

The Obama administration and the legitimization of torture

Tom Carter
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On December 28, US District Judge Royce Lamberth ordered a complete copy of the Senate Intelligence Committee's 2014 report on the Central Intelligence Agency's torture program during the Bush administration to be delivered to a federal courthouse, where it is to be preserved in a safe by a judicial security officer. Lawyers for torture victim Abd al-Rahim Al-Nashiri requested this extraordinary measure on the grounds that efforts were underway within the other branches of the US government to destroy and erase every copy of the full report.

The Senate Select Committee on Intelligence report, titled "Committee Study of the Central Intelligence Agency's Detention and Interrogation Program," was finalized in December 2014 after protracted efforts by the Obama administration and the CIA to obstruct and delay the investigation. At that time, a heavily redacted 525 page "executive summary" was released to the public. The full report, which apparently numbers some 6,700 pages, has been kept secret.

The redacted copy of the executive summary establishes unequivocally that CIA personnel perpetrated war crimes, including torture and murder. Among the more depraved and sadistic torture methods exposed by the report was the practice of so-called "rectal feeding," which involved forcibly pumping puréed food into the victim's rectum "without evidence of medical necessity," in the dry language of the report. These war crimes were carried out systematically with the knowledge of senior figures in the Bush administration from 2001 to 2006, and were followed by an extensive high-level cover-up. (See What is in the Senate Intelligence Committee Report on CIA torture.)

Republican Senator Richard Burr, a vocal Trump supporter, who replaced Democrat Diane Feinstein as Senate Intelligence Committee chairperson following the 2014 midterm elections, has demanded the return of every copy of the report from the Obama administration. The CIA's copies of the report were "inadvertently" and "accidentally" destroyed by the CIA inspector general's office in the summer of 2015.

Virtually no one has been allowed to read the full report, and a concerted effort is underway to make sure that nobody is able to read it in the future. No one has been criminally prosecuted for gross violations of international law, American statutes and the US Constitution, and the moves to make the report disappear are aimed at, in addition to censoring history, making sure that none of the criminals involved in the program are ever brought to justice.

It would be hard to find more damning evidence of the utterly rotten state of American democracy than the fate of this report.

The fact that neither the CIA nor the Bush officials who sanctioned

the torture program have suffered any negative consequences, despite the presentation by the United States Senate of detailed evidence of war crimes, points to the degree to which authoritarian tendencies have asserted and entrenched themselves in the American state. The only CIA employee who has suffered negative consequences in connection with torture is analyst John Kiriakou, who was prosecuted by the Obama Justice Department and sentenced to 30 months in prison for the "crime" of revealing to the public the CIA's use of waterboarding.

In America, certain democratic rituals continue to be observed, but the reality is that the military, the intelligence agencies, and the largest business and financial institutions dictate policy to what would once have been called the "civilian" branches of government, including both official political parties.

In order to shield the CIA from accountability for its crimes, President Obama has refused to declassify the report, which he has the power to order unilaterally. He has also refused to incorporate the report into the records of federal agencies, as requested by several lawmakers, a procedural maneuver that would facilitate its preservation and future declassification. In a token measure, he has ordered a copy retained in his official presidential records. This might save a single copy from destruction for the moment, but it would delay its release to the public until at least 2028.

The case of Al-Nashiri was the subject of particular scrutiny in the Senate investigation. Before being transferred to the Guantanamo Bay torture camp, Al-Nashiri was abducted and "rendered" to a series of secret CIA "black sites" in Afghanistan, Thailand, Poland, Morocco and Romania. He was waterboarded, shackled naked and hooded, and threatened with guns and power drills, among other abuses. To prevent evidence of war crimes from coming to light, the CIA destroyed the tapes of Al-Nashiri's waterboarding in 2005.

Al-Nashiri, a Saudi citizen and alleged Al Qaeda leader, is the subject of ongoing proceedings before a US military commission, in which the Obama administration is seeking the death penalty. Underscoring the absurd character of these supposedly "legal" proceedings, Al-Nashiri will not be released even if he is found to be not guilty.

In July 2014, the European Court of Human Rights found Poland to be in violation of the European Convention on Human Rights for its complicity in the detention and torture of Al-Nashiri, ordering Poland to pay him €100,000 in damages.

The story of the CIA "enhanced interrogation" program is one of crimes compounded by crimes, lies told upon lies, implicating higher and higher levels of the state, eventually metastasizing into a full-blown constitutional crisis. A full recitation of the scandal's long

development would require several books.

During the Senate Intelligence Committee investigation, CIA Director John Brennan ordered agents to break into Senate staffers' computers in an effort to delete incriminating information. Then the CIA provocatively demanded that the staffers be prosecuted for stealing confidential information, which prompted reciprocal demands for the CIA burglars themselves to be prosecuted, as well as an extraordinary speech on the Senate floor by Feinstein in March 2014. (See Senate Intelligence head accuses CIA of undermining US "constitutional framework") During the Senate investigation, the CIA took the position that it could keep information secret from the Senate Intelligence Committee, which is charged with overseeing the CIA.

The Obama administration purported to resolve the crisis with the announcement that nobody on either side would be prosecuted. At the end of 2014, the administration colluded with congressional Republicans in an effort to block the release of the report until the Republicans could obtain control of both houses. As part of these efforts, Secretary of State John Kerry placed a call to Democratic Senator Dianne Feinstein to urge her to "consider" further delaying the release of the report.

After the report's release, the Obama administration continued to do everything it could to block and suppress the report. While Obama made "transparency" a plank of his election platform, his administration vigorously opposed efforts to secure the release of the report under the Freedom of Information Act, as in the case of *ACLU v. CIA*.

The administration's efforts to cover up torture and shield torturers from accountability have been a significant factor in the legitimization of torture in the US, paving the way for an escalation of the practice under Trump.

A particularly menacing article appeared in the *Wall Street Journal* last month titled, "Sorry, Mad Dog, Waterboarding Works." The author, James E. Mitchell, boasts of having been "authorized" to conduct "enhanced interrogation" by the CIA. He proudly describes having "personally waterboarded" three men while working as a CIA contractor.

The Senate report identifies Mitchell as one of the chief architects of the torture program. In at least one lawsuit, he has been charged with engaging in a "joint criminal enterprise" with the US government that involved "torture; cruel, inhuman, and degrading treatment; non-consensual human experimentation; and war crimes."

In the article, Mitchell lashes out at the Senate report, calling it "partisan," and he denounces retired Marine Corps General James "Mad Dog" Mathis, Trump's appointee for secretary of defense, for his pragmatic statements that torture does not work. Mitchell argues that "harsh" interrogation methods are justified in a "ticking-time-bomb scenario." However, underscoring the fraud of that oft-cited argument, Mitchell does not allege that any time bombs were ticking when he tortured his victims.

Mitchell is a war criminal and he should have been arrested and prosecuted a long time ago. The fact that he can openly boast of his conduct in the press is the product of the Obama administration's dogged efforts to cover up torture and shield perpetrators such as Mitchell from accountability. If all of the Bush-era torturers had been sentenced to lengthy jail terms—together with those who authorized the program, lied about it, and tried to cover it up—it goes without saying that conditions would not be as favorable for such an article to appear in the *Wall Street Journal*, or for Trump to shout about how he will "bring back a hell of a lot worse than waterboarding."

The fact that the Senate report on CIA torture is now in danger of being destroyed or locked away for more than a decade is a fitting symbol of the legacy of the Obama administration. Obama was elected based on popular illusions that he would reverse the hated policies of the Bush administration. Instead, by any objective standard, the Obama administration was among the most reactionary in American history. Over a period of eight years, Obama oversaw a broad assault on basic democratic rights, the strengthening of the apparatus of a police state, and a massive transfer of wealth to the super-rich. These policies helped lay the foundations for the rise of an authoritarian populist like Trump.

Without presenting a complete list, the Obama administration's legacy as it pertains to democratic rights includes carrying out and justifying assassinations of US citizens, codifying military commissions and indefinite detention without judicial due process, persecuting whistleblowers and journalists, further expanding the illegal regime of domestic spying, blocking efforts at transparency, deporting immigrants en masse, cracking down on protests and prosecuting political activists on the basis of anti-terror laws, abetting the epidemic of police brutality, further militarizing local police, and asserting immunity on behalf of killer cops in proceedings before the Supreme Court.

When Obama first took office, he made it a priority to shield Bush-era criminals. Bush administration officials, war criminals who carried out torture, and Wall Street financial criminals who crashed the economy all got a free pass under Obama, who pledged to "look forward, not backward." While he was elected on promises to close the infamous Guantanamo Bay facility, Obama ends his eight years in office with the torture camp still in operation.

Trump, for his part, has declared that "torture works," and has promised to keep Guantanamo open. "I watched President Obama talking about Gitmo, right, Guantanamo Bay, which by the way, which by the way, we are keeping open," Trump declared in November. "Which we are keeping open ... and we're gonna load it up with some bad dudes, believe me, we're gonna load it up."

Given the boundless sadism and depravity of the CIA torture that has already been exposed, the mind boggles at Trump's proposal to implement practices that are "a hell of a lot worse." Trump has also declared that American citizens who are accused of "terrorism" can be transferred to Guantanamo Bay.



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