

Tomgram: Rebecca Gordon, Exhibit One in Any Future American War Crimes Trial



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[Note for TomDispatch Readers: *At this website, the book offers are coming fast and furious these days. Think of it as a late winter and spring flurry. The latest is for a new book by a TomDispatch regular we much admire: Rebecca Gordon. She's written a particularly readable volume with a well-deserved hot-button title: [American Nuremberg: The U.S. Officials Who Should Stand Trial for Post-9/11 War Crimes](#). Her piece today demonstrates just why such trials were justified (and why, of course, for the leaders of the "sole superpower" they will never happen). For a donation of \$100 or more (\$125 if you live outside the United States), you can get a signed, personalized copy for yourself and lend this website a helping hand staying afloat in a crazed universe. Check out the details at [our donation page](#). Tom]*

Let's take a moment to think about the ultimate strangeness of our American world. In recent months, [Donald Trump](#) and [Ted Cruz](#) have offered a range of hair-raising suggestions: as president, one or the other of them might order the U.S. military and the CIA to commit acts that would include the waterboarding of terror suspects (or "[a hell of a lot worse](#)"), the [killing](#) of the relatives of terrorists, and the [carpet bombing](#) of parts of Syria. All of these would, legally speaking, be war crimes. This has caused shock among many Americans in quite established quarters who have decried the possibility of such a president, suggesting that the two of them are calling for outright illegal acts, actual "[war crimes](#)," and that the U.S. military and others would be justified in rejecting such orders. In this context, for instance, CIA Director John Brennan recently [made it clear](#) that no Agency operative under his command would ever waterboard a suspect in response to orders of such a nature from a future president. ("I will not agree to carry out some of these tactics and techniques I've heard bandied about because this institution needs to endure.")

These acts, in other words, are considered beyond the pale when Donald Trump suggests them, but here's the strangeness of it all: what The Donald is only mouthing off about, a perfectly real American president (and vice president and secretary of defense, and so on) actually did. Among other things, under the euphemistic term "enhanced interrogation techniques," they ordered the CIA to use classic torture practices including waterboarding (which, in blunter times, had been [known](#) as "the water torture"). They also let the U.S. military loose to torture and abuse prisoners in their custody. They green-lighted the CIA to [kidnap](#) terror suspects (who sometimes turned out to be [perfectly innocent](#) people) off the streets of cities around the world, as well as from the backlands of the planet, and transported them to the [prisons](#) of some of the worst torture regimes or to secret detention centers ("[black sites](#)") the CIA was allowed to set up in compliant countries. In other words, a perfectly real administration ordered and oversaw perfectly real crimes. (Its top officials even reportedly had torture techniques [demonstrated](#) to them in the White House.)

At the time, the CIA fulfilled its orders to a T and without complaint. A lone CIA officer spoke out publicly in opposition to such a program and was [jailed](#) for disclosing classified information to a journalist. (He would be the only CIA official to go to jail for the Agency's acts of torture.) At places like [Abu Ghraib](#), the military similarly carried out its orders without significant complaint or resistance. The mainstream media generally adopted the euphemism "enhanced interrogation techniques" or "[harsh techniques](#)" in its reporting -- no "torture" or "war crimes" for them then. And back in the post-2001 years, John Brennan, then deputy executive director of the CIA, didn't offer a peep of protest about what he surely knew was going on in his own agency. In [2014](#), in fact, as its director he actually [defended](#) such torture practices for producing "intelligence that helped thwart attack plans, capture terrorists, and save lives." In addition, none of those who ordered or oversaw torture and other criminal behavior (a number of whom would [sell](#) their [memoirs](#) for millions of dollars) suffered in the slightest for the acts that were performed on their watch and at their behest.

To sum up: when Donald Trump says such things it's a future nightmare to be called by its rightful name and denounced, as well as rejected and resisted by military and intelligence officials. When an American president and his top officials actually did such things, however, it was another story entirely. Today, [TomDispatch regular](#) Rebecca Gordon catches the nightmarish quality of those years, now largely buried, in the grim case of a single mistreated human being. It should make Americans shudder. She has also just published a new book, [American Nuremberg: The U.S. Officials Who Should Stand Trial for Post-9/11 War Crimes](#), that couldn't be more relevant. It's a must-read for a country conveniently without a memory. *Tom*

The Al-Qaeda Leader Who Wasn't The Shameful Ordeal of Abu Zubaydah

By [Rebecca Gordon](#)

The allegations against the man were serious indeed.

* Donald Rumsfeld [said](#) he was "if not the number two, very close to the number two person" in al-Qaeda.

* The Central Intelligence Agency [informed](#) Assistant Attorney General Jay Bybee that he "served as Usama Bin Laden's senior lieutenant. In that capacity, he has managed a network of training camps... He also acted as al-Qaeda's coordinator of external contacts and foreign communications."

* CIA Director Michael Hayden would [tell](#) the press in 2008 that 25% of all the information his agency had gathered about al-Qaeda from human sources "originated" with one other detainee and him.

* George W. Bush would use his case to [justify](#) the CIA's "enhanced interrogation program," claiming that "he had run a terrorist camp in Afghanistan where some of the 9/11 hijackers trained" and that "he helped smuggle al-Qaeda leaders out of Afghanistan" so they would not be captured by U.S. military forces.

None of it [was true](#).

And even if it had been true, what the CIA did to Abu Zubaydah -- with the knowledge and approval of the highest government officials -- is a prime example of the kind of still-unpunished crimes that officials like Dick Cheney, George Bush, and Donald Rumsfeld committed in the so-called Global War on Terror.

So who was this infamous figure, and where is he now? His name is Zayn al-Abidin Muhammad Husayn, but he is better known by his Arabic nickname, Abu Zubaydah. And as far as we know, he is still in solitary detention in Guantánamo.

A Saudi national, in the 1980s Zubaydah helped run the Khaldan camp, a mujahedeen training facility set up in Afghanistan with CIA help during the Soviet occupation of that country. In other words, Zubaydah was then an American ally in the fight against the Soviets, one of President Ronald Reagan's "[freedom fighters](#)." (But then again, so in effect was Osama bin Laden.)

Zubaydah's later fate in the hands of the CIA was of a far grimmer nature. He had the dubious luck to be the subject of a number of CIA "firsts": the first post-9/11 prisoner to be waterboarded; the first to be experimented on by psychologists working as CIA contractors; one of the first of the Agency's "ghost prisoners" (detainees hidden from the world, including the International Committee of the Red Cross which, under the Geneva Conventions, must be allowed access to every prisoner of war); and one of the first prisoners to be cited in a memo written by Jay Bybee for the Bush administration on what the CIA could "legally" do to a detainee without supposedly violating U.S. [federal laws](#) against torture.

Zubaydah's story is -- or at least should be -- the iconic tale of the [illegal](#) extremes to which the Bush administration and the CIA went in the wake of the 9/11 attacks. And yet former officials, from CIA head [Michael Hayden](#) to Vice President [Dick Cheney](#) to [George W. Bush](#) himself, have presented it as a glowing example of the use of "enhanced

interrogation techniques” to extract desperately needed information from the “evildoers” of that time.

Zubaydah was an early experiment in post-9/11 CIA practices and here’s the remarkable thing (though it has yet to become part of the mainstream media accounts of his case): it was all a big lie. Zubaydah wasn’t involved with al-Qaeda; he was the ringleader of nothing; he never took part in planning for the 9/11 attacks. He was brutally mistreated and, in another kind of world, would be exhibit one in the war crimes trials of America’s top leaders and its major intelligence agency.

Yet notorious as he once was, he’s been forgotten by all but his [lawyers](#) and a few tenacious [reporters](#). He shouldn’t have been. He was *the* test case for the kind of torture that Donald Trump [now wants](#) the U.S. government to bring back, presumably because it “worked” so well the first time. With Republican presidential hopefuls [promising](#) future war crimes, it’s worth reconsidering his case and thinking about how to prevent it from happening again. After all, it’s only because no one has been held to account for the years of Bush administration torture practices that Trump and others feel free to promise even [more](#) and “yuger” war crimes in the future.

Experiments in Torture

In August 2002, a group of FBI agents, CIA agents, and Pakistani forces captured Zubaydah (along with about 50 other men) in Faisalabad, Pakistan. In the process, he was severely injured -- shot in the thigh, testicle, and stomach. He might well have died, had the CIA not flown in an American surgeon to patch him up. The Agency’s interest in his health was, however, anything but humanitarian. Its officials wanted to interrogate him and, even after he had recovered sufficiently to be questioned, his captors occasionally withheld pain medication as a means of torture.

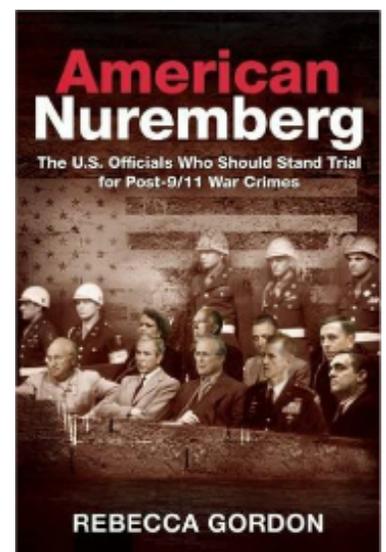
When he “lost” his left eye under [mysterious circumstances](#) while in CIA custody, the agency’s concern again was not for his health. The December 2014 [torture report](#) produced by the Senate Select Committee on Intelligence (despite CIA opposition that included hacking into the committee’s computers) described the situation this way: with his left eye gone, “[i]n October 2002, DETENTION SITE GREEN [now known to be Thailand] recommended that the vision in his right eye be tested, noting that ‘[w]e have a lot riding upon his ability to see, read, and write.’ DETENTION SITE GREEN stressed that ‘this request is driven by our intelligence needs [not] humanitarian concern for AZ.’”

The CIA then set to work interrogating Zubaydah with the help of two contractors, the [psychologists](#) Bruce Jessen and James Mitchell. Zubaydah would be the first human subject on whom those two, who were former instructors at the Air Force’s SERE (Survival, Evasion, Resistance, Escape) training center, could test their theories about using torture to induce what they called “[learned helplessness](#),” meant to reduce a suspect’s resistance to interrogation. Their price? Only [\\$81 million](#).

CIA records show that, using a plan drawn up by Jessen and Mitchell, Abu Zubaydah’s interrogators would waterboard him an almost unimaginable 83 times in the course of a single month; that is, they would strap him to a wooden board, place a cloth over his entire face, and gradually pour water through the cloth until he began to drown. At one point during this endlessly repeated ordeal, the Senate committee reported that Zubaydah became “completely unresponsive, with bubbles rising through his open, full mouth.”

Each of those 83 uses of what was called “the watering cycle” consisted of four steps:

“1) demands for information interspersed with the application of the water just short of blocking his airway 2) escalation of the amount of water applied until it blocked his airway and he started to have



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involuntary spasms 3) raising the water-board to clear subject's airway 4) lowering of the water-board and return to demands for information.”

The CIA videotaped Zubaydah undergoing each of these “cycles,” only to destroy those tapes in 2005 when news of their existence surfaced and the embarrassment (and possible future culpability) of the Agency seemed increasingly to be at stake. CIA Director Michael Hayden would later [assure](#) CNN that the tapes had been destroyed only because “they no longer had ‘intelligence value’ and they posed a security risk.” Whose “security” was at risk if the tapes became public? Most likely, that of the Agency’s operatives and contractors who were breaking multiple national and international laws against torture, along with the high CIA and Bush administration officials who had directly approved their actions.

In addition to the waterboarding, the Senate torture report [indicates](#) that Zubaydah endured excruciating [stress positions](#) (which cause terrible pain without leaving a mark); sleep deprivation (for up to 180 hours, which generally induces hallucinations or psychosis); unrelenting exposure to loud noises (another psychosis-inducer); “[walling](#)” (the Agency’s term for repeatedly slamming the shoulder blades into a “flexible, false wall,” though Zubaydah told the International Committee of the Red Cross that when this was first done to him, “he was slammed directly against a hard concrete wall”); and confinement for hours in a box so cramped that he could not stand up inside it. All of these methods of torture had been given explicit approval in a memo written to the CIA’s head lawyer, John Rizzo, by Jay Bybee, who was then serving in the Justice Department’s Office of Legal Counsel. In that [memo](#) Bybee approved the use of 10 different “techniques” on Zubaydah.

It seems likely that, while the CIA was torturing Zubaydah at Jessen’s and Mitchell’s direction for whatever information he might have, it was also using him to test the “effectiveness” of waterboarding as a torture technique. If so, the agency and its contractors violated not only international law, but the U.S. War Crimes Act, which expressly forbids experimenting on prisoners.

What might lead us to think that Zubaydah’s treatment was, in part, an experiment? In a May 30, 2005, [memo](#) sent to Rizzo, Steven Bradbury, head of the Justice Department’s Office of Legal Counsel, discussed the CIA’s record keeping. There was, Bradbury commented, method to the CIA’s brutality. “Careful records are kept of each interrogation,” he wrote. This procedure, he continued, “allows for ongoing evaluation of the efficacy of each technique and its potential for any unintended or inappropriate results.” In other words, with the support of the Bush Justice Department, the CIA was keeping careful records of an experimental procedure designed to evaluate how well waterboarding worked.

This was Abu Zubaydah’s impression as well. “I was told during this period that I was one of the first to receive these interrogation techniques,” Zubaydah would later [tell](#) the International Committee of the Red Cross, “so no rules applied. It felt like they were experimenting and trying out techniques to be used later on other people.”

In addition to the videotaping, the CIA’s Office of Medical Services required a meticulous written record of every waterboarding session. The details to be recorded were spelled out clearly:

“In order to best inform future medical judgments and recommendations, it is important that every application of the waterboard be thoroughly documented: how long each application (and the entire procedure) lasted, how much water was used in the process (realizing that much splashes off), how exactly the water was applied, if a seal was achieved, if the naso- or oropharynx was filled, what sort of volume was expelled, how long was the break between applications, and how the subject looked between each treatment.”

Again, these were clearly meant to be the records of an experimental procedure, focusing as they did on how much water was effective; whether a “seal” was achieved (so no air could enter the victim’s lungs); whether the naso- or oropharynx (that is, the nose and throat) were so full of water the victim could not breathe; and just how much the “subject” vomited up.

It was with Zubaydah that the CIA also began its post-9/11 practice of hiding detainees from the International Committee of the Red Cross by transferring them to its “black sites,” the secret prisons it was setting up in countries with complacent or complicit regimes around the world. Such unacknowledged detainees came to be known as “ghost prisoners,” because they had no official existence. As the Senate torture report noted, “In part to avoid declaring Abu Zubaydah to the International Committee of the Red Cross, which would be required if he were detained at a U.S. military base, the CIA decided to seek authorization to clandestinely detain Abu Zubaydah at a facility in Country _____ [now known to have been Thailand].”

Tortured and Circular Reasoning

As British investigative journalist Andy Worthington [reported](#) in 2009, the Bush administration used Abu Zubaydah’s “interrogation” results to help justify the greatest crime of that administration, the unprovoked, illegal invasion of Iraq. Officials leaked to the media that he had confessed to knowing about a secret agreement involving Osama bin Laden, Abu Musab al-Zarqawi (who later led al-Qaeda in Iraq), and Iraqi autocrat Saddam Hussein to work together “to destabilize the autonomous Kurdish region in northern Iraq.” Of course, it was all lies. Zubaydah couldn’t have known about such an arrangement, first because it was, as Worthington says, “absurd,” and second, because Zubaydah was not a member of al-Qaeda at all.

In fact, the evidence that Zubaydah had anything to do with al-Qaeda was beyond circumstantial -- it was entirely circular. The administration’s reasoning went something like this: Zubaydah, a “senior al-Qaeda lieutenant,” ran the Khaldan camp in Afghanistan; therefore, Khaldan was an al-Qaeda camp; if Khaldan was an al-Qaeda camp, then Zubaydah must have been a senior al-Qaeda official.

They then used their “enhanced techniques” to drag what they wanted to hear out of a man whose life bore no relation to the tortured lies he evidently finally told his captors. Not surprisingly, no aspect of the administration’s formula proved accurate. It was true that, for several years, the Bush administration routinely referred to Khaldan as an al-Qaeda training camp, but the CIA was well aware that this wasn’t so.

The Senate Intelligence Committee’s [torture report](#), for instance, made this crystal clear, quoting an August 16, 2006, CIA Intelligence Assessment, “Countering Misconceptions About Training Camps in Afghanistan, 1990-2001” this way:

“Khaldan Not Affiliated With Al-Qa’ida. A common misperception in outside articles is that Khaldan camp was run by al-Qa’ida. Pre-11 September 2001 reporting miscast Abu Zubaydah as a ‘senior al-Qa’ida lieutenant,’ which led to the inference that the Khaldan camp he was administering was tied to Usama bin Laden.”

Not only was Zubaydah not a senior al-Qaeda lieutenant, he had, according to the report, been turned down for membership in al-Qaeda as early as 1993 and the CIA knew it by at least 2006, if not far sooner. Nevertheless, the month after it privately clarified the nature of the Khaldan camp and Zubaydah’s lack of al-Qaeda connections, President Bush [used](#) the story of Zubaydah’s capture and interrogation in a speech to the nation justifying the CIA’s “enhanced interrogation” program. He then claimed that Zubaydah had “helped smuggle Al Qaida leaders out of Afghanistan.”

In the same speech, Bush told the nation, “Our intelligence community believes [Zubaydah] had run a terrorist camp in Afghanistan where some of the 9/11 hijackers trained” (a reference presumably to Khaldan). Perhaps the CIA should have been looking instead at some of the people who *actually* trained the hijackers -- the operators of flight schools in the United States, where, according to a September 23, 2001 *Washington Post* story, the FBI [already knew](#) “terrorists” were learning to fly 747s.

In June 2007, the Bush administration doubled down on its claim that Zubaydah was involved with 9/11. At a hearing before the congressional Commission on Security and Cooperation in Europe, State Department Legal Adviser John Bellinger, discussing why the Guantánamo prison needed to remain open, explained that it “serves a very important

purpose, to hold and detain individuals who are extremely dangerous... [like] Abu Zubaydah, people who have been planners of 9/11.”

Charges Withdrawn

In September 2009, the U.S. government quietly withdrew its many allegations against Abu Zubaydah. His attorneys had filed a *habeas corpus* petition on his behalf; that is, a petition to exercise the constitutional right of anyone in government custody to know on what charges they are being held. In that context, they were asking the government to supply certain documents to help substantiate their claim that his continued detention in Guantánamo was illegal. The new Obama administration replied with a [109-page brief](#) filed in the U.S. District Court in the District of Columbia, which is legally designated to hear the *habeas* cases of Guantánamo detainees.

The bulk of that brief came down to a government argument that was curious indeed, given the years of bragging about Zubaydah’s central role in al-Qaeda’s activities. It claimed that there was no reason to turn over any “exculpatory” documents demonstrating that he was not a member of al-Qaeda, or that he had no involvement in 9/11 or any other terrorist activity -- because the government was no longer claiming that any of those things were true.

The government’s lawyers went on to claim, bizarrely enough, that the Bush administration had never “contended that [Zubaydah] had any personal involvement in planning or executing... the attacks of September 11, 2001.” They added that “the Government also has not contended in this proceeding that, at the time of his capture, [Zubaydah] had knowledge of any specific impending terrorist operations” -- an especially curious claim, since the prevention of such future attacks was how the CIA justified its torture of Zubaydah in the first place. Far from believing that he was “if not the number two, very close to the number two person in” al-Qaeda, as Secretary of Defense Donald Rumsfeld had once claimed, “the Government has not contended in this proceeding that [Zubaydah] was a member of al-Qaida or otherwise formally identified with al-Qaida.”

And so, the case against the man who was waterboarded 83 times and contributed supposedly crucial information to the CIA on al-Qaeda plotting was oh-so-quietly withdrawn without either fuss or media attention. Exhibit one was now exhibit none.

Seven years after the initial filing of Zubaydah’s *habeas* petition, the DC District Court has yet to rule on it. Given the court’s average 751-day turnaround time on such petitions, this is an extraordinary length of time. Here, justice delayed is truly justice denied.

Perhaps we should not be surprised, however. According to the Senate Intelligence Committee report, CIA headquarters assured those who were interrogating Zubaydah that he would “never be placed in a situation where he has any significant contact with others and/or has the opportunity to be released.” In fact, “all major players are in concurrence,” stated the agency, that he “should remain incommunicado for the remainder of his life.” And so far, that’s exactly what’s happened.

The capture, torture, and propaganda use of Abu Zubaydah is the perfect example of the U.S. government’s unique combination of willful law-breaking, ass-covering memo-writing, and what some Salvadorans I once worked with called “strategic incompetence.” The fact that no one -- not George Bush or Dick Cheney, not Jessen or Mitchell, nor multiple directors of the CIA -- has been held accountable means that, unless we are very lucky, we will see more of the same in the future.

*Rebecca Gordon, a [TomDispatch regular](#), teaches in the Philosophy department at the University of San Francisco. She is the author of [American Nuremberg: The U.S. Officials Who Should Stand Trial for Post-9/11 War Crimes](#) (Hot Books, April 2016). Her previous books include *Mainstreaming Torture: Ethical Approaches in the Post-9/11 United States* and *Letters from Nicaragua*.*

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