By Ray McGovern

From Consortiumnews.com | Original Article

Exclusive: *As the tenth anniversary of 9/11 nears, many ex-Bush administration officials who approved torture in the "war on terror" and botched wars in Afghanistan and Iraq are back in the spotlight taking bows from appreciative audiences in tightly controlled settings. But Ray McGovern was part of a different reaction in New York City.*

Back in my native New York on Thursday, I was bolstered by a scene of what I call the real New Yorkers (along with tourists and honking cab drivers) joining in a protest of the adulation bestowed on torture lawyer John Yoo at the swank University Club off Fifth Avenue.

The hoi aristoi arrived at the club quite decked out in silk ties and pricey shoes to honor Yoo, the Bush administration lawyer who drafted some of the most objectionable rationalizations for torturing detainees in the "war on terror." (He is now a law professor at the University of California at Berkeley.)

My chatting with the hoi polloi on the street, who were supporting the protest, brought a welcome reminder that the self-important "meritocracy" of the University Club – "the suits and the shoes" as we call them – hardly represent New York City.

That realization also generated some helpful adrenalin for later, when I traveled over to the 92nd Street Y for a panel discussion on "9/11 a Decade Later: Lessons Learned and Future Challenges," featuring former Defense Secretary Donald Rumsfeld, ex-Attorney General Michael Mukasey, and George W. Bush's press spokesman Ari Fleischer.

The event, sponsored by the Jewish Policy Center, was moderated by neoconservative talk show host Michael Medved.

I found myself in the banal belly of the beast. To say I felt out of place would be an understatement. My discomfort grew as Medved's introductory remarks amounted to a rant about radical, fundamentalist, Islamist terrorists.

But those weren't the only enemies to be feared. The event's "ushers" threw out some folks because they were on the Jewish Policy Center's equivalent of a "no-fly list." They were preemptively and roughly removed before the event even got started.

I wore a new "Veterans for Peace" T-shirt (since the blood drawn when I protested at Hillary Clinton's speech last February would not wash out of the old one). Standing in front in silent witness against Rumsfeld and his apologists on the panel got me unceremoniously thrown out after a mere two minutes.

In coming to the Rumsfeld/Mukasey/Fleischer/Medved whitewash of the incompetence before 9/11 and then the aggressive wars and torture afterwards, I did not expect to be able to resume the four-minute impromptu debate
I had lucked into with Rumsfeld on live TV on May 4, 2006, in Atlanta.

However, this discussion turned out to be so boring, with an occasional dash of disingenuousness thrown in about how "they hate our democracy," that it was almost a relief not to have to sit, or stand, through it – waiting for the off-chance to argue with Rumsfeld again.

A sympathetic policeman, when ordered to remove a young woman who stood up in protest later, commented *sotto voce*, "I just don't understand how you could have sat there for as long as you did!"

No Q&A This Time

It also was no surprise that no one was permitted to come to the mike and ask a question. This time questions had to be written on index cards and thoroughly vetted before being given to the

speakers. Still less of a surprise was it that the question I dutifully wrote on my index card did not make the cut. I wrote:

“Mr. Rumsfeld, why did you in November 2002 tell Joint Chiefs Chairman Richard Myers to abort the armed service-and-intelligence-wide inquiry he had ordered his chief legal counsel, Navy Captain Jane Dalton to commission into methods of interrogation to which the judge advocates general of the Army, Navy, Marine Corps, and Air Force had strongly objected?”

Background: After over a year of study, the Senate Armed Services Committee issued on Dec. 11, 2008, a unanimous report (“Inquiry Into the Treatment of Detainees in U.S. Custody”), exposing in sordid detail the circumstances surrounding Rumsfeld’s order to quash an inquiry into the legality of torture methods. (Much of the detail adduced below comes from the Senate report.)

The Senate Committee found that Rumsfeld in November 2002 had nipped in the bud an in-depth legal review of interrogation techniques at precisely at the time when all interested parties were eager for an authoritative ruling as to their lawfulness.

Rumsfeld’s order was conveyed to Myers by William “Jim” Haynes II, then the Defense Department counsel, who told Myers to cease and desist. Assured of Navy Capt. Dalton’s cooperation (she was later promoted to Admiral) and relying on the uniformed JAGs not to break discipline by speaking out, Rumsfeld was able to stop the inquiry cold.

The summer of 2002 had brought to interrogators at Guantanamo new techniques adopted from the Korean War practices of Chinese Communist interrogators who extracted false confessions from captured American soldiers.

On Aug. 1, a memo signed by the head of the Justice Department’s Office of Legal Counsel, Jay Bybee (who was then John Yoo’s boss and is now a federal judge), stated that for an act to qualify as “torture”:

–”Physical pain … must be equivalent in intensity to the pain accompanying serious physical

injury, such as organ failure, impairment of bodily function, or even death.

–"Purely mental pain or suffering … must result in significant psychological harm of significant duration, e.g., lasting for months or even years."

In other words, Bybee was loosening the definition of torture to permit a wide range of abuses that the United States had previously regarded as torture, especially when inflicted on Americans.

During the week of Sept. 16, 2002, a group of interrogators from Guantanamo flew to Fort Bragg, North Carolina, for training in the use of these SERE (Survival, Evasion, Resistance, & Escape) techniques, which were originally designed to help downed pilots withstand the regimen of torture employed by China.

Now, SERE techniques were being "reverse engineered" and placed in the toolkit of U.S. military and CIA interrogators.

As soon as the Guantanamo interrogators returned from Fort Bragg, senior administration lawyers, including the Pentagon's Haynes, John Rizzo (CIA), and David Addington (counsel to Vice President Dick Cheney), visited Guantanamo to underscore that the top administration lawyers were all on board.

And, just to make quite sure there was no doubt about the new license given to interrogators, Jonathan Fredman, chief counsel to CIA's Counterterrorist Center, arrived and gathered the Guantanamo staff together on Oct. 2, 2002, to resolve any lingering questions regarding unfamiliar aggressive interrogation techniques, like the sensation of drowning induced by water-boarding.

Fredman stressed that "the language of the [torture] statutes is written vaguely." He repeated Bybee's Aug. 1 guidance and summed up the legalities in this way: "It is basically subject to perception. If the detainee dies, you're doing it wrong."

More Authoritative Guidance

Small wonder that on Oct. 11, 2002, Gen. Michael Dunlavey, the commander at Guantanamo, saw fit to double check with his superior, SOUTHCOM commander Gen. James Hill and request formal authorization to use aggressive interrogation techniques, including water-boarding.

On Oct. 25, 2002, Hill forwarded the request to Gen. Myers and Secretary Rumsfeld, commenting that, while lawyers were saying the techniques could be used, “I want a legal review of it, and I want you to tell me that, policy-wise, it’s the right way to do business.”

Hill later told the Army Inspector General that he (Hill) thought the request “was important enough that there ought to be a high-level look at it … [there] ought to be a major policy discussion of this and everybody ought to be involved.” Gen. Myers, in turn, solicited the views of the military services on the Dunlavey/Hill request.

The Army, Navy, Marines and Air Force all expressed serious concerns about the legality of the techniques and called for a comprehensive legal review. The Marine Corps, for example, wrote, “Several of the techniques arguably violate federal law, and would expose our service members to possible prosecution.”

The Defense Department’s Criminal Investigative Task Force (CITF) at Guantanamo joined the services in expressing grave misgivings. Reflecting the tenor of the four services’ concerns, CITF’s chief legal advisor wrote that the “legality of applying certain techniques” for which authorization was requested was “questionable.”

He added that he could not “advocate any action, interrogation or otherwise, that is predicated upon the principle that all is well if the ends justify the means and others are not aware of how we conduct our business.”

Myers’s Legal Counsel, Captain Jane Dalton, had her own concerns (and has testified that she

made Gen. Myers aware of them), together with those expressed in writing by the Army, Navy, Marines and Air Force. Dalton directed her staff to initiate a thorough legal and policy review of the proposed techniques.

The review got off to a quick start. As a first step, Dalton ordered a secure video teleconference including Guantanamo, SOUTHCOM, the Defense Intelligence Agency, and the Army's intelligence school at Fort Huachuca. Dalton said she wanted to find out more information about the techniques in the request and to begin discussing the legal issues to see if her office could do its own independent legal analysis.

Under oath before the Senate Armed Services Committee, Captain Dalton testified that, after she and her staff had begun their analysis, Gen. Myers directed her in November 2002 to stop the review.

She explained that Myers returned from a meeting and "advised me that Mr. Haynes wanted me … to cancel the video teleconference and to stop the review" because of concerns that "people were going to see" the Guantanamo request and the military services' analysis of it. Haynes (i.e., Rumsfeld) "wanted to keep it much more close-hold," Dalton said.

Dalton ordered her staff to stop the legal analysis. She testified that this was the only time that she had ever been asked to stop analyzing a request that came to her for review.

Haynes told the Senate committee, "There was a sense by DoD leadership that this decision was taking too long."

On Nov. 27, 2002, shortly after Haynes told Myers to order Dalton to stop her review – and despite the serious legal concerns of the military services – Haynes sent Rumsfeld a one-page memo recommending that he approve all but three of the 18 techniques in the request from Guantanamo.

Techniques like stress positions, forced nudity, exploitation of phobias (like fear of dogs), deprivation of light, and auditory stimuli were all recommended for approval.

On Dec. 2, 2002, Rumsfeld signed Haynes's recommendation, adding a handwritten note referring to the use of stress positions: "I stand for 8-10 hours a day. Why is standing limited to 4 hours?"

In Line with the President

Rumsfeld's approval of these techniques, over the objections of the top legal counsels of all of the armed services, was in line with the "smoking gun" two-page executive memorandum signed by George W. Bush on Feb. 7, 2002. The Senate Committee found that Bush's memo "opened the door" to subsequent abuse in interrogations.

In his memo, the President tried his best to square a circle. He declared that Geneva did not apply to al-Qaeda and Taliban detainees, but that they would nonetheless be treated "humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva."

"Conclusion 1" of the Senate committee report stated:

"On Feb. 7, 2002, President George W. Bush made a written determination that Common Article 3 of the Geneva Conventions, which would have afforded minimum standards for humane treatment, did not apply to al-Qaeda or Taliban detainees.

"Following the President's determination, techniques such as water boarding, nudity, and stress positions … were authorized for use in interrogations of detainees in U.S. custody."

Much later, when Gen. Myers came to Washington to peddle his memoir, I had a chance to quiz him personally and in public on May 12, 2009. [See Consortiumnews.com's " Impertinent Questions for Gen. Myers ."]

“Gen. Myers,” I began, “you were one of eight addressees for the President’s directive of Feb. 7, 2002. What did you do when you learned of the President’s decision to ignore Geneva?”

Myers said he had fought the good fight before the President’s decision. The sense was, if the President wanted to dismiss Geneva, what was a mere general to do?

And yet, in his book Myers claims, “Showing respect for the Geneva Conventions was important to all of us in uniform.” Right. Myers was well chosen by Rumsfeld as a good-looking blue suit not likely to stand on principle. None of the suits summoned the courage to speak out.

On Thursday evening, what Rumsfeld, Mukasey, Fleischer, and Medved seemed to be saying, in effect, was, “Principle. C’mon! Haven’t you heard? 9/11 changed everything.”

I can say that in preparation for attending the session, I subjected myself to a different sort of torture, reading Rumsfeld’s banal memoir on the train to New York. In case you were wondering, he apparently forgot to include in his book any mention of the Senate Armed Services Committee report on torture.

Ray McGovern, a War Criminals Watch advisor, works with Tell the Word, a publishing arm of the ecumenical Church of the Saviour in inner-city Washington, DC. He was an Army Infantry/Intelligence officer during the Sixties, and then served for 27 years as a CIA analyst. He is co-founder of Veteran Intelligence Professionals for Sanity (VIPS).