

# **BY OCTOBER 24, 2001, THEY DECIDED THEY COULD DETAIN PRISONERS AS LONG AS THE AFGHAN WAR CONTINUED**

The reporting on the latest torture documents released in Binyam Mohamed's suit in the UK is damning enough (Beeb, Guardian). They show the highest levels of the British government—up to and including Tony Blair—were getting warnings that Americans were using torture within six months of 9/11. Yet they placed those warnings aside so they could stand united with the US.

But put some of them in context. As Jason Leopold pointed out, for example, the memo—on which Blair wrote comments indicating his initial skepticism about claims that we were using torture was diminishing—is dated January 20, 2002. That was the same day Jay Bybee signed a memo saying Geneva Convention didn't apply. And on February 7, 2002, George Bush wrote his memo declaring that al Qaeda was not entitled to treatment under the Geneva Convention. Not only does the timing make it difficult for Blair to claim his concerns were somehow addressed. After all, if your partner responds to your concerns that it is breaking the Geneva Convention by declaring them invalid in this case, it sure seems to confirm your concerns. But the fact that much of the British national security establishment knew we were torturing makes it clear that declaring al Qaeda was not entitled to Geneva Convention treatment was intended to retroactively excuse torture.

But I'm at least as interested in this document (which doesn't appear to have been released):

Also among the released documents is a letter to London from the British

embassy in Washington, dated 24 October, which reflects a growing realisation that the US was considering detaining people captured in Afghanistan for very long periods, and an understanding that it would be difficult to defend this as lawful.

Heavily censored, the letter shows that **within weeks of the 9/11 attacks, the US and UK governments saw that the longer they could claim they were still waging a form of war, the longer they might be able to detain individuals without trial.** They were aware the argument would wear thin if hostilities should appear to be over.

The author of the letter – whose identity has been redacted – writes: “As long as the war against terrorism in the widest sense continued, the US/UK would have rights to continue to detain those they had been fighting against (even if the fighting in Afghanistan itself were over). [Redacted] conceded that **the strength of such a case would depend on the plausibility of the argument that the war was continuing.**” [my emphasis]

Almost nine years ago, a British embassy official recorded the consensus among American and British officials that the plausibility that we were still at war would affect whether we could legally hold detainees for long periods without trial.

Nine years later, just a handful of the men ultimately captured have had a trial. Our sole claim to still be at war—aside from the Administration’s attempts to stretch the terms of the AUMF—are the 50 al Qaeda members still in Afghanistan. And on that basis, we still hold hundreds of men without trial.

You see, from the start this war was designed to be our longest war. Because all those Commander-

in-Chief powers both Republicans and Democrats have grown to love so much depend on it continuing.

Our men and women are risking their lives in Afghanistan at this point to make indefinite detention more legally "plausible."