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US Torture: Voices from the Black Sites

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ICRC Report on the Treatment of Fourteen "High Value Detainees" in CIA Custody
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[Press release and contact information](#)

We need to get to the bottom of what happened—and why—so we make sure it never happens again.^[1]

—Senator Patrick Leahy, Chairman, Senate Judiciary Committee

1.

We think time and elections will cleanse our fallen world but they will not. Since November, George W. Bush and his administration have seemed to be rushing away from us at accelerating speed, a dark comet hurtling toward the ends of the universe. The phrase "War on Terror"—the signal slogan of that administration, so cherished by the man who took pride in proclaiming that he was "a wartime president"—has acquired in its pronouncement a permanent pair of quotation marks, suggesting something questionable, something mildly embarrassing: something past. And yet the decisions that that president made, especially the monumental decisions taken after the attacks of September 11, 2001—decisions about rendition, surveillance, interrogation—lie strewn about us still, unclaimed and unburied, like corpses freshly dead.

How should we begin to talk about this? Perhaps with a story. Stories come to us newborn, announcing their intent: Once upon a time... In the beginning... From such signs we learn how to listen to what will come. Consider:

I woke up, naked, strapped to a bed, in a very white room. The room measured approximately 4m x 4m [13 feet by 13 feet]. The room had three solid walls, with the fourth wall consisting of metal

bars separating it from a larger room. I am not sure how long I remained in the bed....

A man, unnamed, naked, strapped to a bed, and for the rest, the elemental facts of space and of time, nothing but whiteness.



The storyteller is very much a man of our time. Early on in the "War on Terror," in the spring of 2002, he entered the dark realm of "the disappeared"—and only four and a half years later, when he and thirteen other "high-value detainees" arrived at Guantánamo and told their stories in interviews with representatives of the International Committee of the Red Cross (reported in the confidential document listed above) did he emerge partly into the light. Indeed, he is a famous man, though his fame has followed a certain path, peculiar to our modern age: jihadist, outlaw, terrorist, "disappeared." An international celebrity whose name, one of them anyway, is instantly recognizable. How many people have their lives described by the president of the United States in a nationally televised speech?

Within months of September the 11th, 2001, we captured a man known as Abu Zubaydah. We believe that Zubaydah was a senior terrorist leader and a trusted associate of Osama bin Laden.... Zubaydah was severely wounded during the firefight that brought him into custody—and he survived only because of the medical care arranged by the CIA.^[2]

A dramatic story: big news. Wounded in a firefight in Faisalabad, Pakistan, shot in the stomach, groin, and thigh after jumping from a roof in a desperate attempt to escape. Massive bleeding. Rushed to a military hospital in Lahore. A trauma surgeon at Johns Hopkins awakened by a late-night telephone call from the director of central intelligence and flown in great secrecy to the other side of the world. The wounded man barely escapes death, slowly stabilizes, is shipped secretly to a military base in Thailand. Thence to another base in Afghanistan. Or was it Afghanistan?

We don't know, not definitively. For from the moment of his dramatic capture, on March 28, 2002, the man known as Abu Zubaydah slipped from one clandestine world, that of al-Qaeda officials gone to ground in the days after September 11, into another, a "hidden global internment network" intended for secret detention and interrogation and set up by the Central Intelligence Agency under authority granted directly by President George W. Bush in a "memorandum of understanding" signed on September 17, 2001.

This secret system included prisons on military bases around the world, from Thailand and Afghanistan to Morocco, Poland, and Romania—"at various times," reportedly, "sites in eight countries"—into which, at one time or another, more than one hundred prisoners...disappeared.^[3] The secret internment network of "black sites" had its own air force and its own distinctive "transfer procedures," which were, according to the writers of the International Committee of the Red Cross (ICRC) report, "fairly standardised in most cases":

The detainee would be photographed, both clothed and naked prior to and again after transfer. A body cavity check (rectal examination) would be carried out and some detainees alleged that a suppository (the type and the effect of such suppositories was unknown by the detainees), was also administered at that moment.

The detainee would be made to wear a diaper and dressed in a tracksuit. Earphones would be placed over his ears, through which music would sometimes be played. He would be blindfolded with at least a cloth tied around the head and black goggles. In addition, some detainees alleged that cotton wool was also taped over their eyes prior to the blindfold and goggles being applied....

The detainee would be shackled by [the] hands and feet and transported to the airport by road and loaded onto a plane. He would usually be transported in a reclined sitting position with his hands shackled in front. The journey times...ranged from one hour

to over twenty-four to thirty hours. The detainee was not allowed to go to the toilet and if necessary was obliged to urinate and defecate into the diaper.

One works the imagination trying to picture what it was like in this otherworldly place: blackness in place of vision. Silence—or "sometimes" loud music—in place of sounds of life. Shackles, together sometimes with gloves, in place of the chance to reach, touch, feel. One senses metal on wrist and ankle, cotton against eyes, cloth across face, shit and piss against skin. On "some occasions detainees were transported lying flat on the floor of the plane...with their hands cuffed behind their backs," causing them "severe pain and discomfort," as they were moved from one unknown location to another.

For his part, Abu Zubaydah—thirty-one years old, born Zein al-Abedeen Mohammad Hassan, in Riyadh, Saudi Arabia, though coming of Palestinian stock, from the Gaza Strip—

alleged that during one transfer operation the blindfold was tied very tightly resulting in wounds to his nose and ears. He does not know how long the transfer took but, prior to the transfer, he reported being told by his detaining authorities that he would be going on a journey that would last twenty-four to thirty hours.

A long trip then: perhaps to Guantánamo? Or Morocco? Then back, apparently, to Thailand. Or was it Afghanistan? He thinks the latter but can't be sure....

2.

All classified, compartmentalized, deeply, deeply secret. And yet what is "secret" exactly? In our recent politics, "secret" has become an oddly complex word. From whom was "the secret bombing of Cambodia" secret? Not from the Cambodians, surely. From whom was the existence of these "secret overseas facilities" secret? Not from the terrorists, surely. From Americans, presumably. On the other hand, as early as 2002, anyone interested could read on the front page of one of the country's leading newspapers:

US Decries Abuse but Defends Interrogations: "Stress and Duress"
Tactics Used on Terrorism Suspects Held in Secret Overseas
Facilities

Deep inside the forbidden zone at the US-occupied Bagram air base in Afghanistan, around the corner from the detention center and

beyond the segregated clandestine military units, sits a cluster of metal shipping containers protected by a triple layer of concertina wire. The containers hold the most valuable prizes in the war on terrorism—captured al Qaeda operatives and Taliban commanders....

"If you don't violate someone's human rights some of the time, you probably aren't doing your job," said one official who has supervised the capture and transfer of accused terrorists. "I don't think we want to be promoting a view of zero tolerance on this. That was the whole problem for a long time with the CIA...."

This lengthy article, by Dana Priest and Barton Gellman, appeared in *The Washington Post* on December 26, 2002, only months after the capture of Abu Zubaydah. A similarly lengthy report followed a few months later on the front page of *The New York Times* ("Interrogations: Questioning Terror Suspects in a Dark and Surreal World"). The blithe, aggressive tone of the officials quoted—"We don't kick the [expletive] out of them. We send them to other countries so they can kick the [expletive] out of them"—bespeaks a very different political temper, one in which a prominent writer in a national newsmagazine could headline his weekly column "Time to Think About Torture," noting in his subtitle that in this "new world...survival might well require old techniques that seemed out of the question."^[4]

So there are secrets and secrets. And when, on a bright sunny day two years ago, just before the fifth anniversary of the September 11 attacks, the President of the United States strode into the East Room of the White House and informed the high officials, dignitaries, and specially invited September 11 survivor families gathered in rows before him that the United States government had created a dark and secret universe to hold and interrogate captured terrorists—or, in the President's words, "an environment where they can be held secretly [and] questioned by experts"—he was not telling a secret but instead converting a known and well-reported fact into an officially confirmed truth:

In addition to the terrorists held at Guantánamo, a small number of suspected terrorist leaders and operatives captured during the war have been held and questioned outside the United States, in a separate program operated by the Central Intelligence Agency.... Many specifics of this program, including where these detainees have been held and the details of their confinement, cannot be divulged....

We knew that Abu Zubaydah had more information that could save innocent lives, but he stopped talking.... And so the CIA used an alternative set of procedures. These procedures were designed to be safe, to comply with our laws, our Constitution, and our treaty obligations. The Department of Justice reviewed the authorized methods extensively and determined them to be lawful. I cannot describe the specific methods used—I think you understand why....

I was watching the live broadcast that day and I remember the uncanny feeling that came over me as, having heard the President explain the virtues of this "alternative set of procedures," I watched him stare straight into the camera and with fierce concentration and exaggerated emphasis intone once more: "The United States does not torture. It's against our laws, and it's against our values. I have not authorized it—and I will not authorize it." He had convinced himself, I thought, of the truth of what he said.

This speech, though not much noticed at the time, will stand, I believe, as George W. Bush's most important: perhaps the only "historic" speech he ever gave. In telling his version of Abu Zubaydah's story, and versions of the stories of Khaled Shaik Mohammed and others, the President took hold of many things that were already known but not acknowledged and, by means of the alchemical power of the leader's voice, transformed them into acknowledged facts. He also, in his fervent defense of his government's "alternative set of procedures" and his equally fervent denials that they constituted "torture," set out before the country and the world the dark moral epic of the Bush administration, in the coils of whose contradictions we find ourselves entangled still. Later that month, Congress, facing the midterm elections, duly passed the President's Military Commissions Act of 2006, which, among other things, sought to shelter from prosecution those who had applied the "alternative set of procedures" and had done so, said the President, "in a thorough and professional way."

At the same time, perhaps unwittingly, President Bush made it possible that day for those on whom the "alternative set of procedures" were performed eventually to speak. Even as the President set out before the country his version of what had happened to Abu Zubaydah and the others and argued for its necessity, he announced that he would bring him and thirteen of his fellow "high-value detainees" out of the dark world of the disappeared and into the light. Or, rather, into the twilight: the fourteen would be transferred to Guantánamo, the main acknowledged offshore prison, where—"as soon as Congress acts to authorize the military commissions I have proposed"—they "can face justice." In the meantime, though, the fourteen would be "held in a high-security facility at Guantánamo"

and the International Committee of the Red Cross would be "advised of their detention, and will have the opportunity to meet with them."

A few weeks later, from October 6 to 11 and then from December 4 to 14, 2006, officials of the International Committee of the Red Cross—among whose official and legally recognized duties is to monitor compliance with the Geneva Conventions and to supervise treatment of prisoners of war—traveled to Guantánamo and began interviewing "each of these persons in private" in order to produce a report that would "provide a description of the treatment and material conditions of detention of the fourteen during the period they were held in the CIA detention program," periods ranging "from 16 months to almost four and a half years."

As the ICRC interviewers informed the detainees, their report was not intended to be released to the public but, "to the extent that each detainee agreed for it to be transmitted to the authorities," to be given in strictest secrecy to officials of the government agency that had been in charge of holding them—in this case the Central Intelligence Agency, to whose acting general counsel, John Rizzo, the report was sent on February 14, 2007. Indeed, though almost all of the information in the report has names attached, and though annexes contain extended narratives drawn from interviews with three of the detainees, whose names are used, we do find a number of times in the document variations of this formula: "One of the detainees who did not wish his name to be transmitted to the authorities alleged..."—suggesting that at least one and perhaps more than one of the fourteen, who are, after all, still "held in a high-security facility at Guantánamo," worried about repercussions that might come from what he had said.

In virtually all such cases, the allegations made are echoed by other, named detainees; indeed, since the detainees were kept "in continuous solitary confinement and incommunicado detention" throughout their time in "the black sites," and were kept strictly separated as well when they reached Guantánamo, the striking similarity in their stories, even down to small details, would seem to make fabrication extremely unlikely, if not impossible. "The ICRC wishes to underscore," as the writers tell us in the introduction, "that the consistency of the detailed allegations provided separately by each of the fourteen adds particular weight to the information provided below."

The result is a document—labeled "confidential" and clearly intended only for the eyes of those senior American officials to whom the CIA's Mr. Rizzo would show it—that tells a certain kind of story, a narrative of what happened at "the black

sites" and a detailed description, by those on whom they were practiced, of what the President of the United States described to Americans as an "alternative set of procedures." It is a document for its time, literally "impossible to put down," from its opening page—

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—to its stark and unmistakable conclusion:

The allegations of ill-treatment of the detainees indicate that, in many cases, the ill-treatment to which they were subjected while held in the CIA program, either singly or in combination, constituted torture. In addition, many other elements of the ill-treatment, either singly or in combination, constituted cruel, inhuman or degrading treatment.

Such unflinching clarity, from the body legally charged with overseeing compliance with the Geneva Conventions—in which the terms "torture" and "cruel, inhuman, and degrading treatment" are accorded a strictly defined legal meaning—couldn't be more significant, or indeed more welcome after years in which the President of the United States relied on the power of his office either to redefine or to obfuscate what are relatively simple words. "This debate is

occurring," as President Bush told reporters in the Rose Garden the week after he delivered his East Room speech,

because of the Supreme Court's ruling that said that we must conduct ourselves under the Common Article III of the Geneva Convention. And that Common Article III says that, you know, there will be no outrages upon human dignity. It's like—it's very vague. What does that mean, "outrages upon human dignity"?^[5]

In allowing Abu Zubaydah and the other thirteen "high-value detainees" to tell their own stories, this report manages to answer, with great power and authority, the President's question.

3.

We return to a man, Abu Zubaydah, a Palestinian who, in his thirty-one years, has lived a life shaped by conflicts on the edge of the American consciousness: the Gaza Strip, where his parents were born; Riyadh, Saudi Arabia, where he apparently first saw the light of day; Soviet-occupied Afghanistan, where he took part in the jihad against the Russians, perhaps with the help, directly or indirectly, of American dollars; then, post-Soviet Afghanistan, where he ran al-Qaeda logistics and recruitment, directing aspiring jihadists to the various training camps, placing them in cells after they'd been trained. The man has been captured now: traced to a safe house in Faisalabad, gravely wounded by three shots from an AK-47. He is rushed to the Faisalabad hospital, then to the military hospital at Lahore. When he opens his eyes he finds at his bedside an American, John Kiriakou of the CIA:

I asked him in Arabic what his name was. And he shook his head. And I asked him again in Arabic. And then he answered me in English. And he said that he would not speak to me in God's language. And then I said, "That's okay. We know who you are."

And then he asked me to smother him with a pillow. And I said, "No, no. We have plans for you."^[6]

Kiriakou and the "small group of CIA and FBI people who just kept 24/7 eyes on him" knew that in Abu Zubaydah they had "the biggest fish that we had caught. We knew he was full of information...and we wanted to get it." According to Kiriakou, on a table in the house where they found him "Abu Zubaydah and two other men were building a bomb. The soldering [iron] was still hot. And they had plans for a school on the table...." The plans, Kiriakou told ABC News

correspondent Brian Ross, were for the British school in Lahore. Their prisoner, they knew, was "very current. On top of the current threat information."

With the help of the American trauma surgeon, Abu Zubaydah's captors nursed him back to health. He was moved at least twice, first, reportedly, to Thailand; then, he believes, to Afghanistan, probably Bagram. In a safe house in Thailand the interrogation began:

I woke up, naked, strapped to a bed, in a very white room. The room measured approximately [13 feet by 13 feet]. The room had three solid walls, with the fourth wall consisting of metal bars separating it from a larger room. I am not sure how long I remained in the bed. After some time, I think it was several days, but can't remember exactly, I was transferred to a chair where I was kept, shackled by [the] hands and feet for what I think was the next 2 to 3 weeks. During this time I developed blisters on the underside of my legs due to the constant sitting. I was only allowed to get up from the chair to go [to] the toilet, which consisted of a bucket. Water for cleaning myself was provided in a plastic bottle.

I was given no solid food during the first two or three weeks, while sitting on the chair. I was only given Ensure [a nutrient supplement] and water to drink. At first the Ensure made me vomit, but this became less with time.

The cell and room were air-conditioned and were very cold. Very loud, shouting type music was constantly playing. It kept repeating about every fifteen minutes twenty-four hours a day. Sometimes the music stopped and was replaced by a loud hissing or crackling noise.

The guards were American, but wore masks to conceal their faces. My interrogators did not wear masks.

During this first two to three week period I was questioned for about one to two hours each day. American interrogators would come to the room and speak to me through the bars of the cell. During the questioning the music was switched off, but was then put back on again afterwards. I could not sleep at all for the first two to three weeks. If I started to fall asleep one of the guards would come and spray water in my face.

A naked man chained in a small, very cold, very white room is for several days strapped to a bed, then for several weeks shackled to a chair, bathed unceasingly in white light, bombarded constantly with loud sound, deprived of food; and whenever, despite cold, light, noise, hunger, the hours and days force his eyelids down, cold water is sprayed in his face to force them up.

One can translate these procedures into terms of art: "Change of Scenery Down." "Removal of Clothing." "Use of Stress Positions." "Dietary Manipulation." "Environmental Manipulation." "Sleep Adjustment." "Isolation." "Sleep Deprivation." "Use of Noise to Induce Stress." All these terms and many others can be found, for example, in documents associated with the debate about interrogation and "counter-resistance" carried on by Pentagon and Justice Department officials beginning in 2002. Here, however, we find a different standard: the Working Group says, for example, that "Sleep Deprivation" is "not to exceed 4 days in succession," that "Dietary Manipulation" should include "no intended deprivation of food or water," that "removal of clothing," while "creating a feeling of helplessness and dependence," must be "monitored to ensure the environmental conditions are such that this technique does not injure the detainee."^[7] Here we are in a different place.

But what place? Abu Zubaydah was not only the "biggest fish that we had caught" but the first big fish. According to Kiriakou, Zubaydah, as he recovered, had "wanted to talk about current events. He told us a couple of times that he had nothing personal against the United States.... He said that 9/11 was necessary. That although he didn't think that there would be such a massive loss of life, his view was that 9/11 was supposed to be a wake-up call to the United States."

In those initial weeks of healing, before the white room and the chair and the light, Zubaydah seems to have talked freely with his captors, and during this time, according to news reports, FBI agents began to question him using "standard interview techniques," ensuring that he was bathed and his bandages changed, urging improved medical care, and trying to "convince him they knew details of his activities." (They showed him, for example, a "box of blank audiotapes which they said contained recordings of his phone conversations, but were actually empty.") According to this account, Abu Zubaydah, in the initial days before the white room, "began to provide intelligence insights into Al Qaeda."^[8]

Or did he? "How Good Is Abu Zubaydah's Information?" asked a *Newsweek* "Web exclusive" on April 27, 2002, less than a month after his capture. The extreme secrecy and isolation in which Abu Zubaydah was being held, at a

location unknown to him and to all but a tiny handful of government officials, did not prevent his "information" being leaked from that unknown place directly into the American press—in the cause, apparently, of a bureaucratic struggle between the FBI and the CIA. Even Americans who were not following closely the battling leaks from Zubaydah's interrogation would have found their lives affected, whether they knew it or not, by what was happening in that faraway white room; for about the same time the Bush administration saw fit to issue two "domestic terrorism warnings," derived from Abu Zubaydah's "tips"—about "possible attacks on banks or financial institutions in the Northeastern United States" and possible "attacks on US supermarkets and shopping malls." As *Newsweek* learned from a "senior US official," presumably from the FBI—whose "standard interview techniques" had produced that information and the "domestic terrorism warnings" based on it—the prisoner was "providing detailed information for the 'fight against terrorism.'" At the same time, however, "US intelligence sources"—presumably CIA—"wonder whether he's trying to mislead investigators or frighten the American public."⁹

For his part, John Kiriakou, the CIA man, told ABC News that in those early weeks Zubaydah was "willing to talk about philosophy, [but] he was unwilling to give us any actionable intelligence." The CIA officers had the "sweeping classified directive signed by Mr. Bush," giving them authority to "capture, detain and interrogate terrorism suspects," and Zubaydah was "a test case for an evolving new role,...in which the agency was to act as jailer and interrogator of terrorism suspects." Eventually a team from the CIA's Counterterrorism Center was "sent in from Langley" and the FBI interrogators were withdrawn.

We had these trained interrogators who were sent to his location to use the enhanced techniques as necessary to get him to open up, and to report some threat information.... These enhanced techniques included everything from what was called an attention shake, where you grab the person by their lapels and shake them, all the way up to the other end, which is waterboarding.

They began, apparently, by shackling him to the chair, and applying light, noise, and water to keep him awake. After two or three weeks of this Abu Zubaydah, still naked and shackled, was allowed to lie on the bare floor and to "sleep a little." He was also given solid food—rice—for the first time. Eventually a doctor, a woman, came and examined him, and "asked why I was still naked." The next day he was "provided with orange clothes to wear." The following day, however, "guards came into my cell. They told me to stand up and raise my arms above my head. They then cut the clothes off of me so that I was again naked and put me back on

the chair for several days. I tried to sleep on the chair, but was again kept awake by the guards spraying water in my face."

What follows is a confusing period, in which harsh treatment alternated with more lenient. Zubaydah was mostly naked and cold, "sometimes with the air conditioning adjusted so that, one official said, Mr. Zubayah seemed to turn blue."^[10] Sometimes clothing would be brought, then removed the next day. "When my interrogators had the impression that I was cooperating and providing the information they required, the clothes were given back to me. When they felt I was being less cooperative the clothes were again removed and I was again put back on the chair." At one point he was supplied with a mattress, at another he was "allowed some tissue paper to use when going to toilet on the bucket." A month passed with no questioning. "My cell was still very cold and the loud music no longer played but there was a constant loud hissing or crackling noise, which played twenty-four hours a day. I tried to block out the noise by putting tissue in my ears." Then, "about two and half or three months after I arrived in this place, the interrogation began again, but with more intensity than before."

It is difficult to know whether these alterations in attitude and procedure were intended, meant to keep the detainee off-guard, or resulted from disputes about strategy among the interrogators, who were relying on a hastily assembled "alternative set of procedures" that had been improvised from various sources, including scientists and psychiatrists within the intelligence community, experts from other, "friendly" governments, and consultants who had worked with the US military and now "reverse-engineered" the resistance training taught to American elite forces to help them withstand interrogation after capture. The forerunners of some of the theories being applied in these interrogations, involving sensory deprivation, disorientation, guilt and shame, so-called "learned helplessness," and the need to induce "the debility-dependence-dread state," can be found in CIA documents dating back nearly a half-century, such as this from a notorious "counterintelligence interrogation" manual of the early 1960s:

The circumstances of detention are arranged to enhance within the subject his feelings of being cut off from the known and the reassuring, and of being plunged into the strange.... Control of the source's environment permits the interrogator to determine his diet, sleep pattern and other fundamentals. Manipulating these into irregularities, so that the subject becomes disorientated, is very likely to create feelings of fear and helplessness.^[11]

A later version of the same manual emphasizes the importance of guilt: "If the 'questioner' can intensify these guilt feelings, it will increase the subject's anxiety and his urge to cooperate as a means of escape." Isolation and sensory deprivation will "induce regression" and the "loss of those defenses most recently acquired by civilized man," while the imposition of "stress positions" that in effect force the subject "to harm himself" will produce a guilt leading to an irresistible desire to cooperate with his interrogators.

4.

Two and a half months after Abu Zubaydah woke up strapped to a bed in the white room, the interrogation resumed "with more intensity than before":

Two black wooden boxes were brought into the room outside my cell. One was tall, slightly higher than me and narrow. Measuring perhaps in area [3 1/2 by 2 1/2 feet by 6 1/2 feet high]. The other was shorter, perhaps only [3 1/2 feet] in height. I was taken out of my cell and one of the interrogators wrapped a towel around my neck, they then used it to swing me around and smash me repeatedly against the hard walls of the room. I was also repeatedly slapped in the face....

I was then put into the tall black box for what I think was about one and a half to two hours. The box was totally black on the inside as well as the outside.... They put a cloth or cover over the outside of the box to cut out the light and restrict my air supply. It was difficult to breathe. When I was let out of the box I saw that one of the walls of the room had been covered with plywood sheeting. From now on it was against this wall that I was then smashed with the towel around my neck. I think that the plywood was put there to provide some absorption of the impact of my body. The interrogators realized that smashing me against the hard wall would probably quickly result in physical injury.

One is reminded here that Abu Zubaydah was not alone with his interrogators, that everyone in that white room—guards, interrogators, doctor—was in fact linked directly, and almost constantly, to senior intelligence officials on the other side of the world. "It wasn't up to individual interrogators to decide, 'Well, I'm gonna slap him. Or I'm going to shake him. Or I'm gonna make him stay up for 48 hours,'" said John Kiriakou.

Each one of these steps...had to have the approval of the Deputy Director for Operations. So before you laid a hand on him, you had to send in the cable saying, "He's uncooperative. Request permission to do X." And that permission would come.... The cable traffic back and forth was extremely specific. And the bottom line was these were very unusual authorities that the agency got after 9/11. No one wanted to mess them up. No one wanted to get in trouble by going overboard.... No one wanted to be the guy who accidentally did lasting damage to a prisoner.

Smashing against hard walls before Zubaydah enters the tall black coffin-like box; sudden appearance of plywood sheeting affixed to the wall for him to be smashed against when he emerges. Perhaps the deputy director of operations, pondering the matter in his Langley, Virginia, office, suggested the plywood?

Or perhaps it was someone higher up? Shortly after Abu Zubaydah was captured, according to ABC News, CIA officers "briefed high-level officials in the National Security Council's Principals Committee," including Vice President Dick Cheney, National Security Adviser Condoleezza Rice, and Attorney General John Ashcroft, who "then signed off on the [interrogation] plan." At the time, the spring and summer of 2002, the administration was devising what some referred to as a "golden shield" from the Justice Department—the legal rationale that was embodied in the infamous "torture memorandum," written by John Yoo and signed by Jay Bybee in August 2002, which claimed that for an "alternative procedure" to be considered torture, and thus illegal, it would have to cause pain of the sort "that would be associated with serious physical injury so severe that death, organ failure, or permanent damage resulting in a loss of significant body function will likely result." The "golden shield" presumably would protect CIA officers from prosecution. Still, Director of Central Intelligence George Tenet regularly brought directly to the attention of the highest officials of the government specific procedures to be used on specific detainees—"whether they would be slapped, pushed, deprived of sleep or subject to simulated drowning"—in order to seek reassurance that they were legal. According to the ABC report, the briefings of principals were so detailed and frequent that "some of the interrogation sessions were almost choreographed." At one such meeting, John Ashcroft, then attorney general, reportedly demanded of his colleagues, "Why are we talking about this in the White House? History will not judge this kindly."^[12]

We do not know if the plywood appeared in Zubaydah's white room thanks to orders from his interrogators, from their bosses at Langley, or perhaps from their superiors in the White House. We don't know the precise parts played by those

responsible for "choreographing" the "alternative set of procedures." We do know from several reports that at a White House meeting in July 2002 top administration lawyers gave the CIA "the green light" to move to the "more aggressive techniques" that were applied to him, separately and in combination, during the following days:

After the beating I was then placed in the small box. They placed a cloth or cover over the box to cut out all light and restrict my air supply. As it was not high enough even to sit upright, I had to crouch down. It was very difficult because of my wounds. The stress on my legs held in this position meant my wounds both in the leg and stomach became very painful. I think this occurred about 3 months after my last operation. It was always cold in the room, but when the cover was placed over the box it made it hot and sweaty inside. The wound on my leg began to open and started to bleed. I don't know how long I remained in the small box, I think I may have slept or maybe fainted.

I was then dragged from the small box, unable to walk properly and put on what looked like a hospital bed, and strapped down very tightly with belts. A black cloth was then placed over my face and the interrogators used a mineral water bottle to pour water on the cloth so that I could not breathe. After a few minutes the cloth was removed and the bed was rotated into an upright position. The pressure of the straps on my wounds was very painful. I vomited. The bed was then again lowered to horizontal position and the same torture carried out again with the black cloth over my face and water poured on from a bottle. On this occasion my head was in a more backward, downwards position and the water was poured on for a longer time. I struggled against the straps, trying to breathe, but it was hopeless. I thought I was going to die. I lost control of my urine. Since then I still lose control of my urine when under stress.

I was then placed again in the tall box. While I was inside the box loud music was played again and somebody kept banging repeatedly on the box from the outside. I tried to sit down on the floor, but because of the small space the bucket with urine tipped over and spilt over me.... I was then taken out and again a towel was wrapped around my neck and I was smashed into the wall with the plywood covering and repeatedly slapped in the face by the same two interrogators as before.

I was then made to sit on the floor with a black hood over my head until the next session of torture began. The room was always kept very cold.

This went on for approximately one week. During this time the whole procedure was repeated five times. On each occasion, apart from one, I was suffocated once or twice and was put in the vertical position on the bed in between. On one occasion the suffocation was repeated three times. I vomited each time I was put in the vertical position between the suffocation.

During that week I was not given any solid food. I was only given Ensure to drink. My head and beard were shaved everyday.

I collapsed and lost consciousness on several occasions. Eventually the torture was stopped by the intervention of the doctor.

I was told during this period that I was one of the first to receive these interrogation techniques, so no rules applied. It felt like they were experimenting and trying out techniques to be used later on other people.

5.

All evidence from the ICRC report suggests that Abu Zubaydah's informant was telling him the truth: he was the first, and, as such, a guinea pig. Some techniques are discarded. The coffin-like black boxes, for example, barely large enough to contain a man, one six feet tall and the other scarcely more than three feet, which seem to recall the sensory-deprivation tanks used in early CIA-sponsored experiments, do not reappear. Neither does the "long-time sitting"—the weeks shackled to a chair—that Abu Zubaydah endured in his first few months.

Nudity, on the other hand, is a constant in the ICRC report, as are permanent shackling, the "cold cell," and the unceasing loud music or noise. Sometimes there is twenty-four-hour light, sometimes constant darkness. Beatings, also, and smashing against the walls seem to be favored procedures; often, the interrogators wear gloves.

In later interrogations new techniques emerge, of which "long-time standing" and the use of cold water are notable. Walid Bin Attash, a Yemeni national involved with planning the attacks on the US embassies in Africa in 1998 and on the USS *Cole* in 2000, was captured in Karachi on April 29, 2003:

On arrival at the place of detention in Afghanistan I was stripped naked. I remained naked for the next two weeks. I was put in a cell measuring approximately [3 1/2 by 6 1/2 feet]. I was kept in a standing position, feet flat on the floor, but with my arms above my head and fixed with handcuffs and a chain to a metal bar running across the width of the cell. The cell was dark with no light, artificial or natural.

During the first two weeks I did not receive any food. I was only given Ensure and water to drink. A guard would come and hold the bottle for me while I drank.... The toilet consisted of a bucket in the cell.... I was not allowed to clean myself after using the bucket. Loud music was playing twenty-four hours each day throughout the three weeks I was there.

This "forced standing," with arms shackled above the head, a favorite Soviet technique (*stoika*) that seems to have become standard procedure after Abu Zubaydah, proved especially painful for Bin Attash, who had lost a leg fighting in Afghanistan:

After some time being held in this position my stump began to hurt so I removed my artificial leg to relieve the pain. Of course my good leg then began to ache and soon started to give way so that I was left hanging with all my weight on my wrists. I shouted for help but at first nobody came. Finally, after about one hour a guard came and my artificial leg was given back to me and I was again placed in the standing position with my hands above my head. After that the interrogators sometimes deliberately removed my artificial leg in order to add extra stress to the position....

By his account, Bin Attash was kept in this position for two weeks—"apart [from] two or three times when I was allowed to lie down." Though "the methods used were specifically designed not to leave marks," the cuffs eventually "cut into my wrists and made wounds. When this happened the doctor would be called." At a second location, where Bin Attash was again stripped naked and placed "in a standing position with my arms above my head and fixed with handcuffs and a chain to a metal ring in the ceiling," a doctor examined his lower leg every day—"using a tape measure for signs of swelling."

I do not remember for exactly how many days I was kept standing, but I think it was about ten days.... During the standing I was made to wear a diaper. However, on some occasions the diaper was not

replaced and so I had to urinate and defecate over myself. I was washed down with cold water everyday.

Cold water was used on Bin Attash in combination with beatings and the use of a plastic collar, which seems to have been a refinement of the towel that had been looped around Abu Zubaydah's neck:

Every day for the first two weeks I was subjected to slaps to my face and punches to my body during interrogation. This was done by one interrogator wearing gloves....

Also on a daily basis during the first two weeks a collar was looped around my neck and then used to slam me against the walls of the interrogation room. It was also placed around my neck when being taken out of my cell for interrogation and was used to lead me along the corridor. It was also used to slam me against the walls of the corridor during such movements.

Also on a daily basis during the first two weeks I was made to lie on a plastic sheet placed on the floor which would then be lifted at the edges. Cold water was then poured onto my body with buckets.... I would be kept wrapped inside the sheet with the cold water for several minutes. I would then be taken for interrogation....

Bin Attash notes that in the "second place of detention"—where he was put in the diaper—"they were rather more sophisticated than in Afghanistan because they had a hose-pipe with which to pour the water over me."

6.

A clear method emerges from these accounts, based on forced nudity, isolation, bombardment with noise and light, deprivation of sleep and food, and repeated beatings and "smashings"—though from this basic model one can see the method evolve, from forced sitting to forced standing, for example, and acquire new elements, like immersion in cold water.

Khaled Shaik Mohammed, the key planner of the September 11 attacks who was captured in Rawalpindi on March 1, 2003—nine of the fourteen "high-value detainees" were apprehended in Pakistan—and, after a two-day detention in Pakistan during which he alleges that a "CIA agent...punched him several times in the stomach, chest and face [and]...threw him on the floor and trod on his face," was sent to Afghanistan using the standard "transfer procedures." ("My eyes were

covered with a cloth tied around my head and with a cloth bag pulled over it. A suppository was inserted into my rectum. I was not told what the suppository was for.") In Afghanistan, he was stripped and placed in a small cell, where he "was kept in a standing position with my hands cuffed and chained to a bar above my head. My feet were flat on the floor." After about an hour,

I was taken to another room where I was made to stand on tiptoes for about two hours during questioning. Approximately thirteen persons were in the room. These included the head interrogator (a man) and two female interrogators, plus about ten muscle guys wearing masks. I think they were all Americans. From time to time one of the muscle guys would punch me in the chest and stomach.

These "full-dress" interrogations—where the detainee stands naked, on tiptoe, amid a crowd of thirteen people, including "ten muscle guys wearing masks"—were periodically interrupted by the detainee's removal to a separate room for additional procedures:

Here cold water from buckets was thrown onto me for about forty minutes. Not constantly as it took time to refill the buckets. After which I would be taken back to the interrogation room.

On one occasion during the interrogation I was offered water to drink, when I refused I was again taken to another room where I was made to lie [on] the floor with three persons holding me down. A tube was inserted into my anus and water poured inside. Afterwards I wanted to go to the toilet as I had a feeling as if I had diarrhoea. No toilet access was provided until four hours later when I was given a bucket to use.

Whenever I was returned to my cell I was always kept in the standing position with my hands cuffed and chained to a bar above my head.

After three days in what he believes was Afghanistan, Mohammed was again dressed in a tracksuit, blindfold, hood, and headphones, and shackled and placed aboard a plane "sitting, leaning back, with my hands and ankles shackled in a high chair." He quickly fell asleep—"the first proper sleep in over five days"—and remains unsure of how long the journey took. On arrival, however, he realized he had come a long way:

I could see at one point there was snow on the ground. Everybody was wearing black, with masks and army boots, like Planet-X people. I think the country was Poland. I think this because on one occasion a water bottle was brought to me without the label removed. It had [an] e-mail address ending in ".pl."

He was stripped and put in a small cell "with cameras where I was later informed by an interrogator that I was monitored 24 hours a day by a doctor, psychologist and interrogator." He believes the cell was underground because one had to descend steps to reach it. Its walls were of wood and it measured about ten by thirteen feet.

It was in this place, according to Mohammed, that "the most intense interrogation occurred, led by three experienced CIA interrogators, all over 65 years old and all strong and well trained." They informed him that they had received the "green light from Washington" to give him " *a hard time*." "They never used the word 'torture' and never referred to 'physical pressure,' only to ' *a hard time*.' I was never threatened with death, in fact I was told that they would not allow me to die, but that I would be brought to the ' *verge of death and back again*.'"

I was kept for one month in the cell in a standing position with my hands cuffed and shackled above my head and my feet cuffed and shackled to a point in the floor. Of course during this month I fell asleep on some occasions while still being held in this position. This resulted in all my weight being applied to the handcuffs around my wrist resulting in open and bleeding wounds. [Scars consistent with this allegation were visible on both wrists as well as on both ankles.] Both my feet became very swollen after one month of almost continual standing.^[13]

For interrogation, Mohammed was taken to a different room. The sessions last for as long as eight hours and as short as four.

The number of people present varied greatly from one day to another. Other interrogators, including women, were also sometimes present... A doctor was usually also present. If I was perceived not to be cooperating I would be put against a wall and punched and slapped in the body, head and face. A thick flexible plastic collar would also be placed around my neck so that it could then be held at the two ends by a guard who would use it to slam me repeatedly against the wall. The beatings were combined with the

use of cold water, which was poured over me using a hose-pipe. The beatings and use of cold water occurred on a daily basis during the first month.

Like Abu Zubaydah; like Abdelrahim Hussein Abdul Nashiri, a Saudi who was captured in Dubai in October 2002, Mohammed was also subjected to waterboarding, by his account on five occasions:

I would be strapped to a special bed, which could be rotated into a vertical position. A cloth would be placed over my face. Cold water from a bottle that had been kept in a fridge was then poured onto the cloth by one of the guards so that I could not breathe.... The cloth was then removed and the bed was put into a vertical position. The whole process was then repeated during about one hour. Injuries to my ankles and wrists also occurred during the waterboarding as I struggled in the panic of not being able to breath. Female interrogators were also present...and a doctor was always present, standing out of sight behind the head of [the] bed, but I saw him when he came to fix a clip to my finger which was connected to a machine. I think it was to measure my pulse and oxygen content in my blood. So they could take me to [the] breaking point.

As with Zubaydah, the harshest sessions of interrogation involved the "alternative set of procedures" used in sequence and in combination, one technique intensifying the effects of the others:

The beatings became worse and I had cold water directed at me from a hose-pipe by guards while I was still in my cell. The worst day was when I was beaten for about half an hour by one of the interrogators. My head was banged against the wall so hard that it started to bleed. Cold water was poured over my head. This was then repeated with other interrogators. Finally I was taken for a session of water boarding. The torture on that day was finally stopped by the intervention of the doctor. I was allowed to sleep for about one hour and then put back in my cell standing with my hands shackled above my head.

Reading the ICRC report, one becomes eventually somewhat inured to the "alternative set of procedures" as they are described: the cold and repeated violence grows numbing. Against this background, the descriptions of daily life of the detainees in the black sites, in which interrogation seems merely a periodic

heightening of consistently imposed brutality, become more striking. Here again is Mohammed:

After each session of torture I was put into a cell where I was allowed to lie on the floor and could sleep for a few minutes. However, due to shackles on my ankles and wrists I was never able to sleep very well....The toilet consisted of a bucket in the cell, which I could use on request [he was shackled standing, his hands affixed to the ceiling], but I was not allowed to clean myself after toilet during the first month.... During the first month I was not provided with any food apart from on two occasions as a reward for perceived cooperation. I was given Ensure to drink every 4 hours. If I refused to drink then my mouth was forced open by the guard and it was poured down my throat by force.... At the time of my arrest I weighed 78kg. After one month in detention I weighed 60kg.

I wasn't given any clothes for the first month. Artificial light was on 24 hours a day, but I never saw sunlight.

7.

Q : Mr. President,...this is a moral question: Is torture ever justified?

President George W. Bush : Look, I'm going to say it one more time.... Maybe I can be more clear. The instructions went out to our people to adhere to law. That ought to comfort you. We're a nation of law. We adhere to laws. We have laws on the books. You might look at these laws, and that might provide comfort for you.

—Sea Island, Georgia, June 10, 2004

Abu Zubaydah, Walid Bin Attash, Khaled Shaik Mohammed—these men almost certainly have blood on their hands, a great deal of blood. There is strong reason to believe that they had critical parts in planning and organizing terrorist operations that caused the deaths of thousands of people. So in all likelihood did the other twelve "high-value detainees" whose treatment while secretly confined by agents of the US government is described with such gruesome particularity in the report of the International Committee of the Red Cross. From everything we know, many or all of these men deserve to be tried and punished—to be "brought to justice," as President Bush, in his speech to the American people on September 6, 2006, vowed they would be.

It seems unlikely that they will be brought to justice anytime soon. In mid-January, Susan J. Crawford, who had been appointed by the Bush administration to decide which Guantánamo detainees should be tried before military commissions, declined to refer to trial Mohammed al-Qahtani, who was to have been among the September 11 hijackers but who had been turned back by immigration officials at Orlando International Airport. After he was captured in Afghanistan in late 2002, Qahtani was imprisoned in Guantánamo and interrogated by Department of Defense intelligence officers. Crawford, a retired judge and former general counsel of the army, told *The Washington Post* that she had concluded that Qahtani's "treatment met the legal definition of torture."

The techniques they used were all authorized, but the manner in which they applied them was overly aggressive and too persistent....

You think of torture, you think of some horrendous physical act done to an individual. This was not any one particular act; this was just a combination of things that had a medical impact on him, that hurt his health. It was abusive and uncalled for. And coercive.

Clearly coercive.^[14]

Qahtani's interrogation at Guantánamo, accounts of which have appeared in *Time* and *The Washington Post*, was intense and prolonged, stretching for fifty consecutive days beginning in the late fall of 2002, and led to his hospitalization on at least two occasions. Some of the techniques used, including longtime sitting in restraints, prolonged exposure to cold, loud music, and noise, and sleep deprivation, recall those described in the ICRC report. If the "coercive" and "abusive" interrogation of Qahtani makes trying him impossible, one may doubt that any of the fourteen "high-value detainees" whose accounts are given in this report will ever be tried and sentenced in an internationally recognized and sanctioned legal proceeding.

In the case of men who have committed great crimes, this seems to mark perhaps the most important and consequential sense in which "torture doesn't work." The use of torture deprives the society whose laws have been so egregiously violated of the possibility of rendering justice. Torture destroys justice. Torture in effect relinquishes this sacred right in exchange for speculative benefits whose value is, at the least, much disputed. John Kiriakou, the CIA officer who witnessed part of Zubaydah's interrogation, described to Brian Ross of ABC News what happened after Zubaydah was waterboarded:

He resisted. He was able to withstand the water boarding for quite some time. And by that I mean probably 30, 35 seconds.... And a

short time afterwards, in the next day or so, he told his interrogator that Allah had visited him in his cell during the night and told him to cooperate because his cooperation would make it easier on the other brothers who had been captured. And from that day on he answered every question just like I'm sitting here speaking to you.... The threat information that he provided disrupted a number of attacks, maybe dozens of attacks.

This claim, echoed by President Bush in his speech, is a matter of fierce dispute. Bush's public version, indeed, was much more carefully circumscribed: among other things, that Zubaydah's information confirmed the alias ("Mukhtar") of Khaled Shaik Mohammed, and thus helped lead to his capture; that it helped lead, indirectly, to the capture of Ramzi bin al-Shibh, a Yemeni who was another key figure in planning the September 11 attacks; and that it "helped us stop another planned attack within the United States."

At least some of this information, apparently, came during the early, noncoercive interrogation led by FBI agents. Later, according to the reporter Ron Suskind, Zubaydah

named countless targets inside the US to stop the pain, all of them immaterial. Indeed, think back to the sudden slew of alerts in the spring and summer of 2002 about attacks on apartment buildings, banks, shopping malls and, of course, nuclear plants.

Suskind is only the most prominent of a number of reporters with strong sources in the intelligence community who argue that the importance of the intelligence Zubaydah supplied, and indeed his importance within al-Qaeda, have been grossly and systematically exaggerated by government officials, from President Bush on down.^[15]

Though it seems highly unlikely that Zubaydah's information stopped "maybe dozens of attacks," as Kiriakou said, the plain fact is that it is impossible, until a thorough investigation can be undertaken of the interrogations, to evaluate fully and fairly what intelligence the United States actually received in return for all the severe costs, practical, political, legal, and moral, the country incurred by instituting a policy of torture. There is a sense in which the entire debate over what Zubaydah did or did not provide, and the attacks the information might or might not have prevented—a debate driven largely by leaks by fiercely self-interested parties—itself reflects an unvoiced acceptance, on both sides, of the centrality of the mythical "ticking-bomb scenario" so beloved of those who argue that torture is necessary, and so prized by the writers of television dramas like *24*.

That is, the argument centers on whether Zubaydah's interrogation directly "disrupted a number of attacks."

Perhaps unwittingly, Kiriakou is most revealing about the intelligence value of interrogation of "high-value detainees" when he discusses what the CIA actually got from Zubaydah:

What he was able to provide was information on the al-Qaeda leadership. For example, if bin Laden were to do X, who would be the person to undertake such and such an operation? "Oh, logically that would be Mr. Y." And we were able to use that information to kind of get an idea of how al-Qaeda operated, how it came about conceptualizing its operations, and how it went about tasking different cells with carrying out operations.... His value was, it allowed us to have somebody who we could pass ideas onto for his comments or analysis.

This has the ring of truth, for this is how intelligence works—by the patient accruing of individual pieces of information, by building a picture that will help officers make sense of the other intelligence they receive. Could such "comments or analysis" from a high al-Qaeda operative eventually help lead to the disruption of "a number of attacks, maybe dozens of attacks"? It seems possible—but if it did, the chain of cause and effect might not be direct, certainly not nearly so direct as the dramatic scenarios in newspapers and television dramas—and presidential speeches—suggest. The ticking bomb, about to explode and kill thousands or millions; the evil captured terrorist who alone has the information to find and disarm it; the desperate intelligence operative, forced to do whatever is necessary to gain that information—all these elements are well known and emotionally powerful, but where they appear most frequently is in popular entertainment, not in white rooms in Afghanistan.

There is a reverse side, of course, to the "ticking bomb" and torture: pain and ill-treatment, by creating an unbearable pressure on the detainee to say something, anything, to make the pain stop, increase the likelihood that he will fabricate stories, and waste time, or worse. At least some of the intelligence that came of the "alternative set of procedures," like Zubaydah's supposed "information" about attacks on shopping malls and banks, seems to have led the US government to issue what turned out to be baseless warnings to Americans. Khaled Shaik Mohammed asserted this directly in his interviews with the ICRC. "During the harshest period of my interrogation," he said,

I gave a lot of false information in order to satisfy what I believed the interrogators wished to hear in order to make the ill-treatment stop.... I'm sure that the false information I was forced to invent...wasted a lot of their time and led to several false red-alerts being placed in the US.

For all the talk of ticking bombs, very rarely, if ever, have officials been able to point to information gained by interrogating prisoners with "enhanced techniques" that enabled them to prevent an attack that had reached its "operational stage" (that is, had gone beyond reconnoitering and planning). Still, widespread perception that such techniques have prevented attacks, actively encouraged by the President and other officials, has been politically essential in letting the administration carry on with these policies after they had largely become public. Polls tend to show that a majority of Americans are willing to support torture only when they are assured that it will "thwart a terrorist attack." Because of the political persuasiveness of such scenarios it is vital that a future inquiry truly investigate claims that attacks have been prevented.

As I write, it is impossible to know what benefits—in intelligence, in national security, in disrupting al-Qaeda—the President's approval of use of an "alternative set of procedures" might have brought to the United States. What we can say definitively is that the decision has harmed American interests in quite demonstrable ways. Some are practical and specific: for example, FBI agents, many of them professionals with great experience and skill in interrogation, were withdrawn, apparently after objections by the bureau's leaders, when it was decided to use the "alternative set of procedures" on Abu Zubaydah. Extensive leaks to the press, from both officials supportive of and critical of the "alternative set of procedures," undermined what was supposed to be a highly secret program; those leaks, in large part a product of the great controversy the program provoked within the national security bureaucracy, eventually helped make it unsustainable.

Finally, this bureaucratic weakness led officials of the CIA to destroy, apparently out of fear of eventual exposure and possible prosecution, a trove of as many as ninety-two video recordings that had been made of the interrogations, all but two of them of Abu Zubaydah. Whether or not the prosecutor investigating those actions determines that they were illegal, it is hard to believe that the recordings did not include valuable intelligence, which was sacrificed, in effect, for political reasons. These recordings doubtless could have played a critical part as well in the effort to determine what benefits, if any, the program brought to the security of the United States.

Far and away the greatest damage, though, was legal, moral, and political. In the wake of the ICRC report one can make several definitive statements:

1. Beginning in the spring of 2002 the United States government began to torture prisoners. This torture, approved by the President of the United States and monitored in its daily unfolding by senior officials, including the nation's highest law enforcement officer, clearly violated major treaty obligations of the United States, including the Geneva Conventions and the Convention Against Torture, as well as US law.

2. The most senior officers of the US government, President George W. Bush first among them, repeatedly and explicitly lied about this, both in reports to international institutions and directly to the public. The President lied about it in news conferences, interviews, and, most explicitly, in speeches expressly intended to set out the administration's policy on interrogation before the people who had elected him.

3. The US Congress, already in possession of a great deal of information about the torture conducted by the administration—which had been covered widely in the press, and had been briefed, at least in part, from the outset to a select few of its members—passed the Military Commissions Act of 2006 and in so doing attempted to protect those responsible from criminal penalty under the War Crimes Act.

4. Democrats, who could have filibustered the bill, declined to do so—a decision that had much to do with the proximity of the midterm elections, in the run-up to which, they feared, the President and his Republican allies might gain advantage by accusing them of "coddling terrorists." One senator summarized the politics of the Military Commissions Act with admirable forthrightness:

Soon, we will adjourn for the fall, and the campaigning will begin in earnest. And there will be 30-second attack ads and negative mail pieces, and we will be criticized as caring more about the rights of terrorists than the protection of Americans. And I know that the vote before us was specifically designed and timed to add more fuel to that fire.^[16]

Senator Barack Obama was only saying aloud what every other legislator knew: that for all the horrified and gruesome exposés, for all the leaked photographs and documents and horrific testimony, when it came to torture in the September 11 era, the raw politics cut in the other direction. Most politicians remain convinced that still fearful Americans—given the choice between the image of 24

's Jack Bauer, a latter-day Dirty Harry, fantasy symbol of untrammelled power doing "everything it takes" to protect them from that ticking bomb, and the image of weak liberals "reading Miranda rights to terrorists"—will choose Bauer every time. As Senator Obama said, after the bill he voted against had passed, "politics won today."

5. The political damage to the United States' reputation, and to the "soft power" of its constitutional and democratic ideals, has been, though difficult to quantify, vast and enduring. In a war that is essentially an insurgency fought on a worldwide scale—which is to say, a political war, in which the attitudes and allegiances of young Muslims are the critical target of opportunity—the United States' decision to use torture has resulted in an enormous self-administered defeat, undermining liberal sympathizers of the United States and convincing others that the country is exactly as its enemies paint it: a ruthless imperial power determined to suppress and abuse Muslims. By choosing to torture, we freely chose to become the caricature they made of us.

8.

In the wake of the attacks of September 11, 2001, Cofer Black, the former head of the CIA's Counterterrorism Center and a famously colorful hard-liner, appeared before the Senate Intelligence Committee and made the most telling pronouncement of the era: "All I want to say is that there was 'before' 9/11 and 'after' 9/11. After 9/11 the gloves come off." In the days after the attacks this phrase was everywhere. Columnists quoted it, television commentators flaunted it, interrogators at Abu Ghraib used it in their cables. ("The gloves are coming off gentlemen regarding these detainees, Col Boltz has made it clear that we want these individuals broken."^[17])

The gloves came off: four simple words. And yet they express a complicated thought. For if the gloves must come off, that means that before the attacks the gloves were on. There is something implicitly exculpatory in the image, something that made it particularly appealing to officials of an administration that endured, on its watch, the most lethal terrorist attack in the country's history. If the attack succeeded, it must have had to do not with the fact that intelligence was not passed on or that warnings were not heeded or that senior officials did not focus on terrorism as a leading threat. It must have been, at least in part, because the gloves were on—because the post-Watergate reforms of the 1970s, in which Congress sought to put limits on the CIA, on its freedom to mount covert actions with "deniability" and to conduct surveillance at home and abroad, had illegitimately circumscribed the President's power and thereby put

the country dangerously at risk. It is no accident that two of the administration's most powerful officials, Dick Cheney and Donald Rumsfeld, served as young men in very senior positions in the Nixon and Ford administrations. They had witnessed firsthand the gloves going on and, in the weeks after the September 11 attacks, they argued powerfully that it was those limitations—and, it was implied, not a failure to heed warnings—that had helped lead, however indirectly, to the country's vulnerability to attack.

And so, after a devastating and unprecedented attack, the gloves came off. Guided by the President and his closest advisers, the United States transformed itself from a country that, officially at least, condemned torture to a country that practiced it. And this fateful decision, however much we may want it to, will not go away, any more than the fourteen "high-value detainees," tortured and thus unprosecutable, will go away. Like the grotesque stories in the ICRC report, the decision sits before us, a toxic fact, polluting our political and moral life.

Since the inauguration of President Obama, the previous administration's "alternative procedures" have acquired a prominence in the press, particularly on cable television, that they rarely achieved when they were actually being practiced on detainees. This is especially the case with waterboarding, which according to the former director of the CIA has not been used since 2003. On his first day in office, President Obama issued executive orders that stopped the use of these techniques and provided for task forces to study US government policies on rendition, detention, and interrogation, among others.

Meantime, Democratic leaders in Congress, who have been in control since 2006, have at last embarked on serious investigations. Senators Dianne Feinstein and Christopher Bond, the chair and ranking member of the Intelligence Committee, have announced a "review of the CIA's detention and interrogation program," which would study, among other questions, "how the CIA created, operated, and maintained its detention and interrogation program," make "an evaluation of intelligence information gained through the use of enhanced and standard interrogation techniques," and investigate "whether the CIA accurately described the detention and interrogation program to other parts of the US government"—including, notably, "the Senate Intelligence Committee." The hearings, according to reports, are unlikely to be public.

In February, Senator Patrick Leahy, chairman of the Judiciary Committee, called for the establishment of what he calls a "nonpartisan commission of inquiry," better known as a "Truth and Reconciliation Committee," to investigate "how our detention policies and practices, from Guantanamo to Abu Ghraib, have seriously

eroded fundamental American principles of the rule of law." Since Senator Leahy's commission is intended above all to investigate and make public what was done—"in order to restore our moral leadership," as he said, "we must acknowledge what was done in our name"—he would offer grants of immunity to public officials in exchange for their truthful testimony. He seeks not prosecution and justice but knowledge and exposure: "We cannot turn the page until we have read the page."

Many officials of human rights organizations, who have fought long and valiantly to bring attention and law to bear on these issues, strongly reject any proposal that includes widespread grants of immunity. They urge investigations and prosecutions of Bush administration officials. The choices are complicated and painful. From what we know, officials acted with the legal sanction of the US government and under orders from the highest political authority, the elected president of the United States. Political decisions, made by elected officials, led to these crimes. But political opinion, within the government and increasingly, as time passed, without, to some extent allowed those crimes to persist. If there is a need for prosecution there is also a vital need for education. Only a credible investigation into what was done and what information was gained can begin to alter the political calculus around torture by replacing the public's attachment to the ticking bomb with an understanding of what torture is and what is gained, and lost, when the United States reverts to it.

President Obama, while declaring that "nobody's above the law, and if there are clear instances of wrongdoing...people should be prosecuted," has also expressed his strong preference for "looking forward" rather than "looking backwards." One can understand the sentiment but even some of the decisions his administration has already made—concerning state secrecy, for example—show the extent to which he and his Department of Justice will be haunted by what his predecessor did. Consider the uncompromising words of Eric Holder, the attorney general, who in reply to a direct question at his confirmation hearings had declared, "waterboarding is torture." There is nothing ambiguous about this statement—nor about the equally blunt statements of several high Bush administration officials, including the former vice-president and the director of the CIA, confirming unequivocally that the administration had ordered and directed that prisoners under its control be waterboarded. We are all living, then, with a terrible contradiction, an enduring one, and it is not subtle, any more than the accounts in the ICRC report are subtle. "It was," as Mr. Cheney said of waterboarding, "a no-brainer for me." Now Abu Zubaydah and his fellow detainees have stepped forward out of the darkness to link hands with the former vice-president and testify to his truthfulness.

—March 12, 2009

Notes

^[1]See "Restoring Trust in the Justice System: The Senate Judiciary Committee's Agenda in the 111th Congress," 2009 Marver Bernstein Lecture, Georgetown University, February 9, 2009.

^[2]See "President Discusses Creation of Military Commissions to Try Suspected Terrorists," September 6, 2006, East Room, White House, available at cfr.org.

^[3]See, for the authoritative account, Dana Priest, "CIA Holds Terror Suspects in Secret Prisons," *The Washington Post*, November 2, 2005.

^[4]See Jonathan Alter, "Time to Think About Torture: It's a New World, and Survival May Well Require Old Techniques That Seemed Out of the Question," *Newsweek*, November 5, 2001. See also Raymond Bonner, Don Van Natta Jr., and Amy Waldman, "Interrogations: Questioning Terror Suspects in a Dark and Surreal World," *The New York Times*, March 9, 2003.

^[5]"President Bush's News Conference," *The New York Times*, September 15, 2006.

^[6]From "CIA—Abu Zubaydah. Interview with John Kiriakou." This is the rough and undated transcript of a video interview conducted by Brian Ross of ABC News, apparently in December 2007, available at abcnews.go.com. Quotations from this document have been edited very slightly for clarity. See also Richard Esposito and Brian Ross, "Coming in from the Cold: CIA Spy Calls Waterboarding Necessary But Torture," ABC News, December 10, 2007.

^[7]See "Working Group Report on Detainee Interrogations in the Global War on Terrorism: Assessment of Legal, Historical, Policy, and Operational Considerations," April 4, 2003, in Mark Danner, *Torture and Truth: America, Abu Ghraib, and the War on Terror* (New York Review Books, 2004), pp. 190–192. A great many of these documents, collected in this book and elsewhere, were leaked in the wake of the publication of the Abu Ghraib photographs, and have been public since late spring or early summer of 2004.

^[8]See David Johnston, "At a Secret Interrogation, Dispute Flared Over Tactics," *The New York Times*, September 10, 2006.

^[9]See Mark Hosenball, "How Good Is Abu Zubaydah's Information?," *Newsweek* Web Exclusive, April 27, 2002.

^[10]See Johnston, "At a Secret Interrogation, Dispute Flared Over Tactics."

^[11]See KUBARK *Counterintelligence Interrogation—July 1963* and *Human Resource Exploitation Training Manual—1983*, both archived at "Prisoner Abuse: Patterns from the Past," National Security Archive Electronic Briefing Book No. 122. For the historical roots of the "alternative set of procedures" see Alfred W. McCoy, *A Question of Torture: CIA Interrogation, from the Cold War to the War on Terror* (Metropolitan, 2006); and Jane Mayer, *The Dark Side: The Inside Story of How the War on Terror Turned into a War on American Ideals*

(Doubleday, 2008), especially pp. 167–174. See also my "The Logic of Torture," *The New York Review*, June 24, 2004, and *Torture and Truth*.

^[12]See Jan Crawford Greenburg, Howard L. Rosenberg, and Ariane de Vogue, "Sources: Top Bush Advisors Approved 'Enhanced Interrogation,'" ABC News, April 9, 2008.

^[13]The bracketed comment appears in the ICRC report.

^[14]See Bob Woodward, "Detainee Tortured, Says US Official: Trial Overseer Cites 'Abusive' Methods Against 9/11 Suspect," *The Washington Post*, January 14, 2009.

^[15]See Ron Suskind, "The Unofficial Story of the al-Qaeda 14," *Time*, September 10, 2006. See also Suskind's *The One Percent Doctrine: Deep Inside America's Pursuit of Its Enemies Since 9/11* (Simon and Schuster, 2006), pp. 99–101, and Mayer, *The Dark Side*, pp. 175–177.

^[16]See "Statement on Military Commission Legislation: Remarks by Senator Barack Obama," September 28, 2006.

^[17]See my *Torture and Truth*, p. 33.