THREE TEENAGERS AND A JOURNALIST ATTEMPT TO PROSECUTE BUSH FOR TORTURE

Bush is in British Columbia today, giving a $100,000 speech.

Three men first captured when they were teenagers—Hassan bin Attash (Walid's brother, who was captured when was 16 and remains in Gitmo), Muhammed Khan Tumani (who was captured when he was 17), and German-born Murat Kurnaz (who was 19 when he was captured)—and the Al Jazeera journalist, Sami al-Hajj, are using the opportunity to try to get Bush prosecuted for torture.

There are several interesting details from the filing. For example, they show that Americans used techniques at the Dark Prison (the Salt Pit)—spraying Attash with water—that were not permitted under the Bybee Memo and that were reportedly implicated in Gul Rahman's death not long after. Attash was also physically beaten in Jordan during the period we were drumming up intelligence for the Iraq War because he did not provide the answers on WMD his interrogators wanted.

> Nonsensically, the interrogators asked the youth question after question about weapons of mass destruction—nuclear, biological, and chemical. They also asked him about his brother, Walid bin Attash. When Hassan did not give the answers the interrogators wanted, they would beat him. Americans were present during these interrogation and beating sessions.

And, anticipating Abu Ghraib's tortures, Attash was threatened with electrocution.

The account of Sami al-Hajj's treatment fleshes out two accusations he has made elsewhere. First, that we kept him long after it became clear he was not a threat in an attempt to recruit him to spy on Al Jazeera for us.

> Almost all of the interrogation sessions were aimed at co-opting EL-HAJJ to work as an informant for the CIA within Al-Jazeera – indeed, he and his family were offered US citizenship and money for his son's education if he would agree to become an informant.

It also repeats accounts of Quran desecration published elsewhere.

And the filing also describes Tunami's isolation that—he says—continued up until the time he was release in August 2009.

> In late December 2007, Muhammed sent several letters to his attorneys that had been smeared with human feces. In March 2008, his attorneys received reports from other detainees that Muhammed had been banging his head against his cell walls for hours on end and smearing his cell with excrement. In written correspondence to the U.S. Departments of Defense and Justice, his attorneys expressed grave concerns about Muhammed's mental condition and requested that the government improve his conditions and provide him with appropriate medical care. The government did not respond.

Having laid out the case that Bush knowingly authorized torture, the filing makes the case for why Canada must take action against Bush. A particularly nice touch comes when it recalls the US role in insisting on universal jurisdiction for the Convention Against Torture.

> Article 5(2) provides for universal jurisdiction in all cases where an

> alleged torturer is present –in order to avoid safe havens for perpetrators of torture.‖136 This provision makes CAT–the first human rights treaty incorporating the principal of universal jurisdiction as an international obligation of all State parties without any precondition other than the presence of the alleged torturer.‖137 (emphasis in original) The need for universal jurisdiction for torture was explained as such: –Torture … is according to its definition in Article 1 primarily committed by State officials, and the respective governments usually have no interest in bringing their own officials to justice.‖138
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> 101. It is appropriate in this case to recall the drafting history of this provision. As discussed in the Nowak and McArthur Commentary on CAT, this provision met with –fierce objection‖from many States, with the strongest supporter of the draft provision for universal jurisdiction (presented by Sweden) being the United States: –the US Government expressed the opinion that torture is an offence of special international concern which means that it should have a broad jurisdictional basis in the same way as the international community had agreed upon in earlier conventions against hijacking, sabotage and the protection of diplomats.‖139 The Commentary continues: –It was, above all, the delegation from the United States which had convincingly argued that universal jurisdiction was intended primarily to deal with situations where torture is a State policy and where the respective government, therefore, was not interested in extradition and prosecution of its own officials accused of torture.‖140

> 102. In Article 6(1), CAT states unambiguously that contracting States are obligated to take legal measures against suspected torturers within their jurisdiction:
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> Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measure to ensure his presence. (emphasis added)

The filing ends:

> 171. To conclude, Canada has jurisdiction under domestic and international law when BUSH is –present in Canada.‖
> 172. The foregoing demonstrates that a case for torture exists, as a matter of law and fact, against George W. BUSH.
> 173. Accordingly, once BUSH is present, if no extradition is sought, the Canadian authorities are under a positive legal obligation to investigate BUSH and submit the case for prosecution.

Of course it won't work. But I suspect this will be repeated whereever Bush goes to collect his $100,000 speaking fees.