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Updated - July 13, 2004

The Interrogation Documents: Debating U.S. Policy and Methods

Dec 2, 2002 - Memo from the Department of Defense summarizing approved methods of interrogation, with annotation from Secretary of Defense Donald Rumsfeld

"All of those up and down the chain of command who bear any responsibility must be held accountable for the brutality and humiliation they inflicted on the prisoners and for the damage and dishonor that they brought to our nation and to the United States armed forces, which is otherwise filled with honorable men and women acting with courage and professionalism to bring stability and security and reconstruction to Iraq."

— Senator Carl Levin (D-Mich),
Senate Armed Services Committee
Hearing May 11 2004

"There must be a full accountability for the abuse of Iraq detainees and important questions must be asked of the chain of command to understand what happened, how it happened, when it happened and how those in positions of responsibility either ordered, encouraged or authorized -- or maybe looked the other way -- such conduct."

— Senator John Warner (R-Va),
Senate Armed Services Committee
Hearing May 19 2004

On June 22, 2004, the White House officially released 14 documents originating from the White House, the Pentagon and the Justice Department concerning the Administration's interrogation policies. These records include only one that,

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WHITE HOUSE RELEASE

At a press conference two days later, President Bush was asked about the Justice Department memos giving him authority to allow any method of interrogation. He responded, "The authorization I issued was that anything we did would conform to U.S. law and

would be consistent with international treaty obligations. That's the message I gave our people... I can't remember if I've seen the memo or not, but I gave those instructions."

Jan 22, 2002 - Department of Justice memo to White House and Defense Department Counsels regarding the application of the War Crimes Act and the Geneva Conventions

The 37-page memo, written by Assistant Attorney General Jay S. Bybee, is addressed to White House Counsel Alberto R. Gonzales and General Counsel at the Pentagon William J. Haynes II. The memo states that President Bush is not bound by international obligations to Afghanistan because it is a "failed state," and that therefore the War Crimes Act of 1984 and the Geneva Convention do not apply to prisoners from the Afghanistan conflict.

[The memo was released on June 22, 2004. Obtained from *The Washington Post* website at www.washingtonpost.com.]

Feb 1, 2002 - Department of Justice memo to President Bush reiterating position against the application of Geneva Convention to al Qaeda and the Taliban

The memo, written by Attorney General John Ashcroft, summarizes the position of the Justice Department on why the Geneva Convention does not apply to al Qaeda or Taliban prisoners. Ashcroft warns against the possibility of U.S. officials being subject to prosecution for violating U.S. and international laws if the Geneva Conventions are applied.

[The memo was released on June 22, 2004. Obtained from *The Washington Post* website at www.washingtonpost.com.]

Feb 7, 2002 - Department of Justice memo to the White House Counsel on the status of Taliban combatants

The then Head of the Office of Legal Counsel at the Justice Department, Assistant Attorney General Jay S. Bybee, states the Department's conclusion that the President "has reasonable factual grounds" to determine that members of the Taliban captured in Afghanistan are not entitled to prisoner of war (POW) status under the Geneva Convention.

[Released June 22, 2004. Obtained from *The Washington Post* website at www.washingtonpost.com.]

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Feb 7, 2002 - Memo from President Bush to his national security advisors concerning the application of Geneva Convention in the Afghanistan conflict

In the memo, President Bush states his belief that he has "the authority under the Constitution" to determine that the Geneva Convention does not apply to the conflict in Afghanistan, but that he will "decline to exercise that authority at this time." In accordance with the position of the Department of Justice, he determines that the Geneva Convention on the Treatment of Prisoners of War does not apply to members of the Taliban and al Qaeda.

[Released June 22, 2004. Obtained from *The Washington Post* website at www.washingtonpost.com.]

Feb 26, 2002 - Department of Justice memo to the Defense Department General Counsel on the constitutional issues related to detainees from the Afghanistan conflict

In a memo to General Counsel William J. Haynes II, Assistant Attorney General Jay S. Bybee examines possible legal constraints on the interrogation of Afghanistan prisoners, including whether statements made during interrogations are admissible in military commissions and whether individuals being interrogated will be prosecuted.

[Released June 22, 2004. Obtained from *The Washington Post* website at www.washingtonpost.com.]

Aug 1, 2002 - Department of Justice memo to White House Counsel stating that interrogation methods used on al Qaeda prisoners comply with international treaties prohibiting torture

The memo, written by Deputy Assistant Attorney General John C. Yoo of the Office of Legal Counsel, advises White House Counsel Alberto R. Gonzales that techniques used to interrogate members of al Qaeda would not violate the Torture Convention of 1984, and that such interrogations were not within the jurisdiction of the International Criminal Court.

[Released June 22, 2004. Obtained from *The Washington Post* website at www.washingtonpost.com.]

Aug 1, 2002 - Department of Justice memo to the White House Counsel regarding the definition of torture

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The memo from Assistant Attorney General Jay S. Bybee to White House Counsel Alberto Gonzales examines the definition of torture under the 1984 Torture Convention and its applicability to interrogations outside of the United States. The Office of Legal Counsel concludes that physical pain constituting torture "must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death." The memo also finds that the torture of suspected terrorists for interrogation purposes might be legally defensible.

[Released June 22, 2004. Obtained from *The Washington Post* website at www.washingtonpost.com.]

Dec 2, 2002 - Memo from the Department of Defense summarizing approved methods of interrogation

The memo on "Counter-Resistance Techniques" was written by the Defense Department's General Counsel, William J. Haynes II, and later approved by Secretary of Defense Rumsfeld. It sets out specific techniques for interrogation that can be used on detainees at the U.S. detention center at Guantanamo Bay, Cuba. **A related memo issued on June 22, 2004, by White House officials reviews the specific methods which were approved and used.**

[Released June 22, 2004. Obtained from *The Washington Post* website at www.washingtonpost.com.]

Jan 15, 2003 - Department of Defense memo from Secretary of Defense Rumsfeld to the head of U.S. Southern Command on specific interrogation techniques

The memo from Secretary of Defense Rumsfeld withdraws his approval for some interrogation techniques used on detainees at Guantanamo Bay. Secretary Rumsfeld allows for the use of harsher tactics only if "warranted in an individual case" and explicitly approved by him.

[Released June 22, 2004. Obtained from *The Washington Post* website at www.washingtonpost.com.]

Jan 15, 2003 - Memo from Secretary of Defense Rumsfeld to Defense Department Counsel regarding a review of interrogation policies

The memo from Secretary of Defense Rumsfeld to

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Counsel William J. Haynes requests the creation of a working group "to assess the legal, policy, and operational issues relating to the interrogations of detainees."

[Released June 22, 2004. Obtained from *The Washington Post* website at www.washingtonpost.com.]

Jan 17, 2003 - Department of Defense memo to the General Counsel for the Air Force regarding the review of interrogation policies

The memo from Defense Department Counsel William J. Haynes designates Mary Walker, General Counsel for the Air Force, as the chair of the working group requested by Secretary of Defense Rumsfeld to assess U.S. policies toward interrogation.

[Released June 22, 2004. Obtained from *The Washington Post* website at www.washingtonpost.com.]

April 4, 2003 - Working Group Report from the Defense Department on interrogation methods

The 85-page classified report, prepared for Secretary of Defense Rumsfeld, reviews the "legal, historical, police and operational considerations" regarding interrogations of detainees in the war on terrorism. The report provides recommendations to the Secretary of Defense on which interrogation techniques should be approved. It also outlines U.S. laws and international treaties concerning torture and discusses how national security concerns or legal technicalities could overcome such restrictions. The report states that, as commander-in-chief, President Bush is not bound by domestic or international laws prohibiting torture and that government agents who might have used torture under his direction can not be prosecuted by the Justice Department.

[Released June 22, 2004. Obtained from *The Washington Post* website at www.washingtonpost.com.]

An earlier draft of the report was referenced by *The Wall Street Journal* and made available by *The Wall Street Journal* on June 7, 2004. The draft, dated March 6, 2003, lacks several pages included in the version officially released on June 22, 2004: Pages 29-30, 34, 46, 49, 54-71, as well as the appendices on interrogation techniques and recommendations. Sections from pages 7, 8, 26, 39, 41, and 42 have also

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been omitted or rewritten.

Apr 16, 2003 - Department of Defense memo from Secretary of Defense Rumsfeld to the Head of the U.S. Southern Command regarding approved interrogation methods

The memo restates the specific techniques of interrogation which have been approved by the Secretary of Defense for use on detainees at the U.S. detention facility at Guantanamo Bay. It identifies additional measures which require Secretary of Defense Rumsfeld's explicit approval.

[Released June 22, 2004. Obtained from *The Washington Post* website at www.washingtonpost.com.]

DEPARTMENT OF DEFENSE RELEASE

The following nine documents relate to the development of interrogation procedures at the U.S. military detention facility in Guantanamo Bay, Cuba, and were released by the Department of Defense on June 22. Five of these records were also released by the White House on the same day. According to the Department of Defense press release, the documents were being "made available to demonstrate that the actions of the U.S. Defense Department are bound by law and guided by American values." The documents date from January 2002, when detainees were first brought to Guantanamo, and pertain primarily to the development of interrogation techniques at the facility through April 2004. **Press Release, June 22, 2004.**

The following four documents were released by the Department of Defense on June 22 but were not part of the White House release the same day.

Jan 19, 2002 - Secretary of Defense Memo for Combatant Commanders, "Status of Taliban and Al Qaida"

Secretary of Defense Donald Rumsfeld determines that Al Qaida and Taliban detainees "are not entitled to prisoner of war status for purposes of the Geneva Conventions of 1949." However, detained individuals are to be treated "humanely, and to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of the Geneva Conventions of 1949."

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Jan 21, 2002 - Message from Chairman, Joint Chiefs of Staff to Unified Commands and Services, "Status of Taliban and Al Qaida"

This message transmits the secretary of defense determination of Jan 19 to military combatant commanders.

Oct 11, 2002 - Memo for Commander Joint Task Force 170, "Counter Resistance Strategies"

This memo requests authorization from the U.S. Southern Command chief of a set of interrogation techniques described in an attached memo. A second cover memo indicates that these techniques have passed the legal review of Guantanamo's staff judge advocate. The "Counter Resistance Strategies" document lists three categories of increasingly severe interrogation methods. The commander of Task Force 170, Maj. Gen. Michael Dunlavey, believes that the procedures outlined in the memo "will enhance our efforts to extract additional information."

Oct 25, 2002 - SOUTHCOM's endorsement of the CJTF-170's request

Noting that "some detainees have tenaciously resisted our current interrogation methods," U.S. Southern Command chief James T. Hill recommends the adoption of the interrogation techniques in the first two categories of techniques described in the "Counter Resistance Strategies" memo attached to the Oct 11 memo above. However, Gen. Hill is "uncertain whether all the techniques in the third category are legal under U.S. law" and requests further legal review of these methods. Category three techniques include threats against detainees' families, actions intended to simulate suffocation, exposure to cold weather or water, and the use of "mild, non-injurious physical contact."

The following five documents were released by both the Department of Defense and the White House on June 22.

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Dec 2, 2002 - Memo from the Department of Defense summarizing approved methods of interrogation

Jan 15, 2003 - Memo from Secretary of
Defense Rumsfeld to Defense Department
Counsel regarding a review of interrogation
policies

Apr 16, 2003 - Department of Defense memo from Secretary of Defense Rumsfeld to the Head of the U.S. Southern Command regarding approved interrogation methods

The following records were leaked to the news media and have been widely reported and made available to the public by various news media sources. These records were not included in the June 22 White House release.

The memo, written by lawyers Patrick F. Philbin and John Yoo of the Office of Legal Counsel, concludes that the U.S. does not have jurisdiction over habeas petitions of detainees in Guantanamo Bay, Cuba. The memo states that federal courts cannot review cases of mistreatment or mistaken arrest from prisoners in Guantanamo Bay because the detainees are being held outside U.S. territory.

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Jan 9, 2002 - Department of Justice memo concerning the bearing of international laws prohibiting torture on President Bush and the U.S. military

The memo, entitled "Application of Treaties and Laws to al Qaeda and Taliban Detainees," was written by lawyers John Yoo and Robert J. Delahunty. It states: "Any customary international law of armed conflict in no way binds, as a legal matter, the President or the U.S. Armed Forces concerning the detention or trial of members of al Qaeda and the Taliban." The memo concludes that suspected terrorist detainees can be prosecuted for violating these same laws: "We do not believe that these courts would lose jurisdiction to try members of al Qaeda or the Taliban militia for violations of the laws of war, even though we have concluded that the laws of war have no binding effect [obscured] on the President." [Referenced in "Double Standards?" by Michael Isikoff, *Newsweek*, May 25, 2004. Obtained from the *Newsweek* website at www.newsweek.com]

Jan 25, 2002 - Memo from White House Counsel to President Bush opposing the application of Geneva Conventions to the conflict in Afghanistan

White House Counsel Alberto Gonzales states that as Chief Executive, President Bush has the authority to determine whether the Geneva Convention III on the Treatment of Prisoners of War (GPW) does or does not apply, and reiterates the position of the Office of Legal Counsel of the Justice Department that it does not. The position is justified, Gonzales writes, by the status of Afghanistan as a failed state that is unable to fulfill its international obligations and the "militant, terrorist-like" nature of the Taliban and its forces. [Referenced in "Memos Reveal War Crimes Warnings" by Michael Isikoff, *Newsweek*, on May 17, 2004. Obtained from the *Newsweek* website at www.newsweek.com]

Jan 26, 2002 - Department of State memo from Colin Powell in response to the White House Counsel's position on the application of Geneva Conventions

The 5-page memo, addressed to the President's Counsel and the Assistant to the President for National Security Affairs, outlines the "options available" to the President in deciding the applicability of the Geneva Conventions to the Afghanistan conflict. Secretary Powell identifies numerous advantages for applying

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the conventions, including providing "the strongest legal foundation" for future military action, preserving the "credibility and moral authority" of the U.S., and protecting American forces and officials from criminal investigations.

[Referenced in "Memos Reveal War Crimes Warnings" by Michael Isikoff, *Newsweek*, on May 17, 2004. Obtained from the *Newsweek* website at www.newsweek.com]

Feb 2, 2002 - Department of State memo to the White House Counsel advising that the Geneva Conventions should apply

The 5-page memo from State Department Legal Advisor William H. Taft to Counsel Alberto Gonzales discusses the legal considerations surrounding the application of the Geneva Conventions, emphasizing the advantages of applying the Convention. An attachment to the memo outlines the positions taken by lawyers from the Department of Justice, Department of Defense, Department of State, the White House Counsel, and the Office of the Vice President.

[Referenced in "Documents Build a Case for Working Outside the Laws on Interrogating Prisoners" by Neil A. Lewis, *New York Times*, June 9, 2004. Obtained from *The New York Times*.]

On May 7, 2004, *The Wall Street Journal* published excerpts of a confidential report by the International Committee of the Red Cross on detention in Iraq. The 24-page report, dated January 2004 and submitted to Coalition Forces the following month, was based on inspections and interviews which took place from March to November 2003, including a visit to Abu Ghraib in mid-October. It concludes that abuse of Iraqi prisoners by U.S. military intelligence personnel was widespread and in some cases "tantamount to torture." According to the report, ICRC officials warned military intelligence officers of abuse at Abu Ghraib after witnessing mistreatment in the fall of 2003, but were told that harsh and brutal tactics were "part of the process" when trying to "obtain confessions and extract information." Overall, the report says ICRC investigations "suggested the use of ill-treatment against persons deprived of their liberty went beyond exceptional cases and might be considered a practice tolerated by" coalition forces.

— Excerpts made available by *The Wall Street Journal*, "Red Cross Found Widespread Abuse of Iraqi Prisoners," 7 May 2004

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March 12, 2004 - Report from Maj. General Antonio Taguba detailing the findings of a Department of Defense

Investigation into the treatment of prisoners at Abu Ghraib Prison in Iraq ("Taguba Report")

In January 2004 the senior U.S. commander in Iraq authorized an investigation of the conduct of the 800th Military Police Brigade, the unit in charge of detention and internment operations of detainees and other prisoners at Abu Ghraib prison in Baghdad. The report, prepared by Maj. General Antonio Taguba, sharply criticizes the unit for mistreatment of detainees at the facility, including various acts of physical, psychological and sexual abuse. The report also finds that interrogators from military and civilian intelligence organizations "actively requested" that personnel from the 800th MP Brigade "set the physical and mental conditions for favorable interrogation of witnesses." [Referenced in "Torture at Abu Ghraib" by Seymour Hersh, *The New Yorker*, April 30, 2004]

"At the end of the day, a few soldiers and civilians conspired to abuse and conduct egregious acts of violence against detainees and other civilians outside the bounds of international law and the Geneva Convention. Their incomprehensible acts, caught in their own personal record of photographs and video clips, have seriously maligned and impugned the courageous acts of thousands of U.S. and coalition forces. It puts into question the reputation of our nation and the reputation of those who continue to serve in uniform, and who would willingly sacrifice their lives to safeguard our freedom."

-- General Antonio Taguba, Senate Armed Services Committee hearing May 11 2004

17 ADDITIONAL RECORDS THAT HAVE NOT BEEN RELEASED

"The stonewalling in the prison abuse scandal has been building to a crisis point. Yesterday, responding to public pressure, the White House has released a small subset of the documents that offers a glimpse into the genesis of this scandal. There are many items missing from this release, however, including all but three of the 23 items Judiciary Committee Democrats requested in the subpoena that was voted down by Republicans last

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week. Where are the 20 remaining documents? Perhaps the most ominous omission is the lack of any documents reflecting White House involvement in this issue since military action began in Iraq last year. The released documents do not include a single reference to the treatment or interrogation of detainees in Iraq, despite the heinous abuses at Abu Ghraib that we have all seen with our own eyes."

-- Senator Patrick Leahy (D-Vt), Floor Statement, June 23 2004

The following 16 records are included in a congressional subpoena proposed by Senators Leahy and Feinstein that was defeated on June 17, 2004 by the Senate Judiciary Committee:

1. Memorandum for Timothy E. Flannigan, Deputy Counsel to the President, from John Yoo, Deputy Assistant Attorney General, Office of Legal Counsel, Re: The President's authority to conduct military operations against terrorists and nations supporting them (Sept. 25, 2001);
2. Memorandum for Alberto Gonzales, Counsel to the President, from Patrick F. Philbin, Deputy Assistant Attorney General, Office of Legal Counsel, Re: Legality of the use of military commissions to try terrorists (Nov. 6, 2001);
3. Draft Memorandum for William J. Haynes, General Counsel, Department of Defense, from John Yoo, Deputy Assistant Attorney General, and Robert J. Delahunty, Special Counsel, Office of Legal Counsel, Re: Application of treaties and laws to al Qaeda and Taliban detainees (January 9, 2002);
4. Memorandum for John Yoo, Deputy Assistant Attorney General, Office of Legal Counsel, from James C. Ho, Attorney-Advisor, Office of Legal Counsel, Re: Possible interpretations of Common Article 3 of the 1949 Geneva Convention Relative to the Treatment of Prisoners of War (Feb. 1, 2002);
5. Memorandum for Daniel J. Bryant, Assistant Attorney General, Office of Legal Counsel, from Patrick F. Philbin, Deputy Assistant Attorney General, Office of Legal Counsel, Re: Swift Justice Authorization Act (Apr. 8, 2002);
6. Memorandum for General James T. Hill from Defense Secretary Rumsfeld, Re: Coercive interrogation techniques that can be used with approval of the Defense Secretary (Apr. 2003);

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7. Memorandum from CJTF-7, Re: Applicability of Army Field Manual 34-52 and sensory deprivation (Sept. 10, 2003);

8. Directive of Lt. General Ricardo Sanchez entitled "Interrogation and Counter-Resistance Policy" (Sept. 12, 2003);

9. Memorandum from CJTF-7 on Interrogations (Sept. 28, 2003);

10. Memorandum for MI personnel at Abu Ghraib, Re: Interrogation rules of engagement (Oct. 9, 2003);

11. Memorandum for Commander of MI Brigade from Lt. General Ricardo Sanchez, Re: Order giving military intelligence control over almost every aspect of prison conditions at Abu Ghraib with the explicit aim of manipulating the detainees' "emotions and weaknesses" (Oct. 12, 2003);

12. Memoranda for Review and Appeal Board at Abu Ghraib from Detainee Assessment Branch (Nov. 1, 2003 through Jan. 31, 2004);

13. Memorandum for MP and MI personnel at Abu Ghraib from Colonel Marc Warren, the top legal adviser to Lt. General Ricardo Sanchez, Re: New plan to restrict Red Cross access to Abu Ghraib (Jan. 2, 2004);

14. Memorandum for Superiors from Maj. General Antonio Taguba, Re: Results of Investigation into the 800th MP Brigade's actions in Abu Ghraib (Mar. 12, 2004);

15. Memorandum from the Department of Justice, Re: Liability of interrogators under the Convention Against Torture and the Anti-Torture Act when a prisoner is not in U.S. custody.

16. Review, study, or investigation report by LTC Chamberlain, Re: State of prisons in Iraq (addressing the proportion of innocent people in the prisons and the release procedures for detained Iraqis).

The following document has been described in the news media, but has not been officially or unofficially released.

17. January 11, 2002 - State Department memo concerning the violation of international laws

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[Referenced in "Double Standards?" by Michael Isikoff, *Newsweek*, May 25, 2004.]

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