

By Andy Worthington

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With just days to go before George W. Bush's memoir, [Decision Points](#), hits bookstores (on November 9), and with reports on the book's contents doing the rounds after review copies were made available to the [New York Times](#) and [Reuters](#), it will be interesting to see how many media outlets allow the former President the opportunity to try to salvage his reputation, how many are distracted by [his spat with Kanye West](#) or his claim that he thought about [replacing Dick Cheney](#) as Vice President in 2004, and how many decide that, on balance, it would be more honest to remind readers and viewers of the former President's many crimes — including [the illegal invasion of Iraq](#), and the authorization of [the use of torture](#) on “high-value detainees” seized in the “War on Terror.”

As I fall firmly into the latter camp, this article focuses on what little has so far emerged regarding the President's views on Guantánamo, and, in particular, on his confession that he authorized the waterboarding of “high-value detainee” Khalid Sheikh Mohammed, which is rather more important than trading blows with a rapper about whether or not his response to the Katrina disaster was racist, as it is a crime under domestic and international law.

On Guantánamo

On Guantánamo, the only comments in the book that have so far emerged are insultingly flippant, which is disgraceful from the man who shredded the Geneva Conventions and authorized an unprecedented program of arbitrary detention, coercive interrogation and torture. In addition, Bush's baleful legacy lives on in the cases of [the 174 men still held](#), in [the recent](#)

[show trial of Omar Khadr](#)

, and in the complacency regarding the basis for detaining prisoners of the “War on Terror” — [the Authorization for Use of Military Force](#), passed by Congress the week after the 9/11 attacks — on which Barack Obama [continues to rely](#), despite its [formidable](#) [shortcomings](#)

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As Michiko Kakutani explained in a review of the book for the [New York Times](#) :

He tries to play down the problems of Guantánamo Bay, writing that detainees were given “a personal copy of the Koran” and access to a library among whose popular offerings was “an Arabic translation of Harry Potter.”

On torture

On torture, however, Bush remains as casual about authorizing waterboarding (a form of controlled drowning used on at least three “high-value detainees” [held in secret CIA prisons](#)), as he did [in June this year](#), when he told the Economic Club of Grand Rapids, Michigan, “Yeah, we waterboarded Khalid Sheikh Mohammed. I’d do it again to save lives.”

In his book, he writes that his response, when asked if he would approve the waterboarding of [Khalid Sheikh Mohammed](#), was, “Damn right!” He added, “Had I not authorized waterboarding on senior al-Qaeda leaders, I would have had to accept a greater risk that the country would be attacked.”

On Thursday, [Reuters revealed more](#) about the passages in the book in which Bush discusses waterboarding. This largely revisits the scenario as he described it in [a press conference in September 2006](#)

, when Khalid Sheikh Mohammed,

[Abu Zubaydah](#)

and

[Abd al-Rahim al-Nashiri](#)

(the three men waterboarded by the CIA), plus 11 other “high-value detainees,” were transferred to Guantánamo from the secret CIA prisons whose existence, until that moment, had been strenuously denied by the administration.

On that occasion, he spoke at length about Abu Zubaydah, the supposed “high-value detainee” for whom the torture program was [specifically developed](#), who, according to [the “torture memos” released last year](#) (written by lawyers in the Justice Department’s Office of Legal Counsel in 2002 and 2005) was waterboarded 83 times.

Revisiting his claims that, “When Abu Zubaydah stopped answering questions from the FBI, CIA Director George Tenet told Bush he thought the detainee had more information to offer” (as Reuters described it), Bush explains that “CIA and Justice Department lawyers conducted a careful legal review and came up with an ‘enhanced interrogation program,’ which he said complied with the US Constitution and all applicable laws, including those that ban torture.”

“No doubt the procedure was tough, but medical experts assured the CIA that it did no lasting harm,” Bush writes, adding that the methods were “highly effective,” and that Abu Zubaydah “revealed large amounts of information about al-Qaeda’s structure as well as the location of Ramzi bin al-Shibh, who he called the logistical planner of September 11 attacks” — an analysis that is unconvincing, as FBI interrogator Ali Soufan explained in an op-ed for the [New York Times](#) in April 2009. Soufan wrote:

Defenders of these techniques have claimed that they got Abu Zubaydah to give up information leading to the capture of Ramzi bin al-Shibh, a top aide to Khalid Sheikh Mohammed ... This is false. The information that led to Mr. Shibh’s capture came primarily from a different terrorist operative who was interviewed using traditional methods.

Bizarrely, Bush also attempts to explain how Abu Zubaydah began cooperating, in a troubling passage in which he seems to be trying to make out that waterboarding was some sort of

specific test for Muslims. He writes, “His understanding of Islam was that he had to resist interrogation only up to a certain point. Waterboarding was the technique that allowed him to reach that threshold, fulfill his religious duty, and then cooperate.” He adds that Abu Zubaydah then explained, “You must do this for all the brothers.”

Writing of Khalid Sheikh Mohammed, who was waterboarded 183 times, according to the OLC memos, Bush describes him as “difficult to break,” as Reuters put it, “but when he did, he gave us a lot.” As Reuters explained, “He disclosed plans to attack American targets with anthrax and ‘directed us to three people involved in the al-Qaeda biological weapons program,’ among other breakthroughs.”

Again, this is a claim that is not backed up with any evidence. As David Rose explained in an article for [Vanity Fair](#) in December 2008, “according to a former senior CIA official, who read all the interrogation reports on KSM, ‘90 percent of it was total f*cking bullsh*t.’ A former Pentagon analyst adds: ‘KSM produced no actionable intelligence. He was trying to tell us how stupid we were.’”

In conclusion, however, Bush claims that “the CIA interrogation program saved lives,” as Reuters described it, and states, “Had we captured more al-Qaeda operatives with significant intelligence value, I would have used the program for them as well.”

Why waterboarding is torture, and torture is a crime

The problem with Bush’s off-hand acknowledgment that he authorized the waterboarding of Khalid Sheikh Mohammed — and Abu Zubaydah and Abd al-Rahim al-Nashiri — is that waterboarding is torture, and torture is a crime.

As Isabel Macdonald of FAIR (Fairness and Accuracy in Reporting) explained in 2008 in [an excellent overview](#)

of US reporting on waterboarding, “During the insurrection against the US occupation of the Philippines, the

Washington Post

described how the US military tortured suspected members of the Filipino resistance using “the form of torture known as the water cure.” That was in September 1902, but after the Second

World War, when US military tribunals tried Japanese military officials for war crimes for torturing prisoners of war with techniques including waterboarding, the *New York Times* described the procedure as “forced drownings,” and it was referred to by the *Washington Post* as “water torture.”

Similarly, in March 1968:

“water torture” was mentioned in the headline of a *Washington Post* article about the Australian army’s admission that a soldier had administered the “water treatment” to a Vietnamese woman suspected of being a guerilla. Six months later, the *Post* published a front-page photographic exposé of US soldiers administering this same “water treatment” to a Vietnamese prisoner. A follow-up report in the *Post* [in 1970] referred to this practice, which resulted in charges against the commander of the US Army troops in South Vietnam, as “an ancient Oriental torture called ‘the water treatment.’”

Moreover, when it comes to torture in more general terms, the US anti-torture statute ([Title 18, Part I, Chapter 113C of the US Code](#) , introduced in 1994) describes torture as “an act ... specifically intended to inflict severe physical or mental pain or suffering ... upon another person within his custody or physical control,” and, as I explained in [an article in July this year](#) about Jay S. Bybee, the former OLC head (and now a judge in the Ninth Circuit Court of Appeals) who signed his name to the most notorious of the “torture memos,” written by John Yoo in the summer of 2002:

The US anti-torture statute [also] [requires a fine, or 20 years’ imprisonment \(or both\)](#) for “[w]hoever outside the United States commits or attempts to commit torture,” and a death sentence, or a prison sentence up to and including a life sentence, “if death results to any person from conduct prohibited by this subsection.”

In addition:

The [UN Convention Against Torture](#) [ratified by Ronald Reagan in 1987] stipulates (Article 2.2), “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.” Moreover, the Convention also stipulates (Article 4. 1) that signatories “shall ensure that all acts of torture are offences under its criminal law” and requires each State, when torture has been exposed, to “submit the case to its competent authorities for the purpose of prosecution” (Article 7.1).

These facts are generally ignored by mainstream media outlets, where those in charge have, since 2004, when waterboarding under the Bush administration was first introduced to the US public, coyly — and deceptively — chosen to refer to it as “a form of simulated drowning condemned by human rights activists as torture” (as Reuters did on Thursday), thereby helping to foster the culture of impunity which has allowed Bush to make this statement so publicly, and which, in February, [allowed Dick Cheney to tell Jonathan Karl](#) , on ABC News’ “This Week,” “I was a big supporter of waterboarding.”

Why the Obama administration bears responsibility for Bush’s impunity

In addition, the Obama administration is also responsible. Neither President Obama nor Attorney General Eric Holder has chosen to hold Bush administration officials and lawyers — up to and including the former President — accountable for their crimes, even though, as I explained in [an article in March 2009](#) :

In [an interview with ABC News](#) on January 11, 2009, President-Elect Obama responded to a recent CBS interview with Dick Cheney, in which the then-Vice President had sounded his usual alarms about the need for “extraordinary” policies to deal with terror suspects, by stating, “Vice President Cheney I think continues to defend what he calls extraordinary measures or procedures and from my view waterboarding is torture. I have said that under my administration we will not torture.”

Two days later, at his confirmation hearing, Eric Holder reinforced Obama's opinion. Noting, as the [New York Times](#) described it, that waterboarding had been used to torment prisoners during the Inquisition, by the Japanese in World War II and in Cambodia under the Khmer Rouge, and adding, "We prosecuted our own soldiers for using it in Vietnam," he stated unequivocally, "Waterboarding is torture," and [reiterated his opinion](#) on March 2, 2009, in a speech to the Jewish Council of Public Affairs in Washington. "Waterboarding is torture," he said again, adding, "My Justice Department will not justify it, will not rationalize it and will not condone it."

Instead, after a promising start on torture, which involved the President [upholding the absolute ban on torture](#) in an executive order issued on his second day in office, and the release of the OLC "torture memos" last April, in response to a court order, the Obama administration has retreated to a place where every attempt to seek accountability for the Bush administration's torturers has been resolutely blocked.

In January this year, it was revealed that Holder had appointed — or had allowed — the veteran Justice Department fixer David Margolis to [override the conclusions](#) of a four-year internal investigation into the behavior of John Yoo and Jay Bybee, in which the author's conclusions — that both men had been willfully guilty of "professional misconduct" — were watered down so that they were merely reprimanded for exercising "poor judgment."

In addition, the administration's stock response to attempts to investigate torture claims in court — as, for example, in the cases of [five men subjected to "extraordinary rendition" and torture](#), who sought to sue Jeppesen Dataplan Inc., a Boeing subsidiary that acted as the CIA's torture travel agent — has been to slam all the doors shut mercilessly, inappropriately invoking the little-known "state secrets" privilege to prevent anyone with a valid complaint from even getting anywhere near a court.

This is unlikely to change in the near future, of course, leaving George W. Bush able to boast openly about his crimes, apparently secure in the knowledge that he is untouchable, although as David Cole, a law professor at Georgetown University, and a long-standing critic of the Bush administration's interrogation and detention policies, told the [Washington Post](#) on Thursday, "The fact that he did admit it suggests he believes he is politically immune from being held accountable ... But politics can change."

At present, it is difficult to see how, but those compiling evidence will have taken note that, in the very public forum of an internationally available memoir, George W. Bush has failed to rehabilitate his legacy and has, instead, openly confessed to war crimes.