



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

fff@fff.org www.fff.org

CIA Torture Began in Afghanistan Eight Months before Justice Department Approval by Andy Worthington

Last December, in a typically bullish defense of the Bush administration's conduct in the "war on terror," Vice President [Dick Cheney stated](#),

On the question of so-called "torture," we don't do torture, we never have. It's not something that this administration subscribes to. [W]e proceeded very cautiously; we checked, we had the Justice Department issue the requisite opinions in order to know where the bright lines were that you could not cross. The professionals involved in that program were very, very cautious, very careful, wouldn't do anything without making certain it was authorized and that it was legal. And any suggestion to the contrary is just wrong.

The "requisite opinions" referred to by Cheney consisted primarily of two memos issued in August 2002 by the Justice Department's Office of Legal Counsel (OLC), whose lawyers interpret the law as it relates to the powers of the executive branch, which were issued in connection with the administration's "high-value detainee" program.

The first of these memos ([PDF](#)), which has become known, simply, as the "torture memo," was leaked in June 2004, in the wake of the Abu Ghraib scandal. Notorious for the attempts by its primary author, OLC lawyer John Yoo, to redefine torture as the infliction of physical pain "equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death," or the infliction of mental pain which "result[s] in significant psychological harm of significant duration," it had been vilified by lawyers and human rights activists for nearly four and a half years by the time that Cheney made his pronouncement.

However, it was not until two weeks ago, when the Obama administration released [the other memo](#) — authorizing specific techniques, including [waterboarding](#), an ancient torture technique that involves controlled drowning, to be used on a specific "high-value detainee," [Abu Zubaydah](#) — that the "bright lines" so carefully delineated by Cheney began to blur uncontrollably.

The main problem with the memos, of course, is that they involve attempts to justify the use of torture that are, simply, unjustifiable. The [U.S. anti-torture statute](#) defines torture as any act committed by an individual that is “specifically intended to inflict severe physical or mental pain or suffering ... upon another person within his custody of physical control,” and further defines “severe mental pain or suffering” as “the prolonged mental harm caused by or resulting from” a variety of factors including “the intentional infliction or threatened infliction of severe physical pain or suffering.” Moreover, as the [UN Convention Against Torture](#) makes clear, “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for torture.”

It is, therefore, abundantly clear that no amount of creative advice by canny lawyers, arguing that waterboarding, prolonged sleep deprivation and a host of other grotesque and outlawed techniques are somehow acceptable can sidestep this definition or overcome the absolute prohibition on the use of torture, however much the lawyers protested, as they did repeatedly, that “many of the key terms in the [anti-torture] statute (for example, ‘severe,’ ‘prolonged,’ ‘suffering’) are imprecise.”

However, even if we accept, for now, that the OLC memos provided the administration with the “golden shield” that it so desperately sought (and I fervently hope that [a long-awaited internal DoJ report](#) will confirm that no “golden shield” exists for those who creatively attempted to sanction the use of torture), the problem for Cheney and his fellow torturers right now is the existence of evidence that confirms that the torture of Abu Zubaydah actually began long before the OLC’s advice was issued, as I reported in an article last Friday, “[Who Authorized The Torture of Abu Zubaydah?](#)”

“Extraordinary rendition” before August 2002

Moreover, although the OLC memos dealt specifically with a “high-value detainee” program that began with the capture of Abu Zubaydah on March 28, 2002, it’s also clear that the administration began working out how to deal with prisoners outside of existing legal frameworks within days of the 9/11 attacks. Most of this centered, at the time, on expanding the program of “extraordinary rendition” developed by the CIA under Bill Clinton in order to deliver “terror suspects” to third countries, where they could be interrogated by proxy torturers or even “disappeared.”

This in itself was enormously worrying, of course. The Clinton-era program occupied a horribly gray area, in which “terror suspects” — mostly Egyptians — were seized by the CIA and rendered to the custody of the Egyptian government, which was then free to kill them, torture them, or imprison them after show trials, but it was at least a carefully controlled program, involving 13 prisoners between 1995 and 2000, according to research undertaken last year by Peter Bergen for [Mother Jones](#), and a detailed paper trail that required the existence of a sentence by a court, even one handed down *in absentia* by a government with a disturbing human rights record.

After 9/11, however, all these restraints were abandoned. Within 12 days of the attacks on New York and Washington, a Yemeni named Jamal Mar’i, who worked for a Saudi charity in Pakistan, was kidnapped from his house in Karachi and rendered to Jordan, one of several countries with whom the Bush administration

had swiftly established arrangements involving “extraordinary rendition” and torture. In the ten months that followed, before the OLC issued its indefensible opinions, at least 25 more prisoners were rendered to torture in Egypt, Jordan, Morocco, and Syria, and we now know, from one of [three more OLC memos](#) released two weeks ago — written in May 2005 by Steven G. Bradbury, the principal deputy assistant attorney general, and revisiting the OLC’s August 2002 torture opinions — that, after the CIA brought torture in-house in August 2002, 94 prisoners in total were held in secret CIA custody.

CIA torture in Afghanistan from December 2001

However, while this entire half-submerged story needs to be exposed to the light, and with some urgency, it appears that, at least for now, the CIA can plausibly claim that it did not participate in the torture of any of the men rendered to prisons in third countries before August 2002. Last Thursday, however, lawyers for Rafiq Alhami, a Tunisian prisoner in Guantánamo, introduced another disturbing element to the narrative, which confirms without a shadow of a doubt that the CIA was torturing prisoners in Afghanistan from December 2001.

In his lawsuit, Alhami stated, as the Associated Press described it, that, from December 2001, he was held in three CIA “dark sites,” where “his presence and his existence were unknown to everyone except his United States detainers,” and where, at various times, he was “stripped naked, threatened with dogs, shackled in painful stress positions for hours, punched, kicked and exposed to extremes of heat and cold.” He also stated that his interrogators “sprayed pepper spray on his hemorrhoids, causing extreme pain.”

It’s likely that all of Alhami’s claims are true. In my book [The Guantánamo Files](#), I wrote about him (identifying him, as the Pentagon had, as Rafiq al-Hami), noting, from the transcript of his tribunal at Guantánamo, that he stated that had been working in restaurants in Germany, and had traveled to Pakistan in 1999 to study with the vast missionary organization Jamaat-al-Tablighi.

Speaking of his experiences before his transfer to Guantánamo, Alhami explained, “I was in ... Afghan prison[s] but the interrogation was done by Americans. I was there for about a one-year period, transferring from one place to another.” He added that one of the prisons was the “Dark Prison” near Kabul, which is known, in particular, from the story of the British resident [Binyam Mohamed](#), released from Guantánamo two months ago, who spent four or five months there after being tortured for 18 months in Morocco. I have [previously described](#), the “Dark Prison” as “a medieval torture dungeon with the addition of ear-splittingly loud music and noise, which was pumped into the cells 24 hours a day,” based on accounts by prisoners who were held there, including Binyam Mohamed, who [described his time there](#) as “the worst days of his captivity” — worse than the 18 months in Morocco, where the CIA’s proxy torturers regularly sliced his genitals with a razorblade.

Alhami, who was 33 years old when seized in Iran, told his tribunal that he was tortured for three months in the “Dark Prison,” where, he said, “I was threatened. I was left out all night in the cold ... I spent two months with no water, no shoes, in darkness and in the cold. There was darkness and loud music for two months. I was not allowed to pray ... These things are documented. You have them.”

Rendered to torture from Iran

Shockingly, Alhami's lawsuit reveals that he was actually seized in Iran and transferred to CIA custody through an arrangement between the U.S. and Iranian governments that has never been explained. He was, moreover, not the only one. Although I was unable to identify his country of capture while researching *The Guantánamo Files*, I was able to establish that at least four other prisoners seized in Iran had also been held in the "Dark Prison", and described the stories of two of these men as follows:

Wisam Ahmed, a 25-year old Jordanian (released from Guantánamo in April 2004), ran a clothes shop in Jordan and traveled to Pakistan every year with a religious group. After getting married in 2000, he decided to take his wife and their newborn child to Pakistan for his visit in August 2001. In December, they were on a bus, traveling home, when they were stopped at a checkpoint in Iran, and Ahmed — under suspicion "because they associated [my] headdress with al-Qaeda and must have overlooked the fact that it was also my national dress" — was taken into custody. Rendered to Afghanistan on 1 March 2002, he was held in the "Dark Prison," in [what he described as] "unimaginable conditions that cannot be tolerated in a civilized society," and spent 77 days in a room that "was so dark that we couldn't distinguish nights and days. There was no window, and we didn't see the sun once during the whole time." He was then moved to another secret prison — "Prison Number Three" — where the food was so bad that he lost a significant amount of weight, and was then moved to Bagram, where, in the 40 days before his transfer to Guantánamo, he was threatened by dogs, made to watch torture videos, and intimidated in other ways: "they used to start up an electric saw and while they were sawing we would hear cries of agony. I thought they would cut me into pieces sooner or later."

Walid al-Qadasi, a 22-year old Yemeni (transferred to Yemeni custody from Guantánamo in April 2004) was also captured in Iran, and was rendered to Afghanistan in January 2002. Describing his time in [a prison that he identified as] the "Dark Prison" [but which was probably another secret prison instead], he said, "The Americans interrogated us on our first night which we coined as 'the black night.' They cut our clothes with scissors, left us naked and took photos of us before they gave us Afghan clothes to wear. They then handcuffed our hands behind our backs, blindfolded us and started interrogating us ... They threatened me with death, accusing me of belonging to al-Qaeda." After this initial interrogation, he said, "They put us in an underground cell measuring approximately two meters by three meters. There were 10 of us in the cell. We spent three months in the cell. There was no room for us to sleep so we had to alternate ... It was too hot in the cell, despite the fact that outside the temperature was freezing (there was snow), because the cell was overcrowded." He added that they were only fed once a day, that loud music was used as "torture," and that one of his fellow detainees "went insane," and pointed out that, when Red Cross representatives were allowed to visit, the most severely disturbed prisoners were secretly moved to another cell that was off-limits.

As is clear from these accounts, both men were clearly subjected to torture in facilities operated by the CIA between January and May 2002 (three months before the OLC memos were issued), and, in addition, many more prisoners who also ended up in Guantánamo were also held and tortured in the “Dark Prison” during the same timeframe. Many of these men were seized after the Tora Bora campaign, when U.S. forces allowed Osama bin Laden and other senior figures in al-Qaeda and the Taliban to escape into Pakistan, and one of them, Mohammed Khusruf, a 60-year old Yemeni, told his tribunal that, after he was captured, he — and an unspecified number of wounded prisoners — were moved from a jail in Jalalabad to “an underground prison” in Kabul, where “they would interrogate and beat us.”

No excuses to avoid prosecution

A number of the highest-ranking officials in the Bush administration need hauling up before the courts and confronted with the evidence that, up to eight months before they secured a legal fig leaf for their abominable journey to the “dark side,” they had already authorized torture in a number of secret prisons in Afghanistan.

They will claim, no doubt, that everything that took place was supposedly covered by the “memorandum of notification” issued to the CIA by President Bush on September 17, 2001, which authorized the agency, in the broadest terms possible, “to capture, detain and interrogate terrorism suspects.” If this is the case, then there was clearly no need to persuade lawyers at the OLC to come up with all their subsequent legal contortions to justify the use of torture. However, as is clear from the words of Dick Cheney, quoted at the start of this article, the Justice Department’s August 2002 opinions were essential for the administration “to know where the bright lines were that you could not cross,” and without them Cheney and his colleagues were nothing less than rogue torturers, operating outside the law.

Andy Worthington is the author of [The Guantánamo Files: The Stories of the 774 Detainees in America’s Illegal Prison](#) (published by Pluto Press) and serves as policy advisor to the Future of Freedom Foundation. Visit his website at: www.andyworthington.co.uk.

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