumsfeld, CIA Director George Tenet, Attorney General John Ashcroft, and others.

Reviewing the manner in which this policy was implemented, the report turns to the Justice Department's "redefining of torture."

It cites the memo issued by then-Assistant Attorney General for the Office of Legal Counsel (OLC) Jay Bybee (now a US appeals court judge) in consultation with then-Deputy Assistant Attorney General John Yoo, then-White House Counsel (and subsequently Attorney General) Alberto Gonzales, and David Addington, who was counsel to Vice President Cheney.

The document, which became known as the "Bybee memo," cleared methods of interrogation that had long been defined as torture by declaring that for an act to rise to the level of torture it had to produce pain equivalent to "organ failure, impairment of bodily function or even death," or result in psychological damage "lasting for months or even years."

The Senate report cites the assessment of Bybee's successor at OLC, Jack Goldsmith, who noted that under this legal finding "if you do torture,

you probably have a defense; and even if you don't have a defense, the torture law doesn't apply if you act under the color of presidential authority."

A second Bybee memo, issued in August 2002, remains classified, but, as the report indicates, it approved specific methods of interrogation for use by the CIA, including waterboarding.

The rest of the report documents how these methods were first introduced at Guantánamo and then disseminated—including through Power Point presentations—throughout the US military's sprawling detention camps in Afghanistan and Iraq under the direction of Rumsfeld and with the full support of the administration. It points out that this policy was implemented over the strenuous objections of US military lawyers and other uniformed officers who warned that it violated both US and international law and could expose American military personnel to prosecution.

Much of the report remains classified and undoubtedly contains still undisclosed and even more damning revelations of the criminal methods utilized in the US torture program. Photographic images and videos from Abu Ghraib—some of them reportedly showing rapes of women and children, savage beatings and other acts of violence—have still been withheld by the Pentagon, with the full cooperation of the Democrats in Congress.

In his statement on the report's findings, the Senate Armed Services Committee's Democratic chairman, Carl Levin of Michigan, commented: "Attempts by senior officials to pass the buck to low-ranking soldiers while avoiding any responsibility for abuses are unconscionable." He continued, "America needs to own up to its mistakes so that we can rebuild some of the good will that we have lost."

The reality, however, is that "low-ranking soldiers," were court martialed, stripped of their ranks and military careers and, in some cases, sent to prison. One of them, Charles Garner, who was photographed tormenting naked prisoners and giving a grinning thumbs-up over the body of a murdered detainee at Abu Ghraib, is still in the military stockade at Fort Leavenworth, Kansas, having spent 29 months in solitary confinement over the last four years, much of it in shackles.

Eight other reservists, enlisted personnel and non-commissioned officers were sentenced to jail time.

While the soldiers who carried out these heinous acts deserved to be punished, how much more so those at the top who devised these methods and ordered their implementation? Yet they have suffered no consequences whatsoever.

The Senate panel specifically found that "Secretary of Defense Donald Rumsfeld's authorization of aggressive interrogation techniques for use at Guantánamo Bay was a direct cause of detainee abuse there" and "influenced and contributed to" the use of the same methods in Iraq and Afghanistan. Yet Rumsfeld has not been indicted or even investigated. He is free and writing his memoir.

Neither the committee nor its Democratic chairman nor any other leading member of the Democratic Party has proposed rectifying this situation by means of criminal investigations and prosecutions.

Talk of "owning up to mistakes" and "rebuilding good will" is utterly cynical without proposing such action.

The reality is that the United States remains in violation of the Geneva Conventions. There is every reason to believe that torture continues, if not in the military-run detention centers, then in the secret prisons of the CIA.

Moreover, the conventions demand that those responsible for violating its provisions be punished. It calls on its signatories, which include Washington, to "undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches" of its statutes. These include proscriptions against "torture or inhuman treatment" and "willfully causing great suffering or serious injury to body or health" of prisoners.

There is no indication that the incoming Obama administration is planning to abide by these terms of the treaty.

As *Newsweek's* Michael Isikoff reported in the magazine's December 1 issue: "Despite the hopes of many human rights advocates, the new Obama Justice Department is not likely to launch major new criminal probes of harsh interrogations and other alleged abuses by the Bush administration. But one idea that has currency among some top Obama advisers is setting up a 9/11-style commission that would investigate counterterrorism policies and make public as many details as possible."

In other words, the most that can be expected is a pseudo investigation—like that of the 9/11 commission—deliberately designed to produce a cover-up.

Meanwhile, the Associated Press last month cited two unnamed senior Obama advisers as affirming that "there's little—if any—chance that the incoming president's Justice Department will go after anyone involved in authorizing or carrying out interrogations that provoked worldwide outrage."

Leading Democrats have tried to explain the refusal to pursue these matters as a question of "moving forward" and not becoming enmeshed in "partisan" warfare. The reality is that Democrats in Congress are entirely complicit in the torture policies of the past seven years. Any real war crimes investigation and prosecution would inevitably ensnare Democratic leaders who were briefed on and gave their assent to the criminal methods referred to in the Senate committee's report.

Obama's recent declaration—echoing those of Bush and Rice—that "America does not torture" notwithstanding, there is every reason to believe that these methods will continue under the incoming Democratic administration.

Significantly, Texas Democratic Congressman Silvestre Reyes, the chairman of the House Intelligence Committee, on Tuesday not only urged Obama to retain Director of National Intelligence Mike McConnell and CIA Director Michael Hayden at their posts, but also advised him to allow the CIA's "alternative interrogation program," i.e., torture, to continue.

"We don't want to be known for torturing people," said Reyes. "At the same time we don't want to limit our ability to get information that's vital and critical to our national security." This Democratic approach could be summed up as: Keep torturing, but keep it quiet.



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