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TRANSCRIPT OF "FILE ON 4" – "TORTURE BY FACTS?"

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PRODUCER: Ian Muir-Cochrane

EDITOR: David Ross

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“FILE ON 4”

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MADNI: They put me in handcuffs and shackles and then they take me to plane, the CIA aircraft. Inside the aircraft they put me inside a box, was like a wood box, I was can't move my body because the shackle was very tight and was very painful.

GREY: This man says Britain was complicit in his extraordinary rendition. Others who've been tortured also claim a British connection.

BINYAM: The interrogator was actually bringing in files and saying, 'This is the British file.' We spent months and months just answering questions from these files that were coming in from the UK.

GREY: Tonight File on 4 asks if the British Government really was complicit in the torture of terrorist suspects and if British ministers should have spoken out sooner.

Do you think in hindsight that the right degree of attention was paid to these matters?

GOLDSMITH: Well, I, I, I ... Well I took a bit of a different view on some of these issues, maybe to have been stronger in our condemnation of some of the things that had taken place might have been a good thing to do, for example, about treatment of detainees.

GREY: And we ask how useful to Britain was intelligence that might have come from torture?

SIGNATURE TUNE

ARCHIVE RECORDING OF EXPLOSIONS

GREY: September 26, 2001 – a fortnight and a day since the attacks on the World Trade Center and the Pentagon. The US is entering Afghanistan. First in are Special Forces and a team from the CIA. It's led by Gary Berntsen, a veteran covert operator.

BERNTSEN: In the Afghan conflict we had a major responsibility to manage the early part of the campaign and CIA officers are hired because it's believed that they have broad capabilities, good judgement – this is all about judgement.

GREY: Berntsen's mission from the CIA was simple: go get Osama bin Laden.

BERNTSEN: On the battlefield of Afghanistan, we were going to be involved in lethal operations. That meant that CIA officers would be collecting intelligence and using that intelligence directly with the military to attack and kill members of the opposing force. A number of people were captured, high value targets were turned over and put in the hands of the US military as quickly as possible.

GREY: It wasn't just Americans who were deployed on the ground. Britain sent its elite Special Boat Squadron and the SAS. I've spoken to a senior British Special Force Commander who was on the ground in those days. His words are spoken by an actor.

READER IN STUDIO: We were fully integrated into an American mission; the SAS were down South operating in the mountains, in our own area, so we didn't conflict with what the Americans were doing. We didn't then have much issue about prisoners because we didn't essentially take any – only a few wounded that were passed back down

READER IN STUDIO cont: the medical chain; they were all low level. Probably got released.

GREY: Britain sent not only its soldiers but its spies, both from MI5, the Security Service and from MI6, the Secret Intelligence Service. They both soon began to question prisoners, at first those held by the Northern Alliance. According to Gary Berntsen it was a British officer whose de-brief of a prisoner in Afghanistan helped to prevent one of the first major terrorist attacks that was planned to follow 9/11.

BERNTSEN: One of the major tasks that I was assigned was to figure out what next attack was going to be, the major attack. And of course it wasn't the Americans that figured out what the next attack was, it was the British that did that, and the British did that by talking to prisoners, not interrogating them, but talking to them and interviewing them, and a very capable young man from your country was the person that was able to get someone to tell him that a major attack was coming, and where it was, and it was the Singapore attack. So you know the United Kingdom saved the US Embassy, the British Embassy, the Australian Embassy and the Israeli Embassy in Singapore on the ground there in, you know, that first phase of the Afghan war. It wasn't the Americans.

GREY: And that was a British officer speaking to prisoners that had been ...?

BERNTSEN: A prisoner, yes, speaking to a prisoner but not interrogating, but actually being quite kind to them and talking to them and making sure they were taken care of, and befriended one of the individuals, and that individual told him of the impending attack, and it was actually twenty tons of explosives that were captured.

GREY: In the weeks after 9/11, both UK and US soldiers and spies worked together broadly as one team. But soon there was a catch. America declared the usual laws of war were not always going to apply. Philippe Sands, a British barrister, has traced how as early as December 2001 an order came down from the Pentagon and passed through the US military that, for prisoners captured in this War on Terror, the Geneva Conventions need not apply. It was gloves off time. That was a problem for the British.

SANDS: The British military has a very fine tradition of compliance with the protocols of the Geneva Convention, but I've had former British soldiers who were active in Afghanistan and Iraq tell me that on joint briefings, everything that would normally be said in relation to compliance with the Geneva Conventions would be said to the entire room, British and American. And then the US Commanding Officer, that would be followed by a statement to the effect, 'Okay, we've said what we need to say for those of you on that side of the room, the Brits. As regards to the rest of you - that's to say the Americans - you do what needs to be done'.

GREY: Charles Garraway is an expert on the law of war. When 9/11 happened, he was a senior legal adviser to the British Army and working at the Ministry of Defence. He recalls a debate over whether the UK should follow America's new rules.

GARRAWAY: When we put the Marines in in order to help to clear Torah Borah and the caves there, that led to a major problem, because we could be taking prisoners in considerable numbers, and there we had to have a clear policy on what to do with prisoners. And it was at that stage that the questions arose. If people are captured by forces operating together and they are to be treated under different rules, then you've inevitably got a problem.

GREY: But did the American administration attempt to persuade Britain to follow that advice for pulling back from giving prisoners their sort of full protection?

GARRAWAY: Within the military we had serious concerns with that. We did take it up and a decision was eventually taken that, so far as we were concerned, we would continue to treat all people on the battlefield as prisoners of war until such time as their status could be clarified, and there was a considerable debate between the lawyers, the civilian lawyers in the Foreign Office and in the Ministry of Defence, and there was some dispute between them. At the end of the day, the matter had to be referred to the highest Government legal authorities and the decision was taken that we should stick with the traditional view of the Geneva Conventions.

GREY: While the military were backing off, so was British intelligence. The catalyst was a telegram dated January 10, 2002, from an MI6 officer in Afghanistan, which described how the Americans were treating a prisoner. The message caused a stir back in London and it led for the first time since 9/11 to a definition of what British policy was to prisoners held by others who were being mistreated or tortured. Instructions sent from London – copied to all in Afghanistan from MI5 and MI6 – said that although prisoners held by the US might not be enjoying their full legal rights:

READER IN STUDIO: Given that they are not within our custody or control, the law does not require you to intervene to prevent this. That said, Her Majesty's Government's stated commitment to human rights makes it important that the Americans understand that we cannot be party to such ill treatment, nor can we be seen to condone it. In no case should they be coerced during or in conjunction with an SIS interview of them.

GREY: British officers, then, were not required to intervene to stop torture or mistreatment. But they should leave the room. We wanted to ask a Government minister to explain the origin of this policy; but none was willing to be interviewed for this programme. Human Rights lawyer Philippe Sands argues the policy set out in the MI6 orders was legally bad advice.

SANDS: The policy, as far as we know it and it has not been fully disclosed even to this day, essentially adopted a position - so long as you don't get involved in physical abuse, you are not going to find yourself in difficulty. Now what that leaves the door open to is a situation, as the evidence emerging now appears to show, of British participation in interrogations, in circumstances in which detainees, British nationals or British residents, are known to be alleging abuse. And in which the British participation is not to contribute to physical or perhaps even mental abuse, but to provide questions, to provide information and to contribute. And it seems now pretty clear that the British Government's instructions to intelligence officers was insufficiently rigorous in avoiding the risk of complicity.

GREY: The policy of walking out of an interrogation room at the first hint of any mistreatment was a policy then that left much unresolved: what to do, for instance, when British interests required that questions be answered? If no British officer

GREY: For Binyam Mohamed, all this was just the start of an eight year odyssey through a chain of CIA, US military and foreign prisons. From Pakistan, he was put on a CIA jet and then spent eighteen months in jail in Morocco. He says it was here he was most brutally tortured, including being cut with razor blades. MI5 said they lost track of where he was. But, as he told File on 4, his interrogation was all about Britain.

BINYAM: A lot of it was focused on the people I had met in the UK. There was a lot of pictures and it was mainly focused on gathering information on the people that I'd met in London.

GREY: Did you get the impression that information or questions was actually coming from Britain?

BINYAM: You could say that because the interrogator was actually bringing in files and saying, 'This is the British file.' The senior interrogator, he used to say that once you've finished from here, you're going go back to the UK.

GREY: What did it make you think when you saw those British files?

BINYAM: I was really surprised, shocked. We spent months and months just answering questions from these files that were coming from the UK.

GREY: And did all these questions that were coming contribute to the torture you received?

BINYAM: Well, it did because if I didn't get the answers right I would go on being tortured, and if I did get the answers right I would still be tortured, because they wouldn't know what's right from wrong. So my time in Morocco, the eighteen months I spent, the majority of questions were from Britain.

GREY: Binyam Mohamed tells one story about the jail in Morocco that raises new questions about British promises they had no idea where he was being held. It's about a meeting with a man we'll call Mahmoud.

BINYAM: When I was in Morocco they had so much information that they were saying that they got from people who were cooperating, so one day they decided to show me a person that I recognised from the UK. The cell I was within, there was no toilet facility in it, so I was taken to the toilet and, when I was going back to the cell, the guard opened the door and there he was in front of me.

GREY: And were you surprised to see him?

BINYAM: I was actually kind of shocked because I didn't even know that there was other people in Morocco with me who was in London before.

GREY: Did you exchange any words at all?

BINYAM: No, actually it was like it was meant to be an accidental scene, where it was meant to be the guard made a mistake and he opened the door, but obviously it wasn't, it was intentional, and I knew what was behind it, because afterwards most of the interrogation was focused on him and the information that he was meant to have given the Moroccan authority at that moment.

GREY: Binyam Mohamed told us about Mahmoud's real identity. They grew up together in Notting Hill. Both discovered religion; both went to Afghanistan; both were captured and sent to Morocco. But while Binyam Mohamed's torture continued, Mahmoud was released and came back to Britain. File on 4 has traced him to West London.

ACTUALITY IN LADBROKE GROVE

GREY: I've been in Ladbroke Grove these last few days, talking to people in the community where Binyam Mohamed grew up. He used to attend a mosque that's widely used by Moroccans. It's a mixed area – million pound homes and council house blocks. The streets are lively – there's a stall selling falafel and Middle Eastern spices; old men are sitting outside a coffee shop, smoking water pipes. Down a back street I found an old friend of Binyam Mohamed, who agreed to talk to me about Mahmoud, on condition I didn't use his name.

MAN: I have known him since I would say 1996. We used to hang around together, you know, when we were younger. He was born in Morocco, parents live in West London.

GREY: When he came back, when was that?

MAN: That would have been between 2002 and 2003. I met him when he came back from Morocco and he told me he had bumped into Binyam while he was in Morocco.

GREY: And you knew Binyam?

MAN: Yes, I know Binyam from the mosque where he used to work.

GREY: So what did he say about meeting Binyam and how that happened?

MAN: He said that they were in Morocco in some sort of complex, and while this guy was being tortured he'd actually bumped into Binyam in the same building.

GREY: I've spoken to others who told me similar things. So the question being asked is, if this man Mahmoud had such a background and was so well known to British intelligence, then surely they'd have learned what so many in Notting Hill seemed to know – that Mohamed was being held in a Moroccan jail. File on 4 spoke to Mahmoud's family, who declined to comment, as did the Home Office. Scotland Yard, meanwhile, have launched an inquiry into Binyam Mohamed's case, asking if the actions of any MI5 officer did amount to complicity in torture. But exactly what MI5 knew about Binyam Mohamed's treatment is still an official secret. The Foreign Secretary, David Miliband, told the High Court the release of American intelligence reports about his mistreatment in Pakistan would damage national security, because it would discourage the Americans from sharing their intelligence. In other cases too, questions about British complicity in torture time and again hit a brick wall of secrecy.

ARCHIVE NEWS – CONVICTION OF RANGZIEB AHMED, 18/12/08

MAN: If we will still be alive, we will meet here. Otherwise, Allah willing, we shall meet in Paradise.

NEWSREADER: The chilling words of an al-Qaeda terrorist trapped in Manchester by secret recordings and surveillance.

GREY: Rangzieb Ahmed was the first al-Qaeda suspect convicted in Britain on the charge of directing terrorism. But what the jury at his trial at Manchester Crown Court wasn't told was how his arrest in Britain followed eight months at the hands of Pakistan's notorious ISI intelligence agency. Nor were they shown the medical evidence that detailed his torture. The judge in the case ruled there was no evidence of British complicity, but said national security prevented him from giving the full reasons. It leaves Rangzieb Ahmed's lawyer, Tayab Ali, having to choose his words carefully:

ALI: There's much evidence that I can't talk to you about, because a lot of the evidence has been discussed and disclosed behind closed doors and in camera proceedings

GREY: Was MI5 aware that he'd been mistreated prior to them questioning him?

ALI: I can't answer that question, because

GREY: Why not?

ALI: I cannot tell you how the United Kingdom authorities have responded to the allegations we've made at all. What I can say to you is that there are two rulings in this case: there is an open ruling and a closed ruling. Now for me to speak to you about that would mean that I would be in contempt of court.

GREY: The closed ruling, is it based on witnesses, for example, from MI5 that we the public did not hear?

ALI: I'm not allowed to answer that question. The interesting part about this is that Rangzieb Ahmed has seen the closed ruling and all the in camera material and is perfectly aware of the parts which I'm not allowed to share with you or the general public.

GREY: To be clear, you're saying your client, who is a convicted al-Qaeda terrorist, is able to have access to this information and the public are not?

ALI: That's absolutely right.

GREY: This month, David Davies, the former shadow Home Secretary, decided to tell the House of Commons what Ahmed's lawyer could not tell us. David's used Parliamentary Privilege to defy the Court's secrecy ruling.

ACTUALITY IN THE HOUSE OF COMMONS, 7th JULY 2009

DAVIES: Once he was taken into custody in Pakistan by the ISI, Manchester police and MI5 together created a list of questions to be put to him. MI5 arranged for those questions to be given to ISI. Rangzieb Ahmed was viciously tortured by ISI. He says, amongst other things, he was beaten with wooden staves the size of cricket stumps, whipped with a three foot length of tyre rubber nailed to a wooden handle, and he had three fingernails removed from his left hand.

GREY: We asked the Home Office to respond to these claims. No minister would discuss these issues, even generally. But the Home Office did issue us with a statement:

READER IN STUDIO: The Security and Intelligence Agencies do not participate in, solicit, encourage or condone the use of torture or inhumane or degrading treatment. For reasons both ethical and legal, their policy is not to carry out any action which they know would result in torture or inhuman or degrading treatment.

GREY: Despite assurances like this, there's a feeling in Whitehall and Westminster that the whole issue of British complicity in torture and rendition is not

MADNI: Yes it did stop, and they said for me, 'Just we are stopping here for fuel.' Physically and health wise I was in very very bad condition. I was bleeding from my ear, from my nose, from my mouth, definitely my eyes was I was a blindfold, but I saw the flashing of cameras, the people came inside the plane and they take a pictures, my pictures. Plane was staying for half an hour, then they start up the flight, and after that the second trip was for almost four or five hours up to Cairo.

GREY: How, though, does Iqbal Madni know where he stopped over? The evidence comes from the legal charity, Reprieve. It hasn't got any proof, but it has done some detective work. Clive Stafford Smith is Reprieve's director.

STAFFORD SMITH: In trying to determine that this was Iqbal Madni, we've analysed the various statements. In February 2008, there was a statement made by the British Government to the effect that one of the prisoners was still in Guantanamo Bay. A year later, the British Government says they've both now left Guantanamo Bay, so that means that the individual left in those twelve months. We can identify the 29 people who did leave during that twelve month period, we know about all of those 29 prisoners, where they were seized originally. Out of all of them there's only one who is consistent with this process of being flown to Diego Garcia, and that's Mr Madni. You add it all up, I would defy the British Government to deny that we're right.

GREY: So why does this island stopover actually matter? It's at issue because the plane carrying Madni took him not to Guantanamo – where he ended up – but first to Egypt, where he says the US had sent him to be interrogated. It seems, by his account, a classic case of extraordinary rendition.

MADNI: When I arrived in Egypt, I was blindfold. Each interrogation was longer for fifteen to seventeen hours. During the interrogation they always asked me question if I met Osama bin Laden or I went to Afghanistan, and Americans interrogator also, they was sit down during the interrogation, they would make me, force me to drink a black tea and they put inside a black tea drugs, and that makes me like drowsy. I don't know anything what I have been answering. The interrogator, he put something in my knees and at other times I go to pass out when I feel the electric shocks.

GREY: His lawyer, Clive Stafford Smith, claims that, however brief the stopover, the use of British territory makes the British involved in his torture.

STAFFORD SMITH: The issue for Britain of all of this is that Diego Garcia is a British Territory. We're responsible for what happens on it and we have rules, the Americans are meant to tell us what they're doing there, and we as the supervisors of Diego Garcia have a responsibility to make sure that crimes don't happen on it.

GREY: But you can't be complicit, surely, in something that you don't know anything about? So do you challenge the good faith of the British Government when they say, and its ministers, that they didn't know anything about these transfers?

STAFFORD SMITH: I'm afraid I do challenge the good faith of the British Government, and I'm very sad to have to say that. And unfortunately in the context of these rendition flights, I think particularly under the Blair administration, there was an awful lot of playing the ostrich, where the British knew things were going on but just didn't want to know, so they put their head in the sand. Now that's just wrong.

GREY: File on 4 asked to interview David Miliband for this program, but he declined. Instead, the Foreign Office issued a statement;

READER IN STUDIO: The movement of detainees through UK territory without our permission, while concerning, does not mean that the UK has been complicit in torture. We condemn unreservedly any use of torture. The Government never use torture for any purpose, nor would we instigate or encourage others to do so.

GREY: All these cases involve what Britain knew of torture by foreign governments – Pakistan, Morocco and Egypt. But what of the top prisoners that the CIA questioned itself? Men like Khalid Sheikh Mohamed, the architect of 9/11. He was taken to what the CIA called its 'black sites' – secret prisons where techniques were used like sleep deprivation, stress positions and waterboarding – all, we now know, with the knowledge of the White House. With even the US President now denouncing such methods as torture, how much was Britain told of this?

TOWNSEND: My office was on the ground floor and I literally was an equal number of steps either to the White House situation room, which is where classified discussions were held, or in the other direction I was up a back private stairway to the Oval office. I, as the Homeland Security Advisor, had a phone on my desk that went directly to my counterpart in Number 10, to London, as did the National Security Advisor,

GREY: As a senior expert in the West Wing on counter-terrorism, Frances Townsend was in daily touch with President Bush and with Downing Street. She saw top secret intelligence and passed on warnings to London. With such close contacts, surely Britain must have been told what was going on.

TOWNSEND: I'm not sure I think that that's a fair assumption. Many of these programmes were restricted even inside the US Government. I don't think you can make the assumption that these programmes were necessarily discussed between the US and the UK.

GREY: Did you know about them? Or was it just simply a case you weren't formally told?

TOWNSEND: No, no, no, it's it's ... I was not, I had no knowledge of anything inside that programme because it was not, I was not permitted to know.

GREY: Do you think, though, that the UK benefited from the results of that high value interrogation programme?

TOWNSEND: I think it's fair to say that we certainly would have shared what information, what intelligence the United States gleaned from interrogations, and so to the extent it gave British authorities insight to the out, as it did to the US authorities, insight into the capabilities and intentions of an al-Qaeda, sure I think, I think we all benefited from it.

GREY: But how was it seen in Britain? Sir David Omand was Tony Blair's Intelligence and Security Co-ordinator.

INKSTER cont: information about al-Qaeda - and we should not forget that at that point there was a great deal about al-Qaeda which was not known - did derive from a series of interrogations of high profile detainees that took place in 2002/2003, and the material that came from these detainee interrogations was unquestionably valuable; one has to say for better or worse, because as it now becomes evident, you know, some of the ways that information was obtained are ones that the UK Government could never willingly have gone along with.

GREY: But was Britain strong enough in defining its own position? Could it have prevented abuse if it spoke out? While most ministers from the time are still reluctant to talk, Tony Blair's Attorney General, Lord Goldsmith, seems to harbour doubts.

GOLDSMITH: I'm very troubled by what actually happened and that's why, on a couple of occasions when, since I've left office, because they've emerged since I've left obviously, I've said yes, these are matters which ought to be investigated, we need to know what was going on, we need to know whether there was any complicity or not. If there wasn't, it's important that people know there wasn't complicity and that our record is clean. If there was complicity, then it's important that again people are brought to, brought to book.

GREY: Do you think, in hindsight, that the right degree of attention was paid to these matters?

GOLDSMITH: Well I, I, I... Well I took a bit of a different view on some of these issues. I mean, we did, you know, make our position clear, for example, in relation to the one thing which really was visible, which was the let's detain people until the end of the War on Terror in a camp in Cuba over which there is no legal, there's going to be no legal supervision other than the one that we put in place. We did make that clear and I think we actually, I think the UK, because of the stand that we took, the stand that I took in relation to that actually made a very important step towards actually preventing Guantanamo actually from really from taking hold. Maybe to have been stronger in our condemnation of the some things that had taken place might have been a good thing to do.

GREY: You wish you had been stronger or the Government had been stronger?

GOLDSMITH: I think there were areas when we could have, where we could have spoken a little bit more strongly at least about why it mattered that we stuck to, and that everybody actually stuck to certain principles and rules about, for example, about treatment of detainees. It's happening now, after the Bush administration has gone, but there's a lot of ground to catch up on.

GREY: Could it have been different? Could Britain have got the intelligence it needed while turning up its nose against evidence from torture? Sir David Omand, the former Downing Street intelligence chief, believes it would have been difficult.

OMAND: Individual cases are being investigated. I know what the public has heard so far is only one side of the case. If information comes the way of British authorities that will directly help protect British people, either at home or overseas, then you have to act on it. It's not an easy position to be in. There is no easy, simple way out of this.

GREY: If for someone held in Pakistan, for example, who is an important terrorist suspect who might have information, how is it possible to escape responsibility for this person's treatment and yet still put over the, ask the questions that need to be answered?

OMAND: Well, governments can't escape responsibilities. You have to set out, and I think we have done this, a very clear ethical standpoint and say, we are not, as a nation, prepared to engage in this activity. But we're neither are we prepared to abrogate our responsibility for protecting our own public. That's the horn of the dilemma. Whilst taking information, you don't know where it came from, and in that way a large number of terrorists have been brought to justice in the UK, have been put before the courts and have been convicted and plots have been stopped. And there are people alive today who would not have been alive today. It seems to me that is you know, the least worst position.

SIGNATURE TUNE