

The Black Sites

If a man cries out in pain, alone and in the forest, will he be heard? That is the thought that came to mind as I read this article, *The Black Sites*, by Jane Mayer, in the August 13, 2007 issue of the *New Yorker*.

Surely I am not alone in putting various issues of the *New Yorker* to one side until the occasion arises to read them. In this case Jane Mayer's column would have no interest except as a footnote in history - if things had changed in any significant way. They have not. Her piece is as current as if the torture documented here were in the next room.

In March of 2007 then Attorney General, Alberto Gonzalez, had phoned Mariane Pearl, widow of the murdered *Wall Street Journal* reporter, with the news that a terrorist in U.S. custody - Khalid Sheikh Mohammed - had confessed to the murder.

The murder of Pearl was a brutal, indefensible act. If one could be sure that Khalid Sheikh Mohammed had done the deed it would be hard to muster much sympathy.

But there are problems involved, which led Jane Mayer to a look at the C.I.A.'s secret interrogation program. There is substantial reason to doubt his guilt - doubts not by soft-hearted liberals who might doubt any confession, but by C.I.A. agents who had been investigating the case. Robert Baer, a former C.I.A. officer, said "My old colleagues say with one-hundred-percent certainty that it was not K.S.M. who killed Pearl."

Mohammed's interrogation was part of the CIA program in which suspects were detained in "black sites" outside the United States and subjected to extraordinary treatment. That program was suspended in the fall of 2006 by George Bush, who announced the closure of these sites and the transfer of the prisoners to Guantanamo.

There has been concern about the legality of the C.I.A. methods, concern that they may have violated the U.S. Torture Act passed by Congress in 1994. The Red Cross - whose reports cannot be made public in order to insure it will have access - is said, by sources familiar with the reports, to warn that there may have been "grave breaches" of the Geneva Conventions. Mayer wrote that "A former C.I.A. officer, who supports the agency's detention and interrogation policies, said he worried that, if the full story of the C.I.A. program ever surfaced agency personnel could face criminal prosecution".

Let me briefly take up the usual question by defenders of torture - "If you had captured a man who had set a nuclear device to go off in a crowded part of the city, and you knew he could provide the information needed to stop the device, are there any methods you wouldn't use to get that information?"

A good question, and all of us are tempted to say "well, if you put it that way", or "I hope I never have to answer that question". The practical answer, which is not a retreat to some basic moral stand, is that if you really want that information your chances of getting it by ruthless torture are

much slimmer than if you follow other methods, which are more generally used by the F.B.I. than by the C.I.A. The C.I.A. knows little about running prisons, and little about interrogation.

One former official in the C.I.A. said "What are you going to *do* with these people? The utility of someone like K.S.M. is, at most, six months to a year. You exhaust them. Then what? It would have been better if we had executed them".

Among the methods used to break the captives was sensory deprivation, in which subjects are "confined without light, odors, sound, or any fixed references of time and place" and thus very deep breakdowns can be provoked.

Khaled el-Masri was a German car salesman captured by the C.I.A. in 2003, and sent to Afghanistan, based on erroneous intelligence. He is considered one of the more credible sources on the black-site program because Germany has confirmed he has no connections to terrorism. Masri described inmates bashing their heads against the walls in an effort to kill themselves. K.S.M. had, of course, been water-boarded frequently. One former officer said that the C.I.A. kept a doctor by during interrogations to make sure the prisoner didn't die but added the process could cause "*lasting psychic damage to the interrogators.*"

Critics of the C.I.A. program think that the very nature of the interrogation and detention program makes it impossible to prosecute "the entire top echelon of Al Qaeda leaders in captivity". The prosecutions wouldn't hold up in open court if torture can be documented. (Testimony obtained by torture cannot be used in prosecution).

Leaving aside the question of K.S.M.'s guilt or innocence, or the problem of whether he can actually be tried in a court of law, the deeper question is what has changed in U.S. policy since Jane Mayer wrote her report. Guantanamo is still open. Poland - which was almost certainly one of the "black-sites" - continues to deny any involvement.

At what point do we realize that not only those involved with Al Qaeda, but also those involved in their detention and interrogation, may have gone far beyond the law, that the courts need to investigate and indict those in the C.I.A. who were involved, up to the top of the chain of command, which includes George Tenet and Donald Rumsfeld?

Let me close by quoting in full the final paragraph of Jane Mayer's article:

"Asra Nomani, the Pearls' friend, said of the Mohammed confession, 'I'm not interested in unfair justice, even for bad people'. She went on, 'Danny was such a person of conscience, I don't think he would have wanted all of this dirty business. I don't think we would have wanted someone being tortured. He would have been repulsed. This is the kind of story that Danny would have investigated. He really believed in American principles.'"

Does our current Administration? If so when? When do the indictments for torture begin?

David McReynolds, 6/1/10