By Andy Worthington | Original article

How convenient is it that a door shuts on the Bush administration's global program of extraordinary rendition and torture, just as America's military-industrial complex plays musical chairs — with Republican holdover Robert Gates leaving as defense secretary, to be replaced by Leon Panetta, who has spent the last two years as the director of the CIA, while Gen. David Petraeus, the military commander in Afghanistan, takes over Panetta's role at the CIA?

The answer has to be that it would be hard to conceive of a neater example of how the military and the intelligence agencies — or the CIA, at least — are at the very heart of government.

The door that is shutting is the one that involves accountability for the many prisoners subjected to "extraordinary rendition," torture, and, in some cases, murder, in the Bush administration's "high-value detainee" program. This involved the creation of secret torture prisons in Thailand, Poland, Romania and Lithuania, and, for a while, in Guantánamo, as well as others in Afghanistan and Iraq, the rendition of prisoners between these facilities, and also to the dungeons of allies in Jordan, Egypt, Syria and Morocco.

The Bush administration's program also involved the cynical crafting of memoranda purporting to redefine torture, so that it could be practiced by the CIA. These memos — which will be known forever as the "torture memos" — were written in the Justice Department's Office of Legal Counsel (OLC) by John Yoo, and approved by his boss, Jay S. Bybee. Yoo was part of a team of lawyers clustered around Vice

President Dick Cheney, who were responsible for finding ways to justify the torture program that also involved President Bush and defense secretary Donald Rumsfeld, as well as other senior officials, including Condoleezza Rice. The other lawyers were: David Addington, Cheney's former chief of staff and legal counsel; William J. Haynes II, the Pentagon's former general counsel; his deputy, Daniel Dell'Orto; former White House counsel (and later Attorney General) Alberto Gonzales; and his deputy, Tim Flanigan.

In President Obama's America, in which Obama himself came to power declaring his "belief that we need to look forward as opposed to looking backwards," none of these men have been held accountable for their actions. In fact, as I explained in an article last week, the President has done all in his power to make sure that those who authorised torture or attempted to justify its use have been shielded from accountability for their actions. As I wrote:

Obama stood by and watched as, in February last year, a four-year internal investigation into John Yoo and Jay S. Bybee, lawyers at the Justice Department's Office of Legal Counsel, was cynically overturned by a DoJ fixer, David Margolis. Yoo had written the notorious "torture memos," issued on August 1, 2002, that purported to redefine torture so that it could be used by the CIA, and Bybee had approved them, but when the investigation concluded that both men had been guilty of "professional misconduct," Margolis decided instead that they had only exercised "poor judgment."

Obama also stood by last September when five men subjected to "extraordinary rendition" and torture by the CIA, including the British residents Binyam Mohamed and Bisher al-Rawi, had their lawsuit against Jeppesen Dataplan Inc., a Boeing subsidiary that had functioned as the CIA's travel agent, blocked by the administration, and by the 9th Circuit Court of Appeals, which agreed with Obama's Justice Department that it was appropriate to use the little-known and little-used "state secrets" doctrine to block any attempt to expose the truth in any US court on the basis that it would endanger "national security" — a decision that was upheld by the Supreme Court last month.

Last December, we also discovered, via WikiLeaks, that the Obama administration had put pressure on the Spanish government to prevent the courts in Spain from pursuing an investigation into six former Bush administration

lawyers — David Addington, William J. Haynes II, Alberto Gonzales, Jay Bybee, John Yoo and Douglas Feith, former undersecretary of defense for policy — for "creating a legal framework that allegedly permitted torture."

As a result, the news that special prosecutor John Durham has completed a two-year investigation into 101 cases involving the CIA's treatment of detainees, and has concluded that just two deserve to proceed to criminal prosecutions, is truly depressing. President Bush, as we learned in February, is unable to travel outside the United States because, after he bragged in his autobiography that he had authorized torture (the waterboarding of Khalid Sheikh Mohammed) lawyers will serve him with a torture complaint wherever he goes, but in the US the only people to face a criminal prosecution are those whose actions are deemed to have exceeded the parameters laid down by John Yoo and Jay S. Bybee.

To be fair to John Durham, his investigation was hobbled from the very beginning, because of the limits imposed on him. As Eric Holder explained in a statement announcing Durham's conclusions :

On August 24, 2009, based on information the Department received pertaining to alleged CIA mistreatment of detainees, I announced that I had expanded Mr. Durham's mandate [from that of January 2008, when Bush Attorney General Michael Mukasey appointed him to investigate the destruction of videotapes showing the torture of "high-value detainees"] to conduct a preliminary review into whether federal laws were violated in connection with the interrogation of specific detainees at overseas locations. I made clear at that time that the Department would not prosecute anyone who acted in good faith and within the scope of the legal guidance given by the Office of Legal Counsel regarding the interrogation of detainees. Accordingly, Mr. Durham's review examined primarily whether any unauthorized interrogation techniques were used by CIA interrogators, and if so, whether such techniques could constitute violations of the torture statute or any other applicable statute.

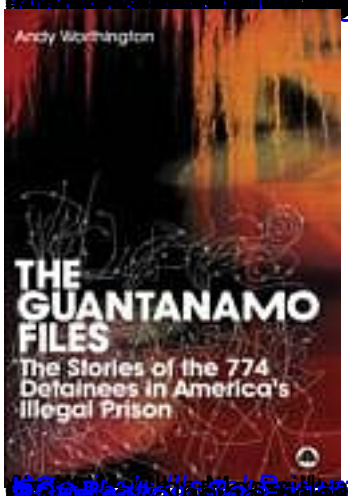
Those particular comments — that the Justice Department "would not prosecute anyone who acted in good faith and within the scope of the legal guidance given by the Office of Legal Counsel regarding the interrogation of detainees" — is the key to the whitewash that has just occurred, and it is so important that it was repeated in August 2009 by White House press secretary Robert Gibbs, when the appointment of Durham was announced. Gibbs noted that "the President agrees with the Attorney General that those who acted in good faith and within

the scope of legal guidance should not be prosecuted."

What no one has yet explained is who authorized the revision to the conclusions reached by a four-year internal investigation into the "legal guidance" provided by Yoo and Bybee. As I noted above, that investigation concluded that Yoo and Bybee were guilty of "professional misconduct," which would have allowed them to be investigated by their bar associations, and might have opened up a clear route to the White House, but veteran DoJ fixer David Margolis was allowed to override the investigation's conclusions, with his excuse that the two lawyers had merely exercised "poor judgment."

This was in January 2010, but Holder's appointment of Durham in August 2009, and his comments at the time, as well as those of the White House, indicate that everyone involved already knew that the results of the OPR investigation would be rewritten so that Yoo and Bybee would be excused. The outstanding questions, therefore, are: did anyone put pressure on the Obama administration to whitewash Yoo and Bybee, and did it happen as part of an agreement between the administration and the CIA prior to April 17, 2009?

That was the date when the President released four previously classified OLC "torture memos" from 2002 and 2005 as part of a court case, but also stated , explicitly, "In releasing these memos, 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."



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