

By Ray McGovern

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Seldom does a crime scene have so clear a smoking gun. A two-page presidential memorandum of Feb. 7, 2002, leaves no room for uncertainty regarding the "decider" on torture. His broad-stroke signature made torture official policy.

This should come as no surprise. You see, the Feb. 7, 2002, memorandum has been posted on the Web since June 22, 2004, when then-White House Counsel Alberto Gonzales mistakenly released it, along with other White House memoranda.

The title seemed innocent enough "Humane Treatment of al Qaeda and Taliban Detainees" but in the body of the memo President George W. Bush authorized his senior aides to withhold Geneva Convention protections from suspected al-Qaeda and Taliban detainees.

Like Shakespeare, the media seem harshest on the lawyers, including Texans Gonzales and William J. Haynes II (Defense Secretary Donald Rumsfeld's lawyer), who later outdid themselves trying to make torture legal.

What gets lost in the woodwork is this: Banal as their ex-post-facto "justification" for torture was, the lawyers were not the deciders.

After the decider-in-chief, the key decision makers were the eight addressees of the Feb. 7 memorandum: Vice President Dick Cheney, Secretary of State Colin Powell, Rumsfeld, Attorney General John Ashcroft, White House chief of staff Andrew Card, CIA Director George Tenet, National Security aide Condoleezza Rice, and Joint Chiefs Chairman Richard Myers.

During the Q & A after a recent Myers talk in Washington, I asked him what he did after he had read the President's memo on ignoring Geneva. The tone of his non-answer was this: If the President wanted to dismiss Geneva, what was a mere Chairman of the Joint Chiefs to do?

In his memoir, *Eyes on the Horizon*, he tries to blame the lawyers: "By relying so heavily on just the lawyers, the President did not get the broader advice on these matters that he needed."

Myers and the other seven addressees might these days be called derivative deciders - or, more simply, accomplices. There is not a shred of evidence that any of the Gang of Eight gave

the slightest consideration to resigning, rather than carry out the President's decision.

They elected to "just follow orders," a defense dismissed out of hand at the post-WWII Nuremberg Tribunal on war crimes. Together with the lawyer-advisers, the derivative deciders provide abundant proof that the "banality of evil" did not die with Adolf Eichmann and other functionaries of the Third Reich.

But the buck stops - actually, in this case, it began - with President Bush. Senate Armed Services Committee leaders Carl Levin and John McCain on Dec. 11, 2008, released the executive summary of a report, approved by the full committee without dissent, concluding that Bush's Feb. 7, 2002, memorandum "opened the door to considering aggressive techniques."

Here is Conclusion Number One of the Senate committee report: "Following the President's determination, techniques such as waterboarding, nudity, and stress positions...were authorized for use in interrogations of detainees in U.S. custody."

It is essential that those responsible for torture be held to account. This is not about "policy differences." It is about crimes. More important still, it's about holding fast to our Constitution and enforcing accountability in the executive branch.

There was a time when we regularly looked to folks from Texas to defend the law. What would we have done, for example, without the late Barbara Jordan, African American jurist and member of the House Judiciary Committee, who spoke out with memorable eloquence in arguing that President Richard Nixon had to be held to account. He could not get away with placing himself over the law.

Jordan and most of her committee colleagues voted out articles of impeachment against Nixon, leaving him little choice but to resign or be impeached. Speaking to the House, Jordan described Nixon as a President "swollen with power and grown tyrannical." She added:

"My faith in the Constitution is whole; it is complete; it is total. I am not going to sit here and be an idle spectator to the diminution, the subversion, the destruction of the Constitution."

Barbara Jordan was a Texan through and through. She was also, above all, an American patriot. I suspect she may be rolling over in her grave at the prospect of a chief executive escaping accountability for approving torture.

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