

# What's Your Torture IQ?

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Deciding which branch of the American government is to blame for torture<sup>1</sup> at Abu Ghraib, Guantanamo Bay and other US-controlled prisons, is difficult. Congress funds the CIA and passes laws restricting torture. Judges are partly to blame because they can interpret the law to encourage the practice. The Executive Branch, over many administrations, is also responsible because they create Executive Orders, policies, provide infrastructure and give orders that could entail torture, particularly within the CIA and other secret intelligence organizations.

The reason blame extends to all governmental branches is because torture has become acceptable to many Americans. A standard joke on late-night TV is that prisoners are raped in US prisons. People indicate their acceptance by laughing rather than being outraged. Thus, the Executive, Legislative and Judicial branches of government merely reflect the will of the American people.

This document asks questions about Executive Branch policy memos, Congressional testimony, and the treatment of prisoners at Abu Ghraib prison to illustrate the Executive's legal justifications for torture and the activities used to hide torture from the American people. Footnotes provide all the information needed to become comfortable with a given topic.

**All** questions have ***more than one*** correct answer choice.

1. Mr. Alberto Gonzales, the President's former chief legal advisor, wrote the Geneva Convention's prohibitions<sup>2</sup> on questioning enemy prisoners were "obsolete" in a 1/25/02 memo<sup>3</sup>. He wrote this memo because:

- A. Mr. Gonzales believed getting information quickly from potential attackers was a top priority and the Conventions slowed the process.
- B. Mr. Gonzales wanted to give the President the greatest flexibility in questioning prisoners and thought significantly altering<sup>4</sup> the interpretation of established US law (War Crimes Act<sup>5</sup>, Section 2340 of the US Code<sup>6</sup>) and international treaties (Geneva Conventions, United Nations Convention Against Torture) would accomplish this objective.
- C. Mr. Gonzales wanted to defend the President against the death penalty<sup>7</sup> in case he was accused/convicted under the War Crimes Act, Section 2441.
- D. As conditions warrant, the Geneva Conventions are reviewed by the President's chief counsel, so Mr. Gonzales was merely doing what other chief counsels have done for the last 50 years.
- E. Mr. Gonzales, like other high-achieving people<sup>8</sup>, might have let his ambition or loyalty color his perception of the law.

2. John Ashcroft's US Attorney General's office (Mr. Jay Bybee) wrote a memo on 8/2/02 saying the only interrogation techniques that could be characterized as torture were those causing pain "equivalent in intensity to pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death"<sup>9</sup>. This memo was written because:

- A. As conditions warrant, the definition of torture is reviewed by the Justice Department and Mr. Bybee was merely doing what other Justice Department staff have done for 50 years.
- B. After reviewing Mr. Gonzalez' 1/25/02 memo and the War Crimes Act, Mr. Bybee had a discussion with senior government officials about how to torture, if necessary, without being accused of war crimes.
- C. The President wanted the greatest latitude in questioning prisoners and didn't want to be precluded from torture.
- D. Mr. Bybee thought his job was to tell the President what he wanted to hear, and not worry about moral or efficacy issues (or they would have been discussed in the memo).
- E. Mr. Bybee, perhaps influenced by personal ambition or loyalty<sup>10</sup>, thought his memo might be favorably received by the President, even when the spirit, if not the letter of the law, did not support his memo's assertions about torture.

3. Condoleezza Rice, President Bush's National Security Advisor, lobbied to stop Congress' attempt to give the CIA detailed instructions and restrictions on torture<sup>11</sup>. The White House's motivation was:

- A. The White House wanted to make it more difficult for a prosecutor to accuse the US of violating the Geneva Conventions and the United Nations Convention Against Torture.<sup>12</sup>
- B. The White House wanted to protect America from terrorists who might be emboldened if they knew torture restrictions existed.
- C. The President wanted the greatest latitude in questioning prisoners and didn't want to be precluded from torture.
- D. The White House agrees with US Army Lt. General William Boykin, the Deputy Undersecretary of Defense for Intelligence, that "the Christian God is bigger than Allah, and the enemy in the war on terrorism was Satan<sup>13</sup>" and, when fighting against Satan, torture should be allowed.
- E. To make it uncertain how far troops could go during interrogations.

4. Former Attorney General John Ashcroft refused to provide the Senate Judiciary Committee with his department's memos concerning torture<sup>14</sup>. His motivation was:

- A. He believed Congressional scrutiny of his department's memos would impair the ability of advice givers to give candid, unvarnished truth at all times<sup>15</sup>.
- B. He agreed with Mr. Bybee the President can do whatever he wants during military campaigns and "Presidentially-proclaimed" war time<sup>16</sup>.
- C. He believed military necessity requires the President not be bound by US law or international treaties when questioning prisoners.
- D. He believed secrecy is the best policy, especially when the memos might show the Executive Branch broke the law (defined by Congress and international treaties).
- E. He was either afraid Congress would find out how many Iraqi people were tortured and killed (44)<sup>17</sup> or how many innocent detainees were arrested by mistake (70 percent according to International Committee of the Red Cross)<sup>18</sup>.

5. US Army Major General Antonio Taguba said there were differences between the actual number of prisoners on hand and the number officially recorded, so-called "ghost detainees". On at least one occasion, the "ghost detainees" were moved around to hide them from the International Committee of the Red Cross. He said "this maneuver was deceptive, contrary to Army Doctrine, and in violation of international law"<sup>19</sup>. The reason they were hidden is because:

- A. Allowing suspected terrorists an audience with the Red Cross might disturb the interrogation process, possibly endangering American lives.
- B. One or two low-level soldiers (e.g. Pfc. Lyndie England) misunderstood their superior officers' instructions, so the deception was isolated and accidental.
- C. A court might decree creating and holding ghost detainees violated both international and federal law.
- D. Some of these detainees were to receive extraordinary rendition, i.e. shipping them to countries (Egypt, Morocco, Syria and Jordan) known to use torture<sup>20</sup>.
- E. They were senior members of Al Qaeda and disclosing their location to the Red Cross could jeopardize American lives.

American authorities, perhaps believing torture is necessary to keep America safe from terrorists, want to avoid being accused of war crimes so longstanding US law and the Geneva Conventions<sup>21</sup> are reinterpreted to provide legal justification. Policy memos saying most torture is legal were written, and activities associated with torture are shielded from Congressional oversight<sup>22</sup> and from the scrutiny of the American people.

Although these activities implicate the current Executive Branch, actually, the American people are responsible for torture. Politicians merely carry out the will of the people. If they knew they would be ejected from office, impeached, and thrown in jail for authorizing, torture would not be permitted.

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## <sup>1</sup> Widespread Torture

a. The Conflict In Iraq: Detainees, Douglas Jehl and Eric Schmitt; Neil A. Lewis. (New York Times) Army and Navy investigators conclude **at least 26 prisoners died in American custody** in Iraq and Afghanistan in what could be **criminal homicides**; only one of deaths was at Abu Ghraib, **contradicting the view wrongdoing was confined to a few military police officers on night shift**; Also see Footnote 18  
<http://query.nytimes.com/gst/abstract.html?res=FA0D1FFF38580C758DDDA0894DD404482>

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b. **The Bagram File**, By Tim Golden (New York Times) Published: May 20, 2005

**But his legs, which had been pummeled by guards for several days, could no longer bend. ... has resulted in criminal charges against seven soldiers, went well beyond the two deaths. ...**

They tell of a shackled prisoner being forced to **roll back and forth on the floor of a cell, kissing the boots of his two interrogators** as he went. Yet another prisoner is made to **pick plastic bottle caps out of a drum mixed with excrement and water as part of a strategy to soften him up** for questioning...

**harsh treatment by some interrogators was routine and guards could strike shackled detainees with virtual impunity**

c. **US Army Major General George R. Fay Investigation** of Intelligence Activities of Abu Ghraib (excerpts)

Physical and sexual abuses of detainees at Abu Ghraib were by far the most serious. The abuses spanned from direct physical assaults, such as delivering **head blows rendering detainees unconscious**, to **sexual posing** and **forced masturbation**. At the extremes were **the death of a detainee** in OGA custody, an alleged **rape** committed by a US translator and observed by a female soldier, and the alleged **assault of a female detainee**. The abuses are, without doubt, criminal. Such abuse can be directly tied to a **systemic US approach to torture** or approved treatment of detainees. <http://news.findlaw.com/hdocs/docs/dod/fay82504rpt.pdf>

d. **US Army Major General Taguba report:**

LtG Sanchez cited recent reports of detainee abuse, ... which indicated **systemic problems** within the brigade...

...at Abu Ghraib, numerous incidents of **sadistic, blatant, and wanton criminal abuses were inflicted on several detainees**. This **systemic** and illegal abuse of detainees was intentionally perpetrated by several members of the military police guard force. <http://www.agonist.org/annex/taguba.htm>

e. We Can't Remain Silent, by Bob Herbert, The New York Times, 4/1/05

**No fewer than a hundred criminal**, military and administrative **inquiries** have been **launched** into apparently improper or unlawful US practices related to detention and interrogation. **Given the range of individuals and locations** involved in these reports, **it is simply no longer possible to view these allegations as a few instances of an isolated problem.**"

f. **Outsourcing Torture**, The secret history of America's "**extraordinary rendition**" program, The New Yorker 4/14/05 & 4/21/05 by Jane Mayer

"detainees are **stripped and blindfolded: suspended from a ceiling** or doorframe with feet just touching the floor; **beaten with fists, whips metal rods; subjected to electrical shocks**; and doused with cold water and **sexually assaulted**."...

the Americans could give the Egyptian interrogators questions they wanted put to the detainees in the morning, Scheuer said, and get answers by the evening. Also see Footnote 22.

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## <sup>2</sup> Geneva Convention Prohibitions (Article 3):

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

... the following acts are and shall **remain prohibited at any time and in any place whatsoever** with respect to the above-mentioned persons:

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

**(c) outrages upon personal dignity, in particular humiliating and degrading treatment;**

[http://www.jewishvirtuallibrary.org/jsource/History/Human\\_Rights/geneva1.html](http://www.jewishvirtuallibrary.org/jsource/History/Human_Rights/geneva1.html)

## <sup>3</sup> Memo To President Bush (from Alberto Gonzales 1/25/02):

...the war against terrorism is a new kind of war. It is not the traditional clash between nations adhering to the rules of war that formed the backdrop to Geneva Convention III on the Treatment of Prisoners of War, 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, and the need to try terrorists for war crimes such as wantonly killing citizens. **In my judgment, this new paradigm renders obsolete Geneva's strict limitations on questioning of enemy prisoners...**

<http://www.msnbc.msn.com/id/4999148/site/newsweek/>

## <sup>4</sup> Significantly Altering The Interpretation of US Law (*Colin Powell's thoughts on not recognizing Geneva Conventions*)

Draft Decision Memorandum for the President on the Applicability of the Geneva Convention to the Conflict in Afghanistan

It **will reverse over a century of US policy and practice in supporting the Geneva Conventions** and undermine the protections of the law of war for our troops, both in this specific conflict and in general.

<http://www.msnbc.msn.com/id/4999363/site/newsweek/>

## <sup>5</sup> War Crimes Act, Section 2441

War crimes (a) Offense.— Whoever, whether inside or outside the United States, commits a war crime, 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**.

Definition — As used in this section the term “war crime” means any conduct— defined as **a grave breach in any of the international conventions signed at Geneva** 12 August 1949, or any protocol to such convention to which the United States is a party;

<http://assembler.law.cornell.edu/uscode/18/2441.html>

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## <sup>6</sup> Section 2340 of the US Code (Title 18, Part I, Chapter 113C):

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

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

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

(C) **the threat of imminent death;**

(3) “United States” includes all **areas under the jurisdiction of the United States** including any of the places described in sections [5](#) and [7](#) of this title and section [46501 \(2\)](#) of title [49](#).

[http://straylight.law.cornell.edu/uscode/html/uscode18/usc\\_sec\\_18\\_00002340---A000-.html](http://straylight.law.cornell.edu/uscode/html/uscode18/usc_sec_18_00002340---A000-.html)

## <sup>7</sup> Defend President Bush Against Death Penalty

**Memo To The President (from Alberto Gonzales 1/25/02) (selected sections):**

**Substantially reduces the threat of domestic Criminal Prosecution under the War Crimes Act (18 USC. 2441).** “War crime” for these purposes is defined to include any grave breach of GPW or any violation of common Article 3 thereof (such as “**outrages against personal dignity**”). **Punishment for violations of Section 2441 includes the death penalty.** A determination that GPW would not apply to actions taken with respect to the Taliban would mean that Section 2441 would not apply to actions taken with respect to the Taliban.

Adhering to your determination that GPW does not apply would guard effectively against misapplication of Section 2441 for several reasons.

First, some of the language of the GPW is undefined (it prohibits, for example, outrages upon personal dignity” and “inhuman treatment”, and it is difficult to predict with confidence what actions, might be deemed to constitute violations of the relevant provisions of GPW...

Third, it is difficult to predict the motives of prosecutors and independent counsels who may in the future decide to pursue unwarranted charges based on Section 2441. **Your determination would create a reasonable basis in law that Section 2441 does not apply, which would provide a solid defense to any future prosecution.**

<http://www.msnbc.msn.com/id/4999148/site/newsweek/>

<sup>8</sup> President Bush appointed Mr. Gonzales to Attorney General.

## <sup>9</sup> Organ Failure (and little else) Qualify As Torture

### **a. Human Rights First Opposes Alberto Gonzales to Be Attorney General**

The Jay Bybee memo (*Standards of Conduct for Interrogation under 18 USC Sections 2340-2340A, 8/02*) **reads largely like a roadmap to circumventing laws against torture.** Indeed, in a number of instances the memo pointedly **ignores significant case law** that does not support its permissive view on torture and expansive presidential power. The Bybee memo includes the following conclusions:

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“For an act to constitute torture as defined in Section 2340 [the statutory prohibition against torture], it must inflict pain that is difficult to endure. Physical pain amounting to torture **must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death.**”

“For purely mental pain or suffering to amount to torture under Section 2340, it must result in significant psychological harm of significant duration, e.g., lasting for months or even years.”

“Even if the defendant knows that severe pain will result from his actions, if causing such harm is not his objective, he lacks the requisite specific intent even though the defendant did not act in good faith. Instead, **a defendant is guilty of torture only if he acts with the express purpose of inflicting severe pain or suffering on a person within his custody or physical control.**

“Under the current circumstances, necessity or self-defense may justify interrogation methods that might violate Sections 2340A.”

[http://www.humanrightsfirst.org/us\\_law/etn/gonzales/statements/hrf\\_opp\\_gonz\\_full\\_012405.asp#memos](http://www.humanrightsfirst.org/us_law/etn/gonzales/statements/hrf_opp_gonz_full_012405.asp#memos)  
<http://www.washingtonpost.com/wp-srv/nation/documents/dojinterrogationmemo20020801.pdf>

#### b. Atrocities in Plain Sight, by Andrew Sullivan (Book Review)

Bybee analyzed the relevant statutes against torture to see exactly how far the military could go in mistreating prisoners without blatant illegality.... Bybee asserted that **the president was within his legal rights to permit his military surrogates to inflict "cruel, inhuman or degrading" treatment on prisoners without violating strictures against torture.** For an act of abuse to be considered torture, **the abuser must be inflicting pain "of such a high level of intensity that the pain is difficult for the subject to endure."** If the abuser is doing this to get information and not merely for sadistic enjoyment, then **"even if the defendant knows that severe pain will result from his actions," he's not guilty of torture. Threatening to kill a prisoner is not torture; "the threat must indicate that death is 'imminent.' " Beating prisoners is not torture either. Bybee argues that a case of kicking an inmate in the stomach with military boots while the prisoner is in a kneeling position does not by itself rise to the level of torture.**

<http://www.nytimes.com/2005/01/13/books/review/books-sullivan.html?ex=1111381200&en=f6e19cf34939083e&ei=5070>

<sup>10</sup> President Bush appointed Mr. Bybee to a judgeship on the Ninth Circuit Court of Appeals.

### <sup>11</sup> **Condoleezza Rice Stops Congress From Giving CIA Restrictions On Torture**

#### **Lawmakers Dump New Interrogation Restrictions; Proposal Would Have Limited Use of Extreme Measures**

Douglas Jehl, David Johnston, New York Times, January 13, 2005

The Senate had approved the new restrictions, by a 96-2 vote... The restrictions extended to intelligence officers a prohibition against torture or inhumane treatment, and it would have required the CIA as well as the Pentagon to report to Congress about its methods.

But in intense, closed-door negotiations, according to congressional officials, four lawmakers from the House and Senate deleted the restrictions from the final bill, **after the White House expressed opposition to the measure.**

**In a letter to members of Congress,** sent in October and made available Wednesday by the White House, **Condoleezza Rice,** the national security adviser, **expressed opposition to the measure on grounds that it "provides legal protections to foreign prisoners to which they are not now entitled under applicable law and policy."**

Earlier, in objecting to a similar measure included in a Senate version of the defense authorization bill, **the Defense Department had sent a letter to Congress saying the department "strongly urges the Senate against passing new legislation.**

Some Democratic congressional officials said they believed the Bush administration was trying to maintain some legal latitude for the CIA to use interrogation practices more extreme than those permitted by the military.

<sup>12</sup> **Outsourcing Torture**, The secret history of America's "extraordinary rendition" program, The New Yorker 4/14&21/05 by Jane Mayer

The State Dept., determined to uphold the Geneva Conventions, fought against Bush's lawyers, and lost. In a forty page memo to Yoo, dated 1/11/02 (not publicly released), William Taft IV, the State Dept.'s legal advisor, argued that Yoo's analysis was "seriously flawed." Taft told Yoo his contention the President could disregard the Geneva Conventions was "untenable", "incorrect" and "confused"...

Taft also warned Yoo that if the US took the war on terrorism outside the Geneva Conventions, not only could US soldiers be denied the protections of the Conventions – and therefore be prosecuted for crimes, including murder—but President Bush could be accused of a "grave breach" by other countries and be prosecuted for war crimes.

<sup>13</sup> **Senator Calls for General to Step Aside Amid Probe**

Boykin said the enemy in the war on terrorism was Satan, that God had put President Bush in the White House and he called one Muslim Somali warlord an idol-worshipper...

<http://www.foxnews.com/story/0,2933,100781,00.html>

<sup>14</sup> **Ashcroft Refuses To Give Torture Memos To Congress**

Senate Judiciary Committee hearing (6/8/04) Ashcroft Comments on Anti-Terror Policy (edited):

Sen. LEAHY: Has there been any order directed from the president with respect to interrogation of detainees, prisoners or combatants, yes or no?

Attn. Gen. Ashcroft: **I'm not in a position to answer that question. ...**

Sen. Ted Kennedy, D-Mass.: **There are three memoranda -- January 9, 2002, signed by John Yoo (<http://msnbc.msn.com/id/5025040/site/newsweek/>) ; the August 2002 Justice Department, the memo -- and the March 2000 -- the inter-agency working group. Those are three memoranda. Will you provide those to the committee?**

Attn. Gen. Ashcroft: **No, I will not.**

Sen. Kennedy: What's the justification not providing it?

Attn. Gen. Ashcroft: **We believe that to provide this kind of information would impair the ability of advice-giving in the Executive Branch to be candid, forthright, thorough, and accurate at all times.**

Sen. Kennedy: **...when we have these kinds of orders,... We get the stress test, we get the use of dogs, we get the forced nakedness we've seen, and we get the hooding. This is what directly results when you have that kind of memoranda out there...**

Sen. Kennedy: General, has the president authorized you to invoke the **executive privilege** today on these documents?

Attn. Gen. Ashcroft: I am not going to reveal discussions --... I have not invoked the executive privilege today. I have explained to you why I'm not turning over the documents. ...

Sen. Biden: you may be in contempt of Congress... You are not allowed, under our Constitution, not to answer our questions.

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Attn. Gen. Ashcroft: But the only people who are accorded the protections of the Geneva Convention are, ... those nations that are high contracting parties to the convention. Al-Qaida is not a high-contracting party... It repudiates the rules of war.

Now, the law against the torture applies. When the Congress enacted the torture statute, it enacted a law that said it applied everywhere outside the United States. But **when the Congress defined the United States, it's not simple: It will sometimes include military bases, it will sometimes include consular offices, it will sometimes include the residences or embassy offices. And when the Congress of the United States makes these definitions, that's what I have to live by.**  
<http://www.washingtonpost.com/wp-dyn/articles/A25211-2004Jun8.html>

<sup>15</sup> **Ibid.** Attn. Gen. Ashcroft's response to Sen. Kennedy

## <sup>16</sup> **Presidential Power Unlimited During War-Time**

a. Atrocities in Plain Sight, by Andrew Sullivan (Book Review)

As Assistant Attorney General, Jay S. Bybee argues in another memo: "Any effort to apply Section 2340A in a manner that interferes with the president's direction of such core war matters as the detention and interrogation of enemy combatants thus would be unconstitutional." [http://www.lawrence.edu/fast/boardmaw/phil\\_law.html](http://www.lawrence.edu/fast/boardmaw/phil_law.html)

b. The Bybee memo requested by Gonzales stated: "**Even if an interrogation method arguably were to violate [the torture statute], the statute would be unconstitutional if it impermissibly encroached on the President's constitutional power to conduct a military campaign.**"  
[http://www.humanrightsfirst.org/us\\_law/etn/gonzales/statements/hrf\\_opp\\_gonz\\_full\\_012405.asp#memos](http://www.humanrightsfirst.org/us_law/etn/gonzales/statements/hrf_opp_gonz_full_012405.asp#memos)

## <sup>17</sup> **Many People Tortured And Killed**

**Prisoner Deaths in US Custody** The Associated Press, 3/16/05

Using information provided by the military and documents obtained by the American Civil Liberties Union, The Associated Press compiled a partial list of people who have died while in US custody in Iraq and Afghanistan.

*44 people are described in this article.*

<http://www.sfgate.com/cgi-bin/article.cgi?f=/n/a/2005/03/16/national/w113007S95.DTL>

also see footnote 1g

## <sup>18</sup> **70% - 90% Of Iraqi Detainees Arrested By Mistake**

Geneva - Intelligence officers of the US-led coalition in Iraq estimated that **70 percent to 90 percent of Iraqi detainees were arrested by mistake.**

<http://www.msnbc.msn.com/id/4944094/>

### **Red Cross details abuse claims**

The report also says some troops told the Red Cross that 70% to 90% of those detained had been arrested by mistake. British Broadcasting Corporation.5/10/04 <http://news.bbc.co.uk/2/hi/americas/3700975.stm>

## <sup>19</sup> **Ghost Detainees Violate Army Doctrine/International Law**

US Army Major General Antonio M. Taguba Report, Findings And Recommendations

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The various detention facilities operated by the 800th MP Brigade have routinely held persons brought to them by Other Government Agencies (OGAs) **without accounting for them, knowing their identities, or even the reason for their detention.** The Joint Interrogation and Debriefing Center at Abu Ghraib called these detainees “ghost detainees.” On at least one occasion, **the 320th MP Battalion at Abu Ghraib held a handful of “ghost detainees”** (6-8) for OGAs that **they moved around within the facility to hide them from a visiting International Committee of the Red Cross (ICRC) survey team. This maneuver was deceptive, contrary to Army Doctrine, and in violation of international law.**

<http://www.msnbc.msn.com/id/4894001/>

- <sup>20</sup> **a. Outsourcing Torture,** The secret history of America’s “**extraordinary rendition**” program, The New Yorker 4/14&21/05 by Jane Mayer

... suspecting Arar of being a terrorist, apprehended him in New York and sent him back to Syria, where he endured **months of brutal interrogation, including torture...** A year later Arar was released without charges.

- b. Questions Are Left by CIA Chief on the Use of Torture** New York Times, Douglas Jehl **Published: 3/1805**

Among the activities under scrutiny by the inspector general and by Congress is the agency's role in the detention and interrogation of terrorism suspects in Iraq, as well as the transfer of **100 to 150 people suspected of being terrorists to the custody of foreign governments** since the Sept. 11 attacks.

- <sup>21</sup> **a. US Reinterprets Longstanding US Law/Geneva Conventions**

Senate Judiciary Committee hearing (6/8/04) Ashcroft Comments on Anti-Terror Policy

Sen. Dianne Feinstein, D-Calif.: So **these memos actually either reverse or substantially alter 30 years of interpretation by our body as well as the executive of the Geneva Conventions.**

<http://www.washingtonpost.com/wp-dyn/articles/A25211-2004Jun8.html>

- b. Outsourcing Torture,** The secret history of America’s “**extraordinary rendition**” program, The New Yorker 4/14/05 by Jane Mayer

The United Nations Convention Against Torture requires “substantial grounds for believing” a detainee will be tortured abroad. Martin Lederman, a lawyer who left the Justice Department’s Office of Legal Counsel in 2002, after 8 years says, “The Convention only applies when you know a suspect is more likely than not to be tortured, but what if you kind of know? That’s not enough. So there are ways to get around it.”

- <sup>22</sup> **See Footnote 14 (Ashcroft Refuses To Give Torture Memos To Congress)**

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## FURTHER READING

### **Human Rights First Opposes Alberto Gonzales to Be Attorney General**

**The Bybee memo also figures prominently in the Defense Department’s Working Group Report on Detainee Interrogations in the Global War on Terrorism: Assessment of Legal, Historical, Policy, and Operational Considerations (April 4, 2003) (the “Working Group Report”), with many paragraphs excerpted verbatim. The Working Group Report in turn supported the actual policy implemented by the Defense Department at Guantanamo Bay on April 16, 2003. See DOD Memo for the Commander, US Southern Command: Counter-Resistance Techniques in the War on Terrorism (April 16, 2003). Authorized techniques include dietary and environmental extremes, sleep deprivation, and prolonged isolation. The International Committee of the Red Cross informed the US Government, the interrogation techniques employed at Guantanamo Bay constitute “an intentional system of cruel, unusual and degrading treatment and a form of torture.” As has been widely documented, interrogation tactics employed at Guantanamo then “migrated” to Afghanistan and Iraq, where military authorities relied upon the Working Group Report to craft interrogation policies.**

[http://www.humanrightsfirst.org/us\\_law/etn/gonzales/statements/hrf\\_opp\\_gonz\\_full\\_012405.asp#memos](http://www.humanrightsfirst.org/us_law/etn/gonzales/statements/hrf_opp_gonz_full_012405.asp#memos)