

Cruel and Unusual Punishment: An Analysis of the U.S. government's post 9/11 torture policies  
and recommendations for the closure of Guantanamo Bay

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May 11, 2026

“Should any American soldier be so base and infamous as to injure any [prisoner]. . . I do most earnestly enjoin you to bring him to such severe and exemplary punishment as the enormity of the crime may require. Should it extend to death itself, it will not be disproportional to its guilt as such a time and in such a cause. . . for by such conduct they bring shame, disgrace and ruin to themselves and their country.” - George Washington, September 1775

### **Introduction**

It was these words written by General George Washington to the Continental Army’s northern expeditionary force that set the standard for the conduct of prisoners held by the United States government. For many years, the United States, as a beacon of liberty and champion of hope, had upheld guidelines for the humane treatment of prisoners held in custody by the government. Laws against cruel and unusual punishment were eventually codified on the international level by the Geneva Conventions of 1949, protecting those individuals that did not participate in the fighting<sup>1</sup>. There were enough civilian casualties during World War II that the broader international community realized that more needed to be done to protect vulnerable populations, and those not involved in the fighting. Then came the attacks of September 11, 2001, the most devastating and vulnerable attack on the American mainland since the Civil War. The terrorist group al-Qaeda claimed responsibility for the attacks in New York, Pennsylvania, and Washington D.C., and in the coming days, the War on Terror officially began, and the traditional rules and conventions of war changed.

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<sup>1</sup> International Committee of the Red Cross. “The Geneva Conventions and their Commentaries”. ICRC. n.d. <https://www.icrc.org/en/law-and-policy/geneva-conventions-and-their-commentaries>

On September 17, 2001, President George W. Bush signed a Memorandum of Notification (MON), granting the CIA broad authority to capture and detain any individuals who posed a threat to national security, including that the Third Geneva Convention did not apply to al-Qaeda or Taliban detainees<sup>2</sup>. A makeshift detainee camp was erected at the U.S. Navy's Guantanamo Bay base in Cuba to detain and interrogate individuals believed to have ties to al-Qaeda or the Taliban. This is where the CIA brought in two U.S. Air Force psychologists, James Mitchell and Bruce Jessen to teach CIA and military interrogators how to use what the CIA termed "enhanced interrogation techniques" or EITs. These included waterboarding; where an interrogator covers a detainee with a cloth and pours water over it, producing a sensation of drowning, stress positions; where a detainee is forced to sit or stand up against a solid wall for extended periods of time, often in uncomfortable positions, sleep deprivation; where interrogators would forcibly prevent detainees from sleeping, often by playing loud music late at night, and abdominal/facial slaps; where interrogators would intentionally slap a detainee's abdominal area or face<sup>3</sup>. These tactics were developed by Mitchell and Jessen, who had no prior intelligence gathering or interrogation experience based on the U.S. Army's Survival, Evasion, Resistance, and Escape (SERE) tactics. SERE tactics were taught to special forces operatives who might be captured by an enemy that might use harsh measures to get them to break under extreme interrogation. The same mindset was applied to these EIT's by Mitchell and Jessen, who thought that the terrorists they capture would be tough to break, and that EITs were the only way

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<sup>2</sup> Fallon, Mark. *Unjustifiable Means: The Inside Story of How the CIA, Pentagon, and US government Conspired to Torture*. Reagan Arts. 2017

<sup>3</sup> Greene, Jim, "Enhanced Interrogation Techniques". EBSCO Host. 2025.

<https://www.ebsco.com/research-starters/communication-and-mass-media/enhanced-interrogation-techniques>.

to get detained terrorists to talk about their involvement in the 9/11 attacks, as well as when and where the next one will be<sup>4</sup>.

The U.S. Navy continues to operate the Guantanamo Bay (referred to as Gitmo) base, with many of those captured by the CIA and U.S. military during the War on Terror still being held there without being charged<sup>5</sup>. Those that have been released have spoken about their experiences being interrogated by the CIA using EITs. The Enhanced Interrogation Techniques developed by the CIA, in addition to violating both the Geneva Conventions, and U.S. Eighth Amendment, were also ineffective in gathering intelligence from suspected terrorists detained at Guantanamo Bay, and highlight an example of structural violence perpetrated by the U.S. government, and should never be implemented again. The outline for this paper will be as follows:

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<sup>4</sup> Fallon, Mark. *Unjustifiable Means: The Inside Story of How the CIA, Pentagon, and US government Conspired to Torture*. Reagan Arts. 2017

<sup>5</sup> Nawaz, Amna, Saher Khan and Tess Conciatori. “Accused 9/11 plotters remain in legal limbo at Guantanamo Bay 22 years after attacks”. PBS News. September 11, 2023.  
<https://www.pbs.org/newshour/show/accused-9-11-plotters-remain-in-legal-limbo-at-guantanamo-bay-22-years-after-attacks>

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### **Literature Review**

There have been many studies conducted in regards to the effectiveness and efficacy of torture as a form of interrogation. In addition the U.S. government developed and implemented these EIT's on suspected al-Qaeda terrorists at Guantanamo Bay, and then further developed them at other sites, such as the Abu Ghraib prison in Iraq<sup>6</sup>. An academic paper written by law professor David Luban and military contractor Katherine S. Newell entitled "Personality Disruption as Mental Torture: The CIA, Interrogational Abuse, and the U.S. Torture Act", examines how past commentaries on EIT's have focused too much on the specifics of these techniques, and too little emphasis on the "other forms of physical violence, psychological stressors, environmental manipulations, and abusive conditions of confinement" that were crucial to understanding whether or not detainees were tortured by the U.S. government<sup>7</sup>. The authors of the paper also examine how past investigations have focused too much on the EIT's and Mitchell and Jessen themselves, even though the CIA conducted research during the Cold War about "learned helplessness", a psychological concept in which a subject will eventually submit to its interrogators' wishes when subjected short but intense periods of pain. In addition to the SERE

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<sup>6</sup> Fallon, Mark. *Unjustifiable Means: The Inside Story of How the CIA, Pentagon, and US government Conspired to Torture*. Reagan Arts. 2017

<sup>7</sup> Luban, David and Katherine S. Newell. "Personality Disruption as Mental Torture: The CIA, Interrogational Abuse, and the U.S. Torture Act". *Georgetown Law Journal*. 2019.  
<https://scholarship.law.georgetown.edu/facpub/2214>

tactics that Mitchell and Jessen underwent training for, they also used this concept in developing the EITs used on prisoners at Guantanamo and other black sites around the world.

A similar academic article published in the University of Buffalo Public Interest Law Journal, and written by law and political science professor Robert Bejesky titled “The Abu Ghraib Convictions: A Miscarriage of Justice”, examines the abuse that was carried out on prisoners, by U.S. military police at the Abu Ghraib prison in Iraq. Photographs and testimony provided by witnesses in Congressional hearings after the abuse was uncovered, detailed how detainees were sexually humiliated, sleep deprived, and environmentally manipulated (such as blasting loud music, and shining bright lights on detainees) by interrogators using reworked versions of the same EITs used on detainees at Guantanamo Bay. These torture methods were also approved by the Bush Administration using similar questionable legal statutes as those approved for use at Guantanamo. Bejesky’s article goes on to state that while some of the military personnel that carried out the abuse at Guantanamo were convicted of crimes, many of the top Bush Administration officials in the White House, Pentagon, and CIA who approved of and advocated for these EITs was ever convicted of a crime (except for Secretary of Defense Donald Rumsfeld, who stepped down from his position, after the abuse at Abu Ghraib was revealed)<sup>8</sup>.

Matthew D. Semel’s paper “24 and the Efficacy of Torture” makes the argument that popular tv shows during the time of the War on Terror, such as *24*, depict torture as an effective means of gathering intelligence from uncooperative prisoners. *24* was a popular show that ran

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<sup>8</sup> Bejesky, Robert, “The Abu Ghraib Convictions: A Miscarriage of Justice”. Buffalo Public Interest Law Journal 32 (2013 - 2014): 103-176. <https://digitalcommons.law.buffalo.edu/bpilj/vol32/iss1/4>

during a majority of the war on terror, and a majority of Americans watched it, including military interrogators<sup>9</sup>. On the show, fictional Counterterrorism federal agent Jack Bauer is often tasked with interrogating and oftentimes torturing uncooperative suspects in a race against a threat to the United States. The show depicts the methods used by Bauer as successful in obtaining information pertaining to the plot. This reinforces the inaccurate stereotype of torture as an effective intelligence gathering method against an imminent threat to national security. Most if not all of the interrogation methods depicted on the show would amount to serious violations of both U.S. and international law<sup>10</sup>. Yet throughout the series run, Bauer's methods are always successful, and by the end of a season, an apocalyptic crisis is averted. What is interesting to note is that in real life, many of the military interrogators sent to Guantanamo Bay believed that they could be the next Jack Bauer in breaking suspected terrorists and averting attacks on American soil, like those depicted in the show<sup>11</sup>. Semel's study highlights how even though Bauer's methods are now considered illegal, at the time of the show's run, U.S. government figures including President George W. Bush endorsed the use of torture on prisoners of war as an effective means of gathering intelligence.

Medical Doctor Paul Farmer's analysis of the structural violence that he saw when he set up a clinic in Haiti, is very similar to how the U.S. government tortured suspected terrorists, and justified it to their superiors at the CIA, Pentagon, and White House, through both questionable legal analyses and inaccurate data. The U.S. government did not treat the suspected terrorists

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<sup>9</sup> Fallon, Mark. *Unjustifiable Means: The Inside Story of How the CIA, Pentagon, and US government Conspired to Torture*. Reagan Arts. 2017

<sup>10</sup> Semel, Matthew D., "24 and the Efficacy of Torture". Sacred Heart University. 2008.  
[https://digitalcommons.sacredheart.edu/cgi/viewcontent.cgi?article=1010&context=cj\\_fac](https://digitalcommons.sacredheart.edu/cgi/viewcontent.cgi?article=1010&context=cj_fac)

<sup>11</sup> Fallon, Mark. *Unjustifiable Means: The Inside Story of How the CIA, Pentagon, and US government Conspired to Torture*. Reagan Arts. 2017

they captured as people, they treated them as dangerous criminals who had vital information to save the United States. The detainees at Gitmo occupied the “bottom rung of the social ladder”, as noted by Farmer during his years treating the poor local population of Haiti throughout most of the 2000’s<sup>12</sup>. These people are often overlooked by western governments, and the institutional systems designed by these entities are designed to keep it that way. Structural violence is not as visible as other forms of violence, but it is still considered a form of violence, as it was an action carried out by military interrogators at Gitmo torturing detainees, and making them suffer. The suffering of the detainees was not always visible, since they were all kept isolated in different camps at Gitmo, and very few people had access to them. It was not until whistleblowers at both Gitmo, and Abu Ghraib brought physical evidence of torture to the U.S. Congress that the full scale of the abuse was finally seen. As stated earlier, high level officials in both the Pentagon and CIA, such as Secretary of Defense Donald Rumsfeld, and CIA director George Tenet, simply resigned from their roles in the Administration

### **Background Information**

After President Bush signed the MON granting the CIA authority to use any means necessary, the CIA and Pentagon tasked their interrogators with using the EIT’s on detainees brought to Gitmo. Joint Task Force 170 (JTF-170), was created to bring together the branches of the U.S. military, along with the CIA, FBI, and the civilian law enforcement arms of each military branch to oversee the investigation. However, as Mark Fallon noted in his memoir about the experience, each branch and respective law enforcement agency had their own separate chains of command that agents reported to. This led to much confusion and eventually

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<sup>12</sup> Farmer, Paul. *On Suffering and Structural Violence: A View from Below*. Daedalus Winter 1996 pgs 261-283.

bad-mouthing between Fallon and his superiors at NCIS, and the superiors at the Pentagon, and CIA. The latter two agencies were strongly advocating for the use of EITs, while Fallon and his team were arguing that they did not work, and that they amounted to torture<sup>13</sup>. Several makeshift detainee camps were quickly erected at the base to house all of the suspected terrorists that the military and CIA were capturing in the Middle East. The broader scope of the Bush Administration's global "war on terror", in addition to invading Iraq and Afghanistan, was to find the head of al-Qaeda, Osama Bin Laden, and take him out before the next attack would come. In order to find Bin Laden and his associates, the CIA needed to gain actionable intelligence from those that they believed were either a part of al-Qaeda leadership, or knew something about it. The September 11th attacks were a serious breach of national security that cost thousands of lives on home soil. The Bush Administration wanted to make sure that nothing like that would ever happen again, and they needed to get ahead of the curve in order for this to happen. This started by going after and detaining everyone who had a connection to al-Qaeda and Bin Laden, and this was often through any means necessary, hence why the EIT's were developed and used on detainees. The Bush Administration thought that the suspects that they captured would try to resist being broken down by interrogators, and they believed that more forceful measures were going to be needed to gather intelligence on al-Qaeda, since that is what they believed al-Qaeda would do to American soldiers who were captured.

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<sup>13</sup> Fallon, Mark. *Unjustifiable Means: The Inside Story of How the CIA, Pentagon, and US government Conspired to Torture*. Reagan Arts. 2017

### **The Bush Administration's Rationalization of its Torture Policies**

To further examine why the U.S. government abandoned its basic legal and moral framework in regards to gaining actionable intelligence in the aftermath of the 9/11 attacks, it is important to look at the various memoranda, authored by various Department of Justice officials in the Bush Administration. These are often referred to colloquially as the “torture memos”, primarily authored by John Yoo and Jay Bybee, both Assistant Attorney Generals in the DOJ’s Office of Legal Counsel. While many of these once highly classified memos were authored by many officials within the DOJ, this paper will focus on analyzing two different memos authored by Jay Bybee and John Yoo, respectively. These two memos are the two most important ones of all the legal documents that were written to justify the use of EIT’s on suspected terrorists, as they clearly outline the legal framework that authorized the CIA to use the EIT’s developed by Mitchell and Jessen. Both of these memos were also once highly classified, but can now be accessed through the DOJ’s website.

After President George W. Bush signed the MON authorizing the CIA to use any means necessary to find and interrogate the perpetrators of the 9/11 attacks, the agency asked the DOJ’s Office of Legal Counsel to provide them with the legal framework that would justify the interrogations that they were conducting. In response, on August 1, 2002, U.S. Assistant Attorney General Jay S. Bybee, authored and signed off on a memorandum for John Rizzo; the Acting General Counsel of the CIA, regarding the interrogation of suspected al-Qaeda operative

Abu Zubaydah<sup>14</sup>. Often referred to afterward as the “Bybee memo”, it reviewed many of the EIT’s that had been developed by psychologists Mitchell and Jessen, and were being used on Zubaydah at Guantanamo Bay. Going through many of the EITs including waterboarding, walling, isolation, facial slaps, stress positions, sleep deprivation, etc, the memo basically states that the EITs being used on Zubaydah are legal as long as they do not cause severe pain or any lasting physical harm, or killing him.

That same day, another memorandum was sent to Alberto R. Gonzales, who was President George W. Bush’s White House Counsel, also from the DOJ’s Office of Legal Counsel. This one was authored by John Yoo, another Assistant Attorney General, and signed off on by Bybee. This memorandum was very similar to the other one sent to the CIA, except this one dealt with a specific statute (Sections 2340-2340A) under the Standards of Conduct for Interrogation under 18 U.S.C. (United States Code). This memorandum used the same questionable legal analysis of the statute that the Bybee memo used, by stating that actions carried out by interrogators only rise to the level of torture if they are of an “extreme nature”, under Section 2340A of 18 U.S.C.<sup>15</sup>. Using the vague wording of Sections 2340-2340A, Bybee and Yoo were able to state that while certain acts utilized by interrogators may be “cruel, inhuman, or degrading”, it may not cause enough pain and suffering to fall within the statute’s definition of torture, and thus not a violation of U.S. law.

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<sup>14</sup> Bybee, Jay. “Memorandum Regarding Interrogation of al Qaeda Operative”. U.S. Department of Justice Office of Legal Counsel. August 1, 2002.

<https://www.justice.gov/sites/default/files/olc/legacy/2010/08/05/memo-bybee2002.pdf>.

<sup>15</sup> Bybee, Jay, and John Yoo. “Memorandum Regarding Standards of Conduct for Interrogation Under 18 U.S.C. 2340 - 2340A.” U.S. Department of Justice Office of Legal Counsel. August 1, 2002.

<https://www.justice.gov/sites/default/files/olc/legacy/2010/08/05/memo-gonzales-aug2002.pdf>.

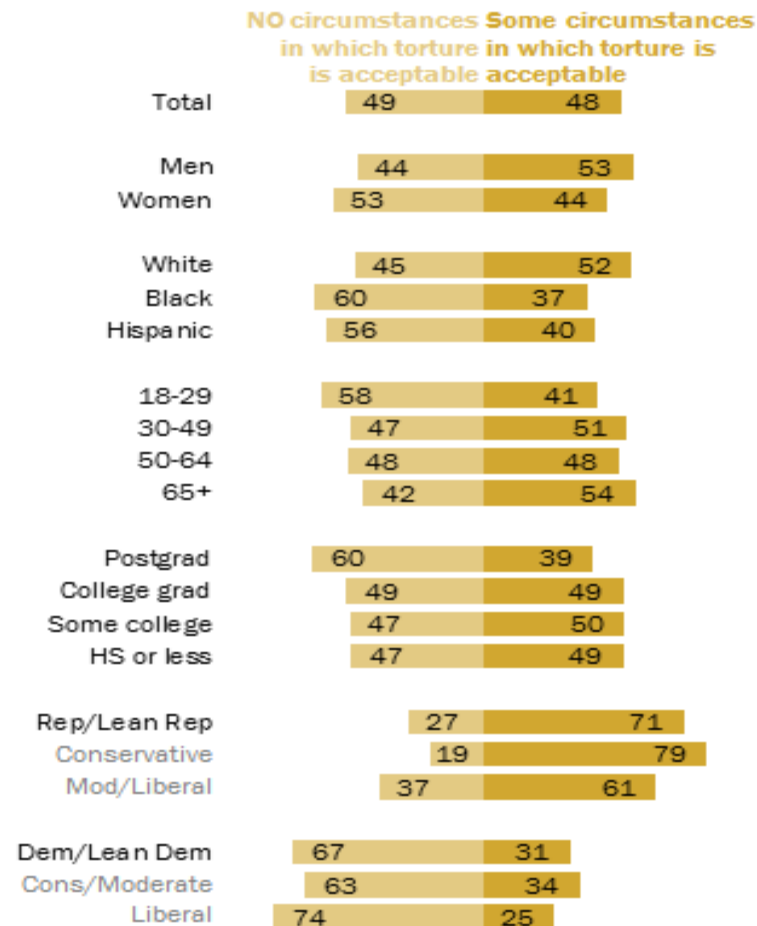
Getting the terrorists to “break” and reveal information to their interrogators was the key to keeping this approved program alive, and military interrogators also knew that they needed to provide their superiors with information that was gained from using the EIT’s on suspects including Zubaydah. The problem with this was that most of the time, interrogators at Gitmo would often gain no actionable intelligence from the suspected terrorists, after using EITs on them. The EITs did not work on breaking down suspects, and getting the information needed to prevent future attacks. The next sections will analyze different aspects of the torture debate, and present key takeaways from the research conducted, and present policy solutions that have been enacted in response to the torture debate, before concluding.

### **What does the American Public Think about Torture?**

So far, this paper has focused on the Bush Administration's justifications for implementing the EIT program using vaguely worded legal analysis. There is however, another part of the torture debate that has not been touched on yet: what do Americans think about torture? While many top officials in the Bush Administration were advocates of EITs and their effectiveness, they only represent a very small portion of Americans. It is those citizens that they represent whose opinions really matter in crafting policy decisions, and holding public office. The American public also makes decisions based on the information they receive both from the media, and their elected officials. Leaders should be held accountable for their actions, but only if the public agrees that what their leaders did was wrong. In 2017, Pew Research Center's Alec Tyson conducted a survey of voting age Americans, asking if they thought torture was acceptable in some circumstances, as opposed to torture never being acceptable. The results are extraordinary.

### Public split over whether U.S. use of torture is ever acceptable

*Thinking about U.S. anti-terrorism efforts, which comes closer to your view? There are ... (%)*



Notes: Don't know/No answer responses not shown.  
Whites and blacks include only those who are not Hispanic; Hispanics are of any race.  
Source: Survey conducted Oct. 25-Nov. 8, 2016.

**PEW RESEARCH CENTER**

Figure 1. Public split over whether U.S. use of torture is ever acceptable. Source: Data from Alec Tyson, *Pew Research Center* 2017. <https://www.pewresearch.org/short-reads/2017/01/26/americans-divided-in-views-of-use-of-torture-in-u-s-anti-terror-efforts/>.

As it turns out, the American public is evenly split in regards to torture. According to the figure above, roughly half of Americans approve of torture in some circumstances, whereas the half believes that torture is not acceptable at all. Breaking down the chart even further, other patterns emerge that shape how Americans feel about torture. For example, older, white, conservative leaning men, without a college degree, think that torture is acceptable in certain circumstances. On the other hand, black/hispanic, younger, democratic-leaning women with a college education believe that torture is never acceptable. That is not to say that democratic leaning white men do not prefer torture or conservative women, these results are merely based on certain separate identifiers such as race/ethnicity, education level, gender, age, and political ideology. What is interesting to note about this chart, is that even though the U.S. government has admitted that it was wrong in torturing detainees, and laws such as the Detainee Treatment Act of 2005 (which will be covered in a later section) have been passed, that half of Americans still believe that torture is an acceptable form of interrogation in certain situations.

This is very similar to the conclusions drawn by political science professor Ron E. Hassner in his article “Stop Trying to convince Americans that Torture doesn’t work”, in which he administered two surveys to more than 2,000 American adults in 2022, a very similar sample size to the survey from Pew. The results showed that the majority of respondents believed that torture was necessary to obtain crucial information. Even when told by Hassner that torturing people does not always yield crucial information, most survey respondents still supported it. It was not until Hassner stated that torture was cruel, that most survey respondents rejected it<sup>16</sup>.

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<sup>16</sup> Hassner, Ron E. “Stop Trying to Convince Americans that Torture doesn’t work”. Political Violence at a Glance. March 28, 2022. <https://politicalviolenceataglance.org/2022/03/28/stop-trying-to-convince-americans-that-torture-doesnt-work/>.

People often make decisions based on their morals, and pointing out that torture is immoral, regardless of how effective it is immediately changed the public's opinions about it. If an action goes against a person's morals, they are likely to reject it, based on these survey results. A person's morals are often shaped by what they see in the world around them, using agents of socialization such as one's family, peers, and the media that they consume. The media is an especially powerful tool in shaping people's perceptions of reality as this next section will examine.

**The Role of Media in shaping Americans' perceptions of Torture, using 24 as a case study**

24 was a popular political thriller TV show that began its initial run in 2001, and ended in 2010. During this time it was very popular among the Americans, including President Bush, and young male military interrogators<sup>17</sup>. On page 61 of *Unjustifiable Means*, Mark Fallon admits that “the army interrogators, basically conscripts, would walk into a room for the first time thinking the detainee was just waiting to be cracked open and they were the next Jack Bauer. But week after week, they got nothing useful”<sup>18</sup>. These young, hyper-masculine, and often inexperienced interrogators only had what they had seen on TV, and the SERE training that they had learned to resist giving out compromising information as a baseline for how to conduct intelligence gathering interrogations. They had little to no experience, and only their training (which included taking turns with other soldiers role-playing as both prisoner and interrogator) to rely on. As shown on 24, Bauer is always successful in achieving the information he needs from uncooperative bad guys, and it is almost always through some form of torture. Whether it be shooting a suspect to make a point, or threatening to shoot a terrorist, unless he complies with Bauer’s orders, an “ends justifies the means” approach is always used on the show to prevent some catastrophic event or attack from taking place<sup>19</sup>.

This form of high-stakes thriller, coupled with a real-time ticking clock, came from a post 9/11 psyche of finding the next attack and killing the bad terrorists, before they can kill any more Americans. In this sense, a certain reality is depicted; in which the U.S. is facing an imminent

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<sup>17</sup> Semel, Matthew D., “24 and the Efficacy of Torture”. Sacred Heart University. 2008.

[https://digitalcommons.sacredheart.edu/cgi/viewcontent.cgi?article=1010&context=cj\\_fac](https://digitalcommons.sacredheart.edu/cgi/viewcontent.cgi?article=1010&context=cj_fac).

<sup>18</sup> Fallon, Mark. *Unjustifiable Means: The Inside Story of How the CIA, Pentagon, and US government Conspired to Torture*. Reagan Arts. 2017

<sup>19</sup> Semel, Matthew D., “24 and the Efficacy of Torture”. Sacred Heart University. 2008.

[https://digitalcommons.sacredheart.edu/cgi/viewcontent.cgi?article=1010&context=cj\\_fac](https://digitalcommons.sacredheart.edu/cgi/viewcontent.cgi?article=1010&context=cj_fac).

terrorist attack on home soil by a foreign entity, usually either a terrorist organization, hate group, drug cartel, or adversaries tied to a foreign government. On the show, all four of these entities are depicted as causing harm or wanting to cause harm to the United States homeland, often for financial or ideological gain, and often with help from inside the highest levels of government. While the show is fiction, the fear and basic premise come from reality; that 9/11 was the focusing event to show how vulnerable the U.S. was, and that the government and allies needed to go after the terrorists before there could be another attack. The show *24* was effective in tapping into that psyche, and giving an albeit fictional representation of how to catch the bad guys, and stop the threat, through an ex-military federal agent (Bauer), who will do anything to protect the country from attack, through any means necessary. Military interrogators likely were watching the show during its initial run, and while they were undergoing SERE training, they likely saw a role model in the character of Jack Bauer, which they would then try to emulate when it came time for them to interrogate the “terrorists” at Gitmo. It is once again important to note however, that these types of TV shows, referred to as “spytainment” give Americans an unrealistic portrayal of the efficacy of torture, by showing it “working”, when in reality, it does not work<sup>20</sup>. The show’s popularity, and boosts of support top administration officials like President George W. Bush and current Supreme Court Justice Clarence Thomas, as well as military officials themselves, allowed this fictional representation of torture to populate the mainstream consciousness as to its efficacy. A trend that continues to shape Americans’ perceptions of torture today.

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<sup>20</sup> De Witte, Melissa, “Inside the secret world of U.S. intelligence with Stanford scholar Amy Zegart”. The Stanford Report. January 31, 2022. <https://news.stanford.edu/stories/2022/01/inside-secret-world-u-s-intelligence>.

### **Key Findings/Policies that have been implemented**

After thoroughly researching this topic, there are four key findings to take away:

1. EITs do not produce accurate intelligence (detainees will say anything to make the pain stop)
2. Rapport interrogations (where an interrogator forms a bond with a detainee by asking questions about name, family, home country, etc) are a much more effective means of gathering actionable intelligence from suspected terrorists
3. The CIA misrepresented the data that they were gaining from using EITs on prisoners to the Pentagon and White House to keep the program going
4. The popular TV shows at the time reinforced the false idea that torture works on detainees (such as what was depicted on *24*)

Much literature, studies, and scholarly articles have been published on this subject since the abuses at Gitmo and Abu Ghraib were uncovered in 2004. Detainees at Gitmo had been tortured since late 2001, just after Mitchell and Jessen had crafted their EITs and brought them to the CIA to implement. Later Congressional investigations revealed that these EIT's basically amounted to torture, which led to the passage of the Detainee Treatment Act of 2005. In its simplest terms, the law prohibits the "cruel, inhuman, or degrading punishment" of detainees in U.S. custody<sup>21</sup>. While there is some question as to whether or not President Bush himself knew that detainees were being abused and tortured at Gitmo, his administration released around 540 prisoners from the original 800 or so, who had been detained at Gitmo since 2001. President

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<sup>21</sup> Detainee Treatment Act of 2005, Pub. L. No. 109-148.

Obama, after signing an executive order stopping the interrogation program at Gitmo in one of his first days in office, released about 200<sup>22</sup>. President Biden released 25 total detainees from Gitmo before departing the White House<sup>23</sup>. President Trump, who has spoken about his approval of torture during his first term, saying it “absolutely works”, only released one prisoner from Gitmo during his entire first term<sup>24</sup>. It is also worth noting that Trump has never explicitly recanted those words, even with the passage of the McCain-Feinstein Amendment (which will be covered below), Trump has kept Gitmo open as a detention facility for deported illegal immigrants from the U.S., in addition to the 15 prisoners that still remain.

Since their releases, many of the detainees have spoken to journalists about the “cruel”, and “inhuman” abuse that they endured while in custody. One of these journalists, Sebastian Köthe, detailed many such instances in his book “*Guantánamo bezeugen*”, in which he described the cruel and inhumane treatment of those in the custody of the U.S. government at Gitmo, as well as how the U.S. government failed to protect those prisoners that were not connected to al-Qaeda, as a majority of Gitmo detainees were<sup>25</sup>. These first hand accounts, in addition to the U.S. Senate Select Committee on Intelligence’s Report on the CIA’s torture policies, inspired the passage of the McCain-Feinstein Amendment in 2015. The amendment is an addition to the

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<sup>22</sup> Nawaz, Amna, Saher Khan and Tess Conciatori. “Accused 9/11 plotters remain in legal limbo at Guantanamo Bay 22 years after attacks”. PBS News. September 11, 2023.  
<https://www.pbs.org/newshour/show/accused-9-11-plotters-remain-in-legal-limbo-at-guantanamo-bay-22-years-after-attacks>

<sup>23</sup> Pfeiffer, Sacha and Michel Martin. “Biden Administration transfers 11 detainees from Guantanamo Bay to Oman”. NPR News. January 7, 2025.  
<https://www.npr.org/2025/01/07/nx-s1-5250156/biden-administration-transfers-11-detainees-from-guantanamo-bay-to-oman>

<sup>24</sup> Masters, James. “Donald Trump says torture ‘absolutely works’ - but does it?”. CNN. January 26, 2017.  
<https://www.cnn.com/2017/01/26/politics/donald-trump-torture-waterboarding>.

<sup>25</sup> Köthe, Sebastian, and Deutsche Forschungsgemeinschaft funder. *Guantánamo bezeugen*. 1st ed. Bielefeld: transcript Verlag, 2023. doi:10.1515/9783839466810.

Detainee Treatment Act of 2005, and named after the late U.S. Senators Dianne Feinstein and John McCain, who were both sponsors of the amendment. The amendment “strengthens the prohibition on torture and ensure that the United States never engages in torture again”<sup>26</sup>. From then on, interrogators are only allowed to use rapport-based methods that are outlined in the U.S. Army’s Human Intelligence Collector’s Field Manual.

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<sup>26</sup> The Center for Victims of Torture. “McCain-Feinstein Amendment Factsheet”. November 2015. [https://www.cvt.org/wp-content/uploads/McCain-Feinstein-Amendment-Factsheet\\_November-2015.pdf](https://www.cvt.org/wp-content/uploads/McCain-Feinstein-Amendment-Factsheet_November-2015.pdf)

### **Conclusion/Policy Recommendations**

In conclusion, as stated above, several things came up after much research on this topic. Principal among them was the conclusion that EITs amount to torture, and that did not produce any actionable intelligence from any of the detainees at Gitmo. While the U.S. government has acknowledged its wrongdoings, and those administration officials, and interrogators are no longer in public service, no one has ever been prosecuted for these crimes. While some officials such as former Secretary of Defense Donald Rumsfeld and Vice President Dick Cheney are now dead, others such as George Tenet, JTF-170 commanders Geoffrey Miller and Michael Dunlavey, John Yoo, Jay Bybee, and many other Bush Administration officials are still alive, and could potentially be prosecuted for their crimes if any of these released detainees decides to sue the U.S. government. Since this is not a viable policy option at the moment, there are two other recommendations that should be implemented by the U.S. government:

1. Call on President Trump to either release the remaining 15 detainees at Gitmo, or charge them with committing crimes against the United States.

All of these prisoners, including Abu Zubaydah and Khalid Sheikh Mohammed provided the U.S. with intelligence about Osama Bin Laden and al-Qaeda several years ago when they were first captured (around 2002-2003). They no longer pose a national security threat to the U.S., and should therefore either be released like the other detainees, or charged with a crime against the United States so that they can be prosecuted.

2. Close all of the detention camps at Guantanamo Bay after all War on Terror prisoners have been released

Both Presidents Bush and Obama have stated that they want to close Guantanamo Bay, but neither one was able to do it. While it seems unlikely that President Trump will close it completely, organizations such as Amnesty International and Human Rights Watch have called for its closure. In addition many former military, national security experts, and former prisoners have also been becoming more vocal about its closure, as it had already served its purpose many years ago<sup>27</sup>. It now only serves as a visual reminder of the U.S. government's dark moment when it became the very monster it was searching for through its torture program.

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<sup>27</sup> Fallon, Mark. *Unjustifiable Means: The Inside Story of How the CIA, Pentagon, and US government Conspired to Torture*. Reagan Arts. 2017

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