

“The Right to Do Whatever I Want as President”

Impunity Guaranteed for Torturers (and Presidents)

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Global Research, February 20, 2020

[TomDispatch](#) 18 February 2020

Region: [USA](#)

Theme: [History](#), [Law and Justice](#)

On February 5th, the Senate voted to acquit President Donald J. Trump of abuse of power and obstruction of Congress. In other words, Trump’s [pre-election boast](#) that he “could stand in the middle of Fifth Avenue and shoot somebody” and not “lose any voters” proved something more than high-flown hyperbole. (To be fair, he did lose one Republican “voter” in the Senate — Mitt Romney — but it wasn’t enough to matter.)

The Senate’s failure to convict the president will only confirm his conception of his office as a seat of absolute power (which, as we’ve [been told](#), “corrupts absolutely”). This is the man, after all, who [told](#) a convention of student activists, “I have an Article II, where I have the right to do whatever I want as president. But I don’t even talk about that.” Except, of course, [he does](#).

The day after the Senate vote, a decidedly unchastened Trump [spoke](#) at a National Prayer Breakfast, brandishing a copy of *USA Today* whose banner headline contained a single word: “Acquitted.” After disagreeing with the prayerful suggestion offered by Arthur Brooks, former head of the conservative American Enterprise Institute (and a couple of millennia earlier by one Jesus of Nazareth), that we should love our enemies, the president promptly accused both Mitt Romney and House Speaker Nancy Pelosi of inadequate prayerfulness. He lumped Romney in with people “who use their faith as justification for doing what they know is wrong” and accused Pelosi, not for the first time, of lying when she says she prays for him.

Trump’s endless boasting about his invulnerability can certainly be blamed on the dismal swamp of his own psyche, but there’s another at least partial explanation for it — and it lies in the country’s collective failure to hold anyone responsible for crimes committed since 2001 in the “war on terror.” If one administration can get away with [confining detainees](#) in coffinlike boxes and torturing them in myriad other ways, why shouldn’t a later one go unpunished for, to take but one example, putting [migrant children in cages](#)?

Forward, Not Backwards

In 2009, Barack Obama prepared to enter the Oval Office promising to end the worst excesses of the previous administration’s war on terror. Although he did [close](#) the CIA’s detention centers and prohibit torture, he also quickly signaled that no one would be held accountable for the already [well-documented](#) practice of torture promoted by the administration of George W. Bush and his vice president, Dick Cheney. A week or so before Obama’s inauguration, the president-elect was already [assuring](#) ABC News’s George Stephanopoulos that, although there would be prosecutions if “somebody has blatantly broken the law,” on the whole he believed “that we need to look forward as opposed to

looking backwards.”

In particular, Obama was concerned that government operatives should not be hampered in the future by fear of prosecution for past acts sanctioned by top officials:

“And part of my job is to make sure that, for example, at the CIA, you’ve got extraordinarily talented people who are working very hard to keep Americans safe. I don’t want them to suddenly feel like they’ve got to spend all their time looking over their shoulders.”

As it turned out, they need not have worried. On April 17, 2009, as Carrie Johnson and Julie Tate [reported](#) in the *Washington Post*, “President Obama and Attorney General Eric H. Holder Jr. reassured CIA employees anew yesterday that interrogators would not face criminal prosecution so long as they followed legal advice.” As Holder put it, “It would be unfair to prosecute dedicated men and women working to protect America for conduct that was sanctioned in advance by the Justice Department.”

The legal advice in question had been contained in a series of infamous memos written by that department’s Office of Legal Counsel (OLC) between 2002 and 2005. In them, the legal definition of torture was “clarified” for a nervous attorney general, Alberto Gonzalez, and the CIA. [One memo](#), drafted by Deputy Assistant Attorney General John Yoo and signed by Assistant Attorney General for the OLC Jay Bybee, explained that to “constitute torture” under the law, physical pain “must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death.” To meet the legal definition of psychological torture, mental suffering “must result in significant psychological harm of significant duration, e.g., lasting for months or even years.”

Not surprisingly, despite the previous administration’s stamp of approval on what were euphemistically called “enhanced interrogation techniques,” a three-year investigation by the Obama Justice Department into CIA interrogation practices came to a whimpering end in August 2012, when Holder [announced](#) that the only two remaining torture cases, both of which involved deaths in U.S. custody, would be dropped.

A year earlier, as Glenn Greenwald [reported](#) in the *Guardian*, Holder had decided not to prosecute anyone in 99 other cases of “severe detainee abuse.” The two remaining cases concerned the death by torture and hypothermia of Gul Rahman in the CIA’s notorious Salt Pit prison in Afghanistan in 2002 and that of “Manadel al-Jamadi, who died in CIA custody after he was beaten, stripped, had cold water poured on him, and then [was] shackled to the wall” at Abu Ghraib prison in Iraq.

Among those Holder presumably chose not to charge were the men responsible for designing and implementing the protocols that led to Rahman’s death, along with tortures like waterboarding and “[walling](#)” (the slamming of the back of a prisoner’s head repeatedly into a wall). Thus ended any hope of holding torturers legally accountable in the United States of America, early proof of the kind of impunity that has, in the Trump years, spread elsewhere.

Torturer Redux

Shortly before Donald Trump's recent triumph in the Senate, one of those "extraordinarily talented people" hailed by President Obama [resurfaced](#) in a courtroom not as a defendant, but as a hostile witness. James Mitchell was called to the stand by the defense at pre-trial hearings at the Guantánamo detention facility in Cuba, the offshore prison for detainees in the war on terror set up by the Bush administration in 2002. In the dock almost 18 years later are five men, long held there, who have been accused of involvement in the 9/11 terrorist attacks. The most notorious is [Khalid Shaikh Mohammed](#), often [described](#) as 9/11's "mastermind."

Mitchell is one of the two psychologists — the other being John "Bruce" Jessen — who designed the CIA's main torture program. He has the honor of being considered the inventor of waterboarding, a series of techniques aimed at producing water-induced suffering that have [formed](#) part of the armamentarium of torturers for centuries. (Perhaps "reinventor" would be the more accurate term.) Mitchell was, in fact, the first person to perform waterboarding in the war on terror, as well as being the architect of walling, of confining victims in tiny boxes, and of a variety of other grim "enhanced interrogation techniques" first employed at CIA "[black sites](#)" set up around the world in those years.

Called by defense attorneys to describe the torture their clients endured, a "defiant" Mitchell told the courtroom, "I'd get up today and do it again."

As *New York Times* reporter Carol Rosenberg [explained](#), Mitchell was not actually talking about what he did to any of the five defendants in the dock at Guantánamo, although he did torture some of them. He was referring to the first prisoner to be waterboarded under the CIA torture program, Saudi national [Abu Zubaydah](#) who was waterboarded a total of 83 times over the course of a single month. President George W. Bush's secretary of defense, Donald Rumsfeld, [claimed](#) (falsely, as it turned out) that he was "if not the number two, very close to the number-two person in" al-Qaeda and that he had run an al-Qaeda training camp in Afghanistan.

In fact, as the Obama administration acknowledged in 2010, Abu Zubaydah was never even a member of that group, let alone one of its key lieutenants. Captured in a joint CIA-FBI operation in Pakistan in 2002, he would be shuffled between CIA black sites for the next four-and-a-half years, including the Agency's secret "[Strawberry Fields](#)" site at Guantánamo. In part because of what the CIA did to him, Abu Zubaydah remains imprisoned there to this day. According to CIA recommendations, he is never to be "placed in a situation where he has any significant contact with others and/or has the opportunity to be released."

Nevertheless, Mitchell oversaw the 83 times Abu Zubaydah was waterboarded in a single month at a CIA black site in Thailand, during which he came close to death by drowning. On one of those occasions, as the Senate Intelligence Committee's 2014 [report](#) on CIA torture revealed, he was observed to be "completely unresponsive, with bubbles rising through his open, full mouth."

Not unlike our president, Mitchell seems to be deeply hurt by what he perceives as unfair criticism. "You folks have been saying untrue and malicious things about me and Dr. Jessen for years," he [complained](#) to defense attorneys at the Guantánamo hearing. People may have said mean things about him, but in reality, far from being held accountable for torture, James Mitchell has luxuriated in his impunity, earning royalties from his book *Enhanced Interrogation: Inside the Minds and Motives of the Islamic Terrorists Trying To Destroy America* and giving [speeches](#) arranged through the Worldwide Speakers Group (which

advertises him as “psychologist, CIA interrogator, author”) at \$15,000 to \$25,000 a pop.

Nor did Mitchell fare poorly while employed by the CIA. In fact, the Agency paid the company Mitchell and Jessen formed \$81 million for their work. In addition, their contract included language guaranteeing that the U.S. government would cover any legal costs they incurred as a result of that work through the year 2021. This would turn out to come in handy when, in 2015, the American Civil Liberties Union (ACLU) [sued](#) the two of them on behalf of three of their victims: Suleiman Abdullah Salim, Mohamed Ahmed ben Soud, and the family of Gul Rahman, the detainee who had died of exposure to cold at the Salt Pit. Mitchell and Jessen settled the case in 2017 for an undisclosed sum, also paid by the U.S. government.

It Never Gets Easier

You’d think it would get easier over time. For almost two decades, I’ve been writing about torture. By now, you might imagine that I’d be at least somewhat desensitized to details about and descriptions of it. Instead, each time I dive into that cesspool, it appears even more disgusting and frightening.

If it’s hard for me, someone who has never been tortured and has spoken face-to-face with only a few torture survivors, imagine what it must be like for those who have survived the Bush-era torture programs, which went on for an unknown number of years. Actually, you don’t have to do too much imagining, since their testimony about how such abuse affected some of them and how lasting those effects were is available. In 2016, *New York Times* reporters Matt Apuzzo, Sheri Fink, and James Risen [published](#) a series of articles under the title “How U.S. Torture Left a Legacy of Damaged Minds.”

One of those profiled was Suleiman Abdullah Salim, a plaintiff in the ACLU suit against Mitchell and Jessen. A Tanzanian native, Salim was picked up in Mogadishu, Somalia, and turned over to U.S. operatives for reasons that remain [murky](#). It’s most likely he was a victim of mistaken identity (and he [wouldn’t have been](#) the only such prisoner in the war on terror). We know, at least, that the Americans who bundled him onto a plane were expecting a Yemeni Arab and someone with much lighter skin. He ended up in Afghanistan at a black site he recalls as “the Darkness,” which was, in fact, the Salt Pit. There he was beaten, walled, shackled in complete darkness, exposed to relentless loud music, confined in a coffinlike box, repeatedly hung by the wrists — once for 48 hours straight — and drenched at times with ice water until he feared he was drowning.

Eventually, the CIA moved Salim to a prison at Bagram Airbase outside the Afghan capital, Kabul. In 2008, he was turned loose in Afghanistan with only the clothes he was wearing. The International Red Cross arranged a flight home to Zanzibar, Tanzania, where he still lives, haunted by the Darkness.

In 2010, the *Times*’ Risen [wrote](#), “Dr. Sondra Crosby of the Boston University School of Medicine, a physician, a Navy reservist and an expert on torture, was asked by Physicians for Human Rights, a New York-based group, to evaluate Mr. Salim.” She found that he was emaciated “like a skeleton” and “plagued by profound distress, inability to eat, and inability to sleep.” Risen’s report continues:

“‘He describes himself as a ghost walking around the town,’ she added. She noted other symptoms: flashbacks, short- and long-term memory loss, distress

at seeing anyone in a military uniform, hopelessness about the future and a strong avoidance of noise. 'He reports that his head feels empty — like an empty box,' she said."

The *Times* series also [chronicled](#) the suffering of another plaintiff in the case against Mitchell and Jessen: Mohamed ben Soud. He, too, was held at the Salt Pit, where his ordeal involved many of the same torture methods Salim had endured. Today, he has full-blown post-traumatic stress disorder. "He is racked with self-doubt and struggles to make simple decisions. His moods swing dramatically," reported the *Times*.

First, Do No Harm?

The pre-trial hearings at Guantánamo have also [revealed](#) the rarely discussed role of doctors and other medical workers in the U.S. torture program. Apparently the reason we know that Abu Zubaydah was waterboarded 83 times and Khalid Shaikh Mohammed [183 times](#) is that, as James Mitchell testified in January, a doctor was indeed present inside the torture chamber and used a little metal [click-counter](#) to keep track. According to the *Times's* Rosenberg, however, doctors

"did more than count waterboarding sessions. Government investigations and evidence in the pretrial hearings of the men... show doctors conducted 'rectal rehydration,' carried out rectal cavity searches, and examined swollen feet and legs of captives who were sleep deprived for days by being shackled in painful positions."

There is undoubtedly more to be uncovered about the role of medical personnel at the CIA's global black sites. Indeed, there is more to be uncovered about all the ways in which detainees were stripped not only of their human rights but, at least in the minds of their tormentors, of their very humanity. At one point in his testimony, for instance, Mitchell turned to the attorney for Ammar al-Baluchi, one of the five 9/11 defendants. Speaking of Charlie Wise, the CIA interrogation chief and the rest of his crew, Mitchell said, "Looks like they used your client as a training prop." [According to](#) the *Guardian's* Julian Borger, in fact, under Wise's leadership, "trainees had to use each of their techniques on Baluchi and other inmates in order to earn certification."

And Mitchell himself used Abu Zubaydah as a demonstration prop, so bigwigs at the CIA would be implicated in what he was doing. Borger reports that "he waterboarded Abu Zubaydah even though he was quite sure the detainee had no actionable intelligence to surrender. It was done purely as a demonstration for the agency VIPs."

The Price of Impunity

Thanks to the cowardice of the Obama administration, no CIA officer or any higher official in the administration of George W. Bush and Dick Cheney, no psychologist, no doctor, no one at all has yet been held accountable for the years of torture practiced on a global scale in the war on terror. Donald Trump himself, of course, got elected while publicly [proclaiming](#) about waterboarding that "I like it a lot" and he [reportedly considered](#) Gina Haspel's black-site torture experiences a positive part of her résumé when considering her for CIA director. Mitchell, of course, continues to make speeches and collect his royalties. George W. Bush has been rehabilitated as a kindly [portrait painter](#).

Is it really so surprising, then, that we now have a man in the Oval Office who believes he

has “the right to do whatever I want as president”? The history of the twenty-first-century war on terror suggests that, if he doesn’t have the right, he certainly appears to have the power.

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