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## The Road from Abu Ghraib

*A Torture Story Without a Hero or an Ending*



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It's mind-boggling. Torture is still up for grabs in America. No one questions anymore whether the CIA waterboarded one individual 83 times or another 186 times. The basic facts are no

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longer in dispute either by those who champion torture or those who, like myself, despise the very idea of it. No one questions whether some individuals died being tortured in American custody. (**They did.**) No one questions that it was a national policy devised by those at the very highest levels of government. (**It was.**) But many, it seems, still believe that the torture policy, politely renamed in its heyday “the enhanced interrogation program,” was **a good thing** for the country.

Now, the nation awaits the newest chapter in the torture debate without having any idea whether it will close the book on American torture or open a path of pain and shame into the distant future. No one yet knows whether we will be allowed to awake from the nightmarish and unacceptable world of illegality and obfuscation into which torture and the network of offshore prisons, or “black sites,” plunged us all.

April 28th marks the **tenth anniversary** of the moment that the horrors of Abu Ghraib were made public in this country. On that day a decade ago, the TV news magazine “60 Minutes II” **broadcast** the first photographs from that American-run prison in “liberated” Iraq. They showed U.S. military personnel humiliating, hurting, and abusing Iraqi prisoners in a myriad of perverse ways. While American servicemen and women smiled and gave a thumbs up, naked men were threatened by dogs, or were hooded, forced into sexual positions, placed standing with wires attached to their bodies, or left bleeding on prison floors.

Thus began America’s public odyssey with torture, a story in many chapters and still missing an ending. As the Abu Ghraib anniversary nears and the White House, the CIA, and various senators **still battle** over the release of a summary of a 6,300-page report by the Senate Intelligence Committee on Bush-era torture policies, it’s worth considering the strange journey we’ve taken and wondering just where we as a nation mired in the legacy of torture might be headed.

## **Chapter One: Revelations**

The odyssey started with the shock of those “60 Minutes II” photos, followed two days later by the reporting of veteran *New Yorker* writer **Seymour Hersh**. Having seen even more grim photographs and interviewed many in the chain of command stretching from Abu Ghraib to the Joint Chiefs of Staff and the Pentagon, Hersh painted a picture of a deliberate policy of abuse. He traced Abu Ghraib’s crimes to pressure from “military-intelligence teams, which included CIA officers and linguists and interrogation specialists from private defense contractors,” urging the production — and fast — of crucial information from U.S. captives in Iraq. Towards this end, the guards at Abu Ghraib were encouraged to “soften up” the detainees for interrogation.

That summer and fall of 2004, the *Washington Post*, the *New York Times*, the ACLU, and others got their hands on **several Bush administration memos** justifying and legalizing torture. These had largely been written by John Yoo and Jay Bybee, lawyers in the Office of Legal Counsel at the Department of Justice, and they proved grim reading indeed. The documents provided uniquely tortured definitions of torture that made almost any act in which the infliction of pain didn’t **rise to the level** of “organ failure, impairment of bodily function, or even death” acceptable. As if that weren’t enough, they developed **no less tortured** theories of executive power in which the president as commander-in-chief retained the right to authorize torture for national security reasons, despite its illegality under domestic, military, and international law.

With this anything-goes green light switched on, the memos proceeded to expressly approve **individual methods** of abuse (previously defined as torture) for American interrogators. Used in combination and repeatedly, these were known to destroy the human psyche and bring severe pain to the body as well. Specifically, they put the Bush administration's stamp of approval on graphically described "techniques," including sleep deprivation, slapping, the dangling of trussed prisoners from beams, and especially waterboarding, a process in which individuals essentially experience drowning, only to be saved at the last moment.

The trail of evidence went right to the top. The office of Defense Secretary Donald Rumsfeld told the interrogators of "the American Taliban," John Walker Lindh, to "**take the gloves off.**" Vice President Dick Cheney, who famously **said** it was time to "work the dark side," has **repeatedly defended** the policy of harsh interrogation techniques, **including waterboarding**, as effective and essential in keeping the nation safe. Top officials reportedly had various "enhanced interrogation techniques" **demonstrated** in the White House. The 2002 torture memos were addressed to White House Counsel and later Attorney General Alberto Gonzales.

CIA director George Tenet **knew**, too. Rumsfeld approved the use of special techniques in a **December 2002 memo**. It is impossible to imagine that Yoo's boss, Attorney General John Ashcroft, didn't know about the memos as well, and given what everyone else knew, it's unlikely President George W. Bush was left in the dark for long, if at all.

There were those who protested, but they did so only inside "the family." FBI Director **Robert Mueller**, for instance, knew enough to forbid the Bureau to use the techniques. He even **pulled his men** away from CIA interrogations of terror suspects, including the one that ended with the brutal waterboarding of suspected al-Qaeda operative Abu Zubaydah **83 times**. Colin Powell, the four-star general who was Secretary of State, balked at the notion of removing the prisoner of war protections of the Geneva Conventions from al-Qaeda detainees for the **purposes** of "interrogation and length of the detention." He went no further, however, than protesting vigorously in that early 2002 memo, urging the president to reconsider his options and stay within the law.

Michael Chertoff, the head of the Criminal Division at the Department of Justice and the future head of the Department of Homeland Security, **abruptly left** a meeting at which he was asked to give immunity in advance to those who would use harsh interrogation techniques. He refused to do so. But no one went public.

All told, there were no vocal dissidents when it came to the torture policy; no one resigned over it; no one even leaked the story to the media to protest the evisceration of American values and the constitutional or legal principles involved. In the aftermath of Abu Ghraib and the revelations that followed, there was just a chorus of "it wasn't torture" or "I didn't know" from nearly every official inside the executive branch who had known.

## **Chapter Two: The End Is(n't) in Sight**

Many initially believed that the Abu Ghraib revelations would bring a quick policy about-face. After all, torture is against the law in the United States, as well as under international law and the Uniform Code of Military Justice. Once awakened to the facts, could there be any question that

the country's nightmare would end promptly? Americans and their officials would wake up, shake off the bad episodes, and move on in law-abiding fashion.

The government, it was assumed, would back down from its violations of the law, the programs would be terminated, the perpetrators would be punished, Americans would lament the error, and chalk it all up — ruefully — to the misbehavior unleashed by the shock and fears of 9/11.

But these predictions — and they were widespread — proved wrong. Rather than recant, the administration, top to bottom, chose to lie, denying that “torture” in its true sense was taking place, and accusing the media and civil libertarians of **exaggerating**. Secretary of Defense Donald Rumsfeld, for example, **called** the accusations “isolated pockets of international hyperventilation.”

The administration's **counter-story** took the My Lai massacre path: there was no policy, no conspiracy to torture. The Abu Ghraib photos **reflected** a few low-level bad apples and rogue players, soldiers with anger management issues, who were understandably full of hate post-9/11 and unfortunately sexually perverse as well. They were in need of punishment, to be sure, but no one else was. And as for those memos, they were just drafts and suggestions, not accepted policy at all.

### **Chapter Three: Yet More Revelations (Don't) Turn the Tide**

Meanwhile, by summer's end in 2004, four official reports on detainee treatment had already been released to the public, making it clear that Abu Ghraib represented a pattern of abuse extending elsewhere. All concluded that what had occurred there violated military code. All also concluded that, when it came to the military, **there was** “no evidence of a policy of abuse promulgated by senior [Pentagon] officials or military authorities.” One of them, **the Fay-Jones Report**, hinted that the problem did not lie inside the military at all. “It is clear that the interrogation practices of other government agencies led to a loss of accountability at Abu Ghraib,” it noted, adding, “This requires further investigation.”

Once again, however, revelations and documentation led to nothing. George Bush was decisively reelected sixth months after the first stories on Abu Ghraib broke. The shadow of torture seemed not to harm him at all and had done nothing to deter his claim to the presidency, despite the fact that a **Gallup poll** at the time of his second inauguration showed that American opposition to torture — 39% in favor, 59% against — hadn't changed significantly since the war on terror began, when a Gallup poll showed 45% in favor and 53% against.

The implications of reelecting a president who had presided over a policy of torture soon came further into focus. In November 2005, *Washington Post* reporter Dana Priest documented the existence of “**black sites**,” secret CIA prisons scattered in eight countries around the world. They had been set up to interrogate detainees without any fear of being bothered by the U.S. legal system or its courts. The idea was to find convenient spots where no one would complain when those newly approved brutal techniques of interrogation were put into action by the CIA, private contractors, or in some cases foreign torturers. In other words, an offshore system of injustice for a state-sponsored policy of torture had been successfully created.

### **Chapter Four: The President Embraces the Torture Program**

In the wake of Bush's reelection, any pressure to change the detention and interrogation practices of the government naturally ebbed. Although late in 2004 the Justice Department revoked the original torture memos, new memos approved harsh interrogation techniques, albeit not the harshest of the earlier approved methods like waterboarding. A **Detainee Treatment Act** was indeed passed in 2005, **introduced by John McCain**, but its focus was on the military, not the CIA. Worse yet, it was amended to offer **immunity** to personnel who had followed "lawful" interrogation procedures — that is, the ones to which the torture memos had given the go-ahead. In other words, Congress was not about to step forward and rid the country of its torture regime.

In September 2006, five days before the anniversary of 9/11, however, President Bush **suddenly announced** an end to the black sites interrogation program. In this way, he admitted for the first time that an official policy of brutality in the service of interrogation had indeed existed. There was, however, little cause for rejoicing. Yes, **14 "high value detainees"** held in black sites were moved to Guantanamo — the centerpiece of the administration's system of offshore injustice — but only because, **according to** the president, they held "little or no additional intelligence value."

In reality, the program hadn't come to an end and some of the black sites **continued** to be used; nor had the president actually recanted anything. In fact, he embraced the program, stepping even further into the nightmarish realm of state-sponsored torture. Without the slightest indication of remorse, he **assured** Americans that it had been a splendid success. "I can say that questioning the detainees in this program has given us information that has saved innocent lives by helping us stop new attacks — here in the United States and across the world."

To this day, evidence that this statement was true has failed to prove convincing, which is undoubtedly why the claim is always made through a veil of national security secrecy. In his speech, the president insisted that information obtained from two of the **three waterboarded subjects** — 9/11 planner Khalid Sheik Mohammed and alleged top operative Abu Zubaydah — had been crucial to identifying and preventing terrorist attacks. "This program," he **added**, "has been and remains one of the most vital tools in our war against the terrorists. It is invaluable to America and to our allies. Were it not for this program, our intelligence community believes that al-Qaeda and its allies would have succeeded in launching another attack against the American homeland. By giving us information about terrorist plans we could not get anywhere else, this program has saved innocent lives."

## **Chapter Five: Impunity and Immunity**

The proof that George Bush had not fully ended the torture program came the moment Barack Obama entered the Oval Office. On that day the new president, as his first act in office, issued an **executive order** officially ending the illegal treatment of detainees for interrogation or other purposes. Henceforth, the Geneva Conventions, suspended by Bush for detainees in the war on terror, were to be restored. Torture was once again to be considered illegal. The president even **released** several previously unseen **Bush-era memos** on torture that were more detailed when it came to enumerating abusive practices than those already on the record.

Once again, however, the revelations came to naught. In the Obama years, the truth has become a substitute for accountability, a subject that the Obama Justice Department refused to tackle in any meaningful way. As the president said upon release of the new memos, he was not seeking

prosecution. It **was** to be a “time for reflection not retribution.” We **were to** “look forward, not backward.”

While the Justice Department did officially investigate **101** cases of alleged CIA torture violations, including two deaths, it found no reason to charge anyone — not those who devised the policy, not those who created the legal rationale for it, not those who lied about it, not those who carried it out, not even the CIA official who brazenly **destroyed 92 videotapes** of torture interrogations. In August 2012, Attorney General Eric Holder formally **dismissed** the last two cases, investigations of the deaths of two prisoners while in CIA hands. He announced the end of all investigations, and that was that. There was to be no accountability, no reckoning at all.

## **Chapter Six: The Elusive Finale**

Despite President Obama’s aversion to addressing the legacy of torture, in **2009** the bipartisan Senate Select Committee on Intelligence went to work on a review of what had happened. After years of effort and a reported six million pages of documents read, it has now completed a 6,300-page report. After heated debate, Congress has **decided** that the report’s executive summary and conclusion should be released, though only after their subject, the CIA, has vetted them.

Stories about wrongdoing and injustice usually feature villains and heroes. The villains in this tale of torture — from Vice President **Dick Cheney** and his legal counsel **David Addington** to the CIA agents who, as **recent leaks** from the Senate report indicate, went beyond even the techniques okayed in the torture memos — are clear enough by now. The question is: Where are the heroes?

To date, no individual has taken charge of the anti-torture movement — not Senator John McCain, who was himself tortured during the Vietnam War and who has spoken out **repeatedly** against torture at American hands, or Jimmy Carter who dedicated his post-presidency to human rights, and certainly not President Obama who refused to “look back” and so protect us from a possible future with torture in it. There are, to be sure, some honorable figures who left the government with little fanfare and much remorse, taking what they knew and their shame with them. They are useless as heroes, however, for they continue to refuse to speak out.

The Bush administration’s warrantless surveillance policy had such a hero in then-acting Attorney General (now FBI director) James Comey, who **famously** faced down the Bush White House and refused to reauthorize that illegal surveillance policy. In contrast, torture has been an all-villain, all-shame event.

Arguably, however, a rare hero of the unlikeliest sort has emerged in these last months, someone who has refused to back down when attacked and even maligned by the CIA and other defenders of the torture policy. Dianne Feinstein, chair of the Senate Intelligence Committee, has been **willing** to sacrifice civil liberties in deference to the wishes of the national security state when it comes to surveillance, but it seems that she has drawn the line at torture and gone very public about it. She even took to **the Senate floor** to denounce the CIA for its recent actions and older policies.

But what will happen when some redacted version of the summary of the report she has shepherded through is finally released? Will it be the beginning of the last chapter in America’s

era of torture? Will there be enough of the report left to matter after it's been vetted by the White House, the CIA, and others? Will Americans actually learn much more about the extremity of the CIA's torture regime — about, that is, what was done in their name? Or will most of that material be left on the cutting room floor? And will it matter anyway? Will Americans even care that the torture policy was carried out knowingly in a state of utter illegality, contrary to constitutional principle, and in a way meant to evade both the American people and parts of the government?

Given the story so far, the odds are that “chapter six” will be no ending at all, perhaps not even the beginning of the end. The book of torture may prove to be the *Game of Thrones* of real world fantasies of blood and pain, a multi-volume epic and a waking nightmare extending far into the future. Despite all evidence to the contrary, many Americans are likely to **continue to believe** that brutality, torture, and rank illegality is the road to national safety. One thing is certain: as long as those who perpetrated the torture policies are considered beyond the law, there will be no safe landing for this national fall from grace that began with the revelations at Abu Ghraib.