

It's Not Too Late to Try Bush, Cheney and Obama for War Crimes

By [Washington's Blog](#)

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We Can Still Prosecute ...

Many argue that the statute of limitations on Bush and Cheney's crimes of lying us into the Iraq war and torture have all run ... so it is too late to prosecute them.

However, the United States War Crimes Act of 1996, a federal statute set forth at [18 U.S.C. § 2441](#), makes it a federal crime for any U.S. national, whether military or civilian, to violate the Geneva Convention by engaging in murder, torture, or inhuman treatment.

The statute applies not only to those who carry out the acts, but also to those who [ORDER IT, know about it, or fail to take steps to stop it](#). The statute applies to [everyone, no matter how high and mighty](#).

18 U.S.C. § 2441 has no statute of limitations, which means that a war crimes complaint can be filed at any time.

The penalty may be life imprisonment or — if *a single* prisoner dies due to torture — death. Given that there are numerous, documented cases of prisoners being tortured to death by U.S. soldiers in both Iraq and Afghanistan, that means that the death penalty would be appropriate for anyone found guilty of carrying out, ordering, or sanctioning such conduct.

The Military Commissions Act of 2006 limited the applicability of the War Crimes Act, but still made the following [unlawful](#): torture, cruel or inhumane treatment, murder, mutilation or maiming, intentionally causing serious bodily harm, rape, sexual assault or abuse.

War Crimes By the Bush Administration

Here's an overview of war crimes by the Bush administration:

- A [widespread torture](#) program [specifically aimed at producing false confessions to justify the war](#)
- [Chemical weapons attacks against civilians](#) (which [greatly increased](#) the [rate of birth defects](#))
- The use of depleted uranium, which can cause cancer and birth defects for decades (see [this](#), [this](#), [this](#), [this](#), [this](#) and [this](#))
- The Pentagon sent [one of the main US creators of the death squads in El](#)

[Salvador into Iraq to set up paramilitary death squads and torture centers](#)

We'll go into more detail on torture below.

Yes, It Was Torture

Yes, Waterboarding IS Torture

- [President Obama, Attorney General Eric Holder, Malcolm Nance](#) (an advisor on terrorism to the US departments of Homeland Security, Special Operations and Intelligence), [Lt. Gen. Michael D. Maples](#) (the director of the Defense Intelligence Agency) and many other interrogation experts and high-level politicians say that waterboarding is torture
- [The United States has always considered waterboarding to be a crime of torture, including when the Japanese did it in WWII](#) (and see [this](#))
- [Waterboarding is torture, Downing Street confirms](#)
- Everyone claiming waterboarding is not torture has changed their tune as soon as they were exposed to even a small dose of it themselves. See [this](#), [this](#) and [this](#)

Not Just Waterboarding

- [Major General Antonio Taguba: Photos Show Sodomy, Rape and Sexual Assault With Wire and Various Blunt Instruments](#)
- [The One Case of Torture Obama Doesn't Want You to Learn About](#)
- ["The Sexual Humiliation Of Iraqi Prisoners...Was Not An Invention Of Maverick Guards, But Part Of A SYSTEM Of Ill-Treatment And Degradation"](#)

Children, Too

- [Congratulations, America ... Children are Being Tortured in Your Name](#)
- [Sick To My Stomach, I Have A Duty To Report On the Torture of Children](#)

People Died While Being Tortured

The ACLU [wrote](#) in 2005:

The American Civil Liberties Union today made public an analysis of new and previously released autopsy and death reports of detainees held in U.S. facilities in Iraq and Afghanistan, many of whom died while being interrogated. The documents show that detainees were hooded, gagged, strangled, beaten with blunt objects, subjected to sleep deprivation and to hot and cold environmental conditions.

““There is no question that U.S. interrogations have resulted in deaths,”” said Anthony D. Romero, Executive Director of the ACLU. ““High-ranking officials who knew about the torture and sat on their hands and those who created and endorsed these policies must be held accountable.””

The documents released today include 44 autopsies and death reports as well as a summary of autopsy reports of individuals apprehended in Iraq and Afghanistan. The documents show that detainees died during or after interrogations by Navy Seals, Military Intelligence and ““OGA”” (Other Governmental Agency) — a term, according to the ACLU, that is commonly used to refer to the CIA.

According to the documents, 21 of the 44 deaths were homicides. Eight of the homicides appear to have resulted from abusive techniques used on detainees, in some instances, by the CIA, Navy Seals and Military Intelligence personnel. The autopsy reports list deaths by ““strangulation,”” ““asphyxiation”” and ““blunt force injuries.”” An overwhelming majority of the so-called ““natural deaths”” were attributed to ““Arteriosclerotic Cardiovascular Disease.””

While newspapers have recently reported deaths of detainees in CIA custody, today’s documents show that the problem is pervasive, involving Navy Seals and Military Intelligence too.

Spiegel [reported](#) in 2009:

At least two men died during imprisonment. One of them, a 22-year-old taxi driver named Dilawar, was suspended by his hands from the ceiling for four days, during which US military personnel repeatedly beat his legs. Dilawar died on Dec. 10, 2002. In the autopsy report, a military doctor wrote that the tissue on his legs had basically been “pulpified.” As it happens, his interrogators had already known — and later testified — that there was no evidence against Dilawar ...

And [see this](#).

Should We Prosecute?

But should we prosecute? Yes:

- [Former Guantanamo Prosecutor: Prosecute Those Who Authorized Torture](#)
- [Expert: Prosecuting Those Who Created Torture Program Will Reduce Attacks Against the U.S. and Against American Troops](#)
- United Nation’s Report Condemns The United States For Human Rights Violations, Including [Blocking Prosecution Of Those Responsible For Torture](#)
- Bush: [“Damn right” I authorized waterboarding](#)
- [Cheney Admits to Being War Criminal](#)

U.S. Officials Launched a Systematic Program of Torture Using Specialized Techniques Which Produce *False* Confessions ... to Justify the Iraq War

Let's dig in a little deeper on the question of torture ...

Not only did Bush, Cheney and other top government officials [lie about us into the Iraq war by making a false linkage between Iraq and 9/11](#), but they carried out a systematic program of torture in order to *intentionally create false evidence* of that allegation.

Indeed, [the entire purpose behind the U.S. torture program](#) was to obtain *false* confessions.

And the torture techniques used were [Communist techniques specifically designed to produce false confessions](#).

Senator Levin, in commenting on a Senate Armed Services Committee report on torture in 2009, [dropped the following bombshell](#):

With last week's release of the Department of Justice Office of Legal Counsel (OLC) opinions, it is now widely known that Bush administration officials distorted Survival Evasion Resistance and Escape "SERE" training - a legitimate program used by the military to train our troops to resist abusive enemy interrogations - by authorizing abusive techniques from SERE for use in detainee interrogations. Those decisions conveyed the message that abusive treatment was appropriate for detainees in U.S. custody. They were also an affront to the values articulated by General Petraeus.

In SERE training, U.S. troops are briefly exposed, in a highly controlled setting, to abusive interrogation techniques used by enemies that refuse to follow the Geneva Conventions. The techniques are based on tactics used by Chinese Communists against American soldiers during the Korean War for the purpose of eliciting false confessions for propaganda purposes. Techniques used in SERE training include stripping trainees of their clothing, placing them in stress positions, putting hoods over their heads, subjecting them to face and body slaps, depriving them of sleep, throwing them up against a wall, confining them in a small box, treating them like animals, subjecting them to loud music and flashing lights, and exposing them to extreme temperatures. Until recently, the Navy SERE school also used waterboarding. The purpose of the SERE program is to provide U.S. troops who might be captured a taste of the treatment they might face so that they might have a better chance of surviving captivity and resisting abusive and coercive interrogations.

Senator Levin then documents that SERE techniques were deployed as part of an official policy on detainees, and that SERE instructors helped to implement the interrogation programs. He noted:

The senior Army SERE psychologist warned in 2002 against using SERE training techniques during interrogations in an email to personnel at Guantanamo Bay, because:

[T]he use of physical pressures brings with it a large number of potential negative side effects... When individuals are gradually exposed to increasing levels of discomfort, it is more common for them to resist harder... If individuals are put under enough

discomfort, i.e. pain, they will eventually do whatever it takes to stop the pain. This will increase the amount of information they tell the interrogator, but it does not mean the information is accurate. In fact, it usually decreases the reliability of the information because the person will say whatever he believes will stop the pain... Bottom line: the likelihood that the use of physical pressures will increase the delivery of accurate information from a detainee is very low. The likelihood that the use of physical pressures will increase the level of resistance in a detainee is very high... (p. 53).

McClatchy [filled in](#) some of the details:

Former senior U.S. intelligence official familiar with the interrogation issue said that Cheney and former Defense Secretary Donald H. Rumsfeld demanded that the interrogators find evidence of al Qaida-Iraq collaboration...

For most of 2002 and into 2003, Cheney and Rumsfeld, especially, were also demanding proof of the links between al Qaida and Iraq that (former Iraqi exile leader Ahmed) Chalabi and others had told them were there."

It was during this period that CIA interrogators waterboarded two alleged top al Qaida detainees repeatedly — Abu Zubaydah at least 83 times in August 2002 and Khalid Sheik Muhammed 183 times in March 2003 — according to a newly released Justice Department document...

When people kept coming up empty, they were told by Cheney's and Rumsfeld's people to push harder," he continued."Cheney's and Rumsfeld's people were told repeatedly, by CIA . . . and by others, that there wasn't any reliable intelligence that pointed to operational ties between bin Laden and Saddam . . .

A former U.S. Army psychiatrist, Maj. Charles Burney, told Army investigators in 2006 that interrogators at the Guantanamo Bay, Cuba, detention facility were under "pressure" to produce evidence of ties between al Qaida and Iraq.

"While we were there a large part of the time we were focused on trying to establish a link between al Qaida and Iraq and we were not successful in establishing a link between al Qaida and Iraq," Burney told staff of the Army Inspector General. "The more frustrated people got in not being able to establish that link . . . there was more and more pressure to resort to measures that might produce more immediate results."

"I think it's obvious that the administration was scrambling then to try to find a connection, a link (between al Qaida and Iraq)," [Senator] Levin said in a conference call with reporters. "They made out links where they didn't exist."

Levin recalled Cheney's assertions that a senior Iraqi intelligence officer had met Mohammad Atta, the leader of the 9/11 hijackers, in the Czech Republic capital of Prague just months before the attacks on the World Trade Center and the Pentagon.

The FBI and CIA found that no such meeting occurred.

In other words, top Bush administration officials not only knowingly lied about a non-existent connection between Al Qaida and Iraq, but they pushed and insisted that interrogators use special torture methods aimed at extracting *false confessions* to attempt to create such a

false linkage.

The Washington Post [reported](#) the same year:

Despite what you've seen on TV, torture is really only good at one thing: eliciting false confessions. Indeed, Bush-era torture techniques, we now know, were cold-bloodedly modeled after methods used by Chinese Communists to extract confessions from captured U.S. servicemen that they could then use for propaganda during the Korean War.

So as shocking as the latest revelation in a new Senate Armed Services Committee report may be, it actually makes sense — in a nauseating way. The White House started pushing the use of torture not when faced with a “ticking time bomb” scenario from terrorists, but when officials in 2002 were desperately casting about for ways to tie Iraq to the 9/11 attacks — in order to strengthen their public case for invading a country that had nothing to do with 9/11 at all.

Gordon Trowbridge writes for the Detroit News: “Senior Bush administration officials pushed for the use of abusive interrogations of terrorism detainees in part to seek evidence to justify the invasion of Iraq, according to newly declassified information discovered in a congressional probe.

Indeed, one of the two senior instructors from the Air Force team which taught U.S. servicemen how to resist torture by foreign governments when used to extract false confessions has blown the whistle on the true purpose behind the U.S. torture program.

As Truth Out [reported](#):

Jessen's notes were provided to Truthout by retired Air Force Capt. Michael Kearns, a “master” SERE instructor and [decorated](#) veteran who has previously held high-ranking positions within the Air Force Headquarters Staff and Department of Defense (DoD).

Kearns and his boss, Roger Aldrich, the head of the Air Force Intelligence's Special Survival Training Program (SSTP), based out of Fairchild Air Force Base in Spokane, Washington, hired Jessen in May 1989. Kearns, who was head of operations at SSTP and trained thousands of service members, said Jessen was brought into the program due to an increase in the number of new SERE courses being taught and “the fact that it required psychological expertise on hand in a full-time basis.”

Jessen, then the chief of Psychology Service at the US Air Force Survival School, immediately started to work directly with Kearns on “a new course for special mission units (SMUs), which had as its goal individual resistance to terrorist exploitation.”

The course, known as SV-91, was developed for the Survival Evasion Resistance Escape (SERE) branch of the US Air Force Intelligence Agency, which acted as the Executive Agent Action Office for the Joint Chiefs of Staff. Jessen's notes formed the basis for one part of SV-91, “Psychological Aspects of Detention.”

Kearns was one of only two officers within DoD qualified to teach all three SERE-related courses within SSTP on a worldwide basis, according to a copy of a 1989 letter written Aldrich, who [nominated him](#) officer of the year.

The Jessen notes clearly state the totality of what was being reverse-engineered – not just ‘enhanced interrogation techniques,’ but an entire program of exploitation of prisoners using torture as a central pillar,” he said. “What I think is important to note, as an ex-SERE Resistance to Interrogation instructor, is the focus of Jessen’s instruction. It is exploitation, not specifically interrogation. And this is not a picayune issue, because if one were to ‘reverse-engineer’ a course on resistance to exploitation then what one would get is a plan to exploit prisoners, not interrogate them. The CIA/DoD torture program appears to have the same goals as the terrorist organizations or enemy governments for which SV-91 and other SERE courses were created to defend against: the full exploitation of the prisoner in his intelligence, propaganda, or other needs held by the detaining power, such as the recruitment of informers and double agents. Those aspects of the US detainee program have not generally been discussed as part of the torture story in the American press.”

Jessen wrote that cooperation is the “end goal” of the detainer, who wants the detainee “to see that [the detainer] has ‘total’ control of you because you are completely dependent on him, and thus you must comply with his wishes. Therefore, it is absolutely inevitable that you must cooperate with him in some way (propaganda, special favors, confession, etc.).”

Kearns said, based on what he has read in declassified government documents and news reports about the role SERE played in the Bush administration’s torture program, Jessen clearly “reverse-engineered” his lesson plan and used resistance methods to abuse “war on terror” detainees.

So we have the two main Air Force insiders concerning the genesis of the torture program confirming – with original notes – that the whole purpose of the torture program was to extract false confessions.

Indeed, the top interrogation experts from U.S. military and intelligence services say that [all torture is lousy at producing actionable intelligence](#), the *only things* it is good for are (1) producing false confessions, (2) creating more terrorists, and (3) *itself* acting as a [form of terrorism](#).

And false confessions were, in fact, extracted.

For example:

- A humanitarian aid worker said: [torture only stopped when I pretended I was in Al Qaeda](#)
- Under torture, Libyan Ibn al-Sheikh al-Libi [falsely claimed there was a link between Saddam Hussein, al-Qaida and WMD](#)
- President Bush mentioned Abu Zubaydah as a success story, where torture

saved lives. Zubaydah was suspected of being a high-ranking al-Qaida leader. Bush administration officials claimed Zubaydah told them that al-Qaida had links with Saddam Hussein. He also claimed there was a plot to attack Washington with a “dirty bomb”. [Both claims are now recognized to be false, even by the CIA, which also admits he was never a member of al-Qaida.](#)

- One of the Main Sources for the 9/11 Commission Report was [Tortured Until He Agreed to Sign a Confession that He Was NOT EVEN ALLOWED TO READ](#)
- The so-called 9/11 mastermind said: [“During ... my interrogation I gave a lot of false information in order to satisfy what I believed the interrogators wished to hear”](#) (the self-confessed 9/11 “mastermind” [falsely confessed to crimes he didn't commit](#))

(Indeed, the 9/11 Commission Report was largely based on a *third-hand* account of what tortured detainees said, with [two of the three parties in the communication being government employees](#). And the government went to great lengths to [obstruct justice and hide unflattering facts](#) from the Commission.)

But Are They Guilty of War Crimes?

The Nuremberg Tribunal which convicted and sentenced Nazis leaders to death conceived of wars of aggression – i.e. wars not launched in self-defense – [defined](#) the following as “crimes against peace”, or war crimes:

- (i) *Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances;*
- (ii) *Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i)*

The Tribunal considered wars of aggression to be the ultimate war crime, which [encompassed all other crimes](#):

To initiate a war of aggression, therefore, is not only an international crime; it is the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole.

Judgment of October 1, 1946, International Military Tribunal Judgment and Sentence, 22 IMTTIALS, supra note 7, at 498, reprinted in 41 AM. J. INT’LL. 172, 186 (1947).

Given that Iraq had *no connection* with 9/11 and possessed no weapons of mass destruction, the Iraq war was a crime of aggression and – under the standards by which Nazi leaders were convicted by the Nuremberg Tribunal – the American leaders who lied us into that war are guilty of war crimes.

Benjamin Ferencz, a former chief prosecutor for the Nuremberg Trials, declared:

A prima facie case can be made that the United States is guilty of the supreme crime against humanity — that being an illegal war of aggression against a sovereign nation.

See [this](#), [this](#), and [this](#).

The Chief Prosecutor for the International Criminal Court – Luis Moreno-Ocampo – [told](#) the Sunday Telegraph in 2007:

That he would be willing to launch an inquiry and could envisage a scenario in which the Prime Minister and American President George W Bush could one day face charges at The Hague. Luis Moreno-Ocampo urged Arab countries, particularly Iraq, to sign up to the court to enable allegations against the West to be pursued.

As a Japan Times Op/Ed [noted](#) in 2009:

In January 2003, a group of American law professors warned President George W. Bush that he and senior officials of his government could be prosecuted for war crimes if their military tactics violated international humanitarian law.

Eminent legal scholars such as former [U.S. Attorney General Ramsey Clarke](#) and Dean of the Massachusetts School of Law and a professor of law [Lawrence Velvel](#) have since stated that high-level Bush administration officials did commit war crimes in relation to the Iraq war.

Torture is – of course – a violation of the [Geneva Conventions](#), which make it illegal to inflict mental or physical torture or inhuman treatment. It is clearly-established that [waterboarding is torture](#). The torture was, in fact, systematic, and included widespread sexual humiliation, murder and other [unambiguous forms of torture](#).

Velvel and many other legal experts say that the torture which was carried out after 9/11 is a [war crime](#).

Colin Powell's former chief of staff stated that [Dick Cheney is guilty of war crimes](#) for [overseeing torture policies](#).

Matthew Alexander – a former top Air Force interrogator who led the team that tracked down Abu Musab al-Zarqawi – notes that government officials [knew they are vulnerable for war crime prosecution](#):

They have, from the beginning, been trying to prevent an investigation into war crimes.

A Malaysian war crimes commission also found Bush, Cheney, Rumsfeld, and five administration attorneys [guilty of war crimes](#) (although but the commission has no power to enforce its judgment).

War Crimes By the Obama Administration

The Obama administration has ordered numerous indiscriminate drone strikes. They

are [war crimes](#)(more [here](#) and [here](#)). (They also [create more terrorists](#).)

Torture is also [apparently continuing under Obama](#). See [this](#) and [this](#).

Note: We're writing less on Obama than Bush solely because the statute of limitations for Obama's crimes are not an issue at this point.

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