

Abu Zubaydah: Guantanamo's Torture's 'Poster Child'. Imprisoned for 14 Years without being Charged...

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The ugly legacy of George W. Bush's torture program continues to haunt U.S. foreign policy as the "poster child" for waterboarding, Abu Zubaydah, makes an appeal for his release from Guantanamo, writes Marjorie Cohn.

Last week, Abu Zubaydah, who has been imprisoned at Guantanamo for 14 years without being charged with a crime, appeared for the first time before the U.S. military Periodic Review Board, which determines whether Guantanamo detainees will continue to be held as "enemy combatants."

Zubaydah argued he should be released because he has "no desire or intent to harm the United States or any other country." During his hearing, Zubaydah also said he had been tortured by the CIA, an allegation confirmed by the Senate Intelligence Committee's torture report. The U.S. government maintains he is an enemy combatant.



Guantanamo Bay prisoner Abu Zubaydah

When Zubaydah was apprehended in Pakistan in 2002, the Bush administration characterized him as "chief of operations" for Al Qaeda and Osama bin Laden's "number three" man. This was untrue, according to John Kiriakou, who led the joint CIA-FBI team that caught Zubaydah. Kiriakou confirmed that Zubaydah did not help plan the September 11, 2001 attacks.

Dan Coleman, a leading FBI expert on Al Qaeda, said Zubaydah "knew very little about real operations, or strategy." Coleman's observations were communicated to President George W. Bush. Nevertheless, the President scolded CIA Director George Tenet, saying, "I said [Zubaydah] was important, You're not going to let me lose face on this, are you?"

Zubaydah was tortured repeatedly at the "black sites," where the CIA subjected him to waterboarding 83 times. On one occasion, Zubaydah had to be resuscitated. An observer at the scene was quoted in the Senate torture report as saying Zubaydah was "completely unresponsive, with bubbles rising through his open, full mouth."

In 2005, after the Abu Ghraib torture photos came to light, the CIA destroyed several hundred hours of videotapes of the interrogations of Zubaydah and Abd al-Rahim al-Nashiri.

The tapes likely depicted waterboarding.

Waterboarding is designed, according to Bush lawyer (now federal judge) Jay Bybee, to induce the perception of “suffocation and incipient panic,” i.e. the perception of drowning.

The Bush administration claimed it only used waterboarding on three individuals (the third being alleged 9/11 organizer Khalid Sheikh Mohammed). But a footnote in one of Bush lawyer Stephen Bradbury’s memos says waterboarding was utilized “with far greater frequency than initially indicated” with “large volumes of water” rather than small quantities as required by the CIA’s rules.

The CIA also withheld Zubaydah’s medication (as he recovered from severe injuries), slammed him into a wall, threatened him with impending death, shackled him in uncomfortable positions, and bombarded him with continuous deafening noise and harsh lights.

In one of his memos, Bybee wrote that the CIA told him, “Zubaydah does not have any pre-existing mental conditions or problems that would make him likely to suffer prolonged mental harm from [the CIA’s] proposed interrogation methods.”

Coffin-like Box

Bybee granted the CIA’s request to confine Zubaydah in a cramped box with a harmless insect and tell him it will sting him but it won’t kill him. Even though the CIA knew that Zubaydah had an irrational fear of insects, Bybee decided there would be no threat of severe physical pain or suffering if it followed this procedure.



Republican presidential candidate Donald Trump speaking to the AIPAC conference in Washington D.C. on March 21, 2016. (Photo credit: AIPAC)

“[Zubaydah] spent a total of 266 hours (11 days, 2 hours) in the large (coffin size) confinement box and 29 hours in a small confinement box, which had the width of 21 inches, a depth of 2.5 feet, and a height of 2.5 feet,” according to the Senate torture report.

The torture of Zubaydah did not yield useful information. FBI agent Ali Soufan, who interrogated him, wrote in the *New York Times* that any useful information Zubaydah provided was given before the “enhanced interrogation techniques” — Bush-speak for torture — were used.

In response to the torture, Zubaydah told his interrogators that Al Qaeda was planning terrorist attacks against the Brooklyn Bridge, Statue of Liberty, shopping malls, banks, water systems, supermarkets, nuclear plants and apartment buildings. He said Al Qaeda was close to building a crude nuclear bomb. None of this was ever corroborated.

The Torture Statute punishes conduct, or conspiracy to engage in conduct, specifically intended to inflict severe physical or mental pain or suffering. “Severe mental pain or suffering” means the prolonged mental harm caused by or resulting from either the

intentional infliction or threatened infliction of severe physical pain or suffering, or from the threat of imminent death.

It is undisputed that waterboarding constitutes torture, which is considered a war crime under the U.S. War Crimes Act. Cruel, inhuman and degrading treatment is also outlawed by the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, a treaty the United States has ratified.

Despite his constitutional duty to “take care that the laws be faithfully executed,” President Barack Obama refuses to bring the Bush officials who tortured Zubaydah and others to justice.

Donald Trump has pledged to keep Guantanamo open and advocates a resumption of waterboarding. Indeed, he promised a Trump administration would “bring back a hell of a lot worse than waterboarding.”

Hillary Clinton opposes waterboarding. She said torture is an “open recruitment poster for more terrorists,” and “over the years, Guantanamo has inspired more terrorists than it has imprisoned.”

Meanwhile, Zubaydah languishes at Guantanamo, with no hope of release.

Joseph Margulies, one of Zubaydah’s lawyers, said his client is “the poster child for the torture program, and that’s why they never want him to be heard from again.”

Marjorie Cohn is professor emerita at Thomas Jefferson School of Law, former president of the National Lawyers Guild, and deputy secretary general of the International Association of Democratic Lawyers. Her books include Cowboy Republic: Six Ways the Bush Gang Has Defied the Law and The United States and Torture: Interrogation, Incarceration, and Abuse. Visit her website at <http://marjoriecohn.com/> and follow her on Twitter at <https://twitter.com/marjoriecohn>.

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