



U.S. Department of Justice

Office of Legal Counsel

Office of the
Deputy Assistant Attorney General

Washington, DC 20530

July 13, 2002

John Rizzo
Acting General Counsel
Central Intelligence Agency
Washington, D.C. 20505

Dear Mr. Rizzo:

This letter is in response to your inquiry at our meeting today about what is necessary to establish the crime of torture, as set forth in 18 U.S.C. § 2340 *et seq.* The elements of the crime of torture are: (1) the torture occurred outside the United States; (2) the defendant acted under the color of law; (3) the victim was within the defendant's custody or physical control; (4) the defendant specifically intended to cause severe mental or physical pain or suffering; and (5) the act inflicted severe mental or physical pain or suffering. See 18 U.S.C. § 2340(1); *id.*, § 2340. With respect to severe mental pain or suffering specifically, prolonged mental harm must be established. That prolonged mental harm must result from one of the following acts: intentional infliction or threatened infliction of severe physical pain or suffering; administration or application of or threatened administration or application of mind-altering drugs or other procedures designed to profoundly disrupt the senses or personality; threat of imminent death; or threatening to subject another person to imminent 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. See 18 U.S.C. § 2340(2).

Moreover, to establish that an individual has acted with the specific intent to inflict severe mental pain or suffering, an individual must act with specific intent, i.e., with the express purpose, of causing prolonged mental harm in order for the use of any of the predicate acts to constitute torture. Specific intent can be negated by a showing of good faith. Thus, if an individual undertook any of the predicate acts for severe mental pain or suffering, but did so in the good faith belief that those acts would not cause the prisoner prolonged mental harm, he would not have acted with the specific intent necessary to establish torture. If, for example, efforts were made to determine what long-term impact, if any, specific conduct would have and it was learned that the conduct would not result in prolonged mental harm, any actions undertaken relying on that advice would have been undertaken in good faith. Due diligence to meet this standard might include such actions as surveying professional literature, consulting with experts, or evidence gained from past experience.

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As you know, our office is in the course of finalizing a more detailed memorandum opinion analyzing section 2340. We look forward to working with you as we finish that project. Please contact me or if you have any further questions.

Sincerely,

John Yoo

John Yoo
Deputy Assistant Attorney General

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