

Command Responsibility?

By Jeremy Brecher and Brendan Smith | January 10, 2006

A jury verdict in Memphis late last year caused little stir among the general public, but it may have caught the attention of Dick Cheney, Donald Rumsfeld, and other high officials of the Bush administration. The jury found Colonel Nicolas Carranza, former Vice Minister of Defense of El Salvador and now a U.S. citizen living in Memphis, responsible for overseeing the torture and killing in that country 25 years ago.¹ Could similar charges be brought against high U.S. officials for the actions of their subordinates in Abu Ghraib, Falluja, and Guantanamo?

Carranza was sued by victims of armed forces under his control. The jury applied the principle of “command responsibility,” which holds a superior legally responsible for human rights abuses by subordinates if the official knew or should have known about them and failed to prevent them or punish those who committed them.

Intelligence agency whistleblowers recently leaked to ABC News a list of six “Enhanced Interrogation Techniques” authorized for CIA agents in mid-March 2002. The agents, according to an ABC News report, did so “because the public needs to know the direction their agency has chosen.”²

The techniques included “Water Boarding:” “The prisoner is bound to an inclined board, feet raised and head slightly below the feet. Cellophane is wrapped over the prisoner’s face and water is poured over him. Unavoidably, the gag reflex kicks in and a terrifying fear of drowning leads to almost instant pleas to bring the treatment to a halt.” CIA officers who subjected themselves to the technique lasted an average of 14 seconds before caving in. According to John Sifton of Human Rights Watch, “It really amounts to a mock execution, which is illegal under international law.”³

President Bush has said “We do not torture.”⁴

But according to a classified report by the CIA’s own Inspector General John Helgerwon, the techniques appeared “to constitute cruel and degrading treatment under the [Geneva] convention.”⁵

If so, they are likely to be crimes not only under international law, but under the U.S. Anti-Torture and War Crimes Acts.

Where they have acknowledged prisoner abuse, Bush administration officials have often blamed it on a few “bad apples” at the bottom of the chain of command. But under the principle of command responsibility, this is no excuse—and no legal defense.

Colin Powell’s top aide, Colonel Larry Wilkerson, said late last year that the United States has tortured and “There’s no question in my mind where the philosophical guidance and the flexibility in order to do so originated—in the vice president of the United States’ office.”

According to Wilkerson, “His implementer in this case was Donald Rumsfeld and the Defense Department.” Wilkerson explained, “The vice president had to cover this in order for it to happen and in order for Secretary Rumsfeld to feel as though he had freedom of action.”⁶

The former commander at Abu Ghraib prison, Brig. Gen. Janis Karpinski, confirms Wilkerson’s charge: Abusive techniques at Abu Ghraib were “delivered with full authority and knowledge of the secretary of defense and probably Cheney.”⁷

This is not just a question of past abuses. According to Wilkerson, “There’s no doubt in my mind that we may still be doing it.” When the vice president of the United States “lobbies the Congress on behalf



of cruel and unusual punishment” Wilkerson says he can “only assume” that “it’s still going on.”⁸

Asked whether Cheney was guilty of a war crime, Col. Wilkerson said the vice president’s actions were certainly a domestic crime and, he would suspect, “an international crime as well.”⁹ Wilkerson says his charges are based on an “audit trail” he prepared for Secretary Powell, including government memoranda and reports from the International Committee of the Red Cross.¹⁰

Criminal investigation is warranted where facts or circumstances “reasonably indicate” that a crime has been committed.¹¹ Wilkerson’s charges are sufficient in themselves to require the Department of Justice to immediately open a criminal investigation of Vice President Cheney and Donald Rumsfeld. Such an investigation could take as its starting point Wilkerson’s “audit trail,” the statements of CIA agents and the CIA Inspector General, and extensive published evidence indicating torture and prisoner abuse by U.S. personnel around the world.

If I. Lewis “Scooter” Libby and other high government officials can be investigated for outing Valerie Plame, don’t facts that “reasonably indicate” war crimes and crimes against humanity deserve equal time?

Bush administration officials have said over and over that they have acted within the law. If so, they have nothing to fear from an investigation and should encourage one to clear the air.

The United States is supposed to have “equal justice under law.” Colonel Carranza has had his day in court. We as citizens—and our prosecutors, judges, and elected representatives—need to address the question: When will Vice President Cheney, Secretary Rumsfeld, and their collaborators get theirs?

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END NOTES

- ¹ Julia Preston, “Ex-Salvadoran Colonel is Ordered to Pay for Crimes against Humanity,” *New York Times*, November 19, 2005; “El Salvador: Col. Nicolas Carranza,” Center for Justice and Accountability, www.cja.org/cases/carranza.shtml.
- ² Brian Ross and Richard Esposito, “CIA’s Harsh Interrogation Techniques Described,” ABC News, November 19, 2005.
- ³ Ross and Esposito.
- ⁴ “Bush Defends Detainees Policy,” Associated Press, November 7, 2005.
- ⁵ *New York Times*, November 9, 2005, quoted in Ross and Esposito.
- ⁶ “Powell Aide: Torture ‘Guidance’ from VP,” CNN, 11/20/05.
- ⁷ Marjorie Cohn, “Abu Ghraib General Lambastes Bush Administration,” *truthout*, August 24, 2005.
- ⁸ “Powell Aide: Torture ‘Guidance’ from VP,” CNN.com, 11/20/2005.
- ⁹ Rupert Cornwell, “Cheney ‘Created Climate’ for U.S. War Crimes,” *The Independent*, November 30, 2005.
- ¹⁰ “Powell Aide: Torture ‘Guidance’ from VP,” CNN.com, 11/20/2005.
- ¹¹ “The Attorney General’s Guidelines on General Crimes, Racketeering Enterprise, and Terrorism Enterprise Investigations,” IND, p. 105.

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