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## The Roots Of Torture

*The road to Abu Ghraib began after 9/11, when Washington wrote new rules to fight a new kind of war. A NEWSWEEK investigation*

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It's not easy to get a member of Congress to stop talking. Much less a room full of them. But as a small group of legislators watched the images flash by in a small, darkened hearing room in the Rayburn Building last week, a sickened silence descended. There were 1,800 slides and several videos, and the show went on for three hours. The nightmarish images showed American soldiers at Abu Ghraib Prison forcing Iraqis to masturbate. American soldiers sexually assaulting Iraqis with chemical light sticks. American soldiers laughing over dead Iraqis whose bodies had been abused and mutilated. There was simply nothing to say. "It was a very subdued walk back to the House floor," said Rep. Jane Harman, the ranking Democrat on the House Intelligence Committee. "People were ashen."

The White House put up three soldiers for court-martial, saying the pictures were all the work of a few bad-apple MPs who were poorly supervised. But evidence was mounting that the furor was only going to grow and probably sink some prominent careers in the process. Senate Armed Services Committee chairman John Warner declared the pictures were the worst "military misconduct" he'd seen in 60 years, and he planned more hearings. Republicans on Capitol Hill were notably reluctant to back Defense Secretary Donald Rumsfeld. And NEWSWEEK has learned that U.S. soldiers and CIA operatives could be accused of war crimes. Among the possible charges: homicide involving deaths during interrogations. "The photos clearly demonstrate to me the level of prisoner abuse and mistreatment went far beyond what I expected, and certainly involved more than six or seven MPs," said GOP Sen. Lindsey Graham, a former military prosecutor. He added: "It seems to have been planned."

Indeed, the single most iconic image to come out of the abuse scandal—that of a hooded man standing naked on a box, arms outspread, with wires dangling from his fingers, toes and penis—may do a lot to undercut the administration's case that this was the work of a few criminal MPs. That's because the practice shown in that photo is an arcane torture method known only to veterans of the interrogation trade. "Was that something that [an MP] dreamed up by herself? Think again," says Darius Rejali, an expert on the use of torture by democracies. "That's a standard torture. It's called 'the Vietnam.' But it's not common knowledge. Ordinary American soldiers did this, but someone taught them."

Who might have taught them? Almost certainly it was their superiors up the line. Some of the images from Abu Ghraib, like those of naked prisoners terrified by attack dogs or humiliated before grinning female guards, actually portray "stress and duress" techniques officially approved at the highest levels of the government for use against terrorist suspects. It is unlikely that President George W. Bush or senior officials ever knew of these specific techniques, and late last week Defense spokesman Larry DiRita said that "no responsible official of the Department of Defense approved any program that could conceivably have been intended to result in such abuses." But a NEWSWEEK investigation shows that, as a means of pre-empting a repeat of 9/11, Bush, along with Defense Secretary Rumsfeld and Attorney General John Ashcroft, signed off on a secret system of detention and interrogation that opened the door to such

C05950330 was an approach that they adopted to sidestep the historical safeguards of the Geneva Conventions, which protect the rights of detainees and prisoners of war. In doing so, they overrode the objections of Secretary of State Colin Powell and America's top military lawyers—and they left underlings to sweat the details of what actually happened to prisoners in these lawless places. While no one deliberately authorized outright torture, these techniques entailed a systematic softening up of prisoners through isolation, privations, insults, threats and humiliation—methods that the Red Cross concluded were tantamount to torture."

The Bush administration created a bold legal framework to justify this system of interrogation, according to internal government memos obtained by NEWSWEEK. What started as a carefully thought-out, if aggressive, policy of interrogation in a covert war—designed mainly for use by a handful of CIA professionals—evolved into ever-more ungoverned tactics that ended up in the hands of untrained MPs in a big, hot war. Originally, Geneva Conventions protections were stripped only from Qaeda and Taliban prisoners. But later Rumsfeld himself, impressed by the success of techniques used against Qaeda suspects at Guantanamo Bay, seemingly set in motion a process that led to their use in Iraq, even though that war was supposed to have been governed by the Geneva Conventions. Ultimately, reservist MPs, like those at Abu Ghraib, were drawn into a system in which fear and humiliation were used to break prisoners' resistance to interrogation.

"There was a before-9/11 and an after-9/11," as Cofer Black, the onetime director of the CIA's counterterrorist unit, put it in testimony to Congress in early 2002. "After 9/11 the gloves came off." Many Americans thrilled to the martial rhetoric at the time, and agreed that Al Qaeda could not be fought according to traditional rules. But it is only now that we are learning what, precisely, it meant to take the gloves off.

The story begins in the months after September 11, when a small band of conservative lawyers within the Bush administration staked out a forward-leaning legal position. The attacks by Al Qaeda on the World Trade Center and the Pentagon, these lawyers said, had plunged the country into a new kind of war. It was conflict against a vast, outlaw, international enemy in which the rules of war, international treaties and even the Geneva Conventions did not apply. These positions were laid out in secret legal opinions drafted by lawyers from the Justice Department's Office of Legal Counsel, and then endorsed by the Department of Defense and ultimately by White House counsel Alberto Gonzales, according to copies of the opinions and other internal legal memos obtained by NEWSWEEK.

The Bush administration's emerging approach was that America's enemies in this war were "unlawful" combatants without rights. One Justice Department memo, written for the CIA late in the fall of 2001, put an extremely narrow interpretation on the international anti-torture convention, allowing the agency to use a whole range of techniques—including sleep deprivation, the use of phobias and the deployment of "stress factors"—in interrogating Qaeda suspects. The only clear prohibition was "causing severe physical or mental pain"—a subjective judgment that allowed for "a whole range of things in between," said one former administration official familiar with the opinion. On Dec. 28, 2001, the Justice Department Office of Legal Counsel weighed in with another opinion, arguing that U.S. courts had no jurisdiction to review the treatment of foreign prisoners at Guantanamo Bay. The appeal of Gitmo from the start was that, in the view of administration lawyers, the base existed in a legal twilight zone—or "the legal equivalent of outer space," as one former administration lawyer described it. And on Jan. 9, 2002, John Yoo of Justice's Office of Legal Counsel coauthored a sweeping 42-page memo concluding that neither the Geneva Conventions nor any of the laws of war applied to the conflict in Afghanistan.

Cut out of the process, as usual, was Colin Powell's State Department. So were military lawyers for the uniformed services. When State Department lawyers first saw the Yoo memo, "we were horrified," said one. As State saw it, the Justice position would place the United States outside the orbit of international

d championed for years. Two days after the Yoo memo circulated, the State Department's chief legal adviser, William Howard Taft IV, fired a memo to Yoo calling his analysis "seriously flawed." State's most immediate concern was the unilateral conclusion that all captured Taliban were not covered by the Geneva Conventions. "In previous conflicts, the United States has dealt with tens of thousands of detainees without repudiating its obligations under the Conventions," Taft wrote. "I have no doubt we can do so here, here a relative handful of persons is involved."

The White House was undeterred. By Jan. 25, 2002, according to a memo obtained by NEWSWEEK, it was clear that Bush had already decided that the Geneva Conventions did not apply at all, either to the Taliban or Al Qaeda. In the memo, which was written to Bush by Gonzales, the White House legal counsel told the president that Powell had "requested that you reconsider that decision." Gonzales then laid out startlingly broad arguments that anticipated any objections to the conduct of U.S. soldiers or CIA interrogators in the future. "As you have said, the war against terrorism is a new kind of war," Gonzales wrote to Bush. "The nature of the new war places a high premium on other factors, such as the ability to quickly obtain information from captured terrorists and their sponsors in order to avoid further atrocities against American civilians." Gonzales concluded in stark terms: "In my judgment, this new paradigm renders obsolete Geneva's strict limitations on questioning of enemy prisoners and renders quaint some of its provisions."

Gonzales also argued that dropping Geneva would allow the president to "preserve his flexibility" in the war on terror. His reasoning? That U.S. officials might otherwise be subject to war-crimes prosecutions under the Geneva Conventions. Gonzales said he feared "prosecutors and independent counsels who may in the future decide to pursue unwarranted charges" based on a 1996 U.S. law that bars "war crimes," which were defined to include "any grave breach" of the Geneva Conventions. As to arguments that U.S. soldiers might suffer abuses themselves if Washington did not observe the conventions, Gonzales argued wishfully to Bush that "your policy of providing humane treatment to enemy detainees gives us the credibility to insist on like treatment for our soldiers."

When Powell read the Gonzales memo, he "hit the roof," says a State source. Desperately seeking to change Bush's mind, Powell fired off his own blistering response the next day, Jan. 26, and sought an immediate meeting with the president. The proposed anti-Geneva Convention declaration, he warned, "will reverse over a century of U.S. policy and practice" and have "a high cost in terms of negative international reaction." Powell won a partial victory: On Feb. 7, 2002, the White House announced that the United States would indeed apply the Geneva Conventions to the Afghan war—but that Taliban and Qaeda detainees would still not be afforded prisoner-of-war status. The White House's halfway retreat was, in the eyes of State Department lawyers, a "hollow" victory for Powell that did not fundamentally change the administration's position. It also set the stage for the new interrogation procedures ungoverned by international law.

What Bush seemed to have in mind was applying his broad doctrine of pre-emption to interrogations: to get information that could help stop terrorist acts before they could be carried out. This was justified by what is known in counterterror circles as the "ticking time bomb" theory—the idea that when faced with an imminent threat by a terrorist, almost any method is justified, even torture.

With the legal groundwork laid, Bush began to act. First, he signed a secret order granting new powers to the CIA. According to knowledgeable sources, the president's directive authorized the CIA to set up a series of secret detention facilities outside the United States, and to question those held in them with unprecedented harshness. Washington then negotiated novel "status of forces agreements" with foreign governments for the secret sites. These agreements gave immunity not merely to U.S. government personnel but also to private contractors. (Asked about the directive last week, a senior administration official said, "We cannot comment on purported intelligence activities.")

The administration also began "rendering"—or delivering terror suspects to foreign governments for interrogation. Why? At a classified briefing for senators not long after 9/11, CIA Director George Tenet was asked whether Washington was going to get governments known for their brutality to turn over Qaeda suspects to the United States. Congressional sources told NEWSWEEK that Tenet suggested it might be better sometimes for such suspects to remain in the hands of foreign authorities, who might be able to use more aggressive interrogation methods. By 2004, the United States was running a covert charter airline moving CIA prisoners from one secret facility to another, sources say. The reason? It was judged impolitic (and too traceable) to use the U.S. Air Force.

At first—in the autumn of 2001—the Pentagon was less inclined than the CIA to jump into the business of handling terror suspects. Rumsfeld himself was initially opposed to having detainees sent into DOD custody at Guantanamo, according to a DOD source intimately involved in the Gitmo issue. "I don't want to be jailer to the goddammed world," said Rumsfeld. But he was finally persuaded. Those sent to Gitmo would be hard-core Qaeda or other terrorists who might be liable for war-crimes prosecutions, and who would likely, if freed, "go back and hit us again," as the source put it.

In mid-January 2002 the first plane-load of prisoners landed at Gitmo's Camp X-Ray. Still, not everyone was getting the message that this was a new kind of war. The first commander of the MPs at Gitmo was a one-star from the Rhode Island National Guard, Brig. Gen. Rick Baccus, who, a Defense source recalled, mainly "wanted to keep the prisoners happy." Baccus began giving copies of the Qur'an to detainees, and he organized a special meal schedule for Ramadan. "He was even handing out printed 'rights cards'," the Defense source recalled. The upshot was that the prisoners were soon telling the interrogators, "Go f--- yourself, I know my rights." Baccus was relieved in October 2002, and Rumsfeld gave military intelligence control of all aspects of the Gitmo camp, including the MPs.

Pentagon officials now insist that they flatly ruled out using some of the harsher interrogation techniques authorized for the CIA. That included one practice—reported last week by The New York Times—whereby a suspect is pushed underwater and made to think he will be drowned. While the CIA could do pretty much what it liked in its own secret centers, the Pentagon was bound by the Uniform Code of Military Justice. Military officers were routinely trained to observe the Geneva Conventions. According to one source, both military and civilian officials at the Pentagon ultimately determined that such CIA techniques were "not something we believed the military should be involved in."

But in practical terms those distinctions began to matter less. The Pentagon's resistance to rougher techniques eroded month by month. In part this was because CIA interrogators were increasingly in the same room as their military-intelligence counterparts. But there was also a deliberate effort by top Pentagon officials to loosen the rules binding the military.

Toward the end of 2002, orders came down the political chain at DOD that the Geneva Conventions were to be reinterpreted to allow tougher methods of interrogation. "There was almost a revolt" by the service judge advocates general, or JAGs, the top military lawyers who had originally allied with Powell against the new rules, says a knowledgeable source. The JAGs, including the lawyers in the office of the chairman of the Joint Chiefs, Gen. Richard Myers, fought their civilian bosses for months—but finally lost. In April 2003, new and tougher interrogation techniques were approved. Covertly, though, the JAGs made a final effort. They went to see Scott Horton, a specialist in international human-rights law and a major player in the New York City Bar Association's human-rights work. The JAGs told Horton they could only talk obliquely about practices that were classified. But they said the U.S. military's 50-year history of observing the demands of the Geneva Conventions was now being overturned. "There is a calculated effort to create an atmosphere of legal ambiguity" about how the conventions should be interpreted and applied, they told Horton. And the prime movers in this effort, they told him, were DOD Under Secretary for Policy Douglas

... JOD general counsel William Haynes. There was, they warned, "a real risk of a disaster" for U.S. interests.

The approach at Gitmo soon reflected these changes. Under the leadership of an aggressive, self-assured major general named Geoffrey Miller, a new set of interrogation rules became doctrine. Ultimately what was developed at Gitmo was a "72-point matrix for stress and duress," which laid out types of coercion and the escalating levels at which they could be applied. These included the use of harsh heat or cold; withholding food; hooding for days at a time; naked isolation in cold, dark cells for more than 30 days, and threatening (but not biting) by dogs. It also permitted limited use of "stress positions" designed to subject detainees to rising levels of pain.

While the interrogators at Gitmo were refining their techniques, by the summer of 2003 the "postwar" insurgency in Iraq was raging. And Rumsfeld was getting impatient about the poor quality of the intelligence coming out of there. He wanted to know: Where was Saddam? Where were the WMD? Most immediately: Why weren't U.S. troops catching or forestalling the gangs planting improvised explosive devices by the roads? Rumsfeld pointed out that Gitmo was producing good intel. So he directed Steve Cambone, his under secretary for intelligence, to send Gitmo commandant Miller to Iraq to improve what they were doing out there. Cambone in turn dispatched his deputy, Lt. Gen. William (Jerry) Boykin—later to gain notoriety for his harsh comments about Islam—down to Gitmo to talk with Miller and organize the trip. In Baghdad in September 2003, Miller delivered a blunt message to Brig. Gen. Janis Karpinski, who was then in charge of the 800th Military Police Brigade running Iraqi detentions. According to Karpinski, Miller told her that the prison would thenceforth be dedicated to gathering intel. (Miller says he simply recommended that detention and intelligence commands be integrated.) On Nov. 19, Abu Ghraib was formally handed over to tactical control of military-intelligence units.

By the time Gitmo's techniques were exported to Abu Ghraib, the CIA was already fully involved. On a daily basis at Abu Ghraib, says Paul Wayne Bergrin, a lawyer for MP defendant Sgt. Javal Davis, the CIA and other intel officials "would interrogate, interview prisoners exhaustively, use the approved measures of food and sleep deprivation, solitary confinement with no light coming into cell 24 hours a day. Consequently, they set a poor example for young soldiers but it went even further than that."

Today there is no telling where the scandal will bottom out. But it is growing harder for top Pentagon officials, including Rumsfeld himself, to absolve themselves of all responsibility. Evidence is growing that the Pentagon has not been forthright on exactly when it was first warned of the alleged abuses at Abu Ghraib. U.S. officials continued to say they didn't know until mid-January. But Red Cross officials had alerted the U.S. military command in Baghdad at the start of November. The Red Cross warned explicitly of MPs' conducting "acts of humiliation such as [detainees] being made to stand naked ... with women's underwear over the head, while being laughed at by guards, including female guards, and sometimes photographed in this position." Karpinski recounts that the military-intel officials there regarded this criticism as funny. She says: "The MI officers said, 'We warned the [commanding officer] about giving those detainees the Victoria's Secret catalog, but he wouldn't listen.'" The Coalition commander in Iraq, Lt. Gen. Ricardo Sanchez, and his Iraq command didn't begin an investigation until two months later, when it was clear the pictures were about to leak.

Now more charges are coming. Intelligence officials have confirmed that the CIA inspector general is conducting an investigation into the death of at least one person at Abu Ghraib who had been subject to questioning by CIA interrogators. The Justice Department is likely to open full-scale criminal investigations into this CIA-related death and two other CIA interrogation-related fatalities.

As his other reasons for war have fallen away, President Bush has justified his ouster of Saddam Hussein saying he's a "torturer and murderer." Now the American forces arrayed against the terrorists are being

... the same epithet. That's unfair: what Saddam did at Abu Ghraib during his regime was more horrible, and on a much vaster scale, than anything seen in those images on Capitol Hill. But if America is going to live up to its promise to bring justice and democracy to Iraq, it needs to get to the bottom of what happened at Abu Ghraib.

*th Mark Hosenball and Roy Gutman in Washington, T. Trent Gegax and Julie Scelfo in New York and  
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