



HIGH ROAD *for*
HUMAN RIGHTS
Advocacy Project

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**Remarks of Ross C. “Rocky” Anderson
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**Rally for Truth and Accountability for War Crimes
June 25, 2009
Washington Square, Salt Lake City, Utah**

How do we see ourselves – and what have we become? Who are we, as a nation, as citizens and patriots, and as individuals who make decisions and act in ways that either comport or conflict with fundamental moral principles?

This inquiry is essential as we determine how to proceed from this day forward – and, in doing so, determining who and what we really are.

Let us be able to say that we took the high road, that we stood up for the values upon which our nation was founded, and that we pursued a principled, moral path, even when the going got rough.

We are at a defining crossroads for our nation, and for each of us.

This is not about being Republicans, Democrats, or Independents.

This is about what we believe in and whether we have the courage of our convictions as we decide whether to stand for, or to run away from, principles to which our nation has, since its founding, always laid claim.

Are we committed to the rule of law and to equal justice – or do we believe that powerful people, or those they support, should be exempt from our laws?

Do we believe that our criminal laws and treaty obligations should be applied equally, or do we think that powerful people in the United States

should be able to pick and choose what laws should be applied, to whom, and under what circumstances?

Do we believe we should be held to our commitments under solemn treaty obligations and our federal laws, or is our commitment to the rule of law so unprincipled and so feeble that we will allow Congress or our president to brush it aside whenever it becomes messy, difficult, or politically inconvenient?

Most fundamentally, do we believe that our nation should join, for the first time in our history, the company of human rights-abusing countries that, without any personal accountability and as a matter of official policy, kidnap people, disappear them, detain them indefinitely without any due process, and torture them? Have we become so incapable of drawing a moral line in the sand that we will stand by, with hardly a whimper, and permit such immoral outrages to be perpetrated in our name?

And are we, as a nation and as individuals, so inclined toward refusing to acknowledge the truth, that we are content with not knowing what abuses have taken place, by whom, and on whose authority?

We know that US agents, pursuant to official policies thoroughly inconsistent with several treaties and federal law, have kidnapped, disappeared, and tortured people in CIA secret prisons and at Guantanamo, Abu Ghraib, and Bagram Air Base. Many have been kidnapped and sent off to the torture chambers of other nations. The accounts of kidnapping and torture are abundant.

Maher Arar, a citizen of Canada, was kidnapped by the CIA, tortured, and imprisoned in horrendous conditions for a year in Syria. His innocence of any wrongdoing has been proven. In a case of mistaken identity, Khaled El-Masri, a German citizen, was kidnapped by the CIA in Macedonia and was sent to be tortured and held for several months in Afghanistan. Habibullah killed after torture by US military personnel at Bagram. Dilawar, a 22 year-old Afghan taxi driver and farmer, tortured and killed at Bagram, with no evidence whatsoever of terrorist activity. Manadel al-Jamadi killed during torture at Abu Ghraib. His corpse photographed with US soldiers smiling and giving a thumbs-up.

Rapes, sodomy with objects, sleep deprivation, exposure to extreme temperatures, beatings, men forced to masturbate in front of women soldiers, other sexual and religious humiliations, threats against family members, detainees driven to madness.

This is not the Inquisition; it is not Argentina's Dirty War; it is not El Salvador in the 80's; it is not the Savak under the Shah of Iran or the cages of the Somozas in Nicaragua. This is cruel, sadistic, inhumane treatment of human beings perpetrated by *our* government, pursuant to official policies and so-called legal opinions from *our* government's administration lawyers – all of it in blatant violation of Common Article 3 of the Geneva Conventions and of customary international law arising from Common Article 3, in blatant violation of the Covenant on Civil and Political Rights, and in blatant violation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

One need not be a legal scholar to understand the clear prohibitions of these treaties, all of which have been ratified by the United States. They make it clear that torture is, without exception, absolutely forbidden.¹ The

¹ For instance, the Convention Against Torture provides, in part, as follows:

The States Parties to this Convention, . . .

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

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Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:

* * *

Article 2:

Paragraph 2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

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Article 4:

Paragraph 1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

Paragraph 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

United States betrays its commitments under those treaties every day it turns a blind eye to the atrocities by failing to investigate and disclose the truth, and call the offenders to account.

Nowhere in the Geneva Conventions, in the Convention Against Torture, or in the Covenant on Civil and Political Rights is there any provision justifying, for the sake of “moving forward,” the disregard of the solemn undertakings of those treaties. A president who, because he faces economic challenges or wants to avoid partisan political battles, tosses aside any accountability for egregious abuses is himself acting in contravention of those treaties.

Who among us ever thought that, inconsistently with the principles underlying the Nuremberg trials and the rule of law, our president, who campaigned with the promise of fundamental “change,” would continue to disregard not only our treaty obligations, but also our own nation’s Torture Statute and the War Crimes Act, a statute passed by Congress to criminalize torture and other grave breaches of the Geneva Conventions?

We are, of course, better off now than under the prior administration. But we the American people all need to push for far better – far better from the administration and far better from our Congress.

We were hoping for openness, a commitment to due process, application of equal justice, and adherence to the rule of law. Instead, the Obama administration, in the same manner as the Bush administration, has, through the assertion of the “state secrets” doctrine, deprived torture victims of their right to challenge in federal court the abuses from which they suffered. By doing so, the Obama administration, following the lead of the Bush administration, has essentially removed the courts as a co-equal branch of government essential to our system of checks and balances. That is particularly odious when the executive branch is preventing the courts from providing a check on abuses by the executive branch.

The Obama administration has refused to disclose photographs evidencing outrages committed against detainees – photographs that, like the images of the Holocaust, would serve the purpose of acknowledging wrongdoing and preserving the memory of it so it will not happen again. The disclosure of the photographs would be an important signal to the world that the US is facing up to its prior outrages and, by doing so, is committed

to changing course. Instead, by refusing to disclose the photographs, the current administration is continuing the dangerous, undemocratic policy of hiding away the truth – of hiding away evidence of criminal wrongdoing and signaling to the world that the cover-up of the truth will be continued.

As the British High Court recently stated with respect to information about illegal torture or other abusive treatment of detainees, “The provision of information of this kind which enables public debate to take place and democratic accountability to be made more effective is one of the bases on which democracy rests. . . . [T]here can be no assurance that government is carried out for the people unless the facts are made known and issues publicly ventilated.”²

The Obama administration, like the Bush administration, has asserted the right to detain people indefinitely, without any proof of wrongdoing.

It has resisted the call for a commission to investigate and disclose the truth about war crimes.

And it has, shockingly, continued the Bush administration’s cover-up by making threats against the British government to ensure that the UK’s High Court does not disclose publicly a description of torture committed by US agents.

Here’s what the British High Court had to say about the Obama administration’s threats:

Moreover, in the light of the long history of the common law and democracy which we share with the United States, it was, in our view difficult to conceive that a democratically elected and accountable government could possibly have any rational objection to placing into the public domain such a summary of what its own officials reported as to how a detainee was treated by them and which made no disclosure of sensitive intelligence matters. Indeed we did not consider that a democracy governed by the rule of law would expect a court in another democracy to suppress a summary of the evidence contained in reports by its own officials or officials of another State

² *Mohamed v. Secretary of State for Foreign and Commonwealth Affairs* [2009] EWHC 152 (Admin), para. 46..

where the evidence was relevant to allegations of torture and cruel, inhuman or degrading treatment, politically embarrassing though it might be.³

Many of us thought all of this would change with a new administration, but it has not. Avoidance of accountability, denials of equal justice, further erosion of the rule of law, and cover-up have continued to prevail as our nation's policy. And it will continue into the future unless we, the American people, demand better. That's why we are gathered here today.

We recognize that important improvements in US policy have been achieved under the current administration, but we also know that we all need to keep pushing if the rule of law and democratic disclosure, rather than politics as usual, are to prevail.

As Americans who are committed to the rule of law and equal justice, we know that, as Supreme Court Justice Louis Brandeis said, "Sunlight is the best disinfectant." We don't face up to our nation's wrongdoing, and we do not deter similar misconduct in the future, by hiding away the evidence, by covering up the truth, or by denying justice to those who were harmed. Yet that is exactly what the present administration is endeavoring to do, purportedly for the sake of "moving forward."

We can only "move forward" as a nation that adheres to the rule of law, to our treaty obligations, and to federal law if we insist on accountability for the people who violated those laws and a full investigation and disclosure of the truth, with reforms enacted by Congress to ensure that similar abuses do not happen in the future.

It was a glorious time for our democracy, for openness in government, and for major reform when the Church Committee undertook a comprehensive investigation of abuses by the US intelligence community during the 1950s and 60's and disclosed those abuses to the American people, with an eye toward reforms and future deterrence.

³ *Mohamed v. Secretary of State for Foreign and Commonwealth Affairs* [2009] EWHC 152 (Admin), para. 69.

We now have a similar opportunity for openness to prevail over secrecy and cover-up; for the truth to prevail over lies and obfuscations; for governmental reforms and deterrence of future atrocities to prevail over condoning past outrages by hiding the truth and foregoing reforms.

Cognizant of all that lies in the balance, let us be persistent in calling for the appointment of a select congressional committee, like the Church Committee, or an independent commission, like the Iraq Study Group, for the investigation and disclosure of the truth about war crimes.

The New York Times recently published an editorial calling for a thorough investigation, stating as follows:

Mr. Obama . . . should stop resisting an investigation of Mr. Bush's policies on terrorism, state secrets, wiretapping, detention and interrogation. We know he is struggling with many Bush-created disasters – in the economy, in foreign policy and on and on. But understanding all that has gone wrong is the only way to ensure that abuses will truly end.

During prior demonstrations here and at Pioneer Park, we shouted out to the Bush administration and to the mainstream media, “Give us the truth.” We are here again today, no less impassioned, demanding the truth, demanding accountability, demanding a recommitment to the rule of law and equal justice, and demanding that steps be taken to ensure that our nation will never again be dragged into the moral sewer of crimes against peace, war crimes, and the deceit, arrogance, and undemocratic abandonment of accountability, truth-telling, and reform.

Let us show the world, let us show our children, and let us show ourselves that we are not the kind of nation, and we are not the kind of people, who will countenance torture and other war crimes – and that, at this vital time, we will remain steadfast as we stand for the rule of law, for the values of our Constitution, for compliance with our solemn treaty obligations, and for principled accountability.