

"They should arrest Obama for impersonating a President"

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Barack Obama, Torture Enabler

America is a nation of laws -- laws enforced by Spain.

John Yoo, Jay Bybee, David Addington, Alberto Gonzales, William Haynes and Douglas Feith wrote, authorized and promulgated the Justice Department "torture memos" that the Bush Administration used for legal cover. After World War II, German lawyers for the Ministry of Justice went to prison for similar actions.



We've known about Yoo et al.'s crimes for years. Yet--unlike their victims--they're free as birds, fluttering around, writing op/ed columns...and teaching. At law school!

Obama has failed to match changes of tone with changes in substance on the issue of Bush's war crimes. "We need to look forward as opposed to looking backwards," he answered when asked whether he would investigate America's worst human rights abuses since World War II. Indeed, there's no evidence that Obama's Justice Department plans to lift a finger to hold Bush or his henchmen accountable.

"They should arrest Obama for trying to impersonate a President," one wag commented on The San Francisco Chronicle's website.

Fortunately for those who care about U.S. law, there are Spanish prosecutors willing to do their job. Baltasar Garzón, the crusading prosecutor who went after General Augusto Pinochet in the '90s, will likely subpoena the Dirty Half Dozen within the next few weeks. "It would have been impossible to structure a legal framework that supported what happened [in Guantánamo]" without Gonzales and his pals," argues the criminal complaint filed in Madrid.

When the six miscreants ignore their court dates (as they surely will), Spain will issue international arrest warrants enforceable in the 25 countries that are party to European extradition treaties. All hail King Juan Carlos I!

Which brings us to a leaked report by the Red Cross, famous for its traditional reticence to confront governments. Which means that physicians are enjoined to do no harm. Doctors are prohibited by their ethical code of conduct from attending, much less participating in, torture. (What does this have to do with Bush's lawyers? Hold on. I'm getting there.)

The Red Cross found that CIA doctors, nurses and/or paramedics "monitored prisoners undergoing waterboarding, apparently to make sure they did not drown. Medical workers were also present when guards confined prisoners in small boxes, shackled their arms to the ceiling, kept them in frigid cells and slammed them repeatedly into walls," reports The New York Times.

"Even if the medical worker's intentions had been to prevent death or permanent injury," the report said, they would have violated medical ethics. But they weren't there to protect anyone but the CIA. They even "condoned and participated in ill treatment....[giving] instructions to interrogators to continue, to adjust or to stop particular methods." Charming.

Since 1945, at least 70 doctors around the world have been prosecuted for participating in torture. But not Bush's CIA torture facilitators. Not by this president. Asked to comment on the Red Cross report, a spokesman for CIA director Leon Panetta replied that Panetta "has stated repeatedly that no one who took actions based on legal guidance from the Department of Justice at the time should be investigated, let alone punished." (There's the lawyer connection.)

Which is similar to what Obama said about the torturers: "At the CIA, you've got extraordinarily talented people who are working very hard to keep Americans safe. I don't want them to suddenly feel like they've got to spend all their time looking over their shoulders and lawyering up." Don't you just hate being micromanaged when you're torturing people?

Ah, the great shell game of American justice. You can't prosecute the torturers because their lawyers advised them that torture was OK. You can't prosecute the lawyers because all they did was theorize--they didn't torture anyone. You can't prosecute the president and vice president who ordered the torture because they have "executive privilege" and, anyway, who would put a head of state on trial? What is this, Peru?

What's the flip side of a victimless crime? A perpless crime?

It's a neat circle, or would be if it fit, but drink some coffee and let the caffeine do its thing and it soon becomes apparent that it doesn't come close. The trouble for the Bushies, and now for Obama--they're his torturers now--is that lawyers are bound by a higher code than following orders.

Yoo, Bybee, Addington, Gonzales, Haynes and Feith were asked by the White House to come up with legal cover for what they knew or ought to have known were illegal acts under U.S. law, international law, and treaties including the Geneva Conventions (which were ratified by the U.S. and therefore hold the force of U.S. law). Since they don't deny what they did--indeed, they continue to justify it--their presumed defense if they wound up on trial in Europe would be that they were just following orders.

However, the decision in the 1948 trials of German attorneys immortalized in the fictionalized film "Judgment at Nuremberg" makes clear that a lawyer's duty is to the law--not his government. And not just his own country's law--international law.

The Nuremberg tribunal acknowledged that Nazi Germany was an absolute dictatorship in which everyone answered to Adolf Hitler and could be shot for disobeying. Nevertheless, the court ruled,

"there were [German] restrictions for Hitler under international law." Despite his total legal authority within Germany, Hitler "could issue orders [that violated] international law." Obeying a direct order from Hitler, in other words, was illegal if it violated international law. And German lawyers went to prison for doing just that.

The six lawyers about to face charges in Spain didn't have to worry about Nazi firing squads. They were rank opportunists trying to advance their careers in an Administration that viewed laws as quaint, inconvenient obstacles. Here's how not scared they are: Feith recently penned an op/ed in The Wall Street Journal daring--double-daring--Obama's Justice Department to go after him.

"If President Barack Obama and the prosecutors see a crime to be prosecuted, they can act," Feith wrote.

One can only hope. In the meantime, we'll always have Spain.

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 [Red Cross ICRC Torture Report](#)

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