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The Debate Over Torture

Right after 9/11, Cheney said, 'we have to work...the dark side if you will. '

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Interrogators have pondered the uses of torture for centuries. During the Spanish Inquisition 500 years ago, priests obtained the desired results by placing infidels on the rack but had less success with sleep deprivation, which, after three or four days, seemed only to induce hallucinations. Torture still works to extract the truth in the movies and on TV shows like the popular '24,' but not in real life, say the experts. A prisoner who has his fingernails pulled out or his genitals shocked will say (and make up) anything to make the pain stop.

Real-world choices are less black and white. Less violent but still coercive techniques can sometimes be effective. These "enhanced" interrogation techniques, like placing a smelly hood over a prisoner and making him stand or squat naked for hours in a cold and dark room, are called "torture lite." In modern times, these tactics have been used by British intelligence to unravel the command structure of the IRA and by the Israelis to stop Palestinian suicide bombers.

Since 9/11, torture lite has been used by the Americans in the war on terror. In the immediate aftermath of the 9/11 attacks, fearful that another attack was imminent, Vice President Dick Cheney said, "we have to work... the dark side, if you will." Declared the CIA's then Counterterror chief Cofer Black: "After 9/11, the gloves came off." At one point, the Bush administration formally told the CIA it couldn't be prosecuted for any technique short of inflicting the kind of pain that accompanies "organ failure" or "death."

Torture lite has been a sparingly used but essential tool, says a senior Bush aide who spoke anonymously because of the classified nature of the subject. "We're talking about the most successful intelligence gained in the war on terror coming from these programs," he says. Details are hard to come by, but Sen. Kit Bond, a member of the Senate intelligence committee, told NEWSWEEK that "enhanced interrogation techniques" worked with at least one high-level Qaeda operative, 9/11 mastermind Khalid Shaikh Mohammed, to thwart a plot. Bond would not say which one, but among foiled plots vaguely described by the White House and linked to "KSM" was a scheme to attack targets on the West Coast of the United States with hijacked airlines. The planning for such a "second wave" attack may have been in the early stages. A career CIA official involved with interrogation policy cautioned NEWSWEEK not to put too much credence in such claims. "Whatever briefing they got was probably not truthful," said the official, who did not wish to be identified discussing sensitive matters. "And there's no way of knowing whether what good information they got could not have been obtained by more traditional means." The White House suggests the intelligence obtained has less to do with people and plots and more to do with the structure of Al Qaeda. Because of "the program," as they somewhat spookily describe the CIA's "aggressive interrogation techniques," White House aides say that the United States has a much better idea how Al Qaeda operates around the world.

But at what cost? While many Americans probably don't wish to know too much about the "dark side" of intelligence gathering, the horrific images of tortured detainees in Iraq and Afghanistan have taken a terrible toll

on America's standing in the world. "It's killing us. It's killing us," says Sen. John McCain of Arizona, whose NEWSWEEK essay on the subject follows this article. As a POW in Vietnam who had his arm broken and worse, McCain knows something about torture. His bill to ban "cruel, inhuman or degrading" interrogation techniques passed the Senate last month 90 to 9. But Cheney, with CIA Director Porter Goss in tow, has been lobbying against McCain. As written, the administration argues, the McCain legislation would tie the CIA's hands in the war on terror and potentially expose CIA operatives to prosecution at home and abroad.

Compromises are possible. "There's a common desire to work this out," says the senior Bush aide. Torture lite--and its bastard child, detainee abuse--are coming out of the shadows into the political arena. Cheney sometimes seems like a quieter version of Jack Nicholson in "A Few Good Men" ("You can't handle the truth!"), and last week President George W. Bush in effect attacked the administration's critics as unpatriotic. Yet there is a growing willingness in the courts and body politic to deal with the sometimes unpleasant questions of how to incarcerate and question suspected terrorists, and not just because John McCain is gearing up to run for president. In Britain last week, Parliament rebuffed Prime Minister Tony Blair's bill to hold terror suspects without charging them for 90 days, and the U.S. Supreme Court has signaled that it will rule on the constitutionality of so-called military commissions set up to try terrorists after 9/11.

The American public seems split. According to the latest NEWSWEEK Poll, 44 percent of the public thinks torture is often or sometimes justified as a way to obtain important information, while 51 percent say it is rarely or never justified. A clear majority--58 percent--would support torture to thwart a terrorist attack, but asked if they would still support torture if that made it more likely enemies would use it against Americans, 57 percent said no. Some 73 percent agree that America's image abroad has been hurt by the torture allegations.

Clearly, some sort of rules--some real limits beyond the risk of "organ failure"--are necessary. Otherwise, as McCain warns, America will sink to the level of its worst enemies. A reconstruction of the road to Abu Ghraib shows why: at each step, the Bush administration made understandable decisions to permit the use of harsh interrogation techniques against a few individuals. But the decisions were made in such an atmosphere of secrecy and confusion that the whole process spun out of control and produced atrocities that America may never live down.

The story of the first "High Value Target" captured by U.S. intelligence illustrates some of the dilemmas and pitfalls of interrogating terrorists. When Ibn Al-Shaykhal-Libi, who helped run Qaeda training camps, was picked up in Afghanistan in November 2001, the questioning of detainees was still the province of the FBI. For some years before 9/11, the bureau's "Bin Laden team" had typically handled suspects with a carrots-and-no-sticks approach: grant favors to suspects and their families (one terrorist's son even got a heart transplant), and they'll talk. But after 9/11, fighting Al Qaeda was deemed to be war, not law enforcement, and the usual rules went out the window. The CIA took al-Libi, strapped some duct tape over his mouth and put him on a plane to Egypt, where interrogations are a little rougher than down at FBI headquarters. At the airport, according to Jack Cloonan, a retired FBI officer who handled al-Libi, a CIA case officer went up to the suspected terrorist and said, "You're going to Cairo, you know. Before you get there I'm going to find your mother and I'm going to f--- her."

Sending a suspect off to languish (and possibly be abused) in the prison of a foreign country is called a "rendition." The CIA has done numerous renditions over the years, usually not for the purpose of seeing suspected terrorists subjected to torture, but just to get them off the street while the agency follows up leads from captured documents, laptop computers and the like. In the case of al-Libi, however, the Bush administration was only too glad to make use of the "take" from al-Libi's interrogation, helpfully provided by Egyptian intelligence. Under questioning by the Egyptian authorities (techniques unknown, but not hard to imagine), al-Libi confessed that Al Qaeda terrorists, beginning in December 2000, had gone to Iraq to learn about chemical and biological weapons. This was just the evidence the Bush administration needed to make the case for invading Iraq and getting rid of Saddam Hussein. In his famous, now discredited speech to the United Nations in February 2003, the then Secretary of State Colin Powell cited the intelligence extracted from al-Libi, referring to him not by name but as a "senior Al Qaeda terrorist" who ran a training camp in Afghanistan.

There was only one problem with al-Libi's story: after the Powell presentation, he recanted it. Overlooking timely doubts raised by some U.S. intelligence officials, particularly at the Defense Intelligence Agency, the ideologues in the Bush administration had used information obtained by torture to mislead the world.

Better, then, for the CIA to interrogate terror suspects on its terms. In April 2002, Abu Zubaydah, a top Qaeda lieutenant, was captured in Pakistan. At first he talked, but then he clammed up. Frustrated, the CIA went to its political masters in the Bush administration to ask: how far could the agency go in interrogating a crucial but reluctant suspect like Zubaydah?

In July 2002, the president's counsel, Alberto Gonzales, convened his colleagues in his cozy, wood-paneled office in the White House. Present were top Justice Department and Defense Department lawyers. Significantly missing were lawyers from the State Department and uniformed military, whose views on interrogation were known to be a good deal more cautious. (The military worries what will happen to captured American POWs in return.) According to a participant at the meeting who declined to be identified discussing private deliberations, Gonzales emphasized that it would be wrong to go over the line, but that America was at war, and it was necessary to "lean forward." (Gonzales has declined to comment.)

One by one, the lawyers went through five or six pressure techniques proposed by the CIA. They approved "waterboarding," dripping water onto a wet cloth over the suspect's face, which feels like drowning. But they nixed mock burials as too harsh.

It has never been clearly established if their methods worked to sweat useful information out of Zubaydah. But a precedent had been established, and interrogators creatively made the most of it. Toward the end of 2002, there was a spike in intelligence suggesting that Al Qaeda was preparing another major attack. The CIA had in custody Mohammad al-Qatani, the so-called 20th hijacker who had been refused entry to the United States before 9/11. But al-Qatani, trained in resistance (one method is to memorize and recite the Qur'an over and over), was not responding to the usual interrogation techniques.

So his handlers at Guantanamo Bay obtained permission from Secretary of Defense Donald Rumsfeld to try new techniques. According to a Southern Command report that came out earlier this year, al-Qatani was forced to perform dog tricks on a leash, was straddled by a female interrogator, told that his mother and sister were whores, forced to wear a woman's bra and thong on his head during interrogation, forced to dance with a male interrogator and subjected to an unmuzzled dog to scare him. At congressional hearings last July, Southern Command's Gen. Bantz Craddock testified that as a result of the use of some of these techniques, the formerly defiant al-Qatani had "provided insights" into Al Qaeda's planning for 9/11.

The harsh techniques used at Gitmo produced a backlash. The FBI and lawyers for the uniformed military services protested. A behind-the-scenes bureaucratic struggle broke out in Washington and raged and spluttered into the summer of 2003 and beyond, producing a welter of conflicting and confusing rules. The Geneva Conventions, international law requiring humane treatment, applied to some, but maybe not all prisoners--or did they? The answer seemed to depend on--what? No one seemed to know for sure. The international Convention Against Torture, ratified by the United States in 1994, bans the "cruel, inhuman and degrading" treatment of all prisoners. But Justice Department lawyers had obligingly declared that the president could ignore such constraints.

At the same time, the war in Iraq was starting to go badly. American soldiers were being killed by bombs planted by insurgents, and the Army seemed powerless to stop it. In Washington, a furious Rumsfeld was pounding the table for more and better intelligence. Where was Saddam? Where was the WMD? Why couldn't U.S. troops

catch the insurgents before they could set off crude roadside bombs?

Here, in retrospect, is where the real trouble began. In the summer of 2003, Rumsfeld sent a get-tough commander from Guantanamo--Lt. Gen. Geoffrey Miller--to "Gitmoize" the interrogation techniques in Iraq. So began an era of "strategic interrogation." Ordinary military policemen were told by intelligence officials to do things like "loosen this guy up for us" and "make sure this guy has a bad night" and "give him the treatment," according to Sgt. Javal Davis, one of the defendants in the Abu Ghraib scandal. Techniques used to ratchet up the pressure on High Value Targets by professional interrogators were being bastardized by poorly supervised, untrained Army MPs like the unfortunate Pvt. Lynndie England, the cavorting guard at Abu Ghraib. The Internet slide shows are still playing across the Muslim world.

There were honorable soldiers in Iraq and Afghanistan who wanted to do the right thing--but couldn't figure out what it was. Even though the administration said the Iraq war was covered by the Geneva Conventions, it never stated clearly how the insurgents should be treated. Capt. Ian Fishback, a West Point graduate deployed with a rifle company in Iraq, has written a heartbreaking chronology of his fruitless efforts to get any kind of clear answer from his superiors or the Pentagon about whether Geneva rules applied to Iraq. The "command climate" cast the insurgency as part of the larger war on terror, suggesting they did not apply, he says. He kept running into men in civilian clothes who, he assumed, were "OGA"--Other Government Agency, the standard military euphemism for the CIA. Hearing "loud noises" coming from the cells where the OGA men were detaining prisoners, Fishback worried about abuse, but assumed such treatment was official policy. "If I had thought that the United States was adhering to the Geneva Conventions I would have immediately investigated," he said, "but I did not." A Pentagon spokesman said Fishback's allegations are being "taken very seriously."

It was Fishback's story that got McCain's attention. On McCain's travels around the world, he heard constant complaints about Abu Ghraib and prisoner abuse. He resolved to do something because "America's position in the world is at an all-time low," he says. McCain's bill outlawing "cruel, inhuman and degrading" treatment of any and all foreign prisoners held overseas would still give interrogators some leeway. The military would be bound by the Army Field Manual, which allows techniques such as "fear up harsh," including "a loud and threatening voice" and "throw[ing] objects across the room to heighten the source's implanted feelings of fear." "Cruel, inhuman and degrading" treatment in prison cases in the United States has been defined by courts as conduct that "shocks the conscience." Such a standard would presumably allow for a sliding scale. For a very small percentage--those High Value Targets like Khalid Shaikh Mohammed--some pretty rough treatment might not "shock the conscience" if the payoff was averting a terrorist strike on an American city. But the sort of abuse that went on at Abu Ghraib--humiliating innocent detainees--would be way out of bounds.

McCain is inspired by the examples of other countries that have wrestled with the torture issue. The Israeli High Court formally outlawed torture in 1999 after at least 10 Palestinians died in custody. Still, in "ticking time bomb" cases when time is of the essence, Israeli interrogators can seek special permission to use force with a suspect--though they would be subject to prosecution if the suspect was not concealing urgent information.

Even McCain recognizes there could be rare instances when a president disobeys the law and orders a suspect tortured--say, if Al Qaeda had hidden a nuclear bomb in New York and a suspect involved in the plot had been captured. "You do what you have to do," McCain told NEWSWEEK. "But you take responsibility for it. Abraham Lincoln suspended habeas corpus in the Civil War, and FDR violated the Neutrality Acts before World War II."

Taking responsibility would be a new concept for the Bush administration. No high-ranking officer has been prosecuted in connection with the abuses, and no Pentagon official has even been publicly reprimanded. There are a number of senior officials openly pushing for some clear legal standard on detainee interrogations. Lately, Secretary of State Condoleezza Rice has been warning Bush that America's low image in the world requires positive steps to take a stand against prisoner abuse. She is backed by national-security adviser Stephen Hadley and Deputy Secretary of Defense Gordon England. But Rumsfeld's position is unclear (often the case

with the blunt but slippery Defense secretary), and Cheney remains adamantly opposed to any check on executive power. His new chief of staff (replacing the recently indicted I. Lewis Libby), the hawkish David Addington, has strongly attacked a draft directive from DoD's England that would require detainees to be treated in accordance with language drawn from Article Three of the Geneva Conventions, which prohibit torture and cruel--"humiliating and degrading"--treatment. "Addington is not happy about the draft," says a Pentagon official who requested anonymity because the discussions are still confidential. He added sarcastically that Addington "would like us to be able to pull fingernails with pliers." Lea Anne McBride, a spokeswoman for the vice president's office, said she had no comment on the debate except "the administration does not authorize or condone torture or cruel, humiliating and degrading treatment."

Bush has floated above the fray, blithely declaring that the "United States doesn't do torture," without getting entangled in debates over torture lite. A White House official who did not wish to be identified because of the sensitivity of the matter claims that Bush has personally reached out to McCain to seek a compromise. McCain told NEWSWEEK that he had briefly spoken with the president by phone.

And what of the interrogators themselves? Top agency officials under Goss are supporting their director, but farther down the chain of command, there is uneasiness, if not downright resistance. As The Washington Post, NEWSWEEK and others have reported, the CIA has at least a score of detainees tucked away in secret places it doesn't know how to dispose of without legal procedures. "Where's the off button?" says one retired CIA official who prefers to stay undercover. In the hands of President Bush--if he is willing to openly face some tough choices.