



RELEASED

TORTURE & SECRECY

FREEDOM OF INFORMATION ACT: Torture Documents

In 2003, the American Civil Liberties Union (ACLU) filed a Freedom of Information Act (FOIA) request for records concerning the treatment, death, and rendition of detainees in U.S. custody. Since then, the government has released more than 100,000 pages of responsive records, including memos in which Justice Department lawyers attempted to justify harsh interrogation techniques that, at times, amounted to torture.

The American public and the world have the right to know the truth about these abuses, the policies that led to them, and the leaders whose decisions put the policies in place. The ACLU continues to pursue the release of information about detainee torture and abuse. The truth must be aired and our leaders held accountable.

Visit our **Torture Document Search** tool to find details about the incidents, decisions, policies, agencies, and leaders behind the systematic torture and abuse of those in U.S. custody.

<http://www.aclu.org/torturefoia>

NATIONAL SECURITY PROJECT

The ACLU's National Security Project advocates for national security policies that are consistent with the Constitution, the rule of law, and fundamental human rights. The Project litigates cases relating to detention, torture, discrimination, surveillance, censorship, and secrecy. Originally created as an informal working group after the September 2001 attacks, the National Security Project is now at the forefront of virtually every major legal battle relating to national security, human rights, and civil liberties.



U.S. Department of Justice
Office of Legal Counsel

Office of the Deputy Assistant Attorney General

Washington, D.C. 20530

March 14, 2003

Memorandum for William J. Haynes II,
General Counsel of the Department of Defense

Re: Military Interrogation of Alien Unlawful Combatants Held Outside the United States

You have asked our Office to examine the legal standards governing military interrogations of alien unlawful combatants held abroad. In Part I, we examine federal criminal law. We explain that several canons of construction indicate that federal criminal laws of general applicability do not apply to properly authorized interrogations of enemy combatants undertaken by military personnel in the course of an armed conflict. Such criminal statutes, if they were misconstrued to apply to the interrogation of enemy combatants, would conflict with the Constitution's grant of the Commander in Chief power solely to the President.

In Part II, we conclude that the Fifth and Eighth Amendments, as interpreted by the Supreme Court, do not extend to alien enemy combatants held abroad. In Part III, we examine federal criminal law. We explain that several canons of construction indicate that federal criminal laws of general applicability do not apply to properly authorized interrogations of enemy combatants undertaken by military personnel in the course of an armed conflict. Such criminal statutes, if they were misconstrued to apply to the interrogation of enemy combatants, would conflict with the Constitution's grant of the Commander in Chief power solely to the President.

Although we do not believe that these laws would apply to authorized military interrogations, we outline the various federal statutes that apply in the special maritime and territorial jurisdiction of the United States: assault, 18 U.S.C. § 113 (2000); maiming, 18 U.S.C. § 114 (2000); and interstate stalking, 18 U.S.C. § 2261A (2000). In Part II.C, we address relevant criminal prohibitions that apply to conduct outside the jurisdiction of the United States: war crimes, 18 U.S.C. § 2441 (2000); and torture, 18 U.S.C. § 2340A (2000 & West Supp. 2002).

In Part III, we examine the international law applicable to the conduct of interrogations. First, we examine the U.N. Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Apr. 18, 1985, 1465 U.N.T.S. 113 ("CAT") and conclude that U.S. reservations, understandings, and declarations ensure that our international obligations mirror the standards of 18 U.S.C. § 2340A. Second, we address the U.S. obligation under CAT to undertake to prevent the commission of "outrage, inhuman, or degrading treatment or punishment." We conclude that based on its reservation, the United States' obligation extends only to conduct

¹ By defining the legal boundaries applicable to interrogations, we of course do not express or imply any views concerning whether and when, if any, permissible means of interrogation should be employed. That is a policy judgment for those conducting and reviewing the interrogations. Document number: Executive Order 13526, 68 Fed. Reg. 61,835 (2003).
By: Acting General Counsel, Department of Defense
By: Daniel J. Cook
27 March 2003

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