

**The  
BLACK  
C o m m e n t a t o r**  
Commentary, analysis and investigations  
on issues affecting African Americans  
[www.blackcommentator.com](http://www.blackcommentator.com)

**April 30, 2009 - Issue 322**

[Contents of Issue](#)

[Click here](#)

[Home](#)

**The Four Torture Memos, Eichmann, and the Obama Administration  
National Affairs**

**By Lawrence R. Velvel, JD**

**BlackCommentator.com Columnist**

Click on the back button of your browser to return to non printer friendly page of this article

[Click here](#) to get helpful hints for viewing and printing this printer friendly plain text page

I have read the four memoranda that were recently released by the DOJ and authorized torture. Permit me to invent a similar but short memo that will allow the reader, without reading the approximately 120 densely packed pages of the four memos, to grasp their style, their character, their techniques, their aims, and, inherently and avoidably, the nature of the people who wrote or signed off on them: John Yoo, Jay Bybee and Steven Bradbury.

To: Reinhard Heydrich

From: Joseph Alstotter, Chief of Section of Legality

Re: Transportation

Date: February 1, 1942

You have asked the legal opinion of the Section of Legality on a matter related to transportation.

You have informed us that the trains containing persons being taken to Auschwitz, mostly Jews, have cars in which the transportees are so numerous that they are forced to stand for the entire trip, which takes five days and eleven hours. Because of the close packing of standing bodies within the cars, there is a lack of air: the conditions are suffocating. Although the transportees are allowed out of the car for fifteen minutes once every eight hours, when they are each fed half a bowlful of thin gruel by the side of the tracks, the conditions of transportation cause some of them to weaken so greatly that they suffocate inside the cars. Or by somehow sliding to the floor

(even though the close packing of the bodies causes some of their bodies to be held vertical for a period after they have already died), they become trampled to death. Old women, old men, and young children, you inform us, are the ones most susceptible to dying by suffocation or by being trampled after sliding to the floor.

You further inform us that, when the trains stop once every eight hours and people get off to eat, there usually are a number of transportees who are too weak to get back on the train or who feign such weakness. These individuals are quickly examined by a doctor who accompanies the train for this purpose. If the examination shows them to be too weak to continue, they are shot and left by the side of the tracks. Medical officers attest that the shootings cause no unnecessary or long lasting pain because the people are shot by pressing the muzzle of a pistol directly against the back of the head so that death is instantaneous.

You have informed us that the train cars are packed as tightly as they are because of military necessity. Our armies are fighting the Bolsheviki in a life and death struggle on the eastern front. If we lose the war on the Bolsheviki front, Germany will be laid waste and will cease to exist as a nation. There is therefore an overwhelming military necessity to use the railroad, one of Poland's few, to move a continuous stream of tanks, artillery, small arms, ammunition, food, etc. to our eastern armies. Engines and cars are thus employed exclusively for that purpose, with the sole exception that once each week an engine and ten cars are used to transport Jews to Auschwitz. This movement of the Jews is essential because they, like the Bolsheviki, are a bone in the throat to the German people and must be eliminated for Greater Germany to survive and prosper. (Not surprisingly, they often are the leaders of the Bolsheviki.) Transporting Jews to Auschwitz carries out a major policy decision of the Fuhrer and his advisers established at the Wannsee Conference in 1941 and set forth in appropriate prior memos from this office.

As you have explained to us, this railroad transportation of the Jews, as essential as it is, must be done in a way that minimizes interruption of, or interference with, the movement of supplies to our eastern armies. The cars are therefore packed as tightly as they are, since otherwise three trains per week would be required instead of just one, with a corresponding adverse impact on the movement of supplies to our armies and a correspondingly enhanced risk of losing the war against the Bolsheviki, with the accompanying destruction of Germany.

You have asked us, in light of these facts, to opine on whether the transportation of Jews to Auschwitz in this way is a crime against international law in violation of the rule laid down in the 1921 case of *Van Devent v. Hohenzollern*. Our opinion on this question is required because, now that the United States, under the Rooseveltian Jewish cabal, has entered the war against us, a few officers and soldiers who are involved in the transportation of Jews have asked for assurance that this is legal, lest they be subject to punishment as war criminals should Germany unexpectedly lose the war. You recognize that this kind of defeatism could be handled in

the usual way, by shooting the offender or hanging him from a lamppost, but you think it would be better if it were possible to obtain an opinion from the Section of Legality holding that no crime is being committed and there can therefore be no punishment for any supposed violation of international law.

It is our judgment that the transportation to Auschwitz, as you have described it to us, is not a crime, is completely lawful, and cannot be punished. In *Van Devent v. Hohenzollern*, German soldiers had been fired on by partisans, who were not in uniform, as the Kaiser's armies moved through Belgium in 1914. (The partisans would fire from roofs, windows, etc.) In consequence, when the Kaiser's army would enter a Dutch town, it began to shoot three or four of the leading citizens - the mayor and town councilmen, for example - as a warning to other partisans of what would happen if German soldiers were killed by nonuniformed partisans. This expedient worked very well, since the shooting of German soldiers by partisans ceased.

Nonetheless, the Dutch court ruled in 1921 that the shooting of town leaders as a warning to potential partisans constituted a crime under international law. The court's reasoning was that an army going through enemy territory cannot shoot innocent people, or anyone under its control whether innocent or not. The court said that the shooting of innocents, or even of guilty parties without some form of suitable trial to establish guilt, cannot be part of state or military policy under international law, and necessarily is, instead, a crime, under international law.

As we have stated previously, however, the German government does not accept that the tribunals of foreign governments can establish the rules governing what it is legal or not legal for the German government to do. Therefore, the decision in *Van Devent v. Hohenzollern* cannot govern German soldiers in the performance of their duty. In the present case, moreover, and regardless of what the Dutch court said can or cannot be part of state policy, it is clear that transporting Jews to Auschwitz is the state policy of the German Reich, in accordance with the will of the Fuhrer and the decisions of the Wansee Conference, which he has approved. It is equally clear, as stated in our memorandum of December 15, 1941, that it is Germany's state and military policy to fight a war of annihilation against the Bolsheviki on the eastern front.

The mode of transportation to Auschwitz melds the two state policies: it transports enemies of the German people (the Jews) to Auschwitz for annihilation, sometimes after a suitable period of working in mines and factories for the Third Reich, while minimizing interference with the transportation of tanks, guns, ammunition, food, etc. to German troops fighting a desperate war against the Bolsheviki on the eastern front.

Because war against the Bolsheviki and annihilation of the Jews are both high state policies, and the transportation of the Jews is done in a way that carries forward that policy while minimizing interference with the policy of war against the Bolsheviki, it is our opinion that the transportation, as carried out, cannot and does not violate any rule of law.

Our opinion is limited to the facts as you have described them to us, and is not intended to cover any different or altered facts.

Please let us know if we can be of further assistance.

Joseph Alstotter  
Chief of Section of Legality

From the foregoing short invention, whose style, character, techniques and aims mimic many a legal memo and in particular mimic the four torture memos, one can readily grasp a lot. The short invented memo exemplifies the kind of language used in the four Department of Justice memos: formal, legalistic, bloodless, designed to camouflage the most horrible conduct in abstract formulations. It mimics the acceptance, use, and non-questioning of facts and arguments that have been provided by the persons who seek the legal opinions for their own protection. It mimics the torture memos' use of legal materials to approve monstrous actions, which is done at phenomenal length in the four torture memos (as if extreme long windedness can substitute for rightness). It mimics the transparent goal of trying to clothe the most awful actions in high sounding reasons of state in order to justify such actions under the law. It mimics the four memos' (obviously guilt-caused) effort to escape responsibility as much as possible by saying it is confined to the facts given to the writer. It mimics the self referential technique of referring to prior memos from the same office which say the same things. It mimics the four memos' claim that the most horrible acts are performed in a way that supposedly causes no pain - which the authors of the torture memos have no real way of knowing since they were not themselves subjected to the techniques nor even present to see their effects. It mimics the claim that acts are overseen by medical personnel. It shows how, as in the four memos, the techniques of writing and law can be used to justify the most horrific conduct while pretending to be an exercise in legitimate lawyering. It shows why the *New York Times* said, on Sunday, April 19th:

These memos are not an honest attempt to set the legal limits on interrogations, which was the authors' statutory obligation. They were written to provide legal immunity for acts that are clearly illegal, immoral and a violation of this country's most basic values.

It sounds like the plot of a mob film, except the lawyers asking how much their clients can get away with are from the C.I.A. and the lawyers coaching them on how to commit the abuses are from the Justice Department. And it all played out with the blessing of the defense secretary, the attorney general, the intelligence director and, most likely, President Bush and Vice President Dick Cheney.

And it mimics the transparent fact, or at least it would if it had been written "for real" instead of only to enable readers to understand the nature of the torture memos, that the authors of the torture memos are monsters disguised as human beings.

[Click here to comment on any article  
in this issue or see what others are saying in the](#)  
**The BlackCommentator Readers' Corner Blog**

**BlackCommentator.com** Columnist, Lawrence R. Velvel, JD, is the Dean of


[Massachusetts School of Law](#). He is the author of [Blogs From the Liberal Standpoint: 2004-2005](#) (Doukathsan Press, 2006). Click [here](#) to contact Dean Velvel, or you may post your comment on his website, [VelvelOnNationalAffairs.com](#).

[Contents of Issue](#)

[Click here](#)

[Home](#)

Click Here To

CONTRIBUTE TO  NOW

Click Here To

CONTACT 

Your comments are always welcome.

### **e-Mail re-print notice**

If you send us an e-Mail message we may publish all or part of it, unless you tell us it is not for publication. You may also request that we withhold your name.

Thank you very much for your readership.

Website Design and Hosting provided by



Copyright © 2002-2009  
www.BlackCommentator.com  
All Rights Reserved