

# Cheney and Addington Are at Front And Center in Torture Scandal

by Edward Spannaus

Whether Dick Cheney is in, or out, of the Office of the Vice President after Nov. 2, the prisoner-torture scandal that emerged around Abu Ghraib, and which now also encompasses Afghanistan and Guantanamo Bay, is not going to disappear as a national and international issue. To restore America's moral standing in the world, it is urgent that those Administration officials responsible for this infamous policy be prosecuted under the U.S. Federal War Crimes Act and other laws. At the top of the list of those to be indicted, should be the name of Dick Cheney.

In December 2001, *EIR* was the first to report that aides in Vice President Cheney's office were involved in drafting the scheme to establish military tribunals. More recently, *EIR* has highlighted the central role of David Addington, the Counsel to the Vice President, in the drafting the "torture" memos, particularly those advocating abandonment of the Geneva Conventions, and urging unlimited, imperial powers for the Presidency.

As we have previously reported, the two most crucial of these known documents that were either written or strongly influenced by Addington, were:

- The Jan. 25, 2002, memorandum for the President, submitted over the name of White House Counsel Alberto Gonzales. This memo warned that Administration officials could be prosecuted under the U.S. War Crimes Act for their actions in the war on terrorism. It urged the President to reject the position being argued by Secretary of State Colin Powell, and instead to declare that the Geneva Convention on the Treatment of Prisoners of War did not apply in the conflict with Taliban and al-Qaeda in Afghanistan. This, Addington wrote, "would provide a solid defense to any future prosecution."
- The infamous Aug. 1, 2002, Justice Department memo drafted by its Office of Legal Counsel (OLC), which argued that "moderate" torture, as long as it doesn't cause organ failure or death, is permissible under their perverted interpretation of the law. The DOJ/OLC memo contended that the President, under his war-time powers as Commander-in-Chief, could even authorize severe torture under certain conditions, and neither the Courts nor Congress could interfere with this exercise of Executive power.

The section of the OLC memo on Executive power was reportedly the product of heavy pressure put on the OLC by Addington. That section was later incorporated almost verbatim into the April 2003 report produced by the Pentagon Working Group on Detainee Interrogations.

Now, in the past few weeks, a couple of major exposés have been belatedly published, confirming in detail what *EIR* has long reported, and adding some important new information to the Cheney/Addington dossier.

## 'In the Shadows'

On Oct. 11, the *Washington Post's* Dana Milbank wrote a profile of Addington, titled "In Cheney's Shadows."

"Where there has been controversy over the past four years, there has often been Addington," Milbank wrote, noting that Addington's views are "so audacious that even conservatives on the Supreme Court sympathetic to Cheney's views have rejected them as overreaching."

In fact, Milbank observed, there has been a backlash within the Administration against Addington, with some Administration officials believing that his aggressive legal arguments have caused the courts to become more suspicious of Executive Branch authority. This came up particularly around the Supreme Court's surprise rulings in the "enemy combatant" cases in June.

Milbank pointed out that in addition to his role in the torture memos, and his advocacy of holding terrorism suspects without access to the courts, Addington also led the campaign for secrecy around Cheney's Energy Task Force, and he was a main backer of the nomination of Department of Defense General Counsel William Haynes for a seat on the 4th Circuit Court of Appeals.

Milbank writes, "Even in a White House known for its dedication to conservative philosophy, Addington is known as an ideologue, an adherent of an obscure philosophy called the unitary executive theory that favors an extraordinarily powerful President." This argument, following that of the Nazis' jurist Carl Schmitt, as *EIR* early identified it, is used in Addington's contention that neither Congress nor international treaties can impinge upon the President's virtually unlimited exercise of Executive authority.

Milbank notes that Addington had raised the same arguments when he was a staffer for the Congressional Iran-Contra Committee (on which Cheney sat in the 1980s), when he argued that Congress could not tie the President's hands by preventing him from assisting the Nicaraguan Contras. Later, when Cheney was Secretary of Defense in the Bush 41 Administration, Addington was known as his "gatekeeper."

### **'Driving Force'**

Then, in a bombshell published on Sunday, Oct. 24—obviously based on massive leaks from within the Bush Administration—the *New York Times* portrayed Cheney as a central "driving force" behind the campaign to circumvent the U.S. Constitution and the Geneva Conventions after the 9/11 attacks. The article documented Cheney's specific role in crafting a scheme to bypass both the traditional military justice system, and the Federal courts, in order to create a system under which prisoners could be held indefinitely as "enemy combatants," and eventually be tried by military tribunals.

Cheney, as is characteristic, operated in secrecy, the *Times* reported, excluding uniformed military lawyers from the planning. Then, when a draft Executive Order was prepared, Cheney ordered it to be withheld from National Security Advisor Condoleezza Rice and Secretary of State Colin Powell.

While the 9/11 attacks were the pretext, the *Times* notes (as has *EIR* and others) that the strategy was shaped by long-standing agendas—of expanding Presidential power and downgrading international treaty commitments—that had little to do with fighting terrorism.

The key planners, as identified in the *Times* article, were Cheney (at the top of their chart), then Cheney's Counsel, Addington; Bush's Counsel, Alberto Gonzales; Gonzales's deputy Timothy Flanigan; and the Justice Department's Office of Legal Counsel. Excluded were most of the government's experts in international law and military law.

The *Times* says that the idea of using military tribunals to try suspected terrorists came in a phone call from former Attorney General William P. Barr to Flanigan, who had worked under Barr in the Bush 41 Administration. Tribunals would give the government wide latitude to hold, interrogate, and prosecute suspected terrorists—with control of the entire process totally in the hands of the Executive, not the Judiciary Branch. "The same ideas were taking hold in the office of Vice President Cheney," the *Times* notes, adding that these were being championed by Addington.

The Justice Department worked up a plan to establish tribunals, ostensibly modelled on the one used by FDR to try Nazi saboteurs in 1942—despite dramatic changes that had taken place since, in both military and international law, including the adoption of the Geneva Conventions. Addington seized upon the 1942 precedent, and was the most influential in pushing it through, because of the clout he had by virtue of representing Dick Cheney. Top military

lawyers offered proposals to shift the scheme closer to the existing military justice system; their suggestions were completely ignored.

On Nov. 10, 2001, Cheney chaired a meeting in the White House, attended by Ashcroft, Pentagon General Counsel William Haynes, and White House lawyers. Senior State Department and National Security Council officials were excluded, and Cheney advocated withholding the final draft from Rice and Powell. Cheney discussed the order with President Bush over lunch, and the President then signed it on Nov. 13.

As *EIR* was told, and reported, at the time, military lawyers were extremely angry at the President's order and at the bypassing of the court-martial system, fearing that the entire system of military justice would be tainted. The *Times* quoted Adm. Donald Guter, who has since retired as the Navy's Judge Advocate General: "The military lawyers would from time to time remind the civilians that there was a Constitution that we had to pay attention to."

### **Rumsfeld's Power Base**

The *Times* also disclosed some new details about Addington's activities around the time of the Jan. 25, 2002, "Gonzales" memo cited above, when there was a fierce debate raging within the Administration over the applicability of the Geneva Conventions.

On approximately Jan. 21, while returning from a "field trip" to Guantanamo, Addington urged Gonzales to seek a blanket designation declaring all prisoners at Guantanamo to be covered by the President's order on military tribunals. Gonzales agreed, and within a day, the Pentagon set into motion the procedures intended to prepare for military tribunals to try the Guantanamo prisoners.

A follow-up piece in the *New York Times*, published Oct. 25, describes how the Cheney-Addington policy on detentions encountered rising opposition within the Administration, so that even before last Summer's adverse Supreme Court rulings, the DOD was compelled to begin releasing prisoners—many of them harmless—from Guantanamo.

Within weeks of the decision to include all Guantanamo prisoners under President Bush's order for military tribunals, Military Intelligence officers were reporting to the Pentagon that they didn't have enough evidence on most prisoners even to establish a basis for putting them on trial. But Cheney continued to declare publicly that the Guantanamo prisoners were extremely dangerous, and that they might have information about planned terrorist attacks against the United States.

Resistance to the policy grew in the State Department (which was fielding complaints from other governments, including allies in the Afghan war), and among FBI and DOJ officials (who realized how weak the cases against the prisoners were), and CIA officers (who feared that Guantanamo could become America's *madrasa*, a school for radicalizing prisoners). NSC staffers, even neo-con Elliott Abrams, kept pressing the Pentagon as to whether all of the

prisoners actually belonged there.

But Defense Secretary Rumsfeld made it clear that he wanted to remain in charge, says former Army Secretary Thomas White. "He reigned supreme within the government. The Vice President backed him up, and that was his power base."

Against opposition from almost every other agency, including the Justice Department, Addington continued to push the most aggressive stance possible, according to the *Times* account. A critical element in blocking the Cheney-Rumsfeld plan for kangaroo-court trials was the feisty approach taken by the military lawyers assigned to defend those detainees scheduled for trial. As a result, a number of changes have been made in the structure of the tribunals, and no trials have yet commenced, almost three years after the President's order.

## Torture at Guantanamo

Although there has been no action for many weeks on either the Congressional or Administration investigations of the torture scandal, new revelations have continued to come out, in leaks from military and other officials, which document the damaging consequences of the detention and interrogation policies championed by Cheney and Addington. In the aftermath of the release of some Guantanamo prisoners, disclosures about widespread abuse and torture at Guantanamo have been published in the British and Australian press, but the U.S. press has been largely silent on the matter.

However, the Oct. 17 *New York Times* featured new information obtained from military and intelligence personnel who worked at Guantanamo, documenting that abuse and torture of prisoners there was much more widespread than has so far been admitted by Administration officials, or in the report compiled the Rumsfeld-appointed panel headed by former Defense Secretary James Schlesinger.

The personnel, many of whom were angry about what they had seen, agreed to be interviewed on the condition that their names not be revealed, for fear of endangering their careers. They described a range of "highly abusive" interrogation procedures, which came to an abrupt halt after the disclosures about Abu Ghraib became public.

One regular procedure reported by people who had worked at Camp Delta, is described as "making uncooperative prisoners strip to their underwear, having them sit in a chair while shackled hand and foot to a bolt in the floor, and forcing them to endure strobe lights and screamingly loud rock and rap music played through two close loudspeakers, while the air-conditioning was turned up to maximum levels." These sessions could last up to 14 hours, "It fried them," said a military official. Another source described it as follows: "They were very wobbly. They came back to their cells and were just completely out of it."

David Sheffer, a former senior State Department human rights official in the Clinton Administration, who is now teaching law at George Washington University, said that this

procedure clearly constitutes torture. "I don't think there's any question that treatment of that character satisfies the severe pain and suffering requirement, be it physical or mental, that is provided for in the Convention Against Torture," Sheffer said.

On Oct. 27, attorneys for four British detainees who were released from Guantanamo earlier this year, filed suit in Washington against Rumsfeld, former Guantanamo Commander Maj. Gen. Geoffrey Miller, and others, charging that the Pentagon chain of command authorized and condoned torture and other mistreatment. The 50-page complaint describes inhuman physical and mental torture carried out at Guantanamo, in violation of the U.S. Constitution, the Geneva Conventions, and U.S. statutory law.

## Miller in Iraq

As is well known, Gen. Geoffrey Miller was sent to Iraq in the late Summer of 2003 to "Gitmo-ize" the interrogation procedures at Abu Ghraib prison, with the results memorialized in the infamous photos circulated and published worldwide. Less well known, is what else Miller did on that trip.

According to Miller's own report on the trip (which was included as an annex to the Army's Taguba Report, recently leaked to a news organization), the purpose of Miller's visit was to assess interrogation operations at the military prisons, but also to assess the operations of the CIA's Iraq Survey Group and Task Force 20.

Miller's report is focussed on methods of obtaining what he calls the "rapid exploitation of detainees" at all these sites, and he complained that the detention system as he found it, "does not yet set conditions for successful interrogations." One of Miller's overall recommendations was for the establishment of "Tiger Teams"—integrated interrogation teams consisting of interrogators and analysts with above-top-secret security clearances, such as were used in Guantanamo. Miller said that Task Force 20 "lacks adequate number of trained interrogator-analyst Tiger Teams for mission requirements," and he recommended that these be provided.

Task Force 20, whose very existence is hardly ever acknowledged, is a team made up of Army and Navy special forces, CIA paramilitaries, and, some say, also British and Israeli commandos. It is one of the "hunter-killer" teams created by Defense Secretary Rumsfeld to hunt down, and capture or kill, "high-level targets" in the war on terrorism (see *EIR*, Sept. 24, 2004). In Iraq, Task Force 20 (which is now re-formed as Task Force 121) was the lead organization in the search for Saddam Hussein and his sons and other leading regime officials. It is most likely the case, that the secret detention centers which have come under attention in recent months, are also run by Rumsfeld's "hunter-killer" task forces.

We thus see what Rumsfeld has wrought, using, in the terms of former Army Secretary White, the Office of the Vice President as his "power base."