

INTRODUCTORY NOTE: Jonathan Alter is a columnist for *Newsweek*.
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TIME TO THINK ABOUT TORTURE

In this autumn of anger, even a liberal can find his thoughts turning to...torture. OK, not cattle prods or rubber hoses, at least not here in the United States, but something to jump-start the stalled investigation of the greatest crime in American history. Right now, four key hijacking suspects aren't talking at all.

Couldn't we at least subject them to psychological torture, like tapes of dying rabbits or high-decibel rap? (The military has done that in Panama and elsewhere.) How about truth serum, administered with a mandatory IV? Or deportation to Saudi Arabia, land of beheadings? (As the frustrated FBI has been threatening.) Some people still argue that we needn't rethink any of our old assumptions about law enforcement, but they're hopelessly "Sept.10"—living in a country that no longer exists.

One sign of how much things have changed is the reaction to the anti-terrorism bill, which cleared the Senate last week by a vote of 98-1. While the ACLU felt obliged to quibble with a provision or two, the opposition was tepid, even from staunch civil libertarians. That great quote from the late Chief Justice Robert Jackson—"The Constitution is not a suicide pact"—is getting a good workout lately. "This was incomparably more sober and sensible than what some of our revered presidents did," says Floyd Abrams, the First Amendment lawyer, referring to the severe restrictions on liberty imposed during the Civil War and World War I.

Fortunately, the new law stops short of threatening basic rights like free speech, which is essential in wartime to hold the government accountable. The bill makes it easier to wiretap (under the old rules, you had to get a warrant for each individual phone, an anachronism in a cellular age), easier to detain immigrants who won't talk and easier to follow money through the international laundering process. A welcome "sunset" provision means the expansion of surveillance will expire after four years. That's an important precedent, though odds are these changes will end up being permanent. It's a new world.

Actually, the world hasn't changed as much as we have. The Israelis have been wrestling for years with the morality of torture. Until 1999 an interrogation technique called "shaking" was legal. It entailed holding a smelly bag over a suspect's head in a dark room, then applying scary psychological torment. (To avoid lessening the potential impact on terrorists, I won't specify exactly what kind.) Even now, Israeli law leaves a little room for "moderate physical pressure" in what are called "ticking time bomb" cases, where extracting information is essential to saving hundreds of lives. The decision of when to apply it is left in the hands of law-enforcement officials.

For more than 20 years Harvard Law School professor Alan Dershowitz has argued to the Israelis that this is terribly unfair to the members of the security services. In a forthcoming book, *Shouting Fire*, he makes the case for what he calls a "torture warrant," where judges

would balance competing claims and make the call, as they do in issuing search warrants. Dershowitz says that as long as the fruits of such interrogation are used for investigation, not to convict the detainee (a violation of the Fifth Amendment right against self-incrimination), it could be constitutional here, too. "I'm not in favor of torture, but if you're going to have it, it should damn well have court approval," Dershowitz says.

Not surprisingly, judges and lawyers in both Israel and the United States don't agree. They prefer looking the other way to giving even mild torture techniques the patina of legality. This leaves them in a strange moral position. The torture they can't see (or that occurs after deportation) is harder on the person they claim to be concerned about—the detainee—but easier on their consciences. Out of sight, out of mind.

Short of physical torture, there's always sodium pentothal ("truth serum"). The FBI is eager to try it, and deserves the chance. Unfortunately, truth serum, first used on spies in World War II, makes suspects gabby but not necessarily truthful. The same goes for even the harshest torture. When the subject breaks, he often lies. Prisoners "have only one objective—to end the pain," says retired Col. Kenneth Allard, who was trained in interrogation. "It's a huge limitation."

Some torture clearly works. Jordan broke the most notorious terrorist of the 1980s, Abu Nidal, by threatening his family. Philippine police reportedly helped crack the 1993 World Trade Center bombings (plus a plot to crash 11 U.S. airliners and kill the pope) by convincing a suspect that they were about to turn him over to the Israelis. Then there's painful Islamic justice, which has the added benefit of greater acceptance among Muslims.

We can't legalize physical torture; it's contrary to American values. But even as we continue to speak out against human-rights abuses around the world, we need to keep an open mind about certain measures to fight terrorism, like court-sanctioned psychological interrogation. And we'll have to think about transferring some suspects to our less squeamish allies, even if that's hypocritical. Nobody said this was going to be pretty.

ESSAY TOPIC

Jonathan Alter asks us to consider permitting the use of torture in the interrogation of suspects. Examine the evidence and arguments he offers in support of his thesis, explaining the degree to which you find his evidence and arguments effective. In developing your essay, be sure to offer specific illustrations drawn from your experience, your observation of others, or any of your reading—including "Time to Think About Torture" itself.