

LAWs instructions for starting criminal procedures against Bush

Nov 29, 2004

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I LAYING AN INFORMATION

- Go to Provincial Court Criminal Division on Monday or Tuesday and pick up an information; or
- Fill out the information with the charges provided
- On Tuesday or Wednesday go to the Provincial Court, Criminal Division and ask to see a Justice of the Peace

AT THE JUSTICE OF THE PEACE

- Identify yourself and indicate that you want to lay an information against George Walker Bush.

Criminal Code Sections

-- 504 sets out the right of "anyone who, on reasonable grounds, believes that a person has committed an indictable offence" to "lay an information in writing and under oath...and the justice shall receive the information, where it is alleged...that the person...has committed an indictable offence within the territorial jurisdiction of the justice;".

--7(3.7)(e) creates the jurisdiction to prosecute anyone, even a non-citizen, for the offence of torture even if committed outside of Canada as long as "the person who commits the act or omission is, after the commission thereof, present in Canada."

-- 7(5) creates jurisdiction to commence proceedings for torture in any part of Canada by providing that proceedings "may be commenced in any territorial division in Canada and the accused may be tried and punished in respect of that offence in the same manner as if the offence had been committed in that territorial division."

--7 (7) establishes that, "if the accused is not a Canadian citizen no proceedings...shall be continued unless the consent of the Attorney general of Canada is obtained not later than eight days after proceedings are commenced" meaning that no consent is necessary for the commencement of proceedings by laying an information, just their continuance after 8 days.

--507.1 provides that a justice who receives an information by a private citizen "shall refer it to a provincial court judge or, in Quebec, a judge of the Court of Quebec, or to a designated justice, to consider whether to compel the appearance of the accused on the information."

- Present the completed information for charges under Criminal Code sections 269.1(1), 21.(1) (2) and 22. (1) (2).
 - 269/1(1) torture
 - 21.(1)party to an offence of torture
 - 22.(1)(2) counselling another person to be a party to offence of torture
- Let the Justice of the Peace know that you will serve notice on the Attorney General of Canada and the Attorney General of your province of the information once it is laid (section 7(7)).
- Indicate that you are ready to answer any questions regarding your reasonable grounds to believe that George W. Bush has been party to the crime of torture of prisoners held in Guantánamo Bay prison in Cuba and Abu Ghraib prison in Iraq.

N.B.

Criminal Code sections and briefs regarding torture at the Abu Ghraib prison in Iraq and at Guantánamo Bay prison in Cuba including facts regarding the use of torture are attached.

II Abu Ghraib—Torture

Laws Violated:

- Geneva Conventions for the Treatment of Prisoners of War (3),
- Convention against Torture,
- US War Crimes Act,
- Canadian War Crimes and Crimes against Humanity,
- Rome Statute,
- Criminal Code of Canada.

Location of Abu Ghraib:

Abu Ghraib is a prison located in Iraq, 20 miles west of Baghdad and Control of Abu Ghraib and since June 2003 has been operated by and under the control of the US Armed Forces as a military prison.

Control of Abu Ghraib

US Armed Forces control Abu Ghraib as a military prison. Janis Karpinski, Army reserve brigadier general was named commander of the 800th Military Police Brigade and put in charge of Abu Ghraib and was subsequently suspended in January 2004.

Report of Major General Antonio M. Taguba—Taguba Report:

Major General Antonio M. Taguba was appointed to investigate allegations of abuse of prisoners at Abu Ghraib by US military personnel and agents of the US military and his report into allegations of abuse and torture was completed in February 2004.

Dates of Torture/Geneva Convention violations:

General Taguba found that between October and December 2003 there were numerous instances of “sadistic, blatant, and wanton criminal abuses” of detainees at Abu Ghraib by US military personnel namely the 372nd Military Police Company and members of the US intelligence community.

Perpetrators:

US military personnel namely the 372nd Military Police Company and members of the US intelligence community and their superiors and commanders including George Walker Bush¹

Torture used at Abu Ghraib:

Taguba’s report lists specific acts of abuse and torture:

- “Breaking chemical lights and pouring the phosphoric liquid on detainees;
- pouring cold water on naked detainees;
- beating detainees with a broom handle and a chair;
- threatening male detainees with rape;

¹ Investigation of the 800th Military Police Brigade by Maj. Gen. Antonio M. Taguba

- allowing a military police guard to stitch the wound of a detainee who was injured after being slammed against the wall in his cell;
- sodomizing a detainee with a chemical light and perhaps a broom stick,
- using military working dogs to frighten and intimidate detainees with threats of attack, and in one instance actually biting a detainee.”²
- Shooting deaths of 8 detainees on 13 June 2003 and 3 detainees on November 24 2003;³
- Punching slapping, and kicking detainees; jumping on their naked feet;
- Videotaping and photographing naked male and female detainees;
- Forcibly arranging detainees in various sexually explicit positions for photographing;
- Forcing detainees to remove their clothing and keeping them naked for several days at a time;
- Forcing naked male detainees to wear women’s underwear;
- Forcing groups of male detainees to masturbate themselves while being photographed and videotaped;
- Arranging naked male detainees in a pile and them jumping on them;
- Positioning a naked detainee on a MRE Box, with a sandbag on his head, and attaching wires o his finger, toes, and penis to simulate electric torture;
- Using military working dogs (without muzzles) to intimidate and frighten detainees, and in at least one case biting and severely injuring a detainee.⁴

Knowledge of and Direction from George W. Bush

By his Memorandum of February 7, 2002 President Bush authorized the use of interrogation techniques on detainees in Guantánamo Bay and other prisons on the basis that the detainees were not Prisoners of War or otherwise protected by the Geneva Conventions of other international law. Item 5 of the February 7, 2002 memo was the basis for interrogation techniques used at Guantánamo Bay and in Iraq prisons that were known to violate the Geneva Conventions if “military necessity” required such treatment.

“I hereby reaffirm the order previously issued by the secretary of defense to the United States Armed Forces requiring that the detainees be treated humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva.”

George Bush, memorandum to the V.P., et al, "Humane Treatment of Taliban and al Qaeda Detainees," February 7, 2002.

Specific techniques, including techniques prohibited by the Geneva Conventions and the Convention Against Torture, had been approved by Secretary Rumsfeld 2 December 2002 for use and used in Guantánamo Bay and other places and the

² Seymour M. Hersh *Torture at Abu Ghraib*, The New Yorker, November 2004 V. 5 No. 10

³ Article 15-6 Investigation of the 800th Military Police Brigade—The Taguba Report, p. 28.
<http://www.thesmokinggun.com/graphics/pdf/0505041report.pdf>

⁴ Investigation of the 800th Military Police Brigade by Maj. Gen. Antonio M. Taguba. p. 16 flg.

February Memorandum from Bush approved these illegal methods by depriving detainees of Geneva Convention 3 protection and absolving military personnel of the duty to afford these protections. The 'military necessity' principle spawned the use of torture on the detainees in Guantánamo Bay. The same techniques were then used at Abu Ghraib.

The Bush, Rumsfeld and Gonzales memoranda purported to authorize and legalize the use of interrogation techniques that violated the Geneva Conventions, the US War Crimes Act and the Convention against Torture by declaring that detainees were not prisoners of war and therefore were not entitled to Geneva Convention rights. It was the intention to then use of information and confessions obtained by use of illegal techniques in trial proceedings which were themselves a violation of the Geneva Convention. A recent editorial in the Washington Post commented on some of the now well known facts regarding the chain of memoranda from the President and white house White House counsel Alberto R. Gonzales, now Attorney General, that led to the use of torture by the US Armed Forces.⁵

By his February 2002 Memorandum, the President put interrogators on notice that the Geneva Conventions did not apply to the detainees; that the paramount principle governing interrogation was to be 'military necessity'.

The Bush administration 'defence' to the use of torture to interrogate detainees crumbled November 7 2004 when the United States District Court for the District of Columbia in habeas petition of Guantánamo Bay detainee Salim Ahmed Hamdan ruled that Hamdan was "entitled to the protections of the Third Geneva Convention as a prisoner of war and that accordingly he must be given those protections unless and until the "competent tribunal" referred in Article 5 [of Geneva Convention 3]concludes otherwise."⁶

The Washington Post published the following editorial November 22, 2004 "Investigations have determined that some U.S. interrogators who tortured Iraqi detainees at the Abu Ghraib prison reasonably believed that their actions had been authorized by a memorandum from the headquarters of Lt. Gen. Ricardo S. Sanchez, who approved such techniques as hooding, imposing "stress positions" and using dogs to inspire fear. According to one official report, although those methods clearly violate the Geneva Conventions, they were sanctioned by Gen. Sanchez's legal staff "using reasoning from the president's memorandum of February 7, 2002, which determined that the conventions should be set aside for people deemed 'unlawful combatants'.

The architect of that presidential memorandum was Alberto R. Gonzales, the White House counsel who now has been nominated by President Bush to serve as Attorney General. Like several other senior administration officials, Mr. Gonzales has never

⁵ The Washington Post, Editorial, November 22 2004.

⁶ *Hamdan, Salim Ahmed v. Rumsfeld, Donald H., et al*, Case No. 04-5393, unreported p. 26.

accepted responsibility, or been held accountable, for his role in setting administration policies that led to extensive violations of international law -- and U.S. standards of justice -- in Iraq, Afghanistan, and Guantánamo Bay and in other still-secret detention facilities. Mr. Gonzales should not become attorney general without being asked by the Senate to answer for that record.

The starting point was Mr. Gonzales's recommendation to Mr. Bush that he declare the Geneva Conventions -- whose rules on the questioning of prisoners he derided as "obsolete" -- inapplicable to detainees from Afghanistan. That decision caused enormous damage to U.S. standing even with close allies, yet from a practical point of view was entirely unnecessary. Mr. Gonzales ignored the advice of the administration's most seasoned national security officials, including Secretary of State Colin L. Powell and the chairman of the Joint Chiefs of Staff, who told him it was possible to indefinitely detain and vigorously interrogate al Qaeda members without violating Geneva Convention 3, and that he risked undermining a U.S. military culture of treating prisoners humanely. That prophecy came true when Gen. Sanchez used Mr. Gonzales's logic to authorize the abuse of prisoners at Abu Ghraib. The position Mr. Gonzales endorsed, that the president could declare that all those captured in Afghanistan were not entitled to Geneva Convention 3 protections, has since been ruled illegal by one federal judge.

Around the same time Mr. Gonzales convened a working group and pressed it to develop a system of "military commissions" for the detainees that would bypass both federal courts and the military's own justice system. Once again he ignored the military's own legal professionals, who believed the court-martial system was adequate. Once again trust in the United States was seriously eroded, without any useful result. After three years, not a single trial has been completed; instead, the system has been invalidated by one federal judge and the Supreme Court has ruled that all the foreign detainees can challenge their detentions in federal court. The Supreme Court also ruled that the government could not hold a U.S. citizen without court review or the right to counsel -- again invalidating the stance that Mr. Gonzales adopted in the case of terrorism suspects in the case of Yaser Esam Hamdi and Jose Padilla.

Within months of Mr. Bush's adoption of the Geneva decision, the CIA was using harsh questioning methods on a senior al Qaeda leader, Abu Zubaida, and asking the White House for legal justification. Mr. Gonzales commissioned a memo from the Justice Department in the summer of 2002 that asserted the President's right to order the torture of detainees and redefined torture itself so that pain short of organ failure, death or permanent psychological damage did not qualify. According to a report in Newsweek magazine, the memo was written after a meeting convened by Mr. Gonzales at which specific torture practices were discussed and approved, including "water-boarding," a technique designed to cause a sensation of drowning.

After the scandal over abuse at Abu Ghraib erupted, Mr. Gonzales tried to distance himself from the torture memo, though what is known indicates that he played a central role in its formulation. Like Mr. Bush and other senior officials, he has ignored the

abundant evidence that the decision on the Geneva Conventions led directly to the abuse of detainees in Afghanistan and Iraq. His damaging and erroneous legal positions have been altered only in response to court rulings and then only grudgingly. Senators should ask Mr. Gonzales to explain his definition of torture and to say whether he believes captors in other nations could legally inflict pain short of organ failure on detained Americans. They should also ask why he chose to exclude or disregard the views of the uniformed military legal corps in his consideration of military commissions and the application of the Geneva Conventions. Above all, Mr. Gonzales should answer this question: Why is a lawyer whose opinions have produced such disastrous results for his government -- in their practical application, in their effect on U.S. international standing and in their repeated reversal by U.S. courts -- qualified to serve as Attorney General?"

<http://www.washingtonpost.com/wp-dyn/articles/A3187-2004Nov21.html>
washingtonpost.com © 2004 The Washington Post Company

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- [Gray Zone, The](#) - from The New Yorker. Text of Seymour Hersh's April 2004 article about the roots of the Abu Ghraib prison scandal.
- [International Red Cross Iraq POW Report \(PDF\)](#) - February 2004 report of the International Committee of the Red Cross (ICRC) on the treatment by the Coalition Forces of POWs during arrest, internment, and interrogation. In PDF format.
- [Memory Hole: Photos of Iraqis Being Abused by U.S. Personnel](#) - archive of Iraqi prisoner abuse photos and documents that have been released.
- [Painful Lessons of Abu Ghraib, The](#) - Village Voice special feature on the prisoner abuse scandal at Abu Ghraib prison.
- [Torture at Abu Ghraib](#) - New Yorker feature article by Seymour Hersh about the mistreatment of Iraqi prisoners by American soldiers.
- [U.S. Army Report on Iraqi Prisoner Abuse](#) - complete text of Article 15-6 Investigation of the 800th Military Police Brigade by Maj. Gen. Antonio M. Taguba.
- [Washington Post: Abu Ghraib Prison](#) - archive of the Post's coverage of prisoner abuse at Abu Ghraib prison. Includes news stories, statements, photographs, video, and documents.
- [Wikipedia: Abu Ghraib \(prison\)](#) - provides a history of the prison under the leadership of both Saddam Hussein and the U.S. led coalition.

Convictions for Maltreatment of prisoners

Spc. Jeremy C. Sivits pleaded guilty to conspiracy to maltreat subordinates or detainees, dereliction of duty and maltreatment of detainees in a special court-martial held May 19, 2004, in Baghdad, Iraq and was sentenced to one year of confinement, also to be discharged for bad conduct and demoted.

Aumin Cruz pleaded guilty 11 September 2004 to charges of maltreatment and conspiracy to maltreat detainees in Abu Ghraib and was sentenced to one year confinement and discharge.

Staff Sgt. Ivan L. "Chip" Frederick II (sentenced to 8 yrs., a reduction in rank, forfeiture of pay and a dishonorable discharge. Oct. 21, 2004) <http://www.msnbc.msn.com/id/6287557/>

Buckingham, Virginia

- Pled guilty to five charges and was sentenced October 21, 2004, to eight years in prison, a reduction in rank to private, forfeiture of pay and a dishonorable discharge.
- Charges include assault, maltreating prisoners, conspiracy to maltreat prisoners, dereliction of duty and committing an indecent act.
- Frederick was the senior enlisted soldier at the Abu Ghraib prison at the time of the abuses.

Waiting Trial

Spc. Charles A. Graner Jr. (alleged ringleader) (trial transferred from Baghdad to Fort Hood, Texas -- set for next Jan.) http://www.usatoday.com/news/washington/2004-11-10-iraq-prisoner-abuse_x.htm

- Graner did not enter a plea, and his attorney asked for more time to talk to witnesses in a court-martial arraignment held May 19, 2004.
- Charges include conspiracy to maltreat detainees, dereliction of duty, maltreatment of detainees, assault, committing indecent acts, adultery and obstruction of justice.

Pfc. Lynndie England (has "not yet been referred to trial" Faces pos. 38 years.)
http://www.usatoday.com/news/world/iraq/2004-08-02-england-hearing_x.htm?csp=34

- Charges include committing an indecent act, assaulting detainees, conspiring to maltreat detainees and committing acts "prejudicial to good order and discipline."
- In a television interview, England said that she did not want to be in any pictures but was "instructed by persons in higher rank to 'stand there, hold this leash, look at the camera,' and they took pictures for PsyOps [psychological operations]."

Spc. Sabrina D. Harmon (trial transferred from Baghdad to Fort Hood, Texas -- set for next Jan.) [Source](http://www.usatoday.com/news/washington/2004-11-10-iraq-prisoner-abuse_x.htm)
http://www.usatoday.com/news/washington/2004-11-10-iraq-prisoner-abuse_x.htm

- Charges announced March 20, 2004.
- According to The Associated Press, the report by investigator Maj. Gen. Antonio Taguba quotes Harmon as saying her job was to keep detainees awake, including a prisoner who was placed on a box with wires attached to his body.
- Harmon said in an interview with The Washington Post that she had been assigned to break down prisoners for interrogation.

Sgt. Javal S. Davis (trial transferred from Baghdad to Fort Hood, Texas -- set for next Jan.)

- Court-martial arraignment held May 19, 2004.
- Davis did not enter a plea, and his attorney asked for more time to talk to witnesses.
- Request for change of venue and a new Article 32 hearing denied during June 21 pretrial hearing.
- Charges include conspiracy to maltreat detainees, dereliction of duty, maltreatment of detainees, assault and making false statements.

Spc. Megan Ambuhl

- Charges announced March 20, 2004.
- Charges include conspiracy to maltreat prisoners and dereliction of duty, according to her attorney, Harvey J. Volzer.
- Volzer said, "Her problem is they charged every member of the night shift at the prison with the court-martial offense, and she happened to be one of the six people there."

III GUANTÁNAMO BAY TORTURE

Use of Torture in Violation of:

- Geneva Conventions for the Treatment of Prisoners of War (3),
- Convention against Torture,
- US War Crimes Act,
- Canadian War Crimes and Crimes against Humanity,
- Rome Statute,
- Criminal Code of Canada.

Location of Guantánamo Bay

The base proper is U.S. Naval Base Guantánamo Bay, in Cuba under the command of Captain Leslie J. McCoy (USN). The base is AKA "*Gitmo*" for short (officially accepted Navy slang), and is sometimes referred to as a "naval station" (or NS). The base is a component of *U.S. Joint Task Force Guantanamo* (JTF-GTMO), Brig. Gen. Jay W. Hood (USA) commanding.

Control of Guantánamo

The detainees are the responsibility of another JTF component, the ***Joint Detention Operations Group (JDOG)***, Col. Brice A. Gyurisko (USA) commanding, a career M.P. and the warden in essence. And JTF-GTMO is a component of the ***U.S Southern Command (SOUTHCOM)***.

Dates of Torture/Geneva Convention violations

December 2001 to November 2004

Perpetrators:

The Joint Interrogation Group (JIG) personnel are responsible for conducting interrogations of Guantánamo detainees. JIG is a division of the US Armed Forces. Interrogations were reported to have been carried out in accordance with instructions received.

Torture used at Guantánamo

Specific techniques, including techniques prohibited by the Geneva Conventions and the Convention Against Torture and by section 169.1 of the *Criminal Code* of Canada, were approved by Secretary Rumsfeld 2 December 2002 for use in the interrogation of detainees at Guantánamo Bay and other places. Techniques approved in the Rumsfeld memo:

- the use of dogs to "fear up" and induce stress;
- removal of clothing (forced nakedness);
- yelling;

- use of stress: intimidation, threats;
- use of falsified documents or reports;
- sensory deprivation;
- 20 hour interrogations;
- forced shaving;
- use of phobias to induce stress;
- Manipulation of the environment—heat and light;
- Manipulation of diet;
- Isolation.

Other reported abuses:

- being kept chained to the floor in painful bent positions for hours or days on end;
- sprayed with mace;
- held in isolation and/or naked for weeks and months at a time;
- being kept in freezing air-conditioned rooms,
- sleep deprivation;
- near-starvation;
- denial of medical treatment and prescription drugs;
- forced injections of unknown drugs;
- sexual humiliation;
- religious harassment;
- hooding.

Torture reported in pleadings of (Rasul et al v Rumsfeld et al) who were detained in Pakistan 2 October 1991 and transported to Guantánamo and released March 2004:

- bound naked and forced to kneel before interrogators interrogated at gun point;
- threatened with beatings and with death;
- punched, kicked slapped and struck with rifle butts;
- sleep deprivation by being woken hourly;
- intimidated by unmuzzled military dogs;
- forced nakedness and forced shaving of adherents to Muslim faith;
- repeated cavity searches and photographs while naked;
- forced to squat, shackled in painful positions in extreme heat for long periods of time (6-7 hours);
- told, “You are now the property of the United States Marine Corps”;
- Held in wire cages 2m X 2m and exposed to extreme heat;
- Fed inadequate food rations that were 10 to 12 years beyond the indicated ‘best before’ dates;
- Sleep deprived with 24 hour lights and spotlights and prevented from sheltering from the light;
- Death threats such as, “We can kill you at any time; the world doesn’t know you’re here; we could kill you and no one would know.”

Suicide attempts were frequent and there were numerous cases of serious mental illness directly caused by the illegal and brutal treatment. British detainees said they knew of at least 50 prisoners in Guantánamo Bay who were so disturbed that “they are no longer capable of rational thought or behaviour” and acted like small children. (See [Detention in Afghanistan and Guantanamo.](#))⁷

Michael Ratner from the Center for Constitutional Rights, which published the dossier, said prisoners in Guantánamo Bay faced a “Kafkaesque” situation.

Evidence that Bush knew and approved of the use of torture at Guantánamo Bay prison.

By his Memorandum of February 7, 2002 President Bush authorized the use of interrogation techniques on detainees in Guantánamo Bay and other prisons on the basis that the detainees were not Prisoners of War or otherwise protected by the Geneva Conventions of other international law. Item 5 of the February 7, 2002 memo was the basis for interrogation techniques used at Guantánamo Bay and in Iraq prisons that were known to violate the Geneva Conventions if “military necessity” required such treatment.

“I hereby reaffirm the order previously issued by the secretary of defense to the United States Armed Forces requiring that the detainees be treated humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva.

George Bush, memorandum to the V.P., et al, "Humane Treatment of Taliban and al Qaeda Detainees," February 7, 2002.

The Bush, Rumsfeld and Gonzales memoranda purported to authorize and legalize the use of interrogation techniques that violated the Geneva Conventions, the US War Crimes Act and the Convention against Torture and also to authorize the use of information and confessions obtained by use of illegal techniques in trial proceedings which were themselves a violation of the Geneva Convention. A recent editorial in the Washington Post commented on some of the now well known facts regarding the chain of memoranda from the President and White House counsel Alberto R. Gonzales, now Attorney General, that led to the use of torture by the US Armed Forces.⁸

By his February 2002 Memorandum, the President put interrogators on notice that the Geneva Conventions did not apply to the detainees; that the paramount principle governing interrogation was to be ‘military necessity’. This, coupled with General Miller’s view that Guantánamo housed ‘the worst killers who posed the worst threat to Americans’ left interrogators with pointed instructions to use torture to extract information.

⁷ Safiz Rosul, Asif Iqbal, Ruhel Ahmed, *Composite Statement: Detention in Afghanistan and Guantanamo Bay* <http://www.ccr-ny.org/v2/reports/docs/Gitmo-compositestatementFINAL23july04.pdf>

⁸ The Washington Post, Editorial, November 22 2004.

Claims that detainees' status as enemy combatants legitimized these illegal interrogations techniques crumbled on November 7 2004 when the United States District Court for the District of Columbia in habeas petition of Guantánamo Bay detainee Salim Ahmed Hamdan (*Hamdan, Salim Ahmed v. Rumsfeld, Donald H., et al*, Case No. 04-5393) ruled that Hamdan is "entitled to the protections of the Third Geneva Convention as a prisoner of war and that accordingly must be given those protections unless and until the "competent tribunal" referred to in Article 5 concludes otherwise."(p. 26)

Individuals Tortured (suits filed)

Ibrahim Ahmed Mahmoud Al Qosi v. George W. Bush et al, Petition for Writ of Mandamus and/or Writ of Habeas Corpus, and Complaint for Declaratory Injunctive and other Relief contains in Count VIII "The Abuse, Mistreatment, and related Interrogation of the Petitioner...."

Shafiq Rasul, Asif Iqbal, Rhuhel Ahmed, Jamal Al-Harith v. Rumsfeld et al.

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The Common Plan to Violate Geneva Conventions, by Professor Jordan J.Paust, :
http://pegc.no-ip.info/LAW/paust_the_plan.pdf

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Washington Post Staff Writer Tuesday, November 23, 2004.

<http://www.washingtonpost.com/ac2/wp-dyn/A7386-2004Nov23>

--<http://www.cbsnews.com/stories/2004/04/27/6011/main614063.shtml>

Investigation of the 800th Military Police Brigade by Maj. Gen. Antonio M. Taguba

<http://www.globalsecurity.org/intell/library/reports/2004/800-mp-bde.htm>

IV 'Reasonable grounds'

to lay charges against George Walker Bush for counselling, aiding and abetting torture in violation of the Criminal Code of Canada sections 269.1, 22(1), 22 (2), 21(1) (b), 21 (1) (c).

This document is not intended for publication or circulation and is intended only as a summary of some of the reports regarding memorandum from the President, his legal counsel and Secretary of Defence. It is only for the guidance of those intending to lay an information against the President while he is present in Canada. The only fact referred to that has been confirmed by a court is detainees' status as prisoners of war and the President's lack of authority to alter that status.

N.B. to have reasonable grounds you do not have to witness the events complained of yourself. It is sufficient if you have reviewed the reports of witnesses and investigators and are satisfied that these provide reasonable grounds. *R v Golub* (1997), 117 C.C.C.(3d) 193 (Ontario Court of Appeal).

The reasonable grounds for believing President Bush guilty of torture are the not disputed facts that acts amounting to torture were inflicted by US personnel on prisoners at the Abu Ghraib and Guantánamo Bay prisons; whether or not they were considered 'torture' by the President is irrelevant because ignorance of the law is no excuse.

These practices were explicitly and implicitly authorized by senior members of the military and Bush administration, who report directly to the President. On the basis of existing reports, it is reasonable to believe that President Bush himself must have been aware of these practices, or suspected them while deliberately keeping himself in ignorance--which is called 'wilful blindness by the law and is equivalent to knowledge--or at the very least he should have known. Reports indicate that as Commander in Chief of the Armed Forces, he took no steps to interfere and issued memos that could only have been regarded as authorization for these practices. There are reasonable grounds to believe that George W. Bush, while not inflicting torture himself, counselled, aided and abetted torture.

Many of the illegal interrogation techniques used by US Armed Forces personnel on prisoners constitute torture. (See Taguba report and Rumsfeld memorandum detail of techniques attached).

The *Criminal Code* section 269.1 says "torture" means any act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person...for a purpose..."

1. Attorney General of the United States Alberto Gonzales (then White House legal counsel) in a 1 August 2002 memorandum to the President stated that the criminal law "does not apply to the president's detention and interrogation of enemy combatants pursuant to his commander-in-chief responsibilities."

2. President George W. Bush confirmed that prisoners in Guantánamo Bay were not considered prisoners of war, were not therefore not entitled to the Geneva Convention rights afforded to prisoners of war.
3. President George W. Bush, in his memorandum of February 7, 2002 authorized the use of interrogation techniques that would otherwise be illegal on the basis of 'military necessity.' In Item 5 of the February 7, 2002 memo Bush stated, "I hereby reaffirm the order previously issued by the secretary of defense to the United States Armed Forces requiring that the detainees be treated humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva." - George Bush, memorandum to the V.P., et al, "Humane Treatment of Taliban and al Qaeda Detainees," February 7, 2002.
4. *The Geneva Convention Relative to the Treatment of Prisoners of War* Article 17 provides,
"No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind."
5. There is no doubt that the prisoners detained at Guantánamo Bay and in Iraq were entitled to prisoner of war status.
6. Secretary of Defense Donald Rumsfeld in his 2 December 2002 memorandum specifically authorized the use of some of the torture subsequently used at Abu Ghraib and Guantánamo Bay prisons.
7. The Bush, Gonzales and Rumsfeld memos were directed towards creating a legal basis for illegal acts by denying detainees prisoner of war status and thereby to legalize criminal acts against detainees. These memos became the authorization and justification for the use of interrogation techniques, including the use of torture. torture, that were known to violate the criminal law and the Geneva Conventions if "military necessity" required such treatment.
8. The UN Convention on Torture to which Canada is a party prohibits the use of torture in the name of 'military necessity.' Article 2.1 and 2.2 provide:
 1. "No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture.
 2. An order from a superior officer or a public authority may not be invoked as a justification of torture."
9. On November 8 2004, the US District Court in *Hamdan v Bush et al* ruled that Guantánamo Bay prisoners were prisoners of war until a competent court ruled otherwise and as such are entitled to the protection of the Geneva Convention relative to the protection of prisoners of war irrespective of what the Presidential pronouncements to the contrary.

V. Form of Charges: Wording of Counts

ABU GHRAIB

1) Counselling [*section 22(1)*]: George Walker Bush, as President of the United States and Commander in Chief of the Armed Forces, between February 7, 2002 and November 30 2004 did counsel Donald Rumsfeld, Alberto R. Gonzales, Ricardo S. Sanchez, Geoffrey Miller, Janis Karpinski, Jeremy C. Sivits, Aumin Cruz, Ivan Frederick, Charles Graner, Lynndie England, Sabrina Harmon, Javal Davis, Megan Ambuhl and persons unknown to be parties to the infliction of torture by officials of the US Armed Forces or persons acting with the consent or acquiescence of such officials on persons detained at the Abu Ghraib prison in Iraq, and those persons afterwards were parties to the infliction of torture on those detained persons, contrary to sections 269.1 and 22(1) of the Criminal Code of Canada.

2) Counselling [*section 22(2)*]: George Walker Bush, as President of the United States and Commander in Chief of the Armed Forces, between February 7, 2002 and November 30, 2004 did counsel Donald Rumsfeld, Alberto R. Gonzales, Ricardo S. Sanchez, Geoffrey Miller, Janis Karpinski, Jeremy C. Sivits, Aumin Cruz, Ivan Frederick, Charles Graner, Lynndie England, Sabrina Harmon, Javal Davis, Megan Ambuhl and persons unknown to be parties to grave breaches of the Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949 and to war crimes contrary to the Crimes Against Humanity and War Crimes Act, sections 6 and 7, namely to deny prisoner of war status to those entitled to it, which persons, officials of the US Armed Forces or persons acting with the consent or acquiescence of such officials, in consequence of the counselling, inflicted torture on persons detained at the Abu Ghraib prison in Iraq, and the said George Walker Bush knew or ought to have known that such torture was likely to be inflicted in consequence of the counselling, contrary to sections 269.1 and 22(2) of the Criminal Code of Canada.

3) Aiding: George Walker Bush, as President of the United States and Commander in Chief of the Armed Forces, between February 7, 2002 and November 30, 2004 did and omitted to do acts for the purpose of aiding the infliction of torture by Jeremy C. Sivits, Aumin Cruz, Ivan Frederick, Charles Graner, Lynndie England, Sabrina Harmon, Javal Davis, Megan Ambuhl, and persons unknown, officials of the US Armed Forces or persons acting with the consent or acquiescence of such officials, on persons detained at the Abu Ghraib prison in Iraq, contrary to sections 269.1 and 21(1)(b) of the Criminal Code of Canada.

4) Abetting: George Walker Bush, as President of the United States and Commander in Chief of the Armed Forces, between February 7, 2002 and November 30, 2004 did abet the infliction of torture by Jeremy C. Sivits, Aumin Cruz, Ivan Frederick, Charles Graner, Lynndie England, Sabrina Harmon, Javal Davis, Megan Ambuhl and persons unknown, officials of the US Armed Forces or persons acting with the consent or acquiescence of such officials on persons detained at the Abu Ghraib prison in Iraq, contrary to sections 269.1 and 21(1)(c) of the Criminal Code of Canada.

GUANTÁNAMO

1) Counselling [*section 22(1)*]: George Walker Bush, as President of the United States and Commander in Chief of the Armed Forces, between February 7, 2002 and November 30 2004 did counsel Donald Rumsfeld, Alberto R. Gonzales, Geoffrey Miller, Bryce Gyurisko and persons unknown to be parties to the infliction of torture by officials of the US Armed Forces or persons acting with the consent or acquiescence of such officials on Ibrahim Ahmed Mahmoud Al Qasi, Shafiq Rasul, Asif Iqbal, Rhuel Ahmed, Jamal Al-Harith and other persons detained at the U.S. Naval Base Guantánamo Bay, Cuba, and those persons counseled were afterwards parties to the infliction of torture on those detained persons, contrary to sections 269.1 and 22(1) of the Criminal Code of Canada.

2) Counselling [*section 22(2)*]: George Walker Bush, as President of the United States and Commander in Chief of the Armed Forces, between February 7, 2002 and November 30, 2004, did counsel Donald Rumsfeld, Bryce Gyurisko, Geoffrey Miller and persons unknown to be parties to grave breaches of the Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949 and to war crimes contrary to the Crimes Against Humanity and War Crimes Act, sections 6 and 7, namely to deny prisoner of war status to those entitled to it, and those persons so counselled, officials of the US Armed Forces or persons acting with the consent or acquiescence of such officials, in consequence of the counselling, inflicted torture on on Ibrahim Ahmed Mahmoud Al Qasi, Shafiq Rasul, Asif Iqbal, Rhuel Ahmed, Jamal Al-Harith and other persons detained at the U.S. Naval Base Guantánamo Bay, Cuba, and the said George Walker Bush knew or ought to have known that such torture was likely to be inflicted in consequence of the counselling, contrary to sections 269.1 and 22(2) of the Criminal Code of Canada.

3) Aiding: George Walker Bush, as President of the United States and Commander in Chief of the Armed Forces, between February 7, 2002 and November 30, 2004 did and omitted to do acts for the purpose of aiding the infliction of torture by persons unknown, officials of the US Armed Forces or persons acting with the consent or acquiescence of such officials, on on Ibrahim Ahmed Mahmoud Al Qasi, Shafiq Rasul, Asif Iqbal, Rhuel Ahmed, Jamal Al-Harith and other persons detained at the U.S. Naval Base Guantánamo Bay, Cuba, contrary to sections 269.1 and 21(1)(b) of the Criminal Code of Canada.

4) Abetting: George Walker Bush, as President of the United States and Commander in Chief of the Armed Forces, between February 7, 2002 and November 30, 2004 did abet the infliction of torture by persons unknown, officials of the US Armed Forces or persons acting with the consent or acquiescence of such officials, on Ibrahim Ahmed Mahmoud Al Qasi, Shafiq Rasul, Asif Iqbal, Rhuel Ahmed, Jamal Al-Harith and other persons detained at the U.S. Naval Base Guantánamo Bay, Cuba, contrary to sections 269.1 and 21(1)(c) of the Criminal Code of Canada.

VI Criminal Code Of Canada Provisions

TORTURE

Section 269.1 (1) Every official, or every person acting at the instigation of or with the consent of or acquiescence of an official, who inflicts torture on any other person is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

(2) For the purposes of this section, "official" means

- (a) a peace officer,
 - (b) a public officer,
 - (c) a member of the Canadian Forces, or
 - (d) any person who may exercise powers, pursuant to a law in force in a foreign state, that would, in Canada be exercised by a person referred to in Paragraph (a), (b), or (c),
 - (e) whether the person exercises powers in Canada or outside Canada;
- "torture" means any act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person

- (a) for a purpose including
 - (i) obtaining from the person or from a third person information or a statement,
 - (ii) punishing the person for an act that the person or a third person has committed or is suspected of having committed, and
 - (iii) intimidating or coercing the person or a third person, or
- (b) for any reason based on discrimination of any kind, but does not include any act or omission arising only from one inherent in or incidental to lawful sanctions.

(3) It is no defence to a charge under this section that the accused was ordered by a superior or a public authority to perform the act or omission that forms the subjectmatter of the charge or that the act or omission is alleged to have been justified by exceptional circumstances, including a state of war, a threat of war, internal political instability or any other public emergency.

PARTIES TO OFFENCE / COMMON INTENTION

Section 21. (1) Every one is a party to an offence who

- (a) actually commits it;
- (b) does or omits to do anything for the purpose of aiding any person to commit; or
- (c) abets any person in committing it.

(2) Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any one of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to that offence.

COUNSELLING OFFENCE

Section 22. (1) Where a person counsels another person to be a party to an offence and that other person is afterwards a party to that offence, the person who counseled is a party to that offence, notwithstanding that the offence was committed in a way different from that which was counselled.

(2) Every one who counsels another person to be a party to an offence is a party to every offence that the other commits in consequence of the counseling that the person who counseled knew or ought to have known was likely to be committed in consequence of the counselling.

JURISDICTION TO PROSECUTE FOR OFFENCES COMMITTED OUTSIDE CANADA

Section 7 (3.7) Notwithstanding anything in this Act or any other Act, every one who, outside Canada, commits an act or omission that, if committed in Canada, would constitute an offence against, a conspiracy or an attempt to commit an offence against, being an accessory after the fact in relation to an offence against, or any counselling in relation to an offence against, **section 269.1** shall be deemed to commit that act or omission in Canada if

(d) the complainant is a Canadian citizen; **or**

(e) the person who commits the act or omission is, after the commission thereof, present in Canada.

7. (5) Where a person is alleged to have committed an act or omission that is an offence by virtue of this section, proceedings in respect of that offence may, whether or not that person is in Canada, be commenced in any territorial division in Canada and the accused may be tried and punished in respect of that offence in the same manner as if the offence had been committed in that territorial division.

7. (7) If the accused is not a Canadian citizen, no proceedings in respect of which courts have jurisdiction by virtue of this section shall be continued unless the consent of the Attorney General of Canada is obtained not later than eight days after the proceedings are commenced.

ANY ONE MAY LAY AN INFORMATION

Section 504. Any one who, on reasonable grounds, believes that a person has committed an indictable offence may lay an information in writing and under oath before a justice, and the justice shall receive the information, where it is alleged

(a) that the person has committed, anywhere, an indictable offence that may be tried in the province in which the justice resides, and that the person

(i) is or is believed to be, or

(ii) resides or is believed to reside, within the territorial jurisdiction of the justice;

Duty to Prosecute

Article 129 of the Third Geneva Convention on Prisoners of War and article 146 of the Fourth Geneva Convention protecting Civilians in wartime (ratified by Canada) provide "Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such graves breaches, and shall bring such persons, regardless of their nationality, before its own courts."

Torture of Children

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