

FACT CHECKER FILE
For
The Torture Trial of George W. Bush

This is a companion file to the novel, *The Torture Trial of George W. Bush*.

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In some cases, we have included a brief excerpt from the referenced file to save you from searching the entire document.

Thank you for reading, *The Torture Trial of George W. Bush*.

Good Thoughts, Joseph Suste

FOOTNOTE¹Diane Feinstein, Chairman of Senate Select Committee on Intelligence, *Forward to Senate Select Committee on Intelligence, Committee Study of the Central Intelligence Agency's Detention and Interrogation Program*, December 3, 2014. Page 4.

http://fas.org/irp/congress/2014_rpt/ssci-rdi.pdf

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President Obama signed Executive Order 13491 in January 2009 to prohibit the CIA from holding detainees other than on a “short-term, transitory basis” and to limit interrogation techniques to those included in the Army Field Manual. However, these limitations are not part of U.S. law and could be overturned by a future president with the stroke of a pen. They should be enshrined in legislation.

Even so, existing U.S. law and treaty obligations should have prevented many of the abuses and mistakes made during this program. While the Office of Legal Counsel found otherwise between 2002 and 2007, it is my personal conclusion that, under any common meaning of the term, CIA detainees were tortured. I also believe that the conditions of confinement and the use of authorized and unauthorized interrogation and conditioning techniques were cruel, inhuman, and degrading. I believe the evidence of this is overwhelming and incontrovertible.

While the Committee did not make specific recommendations, several emerge from the Committee’s review. The CIA, in its June 2013 response to the Committee’s Study from December 2012, has also already made and begun to implement its own recommendations. I intend to work with Senate colleagues to produce recommendations and to solicit views from the readers of the Committee Study.

I would also like to take this opportunity to describe the process of this study.

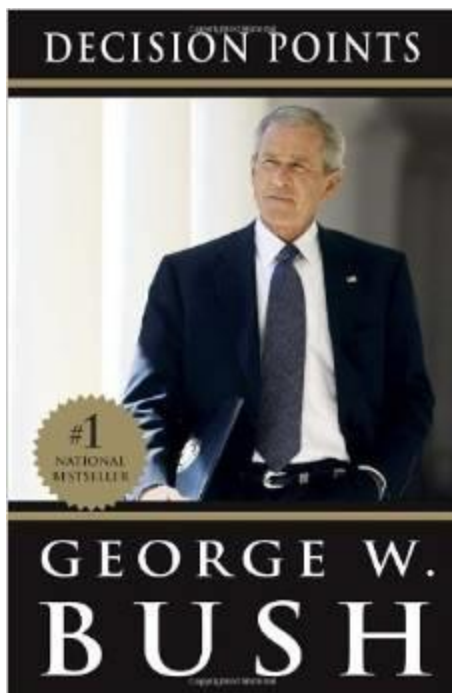
As noted previously, the Committee approved the Terms of Reference for the Study in March 2009 and began requesting information from the CIA and other federal departments. The Committee, through its staff, had already reviewed in 2008 thousands of CIA cables describing the interrogations of the CIA detainees Abu Zubaydah and ‘Abd al-Rahim al-Nashiri, whose interrogations were the subject of videotapes that were destroyed by the CIA in 2005.

The 2008 review was complicated by the existence of a Department of Justice investigation, opened by Attorney General Michael Mukasey, into the destruction of the videotapes and expanded by Attorney General Holder in August 2009. In particular, CIA employees and contractors who would otherwise have been interviewed by the Committee staff were under potential legal jeopardy, and therefore the CIA would not compel its workforce to appear before the Committee. This constraint lasted until the Committee’s research and documentary review were completed and the Committee Study had largely been finalized.

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FOOTNOTE² Bush, George W. *Decision Points*. Crown Publishing Group, Random House. New York. 2010.



FOOTNOTE³ Video record of the 27th Annual Miami Book Fair International, at Miami Dade College, November 14, 2010. The C-SPAN recording can be viewed at:

<http://www.c-span.org/video/?296496-1/book-discussion-decision-points>

Approximately thirty minutes into video. Words of President George W. Bush.

Author prepared partial transcript

“I approved techniques, including waterboarding, on three people. In my book, I make two points clear. One, the information we received from those on whom we used enhanced interrogation techniques, saved, American, lives. And secondly, I could not have lived with myself had I not, under the law, used the techniques, to get the information, so that our folks could react and prevent attack. And I’m fully aware, at the time I made the decision, that there would be a lot of controversy and a lot of blow back on this decision. But my job was to protect you, within the law and within the constitution of the United State. And uh, as I said in the book, had later on in my presidency, we had captured somebody who had information, that uh, uh that, if we’d a gotten it, it could save lives, I would have done the same thing again. And finally, just so you know, in the book, I walk you through, getting this uh, this capability, this tool, passed by the United States congress so it is now available to any president to use, should he or she choose to do so.”

FOOTNOTE⁴United States Code (USC) Title 18- Crimes and Criminal Procedure, Part 1, Chapter 113c-Torture.

<http://www.gpo.gov/fdsys/pkg/USCODE-2011-title18/pdf/USCODE-2011-title18-partI-chap113C.pdf>

§ 2340. Definitions

As used in this chapter—

(1) “torture” means an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control;

(2) “severe mental pain or suffering” means the prolonged mental harm caused by or resulting from—

(A) the intentional infliction or threatened infliction of severe physical pain or suffering;

(B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;

(C) the threat of imminent death; or

(D) the threat that another person will im-

minently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality; and
(3) “United States” means the several States of the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States.

FOOTNOTE⁵ President Barak Obama interviewed on *This Week*. ABC. January 11, 2009.
http://www.youtube.com/watch?feature=player_detailpage&v=0K27oIJlAIA

FOOTNOTE⁶ *ibid*

FOOTNOTE⁷ United States Constitution Article III. Section 1. ... The Judges, both of the supreme and inferior Courts, shall hold their Offices, during good Behavior, ...

Section 1.

The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

FOOTNOTE⁸ Washington Post Opinion, “ *I’m Still Tortured by What I Saw in Iraq*”. By Matthew Alexander, US Air Force, Senior Interrogator. Sunday, November 30, 2008

<http://www.washingtonpost.com/wp-dyn/content/article/2008/11/28/AR2008112802242.html>

Excerpt Follows.

Torture and abuse are against my moral fabric. The cliché still bears repeating: Such outrages are inconsistent with American principles. And then there's the pragmatic side: **Torture and abuse cost American lives.**

I learned in Iraq that the No. 1 reason foreign fighters flocked there to fight were the abuses carried out at Abu Ghraib and Guantanamo. **Our policy of torture was directly and swiftly recruiting fighters for al-Qaeda in Iraq.** The large majority of suicide bombings in Iraq are still carried out by these foreigners. They are also involved in most of the attacks on U.S. and coalition forces in Iraq. It's no exaggeration to say that at least half of our losses and casualties in

that country have come at the hands of foreigners who joined the fray because of our program of detainee abuse. The number of U.S. soldiers who have died because of our torture policy will never be definitively known, but it is fair to say that it is close to the number of lives lost on Sept. 11, 2001. How anyone can say that torture keeps Americans safe is beyond me -- unless you don't count American soldiers as Americans.

FOOTNOTE⁹The oath is from the Judiciary Act of 1789, that established an oath taken by federal judges.

I do solemnly swear (or affirm), that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent on me, according to the best of my abilities and understanding, agreeably to the Constitution, and laws of the United States. So help me God.

FOOTNOTE¹⁰ Sarah Palin address to National Rifle Association Annual Meeting, 2014. <http://www.cbsnews.com/videos/sarah-palin-waterboarding-is-how-we-baptize-terrorists/>

Sarah Palin: "Waterboarding is how we baptize terrorists"

April 27, 2014, 10:12 AM|Former Alaska Governor and 2008 Republican vice presidential nominee Sarah Palin explains one way U.S. counterterrorism policy would change if she were president. **Sarah Palin: "Waterboarding is how we baptize terrorists"**

FOOTNOTE¹¹Title 18 U.S.C. § 3331 CHAPTER 216—SPECIAL GRAND JURY.

<http://www.gpo.gov/fdsys/pkg/USCODE-2011-title18/pdf/USCODE-2011-title18-partII-chap216-sec3331.pdf>

CHAPTER 216—SPECIAL GRAND JURY

Sec.

3331. Summoning and term.

3332. Powers and duties.

3333. Reports.

3334. General provisions.

§ 3331. Summoning and term

(a) In addition to such other grand juries as shall be called from time to time, each district court which is located in a judicial district containing more than four million inhabitants or in which the Attorney General, the Deputy Attorney General, the Associate Attorney General, or any designated Assistant Attorney General, certifies in writing to the chief judge of the district that in his judgment a special grand jury is necessary because of criminal activity in the district shall order a special grand jury to be summoned at least once in each period of eighteen months unless another special grand jury is then serving. The grand jury shall serve for a term of

eighteen months unless an order for its discharge is entered earlier by the court upon a determination of the grand jury by majority vote that its business has been completed. If, at the end of such term or any extension thereof, the district court determines the business of the grand jury has not been completed, the court may enter an order extending such term for an additional period of six months. No special grand jury term so extended shall exceed thirty-six months, except as provided in subsection (e) of section 3333 of this chapter.

FOOTNOTE¹²Sixth Declaration of Marilyn A. Dorn, Information Review Officer, Central Intelligence Agency, Item 61, page 34, January 5th, 2007.

https://www.aclu.org/files/pdfs/natsec/20070105_Dorn_Declaration_8.pdf

Item No. 61

66. Item No. 61 requested a "Directive signed by President Bush that grants CIA, the authority to set up detention facilities outside the United States and/or outlining interrogation methods that may be used against Detainees." The CIA did not locate a document signed by President Bush outlining interrogation methods that may be used against detainees. The CIA did locate one document signed by President Bush that

pertains to the CIA's authorization to set up detention facilities outside the United States. The document responsive to Item No. 61 is a 14-page memorandum dated 17 September 2001 from President Bush to the Director of the CIA pertaining to the CIA's authorization to detain terrorists. This document is withheld in its entirety on the basis of FOIA Exemption b(5). Substantial portions of this document contain information relating to intelligence sources and methods and foreign relations and foreign activities of the United States that is classified TOP SECRET and is withheld on the bases of FOIA Exemptions b(1) and b(3).

FOOTNOTE¹³Federal Rules of Criminal Procedure, Rule 42. Criminal Contempt

http://judiciary.house.gov/_cache/files/86a03f0f-cbfb-4624-8029-b2eec078d211/criminal2014.pdf

Rule 42. Criminal Contempt

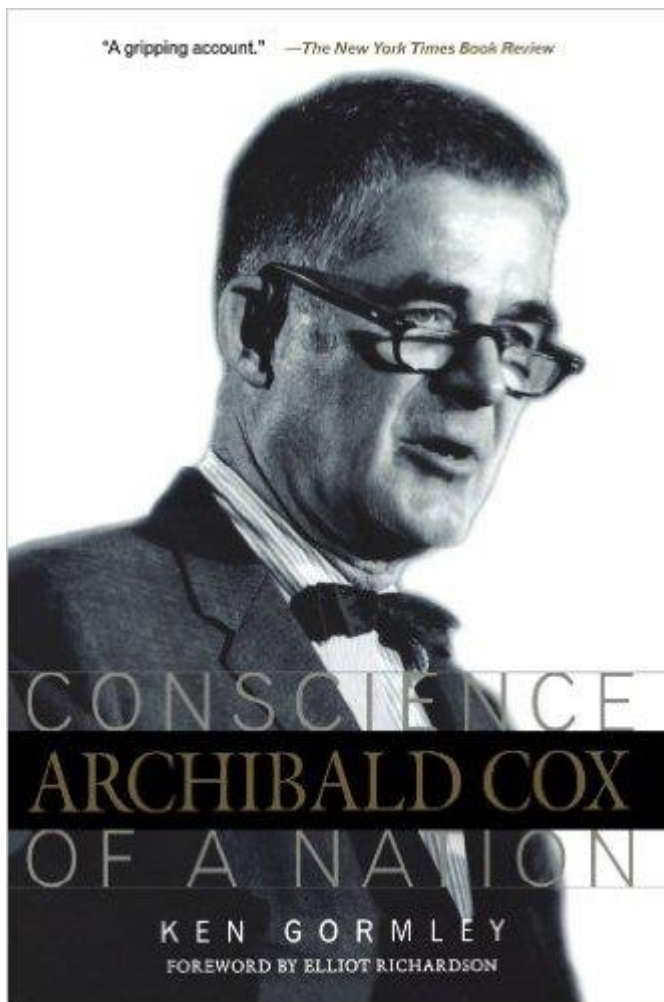
(a) Disposition After Notice. Any person who commits criminal contempt may be punished for that contempt after prosecution on notice.

(1) Notice. The court must give the person notice in open court, in an order to show cause, or in an arrest order. The notice must:

- (A) state the time and place of the trial;
- (B) allow the defendant a reasonable time to prepare a defense; and
- (C) state the essential facts constituting the charged criminal contempt and describe it as such.

(2) Appointing a Prosecutor. The court must request that the contempt be prosecuted by an attorney for the government, unless the interest of justice requires the appointment of another attorney. **If the government declines the request, the court must appoint another attorney to prosecute the contempt.**

FOOTNOTE¹⁴ Ken Gormley, *Archibald Cox, Conscience of a Nation*, Perseus Books, Reading Massachusetts, 1997, page 240.



FOOTNOTE¹⁵ Ibid. page 357

FOOTNOTE¹⁶ Reference Military Commissions Act of 2006 making Detainee Treatment Act of 2005 retroactive to September 11, 2001
[https://www.icrc.org/ihl-nat/a24d1cf3344e99934125673e00508142/b22319a0da00fa02c1257b8600397d29/\\$FILE/Detainee%20Treatment%20Act%20of%202005%20.pdf](https://www.icrc.org/ihl-nat/a24d1cf3344e99934125673e00508142/b22319a0da00fa02c1257b8600397d29/$FILE/Detainee%20Treatment%20Act%20of%202005%20.pdf)

Except from Detainee Treatment Act of 2005

**SEC. 1004. PROTECTION OF UNITED STATES GOVERNMENT PERSONNEL ENGAGED IN
AUTHORIZED INTERROGATIONS.**

(a) Protection of United States Government Personnel- In any civil action or criminal prosecution against an officer, employee, member of the Armed Forces, or other agent of the United States Government who is a United States person, arising out of the officer, employee, member of the Armed Forces, or other agent's engaging in specific operational practices, that involve detention and interrogation of aliens who the President or his

designees have determined are believed to be engaged in or associated with international terrorist activity that poses a serious, continuing threat to the United States, its interests, or its allies, and that were officially authorized and determined to be lawful at the time that they were conducted, it shall be a defense that such officer, employee, member of the Armed Forces, or other agent did not know that the practices were unlawful and a person of ordinary sense and understanding would not know the practices were unlawful. Good faith reliance on advice of counsel should be an important factor, among others, to consider in assessing whether a person of ordinary sense and understanding would have known the practices to be unlawful. Nothing in this section shall be construed to limit or extinguish any defense or protection otherwise available to any person or entity from suit, civil or criminal liability, or damages, or to provide immunity from prosecution for any criminal offense by the proper authorities.

(b) Counsel- The United States Government may provide or employ counsel, and pay counsel fees, court costs, bail, and other expenses incident to the representation of an officer, employee, member of the Armed Forces, or other agent described in subsection (a), with respect to any civil action or criminal prosecution arising out of practices described in that subsection, under the same conditions, and to the same extent, to which such services and payments are authorized under section 1037 of title 10, United States Code.

Excerpt from Military Commissions Act of 2006

http://www.loc.gov/rr/frd/Military_Law/pdf/PL-109-366.pdf

SEC. 8. REVISIONS TO DETAINEE TREATMENT ACT OF 2005 RELATING TO PROTECTION OF CERTAIN UNITED STATES GOVERNMENT PERSONNEL.

(a) Counsel and Investigations- Section 1004(b) of the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd-1(b)) is amended--

(1) by striking 'may provide' and inserting 'shall provide';

(2) by inserting 'or investigation' after 'criminal prosecution'; and

(3) by inserting 'whether before United States courts or agencies, foreign courts or agencies, or international courts or agencies,' after 'described in that subsection'.

(b) Protection of Personnel- Section 1004 of the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd-1) shall apply with respect to any criminal prosecution that--

(1) relates to the detention and interrogation of aliens described in such section;

(2) is grounded in section 2441(c)(3) of title 18, United States Code; and

(3) relates to actions occurring between September 11, 2001, and December 30, 2005.

FOOTNOTE¹⁷ Supra 3. Approximately thirty minutes into video

FOOTNOTE¹⁸ Supra 14. page 237

FOOTNOTE¹⁹ Supra 14. page 240.

FOOTNOTE²⁰ Supra 12. Item No. 61, pages 33-39.

FOOTNOTE²¹ Ethics in Government Act, 1978. The special prosecutor provision was renewed several times but finally left to expire in 1999.

http://www.senate.gov/artandhistory/history/common/investigations/pdf/Watergate_EthicsGov.pdf



Watergate_EthicsGo
v.pdf

Scroll down to 92 Stat. 1867

FOOTNOTE²² Supra 13.

FOOTNOTE²³ DEP'T OF JUSTICE, OFFICE OF PROF'L RESPONSIBILITY REPORT, INVESTIGATION INTO THE OFFICE OF LEGAL COUNSEL'S MEMORANDA CONCERNING ISSUES RELATING TO THE CENTRAL INTELLIGENCE AGENCY'S USE OF "ENHANCED INTERROGATION TECHNIQUES" ON SUSPECTED TERRORISTS 160 (2009). <http://www.fas.org/irp/agency/doj/opr-2nddraft.pdf>



opr-2nddraft.pdf

FOOTNOTE²⁴ US Code Title 18 Crimes and Criminal Procedure, Chapter 1, paragraph 3, Accessory after the fact.

§3. Accessory after the fact

Whoever, knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact.

Except as otherwise expressly provided by any Act of Congress, an accessory after the fact shall be imprisoned not more than one-half the maximum term of imprisonment or (notwithstanding section 3571) fined not more than one-half the maximum fine prescribed for the punishment of the principal, or both; or if the principal is punishable by life imprisonment or death, the accessory shall be imprisoned not more than 15 years.

FOOTNOTE²⁵ Ibid, paragraph 4, Misprision of a felony.

§4. Misprision of felony

Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.

FOOTNOTE²⁶ John Adams seventh Novanglus essay.

“If Aristotle, Livy, and Harrington knew what a republic was, ... They define a republic to be a *government of laws, and not of men.*”

Rule 7. The Indictment and the Information

(a) When Used.

(1) *Felony.* An offense (other than criminal contempt) must be prosecuted by an indictment if it is punishable:

(A) by death; or

(B) by imprisonment for more than one year.

(2) *Misdemeanor.* An offense punishable by imprisonment for one year or less may be prosecuted in accordance with Rule 58(b)(1).

(b) *Waiving Indictment.* An offense punishable by imprisonment for more than one year may be prosecuted by information if the defendant—in open court and after being advised of the nature of the charge and of the defendant's rights—waives prosecution by indictment.

(c) Nature and Contents.

(1) *In General.* The indictment or information must be a plain, concise, and definite written statement of the essential facts constituting the offense charged and must be signed by an attorney for the government.

FOOTNOTE²⁸ Supra 3. Approximately thirty minutes into video.

FOOTNOTE²⁹ Supra 2. Page 170

FOOTNOTE³⁰ Supra 16.

FOOTNOTE³¹The Constitution of the United States of America, Article I, Section 9

SECTION 9....**No Bill of Attainder or ex post facto Law shall be passed.**

FOOTNOTE³² Federalist Papers number 78, Alexander Hamilton.

Excerpt from number 78

The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no *ex post facto* laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.

FOOTNOTE³³ Thomas Jefferson 1813 letter to Isaac McPherson.

Excerpt from letter

The sentiment that ex post facto laws are against natural right, is so strong in the United States, that few, if any, of the State constitutions have failed to proscribe them.

FOOTNOTE³⁴U.S. Supreme Court ,NIXON v. FITZGERALD, 457 U.S. 731 (1982) In a 5-4 decision, the Supreme Court ruled that the President is entitled to absolute immunity from liability for civil damages based on his official acts. The court emphasized that the President is not immune from criminal charges stemming from his official (or unofficial) acts while in office. See opinion by Justice White et al.
<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=457&invol=731>

Excerpt from opinion

I do not agree that if the Office of President is to operate effectively, the holder of that Office must be permitted, without fear of liability and regardless of the function he is performing, deliberately to inflict injury on others by conduct that he knows violates the law.

But there is no contention that the President is immune from criminal prosecution in the courts under the criminal laws enacted by Congress or by the States for that matter. Nor would such a claim be credible. The Constitution itself provides that impeachment shall not bar "Indictment,

FOOTNOTE³⁵ Beginning in March 1986 civil lawsuits were filed in US courts alleging that Philippino opposition activists were the victims of water torture by the Marcos Dictatorship. In 1996 the US Court of Appeals for the Ninth Circuit found the Marcos Estate guilty of human rights violations, including the use of the "water cure."
United States Court of Appeals,Ninth Circuit.Maximo HILAO, Class Plaintiffs, Plaintiff-Appellee, v. ESTATE OF Ferdinand MARCOS, Defendant, Imelda R. Marcos; Ferdinand R. Marcos, Representatives of the Estate of Ferdinand Marcos, Defendants-Appellants. Nos. 95-16487, 95-16145. Decided: December 17, 1996
<http://caselaw.findlaw.com/us-9th-circuit/1279729.html#sthash.Cn4JfCJ.dpuf>

FOOTNOTE³⁶ Jus cogens is Latin for "compelling law"; a fundamental principle of international law that is accepted by the international community of states as a norm from which no derogation is permitted.

FOOTNOTE³⁷ Non-derogable: Certain human rights have been considered so important that they cannot be limited or suspended under any circumstance. The right to be free from torture is non-derogable in international law.

FOOTNOTE³⁸Wikipedia “Abu Ghraib torture and prisoner abuse” subparagraph “Repercussions.”

https://en.wikipedia.org/wiki/Abu_Ghraib_torture_and_prisoner_abuse#Repercussions

Eleven soldiers were convicted of various charges relating to the incidents, with all of the convictions including the charge of dereliction of duty. Most soldiers only received minor sentences. Three other soldiers were either cleared of charges or were not charged. No one was convicted for the murders of the detainees.

Senior personnel

Brigadier General Janis Karpinski, who had been commanding officer at the prison, was **demoted to colonel** on May 5, 2005. In a BBC interview, Janis Karpinski said that she was being made a scapegoat, and that the top U.S. commander for Iraq, General Ricardo Sanchez, should be asked what he knew about the abuse.[96]

Donald Rumsfeld stated in February 2005 that as a result of the Abu Ghraib scandal, he had twice offered to resign from his post of Secretary of Defense, but U.S. President George W. Bush declined both offers.[97]

Jay Bybee, the author of the Justice Department memo defining torture as activity producing pain equivalent to the pain experienced during death and organ failure,[98] **was nominated by President Bush to the Ninth Circuit Court of Appeals, where he began service in 2003.**

Michael Chertoff, who as head of the Justice Department's criminal division advised the CIA on the outer limits of legality in coercive interrogation sessions, was selected by President Bush to **fill the cabinet-level vacancy at Secretary of Homeland Security** created by the departure of Tom Ridge.

The Final Report of the Independent Panel to Review Department of Defense detention operations specifically absolved U.S. military and political leadership from culpability: "The Panel finds no evidence that organizations above the 800th MP brigade or the 205th MI Brigade-level were directly involved in the incidents at Abu Ghraib." [99] **Karpinski's immediate operational supervisor and Sanchez' deputy, Major General Walter Wojdakowski, was subsequently appointed Chief of the US Army Infantry School at Fort Benning. Pappas's boss, Barbara Fast, was subsequently appointed Chief of the US Army Intelligence Center at Fort Huachuca.**

FOOTNOTE³⁹ Former Central Intelligence Agency officer John Kiriakou sentenced to 30 years for revealing CIA torture program

http://www.democracynow.org/2013/1/30/ex_cia_agent_whistleblower_john_kiriakou

Ex-CIA Agent, Whistleblower John Kiriakou Sentenced to Prison While Torturers He Exposed Walk Free

FOOTNOTE⁴⁰ Handbook for Federal Grand Jurors. Published by the Administrative Office of the United States Courts, Washington, D.C.

<https://www.mdd.uscourts.gov/jury/docs/federalgrand.pdf>

FOOTNOTE⁴¹ Mark Benjamin, Water boarding for Dummies, Salon, March 9, 2010,

http://www.salon.com/2010/03/09/waterboarding_for_dummies/

FOOTNOTE⁴² Steven G. Bradley, Principal Deputy Assistant Attorney General, *Memorandum for John Rizzo, Senior Deputy General Counsel, Central Intelligence Agency*, May 10, 2005. Item 13, page 15.

http://www1.umn.edu/humanrts/OathBetrayed/olc_Bradbury051005.pdf

FOOTNOTE^{43,44,45}

Ibid

FOOTNOTE⁴⁶ OMS, Guidelines On Medical And Psychological Support To Detainee Rendition, Interrogation And Detention. CIA Office of Medical Services, December 2004. Page 19. (lower right corner page number). https://www.thetorturedatabase.org/document/cia-memo-oms-guidelines-medical-and-psychological-support-detainee-rendition-interrogation?search_url=search/apachesolr_search/rendition then downloadpdf

Excerpt page 19.

- a. Approvals for use of the waterboard last for only 30 days. During that 30 day period, the waterboard may not be used on more than 5 days during that 30 day period.
- b. The number of waterboard sessions during any given 24-hour period may not exceed two.
- c. A waterboard "session" is the period of time in which a subject is strapped to the waterboard before being removed. It may involve multiple applications of water. A waterboard session may not last longer than two hours.
- d. An "application" during a waterboard session is the time period in which water is poured on the cloth being held on the subject's face. Under the DCI interrogation guidelines, the time of total water contact with the face will not exceed 40 seconds. The vast majority of applications are less than 40 seconds, many for fewer than 10 seconds. Individual applications lasting 10 seconds or longer will be limited to no more than six applications during any one waterboard session. The Agency will limit the aggregate, " of applications to no more than 12 minutes in any 24 hour period.

FOOTNOTE⁴⁷

Ibid

Excerpt page 18.

In our limited experience. Extensive sustained use of the waterboard can induce new risks. Most seriously, for reasons of physical fatigue or psychological resignation, the subject may simply give up, allowing excessive filling of the airways and loss of consciousness. An unresponsive subject should be righted immediately, and the interrogator should deliver a sub-xyphoid thrust to expel the water. If this fails to restore normal breathing, aggressive medical intervention is required. Any subject who has reached this degree of compromise is not considered an appropriate candidate for the waterboard, and the physician on the scene can not concur in further use of the waterboard without specific C/OMS consultation and approval.

FOOTNOTE⁴⁹ Memorandum for John A. Rizzo, Senior Deputy General Counsel, Central Intelligence Agency, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, Re: *Application of 18 U.S.C. §§ 2340–2340A to the Combined Use of Certain Techniques in the Interrogation of High Value al Qaeda Detainees* (May 10, 2005)
<http://www.derechos.org/nizkor/excep/combined.pdf>

FOOTNOTE⁵⁰ Memorandum for John A. Rizzo, Senior Deputy General Counsel, Central Intelligence Agency from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Department of Justice, Office of Legal Counsel Re: *Application of United States Obligations Under Article 16 of the Convention Against Torture to Certain Techniques that May Be Used in the Interrogation of High Value al Qaeda Detainees* (May 30, 2005)
<http://www.justice.gov/sites/default/files/olc/legacy/2013/10/21/memo-bradbury2005.pdf>

FOOTNOTE⁵¹ Central Intelligence Agency, Inspector General, SPECIAL REVIEW. COUNTERTERRORISM DETENTION AND INTERROGATION ACTIVITIES (SEPTEMBER 2001- OCTOBER 2003) (2003-7123-1 G) page 91
https://www.thetorturedatabase.org/files/foia_subsite/pdfs/CIA000349.pdf

Excerpt page 90

Prior to the use of EITs, Abu Zubaydah provided information for (DELETED) intelligence reports. Interrogators applied the waterboard to Abu Zubaydah at least 83 times during August 2002.

Excerpt page 91

Khalid Shaykh Muhammad received 183 applications of the waterboard in March 2003

FOOTNOTE⁴⁸ Article 3 of the Geneva Convention (III) Relative to the Treatment of Prisoners of War, August 12, 1949, [1955] 6 U.S.T. 3316, 3318, T.I.A.S. No. 3364.
http://www.loc.gov/rr/frd/Military_Law/pdf/GC_1949-III.pdf

Excerpt page 58

(1) *Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.*

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons ;

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

FOOTNOTE⁴⁹ Alberto R. Gonzales, Memorandum for the President, Decision Re Application of the Geneva Convention on Prisoners of War in the Conflict with Al Qaeda and the Taliban, January 25, 2002.
<http://nsarchive.gwu.edu/torturingdemocracy/documents/20020125.pdf>

FOOTNOTE⁵⁰ Supreme Court Of The United States, Syllabus, Hamdan V. Rumsfeld, Secretary Of Defense, Et Al. Certiorari To The United States Court Of Appeals For The District Of Columbia Circuit, No. 05-184. Argued March 28, 2006—Decided June 29, 2006
<http://caselaw.findlaw.com/us-supreme-court/548/557.html>

FOOTNOTE⁵¹ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
<http://www.unhcr.org/49e479d10.html>

FOOTNOTE⁵² Think Progress, “Retired Judge Advocates General Write To Leahy Condemning Water boarding, by Amanda Terkel Posted on November 3, 2007.
<http://thinkprogress.org/jag-letter-waterboarding/>

FOOTNOTE⁵⁴ Letter to Michael Mukasey from Senators McCain, Graham and Warner, Oct 31, 2007
http://www.mccain.senate.gov/public/_cache/files/2ff245f8-ec97-466e-a24e-144415abc000/103107-mccaingrahamwarnerresponsetomukasey.pdf

FOOTNOTE⁵⁵CSPAN video of Obama news conference. jApril 29, 2009.
<http://www.c-span.org/video/?285574-3/presidential-news-conference>

18 Minutes 44 seconds into video.

Jake Tapper

Do you believe the previous
administration
sanctioned torture?

Barack Obama

00:18:46



I believe that waterboarding was torture.
And I think that the -- whatever legal
rationales were used, it was a mistake.

FOOTNOTE⁵⁶ New York Times, January 16, 2009, Transcript of confirmation hearing of Attorney General Eric Holder <http://www.nytimes.com/2009/01/16/us/politics/16text-holder.html?pagewanted=all& r=0>

LEAHY: Thank you, Mr. Holder. We'll have the first round of ten-minute questions.

Water boarding has been recognized to be torture since the time of Spanish Inquisition. The United States has prosecuted American soldiers for using this technique. Earlier in the last century, they prosecuted Japanese soldiers for using it on Americans in World War II. But the two most recent nominees to serve as attorney general of the United States hedged on the question of water boarding.

They would not say that if an American were water boarded by some other government or terrorist anywhere in the world, whether it would be torture and illegal. They maintained it would depend upon the circumstances.

Do you agree with me that water boarding is torture and illegal?

HOLDER: If you look at the history of the use of that technique used by the Khmer Rouge, used in the inquisition, used by the Japanese and prosecuted by us as war crimes. We prosecuted our own soldiers for using it in Vietnam.

I agree with you, Mr. Chairman, water boarding is torture.

FOOTNOTE⁵⁷ Senate Select Committee on Intelligence Committee Study of the CIA's Detention and Interrogation Program, Findings and Conclusions. December 3, 2014.
<http://www.amnestyusa.org/pdfs/sscistudy1.pdf>

FOOTNOTE⁵⁸ Dismissing Senate Report, Cheney Defends C.I.A. Interrogations, New York Times, By Peter Baker Dec. 8, 2014

<http://www.nytimes.com/2014/12/09/world/dismissing-senate-report-cheney-defends-cia-interrogations.html>

FOOTNOTE⁵⁹ CNN video, President Bush,

<https://www.youtube.com/watch?v=mlr0pjNLIDl>

FOOTNOTE⁶⁰ NBC News, *CIA chief: Waterboarding aided bin Laden raid.*, May 3, 2011

http://www.today.com/id/42880435/ns/today-today_news/t/cia-chief-waterboarding-aided-bin-laden-raid/#.VnNKBm3Tmoo

FOOTNOTE⁶¹ Zero Dark Thirty, Sony movie released January 11, 2013.

FOOTNOTE⁶² Acting C.I.A. Chief Critical of Film 'Zero Dark Thirty', By Scott Shane. New York Times, December 22,

2012 http://www.nytimes.com/2012/12/23/us/politics/acting-cia-director-michael-j-morell-criticizes-zero-dark-thirty.html?_r=1&.

FOOTNOTE⁶³ Statement Of Attorney General Eric Holder On Closure Of Investigation Into The Interrogation Of Certain Detainees, August 30, 2012.

<http://www.justice.gov/opa/pr/statement-attorney-general-eric-holder-closure-investigation-interrogation-certain-detainees>

FOOTNOTE⁶⁴ Fox news interview with Dick Cheney by Bret Baier, December 11, 2014

<http://www.foxnews.com/politics/2014/12/11/cheney-defends-cia-interrogation-techniques-calls-senate-report-flawed/>

Excerpt from transcript

Cheney also refuted claims that President George W. Bush was kept in the dark about the interrogations. "I think he knew everything he wanted to know and needed to know," Cheney told Baier.

FOOTNOTE⁶⁵ Mark Sherman, *Scalia: Hard to rule out 'extreme measures'*, Associated Press

<http://www.salon.com/2014/12/13/scalia-hard-to-rule-out-extreme-measures/>

FOOTNOTE⁶⁶ Supra 53.

Excerpt from Convention Against Torture:

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

FOOTNOTE⁶⁷ Amanda Terkel, *Scalia Defends Torture: It's 'Absurd' To Say The Gov't Can't 'Smack' A Suspect 'In The Face'*, Thinkprogress. <http://thinkprogress.org/politics/2008/02/12/19522/scalia-torture/>

FOOTNOTE⁶⁸ USC Title 18 - CRIMES AND CRIMINAL PROCEDURE Chapter 1. General Provisions. §2. Principals.

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

FOOTNOTE⁶⁹ Supra 3. Approximately thirty minutes into video.

FOOTNOTE⁷⁰ Supra 2. Pages 168-169

was the tension between protecting the American people and upholding civil liberties. Maintaining our values was critical to our position in the world. We could neither lead the free world nor recruit new allies to our cause if we did not practice what we preached. I believed military tribunals struck the right balance, upholding the rule of law while protecting the country.

On March 28, 2002, I could hear excitement in George Tenet's voice. He reported that Pakistani police—with a hand from the FBI and CIA—had launched a takedown operation against several al Qaeda safe houses in the Pakistani city of Faisalabad. They netted more than two dozen operatives, including Abu Zubaydah.

I had been hearing reports about Zubaydah for months. The intelligence community believed he was a trusted associate of Osama bin Laden and a senior recruiter and operator who had run a camp in Afghanistan where some of the 9/11 hijackers had trained. He was suspected of involvement in previous plots to destroy targets in Jordan and blow up Los Angeles International Airport. The CIA believed he was planning to attack America again.

Zubaydah had been severely wounded in a gun battle prior to his arrest. The CIA flew in a top doctor, who saved his life. The Pakistanis then turned him over to our custody. The FBI began questioning Zubaydah, who had clearly been trained on how to resist interrogation. He revealed bits and pieces of information that he thought we already knew. Frighteningly, we didn't know much. For example, we received definitive information about a new alias for Khalid Sheikh Mohammed, who Zubaydah also confirmed had masterminded the 9/11 attacks.

Then Zubaydah stopped answering questions. George Tenet told me interrogators believed Zubaydah had more information to reveal. If he was hiding something more, what could it be? Zubaydah was our best lead to avoid another catastrophic attack. "We need to find out what he knows," I directed the team. "What are our options?"

One option was for the CIA to take over Zubaydah's questioning and

move him to a secure location in another country where the Agency could have total control over his environment. CIA experts drew up a list of interrogation techniques that differed from those Zubaydah had successfully resisted. George assured me all interrogations would be performed by experienced intelligence professionals who had undergone extensive training. Medical personnel would be on-site to guarantee that the detainee was not physically or mentally harmed.

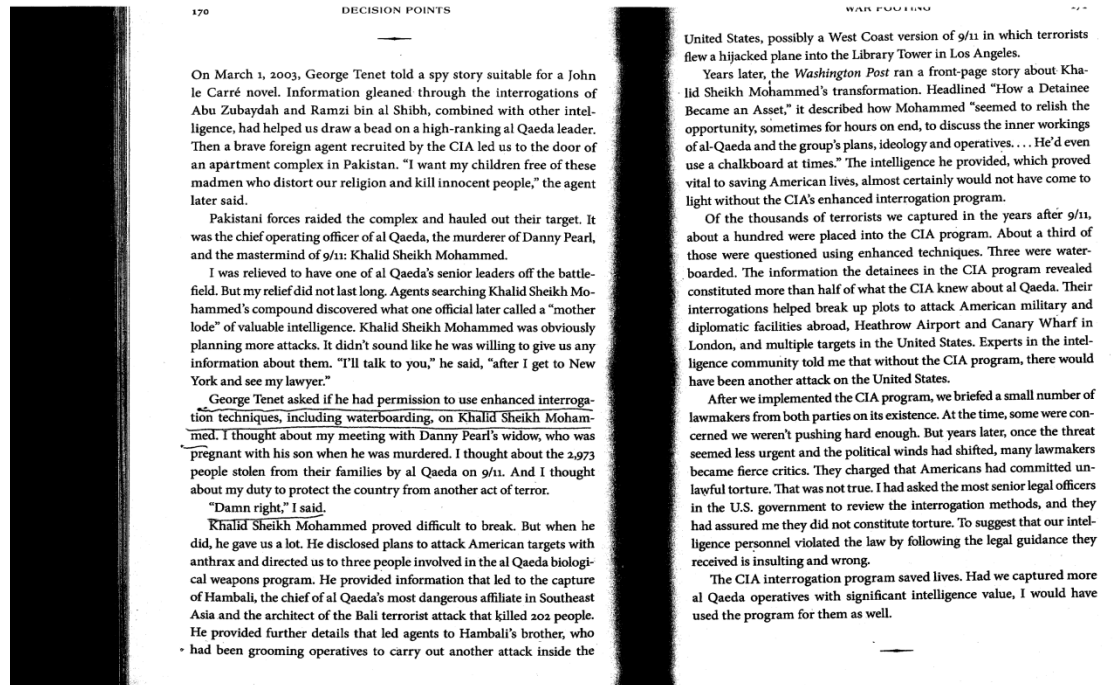
At my direction, Department of Justice and CIA lawyers conducted a careful legal review. They concluded that the enhanced interrogation program complied with the Constitution and all applicable laws, including those that ban torture.

I took a look at the list of techniques. There were two that I felt went too far, even if they were legal. I directed the CIA not to use them. Another technique was waterboarding, a process of simulated drowning. No doubt the procedure was tough, but medical experts assured the CIA that it did no lasting harm.

I knew that an interrogation program this sensitive and controversial would one day become public. When it did, we would open ourselves up to criticism that America had compromised our moral values. I would have preferred that we get the information another way. But the choice between security and values was real. Had I not authorized waterboarding on senior al Qaeda leaders, I would have had to accept a greater risk that the country would be attacked. In the wake of 9/11, that was a risk I was unwilling to take. My most solemn responsibility as president was to protect the country. I approved the use of the interrogation techniques.

The new techniques proved highly effective. Zubaydah revealed large amounts of information on al Qaeda's structure and operations. He also provided leads that helped reveal the location of Ramzi bin al Shibh, the logistical planner of the 9/11 attacks. The Pakistani police picked him up on the first anniversary of 9/11.

Zubaydah later explained to interrogators why he started answering questions again. His understanding of Islam was that he had to resist interrogation only up to a certain point. Waterboarding was the technique that allowed him to reach that threshold, fulfill his religious duty, and then cooperate. "You must do this for all the brothers," he said.



On March 1, 2003, George Tenet told a spy story suitable for a John le Carré novel. Information gleaned through the interrogations of Abu Zubaydah and Ramzi bin al Shibh, combined with other intelligence, had helped us draw a bead on a high-ranking al Qaeda leader. Then a brave foreign agent recruited by the CIA led us to the door of an apartment complex in Pakistan. "I want my children free of these madmen who distort our religion and kill innocent people," the agent later said.

Pakistani forces raided the complex and hauled out their target. It was the chief operating officer of al Qaeda, the murderer of Danny Pearl, and the mastermind of 9/11: Khalid Sheikh Mohammed.

I was relieved to have one of al Qaeda's senior leaders off the battlefield. But my relief did not last long. Agents searching Khalid Sheikh Mohammed's compound discovered what one official later called a "mother lode" of valuable intelligence. Khalid Sheikh Mohammed was obviously planning more attacks. It didn't sound like he was willing to give us any information about them. "I'll talk to you," he said, "after I get to New York and see my lawyer."

George Tenet asked if he had permission to use enhanced interrogation techniques, including waterboarding, on Khalid Sheikh Mohammed. I thought about my meeting with Danny Pearl's widow, who was pregnant with his son when he was murdered. I thought about the 2,973 people stolen from their families by al Qaeda on 9/11. And I thought about my duty to protect the country from another act of terror.

"Damn right," I said.

Khalid Sheikh Mohammed proved difficult to break. But when he did, he gave us a lot. He disclosed plans to attack American targets with anthrax and directed us to three people involved in the al Qaeda biological weapons program. He provided information that led to the capture of Hambali, the chief of al Qaeda's most dangerous affiliate in Southeast Asia and the architect of the Bali terrorist attack that killed 202 people. He provided further details that led agents to Hambali's brother, who had been grooming operatives to carry out another attack inside the

United States, possibly a West Coast version of 9/11 in which terrorists flew a hijacked plane into the Library Tower in Los Angeles.

Years later, the *Washington Post* ran a front-page story about Khalid Sheikh Mohammed's transformation. Headlined "How a Detainee Became an Asset," it described how Mohammed "seemed to relish the opportunity, sometimes for hours on end, to discuss the inner workings of al-Qaeda and the group's plans, ideology and operatives. . . . He'd even use a chalkboard at times." The intelligence he provided, which proved vital to saving American lives, almost certainly would not have come to light without the CIA's enhanced interrogation program.

Of the thousands of terrorists we captured in the years after 9/11, about a hundred were placed into the CIA program. About a third of those were questioned using enhanced techniques. Three were waterboarded. The information the detainees in the CIA program revealed constituted more than half of what the CIA knew about al Qaeda. Their interrogations helped break up plots to attack American military and diplomatic facilities abroad, Heathrow Airport and Canary Wharf in London, and multiple targets in the United States. Experts in the intelligence community told me that without the CIA program, there would have been another attack on the United States.

After we implemented the CIA program, we briefed a small number of lawmakers from both parties on its existence. At the time, some were concerned we weren't pushing hard enough. But years later, once the threat seemed less urgent and the political winds had shifted, many lawmakers became fierce critics. They charged that Americans had committed unlawful torture. That was not true. I had asked the most senior legal officers in the U.S. government to review the interrogation methods, and they had assured me they did not constitute torture. To suggest that our intelligence personnel violated the law by following the legal guidance they received is insulting and wrong.

The CIA interrogation program saved lives. Had we captured more al Qaeda operatives with significant intelligence value, I would have used the program for them as well.

FOOTNOTE⁷² Senate Select Committee Intelligence Committee Study of the CIA's Detention and Interrogation Program Executive Summary, December 3, 2014. Page 67. <http://www.amnestyusa.org/pdfs/sscistudy1.pdf>

Excerpt page 67

... al-Nashiri was interrogated using the CIA's enhanced interrogation techniques, including being subjected to the waterboard at least three times...

FOOTNOTE⁷³ Bush memo, "Humane Treatment of Taliban and al Qaeda Detainees." February 7, 2002. http://www.pegc.us/archive/White_House/bush_memo_20020207_ed.pdf

FOOTNOTE⁷⁴ Text of President Bush's radio address to the nation, March 8, 2008, as released by the White House. <http://www.nytimes.com/2008/03/08/washington/08cnd-ptext.html?ref=washington>

FOOTNOTE⁷⁵ Supra 57. Findings and Conclusions #7. Page 6.

Excerpt:

According to CIA records, no CIA officer, up to and including CIA Directors George Tenet and Porter Goss, briefed the president on the specific CIA enhanced interrogation techniques before April 2006. By that time, 38 of the 39 detainees identified as having been subjected to the CIA's enhanced interrogation techniques had already been subjected to the techniques. The CIA did not inform the president or vice president of the location of CIA detention facilities other than Country (Blocked).

FOOTNOTE⁷⁶ Dick Cheney, Meet the Press, December 14, 2014. <http://www.nbcnews.com/watch/meet-the-press/cheney-on-the-senate-intelligence-report-372288067934>

FOOTNOTE⁷⁷Senate bill S. 3930. The Military Commissions Act of 2006. An act to authorize trial by military commission for violations of the law of war, and for other purposes. Section 8.

<https://www.congress.gov/bill/109th-congress/senate-bill/3930>

Excerpt making ex post facto law:

(Sec. 8) Amends provisions of the Detainee Treatment Act of 2005 relating to the protection of U.S. government personnel engaged in authorized interrogations to: (1) require (currently authorizes) the U.S. government to provide counsel and pay the legal fees of any such personnel with respect to any civil action or criminal prosecution arising out of an authorized interrogation; and (2) make such provisions effective with respect to actions occurring between September 11, 2001, and December 30, 2005.

FOOTNOTE⁷⁸Senate, CIA clash over redactions in interrogation report, The Washington Post, August 5, 2014.

http://www.washingtonpost.com/world/national-security/senate-cia-clash-over-redactions-in-interrogation-report/2014/08/05/2f904f04-1ce0-11e4-ab7b-696c295ddfd1_story.html

FOOTNOTE⁷⁹Dianne Feinstein: CIA interfered with Senate Intelligence Committee, March 11, 2014

<http://www.politico.com/multimedia/video/2014/03/dianne-feinstein-cia-interfered-with-senate-intelligence-committee.html>

FOOTNOTE⁸⁰Supra 23.

FOOTNOTE⁸¹Supra 52.

FOOTNOTE⁸²Michael P. Scharf, *The Torture Lawyers*, 20 Duke Journal of Comparative & International Law 389-412 (2010)

<http://scholarship.law.duke.edu/djCIL/vol20/iss3/4>

Excerpt:

Some truths are inconvenient; some are stranger than fiction. This one might be characterized as both. This is the true story of how, in the months following the attacks of 9/11, the legal policy of the U.S. government with respect to the war on terrorism was hijacked and dictated by a cabal of four highly placed government lawyers who called themselves the “War Council.”

FOOTNOTE⁸³JACK GOLDSMITH, *THE TERROR PRESIDENCY: LAW AND JUDGMENT INSIDE THE BUSH ADMINISTRATION*. W.W. Norton & Company, New York (2007). Pages 22-23.

FOOTNOTE⁸⁴Model Grand Jury Charge section, item 3.

<http://cldc.org/wp-content/uploads/2012/10/model-gj-charge.pdf>

Excerpt item 3.

3. The Grand Jury is an independent body and does not belong to any branch of the government. As members of the Grand Jury, you, in a very real sense, stand between the government and the person being investigated by the government. A federal grand jury must never be made an instrument of private prejudice, vengeance, or malice. It is your duty to see to it that indictments are returned only against those who you find probable cause to believe are guilty and to see to it that the innocent are not compelled to go to trial.

FOOTNOTE⁸⁵Supra 23. Conclusion. Page 201

Excerpt”

(U) Based on the results of our investigation, we concluded that former AAG Jay S. Bybee and former Deputy AAG John Yoo failed to meet their responsibilities under D.C. Rule of Professional Conduct 1.1 to provide competent representation to their client, the United States, and failed to fulfill their duty to exercise independent legal judgment and to render candid legal advice, pursuant to D.C. Rule of Professional Conduct 2.1. In violating D.C. Rules 1.1 and 2.1, Bybee and Yoo committed professional misconduct. Pursuant to Department policy, we notify their respective state bars of our findings.

FOOTNOTE⁸⁶This Week' Transcript: Former Vice President Dick Cheney February 14, 2010.
<http://abcnews.go.com/ThisWeek/week-transcript-vice-president-dick-cheney/story?id=9818034>

Excerpt from transcript: JONATHAN KARL is interviewer, CHENEY is Vice President Dick Cheney.

KARL: ... waterboarding, clearly, what was your...

CHENEY: I was a big supporter of waterboarding. I was a big supporter of the enhanced interrogation techniques that...

KARL: And you opposed the administration's actions of doing away with waterboarding?

CHENEY: Yes.

FOOTNOTE⁸⁷ Roger Roots, *If It's Not A Runaway, It's Not A Real Grand Jury*, Creighton Law Review, Vol. 33, No. 4 1999-2000, 821.
<http://www.constitution.org/lrev/roots/runaway.htm>

Excerpt:

A "runaway" grand jury, loosely defined as a grand jury which resists the accusatory choices of a government prosecutor, has been virtually eliminated by modern criminal procedure. Today's "runaway" grand jury is in fact the common law grand jury of the past. Prior to the emergence of governmental prosecution as the standard model of American criminal justice, all grand juries were in fact "runaways," according to the definition of modern times; they operated as completely independent, self-directing bodies of inquisitors, with power to pursue unlawful conduct to its very source, including the government itself.

FOOTNOTE⁸⁸Federal Rules of Criminal Procedures, TITLE 18, APPENDIX—RULES OF CRIMINAL PROCEDURE, NOTES OF ADVISORY COMMITTEE ON RULES—1944.**Rule 7.The Indictment and the Information.**
Note 4.explaining Subdivision (a) of the same Rule (stating that grand jury "presentments," or non-government-approved accusations, "are obsolete, at least as concerns the Federal courts"). Page 42
<http://www.gpo.gov/fdsys/pkg/USCODE-2011-title18/pdf/USCODE-2011-title18-app-federalru-dup1.pdf>

Excerpt Note 4.

4. Presentment is not included as an additional type of formal accusation, since presentments as a method of instituting prosecutions are obsolete, at least as concerns the Federal courts.

This document is only available through Yale Law Journal or JSTOR or other legal libraries that require a subscription. Below is an excerpt from the document concerning presentments.

A presentment is a charge the grand jury brings on its own initiative. In contrast, an indictment is almost always first drawn up by a prosecutor and then submitted to the grand jury for approval. In federal courts, a presentment cannot by itself initiate a prosecution. To begin a prosecution, the prosecutor must sign the document.⁷ The act of signing, which is wholly within the Executive's discretion, transforms the presentment into an indictment. While a presentment is capable of serving as a formal charging document, its main function is to publicize. The Federal Rules of Criminal Procedure, however, prevent the grand jury from publicizing its conclusions by giving the judge discretion to seal documents such as presentments.

Notes in Presentment Explanation Box.

1. United States v. Calandra (No. 72-734), 414 U.S. 338, Argued: October 11, 1973, Decided: January 8, 1974. http://www.law.cornell.edu/supremecourt/text/414/338#writing-USSC_CR_0414_0338_ZO.
2. U.S. Supreme Court, United States V. Williams, 504 U.S. 36 (1992) 504 U.S. 36 United States, Petitioner V. John H. Williams, Jr. Certiorari To The United States Court Of Appeals For The Tenth Circuit, No. 90-1972, Argued January 22, 1992, Decided May 4, 1992. <http://www.law.cornell.edu/supct/html/90-1972.ZO.html>
3. Federal Rules of Criminal Procedure, Rule 7(c)(1). Page 42 <http://www.gpo.gov/fdsys/pkg/USCODE-2011-title18/pdf/USCODE-2011-title18-app-federalru-dup1.pdf>
4. Federal Rules of Criminal Procedure Title I. APPLICABILITY. Rule 1. Scope; (b) Definitions. The following definitions apply to these rules: (1) "Attorney for the government" means: (D) ***any other attorney authorized by law to conduct proceedings under these rules as a prosecutor.*** Page 15. <http://www.gpo.gov/fdsys/pkg/USCODE-2011-title18/pdf/USCODE-2011-title18-app-federalru-dup1.pdf>

Note that the judge's authority to authorize a special prosecutor is given under "these rules" by Federal Rules of Criminal Procedure, Rule 42. Supra 13

FOOTNOTE⁹⁰ Michael John Garcia, *International Law and Agreements: Their Effect upon U.S. Law*. Congressional Research Service, January 23, 2014. <https://www.fas.org/sgp/crs/misc/RL32528.pdf>

Excerpt:

This report provides an introduction to the roles that international law and agreements play in the United States. International law is derived from two primary sources—international agreements and customary practice. Under the U.S. legal system, international agreements can be entered into by means of a treaty or an executive agreement. The Constitution allocates primary responsibility for entering into such agreements to the executive branch, but Congress also plays an essential role. First, in order for a treaty (but not an executive agreement) to become binding upon the United States, the Senate must provide its advice and consent to treaty ratification by a two-thirds majority. Secondly, Congress may authorize congressional-executive agreements. Thirdly, many treaties and executive agreements are not self-executing, meaning that implementing legislation is required to provide U.S. bodies with the domestic legal authority necessary to enforce and comply with an international agreement's provisions.

FOOTNOTE⁹¹ U.S. Constitution, Article VI, clause 2.

Article 6, Clause 2

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

FOOTNOTE⁹²MeeraRajnikantShah, *Unnecessary Complications For Basic Obligations: Medellín V. Texas And Common Article 3*. 2010. Columbia Human Rights Law Review, http://www3.law.columbia.edu/hrlr/hrlr_journal/41.3/Shah.pdf

Excerpt:

*Common Article 3 of the Geneva Conventions has provided the minimum standard of humane treatment in times of armed conflict since at least 1949 when the provision was codified in all four of the Conventions. The obligations imposed by the Geneva Conventions on the United States and the protections guaranteed by Common Article 3, in particular, have become a focal point of legal debate since the United States initiated the war in Afghanistan and the Bush administration declared a global “war on terror.” Whether Common Article 3 is self-executing may have consequences for what recourse detainees may have in U.S. courts. Though the Obama administration has issued an Executive Order reinstating Common Article 3 as a minimum standard for detainee treatment, the order fails to resolve the questions raised by Medellín as to whether a particular treaty provision is self-executing or not.

FOOTNOTE⁹³ USC Title 18, Part I, Chapter 7, Assault. §114
<http://www.gpo.gov/fdsys/pkg/USCODE-2011-title18/pdf/USCODE-2011-title18-partI-chap7-sec114.pdf>

§114. Maiming within maritime and territorial jurisdiction

Whoever, within the special maritime and territorial jurisdiction of the United States, and with **intent to torture (as defined in section 2340)**, maim, or disfigure, cuts, bites, or slits the nose, ear, or lip, or cuts out or disables the tongue, or puts out or destroys an eye, or cuts off or disables a limb or any member of another person; or

Whoever, within the special maritime and territorial jurisdiction of the United States, and with like intent, throws or pours upon another person, any scalding water, corrosive acid, or caustic substance—

Shall be fined under this title or imprisoned not more than twenty years, or both.

FOOTNOTE⁹⁴ USC Title 18, Part I Chapter 113C, Section 2340.

http://psm.du.edu/media/documents/us_regulations/federal_law/us_law_federal%20torture_statute.pdf

§2340. Definitions

As used in this chapter—

- (1) “torture” means an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control;
- (2) “severe mental pain or suffering” means the prolonged mental harm caused by or resulting from—
 - (A) the intentional infliction or threatened infliction of severe physical pain or suffering;
 - (B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;
 - (C) the threat of imminent death; or
 - (D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality; and
- (3) “United States” means the several States of the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States.

FOOTNOTE⁹⁵ International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention)*, 12 August 1949, 75 UNTS 135, available at: <http://www.refworld.org/docid/3ae6b36c8.html>

Geneva Convention relative to the Treatment of Prisoners of War
Adopted on 12 August 1949 by the Diplomatic Conference for the Establishment of
International Conventions for the Protection of Victims of War, held in Geneva
from 21 April to 12 August, 1949
entry into force 21 October 1950

Article 3

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) Taking of hostages;
- (c) Outrages upon personal dignity, in particular, humiliating and degrading treatment;
- (d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

2. The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer

its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the Conflict.

FOOTNOTE⁹⁶Universal Declaration of Human Rights, adopted by the UN General Assembly on 10 December 1948. <http://www.un.org/en/documents/udhr/index.shtml#a5>

FOOTNOTE⁹⁷Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. December 10, 1984
http://www.un.org/ga/search/view_doc.asp?symbol=a/res/39/46

FOOTNOTE⁹⁸International Covenant on Civil and Political Rights. Adopted by the General Assembly of the United Nations on 19 December 1966. Article 7.
<https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf>

FOOTNOTE⁹⁹European Convention for the Protection of Human Rights and Fundamental Freedoms, Section I, Article 3.
http://www.echr.coe.int/Documents/Convention_ENG.pdf

FOOTNOTE¹⁰⁰ American Convention On Human Rights "Pact Of San Jose, Costa Rica". Article 5.
https://www.oas.org/dil/access_to_information_American_Convention_on_Human_Rights.pdf

FOOTNOTE¹⁰¹ USC. CONSPIRACY. Title 18– Part I, Chapter 19, section 373 - Solicitation to commit a crime of violence.
<http://www.gpo.gov/fdsys/pkg/USCODE-2011-title18/pdf/USCODE-2011-title18-partI-chap19-sec373.pdf>

Excerpt:

§373. Solicitation to commit a crime of violence

(a) Whoever, with intent that another person engage in conduct constituting a felony that has as an element the use, attempted use, or threatened use of physical force against property or against the person of another in violation of the laws of the United States, and under circumstances strongly corroborative of that intent, solicits, commands, induces, or otherwise endeavors to persuade such other person to engage in such conduct, shall be imprisoned not more than one-half the maximum term of imprisonment or (notwithstanding section 3571) fined not more than one-half of the maximum fine prescribed for the punishment of the crime solicited, or both; or if the crime solicited is punishable by life imprisonment or death, shall be imprisoned for not more than twenty years.

FOOTNOTE¹⁰² USC MISPRISION Title 18 - CRIMES AND CRIMINAL PROCEDURE, PART I – CRIMES, CHAPTER 1 - GENERAL PROVISIONS, Sec. 4.

<http://www.gpo.gov/fdsys/pkg/USCODE-2011-title18/pdf/USCODE-2011-title18-partI-chap1-sec4.pdf>

§ 4. Misprision of felony

Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.

FOOTNOTE¹⁰³ Ibid Section 3 – Accessory after the fact.

<http://www.gpo.gov/fdsys/pkg/USCODE-2011-title18/pdf/USCODE-2011-title18-partI-chap1-sec3.pdf>

§ 3. Accessory after the fact. Whoever, knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact.

FOOTNOTE¹⁰⁴ Author letter to Eric H, Holder Jr. Attorney General of the United States, May 30, 2014.



Holder Whitehouse
Graham 5.29.14 and

FOOTNOTE¹⁰⁵ Letter from U.S Department of Justice, Criminal Division, by Correspondence Management Staff, August 11, 2014 to Author.



Letter from Dept of
Justice 8.11.14.pdf

FOOTNOTE¹⁰⁶ Author letter to Senator Lindsey Graham and Senator Sheldon Whitehouse, May 30, 2014.



Holder Whitehouse
Graham 5.29.14 and

FOOTNOTE¹⁰⁷ Author letter to Representative John Boehner, June 26, 2014.



Lettre John Baoener
6.26.14.pdf

FOOTNOTE¹⁰⁸ Author letter to FBI Director James Comey, with cc Senators Lindsay and Whitehouse, January 27, 2015



James Comey Letter
1.27.15.pdf



James Comey Cert
Mail Receipt 1.27.15.

FOOTNOTE¹⁰⁹ Author letter to Attorney General Loretta Lynch. May 21, 2015. Copies to Senator Lindsey Graham, Senator Sheldon Whitehouse, FBI Director James B. Comey.



Letter to Loretta
Lynch, 5.21.15.pdf

FOOTNOTE¹¹⁰ Update on the Treatment of Conflict-Related Detainees in Afghan Custody: Accountability and Implementation of Presidential Decree 129, United Nations Assistance Mission in Afghanistan Office of the United Nations High Commissioner for Human Rights, February 2015, Kabul, Afghanistan. Pages 70 and 71. <http://docslide.us/documents/unama-detention-report-2015.html>

Excerpt:

Treatment of Detainees by International Military Forces

.....Of the 31 detainees initially detained at an international military facility, UNAMA found sufficiently credible and reliable evidence of two²¹⁴ detainees experiencing torture and seven²¹⁵ being subjected to ill-treatment while in international forces' custody and prior to being handed over to Afghan forces. Three of these detainees were children under 18 years old at the time of arrest.²¹⁶

Of the two detainees who provided credible and reliable accounts of torture, one was captured and interrogated in Maydan Wardak province in September 2013, while the other was captured and detained in Baghlan province in October 2013. The described forms of torture included repeated beatings and threats to kill during interrogation with detainees accused of being Taliban members.

Of the seven detainees who were subjected to ill-treatment, two detainees reported being subjected to sleep deprivation in the US-run DFIP, with one detainee claiming he received no food and only water for days.²¹⁷ Of the three detainees arrested and detained in Logar, one described being beaten at arrest and two were put in stress positions while detained at the US Sheng Camp in Logar; two detainees stated being ill-treated at the moment of arrest, one by an Afghan interpreter and the other by ANA members in the presence of international military forces. The described forms of ill-treatment included multiple slaps and kicks.

According to the Resolute Support mission, the allegations of torture and ill-treatment have been the subject of several joint and national inquiries and investigations by ISAF, the Government and US authorities, and no evidence to link the allegations with international military forces was found.²¹⁸

UNAMA also found that five detainees who had been arrested by the Khost Protection Forces (KPF) together with international military forces and detained at the US military base in Khost (CIA Base Camp Chapman) were subjected to ill-treatment by the US-created and funded local security force.²¹⁹

FOOTNOTE¹¹¹*The disappeared: Chicago police detain Americans at abuse-laden 'black site*, The Guardian, February 24, 2015. <http://www.theguardian.com/us-news/2015/feb/24/chicago-police-detain-americans-black-site>

Excerpt:

The [Chicago](#) police department operates an off-the-books interrogation compound, rendering Americans unable to be found by family or attorneys while locked inside what lawyers say is the domestic equivalent of a CIA black site.

Held for hours at secret Chicago 'black site': 'You're a hostage. It's kidnapping'

Read more

The facility, a nondescript warehouse on Chicago's west side known as Homan Square, has long been the scene of secretive work by special police units. Interviews with local attorneys and one protester who spent the better part of a day shackled in [Homan Square](#) describe operations that deny access to basic constitutional rights.

[Alleged police practices at Homan Square](#), according to those familiar with the facility who spoke out to the Guardian after [its investigation into Chicago police abuse](#), include:

- Keeping arrestees out of official booking databases.
- Beating by police, resulting in head wounds.
- Shackling for prolonged periods.
- Denying attorneys access to the "secure" facility.
- Holding people without legal counsel for between 12 and 24 hours, including people as young as 15.

At least one man was found unresponsive in a Homan Square "interview room" and later pronounced dead.

FOOTNOTE¹¹²Kara Brandeisky and SisiWei, *Timeline: The Tortured History of the Senate's Torture Report*. Pro Publica, April 8, 2014. <http://projects.propublica.org/graphics/torture-report>.

FOOTNOTE¹¹³Mark Mazzettijan,C.I.A. *Report Found Value of Brutal Interrogation Was Inflated*. New York Times, January 20, 2015
http://www.nytimes.com/2015/01/21/world/cia-report-found-value-of-brutal-interrogation-was-inflated.html?_r=1

Excerpt:

WASHINGTON — Years before the release in December of a Senate Intelligence Committee report detailing the [C.I.A.](#)'s use of torture and deceit in its detention program, an internal review by the agency found that the C.I.A. had repeatedly overstated the value of intelligence gained during the brutal interrogations of some of its detainees.

The internal report, more than 1,000 pages in length, came to be known as the Panetta Review after [Leon E. Panetta](#), who, as the C.I.A.'s director, ordered that it be done in 2009. At least one of its authors won an agency award for her work, according to a recent briefing that the agency's inspector general gave to staff members of the Senate Intelligence Committee.

New details of the Panetta Review, presented last month by the C.I.A. inspector general in a briefing to the committee, came as [Senator Richard M. Burr of North Carolina, the new chairman of the Intelligence Committee, wrote to President Obama with an odd request: He wants the committee's report back.](#)

FOOTNOTE¹¹⁴List of assassinated American politicians, Wikipedia.
http://en.wikipedia.org/wiki/List_of_assassinated_American_politicians

FOOTNOTE¹¹⁵Supra 42.

FOOTNOTE¹¹⁶*Inquiry Into The Treatment Of Detainees In U.S. Custody Report Of The Committee On Armed Services*, United States Senate, November 20, 2008.
<https://www.gpo.gov/fdsys/pkg/CPRT-110SPRT48761/pdf/CPRT-110SPRT48761.pdf>

FOOTNOTE¹¹⁷Supra 72. Page 16, note 33.

Excerpt:

³³For example, the Committee did not include among the 26 individuals wrongfully detained ...Arsala Khan, who suffered disturbing hallucinations after 56 hours of standing sleep deprivation, after which the CIA determined he “does not appear to be the subject involved in...current plans or activities against U.S. personnel or facilities.

FOOTNOTE¹¹⁸ Ibid. Page 54.

OnNovember, REDACTED 2002,[CIAOFFICER1] ordered that Gu IRahman be shackled to the wall of his cell in a position that required the detainee to rest on the bare concrete floor. Rahman was wearing only a sweatshirt, as [CIA OFFICER 1]had ordered that Rahman's clothing be removed when he had been judged to be uncooperateduring an earlierinterrogation.The next day, the guards found Gul Rahman's dead body. Aninternal CIA review and autopsy assessed that Rahman likely died from hypothermia...

FOOTNOTE¹¹⁹Ibid Page 55. Note 277

Excerpt

On February 10, 2006, however, the CIA Executive Director K.B. Foggo notified [CIA OFFICER 1] that he intended to take no disciplinary action against him. In his memo describing that decision, the executive director stated: "While not condoning your actions, it is imperative, in my view, that they... be judged within the operational context that existed at the time of Rahman's detention.

FOOTNOTE¹²⁰Ibid Page 49-50. Note 240

Excerpt:

...One senior interrogator, told the CIA OIG that "literally, a detainee could go for days or weeks without anyone looking at him," and that his team found one detainee who, "as far as we could determine, had been chained to the wall in a standing position for 17 days." According to the CIA interrogator, some of the CIA detainees at DETENTION SITE COBALT "literally looked like a dog that had been kenneled."...

FOOTNOTE¹²¹Jacob Alderdice, *Recap of PLAP Solitary Confinement Panel*, Harvard Civil Rights – Civil Liberties Law Review. <http://harvardcrcl.org/recap-of-plap-solitary-confinement-panel/>

Excerpt:

Professor Lobel introduced a recurring motif for the night: the shocking nature of solitary confinement being met with judicial and institutional apathy. **80,000 people are in solitary confinement nationwide**, 25,000 of them in Supermax prisons, and 1,000 of them in Pelican Bay State Prison alone, a California Supermax. The Center for Constitutional Rights filed a lawsuit last year against the California Department of Corrections, alleging that **the solitary confinement practices of Pelican Bay violate the 8th Amendment's prohibition of "cruel and unusual punishment,"** and the 14th Amendment's guarantees of due process.

FOOTNOTE¹²²Center for Constitutional Rights, *TORTURE: The Use Of Solitary Confinement In US Prisons*. <http://ccrjustice.org/files/CCR-Factsheet-Solitary-Confinement.pdf>

Excerpt:

"I feel dead. It's been thirteen years since I have shaken someone's hand and I fear I'll forget the feel of human contact."- Luis Esquivel, a CCR Plaintiff who has spent 13 years in solitary confinement.

FOOTNOTE¹²³Herman Reyes, *The Worst Scars Are In The Mind: Psychological Torture*. International Review of the Red Cross. Volume 89 Number 867 September 2007. page 607. <https://www.icrc.org/eng/resources/documents/article/review/review-867-p591.htm>

Excerpt:

The effects of solitary confinement have been widely documented. According to Grassian, in severe cases:

[T]he mental disturbances among prisoners so detained ... [include] ... an Agitated confusional state, characteristics of a florid delirium, [with] severe paranoid and hallucinatory features and also by intense agitation and random, impulsive, often self-directed violence.'

FOOTNOTE¹²⁴ Supra 72. Page 42.

The "aggressive phase of interrogation" continued until August 23, 2002. Over the course of the entire 20 day "aggressive phase of interrogation," Abu Zubaydah spent a total of 266 hours (11 days, 2 hours) in the large (coffin size) confinement box and 29 hours in a small confinement box, which had a width of 21 inches, a depth of 2.5 feet, and a height of 2.5 feet. The CIA interrogators told Abu Zubaydah that the only way he would leave the facility was in the coffin-shaped confinement box.

FOOTNOTE¹²⁵ Ibid., page 498

Excerpt:

There are multiple descriptions of CIA detainees being forced to stand with their arms shackled above their heads for extended periods of time at the CIA's DETENTION SITE COBALT. "In one example, a U.S. military legal advisor observed the technique known as "hanging," involving handcuffing one or both wrists to an overhead horizontal bar. The legal advisor noted that one detainee was apparently left hanging for 22 hours each day for two consecutive days to "break" his resistance.

FOOTNOTE¹²⁶ Supra 57. #3. Page 4

Excerpt:

CIA officers also threatened at least three detainees with harm to their families—to include threats to harm the children of a detainee, threats to sexually abuse the mother of a detainee, and a threat to "cut [a detainee's] mother's throat.

FOOTNOTE¹²⁷ Ibid, #3. Page 3.

Sleep deprivation involved keeping detainees awake for up to 180 hours, usually standing or in stress positions, at times with their hands shackled above their heads. At least five detainees experienced disturbing hallucinations during prolonged sleep deprivation and, in at least two of those cases, the CIA nonetheless continued the sleep deprivation.

FOOTNOTE¹²⁸ Ibid. #3. Page 4.

The CIA led several detainees to believe they would never be allowed to leave CIA custody alive, suggesting to one detainee that he would only leave in a coffin-shaped box.

FOOTNOTE¹²⁹ Supra 72, Page 11

Excerpt:

On September 17, 2001, six days after the terrorist attacks of September 11, 2001, President George W. Bush signed a covert action Memorandum of Notification (MON) to authorize the director of central intelligence (DCI) to "undertake operations designed to capture and detain persons who pose a continuing, serious threat of violence or death to U.S. persons and interests or who are planning terrorist activities." Although the CIA had previously been provided limited authorities to detain specific, named individuals pending the issuance of formal criminal charges, the MON provided unprecedented authorities, granting the CIA significant discretion in determining whom to detain, the factual basis for the detention, and the length of the detention. The MON made no reference to interrogations or interrogation techniques.

FOOTNOTE¹³⁰ Supra 51. Article 6.

Article 6

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.
2. Such State shall immediately make a preliminary inquiry into the facts.
3. Any person in custody pursuant to paragraph I of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.
4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

FOOTNOTE¹³¹ President George W. Bush, *Memorandum for the Vice President, the Secretary of State, the Secretary of Defense, the Attorney General, chief of staff to the President, Director of Central Intelligence, Assistant to the President for National Security Affairs, and Chairman of the Joint Chiefs of Staff, re. Humane Treatment of al Qaeda and Taliban Detainees*, February 7, 2002 , http://www.pegc.us/archive/White_House/bush_memo_20020207_ed.pdf

Excerpt:

I also accept the legal conclusion of the Department of Justice and determine that common Article 3 of Geneva does not apply to either al Qaeda or Taliban detainees, because, among other reasons, the relevant conflicts are international in scope and common Article 3 applies only to "armed conflict not of an international character.

FOOTNOTE¹³² Supra 2. Pages 168,169

FOOTNOTE¹³³ Geoge Tenent, *At the Center of the Storm*, Harper Collins Publishers, 2007. Pages 366, 367.

FOOTNOTE¹³⁴ Supra 57, #6. Page 6..

Excerpt:

A year after being briefed on the program, the House and Senate Conference Committee considering the Fiscal Year 2008 Intelligence Authorization bill voted to limit the CIA to using only interrogation techniques authorized by the Army Field Manual. That legislation was approved by the Senate and the House of Representatives in February 2008, and was vetoed by President Bush on March 8, 2008.

FOOTNOTE¹³⁵ Note to reader. A complete copy of the grand jury presentment can be found in the appendix of this book.

FOOTNOTE¹³⁶ Francis Boyle, *Lawyers Against the War*, Letter to Canadian Prime Minister Stephen Harper, August 25, 2011.

http://www.lawyersagainsthewar.org/letters/LAW_letter_re_George_Bush_20110825.pdf

FOOTNOTE¹³⁷ David Corn, *Obama and GOPers Worked Together to Kill Bush Torture Probe*, Mother Jones, December 1, 2010.

<http://www.motherjones.com/politics/2010/12/wikileaks-cable-obama-quashed-torture-investigation>

FOOTNOTE¹³⁸ Andy Worthington, *Wikileaks: Bush and Obama Pressured Spain, Germany, not to Investigate U.S. Torture*, The World Can't Wait.

<http://www.world.C.antwait.net/index.php/wikileaks/6847-wikileaks-bush-and-obama-pressured-spain-germany-not-to-investigate-us-torture>

FOOTNOTE¹³⁹ Frank A. Hart. *Yamashita, Nuremberg And Vietnam: Command Responsibility Reappraised*. International Law Studies, volume 62.

<https://www.usnwc.edu/getattachment/897939db-bc68-4032-8783-48f2eb68024a/Yamashita.-Nuremberg.-and.-Vietnam--Command-Respons.aspx>

FOOTNOTE¹⁴⁰ Katherine Gallagher, Matt Eisenbrandt. Center for Constitutional Rights and Canadian Centre for International Justice, Letter to United Nations Committee against Torture, July 17,

2014. <http://ccrjustice.org/sites/default/files/assets/17%20July%202014%20Final%20Reply%20UN%20CAT%20CCR%20CCIJ.pdf>

FOOTNOTE¹⁴¹ Yvonne Ridley, *Bush Convicted of War Crimes in Absentia*, Foreign Policy Journal, May 12, 2012

<http://www.foreignpolicyjournal.com/2012/05/12/bush-convicted-of-war-crimes-in-absentia/>

FOOTNOTE¹⁴² *Supra* 57. #6. Page 6.

Excerpt:

After multiple senators had been critical of the program and written letters expressing concerns to CIA Director Michael Hayden, Director Hayden nonetheless told a meeting of foreign ambassadors to the United States that every Committee member was "fully briefed," and that "[t]his is not CIA's program. This is not the President's program. This is America's program."

FOOTNOTE¹⁴⁴ US Constitution, Amendment VI, Rights to Fair Trial

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the

witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence .

FOOTNOTE¹⁴⁵18 USC 3286 (b) No Limitation. <https://www.law.cornell.edu/uscode/text/18/3286>

§ 3286. Extension of statute of limitation for certain terrorism offenses

(a) EIGHT-YEAR LIMITATION.—Notwithstanding section 3282, no person shall be prosecuted, tried, or punished for any noncapital offense involving a violation of any provision listed in section 2332b(g)(5)(B), or a violation of section 112, 351(e), 1361, or 1751(e) of this title, or section 46504, 46505, or 46506 of title 49, unless the indictment is found or the information is instituted within 8 years after the offense was committed. Notwithstanding the preceding sentence, offenses listed in section 3295 are subject to the statute of limitations set forth in that section.

(b) NO LIMITATION.—Notwithstanding any other law, an indictment may be found or an information instituted at any time without limitation for any offense listed in section 2332b(g)(5)(B), if the commission of such offense resulted in, or created a foreseeable risk of, death or serious bodily injury to another person.

FOOTNOTE¹⁴⁶Adam Goldman and Julie Tate, *Decoding The Secret Black Sites On The Senate's report On The CIA Interrogation Program*, Washington Post, December 9, 2014. <http://www.washingtonpost.com/blogs/worldviews/wp/2014/12/09/decoding-the-secret-black-sites-on-the-senates-report-on-the-cia-interrogation-program/?postshare=3411418143614830>.

FOOTNOTE¹⁴⁷*Globalizing Torture CIA Secret Detention And Extraordinary Rendition*, Open Society Justice Initiative, 2013 <http://www.opensocietyfoundations.org/sites/default/files/globalizing-torture-20120205.pdf>

FOOTNOTE¹⁴⁸ Huffington Post. *More Than A Quarter Of The World's Countries Helped The CIA Run Its Torture Program*. http://www.huffingtonpost.com/2014/12/09/cia-torture-countries_n_6297832.html

FOOTNOTE¹⁴⁹ Ibid.

FOOTNOTE¹⁵⁰ Stephen Grey, *America's gulag*. New Statesman, 17 May, 2004. <http://www.newstatesman.com/node/159775>

Excerpt:

The former CIA agent Bob Baer, who worked covertly for the US across the Middle East until the mid-1990s, describes how each Middle Eastern country has a purpose in the archipelago. He says: "If you want a serious interrogation, you send a prisoner to Jordan. If you want them to be tortured, you send them to Syria. If you want someone to disappear - never to see them again - you send them to Egypt."

FOOTNOTE¹⁵¹ Michael Di Paolo, *The Lucrative Bounty Program*, New York Law School, February 5, 2014. <http://www.detainedbyus.org/the-lucrative-bounty-program/>

Excerpt:

Turning over individuals to U.S. troops was a lucrative business venture for bounty hunters, the Pakistani and Afghan governments, and civilian reward seekers who could convince the U.S. that the person they had captured or were making accusations against, was connected to Al-Qaeda, the Taliban or another terrorist group. The profitability of the practice was acknowledged by

former President of Pakistan Pervez Musharraf who wrote in his memoir *In the Line of Fire*, “We have captured 689 [enemy combatants] and handed over 369 to the United States. We have earned bounties totaling millions of dollars.”[[]

FOOTNOTE¹⁵²Supra 57. #15. Page 12.

Excerpt:

The CIA never conducted a comprehensive audit or developed a complete and accurate list of the individuals it had detained or subjected to its enhanced interrogation techniques. CIA statements to the Committee and later to the public that the CIA detained fewer than 100 individuals, and that less than a third of those 100 detainees were subjected to the CIA's enhanced interrogation techniques, were inaccurate. The Committee's review of CIA records determined that the CIA detained at least 119 individuals, of whom at least 39 were subjected to the CIA's enhanced interrogation techniques.

FOOTNOTE¹⁵³New York Times, *The Guantanamo Docket*.
<http://projects.nytimes.com/guantanamo/detainees>

Reference lists detainees by name, country of origin and status

FOOTNOTE¹⁵⁴Text of President Bush's 2003 State of the Union Address Jan. 28, 2003 Courtesy eMediaMillWorks, The Washington Post.
http://www.washingtonpost.com/wp-srv/onpolitics/transcripts/bushtext_012803.html

Excerpt:

To date we have arrested or otherwise dealt with many key commanders of Al Qaeda. They include a man who directed logistics and funding for the September the 11th attacks, the chief of Al Qaeda operations in the Persian Gulf who planned the bombings of our embassies in East Africa and the USS Cole, an Al Qaeda operations chief from Southeast Asia, a former director of Al Qaeda's training camps in Afghanistan, a key Al Qaeda operative in Europe, a major Al Qaeda leader in Yemen.

All told, more than 3,000 suspected terrorists have been arrested in many countries.

And many others have met a different fate. Let's put it this way: They are no longer a problem to the United States and our friends and allies.

FOOTNOTE¹⁵⁵ Report of the International Committee of the Red Cross (ICRC) On The Treatment by Coalition Forces of Prisoners of War and Other Protected Persons by The Geneva Conventions in Iraq During Arrest, Internment and Interrogation. February 2004. Page 8.
<http://www.derechos.org/nizkor/us/doc/icrc-prisoner-report-feb-2004.pdf>

Excerpt: (CF stands for coalition forces.)

7. Certain CF military intelligence officers told the ICRC that in their estimate between 70% and 90% of the persons deprived of their liberty in Iraq had been arrested by mistake. They also attributed the brutality of some arrests to the lack of proper supervision of battle group units.

FOOTNOTE¹⁵⁶Tim Golden, New York Times, *In U.S. Report, Brutal Details Of 2 Afghan Inmates' Deaths*, May 20, 2005 <http://www.nytimes.com/2005/05/20/international/asia/20abuse.html?pagewanted=all&r=0>

FOOTNOTE¹⁵⁷ Supra 3.

FOOTNOTE¹⁵⁸ HEADQUARTERS EIGHTH ARMY, United States Army, Office of Staff Judge Advocate, Yokohama, Japan

15 October 1948, UNITED STATES OF AMERICA VS SEITARO HATA, YUKIO ASANO, TAKEO KITA, HIDEJI NAKAMURA

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB4QFjAAahUKEwj_t9O61-rGAhXMpYgKHOaAAIY&url=http%3A%2F%2Fwww.mansell.com%2Fpow_resources%2Fcamplists%2Ffukuoka%2Ffuku_3_tobata%2FIMTFE_Case53_HATA_ASANO_KITA_%2520NAKAMURA_FUK-03.docx&ei=I2ytVb-aL8zLogSGgIKwCA&usq=AFQjCNFz0Z_acJQnGnpwGYb0TBx42jwrXA&bvm=bv.98197061,d.cGU&cad=rja

FOOTNOTE¹⁵⁹ "Interrogation", Washington Post, front page, January 21, 1968.

<http://www.washingtonpost.com/wp-dyn/content/article/2006/10/04/AR2006100402005.html>



FOOTNOTE¹⁶⁰ 10 U.S. Code § 818 - Art. 18. Jurisdiction of general courts-martial

FOOTNOTE¹⁶¹ United States of America, Plaintiff-appellee, v. Carl Lee, Defendant-appellant, 744 F.2d 1124 (5th Cir. 1984), <http://law.justia.com/cases/federal/appellate-courts/F2/744/1124/459598/>

Around The Nation; Texas Sheriff Is Guilty of Torturing Prisoners,” The New York Times, Mar. 20, 1983.
<http://www.nytimes.com/1983/03/20/us/around-the-nation-texas-sheriff-is-guilty-of-torturing-prisoners.html>
<http://www.washingtonpost.com/wp-dyn/content/article/2007/11/02/AR2007110201170.html>

Excerpt from NY Times:

HOUSTON, March 19— The Sheriff of San Jacinto County has resigned after admitting he operated a marijuana trap on heavily traveled U.S. 59 as well as subjected jail inmates to water torture to gain confessions and testimony.

Excerpt from Washington Post:

In 1983, federal prosecutors charged a Texas sheriff and three of his deputies with violating prisoners' civil rights by forcing confessions. The complaint alleged that the officers conspired to "subject prisoners to a suffocating water torture ordeal in order to coerce confessions. This generally included the placement of a towel over the nose and mouth of the prisoner and the pouring of water in the towel until the prisoner began to move, jerk, or otherwise indicate that he was suffocating and/or drowning."

The four defendants were convicted, and the sheriff was sentenced to 10 years in prison.

Wallach, Evan. "Drop By Drop: Forgetting The History of Water Torture In U.S. Courts," The Columbia Journal of Transnational Law, 2007.

Wallach, Evan. "Water boarding used to be a Crime," Washington Post, Nov. 4, 2007.

FOOTNOTE¹⁶² United States Court of Appeals, Ninth Circuit.

Maximo HILAO, Class Plaintiffs, Plaintiff-Appellee, v. ESTATE OF Ferdinand MARCOS, Defendant, Imelda R. Marcos; Ferdinand R. Marcos, Representatives of the Estate of Ferdinand Marcos, Defendants-Appellants.

Nos. 95-16487, 95-16145, Decided: December 17, 1996

<http://caselaw.findlaw.com/us-9th-circuit/1279729.html#sthash.iLkssmk9.dpuf>

FOOTNOTE¹⁶³ Supra 2. Pages 168 and 169.

FOOTNOTE¹⁶⁴ Ibid.

FOOTNOTE¹⁶⁵ ICRC REPORT ON THE TREATMENT OF FOURTEEN "HIGH VALUE DETAINEES" IN CIA CUSTODY, February 2007. <http://assets.nybooks.com/media/doc/2010/04/22/icrc-report.pdf>

FOOTNOTE¹⁶⁶ Ibid. Page 10

FOOTNOTE¹⁶⁷ Supra 57.#3. Page 3.

FOOTNOTE¹⁶⁸ Supra 72. Page 118. Note 698.

FOOTNOTE¹⁶⁹Ibid

FOOTNOTE¹⁷⁰Supra 165. Page 13.

FOOTNOTE¹⁷¹Supra 72. Page 166

FOOTNOTE¹⁷² Supra 165, Pages 14 and 15.

FOOTNOTE¹⁷³ Supra 2, page 171

FOOTNOTE¹⁷⁴ Supra 57, #11, Page 9

FOOTNOTE¹⁷⁵Supra 75.

FOOTNOTE¹⁷⁶Jay S. Bybee, *Memorandum for John Rizzo, Acting General Counsel of the Central Intelligence Agency, Interrogation of al Qaeda Operative*, August 1, 2002.

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

Excerpt:

~~TOP SECRET~~

expectations regarding the treatment he believes he will receive and encourage him to disclose the crucial information mentioned above. These ten techniques are: (1) attention grasp, (2) walling, (3) facial hold, (4) facial slap (insult slap), (5) cramped confinement, (6) wall standing, (7) stress positions, (8) sleep deprivation, (9) insects placed in a confinement box, and (10) the waterboard. You have informed us that the use of these techniques would be on an as-needed basis and that not all of these techniques will necessarily be used. The interrogation team would use these techniques in some combination to convince Zubaydah that the only way he can influence his surrounding environment is through cooperation. You have, however, informed us that you expect these techniques to be used in some sort of escalating fashion, culminating with the waterboard, though not necessarily ending with this technique. Moreover, you have also orally informed us that although some of these techniques may be used with more than once, that repetition will not be substantial because the techniques generally lose their effectiveness after several repetitions. You have also informed us that Zabaydah sustained a wound during his capture, which is being treated.

FOOTNOTE¹⁷⁷ Supra 23. Page 201

FOOTNOTE¹⁷⁸Supra 16. Military Commissions Act Of 2006, Public Law 109-366—Oct. 17, 2006

FOOTNOTE¹⁷⁹Supra 16. Detainee Treatment Act of 2005, as included in the Department of Defense Appropriations Act, 2006

FOOTNOTE¹⁸⁰ US Constitution, Article I, Section 9.

FOOTNOTE¹⁸¹ Supra 74. Page 54.

FOOTNOTE¹⁸² Supra 47. Page 10

Excerpt:

"Interrogations of [Abu] Zubaydah—again, once enhanced interrogation techniques were employed—furnished detailed information regarding al Qaeda's 'organization structure, key operatives, and modus operandi' and identified KSM as the mastermind of the September 11 attacks."

FOOTNOTE¹⁸³ Ibid, Page 10

FOOTNOTE¹⁸⁴ Supra 74. Page 252

Excerpt:

The subsequent "Second Wave" effort began with KSM's tasking of several Malaysian nationals—led by Masran bin Arshad—in late 2001 to attack the "tallest building in California" using shoe-bomb explosive devices to gain access to a plane's cockpit. The thwarting of this plotting was also unrelated to the use of the CIA's enhanced interrogation techniques. This plot was disrupted with the arrest of Masran bin Arshad in January 2002. This arrest was unrelated to CIA detainee reporting. Bin Arshad claimed the effort had "not advanced beyond the initial planning stages" when KSM "shelve[d] the plan" in December 2001 when Richard Reid exposed the "shoe bomb" explosive method. Beginning in July 2002, while in the custody of a foreign government, and after the extensive use of rapport-building interrogation techniques, bin Arshad provided detailed information on this "Second Wave"

FOOTNOTE¹⁸⁵ Ibid Page 47

Excerpt"

"As Zubaydah himself explained with respect to enhanced techniques, 'brothers who are captured and interrogated are permitted by Allah to provide information when they believe they have 'reached the limit of their ability to withhold it' in the face of psychological and physical hardships.'"

FOOTNOTE¹⁸⁶ Supra 49.

FOOTNOTE¹⁸⁷ Supra 45.

FOOTNOTE¹⁸⁸ A History of US Secret Human Experimentation.
<http://www.rense.com/general36/history.htm>

Excerpt:

1940 Four hundred prisoners in Chicago are infected with Malaria in order to study the effects of new and experimental drugs to combat the disease. Nazi doctors later on trial at Nuremberg cite this American study to defend their own actions during the Holocaust.

1942 Chemical Warfare Services begins mustard gas experiments on approximately 4,000 servicemen. The experiments continue until 1945 and made use of Seventh Day Adventists who chose to become human guinea pigs rather than serve on active duty.

1943 In response to Japan's full-scale germ warfare program, the U.S. begins research on biological weapons at Fort Detrick, MD.

1944 U.S. Navy uses human subjects to test gas masks and clothing. Individuals were locked in a gas chamber and exposed to mustard gas and lewisite.

FOOTNOTE ¹⁸⁹ National Defense Authorization Act for Fiscal Year 2016, S. 1356, SEC. 1045. LIMITATION ON INTERROGATION TECHNIQUES, page 252

REFERENCES ARMY FIELD MANUAL

US Army Field Manual, FM 2-22.3 (FM34-52), *HUMAN INTELLIGENCE COLLECTOR OPERATIONS*, Headquarters, Department of the Army, September 2006.

P97 Prohibited techniques 5-57

P355-356 Sleep deprivation 4 hrs per day, 30 days,

prohibited actions include, but are not limited to—

- Forcing the detainee to be naked, perform sexual acts, or pose in a sexual manner.
- Placing hoods or sacks over the head of a detainee; using duct tape over the eyes.
- Applying beatings, electric shock, burns, or other forms of physical pain.
- “Waterboarding.”
- Using military working dogs.
- Inducing hypothermia or heat injury.
- Conducting mock executions.

FOOTNOTE ¹⁸⁹ Sixth Declaration of Marilyn A. Dorn, Information Review Officer, Central Intelligence Agency, Item 61, page 34.

https://www.aclu.org/files/pdfs/natsec/20070105_Dorn_Declaration_8.pdf

FOOTNOTE¹⁹⁰ Memorandum for Chairman of the Joint Chiefs of Staff, from Donald Rumsfeld, *Status of Taliban and Al Qaida*, January 19, 2002.

<http://www1.umn.edu/humanrts/OathBetrayed/Rumsfeld%201-19-02.pdf>

FOOTNOTE ¹⁹¹ US Supreme Court, *Hamdan v. Rumsfeld*, No. 05-184, Decided June 29, 2006. Syllabus page 6.

<http://www.supremecourt.gov/opinions/05pdf/05-184.pdf>

FOOTNOTE ¹⁹² Scott W. Muller. Memorandum for the Record, “*Humane*” *Treatment of CIA Detainees*. February 12, 2003.

<http://ciasavedlives.com/bdr/humane-treatment-of-cia-detainees.pdf>



humane-treatment-o
f-cia-detainees.pdf

FOOTNOTE ¹⁹³ Supra 73.

FOOTNOTE ¹⁹⁴ Supra 191.

FOOTNOTE ¹⁹⁵ George Tenet, Memorandum to National Security Advisor, June 4, 2004.

George Tenet, Memorandum to National Security Advisor, June 4, 2004.

<http://ciasavedlives.com/bdr/memo-for-nsa-review-of-cia-interrogation-program.pdf>



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w-of-cia-interrogator

FOOTNOTE ¹⁹⁶ Supra 72. Page 117 nd 118

On July 29, 2003, DCI Tenet and CIA General Counsel Muller attended a meeting with Vice President Cheney, National Security Advisor Rice, Attorney General Ashcroft, and White House Counsel Gonzales, among others, seeking policy reaffirmation of its coercive interrogation program. The presentation included a list of the CIA's standard and enhanced interrogation techniques. CIA General Counsel Muller also provided a description of the waterboard interrogation technique, including the inaccurate representation that it had been used against KSM 119 times and Abu Zubaydah 42 times. The presentation warned National Security Council principals in attendance that "termination of this program will result in loss of life, possibly extensive." The CIA officers further noted that 50 percent of CIA intelligence reports on al-Qaida were derived from detainee reporting, and that "major threats were countered and attacks averted" because of the use of the CIA's enhanced interrogation techniques. The CIA provided specific examples of "attacks averted" as a result of using the CIA's enhanced interrogation techniques, including references to the U.S. Consulate in Karachi, the Heathrow Plot, the Second Wave Plot, and IymanFaris. As described later in this summary, and in greater detail in Volume 11, these claims were inaccurate. After the CIA's presentation, Vice President Cheney stated, and National Security Advisor Rice agreed, that the CIA was executing Administration policy in carrying out its interrogation program.

FOOTNOTE¹⁹⁷ *Guidelines on Interrogations Conducted Pursuant to the Presidential Memorandum of Notification of 17 September 2001*, signed by George Tenet, Director of Central Intelligence, January 28, 2003.

<http://www.aclu.org/files/torturefoia/released/082409/olcremand/2004olc12.pdf>. Note that the title of the document is redacted in the reference copy, however the complete title is stated in the Senate Select Committee on Intelligence, Committee Study of the Central Intelligence Agency's Detention and Interrogation Program, Executive Summary, footnote 280, pp 57.

~~TOP SECRET~~ [REDACTED]

~~Guidelines on Interrogations Conducted Pursuant to the~~
[REDACTED]

These Guidelines address the conduct of interrogations of persons who are detained pursuant to the authorities set forth in [REDACTED]

These Guidelines complement internal Directorate of Operations guidance relating to the conduct of interrogations. In the event of any inconsistency between existing DO guidance and these Guidelines, the provisions of these Guidelines shall control.

1. Permissible Interrogation Techniques

Unless otherwise approved by Headquarters, CIA officers and other personnel acting on behalf of CIA may use only Permissible Interrogation Techniques. Permissible Interrogation Techniques consist of both (a) Standard Techniques and (b) Enhanced Techniques.

Standard Techniques are techniques that do not incorporate physical or substantial psychological pressure. These techniques include, but are not limited to, all lawful forms of questioning employed by US law enforcement and military interrogation personnel. Among Standard Techniques are the use of isolation, sleep deprivation not to exceed 72 hours, reduced caloric intake (so long as the amount is calculated to maintain the general health of the detainee), deprivation of reading material, use of loud music or white noise (at a decibel level calculated to avoid damage to the detainee's hearing), and the use of diapers for limited periods (generally not to exceed 72 hours, [REDACTED])

~~ALL PORTIONS OF THIS DOCUMENT ARE CLASSIFIED TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

FOOTNOTE¹⁹⁸ William J. Haynes II, General Counsel to SECRETARY OF DEFENSE, *Counter-Resistance Techniques*, November 27, 2002 and approved by Donald Rumsfeld on December 2, 2002. <http://nsarchive.gwu.edu/NSAEBB/NSAEBB127/02.12.02.pdf>

FOOTNOTE ¹⁹⁹ Memorandum for William J. Haynes II, General Counsel, Department of Defense, from John Yoo, Deputy Assistant Attorney General, Application of Laws and Treaties to al Qaeda and Taliban Detainees, January 9, 2002. <http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/02.01.09.pdf>

FOOTNOTE^{E200} Memorandum for John Yoo from William Taft IV, Your Draft Memorandum of January 9th, January 11, 2002. <http://nsarchive.gwu.edu/torturingdemocracy/documents/20020111.pdf>.

FOOTNOTE^{E201} Memo From Alberto Gonzales To President Bush, "Application of the Geneva Convention on Prisoners of War to the Conflict with al Qaeda and the Taliban", January 25, 2002. <http://nsarchive.gwu.edu/torturingdemocracy/documents/20020125.pdf>

FOOTNOTE ²⁰²Executive Intelligence Review, *Cheney's Lawyer Addington Penned Key Torture Memo*, July 16, 2004 http://www.larouchepub.com/other/2004/3128addington_memo.html

FOOTNOTE ²⁰³ Memorandum for William J. Haynes,II, General Counsel, Department of Defense by Jay Bybee, March 13, 2002. <http://www2.gwu.edu/~nsarchiv/torturingdemocracy/documents/20020313.pdf>

FOOTNOTE^{E204} Memo for Alberto R. Gonzales, Counsel to the President, August 1, 2002, by Jay S. Bybee. <http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/02.08.01.pdf>

FOOTNOTE ²⁰⁵ John Yoo Memo To Alberto Gonzales stating that certain torture techniques are legal. August 1, 2002. <http://nsarchive.gwu.edu/torturingdemocracy/documents/20020801-3.pdf>

FOOTNOTE ²⁰⁶ Supra 46.

FOOTNOTE ²⁰⁷ John Yoo letter to John Rizzo, July 13, 2002. <http://www.justice.gov/sites/default/files/olc/legacy/2009/08/24/letter-rizzo2002.pdf>

FOOTNOTE ²⁰⁸Jay Bybee ,*Memorandum for John Rizzo Acting General Counsel of the Central Intelligence Agency*. August 1, 2002. <http://nsarchive.gwu.edu/torturingdemocracy/documents/20020801-2.pdf>

The memo is heavily redacted but the Senate Intelligence Committee Report describes some of the content on page 409 of the executive summary. Reference Supra 1.

Excerpt:

On August 1,2002, the OLC issued a memorandum advising thatthe use of theCIA's enhanced interrogation techniques against Abu Zubaydah would not violateprohibitions against torture found in Section 2340A of Title 18 of the United States Code.The techniques were: (1) attention grasp, (2) walling, (3) facial hold, (4) facial slap (insult slap),(5) cramped confinement, (6) wall standing, (7) stress positions, (8) sleep deprivation, (9) insectsplaced in a confinement box, and (10) the waterboard. The memorandum relied on CIArepresentations about Abu Zubaydah's status in al-Qa'ida, his role inal-Qa'ida plots, hisexpertise in interrogation resistance training, and his withholding ofinformation on pendingterrorist attacks.

FOOTNOTE ²⁰⁹ Supra 47

FOOTNOTE²¹⁰ Various authors, series of memorandum. October 11, 2002 thru December 2, 2002. <http://www.washingtonpost.com/wp-srv/nation/documents/dodmemos.pdf>

FOOTNOTE²¹¹ John Yoo, Memorandum for William J. Haynes II, General Counsel of the Department of Defense
Re: Military Interrogation of Alien Unlawful Combatants Held Outside the United State. March 14, 2003.
https://www.aclu.org/files/pdfs/safefree/yoo_army_torture_memo.pdf

FOOTNOTE ²¹² Supra 72. Page 40. Code name Swigert is James Mitchell. Code name Dunbar is Dr. Bruce Jessen.

Excerpt:

On August 3, 2002, CIA Headquarters informed the interrogation team at DETENTION SITE GREEN that it had formal approval to apply the CIA's enhanced interrogation techniques, including the waterboard, against Abu Zubaydah. According to CIA records, only the two CIA contractors, SWIGERT and DUNBAR, were to have contact with Abu Zubaydah. Other CIA personnel at DETENTION SITE GREEN - including CIA medical personnel and other CIA "interrogators with whom he is familiar" - were only to observe.

See the following website on identification of Swigert and Dunbar.

<https://www.districtsentinel.com/cia-report-swigert-dunbar-paid-millions-to-torture-some-folks/>

FOOTNOTE ²¹³ Jason Leopold, Psychologist James Mitchell Admits He Waterboarded al Qaeda Suspects. Vice News. December 15, 2014.

<https://news.vice.com/article/psychologist-james-mitchell-admits-he-waterboarded-al-qaeda-suspects>

FACT CHECKER FILE

The Torture Trial of George W. Bush
This is a companion file to the novel,
The Torture Trial of George W. Bush.

All of the URL links are active.

First left click the link, then CONTROL-LEFT CLICK
and you will go to the website.