

A monumental miscalculation

Designing a prison at Guantánamo for the short term, now over 20 years old, with no end in sight

Field Notes From A Battleground

Charles R. Church

Many readers do their utmost to forget that America continues to hold captive 35 Muslim men at Guantánamo Bay, Cuba. But as the 20th anniversary of the prison has just passed, I thought it appropriate to write this reminder. It's a problem that won't go away until our nation finally deals with its vestiges. Originally, the United States imprisoned almost 800 men and boys there, while indulging in fantasies such as they're the "worst of the worst." But fabulist bubbles have a way of bursting. George W. Bush quietly released several hundred of the prisoners, and Barack Obama transferred out a couple hundred more. Currently, 35 prisoners remain. Twenty have been approved for transfer (though actualizing a transfer authorization often takes years, sometimes several); 12 fall under the purview of the military commissions: three have been convicted, and nine — including the five 9/11 defendants, whose case has continued seemingly forever in that their torture has complicated the case enormously — who are yet to be tried; and three never-charged but nonetheless imprisoned men. Sen. Dick Durbin, chair of the Judiciary Committee, had this to say about the last category: "Holding people without charge or trial for years on end cannot be reconciled with the values we espouse as a nation..."

(My client, known as Abu Zubaydah, is one of the three; I will write about him in Part Two.)

Yet given the aging prisoner population, the brutal torture inflicted on many of them that guarantees significant health problems (both physical and mental), and other considerations, the U.S. is now trapped in an ever-more-dire financial disaster. Recently, the military was forced to abandon the ultra-secret maximum-security Camp 7, where the so-called "high-value detainees" had been held. The camp cost \$17 million to build, but then it began to crumble.

Raw sewage sloshed through the tiers, the power sometimes went out, and some cell doors would not close. Elsewhere, fungus was growing in a new \$10 million "tiny-house village" being assembled at the military court compound to house lawyers. An M.R.I. device, which had cost \$1.65 million in 2012, suffered a "catastrophic failure" from neglect during the pandemic; the plan to lease a replacement may drag on for months. In another part of the base, construction of a \$115 million dormitory is a year behind schedule.

The cost of the Guantánamo prison has been staggering. To date, \$7 billion has been spent on it. “At Guantánamo, they continually put Band-Aids on instead of coming up with realistic solutions,” said retired Brig. Gen. John G. Baker, who formerly oversaw military defense teams at the prison.

The facility costs \$540 million per year to operate, including about \$100 million for military commissions. That comes to \$15 million for each prisoner, when, for example, a year at the Supermax federal prison at Florence, Colo., costs the government (actually, us taxpayers) only \$78,000. I believe that no prisoner has ever escaped from a Supermax prison.

But Congress, playing politics as usual (these men are so-o-o dangerous), continues to block any transfer of a Guantánamo prisoner to the U.S. mainland, no matter how securely he will be held. The Biden administration is trying to untie that Gordian Knot. Negotiations, which have been ongoing since at least March 2022, have continued between the prosecution and defense teams in the 9/11 case. The deal would center on guilty pleas by the defendants in exchange for the prosecution dropping its request for the death penalty. I can offer no prediction on whether they might succeed. But if they do succeed, will Congress, at long last, drop its posturing, and permit the prisoners to spend the rest of their days at a Supermax prison, so it can cease burning its taxpayers’ dollars?

If the negotiations fail, it is anyone’s guess when the trial will begin. On March 20, 2022, The New York Times’s indispensable Carol Rosenberg stated that “jury selection cannot start before mid-2024 — and that is according to the most optimistic estimate.” The case began for the second time on May 5, 2012. (The first charges had been dismissed, with the prosecution having the right to file new ones.)

Biden has appointed a special representative, Tina Kaidanow, to focus on finding a home for those cleared for transfer. But, alas, unlike the similar representative appointed by Obama, Ms. Kaidanow does not report directly to the Secretary of State.

Salisbury’s Charles Church is a lawyer who serves as co-counsel for Abu Zubaydah, on whom Part Two will focus. His comments, of course, reflect his own views, and not those of this newspaper. Church offers special thanks to Carol Rosenberg, who has been reporting on matters relating to the Guantánamo prisoners since January 2002, four months after 9/11. Many of the facts in this piece were reported by her.

Abu Zubaydah: His brutal torture ‘justified’ by so many falsehoods | The Lakeville Journal | The Millerton News

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By Charles R. Church
7–8 minutes

Part two of two

Last week, I described the monumental miscalculation of the Bush Administration: designing Guantánamo Bay’s prison and courtroom complex for the short term, when the decaying complex recently became 20 years old, and counting. The prisoner population has plummeted to a meager 35, three of whom have never been charged yet continue to be imprisoned. Sen. Dick Durbin, chair of the Judiciary Committee, had this to say on that: “Holding people without charge or trial for years on end cannot be reconciled with the values we espouse as a nation...” Yet my client, Abu Zubaydah (AZ), falls officially within that category, and no one can predict when, if ever, he will be transferred to another country where he would be subjected to security restrictions.

On March 28, 2002, the U.S. joined forces with Pakistani police to conduct a sweep of safe houses in Faisalabad, Pakistan. AZ, caught in a crossfire, took three slugs into his body that nearly killed him. While he was recovering from his surgery, FBI Special Agent Ali Soufan interviewed him. AZ repeatedly expressed his willingness to cooperate, providing information the CIA described as “quite important” and “vital,” including that Khalid Sheikh Mohammed was the “mastermind” of the 9/11 attacks who had trained the hijackers. (Unless noted otherwise, all statements relating to AZ’s 4 ½ years of captivity, interrogation, and torture by the CIA appear in the over 6 MM pages of CIA records, from which the Senate Select Committee on Intelligence drafted and published a 500 page Executive Summary of its Study of the [CIA’s] Detention and Interrogation Program [SSCI ES]). Nonetheless, the CIA elected to torture AZ to test his avowals that he had no information about future attacks on the U.S. and the possible presence here of enemy operatives.

So the Agency hired two contractors, James Mitchell and Bruce Jessen, who had zero experience in interrogating anyone, to design so-called “enhanced interrogation techniques.” But during AZ’s interrogations, the CIA and its contractors applied the torture techniques in a

manner that a Justice Department attorney concluded “was quite different from the descriptions” in Justice’s memo approving the use of enhanced techniques.

From August 4 through 23, 2002, “the CIA subjected [AZ] to its [torture] on a near 24-hours-per-day basis.” The torture began when “security personnel entered [AZ’s] cell, shackled and hooded [him], and removed his towel (so he was naked). Without asking any questions, the interrogators placed a rolled towel around his neck as a collar” then used the collar “to slam AZ (‘headfirst’) against a concrete wall.” For a prisoner with shrapnel “lodged in his skull,” this was an absurdly dangerous technique to employ, and nothing like the benign description of “walling” approved by the Justice Department.

Yet this was just the beginning. Those terrible days included waterboarding AZ 83 times (as reported by The New York Times), one session of which nearly killed him. (I have omitted the description intentionally.) After the use of torture finally stopped (for a while only) the CIA personnel at the detention site concluded that AZ “had been truthful throughout all that torment as he did not possess any new terrorist threat information.” Mitchell and Jessen even cabled from the CIA interrogation site that the interrogation had been a “success,” not because their torture had produced useful information, but rather since their use confirmed that AZ had been telling the truth throughout. This bizarre reasoning prompted two experienced writers, one of which had worked for the CIA, to declare in their book: “This paradox should be terrifying to any sane man.”

But the end of the “aggressive phase” of AZ’s torture by no means signaled that his torment would stop. The CIA then flew him from “black site” to “black site” around the globe. While it has long been publicly known that AZ lost his left eye while in the CIA’s custody, details remain classified. Further, as the result of their complicity in AZ’s captivity and torture in those countries, the European Court of Human rights, among other forms of relief, ruled that Poland and Lithuania each owed him 100,000 Euros, plus costs.

The U.S. used a litany of falsehoods to get to this point. Desperate to appear strong following the 9/11 disaster, President Bush in a April 9, 2002, speech boasted: “The other day we hauled in a guy named AZ. He’s one of the top operatives plotting and planning death and destruction on the [U.S.] He’s not plotting and planning anymore. He’s where he belongs.” Apart from AZ’s capture, not a word of Bush’s remarks was true.

After the CIA studied AZ and his life more thoroughly, according to the prominent author Ron Suskind (“The One Percent Doctrine”, 2006) an opinion that was the polar opposite of Bush’s bombastic claims gained acceptance in the upper reaches of the CIA. When CIA chief George Tenet included this turnabout in a daily briefing to the president, Bush said: “I said he was important. You’re not going to let me lose face on this, are you?” Tenet replied dutifully: “No sir, Mr. President.” Thus, according to Suskind, the CIA’s chief was willing to lie to the country to protect the image of its leader.

To obtain Justice's clearance of the torture techniques, the CIA on July 24, 2002, sent to the now-notorious John Yoo, the lawyer at Justice who would draft the memo, a "Psychological Assessment" (PA) to provide the factual predicate for Yoo's legal opinion. The PA's review of AZ's background is chock-a-block with falsehoods. Most blatantly, the PA several times charged AZ with belonging to al Qaeda, yet the CIA has admitted that AZ never belonged to that, or any other terrorist group. Incredibly, the PA even claims that AZ was one of the planners of the 9/11 attacks, when the several million pages of CIA records fail to support this claim. To conserve space, I will conclude this discussion with a major finding in the SSCI ES: "The CIA repeatedly provided inaccurate information to [Justice], impeding a proper analysis of the CIA's Detention and Interrogation Program."

Why all this fuss by the U.S. about AZ, and his being held for so long without charge nor formal indication that he will be transferred? That's a puzzle. A close review by AZ's lawyers of the government's statement of facts claimed to justify his ongoing detention leaves them convinced that the U.S. has committed a gigantic error. Stay tuned.

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