



11350 Random Hills Road, Suite 800, Fairfax, Virginia 22030 Phone (703) 934-6101 Fax (703) 352-3678

fff@fff.org www.fff.org

Bush Era Ends with Guantánamo Trial Chief's Torture Confession **by Andy Worthington**

Forget the president's [lame, reality-defying farewell speech](#) and Dick Cheney's [last-ditch attempts](#) to claim that the administration in which he served as vice president has never engaged in torture. The Bush era came to an end last Wednesday when, in one short interview, Susan J. Crawford, the senior Pentagon official overseeing the military commissions at Guantánamo — the novel system of trials for terror suspects that was conceived in the wake of the 9/11 attacks — condemned the Bush administration's "war-on-terror" detention policies and paved the way for criminal proceedings against senior administration officials, more acutely than anyone had managed before her.

Crawford, a retired judge who served as general counsel for the army during the Reagan administration and as Pentagon inspector general when Dick Cheney was defense secretary for George W. Bush's father, has served as the convening authority for the commissions since February 2007. In the interview, with Bob Woodward of the [Washington Post](#), she explained why, last May, she had decided in the case of Mohammed al-Qahtani, a Saudi accused of trying and failing to become one of the 9/11 operatives, that she would not refer his case for prosecution.

"We tortured Qahtani," she told Woodward. "His treatment met the legal definition of torture."

The admission was extraordinary for a number of reasons, not least because it was the first time that a senior official in the administration had admitted that a prisoner had been tortured at Guantánamo (or anywhere else, for that matter). Last February, Gen. Michael Hayden, the director of the CIA, admitted in a Senate hearing that three "high-value detainees" — the supposedly senior al-Qaeda operatives [Khalid Sheikh Mohammed](#), [Abu Zubaydah](#) and [Abdul Rahim al-Nashiri](#) — had been [waterboarded](#) in secret CIA custody, but although lawyers and torture experts are well aware that use of the technique — a form of controlled drowning — is torture, and that the Spanish Inquisition had explicitly referred to it as "tortura del agua," senior government officials either [equivocated](#) or [continued to deny](#) that U.S. forces had ever engaged in torture.

For the outgoing administration, Susan Crawford's confession means that equivocations and denials are no longer feasible, and for Barack Obama's new government it is difficult to see how criminal proceedings can be avoided. As Dahlia Lithwick and Philippe Sands explained in an article for [Slate](#), under the terms of the [UN Convention Against Torture](#) (to which the United States is a signatory), all 146 countries who have signed up to the treaty

are under an obligation to "ensure that all acts of torture are offences under its criminal law." These states must take any person alleged to have committed torture (or been complicit or participated in an act of torture) who is present in their territories into custody. The convention allows no exceptions, as Gen. Pinochet discovered in 1998. The state party to the Torture Convention must then submit the case to its competent authorities for prosecution or extradition for prosecution in another country.

They added, "For the Obama administration, the door to the do-nothing option is now closed," and any lingering doubts that this is the case should have been dispelled two days after Crawford's interview was published, when, at his Senate confirmation hearing, Eric Holder, Barack Obama's choice for attorney general, [stated unambiguously](#), "Waterboarding is torture" (reiterating the position Obama had taken on [ABC News](#) on January 11), and proceeded to explain that it had been used as a torture technique during the Spanish Inquisition, by the Japanese in World War II, and in Cambodia under the Khmer Rouge, adding, "We prosecuted our own soldiers for using it in Vietnam."

However, despite Eric Holder's decisive contribution to the torture debate, the impact of Crawford's confession does not end with its application to the torture of one particular prisoner or to the use of waterboarding. Although the administration attempted to redefine torture, in its notorious "[Torture Memo](#)" of August 2002, as the infliction of pain "equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death," Crawford was clearly more inclined to support the definition in the Torture Convention, which declares torture to be "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person."

In describing al-Qahtani's treatment as torture, for example, Crawford did not object to the use of waterboarding (to which, as far as we know, al-Qahtani was not subjected), but to "a combination" of other interrogation techniques, "their duration and the impact on Qahtani's health," as she explained to Woodward.

"The techniques they used were all authorized, but the manner in which they applied them was overly aggressive and too persistent," she said. "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. It was that medical impact that pushed me over the edge,” and to conclude that it was torture.

Al-Qahtani’s treatment was severe, of course. As *Time* magazine revealed in an interrogation log ([PDF](#)) that was made available in 2005, he was interrogated for 20 hours a day over a 50-day period in late 2002 and early 2003, when he was also subjected to extreme sexual humiliation, threatened by a dog, strip-searched and made to stand naked, and made to bark like a dog and growl at pictures of terrorists. On one occasion he was subjected to a “fake rendition,” in which he was tranquilized, flown off the island, revived, flown back to Guantánamo, and told that he was in a country that allowed torture.

In addition, as I explained in my book [The Guantánamo Files](#),

The sessions were so intense that the interrogators worried that the cumulative lack of sleep and constant interrogation posed a risk to his health. Medical staff checked his health frequently — sometimes as often as three times a day — and on one occasion, in early December, the punishing routine was suspended for a day when, as a result of refusing to drink, he became seriously dehydrated and his heart rate dropped to 35 beats a minute. While a doctor came to see him in the booth, however, loud music was played to prevent him from sleeping.

However, although the techniques that were applied to al-Qahtani were specifically approved for use on him by Defense Secretary Donald Rumsfeld, after senior officers at Guantánamo had requested approval for the use of harsher interrogation techniques, it’s clear that at least two other prisoners at Guantánamo were singled out for particularly abusive treatment: [Abdullah Tabarak](#), a Moroccan regarded as one of Osama bin Laden’s bodyguards, who (before his unexplained release from Guantánamo) was repeatedly prevented from seeing representatives of the International Red Cross due to “military necessity,” and Mohamedou Ould Slahi, a Mauritanian who had met the 9/11 hijackers in Germany, whose torture (which was arguably even more severe than that endured by al-Qahtani) was most recently reported in an article in [Der Spiegel](#).

Moreover, as was made clear in a Senate Armed Services Committee report published last month ([PDF](#)), the techniques to which al-Qahtani, Tabarak and Slahi were subjected — which included “stripping detainees of their clothing, placing them in stress positions, putting hoods over their heads, disrupting their sleep, treating them like animals, subjecting them to loud music and flashing lights, and exposing them to extreme temperatures” — were not techniques reserved solely for use on a handful of supposedly significant prisoners.

Instead, they were part of a deliberate policy of reverse engineering techniques taught to U.S. military personnel “to withstand interrogation techniques considered illegal under the Geneva Conventions,” and “based, in part, on Chinese Communist techniques used during the

Korean war to elicit false confessions,” which effectively became part of Guantánamo’s standard operating procedure during 2003 and 2004. According to a former interrogator who spoke to the [New York Times](#) for an article that was published in January 2005,

While all the detainees were threatened with harsh tactics if they did not cooperate, about one in six were eventually subjected to those procedures.... The interrogator said that when new interrogators arrived they were told they had great flexibility in extracting information from detainees because the Geneva Conventions did not apply at the base.

To get some sense of perspective, the maximum number of prisoners that Guantánamo held at any one time was around 660, which means that, according to the former interrogator’s estimate, around 110 prisoners were subjected to these techniques. And while they may not have been applied quite as harshly as they were to al-Qahtani (although the many accounts I report in *The Guantánamo Files* are almost as harrowing), what Susan Crawford’s confession makes abundantly clear is that, when examining the use of torture, it is not appropriate simply to look at the application of each technique in isolation (when they may not have crossed the torture threshold), but to consider that in most cases their use was combined, as it was with al-Qahtani.

Nor is this the end of the story. In response to a question from Woodward about whether she believed that Khalid Sheikh Mohammed and four other prisoners charged in connection with the 9/11 attacks were tortured, Crawford stated, “I assume torture,” even though, as Woodward explained, she “declined to say whether she considers waterboarding ... to be torture.” She then attempted to explain that she “let the charges go forward” in the 9/11 trial “because the FBI satisfied her that they gathered information without using harsh techniques,” using so-called “[clean teams](#)” who gained fresh confessions without using torture.

However, although she also attempted to make a distinction between Khalid Sheikh Mohammed and Mohammed al-Qahtani by stating that “Mohammed has acknowledged his Sept. 11 role in court, whereas Qahtani has recanted his self-incriminating statements,” it is, frankly, disingenuous to claim that torture can be magically written off if a tortured prisoner apparently confesses of his own free will at a later date.

As a result, it is also apparent that Crawford’s confession infects the majority of the [19 cases](#) currently scheduled for trial by military commission, and, moreover, that it has disturbing implications for the rest of the administration’s detention policies over the last seven years, including the widespread torture of prisoners in the U.S. prisons at Kandahar and Bagram, before they were transferred to Guantánamo, the dozens of prisoners who were tortured in the “[Dark Prison](#)” and the “[Salt Pit](#)” (two secret CIA prisons in Afghanistan), the rest of the 14 “high-value detainees” transferred to Guantánamo from secret CIA prisons in September 2006, and the

unknown number of other prisoners held in [secret prisons run by the CIA](#) or rendered for torture to prisons in third countries ([PDF](#)).

As if this were not enough, Crawford's confession also affects the many thousands of prisoners in [Afghanistan](#) and Iraq, who have endured wartime detention policies in which the Geneva Conventions were replaced by the reverse engineering of "Chinese Communist techniques used during the Korean war to elicit false confessions," and, of course, has disturbing ramifications for investigations into the as-yet unknown number of prisoners who have died in Afghanistan and Iraq ([PDF](#)) and in secret prisons as a result of the unfettered exercise of these techniques.

As the implications of all this percolate slowly through the nation's consciousness, the only outstanding question that remains unanswered is why Susan Crawford chose to make her confession to Bob Woodward just days before the Bush administration leaves office, having never granted an interview before.

As a protégée of Vice President Dick Cheney and a close friend of Cheney's chief of staff David Addington (the [prime architects](#), with Rumsfeld, of the Bush administration's torture regime), it seems unlikely that she would have had some kind of Damascene conversion, but her interview was peppered with statements that appear, both on the surface and on closer inspection, to constitute a genuine confession. "I sympathize with the intelligence gatherers in those days after 9/11, not knowing what was coming next and trying to gain information to keep us safe," she explained. "But there still has to be a line that we should not cross. And unfortunately what this has done, I think, has tainted everything going forward."

If Crawford had an ulterior motive, it is not readily apparent. Elsewhere in the interview, for example, she complained that the military commissions should not have been empowered to accept coerced testimony and complained about how "unprepared" the prosecutors were to bring cases to trial, and how she had had to force them to provide exculpatory evidence to the defense. She also complained about Donald Rumsfeld's role in authorizing torture and complained that the torture of al-Qahtani directly endangered U.S. forces abroad. "It did shock me," she said. "I was upset by it. I was embarrassed by it. If we tolerate this and allow it, then how can we object when our servicemen and women, or others in foreign service, are captured and subjected to the same techniques? How can we complain? Where is our moral authority to complain? Well, we may have lost it."

She also said that, although she believed that President Bush was "right to create a system to try unlawful enemy combatants captured in the war on terrorism," the implementation of the policy was flawed. "I think he hurt his own effort," she explained. "I think someone should acknowledge that mistakes were made and that they hurt the effort and take responsibility for it. We learn as children it's easier to ask for forgiveness than it is for permission. I think the buck stops in the Oval Office."

And although she called al-Qahtani “a very dangerous man,” she pointedly asked, “What do you do with him now if you don't charge him and try him?” and handed the responsibility for dealing with him over to Barack Obama. Perhaps — though this may be a naïve interpretation, and is certainly not meant to excuse her [demonstrably poor performance](#) as the commissions’ convening authority — she had looked to the future and was establishing her position accordingly, in case, one day, a special prosecutor for war crimes comes knocking.

Andy Worthington is the author of [The Guantánamo Files: The Stories of the 774 Detainees in America's Illegal Prison](#) (published by Pluto Press). Visit his website at: www.andyworthington.co.uk.

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