



# The Crimes of the « War on Terror ». Should George Bush, Dick Cheney, and Others Be Jailed?

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« *The cold was terrible but the screams were worse,* » Sara Mendez [told](#) the BBC. « *The screams of those who were being tortured were the first thing you heard and they made you shiver. That's why there was a radio blasting day and night.* »

In the 1970s, Mendez was a young Uruguayan teacher with leftist leanings. In 1973, when the military seized power in her country (a few months before General Augusto Pinochet's more famous coup in Chile), Mendez fled to Argentina. She lived there in safety until that country suffered its own coup in 1976. That July, a joint Uruguayan-Argentine military commando group kidnapped her in Buenos Aires and deposited her at Automotores Orletti, a former auto repair shop that would become infamous as a torture site and paramilitary command center. There she was indeed tortured, and there, too, her torturers stole her 20-day-old baby, Simón, giving him to a policeman's family to raise.

Mendez was an early victim of [Operation Condor](#), a torture and assassination program focused on the region's leftists that, from 1975 to 1986, would spread terror across Latin America's southern cone. On May 27th, an Argentine court [convicted](#) 14 military officers of crimes connected with Operation Condor, issuing prison sentences ranging from 13 to 25 years. Among those sentenced was Reynaldo Bignone, Argentina's last military dictator, now 88. (He held power from 1982 to 1983.)

Those convictions are deeply satisfying to the surviving victims and their families, to the legal teams that worked for more than a decade on the case, and to human rights organizations around the world. And yet, as just as this outcome is, it has left me with questions — questions about the length of time between crime and conviction, and about what kinds of justice can and cannot be achieved through prosecutions alone.

## Operation Condor

Operation Condor was launched by the security forces of five military dictatorships: Chile, Argentina, Uruguay, Paraguay, and Bolivia. Brazil soon joined, as did Ecuador and Peru eventually. As a Cold War anti-communist collaboration among the police, military, and intelligence services of those eight governments, Condor offered an enticing set of possibilities. The various services could not only cooperate, but pursue their enemies in tandem across national borders. Indeed, its reach stretched as far as Washington, D.C., where in 1976 its operatives [assassinated](#) former Chilean ambassador to the U.S. Orlando Letelier and his young assistant, Ronni Moffitt, both of whom then worked at the Institute for Policy Studies, a left-wing think tank.

How many people suffered grievously or died due to Operation Condor? A definitive number is by now probably beyond recovery, but records from Chile's secret police suggest that by

itself Argentina's "[dirty war](#)" — the name given to the Argentine junta's reign of terror, "disappearances," and torture — took the lives of 22,000 people between 1975 and 1978. Thousands more are thought to have died before that country's dictatorship ended in 1983. It's generally [believed](#) that at least another 3,000 people died under the grimmest of circumstances in Chile, while thousands more were tortured but lived. And although its story is less well known, the similar reign of terror of the Uruguayan dictatorship directly affected the lives of almost every family in the country. As Lawrence Wechsler [wrote](#) in a 1989 article in the *New Yorker*:

"By 1980, one in every fifty Uruguayans had been detained at some point, and detention routinely involved torture; one in every five hundred had received a sentence of six years or longer under conditions of extreme difficulty; and somewhere between three hundred thousand and four hundred thousand Uruguayans went into exile. Comparable percentages for the United States would involve the emigration of thirty million people, the detention of five million, and the extended incarceration of five hundred thousand."

And what was the U.S. role in Operation Condor? Washington did not (for once) plan and organize this transnational program of assassination and torture, but its national security agencies were certainly involved, as declassified Defense Department communications [indicate](#). In his book [The Condor Years](#), Columbia University journalism professor John Dinges [reported](#) that the CIA provided training for Chile's secret police, computers for Condor's database, telex machines and encoders for its secret communications, and transmitters for its private, continent-wide radio communications network. Chilean Colonel Manuel Contreras, one of Condor's chief architects (who was then on the CIA payroll), met with CIA Deputy Director Vernon Walters four times. And what did the CIA get in return? Among other things, access to the "results" of interrogation under torture, according to Dinges. « Latin American intelligence services, » he added,

"considered U.S. intelligence agencies their allies and provided timely and intimate details of their repressive activities. I have obtained three documents establishing that information obtained under torture, from prisoners who later were executed and disappeared, were provided to the CIA, the FBI and the DIA (Defense Intelligence Agency). There is no question that the U.S. officials were aware of the torture."

## **Justice Delayed**

Why did it take 40 years to bring the architects of Operation Condor to justice? A key factor: for much of that time, it was illegal in Argentina to put them on trial. In the first years of the new civilian government, the Argentine congress passed two laws that granted these men immunity from prosecution for crimes committed in the dirty war. Only in 2005 did that country's supreme court rule that those impunity laws were unconstitutional. Since then, many human rights crimes have been prosecuted. Indeed, Reynaldo Bignone, the former dictator, was already in jail when sentenced in May for his role in Operation Condor. He had been convicted in 2010 of kidnapping, torture, and murder in the years of the dirty war. As of March, Argentina's Center for Legal and Social Studies (CELS) had [recorded](#) 666 convictions for participation in the crimes of that era.

But there's a question that can't help but arise: What's the point of bringing such old men to trial four decades later? How could justice delayed for that long be anything but justice denied?

One answer is that, late as they are, such trials still establish something that all the books and articles in the world can't: an *official* record of the terrible crimes of Operation Condor. This is a crucial step in the process of making its victims, and the nations involved, whole again. As a spokesperson for CELStold the *Wall Street Journal*, "Forty years after Operation Condor was formally founded, and 16 years after the judicial investigation began, this trial produced valuable contributions to knowledge of the truth about the era of state terrorism and this regional criminal network."

It took four decades to get those convictions. Theoretically at least, Americans wouldn't have to wait that long to bring our own war criminals to account. I've spent the last few years of my life [arguing](#) that this country must find a way to hold accountable officials responsible for crimes in the so-called war on terror. I don't want the victims of those crimes, some of whom are [still locked up](#), to wait another 40 years for justice.

Nor do I want the United States to continue its slide into a brave new world, in which any attack on a possible enemy anywhere or any curtailment of our own liberties is permitted as long as it makes us feel "secure." It's little wonder that the presumptive Republican presidential candidate feels free to run around promising yet more [torture](#) and [murder](#). After all, no one's been called to account for the last round. And when there is no official acknowledgement of, or accountability for, the [waging](#) of illegal war, [international kidnapping operations](#), the [indefinite detention without prospect of trial](#) of prisoners at Guantánamo, and, of course, [torture](#), there is no reason not to do it all over again. Indeed, according to Pew Research Center polls, Americans are now [more willing](#) to agree that torture is sometimes justified than they were in the years immediately following the 9/11 attacks.

## **Torture and the U.S. Prison System**

In a recent piece of mine, I [focused](#) on Abu Zubaydah, a prisoner the CIA tortured horribly, falsely claiming he was a top al-Qaeda operative, knew about a connection between Saddam Hussein and al-Qaeda, and might even have trained some of the 9/11 pilots. "In another kind of world," I wrote, Abu Zubaydah "would be exhibit one in the war crimes trials of America's top leaders and its major intelligence agency." Although none of the charges against him proved true, he is still held in isolation at Guantánamo.

Then something surprising happened. I received an email message from someone I'd heard of but never met. Joseph Margulies was the lead counsel in [Rasul v. Bush](#), the first (and unsuccessful) attempt to get the Supreme Court to allow prisoners at Guantánamo to challenge their detention in federal courts. He is also one of Abu Zubaydah's defense attorneys.

He directed me to an article of his, "[War Crimes in a Punitive Age](#)," that mentioned my Abu Zubaydah essay. I'd gotten the facts of the case right, he assured me, but added, "I suspect we are not in complete agreement" on the issue of what justice for his client should look like. As he wrote in his piece,

"There is no question that Zubaydah was the victim of war crimes. The entire CIA black site program [the Agency's Bush era secret prisons around the world] was a global conspiracy to evade and violate international and domestic law. Yet I am firmly convinced there should be no war crimes prosecutions. The call to prosecute is the Siren Song of the carceral state — the very philosophy we need to dismantle."

In other words, one of the leading legal opponents of everything the war on terror represents is firmly opposed to the idea of prosecuting officials of the Bush administration for war crimes (though he has not the slightest doubt that they committed them). Margulies agrees that the crimes against Abu Zubaydah were all too real and “grave” indeed, and that “society must make its judgment known.” He asks, however, “Why do we believe a criminal trial is the only way for society to register its moral voice?”

He doubts that such trials are the best way to do so, fearing that by placing all the blame for the events of those years on a small number of criminal officials, the citizens of an (at least nominally) democratic country could be let off the hook for a responsibility they, too, should share. After all, it’s unlikely the war on terror could have continued year after year without the support — or at least the lack of interest or opposition — of the citizenry.

Margulies, in other words, raises important questions. When people talk about bringing someone to justice they usually imagine a trial, a conviction, and perhaps most important, punishment. But he has reminded me of my own longstanding ambivalence about the equation between punishment and justice.

Even as we call for accountability for war criminals, we shouldn’t forget that we live in the country that jails [the largest proportion](#) of its own population (except for the Seychelles islands), and that holds the largest number of prisoners in the world. Abuse and torture — including [rape, sexual humiliation](#), beatings, and [prolonged exposure](#) to extremes of heat and cold — are routine realities of the U.S. prison system. Solitary confinement — presently being [experienced](#) by at least 80,000 people in our prisons and immigrant detention centers — should also be considered a potentially psychosis-inducing form of torture.

Every nation that institutionalizes torture, as the United States has done, selects specific groups of people as legitimate targets for its application. In the days of Operation Condor, Chilean torturers called their victims “humanoids” to distinguish them from actual human beings. Surely, though, the United States hasn’t done that? Surely, there’s no history of the torture of particular groups? Sadly, of course, such a history does exist, and like so many things in this country, it’s all about race.

The practice of torture in the U.S. didn’t start with those post-9/11 “[enhanced interrogation techniques](#),” nor with the Vietnam War’s [Phoenix Program](#), nor even with the nineteenth century U.S. war in [the Philippines](#). It began when European settlers first treated native peoples and enslaved Africans as subhuman savages. As southern farmers started importing captured Africans to augment their supply of indentured English labor, they quickly realized that there was little incentive for those slaves to work — none but the pain of whippings, mutilations, and brandings, and the threat of yet more pain. Torture and slavery, in other words, were fused at the root. From the first arrival of black people on this continent, it has been permissible, even legal, to torture them.

And it didn’t stop with emancipation. After the end of slavery, southern states began the practice of convict leasing — arresting former slaves and then their descendants, often on trumped-up charges, and renting them out as labor to farmers and later coal mine owners who had the power and legal right to whip and abuse them as they chose.

Then there’s [lynching](#). Many people think of it as an extrajudicial death by hanging. As it was practiced in the Jim Crow South, however, it was a form of public, state-approved torture, often involving the castration or disembowelment of the living victim, sometimes

followed by [death by fire](#). Lynching thus continued the practice of treating black minds and bodies as legitimate targets of torture. So maybe we shouldn't be surprised that, of the more than two million prisoners in the United States today, 40% are black, while the U.S. population is only 13% black.

Here's the problem, then. When we say that putting George W. Bush, Dick Cheney, and other top officials in their administration in prison for war crimes would be justice, we endorse a criminal justice system that is more criminal than just, and where torture is a daily occurrence.

Do we want to do to Bush, Cheney, and their accomplices essentially what they did to their victims? There is, of course, a certain appeal to the idea of someday seeing such powerful white men among the suffering, tortured millions in our prison system, or even — like the supposed "dirty bomber" [José Padilla](#) and Abu Zubaydah — in perpetual solitary confinement.

And yet, would this truly provide even a facsimile of justice, given that American prisons are hardly instruments of justice to begin with? Those opposed to the acts at the heart of America's never-ending war on terror were heartened when President Obama [ordered](#) the CIA "[black sites](#)" dismantled globally. We continue to demand the closing of Guantánamo (something that looks increasingly unlikely to happen in his presidency). How, then, can we find justice through a prison system that uses similar methods on an everyday basis here in the U.S.?

## **Forty Years to Go?**

And then, of course, there is the question: Whom should justice truly serve?

The first answer is: the victims of the « war on terror, » including those who were tortured, those detained without trial, the civilian « collateral damage » of the wars in Afghanistan and Iraq, and the « [unintended](#) » [victims](#) of drone assassinations. Then there are all those in the rest of the world who have to live with the threat of a nuclear-armed superpower that has in these years regularly refused to recognize the most basic aspects of the rule of law.

Many who work with survivors of organized repression like Operation Condor say that their primary desire is not the punishment of their oppressors but official acknowledgement of what happened to them. In his *New Yorker* article, Wechsler, for instance, pointed out that, for the victims of torture, accountability may not be identical to punishment at all.

"People don't necessarily insist that the former torturers go to jail — there has been enough of jail — but they do want to see the truth established... It's a mysteriously powerful, almost magical notion, because often everybody already knows the truth — everyone knows who the torturers were and what they did, the torturers know that everyone knows, and everyone knows that they know."

Seeing "the truth established" was the purpose behind South Africa's post-apartheid [Truth and Reconciliation Commission](#). Torturers and murderers on both sides of the anti-apartheid struggle were offered amnesty for their crimes — but only after they openly acknowledged those crimes. In this way, a public record of the horrors of apartheid was built, and imperfect as the process may have been, the nation was able to confront its history.

That is the kind of reckoning we need in this country. It started with the release of a

summary of the Senate Intelligence Committee's [report](#) on the CIA's torture program, which brought many brutal details into the light. But that's just the beginning. We would need a full and public accounting not just of the CIA's activities, but of the doings of other military and civilian agencies and outfits, including the Joint Special Operations Command. We also would need a full-scale airing of the White House's drone assassination program, and perhaps most important of all, a full accounting of the illegal, devastating invasion and occupation of Iraq.

Justice would also require — to the extent possible — making whole those who had been harmed. In the case of the "war on terror," this might begin by allowing torture victims to sue their torturers in federal court (as the U.N. Convention against Torture requires). With one [exception](#), the Obama administration has until now blocked all such efforts on national security grounds. In the case of the Iraq War, justice would undoubtedly also require financial reparations to repair the infrastructure of what was once a modern, developed nation.

We're unlikely to see justice in the "war on terror" until that cruel and self-defeating exercise is well and truly over and the country has officially acknowledged and accounted for its crimes. Let's hope it doesn't take another 40 years.

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