

The Paper Trail

When laws get in the way of torture

by William Pfaff

People like to quote Karl Marx's comment on the two successive Napoleonic empires, that of Bonaparte himself, and, after 1848, the second empire of his nephew, Napoleon III. Marx said that it was a tragedy repeated as a farce. The United States has reversed the sequence, so that a few years ago the nation, or at least Congress and the media, was obsessed by President Bill Clinton's disputed definition of what does or does not amount to sexual congress with a White House intern.

The tragedy that has followed the farce is torture as an instrument of American national policy in the cause of spreading democracy.

Documents recently obtained by the press reveal White House anxiety about how to protect President George W. Bush and members of his cabinet from going to prison for ordering, authorizing or deliberately permitting systematic torture of persons in their control, but technically outside formal American legal jurisdiction. The question put to lawyers was how the president and the others could commit war crimes and get away with it.

Thus, according to these reports, the president last year obtained from his lawyers an opinion that he is not bound by U.S. laws or by international engagements prohibiting torture and that Americans committing torture under his authority cannot be prosecuted by the Justice Department.

This opinion rests on the argument that national security considerations override both U.S. law and international treaties. As one of the military lawyers who took part in these discussions has said, it was an assertion of "presidential power at its absolute apex."

It deliberately overrode the norms the military had previously been trained to regard as mandated by the Geneva Conventions. The world now knows how overriding the norms at the top overrides them all down the line.

The Bush administration's civilians had been complaining about how law, international treaties and conventions, and military norms and inhibitions, were interfering with their determination to seize and hold anyone they pleased in secret prisons, declare them without legal rights even when they were American citizens, torture them whenever they wanted and keep them forever, if they liked (a totalitarian ambition, obviously). They wanted these obstructions removed.

Their complaints sounded like the complaints of Adolf Eichmann, when he described during his trial in Israel the irksome bureaucratic and legal obstacles he ran into in wartime Germany in carrying out his genocidal responsibilities.

High U.S. administration figures reportedly lingered—with delectation?—over what exactly was to be done to the unfortunate prisoners—for how long, in what position, with what pain inflicted.

(There was also—whoops!—the problem of what to do when things went wrong, and the torturers had a dead man, or woman, on their hands.)

And when all this began to come out, what did the administration have to say? The president said on May 24 that "a few American troops . . . disregarded our values." Civilians in the Pentagon, speaking informally to the press, blamed the Abu Ghraib scandals on "a few hillbillies."

The American operation in Iraq, and apparently in Afghanistan before, has been haphazard, planned and run by people mostly without serious knowledge of these countries and their societies. The administration has gone in for wholesale arrests and interrogations, sweeping people up virtually at random, because it doesn't know what else to do.

This has been futile and irrational, as well as evil. The nearly universal uselessness of torture is well-known in intelligence and special warfare circles. Even if you have a key figure who does possess useful information, and you eventually get him (or her) to tell you what you want, what actual good is it?

Is it really true? Is it merely what the torturer has inadvertently conveyed to the victim that he wants to hear? Even if true, is it any longer useful? Every resistance or underground organization works with a system of cut-outs that limits what any one individual knows, and signals everyone else to scatter when a prisoner is taken.

A network doesn't have to be organized to do that. Any band of armed insurgents in Iraq knows that when one of them is taken the rest don't wait around.

The vast majority of those in Iraqi prisons have turned out to be people who were at the wrong place at the wrong time, or had a name resembling someone else's name, or were related to someone whose name was on a U.S. list. They were tortured because that had become the practice. They might know *something*. When higher commanders complained that they weren't getting enough intelligence, the same prisoners were tortured again.

All of this is a ghastly scandal, one of the worst in American history. It is evident cause for impeachment of this president, if Congress has the courage to do it, and for prosecution of cabinet figures and certain commanders. However in view of the partisan alignment in Congress, quite possibly nothing will happen before the November election.

What then? It also is quite possible that George W. Bush will be elected to a second term. In that case, the American electorate will have made these practices its own. Now that is something for our children to think about.