

By Andy Worthington

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Ten years ago, on the evening of March 28, 2002, the Bush administration officially embarked on [its “high-value detainee” program](#) in the “war on terror” that had been declared in the wake of the terrorist attacks on September 11, 2001, when Zayn al-Abidin Muhammad Husayn (more commonly identified as Abu Zubaydah), was captured in a house raid in Faisalabad, Pakistan.

For the next four and half years, Abu Zubaydah, described on his capture as a senior al-Qaeda operative, was held in secret prisons run by the CIA, until, with 13 other “high-value detainees,” he was moved to Guantánamo, in September 2006, where he remains to this day.

Initially taken to a secret prison in Thailand, he was then [moved to another secret prison in Poland](#), and it was there, in August

2002, that he was subjected to an array of torture techniques, including waterboarding (an ancient form of torture, which involves controlled drowning). The torture allegedly only began after John Yoo, a lawyer in the Justice Department's Office of Legal Counsel, which is supposed to provide impartial advice to the executive branch, wrote two memos ([the "torture memos,"](#) signed by his boss, Jay S. Bybee), which purported to redefine torture, and authorized the CIA to use ten techniques — including waterboarding — on Zubaydah. He was subsequently waterboarded 83 times.

Then, between September 24, 2003 and March 27, 2004, Zubaydah and other "high-value detainees" [were moved](#) to "[Strawberry Fields](#)," a secret prison-within-a-prison at Guantánamo. However, when it became clear that the Supreme Court would grant the Guantánamo prisoners habeas corpus rights (in [Rasul v. Bush](#) in June 2004), Zubaydah and the other "high-value detainees" were moved again. Some, including Zubaydah, were sent to Morocco, and his lawyers state that, in February 2005, he was then moved to a secret prison in Lithuania.

The tenth anniversary of Zubaydah's capture is noteworthy because still no one has been held accountable for his rendition and torture. In 2006, the Justice Department began an investigation into the ethical behaviour of John Yoo and Jay Bybee, but after four years, when the investigators concluded that both men were guilty of "professional misconduct," a veteran DoJ fixer, David Margolis, was [allowed to override the conclusions](#), deciding instead that Yoo and Bybee had only shown "poor judgment." Of course, "professional misconduct" would have led to sanctions, and might have prised open the largely suppressed torture debate, but "poor judgment" led to no punishment at all.

With all avenues to accountability closed in the US, where President Obama has [repeatedly blocked attempts](#) by victims of torture to secure access to any US courtroom, invoking the little-used "state secrets" doctrine, any attempts to secure accountability have had to be initiated in other countries. Two torture cases, which began in 2009, are [ongoing in Spain](#), despite attempts by the Obama administration to [shut them down](#), and the most recent submission, by the New York-based Center for Constitutional Rights, was [in February this year](#).

More significantly, in terms of complicity in torture, as well as holding the Bush administration accountable, are lawsuits in Poland and Lithuania, which both involve Abu Zubaydah.

In 2008, following investigations by the Council of Europe and the European Parliament, a Polish prosecutor began “investigating the possible abuse of power by Polish public officials with regard to a CIA black site,” although the investigation only became widely noted in September 2010, when [lawyers working with the Open Society Justice Initiative](#) “filed an application demanding that the Appellate Prosecutor in Warsaw investigate and prosecute the people responsible for Guantánamo prisoner Abd al-Rahim al-Nashiri’s transfer, detention, and torture on Polish soil.”

Al-Nashiri (another “high-value detainee” held and tortured in Thailand prior to his arrival in Poland) was [granted victim status](#) in October 2010, and in December 2010, following this success, [INTERIGHTS, the international center for human rights](#), working with the legal action charity Reprieve, the Polish lawyer Bartłomiej Jankowski, and Abu Zubaydah’s US lawyers Joe Margulies and Brent Mickum “filed two applications for Zubaydah providing official notification of crimes committed against him while he was held by the CIA in Poland, and requesting that Abu Zubaydah be formally recognised as a victim in the ongoing investigation into abuse of office by Polish officials, and any criminal investigations that may follow.”

In January 2011, Abu Zubaydah was [also recognized as a victim](#), and although the trail has largely gone cold over the last year, it came back to life on March 27, the day before the 10th anniversary of Zubaydah’s capture, when the Polish media announced that Zbigniew Siemiatkowski, who was the chief of Poland’s intelligence services from 2002 to 2004, when the CIA prison was operating, has been accused, by the Warsaw Prosecutor Waledmar Tyl, of “exceeding his powers and breaching international law, with specific charges that he was involved in the ‘unlawful deprivation of liberty’ of prisoners and their physical punishment.

Siemiatkowski has announced his intention not to cooperate. In an interview with the *Gazeta Wyborcza* newspaper and the TVP television station, he said, “While in the prosecutor’s office I refused to answer questions and I shall continue to do so at every stage of the proceedings, including in court.” However, although he also said that prosecutors first announced their intention to act on January 10, and [TheNews.pl website](#) announced that “the completion of Poland’s official investigation into the affair was delayed for a second time on 1 February, with Warsaw Prosecutor Waledmar Tyl suggesting that the

results may not see the light of day until August this year,”

Gazeta Wyborcza

claimed that “prosecutors acted after receiving full documentation from Poland’s Intelligence Agency about cooperation with the CIA in the first years of the War on Terrorism,” indicating that there is a solid case against Siemiatkowski — and also, presumably, against his deputy, Col. Andrzej Derlatka, who was “directly responsible for dealing with the American intelligence service,” and will face similar charges.

According to TheNews.pl, the announcement also indicates that Leszek Miller, the prime minister at the time the prison was open, “may be brought in front of the State Tribunal, Poland’s supreme judicial body,” to answer questions about what he knew, as may the President of Poland at the time, Aleksander Kwasniewski. Reports last year suggested that “he only found out about the ‘black site’ at the Stare Kiejkuty intelligence base, near the Szczytno-Szymany airport, over 100 kilometres from Warsaw, when President George W. Bush thanked him for Poland’s assistance in the ‘war against terror’” during a visit in June 2003. His thanks were allegedly “so profuse” that Kwasniewski “realized that ‘something was not right,’ as Poland had only sent a limited number of troops to Afghanistan and Iraq, to his knowledge.”

As TheNews.pl explained, “When Kwasniewski subsequently found out that CIA-leased planes had been flying terrorist suspects in and out of Poland, the then president ordered the detention centre to be closed down,” according to anonymous sources who spoke to *Gazeta Wyborcza*. One said, “Consequently, the last plane with CIA prisoners on board left Poland on 23 September 2003 from Szymany.”

The news from Poland can only provide comfort for those seeking accountability for the other secret prisons in Europe — in Lithuania and Romania. On October 27, 2011, [INTERIGHTS filed a case](#)

before the European Court of Human Rights in Strasbourg, “concerning the responsibility of Lithuania for [Abu Zubaydah’s] enforced disappearance, torture and ill-treatment at a secret detention facility in Lithuania, and a number of other violations of the European Convention on Human Rights.”

INTERIGHTS added that the case “concerns the failure of the Lithuanian government to account for the violations inflicted on Abu Zubaydah on Lithuanian territory,” chastising the Lithuanian government for previously launching a “superficial criminal investigation, conducted by the Prosecutor General at the instigation of Parliament,” which “was prematurely closed on 14 January 2011,” and noting, “Despite the submission of new evidence recently by two human rights organisations, Reprieve and Amnesty International, on 21 October 2011, Lithuania’s

Prosecutor General decided not to re-open the criminal investigation.”

Abu Zubaydah was never held in Romania, but others, including Khalid Sheikh Mohammed, the alleged 9/11 mastermind, were. Although the Romanian authorities have never even opened an investigation, the prison's existence became front page news in December last year, when the Associated Press and the German television program ARD Panorama [discovered the location of the prison](#), codenamed “Bright Light,” in the basement of a government building in Bucharest, which “opened for business in the fall of 2003, after the CIA decided to empty the black site in Poland,” according to former US officials, who spoke to the AP anonymously.

The officials also explained that the basement “consisted of six prefabricated cells, each with a clock and arrow pointing to Mecca,” adding that the cells “were on springs, keeping them slightly off balance and causing disorientation among some detainees.” The AP also noted, “During the first month of their detention, the detainees endured sleep deprivation and were doused with water, slapped or forced to stand in painful positions,” although, “After the initial interrogations, the detainees were treated with care” and “received regular dental and medical check-ups,” and Halal food flown in from the CIA's European HQ in Frankfurt.

Although the European investigations are extremely important, the focus, on the 10th anniversary of Abu Zubaydah's capture, still needs to be on the US as well. After all, what ought to be both noticeable and scandalous is the fact that, despite being held for 3,653 days, he has only on one occasion been able to speak openly about his experiences, at his Combatant Status Review Tribunal in Guantánamo in 2007 ([PDF](#)), when he said that he was tortured by the CIA to admit that he worked with Osama bin Laden, but insisted, “I'm not his partner and I'm not a member of al-Qaeda.”

The only other statements that have been revealed publicly have come from [Zubaydah's interviews](#) with representatives of the International Committee of the Red Cross, which, along with interviews with other “high-value detainees,” were the basis of a harrowing report to the US government that was leaked in 2009 ([PDF](#)).

Other than this, Zubaydah, like all the “high-value detainees” — except the handful who have

been able to speak briefly in hearings related to their intended military commission trials — have been thoroughly silenced throughout their detention, not just in the CIA “black sites,” but also for the last five and a half years in Guantánamo, where every word exchanged between the prisoners and their lawyers remains classified. In Guantánamo, all exchanges between prisoners and their lawyers are presumptively classified, but with the “high-value detainees,” not a word has ever been unclassified. This is a state of affairs for which there can only be one explanation — that the US wants to permanently hide any reference to their torture.

This combination of torture and enforced silence would be disgraceful enough if those held were genuinely accused of acts of international terrorism, but that is not even necessarily the case, as [the recent plea deal](#) in the military commission trial of Majid Khan demonstrated. In Zubaydah's case, the man once touted as “al-Qaeda's number 3” turned out to be, [in the words of former FBI interrogator Dan Coleman](#), a “safehouse keeper” with mental health problems. Zubaydah had suffered a serious head injury years before his capture, and, as Coleman said, referring to actual al-Qaeda operatives, “They all knew he was crazy, and they knew he was always on the damn phone. You think they're going to tell him anything?”

Referring to the overblown claims about Zubaydah, [INTERIGHTS explained](#) :

After more than six years of incommunicado detention, Zubaydah obtained access to US lawyers, who challenged his detention in US courts and forced the US Department of Justice to withdraw all such allegations. The United States [no longer alleges](#) Abu Zubaydah was ever a member of al-Qaeda or that he supported al-Qaeda's radical ideology. The United States no longer alleges that Abu Zubaydah was an associate of Osama bin Laden or that he was his senior lieutenant. The United States no longer alleges that Zubaydah had any role in any terrorist attack planned or perpetrated by al-Qaeda, including the attacks of 11 September 2001. Instead, the authorities have concocted some implausible story about him being the head of a militia aligned with al-Qaeda, whose alleged existence first surfaced in [the habeas corpus petition of another prisoner, Sufyan Barhoumi](#)

This, however, just looks like a refusal to face facts — that an insignificant player in pre-9/11 Afghanistan was brutally tortured until he almost lost his mind. As [INTERIGHTS has also explained](#) :

As a result of the torture and ill-treatment Abu Zubaydah has been subjected to ... he suffers from serious mental and physical health problems and debilitating on-going pain and suffering. Publicly available records describe how prior injuries were exacerbated by his ill-treatment and by his extended isolation. As a consequence, he has permanent brain damage and physical impairment. He suffers blinding headaches, and has an excruciating sensitivity to sound. Between 2008 and 2011 alone, he experienced more than 300 seizures. At some point during his captivity, [the CIA removed his left eye](#). His physical pain is compounded by his awareness that his mind is slipping away. He suffers partial amnesia, and has trouble remembering his family.

In marking the tenth anniversary of Abu Zubaydah's capture, I can only ask one question in parting: can anyone tell me what these ten years of torture are supposed to have achieved?