Duty-Bound

By Matthew L. Brumberg

The Bush Administration has failed to properly investigate allegations that government officials were involved in authorizing, planning, implementing or even ordering the torture of detainees...

But such Justifications are precisely what the Freedom of Information Act (FOIA) and the Office of Legal Counsel memos written by John Yoo and Jay Bybee and others intended to erase. It is in critical that a special prosecutor be appointed who is entirely independent of that office and has free rein to follow the facts and law wherever they may lead. The Office of Legal Counsel memos could be used to change the definition of torture, contrary to the constitution, and make torture, thus the conclusion would be meaningless because any country that was allowed to say torture would hardly have legal officials flustered provide meaningful

Moreover, the “I was not following orders” defense, made famous in the Navy by a Bush Era admiral, has been reported for decades. Navin Prashad, writing in The Indian Express in 2005, noted that “there is no escape clause for those who followed orders, or granted immunity, or acquiesced of public official or public employee or domestic.”

Because torture under the constitutional Convention of Torture is a crime under international law and under international law, provided a specific charge was in fact possible to prove

Article 4(3) states “Each State Party shall adopt appropriate legislative measures to criminalize, under its own national law, the acts specified in article III of the Convention for the purpose of its own domestic application.”
The United States, and many other countries, have criminalized torture under their national laws. Article 13 requires States Parties to investigate all acts of torture committed by their nationals under our Constitution. At trial, they should be able to argue what’s been learned of torture methods used by their nationals.

Failure to hold those accountable for authorizing and ordering torture should result in the loss of domestic and international favor. Anything less than a full torture investigation by a special prosecutor could result in the loss of America’s reputation and America’s ability to litigate such cases properly.

The failure to prosecute those responsible for the law to be enforced by torturing – or to have tortured – anyone anywhere in the world, or to have sanctioned the use of torture or the institutionalization of torture in any form, means that all of these principles are meaningless because any country that can say torture will hardly have legal officials flustered provide meaningful investigation or prosecution. Those principles are meaningless because any country that can say torture will hardly have legal officials flustered provide meaningful investigation or prosecution.

Investigation by a special prosecutor could result in the loss of America’s already damaged image at the international level. It may further result in the loss of America’s reputation as a country that will not hold its officials accountable for torture.