I am deeply honored to address this group. The work you do is incredibly important, sometimes disheartening, and often heartbreaking. Your clients and patients have been alone and terrified on the dark side of the moon. You help them return to the company of humankind on Earth. To the outside world, your work is largely unknown and unsung. Before saying anything else, I want to salute you for what you do and offer you my profound thanks.

I venture to guess that all the people you treat, or almost all, come from outside the United States. Many of them fled to America seeking asylum. In the familiar words of the law, they had a “well-founded fear of persecution”—well-founded because their own governments had tortured them. They sought refuge in the United States because here at last they would be safe from torture. Largely, they were right—although this morning I will suggest that if we peer inside American prisons, and understand that mental torture is as real as physical torture, they are not as right as they hoped. But it is certainly true that the most obvious forms of political torture and repression are foreign to the United States.

After all, our constitution forbids cruel and unusual punishments, and our Supreme Court has declared that coercive law enforcement practices that “shock the conscience” are unconstitutional.

Our State Department monitors other countries for torture. When we find it, we denounce those countries, and in some cases we withhold aid from them. More than twenty years ago, the U.S. Senate resoundingly ratified the Torture Convention. To honor our obligations, Congress made torture a heavy federal crime. We passed the Torture Victim Protection Act, to allow torture victims to sue their torturers in U.S. courts. We condemn torture and disavow torture. Even President George W. Bush said, repeatedly, in public, “We don’t torture.”

And yet, for the past decade, the United States and We The People have carried on an illicit love affair with torture. It moved from flirtation to seduction, from seduction to consummation, from consummation to deception and self-deception.

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The flirtation started within days of 9/11, when newspapers already reported that torturing terrorists had become a topic of conversation throughout the country, around dining room tables, in bars, and in college ethics courses. Like other flirtations, this one may not have been serious. It’s hardly surprising that in the aftershock of 9/11 our fantasies turned to vengeance, but that doesn’t mean they were anything more than fantasies.

But soon fantasy and flirtation turned to genuine seduction. The seduction was less public, as seductions always are. Dick Cheney told us we would have to turn to the Dark Side, and we knew what he meant but pretended not to. Nameless officials commented that “if you don’t violate someone’s human rights some of the time, you probably aren’t doing your job.” We chuckled. Before the year was over, Washington Post reporter Dana Priest reported on the first torture stories from Afghanistan, which turned out to be true but which we completely ignored at the time. The signs were there, the warnings were there, but We The People chose to wink at them. We were not yet in bed with torture, but we were in the bedroom and the lights were low. By the end of 2001, the rogue psychologists James Mitchell and Bruce Jessen were already busy peddling their torture ideas to the CIA, and they found a willing buyer.

As for the consummation—nobody in this room, or any other room for that matter, needs to be reminded about Guantanamo, and Abu Ghraib, and the Salt Pit, and the CIA’s black sites in Thailand, Poland, and Romania.

We don’t really admit our illicit affair with torture in public—that’s what makes it illicit. We lie and cover up in front of others. And we lie to ourselves. We need to believe in our own righteousness, in our democratic values, in our moral leadership of what we call the free world. And yet, gradually, torture is winning over our hearts and minds. Or so the public opinion polls tell us.
What you see here is a summary of polls taken by the Pew Research Center since the year 2004. Each poll asks the same question:

“Do you think the use of torture against suspected terrorists in order to gain important information can be often justified, sometimes be justified, rarely be justified or never be justified?”

Before discussing the answers, let me point out something striking about the question. Pew doesn’t ask about the use of torture against proven or known terrorists. They ask about torturing suspected terrorists. And the question doesn’t say torturing them might gain “life-saving” information, only “important” information.

Of course, it may be that people responding to the poll miss these subtleties. Maybe they only see the word “terrorist,” and maybe they assume that “important” means life-saving. But the fact remains that a significant number of Americans went on record in favor of torturing people for information on the mere suspicion of being terrorists.

How significant a number? The first poll is dated less than three months after the revelations at Abu Ghraib, presumably when public revulsion against torture was high. It shows a 53% majority of Americans who believe torture can rarely or never be used. Even then, 43% said it can often or sometimes be used.
Stunningly, seven years later those numbers were reversed. Now 53% were in favor of torture and only 42% thought it should rarely or never be used. The graph shows an unbroken, steady rise in support of torture from 2004, and a steady decline in opposition to torture with only one uptick in opposition, a blip in 2008-2009. It was sometime during the first years of the Obama Administration that public support for torture passed the 50% mark.

A deeper look at the data shows that absolute opposition to torture has never been a popular view: in July 2004 fewer than a third of surveyed Americans answered “never” to the question “when can torture be justified?”. Today, it is fewer than a quarter. This is remarkable, when you consider that torture is a major federal crime, carrying a potential death sentence.

Can Torture Be Justified Against Suspected Terrorists To Gain Important Information?

<table>
<thead>
<tr>
<th>Torture can be justified</th>
<th>July 04 %</th>
<th>March 05 %</th>
<th>October 2005 %</th>
<th>October 2006 %</th>
<th>January 2007 %</th>
<th>November 2007 %</th>
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<th>February 2009 %</th>
<th>April 2009 %</th>
<th>August 2011 %</th>
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<tr>
<td>Often</td>
<td>15</td>
<td>15</td>
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<td>Sometimes</td>
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<tr>
<td>Rarely</td>
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<td>17</td>
<td>19</td>
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<td>21</td>
<td>20</td>
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<td>Never</td>
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<td>27</td>
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<td>30</td>
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<tr>
<td>Don’t know</td>
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<td>5</td>
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<td>47</td>
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</tr>
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One intriguing sidebar surfaced when Pew broke down the data by religious affiliation. Pew’s 2005 survey found that Catholics were the strongest supporters of torture: ten points higher than the public as a whole. White Protestants were three points higher than the public as a whole. And self-identified seculars were the least enthusiastic about torture—ten points below the public as a whole. I won’t even begin to speculate on what accounts for these differences.

The most striking speed-up in pro-torture sentiment took place between February and April of 2009, when it rose five full points. What happened then? Crucially, these were the early months of the Obama Administration. On his first day in office, President Obama signed a sweeping executive order banning torture.
Immediately, the Friends of Torture counter-attacked. Former Bush Administration figures like Dick Cheney, John Yoo, and Marc Thiessen began a full-throttle public relations campaign on behalf of torture, hammering home the twin themes that torture works and torture saved American lives—along with their third theme, “it isn’t really torture.” The President, they fulminated, was another softie liberal Democrat who couldn’t be trusted with national security.

The fatal mistake was the Obama Administration’s response: silence. Eager not to open old scabs, and—I will suggest—eager not to antagonize the CIA, the Obama Administration decided to ignore the pro-torture campaign. By April, the futility, naiveté, and—let me say it—stupidity of this approach was proven. The administration had abandoned the field to the non-stop yammer of the Friends of Torture. No wonder support for torture jumped five points.

Unfortunately, this was just the beginning of a pattern that turns out to be a major sin of the Obama Administration: a desire to bury the past. That desire is, after all, the inevitable next stage when an illicit affair becomes public.

I don’t want to overstate my criticism of the Obama Administration. Insiders say the executive order banning torture came through loud and clear in Langley, and led to changes. (What changes, we don’t know.) The Administration also officially withdrew all the most toxic Bush Administration legal memoranda.

And the administration did one other brave thing. DOJ released all the Bush administration torture memos, so the world could see the shabbiness of their legal reasoning and confirm the full catalogue of the CIA’s “Thirteen Techniques,” which the memos set out in graphic detail.

We learned that one detainee was kept awake for seven days and seven nights. We learned that the method for keeping detainees awake was to shackle them to the ceiling and floor in loose chains that would jerk them awake if they began to fall over. The memo explained that they would hang from the ceiling naked, in a diaper. It was in these memos that we learned how many times the detainees were waterboarded.

Of course, the Right went ballistic: now Al Qaeda knew what to suspect, and they would train their operatives to resist these techniques. As if the techniques were not already world-famous since 2005, when ABC News first exposed them.

The torture memos showed us other things as well. Most notably, they showed us that torture was never a last resort after other interrogation methods failed. A detainee got only one chance to offer actionable intelligence before the “enhanced” interrogation began.

So it would be wrong to say that the Obama Administration did nothing to fight the media blitz of the Friends of Torture. They did that one thing—releasing the torture memos.
But their other steps were all in the wrong direction. The most painful thing to understand is how tenaciously the Obama administration has fought any form of accountability for torture. This, I’m afraid, is a depressing story, but it’s one that needs to be told.

The President gave an early hint in an interview ten days before he took office: “I don’t believe that anybody is above the law. On the other hand I also have a belief that we need to look forward as opposed to looking backwards.” He added that he didn’t want the “extraordinarily talented people” at the CIA, who are “working very hard to keep Americans safe,” to “suddenly feel that they’ve got to spend all their time looking over their shoulders and lawyering up.” Transition team staff explained that they feared a CIA “revolt” if Obama prosecuted Bush-era war crimes.

“Looking forward rather than backward” became the mantra. Superficially, it sounds like common sense, but a moment’s thought shows how fatuous it is. Would we ever say it about a murderer or a rapist? “Let him go – we should be looking forward, not back.” Of course not.

In fact, “look forward, not back” sounds more like the pleas of Shakespeare’s arch-villain Richard III. In one scene, Richard the Shameless tries to recruit a woman to help him woo her daughter shortly after he has murdered her sons:

Look, what is done cannot now be amended....

Plead what I will be, not what I have been;

Not my deserts, but what I will deserve.  
(Richard III, Act 4, scene 4)

The plain fact is that law enforcement demands looking back when the law has been grievously violated. Otherwise we might as well have no law at all.

Of course Obama had a problem: the conspiracy to torture went all the way to the top. President Bush boasts about it in his memoirs. Genuine accountability would snare the entire upper strata of the Bush administration. The result was a determined effort to make sure that no-one would face legal accountability in any form.

The first courtroom clue that the new administration would cover for torture came in February 2009, in a California case. An Ethiopian named Binyam Mohamed was rendered to Morocco by the CIA and brutally tortured. After his release, he sued the company that CIA leased the airplane from. The Bush administration stopped the lawsuit in its tracks by invoking the “state secrets defense.” This defense makes lawsuits vanish without a trace by declaring that all the facts plaintiffs would use to prove their case are state secrets—even if they’ve already been publicized. With no facts to back their claims, the cases must be dismissed. That is why lawyers’ nickname for the state secrets defense is “the nuclear option.” Binyam Mohamed
appealed, and many of us assumed that the Obama legal team would back off from the extravagant state secrets claim.

Just the opposite happened. DOJ’s lawyer defended the Bush position, and even the judges hearing the argument said they couldn’t believe their own ears. And since that time, DOJ has fought successfully to keep every torture victim that tries to sue the United States, or its private contractors, from getting his day in court.

Next consider the fate of the Bush Justice Department lawyers who wrote the secret torture memos. Only two of them (out of four) were investigated by the Office of Professional Responsibility, the Justice Department’s internal ethics watchdog. OPR wrote a scathing report and recommended that both lawyers should be referred for professional discipline.

But under Obama, a senior DOJ official reversed the recommendation. Criticizing OPR’s report on nitpicky grounds, he announced that the torture lawyers had been guilty only of “poor judgment” – which is kind of like saying that Iago’s advice to Othello showed poor judgment. There would be no disciplinary action.

What about the torturers themselves? Let’s start near the top, with Jose Rodriguez, the CIA’s director of clandestine services. He’s the man who made headlines in 2005 by burning more than ninety interrogation videotapes in the aftermath of Abu Ghraib. Rodriguez was investigated by veteran prosecutor John Durham, who is, by the way, a registered Republican. In 2010, just as the statute of limitations was about to run, Durham announced that no charges would be filed against Rodriguez.

Attorney General Holder put Durham in charge of investigating CIA torture cases. From the beginning, Mr. Holder excluded cases where interrogators followed the torture memos. To torture opponents this was a galling decision, because it allowed the discredited torture memos to reach out from the grave to set the standard of accountability. Galling as it was, the decision probably was right. Under U.S. law, to prosecute someone for torture you must prove they intentionally inflicted severe pain and suffering, and the torture memos declared that the pain and suffering caused by the CIA’s techniques was not severe. That meant interrogators could truthfully say that the pain and suffering they intentionally inflicted aren’t ‘torture’ because they aren’t severe.

Of course this is absurd. The interrogators could see with their own eyes how much their victims were suffering, and all the torture lawyers gave them in response was Groucho Marx’s line: “Who are you going to believe, us or your lying eyes?” Absurd or not, though, it was an unstoppable legal defense, and prosecuting the interrogators when there was no chance of convicting them would have been unethical.

That still left 101 cases for Durham to investigate, the cases where interrogators went too far even by torture memo standards. But in 2011, he
announced that he was closing all the cases but two—the two where the detainees died. Finally, last August, Holder announced that these last two cases would also be closed. In the contest between torture and accountability, torture won by a score of 101 - 0.

That leaves the last avenue of accountability, foreign prosecutions. For years, human rights groups filed complaints in European countries against the Bush administration officials involved in the torture program. None of these countries wanted to go up against the United States, and they all found ways to duck the cases. Not too surprising. The last one ended in Spain two weeks ago. What might be more surprising is that the embassy cables outed by Wikileaks showed the Obama Administration secretly pressuring Spain to drop the case.

Other Wikileaks cables revealed that the Bush Administration had put similar pressure on Germany not to investigate one of the most grotesque miscarriages of justice in the War on Terror. CIA had snatched and rendered a German citizen named Khalid el-Masri while he was vacationing in Macedonia—but he turned out to be a case of mistaken identity. After five months of imprisonment and abuse in Macedonia and Afghanistan, it dawned on CIA that they had the wrong man. They unceremoniously dumped El-Masri on a deserted road in Albania, and the U.S. government never acknowledged its mistake or apologized. In fact, the Wikileaks cables revealed that U.S. officials warned Germany not to prosecute el-Masri’s kidnappers, at the risk of U.S. anger.

Meanwhile, what happened to the CIA official who ordered the El-Masri operation? A CIA counterterrorism official recalled that “She always did these cases based on her gut. She’d say ‘this guy’s bad, that guy’s dirty’, because she had a ‘feeling’ about them.” She once drew a reprimand for making a “voyeuristic” trip abroad to watch Khalid Sheikh Mohammed get waterboarded. And her punishment for the el-Masri blunder? Since the el- Masri affair she has been promoted twice.

El-Masri sued both here and in the European Court of Human Rights. Last year, the European Court found that el-Masri had indeed been tortured and abused by CIA in Macedonia, and ordered Macedonia to pay him compensation. Here in the U.S., the government blew up el-Masri’s lawsuit with—you guessed it—the state secrets defense.

The U.S. campaign against accountability even extends to the literary realm. As we all know, there is now an impressive library of memoirs by former interrogators and officials. By law, these must be censored by the CIA, to make sure that they don’t reveal any precious state secrets.

One of them was written by a former FBI agent named Ali Soufan. In 2009, Soufan and I were both witnesses at a Senate Judiciary Committee hearing about the torture program. Soufan was the star witness, although none of us ever laid eyes on
him. For reasons of his own personal safety, he testified from behind a black curtain and a wooden screen. I will never forget the sight.

What Ali Soufan had to say was remarkable. He was the interrogator of Abu Zubaydah, and it was Soufan who extracted the most valuable information Zubaydah had to give, without resorting to torture or coercion. Then the CIA took Zubaydah away and tortured him. Zubaydah promptly shut down. He was returned to Soufan and his partner, who re-engaged him in conversation and got more important nuggets of information Zubaydah – and then the CIA took Zubaydah away again for good.

In 2011, Soufan published a book about all this, titled The Black Banners. But when the CIA vetted the book, they imposed scores of cuts and redactions. Some of them were beyond ridiculous: CIA made Soufan take out information that was already in his public Senate testimony; they made him take out the words “I” and “me” when he was describing interrogations he conducted. Just as the book was going to be published without an index—so the book had to be published with an index.

Compare this with the experience of Jose Rodriguez, the nice man who burned the videotapes. Rodriguez is quite a colorful character. He once bragged to a 60 Minutes reporter “We are the dark side,” and it was he who demanded that government officials “put their big boy pants on and provide the authorities that we needed.” Rodriguez’s book Hard Measures, discussing some of the same information that Soufan did, sailed through CIA review.

Perhaps it will not surprise you to learn the subtitle of Rodriguez’s book: “How Aggressive CIA Actions After 9/11 Saved American Lives.” Apparently the CIA has no objection to revealing “secrets” when they are spun to make the Agency look good; they only injure national security when they embarrass the CIA.

All administrations are virtuosos of selective leaks – release the favorable information and suppress the rest. But the Obama administration has been especially diligent. So far, they’ve prosecuted only one CIA officer: John Kiriakou. Kiriakou made headlines back in 2007 when he disclosed the torture program and expressed regrets about it. He was prosecuted for naming two CIA interrogators, even though they were not under cover. So the torturers are exonerated, and the critic gets 30 months in prison.

So far, you will notice that I have not mentioned Zero Dark Thirty. No doubt you have already read and heard far too much about it, and I don’t have much to add. You can surely decide for yourselves whether it is an advertisement for torture, or an advertisement against torture, or both, or neither. But the film captures in miniature the problem with the Obama Administration’s strategy.

First of all, whoever the screenwriter’s inside sources were gave only the CIA’s version of the story—the version that it was a torture victim who revealed the
identity of Osama bin Laden’s courier. This is, in fact, Jose Rodriguez’s version, seconded by Dick Cheney and the Heritage Foundation. Ali Soufan, on the other hand, says that the courier’s name had already surfaced as far back as 2002, before the “enhanced” interrogation program began – and, stunningly, former CIA director Leon Panetta confirmed that in a private letter to Senator John McCain, written back in 2011, shortly after Bin Laden was killed. In fact, Panetta said that no detainee in CIA’s custody gave up the name of the courier.

Reportedly, Khalid Sheikh Mohammed “confirmed” the identity and importance of the courier after he had been tortured. But the same reports go on to explain that what KSM actually said was that he didn’t know anything about al-Kuwaiti (the courier)—and that aroused the interrogators’ suspicions. Of course, KSM would have said the same thing if he hadn’t been tortured. So the right conclusion should have been that torture was unnecessary to discover that al-Kuwaiti was the courier.

Thus at the very least, Katherine Bigelow and her screenwriter based their script on a selective, probably untrue, version of reality. But a more important omission is that the film gives no hint that there was any internal opposition in the government to the torture program – let alone fierce opposition outside. That leaves a story so one-sided that it is objectively false, because it falsely suggests near-unanimity among the professionals who really know, and opposition only from the ignorant. A story like that, airbrushing out the anti-torture movement in and out of government, would be objectively false even if all the events in the film were true.

Does anyone really think that the film would have been made this way if the Obama Administration had fought the anti-torture fight in the public sphere for four years, instead of abandoning the field to the Friends of Torture?

Would it have been made this way if lawyers had been disciplined, if torturers had been officially denounced, or if lawsuits had been allowed to proceed and expose the workings of the program? I find it hard to believe that the answer is yes.

So we are stuck with a national debate in which the Friends of Torture are filled with passionate intensity, and the government gives no aid to torture’s foes.

That debate which we're stuck with centers on the question “Does torture work?”

Of course it's the wrong question. Nobody asks “Does murder work?” If they did, we would have to answer “of course murder works.” After all, it's the only thing guaranteed to stop your enemies forever. In its own way, murder works a lot better than torture, where every true needle of information the victim gives up is buried in a haystack of lies. But we don't ask the question “Does murder work?”, because we know murder is wrong. Not only wrong, but also a crime, carrying serious penalties that in some places include the death penalty.
Now, the same thing is true about torture: it carries a 20 year sentence with a potential death penalty if the victim dies. I find it odd how eagerly Americans argue about whether torture works, or how often we should use torture, without anybody seeming to notice that torture is one of the most serious crimes in our own law books. Even a law professor like Alan Dershowitz barely mentions that torture is a crime when he sings the praises of torture warrants. What is he really proposing? That we should repeal the law against torture? Not only would that send an unmistakable signal of our national commitment to torture, it would put us in breach of our obligations under the Torture Convention. Does that mean Professor Dershowitz also thinks we should become the only country in the world to pull out of the Torture Convention? Or that we should officially license the president to commit what our own law tells us are among the most serious crimes?

“Does torture work?” is the wrong question for another reason: it doesn’t ask whether we could get the same information without torture. Ali Soufan’s lesson has gotten lost.

It seems to me that we can only have these surreal debates because we never really abandoned the absurd conclusion of the torture memos: that the things we do aren’t torture. At the risk of overworking my metaphor of the illicit affair, we’re in the awkward position of someone who denies having illicit sex, but only by insisting that oral sex isn’t sex.

Crucially, even though President Obama banned all the techniques of torture and cruel, inhuman, or degrading treatment, and revoked all the torture memos, his Justice Department never issued substitute memos definitively saying that the techniques ARE torture, or even that they are cruel, inhuman, or degrading. To this day, a vacuum exists in U.S. law and policy – a vacuum that allows the Friends of Torture to continue the lie that waterboarding is not torture.

For that matter, it was already a mistake to think that waterboarding was the only thing U.S. interrogators did that even might have been torture. Narrowing the torture debate to waterboarding is a total misunderstanding of how torture works.

The rogue psychologists who peddled their snake oil to the CIA were keen students of the literature on what is called “learned helplessness.” It began with experiments that Martin Seligman performed in the 1960s on dogs. These cruel experiments involved giving dogs random electrical shocks that their own behavior couldn’t control. Seligman found that after awhile, the dogs no longer even tried to evade the shocks – they settled into lethargy and despondency: learned helplessness. When this research translated to human beings, it led to the idea that heaping abuses, humiliations, sensory deprivation, and manipulations of sleep and temperature one on top the other would do the same thing to a human being. It would reduce him to infantile dependency. That was the theory behind the program of humiliations and cruelties used in Guantanamo and the CIA prisons.
Not all of these abuses involved severe physical pain or suffering, though some certainly did. But there is also such a thing as mental torture, and the piling of one abuse on another, large and small humiliations, stress positions, and sleep deprivation, surely inflict severe mental pain and suffering. That’s how they break the human will and turn human beings into compliant puppies.

Disgracefully, U.S. law does not recognize these as mental torture. That law was intentionally written to minimize mental torture. As the United States interprets mental torture, it can only exist if it involves death threats, threats of physical torture, or mind-altering drugs. When a Guantanamo interrogator threatened to have a detainee’s mother arrested and brought to Guantanamo, Army investigators cleared him – after all, threatening his mother with rendition isn’t threatening her with death or torture. The same when another interrogator threatened a detainee with deleting all of his records and having him disappear into lifelong oblivion. Oblivion isn’t death or physical torture.

The legislative history of this bizarre definition of mental torture is truly eye-opening. U.S. officials brazenly complained that if mental torture was defined more broadly, it might lead to accusations against law enforcement practices. This argument is mind-boggling. You have law-enforcement practices that might be illegal. Do you fix the practices? No – you fix the law. Thus, our statutory definition of torture was born in original sin: the sin of trying to offer as much legal protection as possible to abusive law enforcement practices.

All of us know that the United States has a huge prison population, the world’s largest. It includes an estimated 25,000 prisoners in long-term solitary confinement. Significantly, long-term isolation can have devastating effects on the human personality. In words of psychologist Craig Haney,

Who we are, and how we function in the world around us, is very much nested in our relation to other people. Over a long period of time, solitary confinement undermines one’s sense of self. It undermines your ability to register and regulate emotion. The appropriateness of what you’re thinking and feeling is difficult to index, because we’re so dependent on contact with others for that feedback. And for some people, it becomes a struggle to maintain sanity.²

Long-term isolation was one of the major methods U.S. interrogators used to try to break some of the terrorism suspects.

Perhaps the American public doesn’t recognize these more subtle forms of torture because we have a materialist bias. The body is real, and physical pain is real. As for mental pain – well, that’s all in your head.

This is a remarkably crude misunderstanding of what makes human beings tick. Researchers have found no difference in the harms of physical and mental torture. Both are equally devastating. But we tend to pooh-pooh the mental, unless it has some manifestation we can see.

I have met only a few torture victims, when I teach in Georgetown’s political asylum legal clinic. I recall one of our clients, a young and very appealing Sikh man from Punjab. He had been brutally tortured by the police for his political activism. But he is a resilient and resourceful man, with a gift of gab and an outgoing personality. When he told us about his nightmares, and flashbacks, and difficulties sleeping – all textbook symptoms of PTSD – we worried that a judge might not credit what he said. We had a hard time crediting it ourselves.

Then, one day, he slowly unwound his turban, so that his student lawyers could see for themselves how his long dark hair had fallen out in great patches – alopecia areata, a textbook PTSD symptom. We all breathed a sigh of relief – not only because this was something the judge could see, but also because it was something we could see. It turns out that we too were vulnerable to the materialist bias.

Whether it’s the materialist bias or some other reason, it seems to me that part of our national problem with understanding the gravity of torture is that we don’t understand what it means to break a person down by heaping on repeated large and small abuses. We don’t understand how suffering accumulates into severe suffering. And so we find ourselves comfortably debating whether torture works in a way that we would never dream of debating whether murder works, or rape works, or embezzlement works. At the same time that we debate torturing terrorists abroad, we ignore the mental torture of tens of thousands of prison inmates here at home.

I am reminded of a powerful and famous speech delivered fifty years ago by a great American champion of social justice, Rabbi Abraham Joshua Heschel. The speech was Heschel’s prophetic protest against racial segregation. One of his thoughts was this – in his own words:

There is an evil which most of us condone and are even guilty of: *indifference to evil*. We remain neutral, impartial, and not easily moved by the wrongs done unto other people. Indifference to evil is more insidious than evil itself; it is more universal, more contagious, more dangerous. A silent justification, it makes possible an evil erupting as an exception becoming the rule and being in turn accepted.

The prophets’ great contribution to humanity was the discovery of *the evil of indifference*. One may be decent and sinister, pious and sinful.

Now, unlike Heschel, I am temperamentally unsuited to speaking in the angry words of a prophet, and I think you’ll agree that I am not exactly a prophetic kind of guy. (I lean to the pedantic.) But the American torture debate – including the torture that
we don’t debate because of our indifference and ignorance – does seem to me like
the sign of a nation that has become both decent and sinister, pious and sinful.

And yet I for one don’t despair. As a friend of mine says, we don’t have the
luxury of despair. Sadly, the fight for legal accountability won’t be fought by the
Obama Administration, but that realization should refocus us. The fight against
torture is not merely a legal fight. It never was, and it never should be. Thankfully, it
is still true that more Americans oppose torture than support the Tea Party. Public
opinion has tilted away from us, but it can tilt back.

We have work to do.