Written by **Thomas R. Eddlem** on April 22, 2009

Torture: Obama Equivocates, Conyers Investigates

That statement is all but a flat-out contradiction of his statement just five days earlier, when he essentially ruled out any prosecutions against the torturers, the officials who ordered the torture, and those who provided the pseudo-legal cover for the torturers. “It is our intention to assure those who carried out their duties relying in good faith upon legal advice from the Department of Justice that they will not be subject to prosecution,” Obama said, adding that “nothing will be gained by spending our time and energy laying blame for the past.”

Obama’s new position is essentially the same as the defense of German concentration camp guards at the Nuremberg war crimes trials after the Second World War: “I was only following orders, so I’m not liable for any crimes I’ve committed.” The liability for government officials for their crimes, despite any veneer of legality or orders from above, was perhaps the only positive principle that emerged from the otherwise notorious Nuremberg trials. Obama now says that a principle of his government is that government officials can commit any crime with impunity, so long as they can get a memo from the Justice Department saying it’s “legal.”

Obama’s semi-reversal — he didn’t say there would be prosecutions — turned his press secretary spin-meisters into a sputtering mess. Will did the president change his mind about prosecutions? White House Press Secretary Robert Gibbs couldn’t say (anything intelligible):

> Well, let’s — instead of referring to what anybody might have said, I think it’s important — or anything that I might have said — it’s important to refer to what the President said, and what he said over the course of many months, in all honestly, because this dates back to questions that has received in press conferences or even during the transition, and that is, very much as he said — reiterated today, that he says as a general deal, I think we should be looking forward and not backward. The President has also said he does not believe that people are above the rule of law. And the President stated accurately that any determination as to whether a law was broken would rightly be made not by the President but by the chief law enforcement officer of the United States.

Would there be any criminal probes? Gibbs didn’t say “yes” and he didn’t say “no.” Anyone able to navigate through his gibberish response is supposed to take whatever he wants to out of his words. It, like just about everything coming out of the Obama White House since the beginning of February, was a political Rorschach test.

The stakes for criminal prosecutions couldn’t be higher, however. The felony torture statute calls for up to 20 years in prison for anyone conducting torture or for anyone “conspiring” to torture. Under such a statutory construction, the information already available in the public domain is enough to remove any reasonable doubt about the guilt of the torturers themselves, the policymakers in the Bush administration who pushed the torture, or the Justice Department officials who gave a pseudo-legal veneer to the torture.

Many of them may even face the possibility of the death penalty if they are prosecuted. The statute states that "if death results to any person from conduct prohibited by this subsection," the guilty "shall be punished by death or imprisoned for any term of years or for life." Could former Bush administration cabinet members like Donald Rumsfeld and Alberto Gonzales face charges that could result in the death penalty? It's quite possible, since the torture policy did lead to dozens of deaths from those tortured (see here and here).

Meanwhile, House Judiciary Chairman John Conyers (D-Mich.) has called for another congressional investigation of the torture policy. "The Judiciary Committee will," Conyers stated in an April 21 press release, "hold hearings and investigate these matters."

Conyers had less than a week earlier called for investigations and possible prosecutions for criminal offenders: "We must have a full investigation of the circumstances under which these torture methods were created, approved, and implemented, preferably by an independent commission as I previously proposed. And if our leaders are found to have violated the strict laws against torture, either by ordering these techniques without proper legal authority or by knowingly crafting legal fictions to justify the torture, they should be criminally prosecuted. It is simply obvious that, if there is no accountability when wrongdoing is exposed, future violations will not be deterred."

But Conyers failed to label the interrogations "torture." All his public statements were crafted in the form of "if our leaders are found to have violated the strict laws against torture …" genre. Conyers is a lawyer himself. Given the vast amount of information already available in the public sector (he shouldn't even need the classified information at his disposal as House Judiciary Committee Chairman), isn't that more than enough information needed to draw the conclusions that top administration officials endorsed and conspired to conduct felony torture?

As such, it appears that Conyers' investigation may yield nothing more than a similar Senate investigation conducted into the torture policy last year, of which the full report was just de-classified this week. That Senate investigation failed to call the torture "torture," but persisted in exclusively using euphemisms such as "harsh treatment," "degrading techniques" and the like that are commonly used by the mass media. The Senate investigation also failed to call for criminally prosecuting the torturers, while at the same time wringing its hands of the techniques.

Of course, if there was no violation of the torture statute, then there was no need for the Senate to wring its hands of what was done to the detainees. If U.S. military and intelligence officials only followed legal advice that was properly given by the Bush Justice Department, then they should be commended for their excellent work. The fact that the Senate was neither able to call for prosecutions nor to commend the Bush Justice Department for following the law is a testament to the political cowardice in Washington that persists to this day.

For now, the Obama administration is happy to start speculation about a bipartisan commission to investigate the torture. Such talk delays any real decision about criminal probes and prosecutions, possibly for years. In intelligence circles, this is known as a "dangle."

The idea behind this dangle is to give some hope for advocates of freedom and justice, while at the same time consigning them to pursuing a dead-end. A "bipartisan commission," even if it's not stacked with pro-torture neoconservative Republicans and allowed to conduct its work without "executive privilege" claims (which would be extremely unlikely), would not come out with recommendations for a year or two. By then the memory of torture would be all the more distant, the statute of limitations on

violations on many of the crimes would be all the closer, and the likelihood of prosecutions (therefore, justice) would be almost nil.

That's the idea behind a "bipartisan commission."

Obama's plan is to wave a big red "bi-partisan commission" flag in front of the justice movement bull, and hope that the bull suicidally chases the flag.

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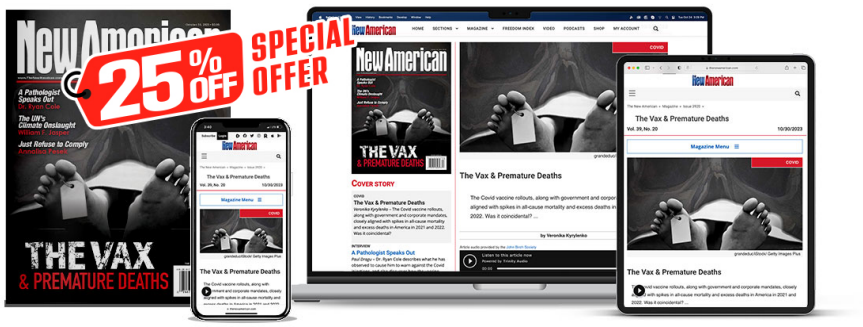

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