

TORTURE TEAM: HUMAN RIGHTS, LAWYERS, INTERROGATIONS AND THE ‘WAR ON TERROR’ — A RESPONSE TO PHILIPPE SANDS

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I INTRODUCTION

Tonight I have been asked to talk about *Torture Team*¹ but I want to go beyond that. The rise of the neo-conservatives in the 1990s, their *Statement of Principles* published in 1997,² the election of George Bush and the terrible events of September 11 all created an atmosphere of fear and, for the neo-conservatives, an opportunity which they seized avidly. The Project for a New American Century has produced some formative neo-conservative documents, especially *Rebuilding America’s Defenses*³ — it is remarkable how influential and prescient this document was. All these factors offer some explanation as to why the events described in *Torture Team* unfolded as they did.

In this speech, I want to draw attention to two key series of events and then to look at the wider implications of those events. The first concerns the 2004 report reviewing United States Department of Defense detention operations.⁴ In a sense this report tells us as much as Sands’s book because it is silent on so many

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¹ Philippe Sands, *Torture Team: Deception, Cruelty and the Compromise of Law* (2008).

² Project for the New American Century, *Statement of Principles* (1997) <<http://www.newamericancentury.org/statementofprinciples.htm>> at 23 September 2008.

³ Project for the New American Century, *Rebuilding America’s Defenses: Strategy, Forces and Resources for a New Century* (Project for the New American Century Report, September 2000) <<http://www.newamericancentury.org/RebuildingAmericasDefenses.pdf>> at 23 September 2008.

⁴ Independent Panel to Review Department of Defense Detention Operations, *Final Report of the Independent Panel to Review DoD Detention Operations* (2004) <<http://www.defenselink.mil/news/Aug2004/d20040824finalreport.pdf>> at 23 September 2008 (‘*Schlesinger Report*’).

matters and inadequate on others. It is these silences and omissions that are revealing.

The second series of events concerns those described and exposed in Philippe Sands's book and implicate, in particular, the President's most senior legal advisers, his Attorney General and the Department of Justice. It begins not much later, in February of the same year, as Donald Rumsfeld, US Secretary of Defense, hand-picked Major General Michael Dunlavey for Guantánamo Bay. These strands were largely separate, meeting at the centre in the persons of Rumsfeld and his Chief Counsel, William J Haynes.

II THE COVER UP: THE ADMINISTRATION'S ATTEMPT TO PASS THE BUCK

A *The Schlesinger Report*

In the public sense, this story begins in April 2004. At this time, photographs of torture at Abu Ghraib were published around the world. America's reputation was immediately threatened. The Abu Ghraib photographs raised serious questions and the Administration seemed to have no clear response to them.

Was the torture permitted to occur? Were the same practices operating in Afghanistan, in Guantánamo Bay? Was it an aberration by unsupervised, low-level military officers or by ill-trained reservists? Or was it something deeper, more fundamental, going to the very heart of the Administration?

In May 2004, Schlesinger was appointed to chair an Independent Panel, examining detention techniques and operations. The Panel reported in August 2004, suggesting that the abuse was the fault of army personnel of all ranks, and also of the army as an organisation.⁵ The Report was silent on the role of the Department of Defense and the role of the Department of Justice. It reported decisions that had been made, often without comment.⁶ It accepted the Presidential Decision of February 2002⁷ — which established that the *Geneva Conventions*⁸ were not to apply to the US in terms of their actions with al Qaeda detainees, while simultaneously providing that detainees were to be treated humanely — without exploring the basis of that decision. The Report never questioned the President's power or the legal advice on which the Decision was based. It accepted that the request for aggressive interrogation techniques came from interrogators at Guantánamo Bay, without questioning how this had

⁵ Ibid.

⁶ See, eg, *ibid* 34, regarding the President's decision that the *Geneva Conventions* did not apply to detainees.

⁷ George W Bush, 'Memo 11: Humane Treatment of al Qaeda and Taliban Detainees' (7 February 2002) in Karen Greenberg and Joshua Dratel (eds), *The Torture Papers: The Road to Abu Ghraib* (2005) 134 ('Presidential Decision').

⁸ *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949*, opened for signature 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950); *Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949*, opened for signature 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950); *Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949*, opened for signature 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950); *Geneva Convention relative to the Protection of Civilian Persons in Time of War of August 12, 1949*, opened for signature 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950) (collectively, '*Geneva Conventions*').

occurred. It was an inadequate report but it served the political interests of the Administration admirably. By blaming the army, the report really said that the centre of power, Washington, was not involved. And yet, despite the findings of the *Schlesinger Report*, the questions surrounding the Administration's involvement in the abuse of detainees were not put to rest.

B *The Cracks Begin to Appear*

As events transpired, the extent of the Administration's involvement had already begun to emerge. Before the Panel reported, John Ashcroft, Attorney General, and Paul Wolfowitz, Deputy Secretary of Defense, both appeared before Senate Committees, their ineffective performances highlighting rather than allaying concern.⁹ In addition, on 22 June 2004, well before the Schlesinger Panel was due to report, Alberto Gonzales, Chief Counsel to the President, and Haynes, Chief Counsel to Rumsfeld, supported by other staff, held an extraordinary press conference in the White House.¹⁰

At this conference, documents were released purportedly showing the care, concern and consideration that had been given to issues of detention and interrogation by the Administration.¹¹ This was done to demonstrate accountability and transparency, but in many ways exposed the true depth of the problem. One document was the Haynes memo to Rumsfeld, recommending the use of 18 additional interrogation techniques.¹² Rumsfeld signed that recommendation on 2 December 2002.

At this press conference a clear lie was told to the world. The Administration had tried to argue that the move to torture had come from the army, from the bottom up. The complete account tells another story, which I now turn to address.

III A TALE OF TWO STRANDS: THE UNRAVELLING OF THE ADMINISTRATION'S ACCOUNT

A *The Presidential Decision*

The first strand of the Administration's account involves the President's Decision of February 2002, denying application of the *Geneva Conventions*.

On 22 January 2002, a memorandum was sent to Gonzales and to Haynes from Jay Bybee, Assistant Attorney General. That advice concluded that neither

⁹ Sands, *Torture Team*, above n 1, 125–6.

¹⁰ Alberto Gonzales et al (Press Briefing, 22 June 2004) <<http://www.whitehouse.gov/news/releases/2004/06/20040622-14.html>> at 23 September 2008.

¹¹ Ibid.

¹² William J Haynes II, 'Memo 21: Counter-Resistance Techniques' (27 November 2002) in Karen Greenberg and Joshua Dratel (eds), *The Torture Papers: The Road to Abu Ghraib* (2005) 236. For a description of these techniques, see Jerald Phifer, 'Memo 19: Request for Approval of Counter-Resistance Strategies' (11 October 2002) in Karen Greenberg and Joshua Dratel (eds), *The Torture Papers: The Road to Abu Ghraib* (2005) 227, 227–8.

the *War Crimes Act*¹³ nor the *Geneva Conventions* would apply to the detention conditions of al Qaeda or Taliban prisoners.¹⁴

Even though the Secretary of State Powell, supported by William Taft IV, sought to argue to the contrary, Gonzales wrote a strong brief opinion that the Department of Justice advice from Bybee should stand. A few days later, on 1 February 2002, Attorney General John Ashcroft joined the argument. He wished to foreclose any possibility of judicial review and recommended that a determination that the *Geneva Conventions* did not apply would provide the Administration with the highest level of legal certainty under US law.¹⁵ Powell and Taft's opposition was hardly noticed.

And so the President made his determination on 7 February 2002, putting aside the *Geneva Conventions*. The Decision reaffirmed that prisoners should be treated humanely,¹⁶ although no definition of that term was given. The Decision also declared that the US would comply with the *Geneva Conventions* in practice 'to the extent appropriate and consistent with military necessity',¹⁷ thus watering down even the 'in principle' application of the *Geneva Conventions*. This decision of the President established an environment of disregard for international law, and influenced events throughout the rest of the year. It could not be questioned by military officers. The Commander-in-Chief had spoken.

It wasn't long before these same legal counsel, who had assisted the President in placing prisoners outside legal protection, began redefining legal restraints on interrogation and redefining torture. As early as 26 February 2002, a memorandum for General Counsel Haynes, concerning 'potential legal constraints applicable to interrogation of persons captured by US armed forces in Afghanistan' was signed by Jay Bybee.¹⁸

This was the Bybee whose famous opinion of 1 August 2002 concludes in this way:

torture as defined ... and prescribed ... covers only extreme acts. Severe pain is generally of the kind difficult for the victim to endure. Where the pain is physical, it must be of an intensity akin to that which accompanies serious physical injury such as death or organ failure. Severe mental pain requires suffering not just at the moment of infliction but it also requires lasting psychological harm ...¹⁹

Further to this legal advice, in August 2002, Deputy Assistant Attorney General John Yoo responded to a request from Counsel to the President,

¹³ *War Crimes Act of 1996*, 18 USC § 2441 (2008) ('*War Crimes Act*').

¹⁴ Jay S Bybee, 'Memo 6: Application of Treaties and Laws to Al Qaeda and Taliban Detainees' (22 January 2002) in Karen Greenberg and Joshua Dratel (eds), *The Torture Papers: The Road to Abu Ghraib* (2005) 81, 81–117.

¹⁵ John Ashcroft, 'Memo 9: Letter to George W Bush, President of the US' (1 February 2002) in Karen Greenberg and Joshua Dratel (eds), *The Torture Papers: The Road to Abu Ghraib* (2005) 126.

¹⁶ Presidential Decision, above n 7, [3].

¹⁷ *Ibid.*

¹⁸ Bybee, 'Memo 6', above n 14.

¹⁹ Jay S Bybee, 'Memo 14: Standards of Conduct for Interrogation under 18 USC §§ 2340–2340A' (1 August 2002) in Karen Greenberg and Joshua Dratel (eds), *The Torture Papers: The Road to Abu Ghraib* (2005) 172, 213–14.

Gonzales, 'concerning the legality, under international law, of interrogation methods to be used during the current war on terrorism'.²⁰

All of this indicates without a doubt that at the highest level of the White House and the Department of Justice, prisoners were not only placed outside the law, but the legality of interrogation methods and techniques was under intense scrutiny — despite the conclusions of the *Schlesinger Report*.

B *Sidelining the Military Lawyers*

This brings me to the second strand of the Administration's account so ably exposed by Philippe Sands, concerning the role of the military legal system.

In February, Rumsfeld held discussions with Major General Dunlavey. Rumsfeld thought he would be an ideal person to establish tough interrogation techniques at Guantánamo Bay, and so he was appointed.²¹

Dunlavey wanted legal cover and so required his Staff Judge Advocate, Lieutenant Colonel Diane Beaver, to prepare an opinion on expanded interrogation techniques. Beaver did so, but was uneasy and isolated from her colleagues and other sources of advice. She had no access to an adequate international law library. Attempts to contact other senior lawyers within the system were not answered.²² Beaver was aware that the *Geneva Conventions* did not apply because of the Presidential Decision of February 2002.²³ In the end, she did as she had been ordered and provided an opinion. She knew she was not an expert in this subject and, while the opinion found that the additional interrogation techniques that had been put together were legal,²⁴ her recommendation, sent to Dunlavey on 11 October 2002, concludes in this way:

Since the law requires examination of all facts under a totality of circumstances test, I further recommend that all proposed interrogations involving Category 2 and 3 methods,²⁵ must undergo a legal, medical, behavioural science and intelligence review prior to their commencement.²⁶

Clearly Beaver had considerable reservations. Dunlavey ignored the reservations expressed by Beaver and included them with the list of 18 proposed techniques — provided by Lieutenant Colonel Phifer — to General Hill. Hill's response on the 25 October went to General Meyers, Chairman of the Joint Chiefs of Staff in Washington.²⁷ Hill was clearly uneasy with Dunlavey's recommendation. The important element in Hill's note involved these words:

²⁰ John Yoo, 'Memo 15: Letter to Alberto Gonzales, Counsel to the President' (1 August 2002) in Karen Greenberg and Joshua Dratel (eds), *The Torture Papers: The Road to Abu Ghraib* (2005) 218.

²¹ Sands, *Torture Team*, above n 1, 50–1.

²² *Ibid* 77.

²³ Sands, *Torture Team*, above n 1, 79.

²⁴ Diane Beaver, 'Memo 18: Legal Review of Aggressive Interrogation Techniques' (11 October 2002) in Karen Greenberg and Joshua Dratel (eds), *The Torture Papers: The Road to Abu Ghraib* (2005) 226, 226–35.

²⁵ For an explanation of these methods see Sands, *Torture Team*, above n 1, 5–7, 80–2.

²⁶ Beaver, above n 24, 235.

²⁷ James T Hill, 'Memo 16: Counter-Resistance Techniques' (25 October 2002) in Karen Greenberg and Joshua Dratel (eds), *The Torture Papers: The Road to Abu Ghraib* (2005) 223.

However I desire to have as many options as possible at my disposal and therefore request the Department of Defense and Department of Justice lawyers to review the third category of techniques.²⁸

Hill made no recommendation to accept any of them. From that point, Hill heard nothing until he saw the Rumsfeld order promulgated on 2 December.²⁹ His advice had been ignored.

General Meyers had a discussion with Haynes, who had seen the recommendations from Dunlavey, and assured Meyers that the appropriate people had been consulted but there was nothing in writing.

On 27 November 2002, Haynes wrote to the Secretary of Defense with his own recommendation to accept the additional techniques. Rumsfeld signed the request on 2 December.³⁰

It is significant that the Beaver request for further legal examination, and the request by the much more senior Hill, for further and better advice from the Department of Defense and the Department of Justice, were totally ignored. Indeed, the military legal system, with the exception of Haynes and those political appointees immediately around him, was ignored. It was suspected that they would oppose the recommendations for intensified interrogation techniques from Guantánamo Bay. The Judge Advocates General and General Meyer's own legal counsel were not involved.

Once the order to accept additional interrogation techniques was promulgated on 2 December 2002, there was a very significant reaction, much of which was led by Alberto Mora, General Counsel to the Navy.³¹ It says a good deal for the system that he was able to get the decision rescinded as early as 15 January 2003.³²

IV THE IMPLICATIONS

In my mind, there can be no doubt at all about the Administration's guilt and the complicity of senior lawyers and politicians. If I were describing their actions in an Australian context, I would call it corrupt. The US is a rules-based system — it has a *Bill of Rights*³³ and a strong Supreme Court. However, the events that have transpired present serious questions. How can such a system be so damaged? How can legality be so destroyed? How can due process be so appallingly ignored? One lesson is that even the best constitution and strongest institutions in the world are no ultimate protection if those in power, and their influential allies, are determined to proceed with a particular course of action.

However, the likelihood is that the people involved will not pay any penalty, although, as Sands has said, some of those involved may need to watch which countries they travel to outside the US.³⁴

²⁸ Ibid.

²⁹ Sands, *Torture Team*, above n 1, 102.

³⁰ Haynes, above n 12, 236.

³¹ Sands, *Torture Team*, above n 1, 159–72.

³² Ibid 169–72.

³³ *US Constitution* amend I–X.

³⁴ Philippe Sands, 'Torture Team: The Responsibility of Lawyers for Abusive Interrogation' (2008) 9 *Melbourne Journal of International Law* 365, 378–9.

The remarkable thing about the *Schlesinger Report* is, despite the severity of his condemnation of the army, the consequences seemed relatively light. In its own way, that is further supporting evidence, if any were needed, of the complicity of the highest political authorities.

While there are many protections built into the American system, for too long they failed. It is possible to argue that, in the end, the protections worked because the Rumsfeld orders were rescinded but the Presidential order was not. In this respect it is worth recalling the Supreme Court's decisions in *Rasul v Bush*,³⁵ *Hamdan v Rumsfeld*³⁶ and *Boumediene v Bush*.³⁷ These decisions represent a struggle to preserve constitutional guarantees. Here, the Supreme Court of the US is in a stronger position to determine the law than the High Court of Australia where the common law, which might otherwise prevail, can be overturned by the legislation of government.

It is, therefore, essential to consider how such breach of process can be prevented in the future. It is possible to suggest some significant steps to strengthen the current system. The Senate should exercise even more vigorous oversight of Presidential appointees and of executive actions. Officials breaching their oath of office should be prosecuted and suffer heavy penalties. There could be more ruthless exposure of a person's true beliefs, positions and attitudes. Arguably, even before his appointment in February 2005, Gonzales had already signed a document giving implicit support to torture, although this was not widely known in the public arena. Finally, the oversight committees which survey intelligence and security could be made much more effective. Failure to disclose methods and operations to such committees should become a significant criminal offence.

For the wider international community, we should ask ourselves what we can do to re-engage the best of America, the America which has done so much to support, to lead the move to a rules-based international system in the years since the Second World War. We should not forget this. The America of Woodrow Wilson, of the Roosevelts, of Harry Truman even, was instrumental in building the post-war humanitarian and political order. The *Universal Declaration of Human Rights*³⁸ and the later-negotiated human rights Conventions³⁹ (which sought to give legal force to the Declaration's high principle) and the Marshall Plan never would have happened without American leadership and drive. Even the *Rome Statute of the International Criminal Court*,⁴⁰ subsequently repudiated by Bush, was originally signed by the US. The US has momentarily forgotten this America — and so has the world at large.

³⁵ 540 US 1175 (2004).

³⁶ 548 US 557 (2006).

³⁷ 553 US __ (2008).

³⁸ GA Res 217A (III), UN GAOR, 3rd sess, 183rd mtg, UN Doc A/RES/217A (III) (10 December 1948).

³⁹ See, eg, *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 999 UNTS 3 (entered into force 3 January 1976); *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987); *Convention on the Prevention and Punishment of the Crime of Genocide*, opened for signature 9 December 1948, 78 UNTS 277 (entered into force 12 January 1951).

⁴⁰ Opened for signature 17 July 1998, 2187 UNTS 3 (entered into force 1 July 2002) ('*Rome Statute*').

Yet neither is Australia immune to threats and incursions into the rule of law and civil liberties. For instance, we have no federal bill of rights and the *Australian Constitution* provides few explicit protections of individual rights. Further, the sovereignty of Parliament is entrenched through its ability to overturn the common law by legislation. In a sense, we are at the whim of government. For example, the High Court by a majority of four to three in *Al-Kateb v Godwin*⁴¹ decided that a failed asylum seeker could, if certain conditions prevailed, be jailed for life. This provoked Professor James Crawford to label parts of this decision ‘disreputable’ in a speech delivered in Canberra earlier this year.⁴²

Furthermore, the treatment of David Hicks also represents complete governmental disregard for the application of the rule of law and due process, as is meant to apply both here and in America.⁴³ This was confirmed by the English Court of Appeal in *R (On the Application of Abbasi) v Secretary of State*,⁴⁴ involving a UK detainee held in Guantánamo Bay.

Finally, our new national security laws allow for Australians, known to be innocent of any evil thought or deed, to be secretly detained for interrogation under new security laws, demonstrating yet again the tenuous situation of human rights under Australian law. Despite our democratic institutions, we legislate for secret detention of the innocent.⁴⁵ We need a properly-based federal bill of rights to influence the behaviour of governments and bureaucracies. I see no other way of effectively limiting abuses of power.

There are ethical issues concerning the behaviour of politicians and of senior bureaucrats, especially since they are now political appointees. The governmental statements published by Prime Ministers are clearly insufficient safeguards, and are too often ignored without consequence. Perhaps we should learn from the US by more vigorously implementing what rules we have. For example, the senior Senator for Alaska, Senator Stevens, has recently been charged with hiding gifts by the Department of Justice.⁴⁶ We need to establish and enforce the strictest codes of ethical behaviour, which should be independently administered, rather than by the mere will of the Prime Minister.

⁴¹ (2004) 219 CLR 562.

⁴² James Crawford, ‘International Law in the House of Lords and the High Court of Australia 1996–2008: A Comparison’ (Paper presented at the Australian and New Zealand Society of International Law, Canberra, Australia, 27 June 2008) <http://www.law.anu.edu.au/Cipl/Lectures&Seminars/2008/KirbyLecture_Crawford.pdf> at 23 September 2008.

⁴³ See, eg, Leigh Sales, *Detainee 002: The Case of David Hicks* (2007); Timothy L H McCormack, ‘David Hicks and the Charade of Guantánamo Bay’ (2007) 8 *Melbourne Journal of International Law* 273. See also Sir Anthony Mason and Geoffrey Lindell, ‘*Detainee 002: The Case of David Hicks* by Leigh Sales’ (2008) 9 *Melbourne Journal of International Law* 515.

⁴⁴ [2002] EWCA Civ 1598. The British Court of Appeal recognised that the detainees in Guantánamo Bay were being held in conditions that violate fundamental principles of international law.

⁴⁵ *Australian Security Intelligence Organisation Act 1979* (Cth) div 3.

⁴⁶ Department of Justice, ‘US Senator Indicted on False Statement Charges’ (Press Release, 29 July 2008) <<http://www.usdoj.gov/criminal/us-v-stevens/press/2008/jul/07-29-08false-statement-charges.pdf>> at 23 September 2008.

There are also particular issues for lawyers themselves which have been so ably but moderately exposed by Sands. *The Torture Papers*⁴⁷ and Sands's book, *Torture Team*, show that it is not just lawyers but also governments and government bureaucracies that need a stronger ethical base that may circumscribe their actions.

There should be much greater accountability for damaging or ignoring the basic rights of individuals, with the possibility of significant penalties for the breach of such standards. Stronger freedom of information legislation, which is hopefully forthcoming,⁴⁸ should lead to fuller exposure of bureaucratic decisions and methods. We also need more effective appeal mechanisms against administrative decisions to strengthen Australians against large and sometimes frightening bureaucracies.

What is the nature of a lawyer's duty? I was once appalled to have a senior Head of Department ask me what the public service should do when ordered to do something illegal. Lawyers really do have obligations to the law, not just to their clients or their political masters. Their duty should be to justice within the law. Similarly, the duty of a lawyer to a President or Prime Minister is not to find a way of justifying or constructing a legal argument to allow that President or Prime Minister do what they want. It is also to keep that President or Prime Minister within the law. Arguably a number of US lawyers have, in recent years, breached their oath of office to uphold the *US Constitution* and the laws of the US. Arguably, it was such a situation that propelled the UK into the Iraq War.⁴⁹

More generally, legal rules must be strengthened through enforcement of significant penalties, whether involving lawyers, bureaucrats or politicians. This builds upon the precedent of the US itself, which, in the *Justice Trials*,⁵⁰ held German jurists responsible for implementing and furthering the Nazi 'racial purity' programme. More recently, the *Pinochet* decisions⁵¹ have provided new precedents that should give some warning to heads of state or government.

We know that our systems can be corroded, that evil actions can be undertaken which would indeed do credit to any tyranny. We know that the most powerful people can plot and lie to achieve their ideological objectives. Democratic values cannot be assumed to apply; they can be subverted and overthrown. We do not like to recognise it or to speak it, but unless we do we will continue to make serious mistakes like the ones described in *Torture Team*.

⁴⁷ Karen Greenberg and Joshua Dratel (eds), *The Torture Papers: The Road to Abu Ghraib* (2005).

⁴⁸ As foreshadowed by the Federal Government earlier this year: Senator John Faulkner, Cabinet Secretary, 'Freedom of Information Reform' (Press Release, 22 July 2008) <http://www.smos.gov.au/media/2008/mr_252008.html> at 23 September 2008.

⁴⁹ 'Full Text: Written Answer on Iraq Advice', *BBC News* (UK) 28 April 2005 <http://news.bbc.co.uk/2/hi/uk_news/politics/vote_2005/frontpage/4492195.stm> at 23 September 2008.

⁵⁰ *US v Altstoetter et al*, reported in *Trials of War Criminals before the Nuernberg Military Tribunals under Control Council Order No 10: Nuernberg, October 1946–April 1949* (1951) vol III ('Justice Trials').

⁵¹ *R v Bow Street Metropolitan Stipendiary Magistrate; Ex parte Pinochet Ugarte (No 3)* [2000] 1 AC 147.

We have put aside George Kennan's injunction from 1946 that we must not fall into the ways of those with whom we are seeking to deal.⁵²

There is one final point. Much of *Torture Team* demonstrates that the Bush Administration was prepared to ignore or evade international agreements and treaties. This erosion may provide a more credible explanation of why the Administration has not ratified the *Rome Statute*. Its excuse, that the treaty would have allowed capricious prosecutions against US citizens, never had much credibility. It is more likely that such a treaty would have provided an unwanted restraint on their powers and threatened the impunity with which they acted in regards to the events described in *Torture Team*.

⁵² George Kennan, 'Excerpts from Telegraphic Message from Moscow of February 22, 1946' in George Kennan, *Memoirs* (1967) 547, 559.