

## C R I T I C I S M

# WE STILL TORTURE

The new evidence from Guantánamo

By Luke Mitchell

**W**e face the temptation to believe that an election can “change everything”—that the stark contrast between Barack Obama and George W. Bush recapitulates an equally stark contrast between the present and the past. But political events move within a continuum, and they are driven by many forces other than democratic action, including the considerable power of their own momentum. Such is the case with the ongoing American experiment with torture.

The release in April of documents from the International Committee of the Red Cross, from the U.S. Justice Department's Office of Legal Council, and from the House Armed Services Committee gave further credence to what had long been known about CIA and military interrogation techniques. They are brutal and, despite the surreal claims of the Bush Justice Department, they are illegal. The assumption underlying coverage of “the torture story,” however, has been that U.S.-sponsored torture came to a halt on January 21. The culpability of the previous administration remains to be determined,

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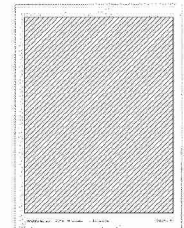
we are told, and in terms of ongoing criminal liability, the worst Obama himself could do is obstruct an investigation. Regarding the launch of that investigation, we must be patient.

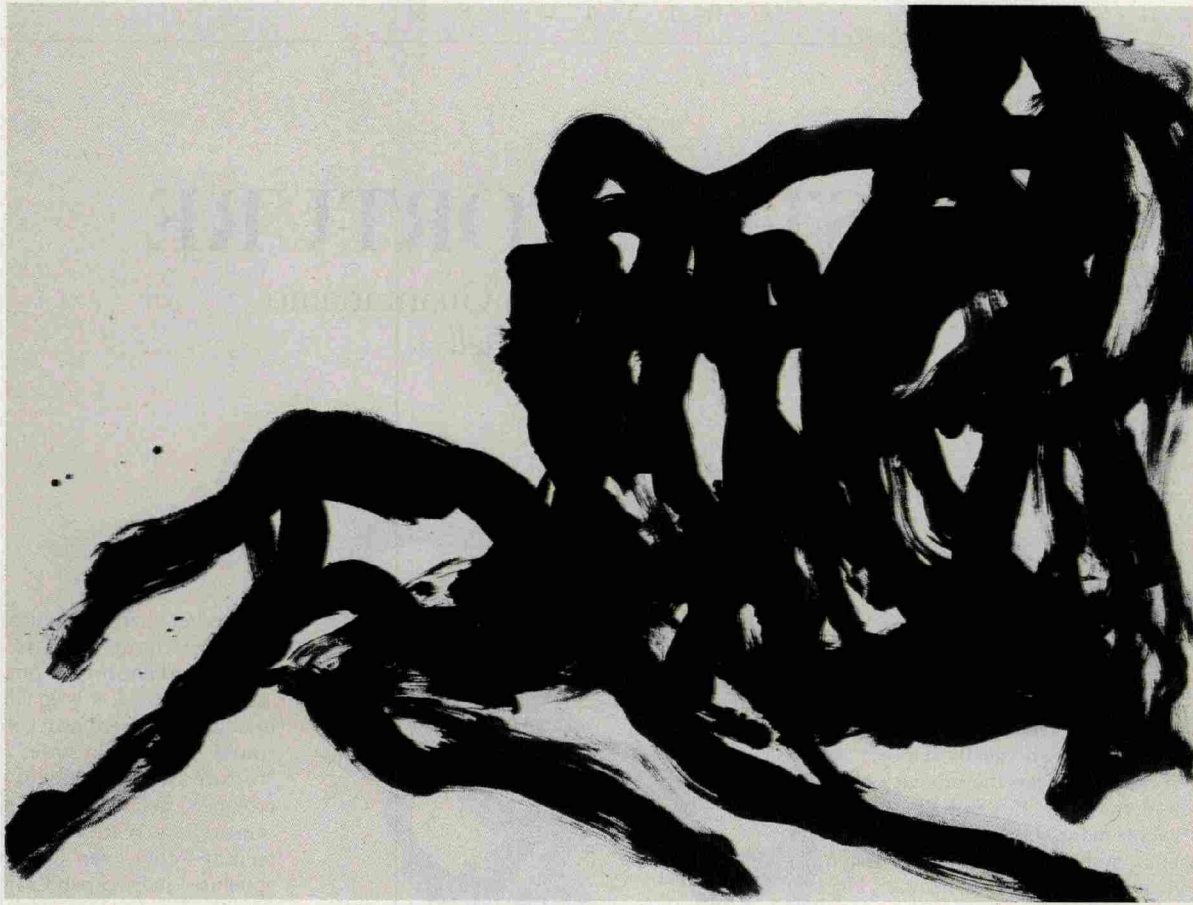
We cannot be patient, though, and not simply because justice must be swift. We cannot be patient because not only have we failed to punish the people who created and maintained our torture regime; we have failed to dismantle that regime and, in many cases, even to cease torturing.

This last charge is the least heard. Although it is true that waterboarding is once again proscribed, it is equally true that the government continues to permit a series of “torture lite” techniques—prolonged isolation, sleep and sensory deprivation, force-feeding—that even Reagan appointee Judge Susan Crawford had to acknowledge amounted to torture when she threw out the government's case against one accused terrorist. Like waterboarding, these techniques cause extreme mental anguish and permanent physical damage, and, like waterboarding, they are not permitted under international law. But unlike waterboarding, they remain on the books, in detailed prison regulations and field-manual directives,

unremarked by anyone except a few activists.

**T**he United States has always tortured. But our approach to torture has evolved over time. In the past, we preferred to keep the practice hidden. During the Cold War, we exported most of our torture projects to client regimes in Latin America, the Middle East, and South Asia, while at home we worked to perfect a new form of





“no touch” interrogation that would achieve terror and compliance without leaving scars, even as we denounced similar practices employed by our enemies. This was the age of hypocrisy—our secrecy was the tribute war crimes paid to democracy.

The hypocritical period ended, of course, with the attacks of September 11, the national flinch, the chest-thumping of George W. Bush, and the grim pronouncements of Dick Cheney, who loudly advertised his willingness to take the United States to “the dark side.” This, as we have all come to understand, was the time of open torture. It was the “shameful era,” when we put the techniques we had developed during the Cold War to use in the new “war on terror.”

Now we have entered what we may wish to call the post-torture era, except that it is not. Indeed, we cannot even revert to the easy hypocrisy

of the Cold War. We have returned to our traditional practice of torturing and pretending not to, but the old routine is no longer convincing. We know too much. We know that we are still imprisoning men who very likely are completely innocent. We know that we still beat them. We know that we still use a series of punishments and interrogation techniques—touch and “no touch”—that any normal person would acknowledge to be torture. And we know that when those men protest such treatment by refusing to eat, we strap them to chairs and force food down their throats. We know all of this because it is well documented, not just by reporters and activists but *by the torturers themselves*.

It is this very openness that suggests why this new age—let’s call it the era of legitimized torture—is so perilous, not just to the men who are tortured

but to liberal democracy. The moment is rapidly approaching when President Obama will cease to be the inheritor of a criminal regime and instead become its primary controlling authority, when the ongoing war crimes will attach themselves to his administration. And when they do attach themselves, Obama’s administration will be forced to defend itself, as all administrations do. And it will defend itself by claiming that what we call crimes are not in fact crimes.

This process has already begun. Rather than end illegal torture, we are now solidifying the steps that we have taken to make these activities legal. By failing to change the underlying problem even as we celebrate its supposed “solution,” we actually further entrench the past, the “bad” Bush era, into the present, the “good” Obama era. We will return to the rule of law, but within that rule will remain a rule

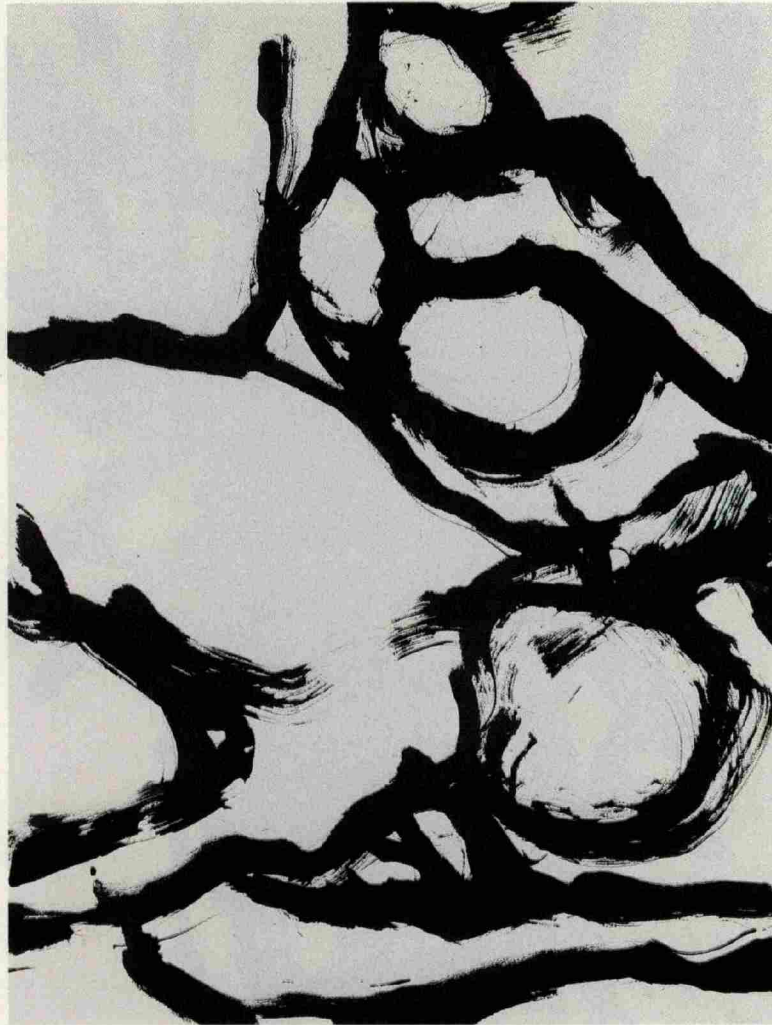
of torture, given all the greater authority by our love of the new regime.

**W**e have a tendency in the United States to judge actions not by their intrinsic merit but by the stylishness with which they are executed. Although the ostentatious lawlessness of the previous administration was pleasing to some, it ultimately frightened the majority of Americans. It was far too flamboyant. Obama and the Democrats seem to have rejected ostentation and lawlessness, and are all the more popular for that rejection. But they have not rejected torture itself.

As we learned from the Office of Legal Counsel memos, it is possible to parse "torture" to a considerable degree. What is the allowable incline for a waterboard? How many calories will suffice to avoid starvation? Which insects are permitted to be used in driving a man insane? The correct answer, according to those who parse, is the difference between a war crime and a heroic act of patriotism.

The OLC memos have been discredited but not the thinking behind them. We are still parsing, still weighing, still considering the possibilities. Whereas once we understood torture to be forbidden—something to be hidden and denied—now we understand it to be "complex." We are instrumental in our analysis, and that instrumentality is held to be a virtue. We don't torture not because it is illegal or immoral or repugnant to democracy but because "it doesn't work," leaving the way clear to torture that does "work."

The combination of complexity and instrumentality creates the potential for a new inversion. We enter the "complex" realm of torture and draw a new line, and the logical consequence—the unavoidably *intended* consequence—is that whatever is on the "good" side of that line, the "useful" side, can no longer be called torture. And since it is no longer torture, it must be something else. In this way we arrive at the strangest and most absurd conclusion. What was once a crime becomes a sensible approach to law enforcement. And in becoming sensible it also becomes invisible.



It is our evolving understanding of force-feeding that most clearly demonstrates this process of inversion and invisibility—not because it is the most horrifying form of torture, though it is horrifying, but because it has been so completely mainstreamed. Indeed, as it is practiced at Guantánamo, force-feeding is understood not only to *not* be torture but in fact to be a form of mercy. It is understood, above all, as a way to "preserve life."

**A**s of this writing, at least thirty men are being force-fed at Guantánamo. They are being force-fed despite the departure of the administration that instituted force-feeding, despite the current administration's order to shut down Guantánamo, and

despite its even more specific order requiring prisoners there to be treated within the bounds of Common Article 3 of the Geneva Conventions, which—by every interpretation but that of the U.S. government—clearly forbids force-feeding.<sup>1</sup>

<sup>1</sup> The conventions forbid "humiliating and degrading treatment," and doctors who advise the Red Cross, which in turn has considerable oversight in interpreting the conventions, have repeatedly made clear that force-feeding is humiliating and degrading. See, for instance, the judgment of Red Cross adviser Hernán Reyes, in a 1998 policy review: "Doctors should never be party to actual coercive feeding, with prisoners being tied down and intravenous drips or oesophageal tubes being forced into them. Such actions can be considered a form of torture, and under no circumstances should doctors participate in them, on the pretext of 'saving the hunger striker's life.'"



Most of these prisoners are not facing imminent death. In fact, force-feeding is itself a risky “treatment” that can cause infections, gastrointestinal disorders, and other complications. The feedings begin very soon after prisoners begin a hunger strike, and continue daily—with military guards strapping them to restraint chairs, usually for several hours at a time—until the prisoners agree to end the strike. This hunger striker is not an emaciated Bobby Sands lying near death after many weeks of starvation. He is a strong

man bound to a chair and covered in his own vomit.<sup>2</sup>

If force-feeding does not save lives, then what *does* it do? What makes it useful? From the perspective of the prisoner, there can be only one answer: Pain makes force-feeding use-

<sup>2</sup> Dr. William Winkenwerder, who served as Bush's assistant secretary of defense for health affairs and was therefore responsible for the force-feeding policy at Guantánamo, explained this preemptory approach to me three years ago with an almost poignant question: “If we're there to protect and sustain someone's life, why would we actually go to the point of putting that person's life at risk before we act?”

ful. The pain makes the strike unbearable, and therefore it prevents further protest.

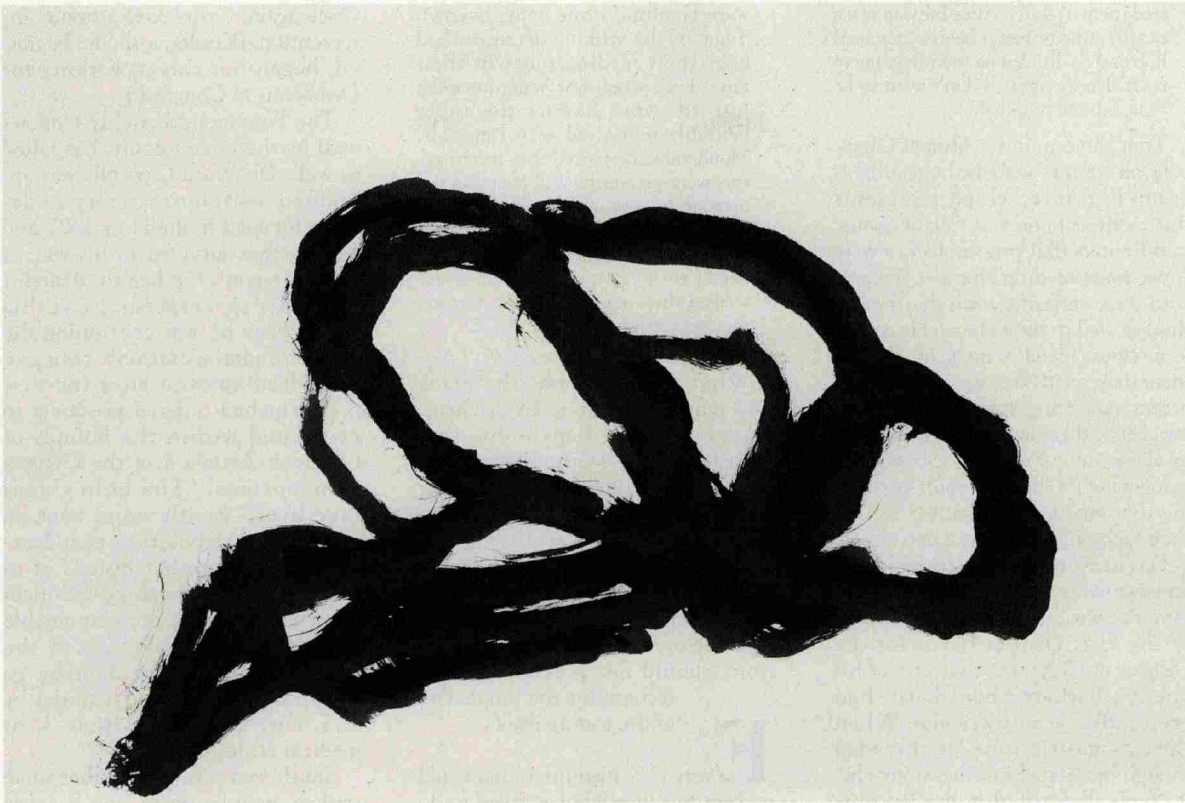
This is not just a logical inference. The first experience many Guantánamo prisoners had with being forced to eat was not when they went on hunger strikes but rather when they underwent interrogations at the secret CIA bases where they were held prior to their arrival at Guantánamo. At these “black sites,” we now know from the ICRC and OLC reports, CIA interrogation teams used “dietary manipulation” as a “conditioning technique” to help gather “intelligence.” These techniques, in other words, were a form of torture, no different from other, more infamous techniques outlined in the same reports, including “walling,” “cramped confinement,” and “water dousing” (now better known as waterboarding).

A 2005 memo signed by Steven Bradbury, then the acting head of the Office of Legal Counsel, explains the method. Dietary manipulation “involves the substitution of commercial liquid meal replacements for normal food, presenting detainees with a bland, unappetizing, but nutritionally complete diet.” The CIA interrogation team would strap the prisoners to chairs and feed them bottles of Ensure Plus—cited by name—for weeks on end. As Bradbury noted, it was hoped that this would cause the prisoners to become compliant.

The interrogation team believed [redacted] “maintains a tough, Mujahidin fighter mentality and has conditioned himself for a physical interrogation.” The team therefore concluded that “more subtle interrogation measures designed more to weaken [redacted] physical ability and mental desire to resist interrogation over the long run are likely to be more effective.” For these reasons, the team sought authorization to use dietary manipulation, nudity, water dousing, and abdominal slap. In the team's view, adding these techniques would be especially helpful [redacted] because he appeared to have a particular weakness for food and also seemed especially modest.

In imposing dietary control, safety

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was always a concern. "While we do not equate commercial weight-loss programs and this interrogation technique," Bradbury wrote, "the fact that these calorie levels are used in the weight-loss programs, in our view, is instructive in evaluating the medical safety of the interrogation technique." Bradbury even anticipated the almost sentimental patina of caregiving that informs the present-day discussion of force-feeding at Guantánamo, noting that "a detainee subjected to the waterboard must be under dietary manipulation, because a fluid diet reduces the risks of the technique"—by reducing the risk of choking on undigested vomit. The force-feeding, in other words, was for the good of the prisoner.

Forcing a man to drink a diet shake may seem like a minor affront, far removed from the rack or even from waterboarding. But actual prisoner testimony from another set of documents, the Red Cross interviews acquired by Mark Danner and published in *The New York Review of Books* in April,

suggests that the dietary manipulation was traumatizing:

During the first two weeks I did not receive any food. I was only given Ensure and water to drink. A guard would come and hold the bottle for me while I drank...

During the first month I was not provided with any food apart from on two occasions as a reward for perceived cooperation. I was given Ensure to drink every 4 hours. If I refused to drink then my mouth was forced open by the guard and it was poured down my throat by force...

I was transferred to a chair where I was kept, shackled by [the] hands and feet [and] given no solid food during the first two or three weeks, while sitting on the chair. I was only given Ensure and water to drink. At first the Ensure made me vomit, but this became less with time...

That is how we treated prisoners at CIA black sites, back in the shameful era. It is by no means the worst instance of man's inhumanity to man.

But dietary manipulation clearly was not a technique meant primarily to preserve life.

Compare now the shameful and repudiated practice of dietary manipulation under Bush to the sensible, life-preserving practice of "involuntary feeding" at Guantánamo today, in the post-torture era.

In February, Lieutenant Colonel Yvonne Bradley, a U.S. military lawyer representing Binyam Mohamed, the British resident who was recently released from Guantánamo, described a now-familiar situation to the *Guardian*. "Binyam has witnessed people being forcibly extracted from their cell," she said. "SWAT teams in police gear come in and take the person out; if they resist, they are force-fed and then beaten."

Bradley continued,

It is so bad that there are not enough chairs to strap them down and force-feed them for a two- or three-hour period to digest food through a feeding tube. Because there are not enough chairs the guards are having to force-

feed them in shifts. After Binyam saw a nearby inmate being beaten it scared him and he decided he was not going to resist. He thought, "I don't want to be beat, injured or killed."

That same month, Ahmed Ghappour, an attorney with the human-rights group Reprive, which represents thirty-one detainees at Guantánamo, told Reuters that prison officials were "over-force-feeding" hunger strikers, who were suffering from diarrhea as they sat tied to their chairs. He said in some cases officials were lacing the nutrient shakes with laxatives. And the situation was getting worse. "According to my clients, there has been a ramping up in abuse since President Obama was inaugurated," Ghappour said, speculating that guards there wanted to "get their kicks in" before the camp closed.

David Remes, an attorney who represents fifteen detainees at Guantánamo, wrote in an April petition to the U.S. District Court for the District of Columbia that one of his clients, Farhan Abdul Latif, had been suffering in particular. When the nasogastric tube "is threaded through his nostril into his stomach," it "feels like a nail going into his nostril, and like a knife going down his throat." Latif had in recent months resorted to covering himself with his own excrement in order "to avoid force-feeding and that, when he was finally force-fed, the tube was inserted through the excrement covering his nostrils."<sup>3</sup>

Another prisoner, Maasoum Abdah Mouhammad, told his lawyers at the Center for Constitutional Rights that he and fifteen other men had also refused to eat:

Mr. Mouhammad described that men

were vomiting while being overfed. Some of the striking detainees had kept their feeding tubes in their noses even when not being force-fed just to avoid having the tubes painfully reinserted each time. Mr. Mouhammad reported that interrogators were pressuring and coercing the men on hunger strike to eat, making promises that they would be moved to the communal living camp if they began eating. Mr. Mouhammad described these experiences as "torture, torture, torture."

What was torture at the black sites remains torture today at Guantánamo. It is perhaps ironic that what began as a method for making men talk—in fact, as we are now learning, in order to make them *lie*, about ties between Al Qaeda and Iraq—is now a method of preventing men from "talking," of preventing them from registering protest at the injustice of their condition. But that irony should not prevent us from recognizing the simple fact of the torture itself.

Every U.S. institution that could prevent force-feeding has failed to do so. Congress has failed to act, as have the courts, as has the president. Today the American Medical Association refuses even to sanction the doctors employed at Guantánamo, and one of those doctors, William Dudeney, actually touts his previous job as the "Chief of Psychiatry, Guantánamo Bay, Cuba" in an advertisement for his "Medical Weight Management" services.

District Judge Gladys Kessler had the opportunity to address force-feeding in February, when lawyers for Mohammed Al-Adahi and four other prisoners at Guantánamo sought an immediate injunction against the practice. Kessler denied the injunction on the unconvincing grounds that her court lacked not just the jurisdiction but the *competency* to dispense justice. "Resolution of this issue requires the exercise of penal and medical discretion by staff with the appropriate expertise," she wrote, "and is precisely the type of question that federal courts, lacking that expertise, leave to the discretion of those who do possess such expertise."

Once again, complexity prevents intervention. (Kessler, it should be noted, began her career working for Democrats in Congress.)

The Pentagon, so richly empowered by the circuit court, has failed as well. Dr. Ward Casscells was appointed assistant secretary of defense for health affairs in 2007 and thus far has survived in his role as the Pentagon's top health official. I asked his spokesperson, Cynthia Smith, why he was continuing the previous administration's policy of force-feeding even after the new president had ordered prisoners to be treated within the bounds of Common Article 3 of the Geneva Conventions. "The policy does save lives," Smith wrote back (a week later, stipulating that I attribute quotes to her instead of to Casscells). "Idly watching detainees for whose care we are responsible engage in self-starvation to the point of permanent damage to health or death is not required by U.S. law, Common Article 3, or medical ethics."<sup>4</sup>

Smith went on to note that some strikers may be protesting because they feel pressured to do so by other prisoners. In such cases, force-feeding was a way to help them resist that pressure. This was a strange argument. Given that the prisoners are separated from one another and are under constant surveillance, such pressure could come only in the form of appeals to conscience. Smith's logic was reminiscent of the claim by Marc Thiessen, a former Bush speechwriter, in the *Washington Post* in April: "The job of the interrogator is to safely help the terrorist do his duty to Allah, so he then feels liberated to speak freely"—which itself brings to mind the case of Alvaro Jaume, who was tortured under medical supervision in Uruguay in the 1980s, and who recalled, "These doctors are saving

<sup>4</sup> Smith is one-third right. Force-feeding is indeed permitted under U.S. Bureau of Prison guidelines. But as previously noted, the Geneva Conventions are well understood to forbid the practice, and the guidelines of the World Medical Association are even more unambiguous: "Forcible feeding is never ethically acceptable."

<sup>3</sup> Latif, who is now being held in Guantánamo's "Behavioral Health Unit," has quite clearly been broken by his many years of confinement. Remes reports that his client has made several suicide attempts, the most recent of which was in his presence. "Without my noticing, he chipped off a piece of stiff veneer from the underside of the table and used it to saw into a vein in his left wrist," he said. "As he sawed, he drained his blood into a plastic container I had brought and, shortly before our time was up, he hurled the blood at me from the container. It must have been a good deal of blood because I was drenched from the top of my head to my knees." Latif survived this attempt as well.

lives, but in a perverse way. The aim of torture is thwarted if the victim cannot support the interminable ordeal. The doctor is needed to prevent you from dying for your convictions.”<sup>5</sup> All of which, in any case, suggests that the Pentagon has no intention of changing its policy.

President Obama, to date, has done nothing either. In February, Ramzi Kassem, a Yale law professor who represents one of the hunger strikers, sent a formal letter to Gregory Craig, the new White House counsel, outlining the legal concerns about force-feeding and recommending in detail how to bring the treatment of hunger strikers in line with the Geneva Conventions (for instance, by prohibiting the use of restraint chairs). Obama

<sup>5</sup> The historian A. J. Langguth recalled some similar thinking many years ago in the New York Times, drawing from the memoirs of a CIA asset in the Uruguayan police force who was trained in the 1960s by Dan Mitrione, of the U.S. Office of Public Safety (which was founded to facilitate the training of officials in states believed to be threatened by Communist subversion).

“Before all else,” Mitrione explained to his Latin American protégé, “you must be efficient. You must cause only the damage that is strictly necessary, not a bit more. We must control our tempers in any case. You have to act with the efficiency and cleanliness of a surgeon and with the perfection of an artist.”

Mitrione was a bureaucrat at heart. “It is very important to know beforehand whether we have the luxury of letting the subject die,” he said, adding that a “premature death means a failure by the technician.”

Compare Mitrione’s claims with the words of the top lawyer at the CIA’s Counter-Terrorism Center, Jonathan Fredman, at a 2002 strategy meeting (the minutes for which were released in 2008 by Carl Levin as part of an investigation by the Senate Armed Services Committee, which he chairs). Fredman was similarly professional, emphasizing that “techniques that lie on the harshest end of the spectrum must be performed by a highly trained individual. Medical personnel should be present to treat any possible accidents.” He also discussed the strong requirement of a bureaucracy for documentation: “If someone dies while aggressive techniques are being used, regardless of cause of death, the backlash of attention would be severely detrimental. Everything must be approved and documented.” And he brought the same dark, almost humorous, perception of his task to bear, declaring that torture “is basically subject to perception. If the detainee dies you’re doing it wrong.”

Fredman, it should be noted, claims that he was “paraphrased sloppily and poorly.” The prudent degree of specificity may vary from regime to regime, but the mind of the torturer remains the same at all times and in all places.

ma could simply order these changes, but he has not.

Obama did ask Navy Admiral Patrick Walsh to visit Guantánamo and report back on conditions there. Walsh found the practices in question, including the use of restraint chairs, to be perfectly acceptable. When Reuters asked Walsh about specific incidents of abuse, he was evasive. “We heard allegations of abuse,” he said. “What we found is that there were in some cases substantiated evidence where guards had misconduct,

I think that would be the best way to put it.”

**F**orce-feeding is an especially egregious example of legitimized torture, but it is far from the only example. Just one percent of the prisoners held offshore by the United States are held at Guantánamo, and many other techniques remain legally available to their jailers. The Army Field Manual still permits solitary confinement, sensory deprivation, and sleep deprivation, as well as so-called emotional techniques such as “fear up,” which involves terrifying prisoners into a state of “learned helplessness.”

It is difficult to know the degree to which these practices are employed, though, because President Obama has adopted not only much of the Bush Administration’s torture policy but also its radical doctrine of secrecy. The Obama White House has sought to prevent detainees at Bagram prison in Afghanistan from gaining access to courts where they may reveal the circumstances of their imprisonment, sought to continue the practice of rendering prisoners to unknown and unknowable locations outside the United States, and sought to keep secret many (though not all) of the records regarding our treatment of those detainees.

The result is that what would at first seem to be something positive—a “national conversation about torture”—has instead become a form of complicity. We know that torture occurred, and we know that it continues to occur. Yet we allow ourselves to pretend otherwise because we don’t know *enough*. The secrecy allows us to transform a taboo into an “issue,” and most voters seem to desire, as Judge Kessler did, to leave the

resolution of that issue to the “penal and medical discretion” of “a staff with the appropriate expertise.” In one recent poll only 35 percent of Americans called for the closing of Guantánamo, whereas 45 percent wanted to keep it open and 20 percent weren’t sure what we should do.

As ever, Democrats are attempting to split the difference. A major claim by Obama is that he does not want people in the CIA “to suddenly feel like they’ve got to spend all their time looking over their shoulders”—presumably because he does not want to prejudge their “appropriate expertise.” A more persuasive means of preventing torture would be to say precisely the opposite, that people in the CIA *should* spend all their time looking over their shoulders. But that is not what Obama has said. Now those who would speak against torture in a crisis situation face a strong deterrent. They will be understood as taking a side on an issue—a *complex* issue—rather than simply upholding well-established legal (and at one time political) precedent.

We have seen too much in the past eight years to pretend any longer that the United States is incapable of criminal abuse or to trust the “experts” to act secretly in what they believe, sincerely or not, to be our best interests. We have seen too much to permit ourselves the luxury of ambivalence. Indeed, now that we have seen what our nation has done in the depths of a panic, we should also be able to recognize the larger, longer-term crimes of our leaders. We have for many years imprisoned a greater proportion of our own people than any other nation on earth, kept many of those prisoners in the kind of prolonged solitary confinement that is shown in study after study to drive people insane, and countenanced the rape of those who aren’t in solitary confinement as part of a system of “rough justice.” We have known this about ourselves for a very long time and done nothing.

Now we have a choice. We can continue our experiment with torture or we can harness the obvious horror of the last eight years to rectify the more discreet horrors of the distant past and the darkening present, and in so doing at last become a nation whose actions embody its pretensions. ■