

Thomas Merton, Presente!

“Sometimes it may be necessary for us to go against social norms in order to obey real norms of objective good For when the norms of conduct in a society become arbitrary, capricious, and pragmatic there is great danger that one will passively enter into cooperation with injustice and evil[.]”

- Thomas Merton, *Conjectures of a Guilty Bystander* (Image Books 1968) at 119



Guantánamo Bay Prison

“I am a captive, but the crimes are my captors’.”



Frank Panopoulos
Presentation to Peace Action Maine
Human Rights Day, Dec. 10, 2022

After 9/11, the US Implements Extrajudicial Means to Capture Suspected Terrorists

- At Sept. 13 and 15, 2001 NSC Meetings, CIA outlines plans for covert operations to fight, kill, and apprehend terrorism suspects and transfer them to third countries (*i.e.*, extraordinary rendition to black sites for interrogation)



Sept. 16, 2001, VP Cheney States on Meet The Press US Must Work the “Dark Side”

“We also have to work, through, sort of the dark side, if you will. We’ve got to spend time in the shadows in the intelligence world. A lot of what needs to be done here will have to be done quietly, without any discussion . . . It’s going to be vital to us to use any means at our disposal, basically to achieve our objective.”



The Legal Architects of the GWOT Implement an Expansive Notion of Executive Power

- “I believe in a strong, robust executive authority, and I think the world we live in demands it.” (V.P. Dick Cheney)
- The President “will on occasion feel duty bound to assert monarchical notions of prerogative that will permit him to exceed the laws.” (Iran-Contra Minority Report, authored by Dick Cheney and David Addington)

A Secret Sept. 17, 2001 Presidential Memorandum of Notification Grants the CIA “Unprecedented Authorities”

- CIA to use “significant discretion in determining whom to detain”
- The CIA can conduct covert operations without having to obtain formal approval for each specific operation, including renditions anywhere in the world
- Lethal force authorized, including use of armed drones
- CIA can operate black site prisons

Case 1:15-cv-09317-AKH Document 58-14 Filed 11/18/16 Page 1 of 1

~~TOP SECRET//~~ UNCLASSIFIED ~~//NOFORN~~

II. Overall History and Operation of the CIA’s Detention and Interrogation Program

A. September 17, 2001, Memorandum of Notification (MON) Authorizes the CIA to Capture and Detain a Specific Category of Individuals

1. *After Considering Various Clandestine Detention Locations, the CIA Determines That a U.S. Military Base Is the “Best Option”; the CIA Delegates “Blanket” Detention Approvals to CIA Officers in [REDACTED]*

(TS// [REDACTED]//NF) 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.”⁷ 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.⁸ The MON made no reference to interrogations or interrogation techniques.⁹

(TS// [REDACTED]//NF) On September 14, 2001, three days before the issuance of the MON, the chief of operations of the CIA’s [REDACTED] based on an urgent requirement from the chief of the Counterterrorism Center (CTC), sent an email to CIA Stations in [REDACTED] seeking input on appropriate locations for potential CIA detention facilities.¹⁰ Over the course of the next month, CIA officers considered at least four countries in [REDACTED] and one in [REDACTED] as possible hosts for detention facilities and [REDACTED] at least three proposed site locations.¹¹

(TS// [REDACTED]//NF) On September 26, 2001, senior CTC personnel met to discuss the capture and detain authorities in the MON. On September 28, 2001, [REDACTED] CTC Legal, [REDACTED], sent an email describing the meeting and a number of policy decisions. The

Congress Passes the Authorization to Use Military Force, Which is Limited to the 9/11 Attacks

“[T]he President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines **planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons**, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.”

The White House Interprets the President's Military Powers Broadly To Reach Beyond the AUMF

“[T]he President may deploy military force preemptively against terrorist organizations or the states that harbor or support them, **whether or not they can be linked to the specific incidents of September 11.**”

The President's Constitutional Authority to Conduct Military Operations Against Terrorists and Nations Supporting Them

The President has broad constitutional power to take military action in response to the terrorist attacks on the United States on September 11, 2001. Congress has acknowledged this inherent executive power in both the War Powers Resolution and the Joint Resolution passed by Congress on September 14, 2001.

The President has constitutional power not only to retaliate against any person, organization, or state suspected of involvement in terrorist attacks on the United States, but also against foreign states suspected of harboring or supporting such organizations.

The President may deploy military force preemptively against terrorist organizations or the states that harbor or support them, whether or not they can be linked to the specific terrorist incidents of September 11.

September 25, 2001

MEMORANDUM OPINION FOR THE DEPUTY COUNSEL TO THE PRESIDENT*

You have asked for our opinion as to the scope of the President's authority to take military action in response to the terrorist attacks on the United States on September 11, 2001. We conclude that the President has broad constitutional power to use military force. Congress has acknowledged this inherent executive power in both the War Powers Resolution, Pub. L. No. 93-148, 87 Stat. 555 (1973), *codified at* 50 U.S.C. §§ 1541-1548 (the “WPR”), and in the Joint Resolution passed by Congress on September 14, 2001, Pub. L. No. 107-40, 115 Stat. 224 (2001). Further, the President has the constitutional power not only to retaliate against any person, organization, or state suspected of involvement in terrorist attacks on the United States, but also against foreign states suspected of harboring or supporting such organizations. Finally, the President may deploy military force preemptively against terrorist organizations or the states that harbor or support them, whether or not they can be linked to the specific terrorist incidents of September 11.

Our analysis falls into four parts. First, we examine the Constitution's text and structure. We conclude that the Constitution vests the President with the plenary authority, as Commander in Chief and the sole organ of the Nation in its foreign relations, to use military force abroad—especially in response to grave national emergencies created by sudden, unforeseen attacks on the people and territory of the United States. Second, we confirm that conclusion by reviewing the executive

Detained Persons Are Placed Under Military's Control and Denied Access to Relief In US Courts

0/000

Military Order 11/13/01, Sec. 2(c):

- [A]ny individual subject to this order who is not already under the control of the Secretary of Defense but who is under the control of any other officer or agent of the United States or any State shall, upon delivery of a copy of such written determination to such officer or agent, **forthwith be placed under the control of the Secretary of Defense.**

Sec. 7(b)(2):

- the **individual shall not be privileged to seek any remedy or maintain any proceeding,** directly or indirectly, or to have any such remedy or proceeding sought on the individual's behalf, **in (i) any court of the United States, or any State thereof[.]**

Federal Register

Presidential Documents

Vol. 66, No. 222

Friday, November 16, 2001

Title 3—

Military Order of November 13, 2001

The President

Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism

By the authority vested in me as President and as Commander in Chief of the Armed Forces of the United States by the Constitution and the laws of the United States of America, including the Authorization for Use

The Scope of Persons That Could Be Detained Under Military Order 11/13/01 Is Broad

Sec. 2(a)

The term “individual subject to this order” shall mean any individual who is not a United States citizen that

(i) is or was a member of al Qaida;

(ii) **has engaged in, aided or abetted, or conspired to commit, acts of international terrorism, or acts in preparation therefor, that have caused, threaten to cause, or have as their aim to cause, injury to or adverse effects on the United States, its citizens, national security, foreign policy, or economy;** or

(iii) has knowingly harbored one or more individuals described above.

Guantánamo Was Selected As The Place To Hold Prisoners Because The US Believed Courts Could Not Exercise Habeas Jurisdiction There

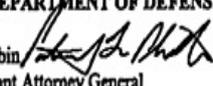
“We conclude that the great weight of legal authority indicates that a federal district court could not properly exercise jurisdiction over an alien detained at GBC.”

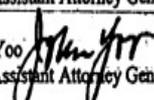
 U.S. Department of Justice
Office of Legal Counsel

Yoo
Daybook
Reading File
Retrieval file
Philbin/Gimpo3.doc

Office of the Deputy Assistant Attorney General Washington, D.C. 20530
December 28, 2001

**MEMORANDUM FOR WILLIAM J. HAYNES, II
GENERAL COUNSEL, DEPARTMENT OF DEFENSE**

FROM: Patrick F. Philbin, Deputy Assistant Attorney General 

TO: John C. Yoo, Deputy Assistant Attorney General 

RE: Possible Habeas Jurisdiction over Aliens Held in Guantanamo Bay, Cuba

This memorandum addresses the question whether a federal district court would properly have jurisdiction to entertain a petition for a writ of habeas corpus filed on behalf of an alien detained at the U.S. naval base at Guantanamo Bay, Cuba (“GBC”). This question has arisen because of proposals to detain al Qaeda and Taliban members at GBC pending possible trial by military commission. If a federal district court were to take jurisdiction over a habeas petition, it could review the constitutionality of the detention and the use of a military commission, the application of certain treaty provisions, and perhaps even the legal status of al Qaeda and Taliban members.

We conclude that the great weight of legal authority indicates that a federal district court could not properly exercise habeas jurisdiction over an alien detained at GBC. Nonetheless, we

Who Was Supposedly Sent to Guantánamo

- Sec. of Defense Donald Rumsfeld: “the worst of the worst.”
- Gen. Richard Myers: “These are people who would gnaw through hydraulic lines in the back of a C-17 to bring it down.”



Who Was Supposedly Sent to Guantánamo

“The only thing I can recall being told about the detainees that would arrive was that they were captured fighting the Americans in Afghanistan. And that they were known terrorists. And that many of them helped in the planning of the 9/11 attacks. We would be coming face-to-face with the worst people the world had to offer.”

“A lot of us, including myself, were pissed off, and many people were out to get revenge for the havoc the United States had been through in recent months by these people.”

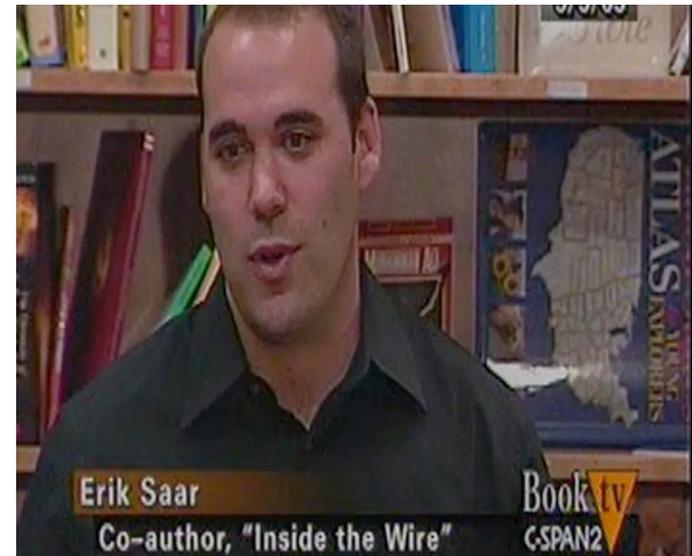
Spec. Brandon Neely
Military Police guard at Guantánamo



Who Was Supposedly Sent To Guantánamo

“[I] was under the impression when I went there that I was going to be sitting face-to-face with hardened terrorists, meaning what **our government had said is the worst of the worst. And I took that to mean those individuals that had extensive training from al Qaeda. Additionally, I thought that they were going to be men who had planned attacks against the United States, who were responsible for the events of September 11,** or who were planning future attacks against the United States.”

Sgt. Erik Saar, Arabic Translator



Who Really Was Sent to Guantánamo

- **780** men and boys, all of them Muslim, were imprisoned over time at Guantánamo since January 2002
 - 86 percent** were sold to the U.S. for a bounty, typically \$5,000
 - 22** or more were children when taken in detention
 - 9** men have died while detained at Guantánamo (3 murdered)
- The US refused to disclose the prisoners' names and basis for their detention until April 2006
- **35** men currently remain detained
 - 23** have not been charged with any crime or offense, and are indefinitely detained
 - 20** of these have been approved for release
 - 12** have active cases before military commissions (*e.g.*, 9/11 planners and other high level AQ or affiliate organizations who are charged with war crimes)
- It costs more than **\$13.5 million** per prisoner to operate Guantánamo

Pakistan Admitted It Turned Over Prisoners To The U.S. For Millions Of Dollars In Bounties

- In his book *In The Line of Fire*, Pakistan's former President Gen. Pervez Musharaf, writes that Pakistan turned over 369 al-Qaeda fighters to the U.S.:
- “We have earned bounties totaling millions of dollars.”



Shaker Aamer

- Shaker went to Afghanistan to help people suffering from the war
- He was kidnapped by warlords and sold to the US for a bounty
- His interrogators blamed him for the 9/11 events



Shaker Aamer, a Saudi citizen and British legal resident, imprisoned in Guantánamo without charge 2002-2015

Who Really Was Sent to Guantánamo

“But, as the months went on, one or two of us would actually question what was going on here, the way the detainees were being treated and if they were actually terrorists or not, but being no-ones, and young, and dumb[.]”

Spec. Brandon Neely

Who Really Was Sent to Guantánamo

“We have people there and we don’t know what their affiliations with terrorism are. **We ourselves cannot verify that they were enemy combatants picked up on the battlefield, as General Miller has repeatedly said to the media. A number of them were turned over to us by foreign governments, and the Northern Alliance, who were paid a bounty for them.** There wasn’t this extensive vetting process, as the Pentagon would lead you to believe. **What extensive vetting process allows an 88-year-old to end up at Guantanamo Bay?** And we are operating outside of the scope of the Geneva Conventions.”

Sgt. Erik Saar

Who Really Was Sent To Guantánamo

- “We need to stop populating Guantánamo Bay (GTMO) with low-level enemy combatants.”
 - Memorandum from Donald Rumsfeld to Chairman JCS and CENTCOM Commander, Apr. 21, 2003

~~SECRET//NOFORN~~

APR 21 2003

FOR: CHAIRMAN, JOINT CHIEFS OF STAFF
COMMANDER, U.S. CENTRAL COMMAND

FROM: Donald Rumsfeld *[Signature]*

SUBJECT: Low-Level Enemy Combatants OSD 1.4 (C)

- We need to stop populating Guantánamo Bay (GTMO) with low-level enemy combatants. GTMO needs to serve as an [redacted] not a prison for Afghanistan. 383.6
- Therefore, effective June 16, the January 7, 2002 Screening Criteria are amended to authorize you to transfer to Guantánamo only those detainees who meet the stated criteria and are of [redacted] value. OSD 1.4 (C)
- As of June 16, you are directed to continue to detain in Afghanistan screened enemy combatants who pose a threat to U.S. forces but are of [redacted] value. OSD 1.4 (C)
- I am also asking Secretary Powell to have Ambassador Finn approach President Karzai on the need for the Afghan government to [redacted] where [redacted] can be kept. I want General Franks to have the same discussion with Karzai, and to consult with the Ambassador and Department of State representatives as the program is developed. OSD 1.4 (a), (c)
- Please work together to sketch out a plan to help the Afghans set up an adequate facility. By April 30, please tell me what is needed, and I will help get you the resources. 21 Apr 03

DECLASSIFIED For Part JUL 9 2010
Authority: EO 12958 as amended
Chief, Records & Declass Div, WHS

Classified by: SecDef Rumsfeld
Reason: 1.4(a)
Declassify on: 21 Apr 2013

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The Geneva Conventions Present An Obstacle To The US's Plan



- The Four Geneva Conventions of 1949 and their subsequent 1977 Protocols establish humanitarian standards in armed conflict for the treatment of POWs, stranded, injured, and sick soldiers, sailors, and civilians
- GCs Ratified by the U.S. on July 14, 1955
- Codified as The War Crimes Act, 18 U.S.C. § 2441

Obstacle 1: The Geneva Convention on the Treatment of POWs

The protections of the POW Convention apply in International Armed Conflicts (IAC) and cover all aspects of capture and imprisonment of combatants. They include that POWs:

- Must at all times be humanely treated and protected, particularly against acts of torture, violence, intimidation, and medical experimentation,
- Are free to exercise their religion
- Must receive fair trials and punishment
- Must be released and repatriated upon the cessation of active hostilities.

Loss of Rights if Deemed Not a POW

- If a combatant does not meet the definition of a POW, or the conflict is not considered an IAC, then they not only lose the POW protections under GC III, but also are subject to trial and punishment
- They are still protected by the customary international law standards contained in Common Article 3

Obstacle 2: Common Article 3 of the Geneva Conventions

- Common Article 3 applies in Non-International Armed Conflict (NIAC)
- It prohibits, among other things, “cruel treatment and torture” of 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 detention
- Without the protection of Common Article 3, Prisoners that are not POWs could be abused

Obstacle 3: The WCA Provides That Those Abusing Prisoners Are Subject to Prosecution

110 STAT. 2104

PUBLIC LAW 104-192—AUG. 21, 1996

Public Law 104-192
104th Congress

An Act

To amend title 18, United States Code, to carry out the international obligations of the United States under the Geneva Conventions to provide criminal penalties for certain war crimes.

Aug. 21, 1996
[H.R. 3680]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

War Crimes Act of 1996
18 USC 2401
note.

SECTION 1. SHORT TITLE.

This Act may be cited as the “War Crimes Act of 1996”.

SEC. 2. CRIMINAL PENALTIES FOR CERTAIN WAR CRIMES.

(a) IN GENERAL.—Title 18, United States Code, is amended by inserting after chapter 117 the following:

“CHAPTER 118—WAR CRIMES

“Sec.
“2401. War crimes.

“§ 2401. War crimes

“(a) OFFENSE.—Whoever, whether inside or outside the United States, commits a grave breach of the Geneva Conventions, in any of the circumstances described in subsection (b), shall be fined under this title or imprisoned for life or any term of years, or both, and if death results to the victim, shall also be subject to the penalty of death.

“(b) CIRCUMSTANCES.—The circumstances referred to in subsection (a) are that the person committing such breach or the victim of such breach is a member of the Armed Forces of the United States or a national of the United States (as defined in section 101 of the Immigration and Nationality Act).

“(c) DEFINITIONS.—As used in this section, the term ‘grave breach of the Geneva Conventions’ means conduct defined as a grave breach in any of the international conventions relating to the laws of warfare signed at Geneva 12 August 1949 or any protocol to any such convention, to which the United States is a party.”

“(b) CLERICAL AMENDMENT.—The table of chapters for part 1 of title 18, United States Code, is amended by inserting after the item relating to chapter 117 the following new item:

“118. War crimes 2401”.

Approved August 21, 1996.

LEGISLATIVE HISTORY—H.R. 3680:

HOUSE REPORTS: No. 104-698 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 142 (1996):

July 29, considered and passed House.

Aug. 2, considered and passed Senate.

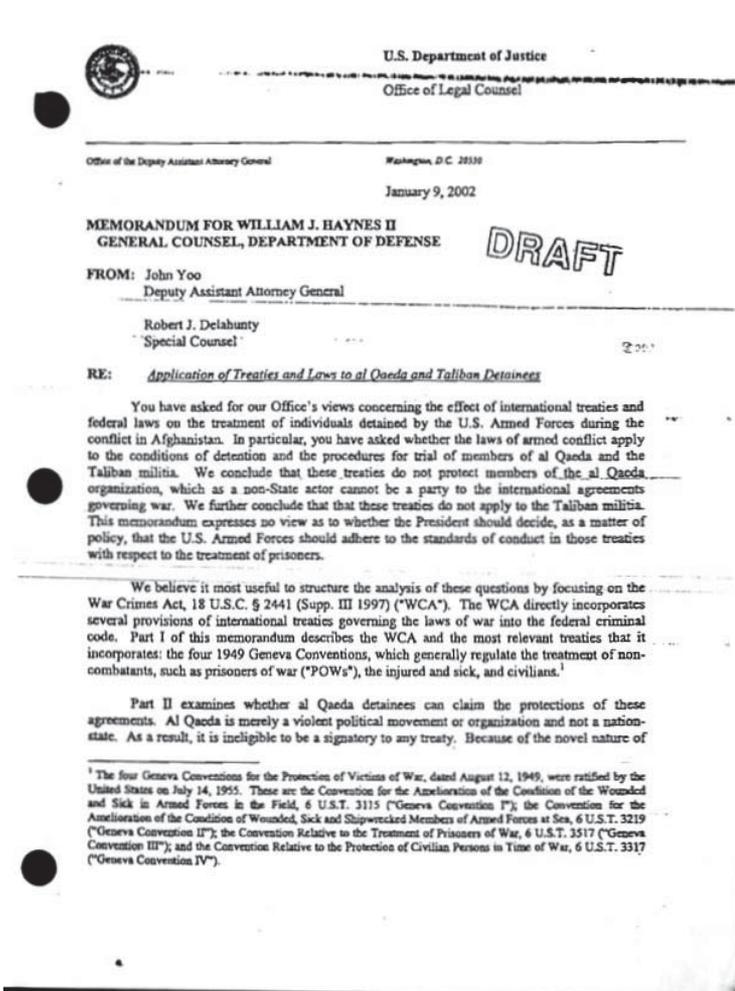
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 32 (1996):
Aug. 21, Presidential statement.

○

The War Crimes Act, 18 U.S.C. § 2441 (as amended)

- Whoever, whether inside or outside the U.S., commits a war crime, where the person committing the war crime or the victim of the war crime is a member of the U.S. Armed Forces or a U.S. national, shall be subject to prison or the death penalty
- War Crime includes violations of Common Articles 2 and 3 of the Conventions

The Yoo Memo of 1/9/02 Argues That The GCs And WCA Do Not Apply To Prisoners At Guantánamo



“You have asked whether the laws of armed conflict apply to the conditions of detention and the procedures for trial of members of AQ and the Taliban militia.”



The Yoo Memo Argues That The GCs and WCA Do Not Apply To AQ and Taliban

- AQ members not covered because:
 - AQ not a nation-state (not signatory to Conventions)
 - Conflict with AQ not a NIAC
 - AQ members not POWs, but “unlawful enemy combatants,” because they are neither regular armed forces nor qualify as irregular armed forces
- Taliban not covered because:
 - Taliban not a government
 - Afghanistan is a failed state
 - Taliban are like AQ, unlawful enemy combatants



Yoo's Analysis Is Based On His Theory Of Expansive Executive Power

- “Any congressional effort to restrict presidential authority by subjecting the conduct of the U.S. Armed Forces to a broad construction of the Geneva Convention, one that is clearly not borne by the text, would represent a possible infringement on presidential discretion to direct the military.”

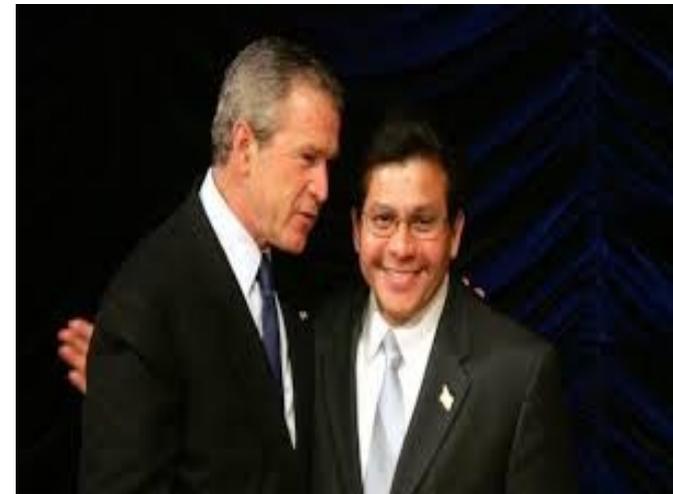
Secretary of State Colin Powell Disagrees With Yoo



- Secretary Powell asks President Bush to reconsider:
 - Reverses a century of US policy and support for GCs
 - Will be subject to legal challenges
 - Foreign prosecutors potentially may prosecute US officials and troops

Presidential Counsel Alberto Gonzales Advises President Bush Not To Reconsider His Decision That Prisoners Are Not POWs

- In a memorandum dated 1/25/2002, Presidential Counsel Gonzales advises President Bush not to reconsider in order to allow extrajudicial means in the GWOT
 - Preserve flexibility in war on terror: “the ability to quickly obtain information from captured terrorists and their sponsors”
 - **Reduce the threat of criminal prosecution under the WCA:** “A determination that the Geneva Convention is not applicable to the Taliban would mean that Section 2441 would not apply to actions taken with respect to the Taliban.”



The Attorney General Advises That Prisoners Not Be Protected by Geneva Conventions or WCA



Office of the Attorney General
Washington, D. C. 20530

February 1, 2002

The President
The White House
Washington, DC

Dear Mr. President:

With your permission, I would like to comment on the National Security Council's discussion concerning the status of Taliban detainees. It is my understanding that the determination that al Qaeda and Taliban detainees are not prisoners of war remains firm.

Thus, a Presidential determination against treaty applicability would provide the highest assurance that no court would subsequently entertain charges that American military officers, intelligence officials, or law enforcement officials violated Geneva Convention rules relating to field conduct, detention conduct or interrogation of detainees. The War Crimes Act of 1996 makes violation of parts of the Geneva Convention a crime in the United States.

Survival, Evasion, Resistance, Escape (SERE) Interrogation Techniques

- Capturing and detaining AQ and Taliban members led the Office of the Secretary of Defense to inquire in December 2001 about using the military SERE program's counter-interrogation techniques



The SERE Program Teaches Trainees How To Withstand Or Counter Coercive Interrogation

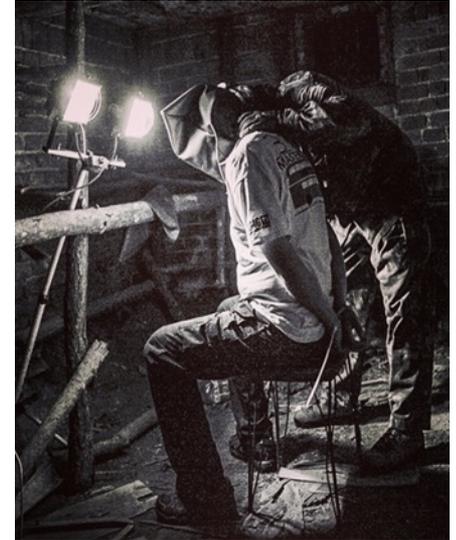


- The SERE program subjects US military and civilian special operators to coercive interrogations as part of a survival course
- Interrogations are based on techniques used on prisoners that contravene the Geneva Conventions, particularly techniques used against US prisoners

SERE Interrogation Techniques

SERE interrogation methods included:

- Water boarding
- Stress positions
- Nakedness
- Hoods over head
- Sleep disruption
- Exposure to loud music and flashing lights
- Exposure to extreme temperatures
- Face and body slaps



Narrowly Interpreting Torture

- DoD and CIA were concerned that interrogating prisoners using SERE techniques could lead to prosecution under the U.N. Convention Against Torture and corresponding U.S. law criminalizing torture

Obstacle 4: The U.N. Convention Against Torture

The CAT (Art. 1) defines Torture as any act by which:

- severe pain or suffering, whether physical or mental,
- is intentionally inflicted on a person for such purposes as
- obtaining from him or a third person
- information or
- a confession,
- punishing him for an act he or a third person has committed or is suspected of having committed, or
- intimidating or coercing him or a third person, or for any reason based on discrimination of any kind,
- when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

The Convention requires signatory countries to enact laws preventing torture.

U.S. Federal Crime of Torture and Conspiracy to Commit Torture

- U.S. Federal law defines torture as:
 - *“‘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 control .”* 18 USC § 2340-2340A

The Bybee Memo to White House Narrowly Interprets Torture



U.S. Department of Justice

Office of Legal Counsel

Office of the Assistant Attorney General

Washington, D.C. 20530

August 1, 2002

**Memorandum for Alberto R. Gonzales
Counsel to the President**

Re: Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340-2340A

You have asked for our Office's views regarding the standards of conduct under the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment as implemented by Sections 2340-2340A of title 18 of the United States Code. As we understand it, this question has arisen in the context of the conduct of interrogations outside of the United States. We conclude below that Section 2340A proscribes acts inflicting, and that are specifically intended to inflict, severe pain or suffering, whether mental or physical. Those acts must be of an extreme nature to rise to the level of torture within the meaning of Section 2340A and the Convention. We further conclude that certain acts may be cruel, inhuman, or degrading, but still not produce pain and suffering of the requisite intensity to fall within Section 2340A's proscription against torture. We conclude by examining possible defenses that would negate any claim that certain interrogation methods violate the statute.

“You have asked for our Office’s view regarding the standards of conduct under the Convention Against Torture as implemented by Sections 2340-2340A. As we understand it, this question has arisen in the context of the conduct of interrogations outside of the US.”



The Bybee Memo to White House Narrowly Interprets Torture

- Acts specifically intended to inflict severe physical or mental pain or suffering “**must be of an extreme nature to rise to the level of torture** within the meaning of Section 2340A and the CAT.”
- Physical pain amounting to torture: the act “must inflict pain that is difficult to endure . . . must be equivalent in intensity to the pain accompanying serious physical injury, such as **organ failure, impairment of bodily function, or even death.**”
- Purely mental pain or suffering amounting to torture: the act “must result in **significant psychological harm of significant duration**, e.g., lasting for months or even years, “ and result from the above acts.

The Bybee Memo to White House Hedges Its Narrow Interpretation of Torture

- The President's power to detain and interrogate enemy combatants derives from his/her authority as Commander in Chief; interpreting Section 2340A in a manner that regulates how the President can interrogate prisoners would raise constitutional issues
- **Even if the interrogation methods violated Section 2340A, they are justified by the defenses of necessity and self-defense** to elicit information to prevent a direct and imminent threat to the U.S. and its citizens

The Secret Bybee Memo to CIA Applies The Narrowed Definition of Torture to Zubaydah's Interrogation

- “You have asked for this Office’s views on whether certain proposed conduct would violate the prohibition against torture You have asked for this advice in the course of conducting interrogations of Abu Zubaydah.”



~~TOP SECRET~~

U.S. Department of Justice

Office of Legal Counsel

Office of the Assistant Attorney General

Washington, D.C. 20530

August 1, 2002

Memorandum for John Rizzo
Acting General Counsel of the Central Intelligence Agency

Interrogation of al Qaeda Operative

You have asked for this Office's views on whether certain proposed conduct would violate the prohibition against torture found at Section 2340A of title 18 of the United States Code. You have asked for this advice in the course of conducting interrogations of Abu Zubaydah. As we understand it, Zubaydah is one of the highest ranking members of the al Qaeda terrorist organization, with which the United States is currently engaged in an international armed conflict following the attacks on the World Trade Center and the Pentagon on September 11, 2001. This letter memorializes our previous oral advice, given on July 24, 2002 and July 26, 2002, that the proposed conduct would not violate this prohibition.

The Secret Bradbury Memos (5/10/2005) To The CIA Reaffirm The Narrow Interpretation of Torture

- “‘Severe physical pain’ . . . denotes physical pain that is extreme in intensity and difficult to endure.”
- Reserved for extreme, deliberate and unusually cruel practices
 - sustained systematic beating,
 - application of electric currents to sensitive parts of the body,
 - tying up or hanging in positions that cause extreme pain.



Narrowly Interpreting Torture

- The Secret Bybee and Bradbury memos to the CIA compare the experience of trainees undergoing the SERE interrogation methods against the definition of torture under Section 2340A
- The memos conclude none of the interrogation methods amounts to torture when properly conducted and monitored
- The memos assess the interrogation techniques in a sanitized, ideal manner

The Memos Assess The Interrogation Techniques In A Sanitized Manner: Wall Slamming

4. *Walling*. This technique involves the use of a flexible, false wall. The individual is placed with his heels touching the flexible wall. The interrogator pulls the individual forward and then quickly and firmly pushes the individual into the wall. It is the individual's shoulder blades that hit the wall. During this motion, the head and neck are supported with a rolled hood or towel that provides a C-collar effect to help prevent whiplash. To reduce further the risk of injury, the individual is allowed to rebound from the flexible wall. You have informed us that the false wall is also constructed to create a loud noise when the individual hits it in order to increase the shock or surprise of the technique. We understand that walling may be used when the detainee is uncooperative or unresponsive to questions from interrogators. Depending on the extent of the detainee's lack of cooperation, he may be walled one time during an interrogation session (one impact with the wall) or many times (perhaps 20 or 30 times) consecutively. We understand that this technique is not designed to, and does not, cause severe pain, even when used repeatedly as you have described. Rather, it is designed to wear down the detainee and to

WALLING: The Reality

- “[B]ehind me there was a concrete wall . . . somebody just grabbed my head and smacking it to the wall behind me, back and forth, back and forth . . . Pain after pain, and all I’m trying to do is protect my head.”



Shaker Aamer, a Saudi citizen and British legal resident, imprisoned in Guantánamo without charge 2002-2015

The Memos Assess The Interrogation Techniques In A Sanitized Manner: Stress Positions

10. *Stress positions.* There are three stress positions that may be used. You have informed us that these positions are not designed to produce the pain associated with contortions or twisting of the body. Rather, like wall standing, they are designed to produce the physical discomfort associated with temporary muscle fatigue. The three stress positions are (1) sitting on the floor with legs extended straight out in front and arms raised above the head, (2) kneeling on the floor while leaning back at a 45 degree angle, and (3) leaning against a wall generally about three feet away from the detainee's feet, with only the detainee's head touching the wall, while his wrists are handcuffed in front of him or behind his back, and while an interrogator stands next to him to prevent injury if he loses his balance. **As with wall standing, we understand that these positions are used only to induce temporary muscle fatigue.**



Stress Positions: The Reality

“Sometimes they would bring me to a room and shackle me in extremely painful positions. They would leave me like that for many hours and then come in and scream and hit me and ask questions that I did not know the answer to...[t]he interrogators wanted me to admit that I had been fighting in Afghanistan and that I was part of al-Qaeda. Neither was true.”



Abdul Razak Ali, Algerian, held in Guantánamo since June 2002 without charge

Short-Shackled



Prisoners On Hunger-Strike Were Subjected to Force Feeding

“Last month, on March 15, I was sick in the prison hospital and refused to be fed. A team from the E.R.F. (Extreme Reaction Force), a squad of eight military police officers in riot gear, burst in. **They tied my hands and feet to the bed. They forcibly inserted an IV into my hand. I spent 26 hours in this state, tied to the bed. During this time I was not permitted to go to the toilet. They inserted a catheter, which was painful, degrading and unnecessary. I was not even permitted to pray. I will never forget the first time they passed the feeding tube up my nose. I can't describe how painful it is to be force-fed this way.**”



Samir Naji al Hasan Moqbel, was among the first Guantánamo prisoners; held for 14 years without charge or trial; released January 2016

The Legal Framework Implemented by the Executive Allowed for the Torture of Prisoners at Guantánamo

- Captured AQ, Taliban, and suspected terrorists, are:
 - not subject to the protections of the Geneva Conventions or UN CAT for interrogation, detention and treatment of prisoners
 - not allowed access to US courts
 - can be tortured by US persons with impunity



“The prisoners are like dogs and if you allow them to believe at any point that they are more than a dog then you’ve lost control of them.”

Maj. Gen. Geoffrey Miller, Commander of Guantánamo prison, to Brig. Gen. Janis Kaprinski, Commander of Abu Ghraib prison

Post-Release From Guantánamo

- Exile to third-countries (e.g., Serbia, Kazakhstan)
 - Harassment
 - Threatened with expulsion from housing and deportation
 - Constantly monitored
 - Restricted from traveling
 - No respect for their culture
 - Inadequate medical care
- More Prison
 - 18 Yemenis spent 5 years imprisoned indefinitely in the UAE after release from Guantánamo in 2016, where they were abused, tortured and held in solitary confinement

Archipelago of Guantánamos: Carceral Circulation Around the Globe

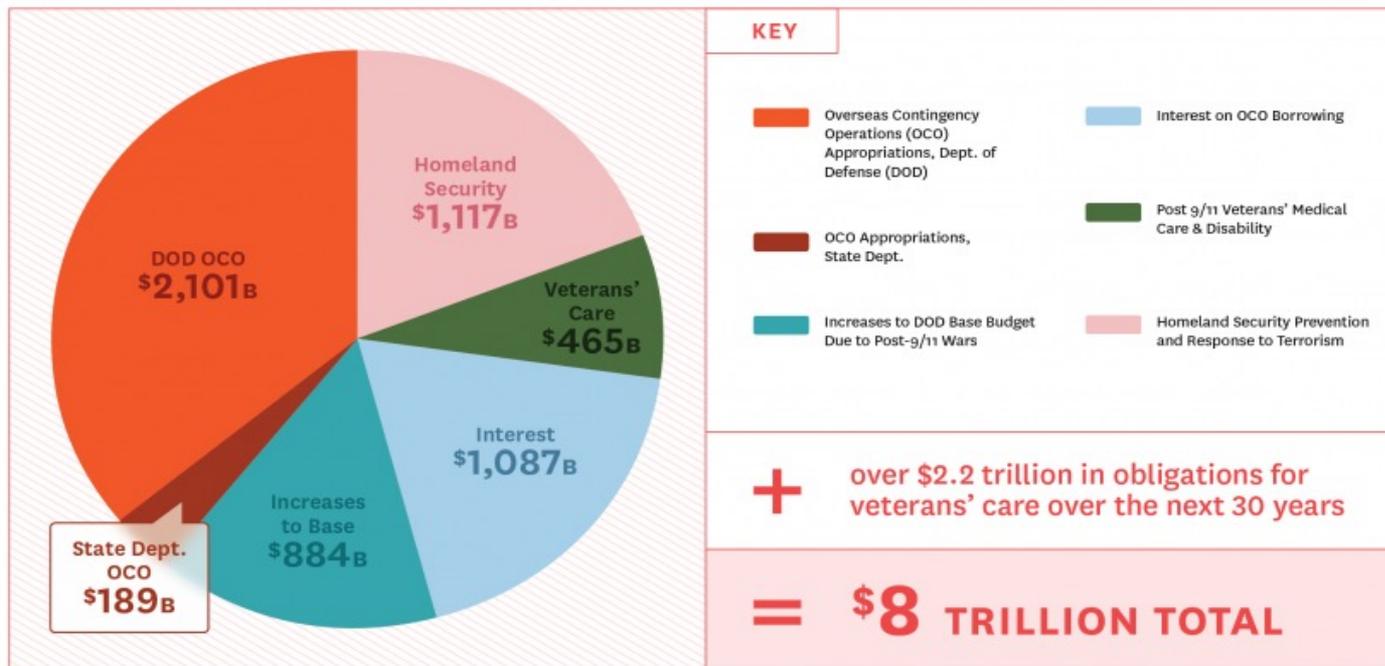
- “Attention to the texture of U.S. relations with client states reveals a loose network of GWOT detention and transfer practices that goes far beyond GTMO to include facilities maintained by the Pentagon and CIA, both secret and semi-secret, in Afghanistan, Djibouti, Iraq, Poland, Romania, and Thailand; and, perhaps, most numerous and difficulty to discern, prisons of U.S. client states such as Egypt, Jordan, Morocco, and Pakistan.”



Daryl Li, *From Exception to Empire, Sovereignty, Carceral Circulation, and the “Global War on Terror”*, in McGranahan & Collins, *Ethnographies of U.S. Empire* (Duke Univ. Press 2018), at 461.

Productivity: Feeding the Security Industry

Estimate of **U.S. Post-9/11 War Spending**, in \$ Billions FY2001–FY2022

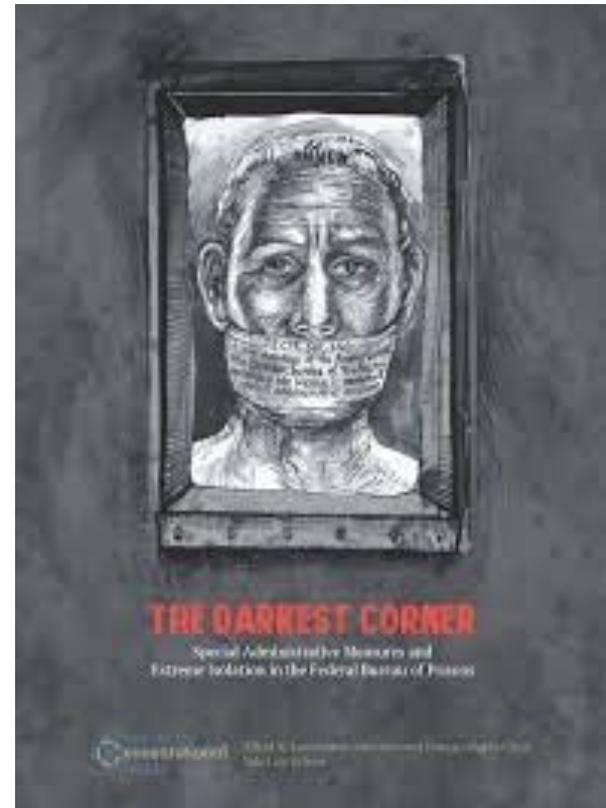


HUMAN COST OF POST-9/11 WARS: DIRECT WAR DEATHS IN MAJOR WAR ZONES, AFGHANISTAN & PAKISTAN (OCT. 2001 – AUG. 2021); IRAQ (MARCH 2003 – AUG. 2021); SYRIA (SEPT. 2014 – MAY 2021); YEMEN (OCT. 2002-AUG. 2021) AND OTHER POST-9/11 WARS

	Afghanistan ⁴	Pakistan	Iraq	Syria/ISIS ⁴	Yemen ⁵	Other ⁶	Total
U.S. Military ⁷	2,324 ⁸	- ⁹	4,598 ¹⁰	- ¹¹	-	130	7,052
U.S. DOD Civilian ¹²	6	-	15		-	-	21
U.S. Contractors ¹³	3,917	90	3,650	19 ¹⁴	2 ¹⁵	511 ¹⁶	8,189
National Military and Police ¹⁷	69,095 ¹⁸	9,431 ¹⁹	45,519- 48,719 ²⁰	80,600 ²¹	- ²²	N/A	204,645- 207,845
Other Allied Troops ²³	1,144	-	323	13,407 ²⁴		-	14,874
Civilians	46,319 ²⁵	24,099 ²⁶	185,831- 208,964 ²⁷	95,000 ²⁸	12,690 ²⁹	N/A ³⁰	363,939- 387,072
Opposition Fighters	52,893 ³¹	32,838 ³²	34,806- 39,881 ³³	77,000 ³⁴	99,321 ³⁵	N/A ³⁶	296,858- 301,933
Journalists/ Media Workers ³⁷	74	87	282	75	33	129 ³⁸	680
Humanitarian/NGO Workers ³⁹	446	105	63	224	46	8 ⁴⁰	892
TOTAL	176,206	66,650	275,087- 306,495	266,325	112,092	778	897,150- 928,558
TOTAL (Rounded to Nearest 1,000)	176,000	67,000	275,000- 306,000	266,000	112,000	1,000 ⁴¹	897,000- 929,000

Guantánamo in Your Neighborhood

- Special Administrative Measures (SAMs) in US federal prisons inflict the most severe form of isolation found in federal prisons. **Imposed on top of solitary confinement**, they operate to seal off prisoners' narrow avenues for human contact and communication.



Guantánamo in Your Neighborhood

- SAMs include sensory deprivation and social isolation on top of solitary confinement:
 - Physical isolation: separate unit, smaller cell, light restriction, alone when allowed out of cell, no recreation
 - Social isolation: cells prevent communication and none is allowed; limited communication only with counsel and immediate family
 - Spiritual isolation: practice of religion sharply restricted; no prayer groups, limited access to chaplain
 - Information isolation: restricted access to information about outside world, news; books, magazines and newspapers censored

Learn More About Guantánamo

Organizations

- Witness Against Torture: <https://witnessagainsttorture.com/>
- Close Guantánamo: <https://www.andyworthington.co.uk/tag/close-guantanamo/>
- No More Guantánamos: <https://www.nogitmos.org/>
- CCR: <https://ccrjustice.org/home/what-we-do/issues/guantanamo>
- Reprieve UK: <https://reprieve.org/uk/>

Film

- The Mauritanian
- Guantánamo Diary Revisited (sequel to The Mauritanian)
- Taxi to the Dark Side
- Guantánamo's Child: Omar Khadr

Database

- University of California Davis, The Guantánamo Testimonials Project
<https://humanrights.ucdavis.edu/projects/the-guantanamo-testimonials-project>
- New York Times, The Guantánamo Docket
<https://www.nytimes.com/interactive/2021/us/guantanamo-bay-detainees.html>

Learn More About Guantánamo

Books

- Mohamedou Ould Slahi, *The Mauritanian* (Back Bay Books 2020 (restored ed.))
- Mansoor Aydefi, *Don't Forget Us Here* (Hachette Books 2021)
- Jérôme Tubiana, *Guantánamo Kid* (SelfMadeHero 2019 (illustrated))
- Ahmed Errachidi, *The General* (Random House UK 2013)
- David Hicks, *Guantánamo: My Journey* (Random House 2010)
- Marc Falkoff, *Poems from Guantánamo* (Univ. Iowa Press 2007)
- Clive Stafford-Smith, *Bad Men* (Weidenfeld & Nicolson 2007)
- Peter Jan Honigsberg, *A Place Outside The Law* (Beacon Press 2019)
- Andy Worthington, *The Guantánamo Files* (Pluto Press 2007)
- Jane Mayer, *The Dark Side* (Anchor Books 2009)
- Eric Saar, *Inside The Wire* (Penguin Press 2005)
- James Yee & Aimee Molloy, *For God and Country* (PublicAffairs 2005)
- Nazia Kazi, *Islamophobia, Race, and Global Politics* (Rowman & Littlefield 2021 (updated ed.))