

The Torture Papers

THE ROAD TO ABU GHRAIB

Edited by

Karen J. Greenberg

Joshua L. Dratel

Introduction by Anthony Lewis

Contents

<i>Acknowledgments</i>	page xi
<i>Introduction: Anthony Lewis</i>	xiii
<i>From Fear to Torture: Karen J. Greenberg</i>	xvii
<i>The Legal Narrative: Joshua L. Dratel</i>	xxi
<i>Timeline</i>	xxv
<i>Missing Documents</i>	xxix
<i>Biographical Sketches</i>	xxxii
Memoranda	
Memo 1. September 25, 2001	
To: Timothy Flanigan, Deputy Counsel to the President	
From: John Yoo, Deputy Assistant Attorney General, U.S. Department of Justice, Office of Legal Counsel	
Re: Memorandum Opinion for the Deputy Counsel to the President	3
Memo 2. November 13, 2001	
Military Order of November 13, 2001 issued by President George W. Bush	25
Memo 3. December 28, 2001	
To: William J. Haynes II, General Counsel, Department of Defense	
From: Patrick F. Philbin, Deputy Assistant Attorney General and John Yoo, Deputy Assistant Attorney General, U.S. Department of Justice, Office of Legal Counsel	
Re: Possible Habeas Jurisdiction over Aliens Held in Guantánamo Bay, Cuba	29
Memo 4. January 9, 2002	
To: William J. Haynes II, General Counsel, Department of Defense	
From: John Yoo, Deputy Assistant Attorney General, U.S. Department of Justice, Office of Legal Counsel and Robert J. Delahunty, Special Counsel, U.S. Department of Justice	
Re: Application of Treaties and Laws to al Qaeda and Taliban Detainees	38
Memo 5. January 19, 2002	
To: Chairman of the Joint Chiefs of Staff	
From: Donald Rumsfeld, Secretary of Defense	
Re: Status of Taliban and al Qaeda	80

Memo 6. January 22, 2002	
To: Alberto R. Gonzales, Counsel to the President, and William J. Haynes, General Counsel, Department of Defense	
From: Jay S. Bybee, Assistant Attorney General, U.S. Department of Justice	
Re: Application of Treaties and Laws to al Qaeda and Taliban Detainees	81
Memo 7. January 25, 2002	
To: President Bush	
From: Alberto R. Gonzales, Counsel to the President	
Re: Decision Re Application of the Geneva Convention on Prisoners of War to the Conflict with al Qaeda and the Taliban	118
Memo 8. January 26, 2002	
To: Counsel to the President, Assistant to the President for National Security Affairs	
From: Colin L. Powell, U.S. Department of State	
Re: Draft Decision Memorandum for the President on the Applicability of the Geneva Convention to the Conflict in Afghanistan	122
Memo 9. February 1, 2002	
To: President Bush	
From: John Ashcroft, Attorney General	
Re: Justice Department's position on why the Geneva Convention did not apply to al Qaeda and Taliban detainees	126
Memo 10. February 2, 2002	
To: Counsel to the President	
From: William H. Taft IV Legal Advisor, U.S. Department of State	
Re: Comments on Your Paper on the Geneva Convention	129
Memo 11. February 7, 2002	
To: The Vice President, The Secretary of State, The Secretary of Defense, The Attorney General, Chief of Staff to the President, Director of CIA, Assistant to the President for National Security Affairs, Chairman of the Joint Chiefs of Staff	
From: George W. Bush	
Re: Humane Treatment of al Qaeda and Taliban Detainees	134
Memo 12. February 7, 2002	
To: Alberto R. Gonzales, Counsel to the President	
From: Jay B. Bybee, Assistant Attorney General, U.S. Department of Justice	
Re: Status of Taliban Forces Under Article 4 of the Third Geneva Convention of 1949	136
Memo 13. February 26, 2002	
To: William J. Haynes II, General Counsel, Department of Defense	
From: Jay S. Bybee, Assistant Attorney General, U.S. Department of Justice	
Re: Potential Legal Constraints Applicable to Interrogations of Persons Captured by U.S. Armed Forces in Afghanistan	144
Memo 14. August 1, 2002	
To: Alberto R. Gonzales, Counsel to the President	
From: Jay S. Bybee, Assistant Attorney General, U.S. Department of Justice	
Re: Standards of Conduct for Interrogation under 18 U.S.C. § § 2340-2340A	172

Memo 15. August 1, 2002

To: Alberto R. Gonzales, Counsel to the President
From: John Yoo, Deputy Assistant Attorney General, U.S. Department of Justice, Office of Legal Counsel
Re: Letter regarding "the views of our Office concerning the legality, under international law, of interrogation methods to be used on captured al Qaeda operatives"

218

(The following three memos (#s 16, 17, 18) are cover letters to the requests for approval of Counter-Resistance Strategies, which follow #s 19, 20.)

Memo 16. October 25, 2002

To: Chairman of the Joint Chiefs of Staff, Washington D.C.
From: General James T. Hill, Department of Defense, U.S. Southern Command, Miami, FL
Re: Counter-Resistance Techniques

223

Memo 17. October 11, 2002

To: General James T. Hill, Commander, U.S. Southern Command, Miami, FL
From: Maj. Gen. Michael Dunlavey, Department of Defense, JTF 170, Guantánamo Bay, Cuba
Re: Counter-Resistance Strategies

225

Memo 18. October 11, 2002

To: General James T. Hill, Commander, Joint Task Force 170
From: Diane Beaver, Staff Judge Advocate, Department of Defense, JTF 170, Guantánamo Bay, Cuba
Re: Legal Review of Aggressive Interrogation Techniques

226

Memo 19. October 11, 2002

To: General James T. Hill, Commander, Joint Task Force 170
From: Jerald Phifer, Director, J2, Department of Defense, JTF 170, Guantánamo Bay, Cuba
Re: Request for Approval of Counter-Resistance Strategies

227

Memo 20. October 11, 2002

To: General James T. Hill, Commander, Joint Task Force 170
From: Diane Beaver, Staff Judge Advocate, Department of Defense, JTF 170, Guantánamo Bay, Cuba
Re: Legal Brief on Proposed Counter-Resistance Strategies

229

Memo 21. November 27, 2002 (approved by Rumsfeld December 2, 2002)

To: Donald Rumsfeld, Secretary of Defense
From: William J. Haynes II, General Counsel, Department of Defense
Re: Counter-Resistance Techniques

237

Memo 22. January 15, 2003

To: General Counsel of the Department of Defense
From: Donald Rumsfeld, Secretary of Defense
Re: Detainee Interrogations

238

Memo 23. January 15, 2003

To: Commander U.S. Southern Command
From: Donald Rumsfeld, Secretary of Defense
Re: Counter-Resistance Techniques

239

Memo 24. January 17, 2003	
To: General Counsel of the Department of the Air Force	
From: William J. Haynes II, General Counsel, Department of Defense	
Re: Working Group to Assess (Interrogation issues)	240
Memo 25. March 6, 2003	
Classified by: Donald Rumsfeld, Secretary of Defense	
<i>DRAFT:</i> Working Group Report on Detainee Interrogations in the Global War on Terrorism: Assessment of Legal, Historical, Policy, and Operational Considerations	241
Memo 26. April 4, 2003	
Classified by: Donald Rumsfeld, Secretary of Defense	
Working Group Report on Detainee Interrogations in the Global War on Terrorism: Assessment of Legal, Historical, Policy, and Operational Considerations	286
Memo 27. April 16, 2003	
To: James T. Hill, Commander, U.S. Southern Command	
From: Donald Rumsfeld, Secretary of Defense	
Re: Counter-Resistance Techniques in the War on Terrorism	360
Memo 28. March 19, 2004	
To: William H. Taft IV, General Counsel, Department of State, William J. Haynes II, General Counsel, Department of Defense, John Bellinger, Legal Adviser for National Security, Scott Muller, General Counsel, Central Intelligence Agency	
Distributed to Alberto R. Gonzales, Counsel to the President	
From: Jack Goldsmith III, Assistant Attorney General, Office of Legal Counsel	
Re: Draft of an opinion concerning the meaning of Article 49 of the Fourth Geneva Convention as it applies in occupied Iraq.	366
Reports	
February 2004 (The ICRC Report)	383
Report of the International Committee of the Red Cross (ICRC) on the Treatment by the Coalition Forces of Prisoners of War and Other Protected Persons by the Geneva Conventions in Iraq During Arrest, Internment and Interrogation	
March 2004 (The Taguba Report)	405
Article 15-6 Investigation of the 800 th Military Police Brigade	
Annexes to the Taguba Report	
Undated Psychological Assessment of Allegations of Detainee Abuse at Abu Ghraib by Col. Henry Nelson, USAF Psychiatrist	
September 2003 Maj. Gen. Geoffrey Miller's assessment regarding interrogation and intelligence operations in Iraq	
Memo 12 October 2003	
To: Combined Joint Task Force Seven, Baghdad, Iraq	
From: Ricardo S. Sanchez, Lieutenant General, USA Commanding	
Re: Interrogation and Counter-Resistance Policy	

Memo 30 November 2003

To: Lt. Gen. Ricardo Sanchez, Commander CJTF-7
From: Thomas M. Pappas, Col., MI Commanding
Re: Request for Exception to CJTF-7 Interrogation and Counter-Resistance Policy

Memo 19 January 2004

To: Commander, U.S. Central Command
From: Ricardo S. Sanchez, Lt. Gen., USA Commanding
Re: Request for Investigating Officer

28 January 2004 Army's Criminal Investigation Division report on allegations of prisoner abuse at Abu Ghraib

CV for Brig. Gen. Janis Karpinski, Commander 800th Military Police Brigade

15 February 2004 selected portions of Brig. Gen. Janis Karpinski's testimony

April 2004

557

The Association of the Bar of the City of New York Committee on International Human Rights, and Committee on Military Affairs and Justice's Report
Re: Human Rights Standards Applicable to the U.S.'s Interrogation of Detainees

July 2004 (The Mikolashek Report)

630

Department of the Army, The Inspector General – Detainee Operations Inspection

August 2004 (The Schlesinger Report)

908

Final Report of the Independent Panel to Review DoD Detention Operations

May 12, 2004 (Vice Admiral Church's Brief)

976

Vice Admiral Albert T. Church III's briefing on his investigation into allegations of abuse of prisoners at Guantánamo Bay, Cuba

October 2004 (Department of Defense Response to the Associated Press)

985

The Department of Defense's response to the allegations of abuse of prisoners at Guantánamo Bay and Abu Ghraib which were noted both in the Schlesinger report and in Vice Admiral Church's press briefing

August 2004 (The Fay-Jones Report)

987

Investigation of Intelligence Activities at Abu Ghraib/Investigation of the Abu Ghraib Prison and 205th Military Intelligence Brigade, LTG Anthony R. Jones/Investigation of the Abu Ghraib Detention Facility and 205th Military Intelligence Brigade, MG George R. Fay

August 9, 2004

1132

American Bar Association Report to the House of Delegates

Re: Uses of torture

Afterword

1165

Appendices

Appendix A: GTMO Interrogation Techniques (a one-page summary issued to reporters by Bush aides on June 22, 2004, listing which specific techniques were approved and/or used)

1239

Appendix B: Recommended readings on torture	1240
Appendix C: Torture-related laws and conventions	1241
Appendix D: Legal cases relevant to the incidences of torture	1242
<i>Index</i>	1243