

# Licence to Torture

*Tony Simpson*

*We first featured Barton Gellman's revelations about rendition and torture, made in the Washington Post in December 2002, in Spokesman 81, entitled Dark Times. Gellman has pursued this subject with notable persistence. It forms a central theme of Angler: The Shadow Presidency of Dick Cheney, recently published by Allen Lane (price £25). 'Angler' is the US Secret Service's code name for Cheney. Tony Simpson is the assistant editor of The Spokesman.*

During the spring and summer of 2001, the Bush Administration ignored a series of high-level warnings about an imminent and large-scale attack in the United States. Then, on September 11<sup>th</sup>, the twin towers of the World Trade Center in New York collapsed after two aircraft were flown into them, killing 2,750 people, a third aircraft ploughed into the Pentagon in Washington DC, killing still more, whilst a fourth crashed in a field in Pennsylvania, killing all on board.

The Administration appeared in deep disarray. President Bush had been reading a story to schoolchildren in Florida when news of the attacks reached him, whilst Vice President Dick Cheney had to be frog-marched by secret service agents to a secure bunker in Washington. At that time, it was thought that a fourth plane was still heading towards the White House, intent unknown, whilst various other aircraft had yet to respond to air traffic control's urgent requests for information. The phones and video links in Cheney's bunker didn't work properly. The Vice President was waiting to speak to his President, who was quickly airborne himself. Each time the phone rang, Cheney lifted the receiver and said 'yello'. But the call was for someone else. A photograph in Barton Gellman's new book *Angler* shows Cheney taking one of those calls in the Bunker, while National Security Advisor Condoleezza Rice looks on, brow furrowed. Cheney's key advisor, lawyer David Addington, stands nearby.

But if the Bush Administration collectively was unprepared for 9/11, Vice President Cheney was in no doubt about what response to the attack was necessary.

The country was at war, the enemy was within the United States as well as outside, and exceptional methods were required. Within the space of a few weeks, the US was bombing Afghanistan, and hunting Osama bin Laden, the leader of the al Qaeda network thought to be behind the 9/11 attacks. US and British special forces were confronting the Taliban, which had ruled Afghanistan and given hospitality and protection to Osama and his cohorts.

What was to be done with prisoners taken during the fighting in Afghanistan? What was their status under international law? Little if any proper preparation had been made for such an eventuality. Very quickly, the US government was embarked on a reckless course that was to lead, ultimately, to systematic torture of so-called 'high-value targets' at Guantanamo Bay, and the extraordinary abuses, many of them sexual in character, of inmates held at Abu Ghraib prison in Iraq. How was it that their moral descent was so rapid and so deep?

According to Barton Gellman's account, on September 11<sup>th</sup> itself, Cheney asked his legal advisor, David Addington, to address the question 'what new authority will the president need?' Already, the Vice President knew the gloves were coming off, and exceptional measures were to be used, both internationally and at home in terms of surveillance of US citizens and their communications. Might there be another cell in the US preparing a chemical, biological, or even a nuclear 9/11?

Addington sprang into action, working with others, particularly in the Office of Legal Counsel, which arbitrates when US government agencies disagree about what the law means. Its opinions are binding on all cabinet departments. It was John C. Yoo of the Justice Department who wrote, two weeks after 9/11, that no law

'can place any limits on the President's determinations as to any terrorist threat, the amount of military force to be used in response, or the method, timing, and nature of the response. These decisions, under our Constitution, are for the President alone to make.'

Cheney and Addington found Yoo's analysis 'congenial', according to Gellman. The existence of this new legal framework, according to Cheney, was to be concealed as much as possible from legislative or judicial actors who might object.

What was all this to mean for the prisoners captured in Afghanistan? The Taliban surrendered the town of Mazar-i-Sharif to General Dostum's Northern Alliance on 9 November 2001. Extensive US airstrikes helped precipitate the surrender, which happened much quicker than anticipated. There were hundreds of prisoners. What was to be done with them?

On 13 November, Bush met privately with Cheney over lunch at the White House. Cheney had with him a proposal drafted by David Addington, his legal advisor. Its gist, according to Gellman (p.163), was to strip foreign suspects of access to any court – civilian or military, domestic or foreign. They could be confined indefinitely without charge. They would be tried, if at all, in closed ‘military commissions’, modelled on the ones Franklin Roosevelt set up for Nazi saboteurs in World War Two.

The next day, Cheney told the US Chamber of Commerce that a terrorist does not ‘deserve to be treated as a prisoner of war’. It was ten weeks later, following a sharp dispute within the Administration, that Bush ratified the policy that Cheney had declared: the Geneva Conventions would not apply to al Qaeda or Taliban fighters captured on the battlefield. Donald Rumsfeld, Cheney’s ally at the Department of Defense, publicly endorsed the new line, declaring all captured fighters in Afghanistan ‘unlawful combatants’ who ‘do not have any rights’ under Geneva.

The Vice President and his collaborators may have had in mind at this time what was happening at Mazar. Rumsfeld had intervened to prevent the negotiated release of foreign fighters: ‘It would be most unfortunate if the foreigners in Afghanistan – the al Qaeda and the Chechens and others who have been there working with the Taliban – if those folks were set free and in any way allowed to go to another country and cause the same kind of terrorist acts’, he said. As a result, around 470 people were taken to the Kalai Janghi fort near Mazar, where Dostum had his headquarters, and incarcerated in the tunnels below one of its giant compounds. Many of them were subsequently killed by British and American special forces, following an attempted breakout which coincided with the arrival of CIA interrogators on 25 November. (For the full story, see Jamie Doran’s article ‘Massacre at Mazar’ in *Spokesman* 77.)

Meanwhile, lawyers at the National Security Council were alarmed at the implications of Cheney’s new approach. John Bellinger warned Condoleezza Rice:

‘... even the closest allies could be expected to stop handing over suspects to US custody. Faxes had been pouring in from overseas since Bush signed the order for military commissions. The first one had come from the British lord chancellor, noting pointedly that London’s co-operation was based on accepted legal norms.’

Of course, the British were already closely involved in the emerging ‘war on terror’. Tony Blair, then Prime Minister, had abandoned his speech to the Trades Union Congress, scheduled for 11 September, in order to

concentrate on that ‘war’. The situation was developing quickly across the Atlantic in Washington. In a matter of weeks, the hunt was on for locations to hold and interrogate ‘unlawful combatants’ which were beyond the reach of those who police international law. The British Indian Ocean Territory of Diego Garcia, which already served as a massive US military installation, was considered and apparently rejected in favour of Guantanamo as a long-term solution because, according to Karen Greenberg, author of *The Least Worst Place*,

‘Europe posed a particular problem. Not only would the relocation of prisoners there require negotiations and the consent of the host country to conditions and practices, but the European Court of Human Rights would inevitably become involved.’

(It was not until 2008 that the British Foreign Secretary, David Miliband, finally admitted that the US had indeed used Diego Garcia for the rendition of detainees.)

Cheney and his allies wanted to construct what has been described as the ‘legal equivalent of outer space’ – a place where detainees had no status, where no rules and no jurisdiction applied. The US installation at Guantanamo Bay on the island of Cuba was to be enrolled for this purpose.

Now, the debate focused on how to extract information quickly from detainees. Gellman records how Cheney had taken a close interest in the fate of William Buckley, CIA station chief in Beirut, who was captured in Lebanon in the 1980s. Buckley knew a lot about CIA operations in the Middle East and, under torture, revealed details to his captors. The lesson Cheney appeared to draw from Buckley’s experience was that torture worked. Of course, this presupposes that the person being tortured has useful information to impart:

‘No longer was the vice president focused on procedural rights, such as access to lawyers and courts. The subject now was elemental: How much suffering could US personnel inflict on an enemy to make him talk – “quickly”?’ (Gellman, p175)

Parts of the US Administration became embroiled in detailed discussions about what cruelties were permissible, and which were not. A line was drawn at burying people alive, but water-boarding to simulate drowning was endorsed, as were other practices:

‘It took four months for Yoo to produce a formal opinion. Meanwhile – in secret consultations with Gonzales, Flanigan, Addington, and CIA lawyers – Yoo gave interim authority for most of what the agency wanted to do. According to an authoritative source, Yoo rejected one proposed technique: the

CIA could not bury a subject alive, even if it planned to dig him back up in time. Convincing a person of his imminent death was torture, open and shut. Other proposed methods, Yoo said, were fine.’ (p.177)

Gellman goes on to record the extraordinary behaviour of senior members of President Bush’s Administration:

‘Beginning in the second quarter of 2002 – and periodically until at least early 2005, ... Cheney and Rice and the war cabinet sat with George Tenet and his successor in the Situation Room. The vice president led meetings with Don Rumsfeld, Colin Powell, and John Ashcroft, among others, to decide which torments exactly would be inflicted on each of the “high-value detainees”.’ (p.178)

One such detainee was Mohammed Qahtani who, it was thought, had tried to meet with Mohammed Atta, one of the main instigators of the 9/11 attacks. What did he know about possible future attacks on the US? A lengthy request for permission to begin ‘more aggressive’ forms of questioning was prepared. Eighteen techniques that interrogators might use were listed, ranging from water-boarding to hooding and yelling, isolation, stress positions, 24 hour interrogations, and the use of ‘individual phobias (such as fear of dogs) to induce stress’.

Qahtani was abused by his interrogators for more than seven weeks, with three teams working shifts 20 hours a day. The torture methods, and his responses, were recorded in a log. According to Gellman:

‘On the fiftieth day, Navy general counsel Alberto Mora threatened to file an official written protest, saying the methods employed against Qahtani “constituted, at a minimum, cruel and unusual treatment and, at worst, torture”. Rumsfeld rescinded authority for the new methods the same day.’ (p.188)

What were the British doing during this time? Binyam Mohamed, who has recently returned to Britain from Guantanamo Bay, has begun to shed some light on this question. He was first detained in Pakistan in April 2002, whilst trying to board a flight to Britain. During the next seven years, he was rendered first to Morocco, then to Afghanistan, and finally to Guantanamo Bay. British intelligence officers were actively engaged with his interrogation from the beginning, interviewing him face-to-face in Pakistan. Subsequently, they supplied information and questions to his Moroccan torturers. Indeed, Binyam Mohamed believes that it was the British who urged his rendition to Morocco because he lived amongst the Moroccan community in London. Mr Mohamed describes his worst time in the black prison in Afghanistan, where he was kept in complete darkness for weeks on end. Eventually, he was transported again from Afghanistan to Guantanamo, where he spent several years. Finally, with the help of his

British lawyer, Clive Stafford Smith of the organisation Reprieve, and an American military lawyer, he was allowed to leave Guantanamo and return to Britain. Now he can give first-hand testimony about Britain's role in the rendition and torture industry that burgeoned during the years following 9/11, when Cheney took charge as 'Shadow President'.



~~TOP SECRET~~

U.S. Department of Justice  
Office of Legal Counsel

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Washington, D.C. 20530

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Memorandum for John Rizzo  
Acting General Counsel of the Central Intelligence Agency

*Interrogation of al Qaeda Operative*

As part of this increased pressure phase, Zubaydah will have contact only with a new interrogation specialist, whom he has not met previously, and the Survival, Evasion, Resistance, Escape ("SERE") training psychologist who has been involved with the interrogations since they began. This phase will likely last no more than several days but could last up to thirty days. In this phase, you would like to employ ten techniques that you believe will dislocate his expectations regarding the treatment he believes he will receive and encourage him to disclose the crucial information mentioned above. These ten techniques are: (1) attention grasp, (2) walling, (3) facial hold, (4) facial slap (insult slap), (5) cramped confinement, (6) wall standing, (7) stress positions, (8) sleep deprivation, (9) insects placed in a confinement box, and (10) the waterboard. You have informed us that the use of these techniques would be on an as-needed basis and that not all of these techniques will necessarily be used. The interrogation team would use these techniques in some combination to convince Zubaydah that the only way he can influence his surrounding environment is through cooperation. You have, however, informed us that you expect these techniques to be used in some sort of escalating fashion, culminating with the waterboard, though not necessarily ending with this technique. Moreover, you have also orally informed us that although some of these techniques may be used with more than once, that repetition will not be substantial because the techniques generally lose their effectiveness after several repetitions. You have also informed us that Zubaydah sustained a wound during his capture, which is being treated.

*In April 2009, President Obama released four lengthy 'torture memos' sent from his predecessor's Office of Legal Counsel to legal officers of the CIA, in 2002 and 2005. This excerpt from a memo written by Jay S. Bybee, Assistant Attorney General, dated 1 August 2002, concerns the interrogation of Mr Abu Zubaydah, who was subsequently waterboarded 83 times during that month.*