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June 29, 2009

Office of Bar Counsel
Board on Professional Responsibility
District of Columbia Court of Appeals
515 5th Street NW
Building A, Suite 117
Washington, DC 20001

Re: Complaint against John A. Rizzo, Acting General Counsel, CIA

Dear Sir or Madam:

NOTICE OF COMPLAINT

Velvet Revolution (“VR”), a Washington, D.C. based non-profit with a network of more than 150 organizations representing over a million members nationwide, including in the District of Columbia, herein lodges a complaint against John A. Rizzo, Acting General Counsel (2001-2002, 2004-present), Deputy General Counsel (2002-2004) with the Central Intelligence Agency; Washington DC 20505. VR requests the *Board on Professional Responsibility, District of Columbia Court of Appeals* take immediate disciplinary action against Mr. Rizzo for violations of the *D.C. Rules of Professional Conduct*.

SUMMARY OF COMPLAINT

John A. Rizzo breached his legal duty and violated the *D.C. Rules of Professional Conduct* by advocating for immoral and unethical “extended” or “enhanced” interrogation techniques (amounting to torture), and other policies that resulted in clear violations of U.S. and international law.

Specifically, Mr. Rizzo ignored over two centuries of historical and legal precedents, fell short of the bar of the “good faith” imperative, and advanced suspect legal constructs and prescriptions for detainee interrogation well outside of legal norms, thereby providing the false cover of claimed legality for those who then engaged in acts and policies that, in fact, violated the following laws, both in letter and spirit:

- 1) The United Nations Convention Against Torture (UNCAT), Articles 1, 2, 3 and 16 (ratified in October 1994), implemented by Sections 2340-2340A of title 18 of the United States Code.
- 2) The Geneva Conventions, Article 3, (ratified in August 1955)
- 3) The Eighth Amendment against “cruel and unusual punishment”
- 4) The “Separation of Powers” constructs and imperatives of the U.S. Constitution
- 5) The United States Criminal Code, Title 18, Prohibitions Against Torture (18 USC 2340A) and War Crimes (18 USC 2441)

As the “law of the land,” these legal protections and dictates are clear. By failing to challenge the OLC memoranda ^[1] since repudiated ^[2] from the Office of Legal Counsel, Mr. Rizzo accepted legal analysis that led to detainee abuses, and, evidence suggests, deaths at overseas U.S. military facilities ^[3].

As Acting General Counsel at the CIA, Mr. Rizzo was also responsible for legal counsel that led to the destruction of documented evidence of torture. In these actions Mr. Rizzo impeded the administration of justice and provided the patina of legal cover for actions that violated the U.S. Constitution, the Geneva Convention, the Convention against Torture, the U.S. Criminal Code [see Applicable Law below] and several *D.C. Rules of Professional Conduct*. As exhibited by his own testimony before the Senate Select Committee on Intelligence, Mr. Rizzo did not act in “good faith”. Rather he acted in a manner that was illegal, extremely prejudicial, grossly incompetent and clearly immoral.

Therefore, VR calls upon the Board on Professional Responsibility, District of Columbia Court of Appeals to act immediately to disbar Mr. Rizzo for conduct that is a travesty of justice and an affront to the rule of law and the accepted standards of professional legal and ethical conduct.

Further, because the evidence points to numerous violations of the law, VR believes that disbarment will complement steps toward open hearings in Congress and a criminal investigation by a special investigator appointed by the Department of Justice.

THE RECORD & EVIDENCE – The Role of the CIA and John A. Rizzo in Torture Policy

As Acting General Counsel and Senior Deputy General Counsel of the CIA, John A. Rizzo approved a policy of torture and oversaw the details of its carefully prescribed application of violence, intimidation and humiliation intended to “enhance” interrogations and aggressively coerce detainees at Guantanamo Bay (Cuba), Abu Ghraib (Iraq), Bagram AFB (Afghanistan), and “extraordinary rendition” or “black” sites in Thailand, Diego Garcia, Poland, Syria, Egypt and elsewhere. Mr. Rizzo was also informed of legal opinions that sanctioned the destruction of videotapes that recorded

some of these techniques as they were applied to two “high-value” detainees. Finally, in hearings before Congress Mr. Rizzo confirmed his original support for the early legal findings of the Office for Legal Counsel (DoJ) that had since been officially withdrawn and nearly universally derided.

Background and Precedence: CIA History of Torture Programs as Prelude to Post-9/11 torture at US facilities and foreign “black sites”

This post-9/11 “enhanced interrogation” program had its precedent in programs run by the CIA during the decades-long Cold War fight against non-state actors with Communist sympathies or links to the Soviet Union. Author Almeringo E. Ojeda thoroughly documents CIA instigated psychological torture programs in his book, *The Trauma of Psychological Torture*:

For 25 years, the CIA disseminated psychological torture techniques to foreign security forces as part of a broader containment initiative aimed at fortifying Third World governments against local communist subversion. First operating through the Office of Public Safety (OPS), a U.S. foreign police training program, between 1963 and 1975, and then collaborating with U.S. Army Green Berets Mobile Training Teams from 1982 to 1987" the CIA acted to apply psychological torture against non-state actors. ^[4]

The CIA first codified this approach in July 1963 in a comprehensive interrogation manual titled *KUBARK Counterintelligence Interrogation*, a systematic compilation of interrogation techniques drawn from research on the psychology of coercion produced between 1950 and 1961. In 1983 the CIA produced another manual, the *Human Resource Exploitation Training Manual-1983* adopting verbatim much of the earlier Kubark manual. Both the *Kubark Manual* and the *Human Resource Exploitation Training Manual-1983* were declassified and released as a result of FOIA requests filed by the Baltimore Sun.

After 9/11 it is clear that that program was re-invigorated, expanded and implemented against non-state actors tied to terrorist groups, and in the case of Iraq, a domestic insurgency. ^[5]

Thus, the so-called “enhanced” or “extended” interrogation program approved and advanced by Mr. Rizzo sprang from, and tapped a long history of hidden CIA programs incorporating brutal, traumatizing, inhumane torture techniques.

Merriam-Webster Dictionary defines interrogation as “formal and systematic” questioning. However, CIA questioning of spies or detainees, whether during the Cold War or post 9/11 was “enhanced” by a carefully crafted but frequently brutal program of psychological and physical abuse designed to coerce confessions through intimidation, threats of violence, physical abuse and mental trauma, and humiliation. While there were formal questions addressed to the detainees, they were preceded, and often followed, by a systematic program of intimidation, humiliation, and in some cases overt violence.

Now thanks to whistleblowers and courageous American leaders this illegal activity is being exposed. Beginning sometime after 9/11, and before receiving any written authorization from the Department of Justice, Mr. Rizzo approved a program that was then carried out directly by CIA officers and CIA-hired contractors, as well as foreign intelligence operatives in countries participating secretly in the CIA's Rendition program. This was in violation of any reasonable and fair reading of the applicable international and domestic law. The public record will show that this program was introduced into U.S. military prison environments, beginning at Guantanamo Bay, Cuba, then expanded to Bagram in Afghanistan and Abu Ghraib in Iraq, and leading to, in scores of cases, maiming, severe trauma, even death. [See unredacted Church Report documents and the endnoted Senate Armed Services Committee Report]

1) Re: CIA's top leadership gives approval to interrogation program

Stephen Grey, the award-winning author of *Ghost Plane*, quotes a former CIA official who was involved in the interrogations:

"Everything we did, down to the tiniest detail, every rendition and every technique of interrogation used against prisoners in our hands, was scrutinized and approved by headquarters." ^[6]

On March 28, a CIA team captured Abu Zubaydah in Pakistan. That spring at an overseas CIA Rendition Program "black site," CIA contractors intervened in order to apply harsher 'techniques' which led FBI interrogator Ali Soufan to protest what he called acts of "borderline torture"^[7] that ultimately included boxed confinement that led to re-opening of wounds Zubaydah obtained during his capture.^[8] FBI Assistant Director Pasquale D'Amuro ordered Soufan's withdrawal from the interrogation and return to the U.S.. Later, FBI Director Robert Mueller would prohibit any FBI involvement in CIA-led interrogation, saying, "we don't do that,"^[9] clearly reflecting his own belief the treatment amounted to torture.

Apparently, in response to concerns from the CIA personnel during this period, Rizzo asked the Bush Administration for authorization to use specific so-called "enhanced interrogation techniques" as implemented by its contractors and officers. Rizzo provided certain facts, which the Office of Legal Counsel used as a basis for its memo.

All of these harsh techniques carried out by the CIA were done prior to receipt of the Yoo/Bybee memo. Throughout this period, Mr. Rizzo is the Acting General Counsel, the most senior legal advisor at the CIA and thus directly responsible relative to questions of the legality of the 'techniques' applied during Zubaydah's interrogation.

Subsequent to the receipt of the since repudiated Yoo/Bybee memo, the CIA water-boarded Zubaydah 83 times within the month of August.^[10]

The *Village Voice's* Nat Hentoff, citing the Senate report released in December of 2008^[11], wrote that the abusive interrogation policy was expanded to Guantanamo by a

team of ten lawyers who met with their military counterparts at the detention facility on October 10, 2002. At this meeting, Jonathan Fredman, a lawyer with the CIA's Counterterrorism Center and a subordinate to Mr. Rizzo advocated for, and defended the application of harsh interrogation techniques at Gitmo in direct violation of Uniform Code of Military Justice, over objections and concerns raised by lower level military lawyers:

Said Fredman: "Torture is basically subject to perception. If the detainee dies, you're doing it wrong." A military lawyer at Guantánamo, Lieutenant Colonel Diane Beaver, apprehensively noted: "We will need documentation to protect us."^[12]

Following that pivotal meeting at Gitmo, a Special Agent of the Naval Criminal Investigative Service named Mark Fallon, emailed a colleague to say that what he'd heard "could shock the conscience of any legal body" that might one day examine the legality of the new interrogation program.

Mr. Rizzo participated in a meeting that preceded the above-mentioned October meeting. On September 25, the most high-level senior Bush administration lawyers met at the Guantanamo Bay facility and included legal counsel from the President's office (Alberto Gonzales), the Vice-President's office (David Addington), the Department of Defense (Michael J. Haynes II), and the Department of Justice (Alice Fisher). With Mr. Rizzo representing the CIA which was overseeing the program, this group was there to observe and "green light" a brutal interrogation program,^[13] one that had begun months before with Zubayhah but was continued in a carefully prescribed program (minus waterboarding) with detainees at Guantanamo Bay.

The abuse was then expanded again to Bagram in Afghanistan and Abu Ghraib prison in Baghdad, Iraq where hundreds of photos documented what had occurred.

2) Re: CIA Inspector General finds violation of Convention Against Torture, Homicides of CIA-held detainees

CIA Inspector General John Helgerson conducted an investigation into the CIA's "enhanced interrogation" in 2003 that concluded in April of 2004. According to an unnamed source cited by the New York Times in December of 2007^[14], the still classified report concluded that the CIA's methods "appeared to constitute cruel, inhuman and degrading treatment" in violation of the Convention Against Torture, which was signed into U.S. law in 1994.

Author Jane Mayer, in a July 14, 2008 interview^[15] with Harper's magazine's Scott Horton, said that General Helgerson "investigated several homicides alleged homicides involving CIA detainees." According to Mayer, these were forwarded to the Department of Justice for possible prosecution. The Church Report found that eight homicides resulted directly from abuse during interrogation.

3) Re: Department of Defense report ties abuse at Abu Ghraib to CIA

In August of 2004, Major General George R. Fay released his report on the role of Military Intelligence at Abu Ghraib prison in Baghdad based on interviews of 170 personnel and review of over 9,000 documents. General Fay suggested that the abuse at the prison was the result of a policy shaped by the CIA:

CIA detention and interrogation practices led to a loss of accountability, abuse, reduced interagency cooperation, and an unhealthy mystique that further poisoned the atmosphere at Abu Ghraib. ^[16]

CIA hired contractors had a direct role in the infamous instances of abuse captured in the photos that were eventually released publicly.

Commenting in his book *The Hidden History of CIA Torture: America's Road to Abu Ghraib*, Professor Alfred C. McCoy wrote:

General Fay might have mentioned that the 519th Military Intelligence, the Army unit that set interrogation guidelines for Abu Ghraib, had just come from Kabul where it worked closely with the CIA, learning torture techniques that left at least one Afghani prisoner dead. Had he gone further still, the general could have added that the sensory deprivation techniques, stress positions, and cultural shock of dogs and nudity that we saw in those photos from Abu Ghraib were plucked from the pages of past CIA torture manuals. ^[17]

4) Re: Assessment of motive behind, and content of, “Torture Memos” drafted and distributed by top Bush administration lawyers.

According to the first of two May 10, 2005 “Bradbury memos” addressed from the Office of Legal Counsel (OLC) of the Department of Justice to Mr. Rizzo at the CIA, the so-called “enhanced techniques” included dietary manipulation, forced nudity, stress positions, abdominal slaps and waterboarding. ^[18] The second May 10th memo addressed the use of combinations of these techniques. Together with the August 2002 memo authored by John Yoo and Jay Bybee, these memos set forth both the claim of legality and detailed guidelines for a brutal and abusive program of detainee treatment. This legal analysis, approved and advanced within the CIA by Mr. Rizzo, gave the formal “in-writing” green light to a program that led to documented abuses and scores of deaths within the detainee/interrogation system.

Attorney Jack Goldsmith, who succeeded Jay Bybee at the OLC, later declared that the legal argument of the OLC memos rested on “one-sided legal arguments” and that their intent was to offer the CIA a “golden shield” against criminal prosecution. John Rizzo through his counsel with the OLC and other administration lawyers was a central figure in establishing the legally suspect foundation for the abusive and illegal detainee treatment, this after he had served as senior legal counsel to the CIA when waterboarding and other brutal techniques were undertaken in mid-2002 before the distribution of the August 1, 2002 OLC Memo.

A view similar to Goldsmith's was expressed by the Navy's general counsel, Alberto J. Mora who, upon learning of abuses at Gitmo told Pentagon superiors, including senior counsel, William J. Haynes II, that these methods were "unlawful and unworthy of the military services," and their use placed all those involved at risk of prosecution.^[19]

Whereas Mr. Rizzo accepted and advanced the program within the CIA, the Navy's top legal officer rejected the practice and questioned its legality directly. Mr. Rizzo would later affirm his agreement of OLC legal arguments during his Senate nomination hearing conducted prior to his name being withdrawn for CIA General Counsel.

Award-winning researcher and investigator Marcy Wheeler presented a summary of the case against Mr. Rizzo in an article published by Salon.com on May 18, 2009.^[20] Specifically, among other points, Ms. Wheeler concluded that Rizzo 1) made the false claim in the 2nd Bybee memo that Abu Zubaydah had not been cooperative,* 2) substituted a harsher standard for waterboarding for the more moderate OLC one, 3) advocated for the harsh techniques within the CIA, despite the warning he'd received deeming the techniques "torture" and the approach, unreliable.

[*The FBI interrogator himself, Ali Soufan who employed the a non-enhanced method said, "The truth is that we got actionable intelligence from him in the first hour of interrogating him."]^[21]

5) Re: Discussions leading up destruction of Torture/Waterboarding tapes

According to reporting by the New York Times, John B. Bellinger III, the top lawyer at the National Security Council, advised the C.I.A. in May of 2004 against destroying the interrogation tapes. But in November, 2005, despite this and other advice against destruction and standing court orders to preserve such evidence, Jose Rodriguez, the head of clandestine operations, authorized the destruction of as many as 92 tapes the CIA had recorded of the interrogations of Abu Zubayhah and Abd al-Rahim al-Nashiri; for which Rodriguez was never been reprimanded. The matter is currently under investigation by John Durham, an assistant attorney general in Connecticut, who was appointed special counsel.

At the time of the destruction, Mr. Rizzo had been involved in discussions about the tapes for approximately two years, as the program was being increasingly scrutinized, including by the CIA's own Inspector General. During this period, Mr. Rizzo met with Mr. Rodriguez and Porter Goss, the then recently appointed Director of the CIA, in the Director's office. The record thus far is unclear on whether or not Goss explicitly prohibited the destruction of the tapes. However, according to Newsweek, Mr. Rizzo had approached White House Counsel, Harriet Miers, and she advised the CIA not to do so.^[22]

The obvious dueling concerns amongst the parties during this time stemmed from the fact the tapes represented evidence that could be used in criminal prosecution: The interests of

those who sanctioned or carried out the torture (including relevant to this complaint, Mr. Rizzo), would be served by tape destruction; while the interests of lawyers and others not directly implicated in the secret interrogations would be served by preserving the tapes as evidence in a possible criminal case, or at least not sanctioning their destruction.

The New York Times reported that two lawyers in the clandestine branch had made the legal argument that Mr. Rodriguez had the authority to destroy the tapes.

The current and former officials also provided new details about the role played in November 2005 by Jose A. Rodriguez Jr., then the chief of the agency's clandestine branch, who ultimately ordered the destruction of the tapes.

The officials said that before he issued a secret cable directing that the tapes be destroyed, Mr. Rodriguez received legal guidance from two C.I.A. lawyers, Steven Hermes and Robert Eater. The officials said that those lawyers gave written guidance to Mr. Rodriguez that he had the authority to destroy the tapes and that the destruction would violate no laws.^[23]

According to current and former officials, the lawyers informed Mr. Rizzo of the legal advice passed along to Mr. Rodriguez. Former CIA lawyer John Radsan told the Times:

"I'd be surprised that even the chief [NCS] lawyer made a decision of that magnitude without bringing the General Counsel's front office into the loop."

"Although unlikely, it is conceivable that once a CIA officer got the answer he wanted from a [NCS] lawyer, he acted on that advice... But a streamlined process like that would have been risky for both the officer and the [NCS] lawyer."^[24]

The effort by Mr. Rizzo and others to gain approval for tape destruction and their ultimate destruction suggests a "consciousness of guilt" relative to the well-established laws against torture.

6) Re: Rizzo's testimony during his nomination hearing before a Senate Select Committee on Intelligence

Mr. Rizzo who had served as top legal advisor to the CIA during the period described above, claimed before Congress his concurrence with the conclusion of the Office of Legal Counsel. All four of the Department of Justice, Office of Legal Counsel recently released memoranda regarding so-called "enhanced interrogation" were sent to John A. Rizzo. Here is how part of his testimony was reported by NPR:

Wyden says he and other senators were stunned when they asked Rizzo about the Justice Department judgment that pain had to reach a level associated with organ failure before it constituted illegal torture.

Rizzo told senators at the time, "I did not certainly object to the memo. My reaction was it was an aggressive, expansive reading. But I can't say I had any specific objections to any specific parts of it."

"He should have lodged an objection," Wyden says. "He should have said, 'Look folks, there is an insufficient legal foundation here for conducting a very sensitive covert action program.'" ^[25]

In consideration of this complaint it's vital to recall that at this juncture, Mr. Rizzo and/or the Office of General Counsel at the CIA had already approved the use of abusive techniques in the questioning of high-value detainees. (see Section 1 above)

Thus, given the circumstances, Mr. Rizzo had a vested interest in what he called "an aggressive, expansive reading" from the Office of Legal Counsel. The implications of anything other than a retroactive legal sanctioning (by the OLC) of the "cruel, inhuman and degrading treatment" cited by CIA IG Helgeson, would possibly mean criminal culpability for Mr. Rizzo, and others who were directly involved.

Fortunately, the record is now clear and the legal counsel and maneuverings of the Bush lawyers has now been sufficiently exposed and in the process Mr. Rizzo has been directly implicated in abuse of detainees amounting to torture, or at minimum acts prohibited by the Convention Against Torture.

Through the course of his public testimony on June 19, 2007 at his Senate Confirmation Hearing 2007 ^[26], excepting his comments regarding the August 1 2002 OLC Memo, Mr. Rizzo expressed extraordinary deference and respect for international law and the U.S. Constitution. This of course stood in stark contrast not only to his expressed concurrence with the OLC memo, but also his entire post-9/11 record as the #1 or #2 lawyer at the CIA, and most especially his approval of the harsh and degrading treatment of Zubayhah and Nashiri, which occurred prior to the issuance of the August OLC memo. Entirely aside from pending investigations and criminal culpability, this testimony exposed his duplicity relative to established and applicable law and as a result his nomination to serve as General Counsel to the CIA was withdrawn.

[Note to reader: John A. Rizzo remains the Acting General Counsel under President Obama.]

Conclusions

John A. Rizzo as a top lawyer within the legal section of the CIA advanced a program of "cruel, inhuman and degrading" treatment that followed decades of largely hidden but similar activity carried out by the CIA as evidenced by CIA manuals released through FOIA. The approval of so-called "enhanced interrogation" led to documented abuses of so-called "ghost detainees" in military prisons in Gitmo, Abu Ghraib, and Bagram

(resulting in death in some cases) as confirmed by the Vice Admiral Albert T. Church, U.S. Army Intelligence, CIA Inspector General, and Senate Armed Service Committee

reports. According to an excellent summary produced by an award-winning investigator, Mr. Rizzo 1) made the false claim in the 2nd Bybee memo that Abu Zubaydah had not been cooperative, 2) substituted a harsher standard for waterboarding for the more moderate OLC one, 3) advocated for the harsh techniques within the CIA, despite the warning he'd received deeming the techniques "torture" and the approach, unreliable.

Prior to any legal sanctioning, however flawed, by the Department of Justice, Mr. Rizzo's legal section approved the application of harsh techniques amounting to torture, clearly in violation of U.S. and international law. Abu Zubaydah was subjected to this new "enhanced interrogation" program, despite the earlier success of the "informed" or rapport method of torture applied by FBI Agent Ali Soufan. Evidence clearly suggests that Mr. Rizzo approved, or at minimum was informed of, legal opinion advanced by subordinates that sanctioned the destruction of videotapes documenting the treatment of three high value detainees, thereby obstructing on-going investigations in an environment of great controversy surrounding detainee treatment by the CIA since 9/11/01 and demonstrating consciousness of guilt relative to concerns of unlawful torture.

Finally, in testimony before a U.S. Senate committee during his nomination hearings, Mr. Rizzo demonstrated brazen duplicity relative to the applicable international law governing detainee treatment, professing respect for established law during the hearing, after having spent several years advancing a program in direct violation of that law.

CASE FOR DISBARMENT-District of Columbia (D.C.) Rules of Professional Conduct

The case for Mr. Rizzo's disbarment is simple and clear. A lawyer should demonstrate respect for the legal system and demonstrate a high ethical and moral standard in providing legal counsel to his client. In his work for the Legal Section of the Central Intelligence Agency, Mr. Rizzo did not.

Mr Rizzo's conduct is so far outside the bounds of legal practice that it falls under *D.C. Rules of Professional Conduct, Scope* (p. 4), which reads, "**The Rules do not exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules.**" Mr. Rizzo's advocacy of torture denied due process rights for detainees, and thus helped to perpetuate gross, violent and degrading treatment, some amounting to torture, and was in no way moral or ethical, by any objective measure.

Rule 3.1 B (Meritorious Claims and Contentions, p. 100) calls for lawyers "to inform themselves about the facts of their clients' cases and the applicable law" Further, legal claims are deemed frivolous if the lawyer is "unable either to make a good-faith argument on the merits of the action taken or to support the action taken by a good-faith argument

for an extension, modification, or reversal of existing law.” The May 2005 OLC memos ignore the question of minimal due process for the detainees, and they fail to present a valid legal argument for overturning the universally accepted definition of torture. Mr. Rizzo failed to include case law detailing previous U.S. prosecutions for waterboarding, and failed to challenge previous legal analysis of his office, and therefore his continued advocacy of so-called “enhanced interrogation” was not made in “good faith” and was “frivolous” and incompetent. Moreover, there is no precedent in case law for the claims of executive power made by the OLC, and embraced by White House counsel.

Rule 1.2 (e) (Scope of Representation) reads, “A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good-faith effort to determine the validity, scope, meaning, or application of the law.”

In legal memos advanced by Mr. Rizzo, he extensively advocated and detailed the parameters of a number of extreme torture techniques, some proposed and some already in use, that are deemed by experts to be torture. See Exhibits C, D and E. Therefore, Mr. Rizzo violated Rule 1.2 (e) by counseling his clients to engage in the actual application of illegal acts rather than challenging the practices in a “**good faith**” analysis of applicable U.S. and international law bearing on questions of interrogation and torture.

Rather than accept the definition of torture^[4] as clearly established in international law, the CIA Legal section, under Mr. Rizzo, concurred with the Department of Justice, Office of Legal Counsel, that the CIA’s methods were not “cruel, inhuman or degrading” under international law, referencing the August 1, 2002 OLC memo that attempted to re-define torture:

“The victim must experience intense pain or suffering of the kind that is equivalent to the pain that would be associated with serious physical injury so severe that death, organ failure or permanent damage resulting in a loss of significant body functions will likely result.”

John A. Rizzo’s legal advice demonstrated extreme disregard for well-established rule of law by advocating the violation of both the letter and spirit of the U.S. Constitution, U.S. Criminal Code and the treaties banning torture that the U.S. had signed and ratified. Mr. Rizzo’s advocacy of so-called “enhanced interrogation techniques” was grossly unethical and immoral. Therefore, VR calls upon the *Board on Professional Responsibility, District of Columbia Court of Appeals* to take disciplinary action against Mr. Rizzo.

NOTE: John Yoo, who worked in the Office of Legal Counsel and authored several memos advocating torture, was sued last year by torture victim, Jose Padilla. In a decision on June 12, 2009, Federal Judge Jeffrey White analyzed the law and facts in great detail and concluded that the suit could proceed and that Mr. Yoo did not have immunity because the law against the use of torture was well established. Exhibit Q.

KEY DOCUMENTS IN EVIDENCE

In order to build the case for disciplinary action against John A. Rizzo, Scott W. Muller, Stephen G. Bradbury, Jay Bybee, John Yoo, and other lawyers who advocated for, and defined so-called “enhanced interrogation,” and to examine the origins of the legal advocacy, it is necessary to review an extensive body of evidence and investigative reporting and analysis, including, but not limited to, the following documents/articles:

- 1) Memoranda prepared by lawyers in the Bush Justice Department's Office of Legal Counsel (OLC). [http://www.aclu.org/safefree/general/olc_memos.html] Exhibits C, D, E, F, G, N and O. See also Haynes Memo, Exhibit I.
- 2) The Senate Armed Services Committee Investigation (SASCI) *See*, Attachment B, Senate Armed Services Inquiry Into the Treatment of Detainees in U.S. Custody, released December 2008 (SASCI), pg. xxviii. Exhibit K.
<http://levin.senate.gov/newsroom/release.cfm?id=305735>
<http://levin.senate.gov/newsroom/supporting/2008/Detainees.121108.pdf>
- 3) Senate Select Committee on Intelligence “Narrative on OLC opinions re. CIA Detention and Interrogation Program” released April 22, 2009.
<http://intelligence.senate.gov/pdfs/olcopinon.pdf>
Exhibit T
- 4) Official transcript, Senate Select Committee on Intelligence, S-HRG 110-407; June 19, 2007. Nomination of John A. Rizzo to be General Counsel of the Central Intelligence Agency.
- 5) The Red Cross Report on Detainee Treatment, <http://www.nybooks.com/icrc-report.pdf> **Exhibit J.**
- 6) American Bar Association Resolution Against Torture, condemning “any use of torture ... *and any endorsement or authorization of such measures by government lawyers, officials and agents.*”
velvetrevolution.us/torture_lawyers/.../ABA_Torture_resolution.pdf **Exhibit P.**
- 7) Emails from Deputy Attorney General James Comey to AG Gonzales warning that that the torture opinion “would come back to haunt [him] and DOJ and urged[ing] him not to allow it.” **Exhibit R.**
- 8) Investigative Reporting:
 - a. *The Dark Side: The Inside Story of How the War on Terror Turned into a War on American Ideals*

- b. “Report: Abusive tactics used to seek Iraq-al Qaida link”; Jonathan S. Landay, *McClatchy Newspapers* -- Tue, Apr. 21, 2009

1) The **OLC memoranda** offered the patina of legal sanction to the use of techniques such as waterboarding, hypothermia, stress positions, extensive sleep deprivation and confinement with stinging insects to exploit prisoner phobias.

The memos, by carefully defining parameters, clearly demonstrate that the authors of the memos were deeply engaged in the application of torture techniques, not merely giving abstract legal counsel.

2) The **Senate Armed Services Committee report** provided a detailed chronology of the process of formulation of policy respecting the treatment of prisoners, with a special focus on the introduction of torture techniques. **Exhibit K**

Senior officials in the U.S. government decided to use some of these harsh techniques against detainees based on deeply flawed interpretations of U.S. and international law. [Levin, McCain Release Executive Summary and Conclusions of Report on Treatment of Detainees in U.S. Custody, December 11, 2008]

3) The **Senate Intelligence Committee memo** details the steps leading to issuance of the OLC memos and identified the Justice Department lawyers and others involved in the process. The memo details a systematic authorized program for the mistreatment and torture of persons denied rights of due process. Letter from Attorney General Eric Holder, Jr., to Senator John. D. Rockefeller IV of the SSCI forwarding declassified narrative, (April 17, 2009).] **Exhibit T**

4) The **Red Cross Report On Detainee Treatment** was prepared from interviews with a number of detainees and others. In short, it confirms that the types of torture techniques advocated by Mr. Bradbury we have complained about here were in fact used against many detainees. These techniques included suffocation by water, prolonged stress standing, beatings by use of a collar, beating and kicking, confinement in a box, prolonged nudity, sleep deprivation, continuous loud noises, exposure to cold temperature and cold water, threats, forced shaving, and deprivation of food. **Exhibit J**

5) In **testimony at a Senate hearing** on May 13, 2009, Former State Department counselor Philip Zelikow told a committee panel that Bush administration officials engaged in a ‘collective failure’ with regard to the detention and interrogation of suspected terrorists. He asserted that the torture memos were unsound because “the lawyers involved ... did not welcome peer review and indeed would shut down challenges even inside the government.” Georgetown University law professor David Luban testified that the Justice Department torture memos constituted “an ethical train wreck” because they violated constitutional, statutory and international law.

<http://www.washingtonpost.com/wpdyn/content/article/2009/05/13/AR2009051301281.html>

6) **Investigation Reporting:** Select reporting from credible sources further suggests that

following the attacks of 9/11/01, a host of controversial and illegal policies were advanced persistently and systematically by a small group of lawyers to serve narrow policy goals and political ambitions, with a primary aim of vastly amplifying the power of the Presidency, in direct threat to the system of checks and balances elucidated in the U.S. Constitution.

a) **Jane Mayer, *The Dark Side***: In her award-winning book, Harpers reporter Jane Mayer writes that John Yoo, working in the Office of Legal Counsel, was a prominent member of the War Council and advanced a concerted campaign to establish an entirely new post-9/11 legal regime already well developed prior to the attacks. Mr. Bybee was head of the Office of Legal Counsel thus ultimately responsible for it's work product. Any objective analysis of this body of work leads to the obvious conclusion that these lawyers methodically advanced an agenda entirely antithetical to the U.S. Constitution and a host of historical and legal precedents, with legal opinion and advocacy that effectively buried American ideals and the rule of law.

b) **Jonathan Landey of McClatchy in his article *Report: Abusive tactics used to seek Iraq-al Qaida link*** reported on the intense pressure put on the CIA and military interrogators to use of extreme interrogation tactics including the use of waterboarding, on scores of occasions, in an effort to produce intelligence from detainee confessions that al-Qaeda was linked to the regime of Iraqi President Hussein. Pressure came from the Vice-President's office. The head of the 'War Council' was David Addington, the Vice-President's Chief of Staff.

c) May 29, 2009 statement by General David Petraeus, discussing torture of detainees, said, "When we have taken steps that have violated the Geneva Conventions, we rightly have been criticized, so as we move forward I think it's important to again live our values, to live the agreements that we have made in the international justice arena and to practice those."

<http://www.harpers.org/archive/2009/06/hbc-90005079> (Article and Video)

d) May 31, 2009, General Ricardo Sanchez, in an interview with MSNBC, stated that the use of torture on detainees, constituted a 'war crime,' and that a "truth commission" is necessary to address the "institutional failure" of those charged with decision making and accountability. http://www.huffingtonpost.com/jack-hidary/general-rick-sanchez-call_b_209573.html (Article and Video)

ENDNOTES

[1] See *ProPublica's* comprehensive list of legal memoranda on controversial Bush policies regarding detentions, interrogations and warrantless wiretapping. <http://www.propublica.org/special/missing-memos>.

A detailed listing of torture related legal memoranda is available here: <http://www.aclu.org/safefree/torture/torturefoia.html> Exhibit A

The most recently declassified memos from Yoo's *Office of Legal Counsel* can be found here: http://www.aclu.org/safefree/general/olc_memos.html

[2] See April 15, 2009, *Memorandum to the Attorney General Re. The Withdrawal of Office of Legal Counsel Opinions* mentioning the legal opinions expressed in dated memoranda written by Jay S. Bybee, Assistant Attorney General and Steven G. Bradbury, Principal Deputy Assistant Attorney General.
[http://media.mcclatchydc.com/smedia/2009/04/16/16/Taylor-OLCops_withdrawal.source.prod_affiliate.91.pdf]

The TIMES Online reported:

"Jack Goldsmith, who succeeded Jay Bybee - the author of many of these memos - at the Office of Legal Counsel, has since declared that they had 'no foundation' in any source of law and rested on 'one-sided legal arguments'. **Their purpose, he said, was to provide the CIA with a 'golden shield' against criminal prosecution of agents.** After all, the US prosecuted waterboarding as torture when the Japanese used it against American troops during Second World War."
[http://www.timesonline.co.uk/tol/news/world/us_and_americas/article6116281.ec]

John Yoo, who worked under Jay Bybee, was the principal author of the most important of the memos now under scrutiny.

[3] Unredacted Church Report Documents (Previously Classified) (2/11/2009)
<http://www.aclu.org/safefree/torture/387101gl20090211.html>
<http://www.aclu.org/torturefoia/released/021109.html>

These reports from the Criminal Investigation Division of the Dept. of Justice detail the deaths of a number of detainees at Bagram Air Force Base in Afghanistan and at prisons in Iraq. Thus far, 21 homicides have been confirmed, eight of which resulted from abusive interrogation techniques.

November, 2002: Afghan detained in Kabul freezes to death in CIA custody.
http://www.nytimes.com/2007/12/30/washington/30intel.html?pagewanted=3&_r=1

[4] Almerindo E. Ojeda, *The Trauma of Psychological Torture*, Praeger, 2008; p. 24

[5] Ibid.

[6] Stephen Grey, *Ghost Plane: The True Story of CIA Torture*; St. Martin's Press, 2006

[7] Ali Soufan, Testimony, House Judiciary Committee, May 13, 2009
http://judiciary.senate.gov/hearings/testimony.cfm?id=3842&wit_id=7906

[8] International Committee of the Red Cross Report on the Treatment of Fourteen "High Value Detainees" in CIA Custody International Committee of the Red Cross, February 2007. <http://www.nybooks.com/icrc-report.pdf>

See Exhibit J

[9] U.S. Department of Justice, Office of the Inspector General, "A Review of the FBI's Involvement in and Observations of Detainee Interrogations in Guantanamo Bay, Afghanistan, and Iraq," May 2008; pp. 67-70. NOTE: "Thomas" in the text is Ali Soufan. <http://www.usdoj.gov/oig/special/s0805/final.pdf>

See Excerpt – Exhibit S

[10] Steven Bradbury Memorandum for John A. Rizzo Senior Deputy General Counsel, Central Intelligence Agency Re: Application of United States Obligations Under Article 16 of the Convention Against Torture to Certain Techniques that May Be Used in the Interrogation of High Value al Qaeda Detainees Department of Justice, Office of Legal Counsel, May 30, 2005

See Exhibit E

[11] SASCI. Senate Armed Services Committee Inquiry in Treatment of Detainees in U.S. Custody, December 2008.

<http://levin.senate.gov/newsroom/release.cfm?id=305735>

<http://levin.senate.gov/newsroom/supporting/2008/Detainees.121108.pdf>

See Exhibit K

[12] Nat Hentoff, A CIA Lawyer's Smoking Gun, Village Voice, July 8th 2008 at 10:28am

<http://www.villagevoice.com/2008-07-09/news/a-cia-lawyer-s-smoking-gun/>

[13] Phillippe Sands, The Green Light, Vanity Fair, May 2008

[14] Scott Shane and Mark Mazzetti, "Tapes by C.I.A. Lived and Died to Save Image" The New York Times, December 30, 2007

http://www.nytimes.com/2007/12/30/washington/30intel.html?pagewanted=1&_r=1

[15] Scott Horton, "Six Questions for Jane Mayer, Author of The Dark Side," Harpers, July 14, 2008. <http://www.harpers.org/archive/2008/07/hbc-90003234>

[16] Major General George R. Fay, U.S. Army; AR 15-6 Investigation of the Abu Ghraib Detention Facility and 205th MI Brigade. The following excerpt from the Generals' report address the CIA culpability according to General Fay for the abuses at Abu Ghraib:

(4) (U) The term Other Government Agencies (OGA) most commonly referred to the Central Intelligence Agency (CIA). The CIA conducted unilateral and joint interrogation operations at Abu Ghraib. The CIA's detention and interrogation practices contributed to a loss of accountability and abuse at Abu Ghraib. No memorandum of understanding existed on the subject interrogation operations

between the CIA and CJTF-7, and local CIA officers convinced military leaders that they should be allowed to operate outside the established local rules and procedures. CIA detainees in Abu Ghraib, known locally as “Ghost Detainees,” were not accounted for in the detention system. With these detainees unidentified or unaccounted for, detention operations at large were impacted because personnel at the operations level were uncertain how to report or classify detainees.

[p. 43 of 177, fay82504.pdf]

(4) (U) Interaction with OGA and other agency interrogators who did not follow the same rules as U.S. Forces. There was at least the perception, and perhaps the reality, that non-DOD agencies had different rules regarding interrogation and detention operations. Such a perception encouraged Soldiers to deviate from prescribed techniques.

[p. 24 of 177]

SECRET//NOFORN//X1

SUBJECT: (U) AR 15-6 Investigation of the Abu Ghraib Detention Facility and 205th MI Brigade

The lack of OGA adherence to the practices and procedures established for accounting for detainees eroded the necessity in the minds of Soldiers and civilians for them to follow Army rules.

[p. 73 of 177]

(1) (U) Although the FBI, JTF-121, Criminal Investigative Task Force, ISG and the Central Intelligence Agency (CIA) were all present at Abu Ghraib, the acronym “Other Government Agency” (OGA) referred almost exclusively to the CIA. CIA detention and interrogation practices led to a loss of accountability, abuse, reduced interagency cooperation, and an unhealthy mystique that further poisoned the atmosphere at Abu Ghraib.

(2) (U) CIA detainees in Abu Ghraib, known locally as “Ghost Detainees,” were not accounted for in the detention system. When the detainees were unidentified or unaccounted for, detention operations at large were impacted because personnel at the operations level were uncertain how to report them or how to classify them, or how to database them, if at all. Therefore, Abu Ghraib personnel were unable to respond to requests for information about CIA detainees from higher headquarters. This confusion arose because the CIA did not follow the established procedures for detainee in-processing, such as fully identifying detainees by name, biometric data, and Internee Serial Number (ISN) number.

[p. 87 of 177]

[17] Alfred W. McCoy, *The Hidden History of CIA Torture: America's Road to Abu Ghraib*, p. 87 of 177; Owl Books, 2006.

[18] The full list of techniques taken directly from in May 10th 2005 Bradbury memos:

- 1) Dietary manipulation
- 2) Forced nudity
- 3) Attention grasp
- 4) Walling
- 5) Facial hold
- 6) Facial slap
- 7) Abdominal slap
- 8) Cramped confinement
- 9) Wall standing
- 10) Stress positions
- 11) Water dousing
- 12) Sleep deprivation
- 13) Waterboarding

[19] Phillippe Sands, The Green Light, Vanity Fair, May 2008

[20] Marcy Wheeler, "The 13 people who made torture possible: The Bush administration's Torture 13. They authorized it, they decided how to implement it, and they crafted the legal fig leaf to justify it;" Salon.com, May 18, 2009.

As deputy general counsel and then acting general counsel for the CIA, John Rizzo's name appears on all of the known OLC opinions on torture for the CIA. For the Bybee Two memo, [http://stream.luxmedia501.com/?file=clients/aclu/olc_08012002_bybee.pdf&method=dl] Rizzo provided a number of factually contested pieces of information to OLC -- notably, that Abu Zubaydah was uncooperative and physically and mentally fit enough to withstand waterboarding and other enhanced techniques. [See Congressional testimony of former FBI agent Ali Soufan] In addition, [Rizzo provided](http://www.fas.org/irp/congress/2007_hr/rizzo.pdf) [http://www.fas.org/irp/congress/2007_hr/rizzo.pdf] a description of waterboarding using one standard, while the OLC opinion described [a more moderate standard](http://emptywheel.firedoglake.com/2009/04/21/the-sasc-smoking-gun-on-waterboarding/). [http://emptywheel.firedoglake.com/2009/04/21/the-sasc-smoking-gun-on-waterboarding/] Significantly, the description of waterboarding submitted to OLC came from the Defense Department, even though NSC had excluded DOD from discussions on the memo. Along with the description of waterboarding and other techniques, [Rizzo also provided a document](http://www.washingtonpost.com/wp-srv/nation/pdf/JPra-Memo_042409.pdf) [http://www.washingtonpost.com/wp-srv/nation/pdf/JPra-Memo_042409.pdf] that called enhanced methods "torture" and deemed them unreliable -- yet even with this warning, Rizzo still advocated for the CIA to get permission to use those techniques.

[21] See Ali Soufan testimony here:

<http://emptywheel.firedoglake.com/2009/05/13/soufans-narrative>
and here:

http://judiciary.senate.gov/hearings/testimony.cfm?id=3842&wit_id=7906

[22] Michael Isikoff and Mark Hosenball, "Paper Trail: Who authorized the CIA to destroy interrogation videos?" Dec 11, 2007; <http://www.newsweek.com/id/76574>

[23] Mark Mazzetti and Scot Shane, "Destruction of C.I.A. Tapes Cleared by Lawyers," The New York Times, December 11, 2007.

[24] Ibid.

[25] Mary Louise Kelly, "In Torture Memo Furor, Rizzo's Name Is At The Top," Morning Edition, NPR, April 29, 2009.
<http://www.npr.org/templates/story/story.php?storyId=103590884>

[26] June 19, 2007, John A. Rizzo, Senate Confirmation Hearing 2007, U.S. Congressional Record

Chairman ROCKEFELLER: ...did you, as acting CIA General Counsel, issue legal guidance, prior to the program's start, that the program's interrogation techniques did not violate the Fifth, Eighth or Fourteenth Amendments of the U.S. Constitution?

Mr. RIZZO. Yes, sir.

Chairman ROCKEFELLER: Did the Department of Justice issue a legal opinion prior to the program's start that the interrogation techniques would not constitute conduct of the type that would be prohibited by the U.S. Constitution, and did you concur with this opinion?

Mr. RIZZO. The Department of Justice, before the program began, did issue guidance relative to the issue of the program by laying the terms of the torture statute. That at that time was the extent of the legal guidance we received from the Department of Justice prior to the program's initiation.

Chairman ROCKEFELLER. OK. As acting CIA General Counsel in 2002, did you issue legal guidance that the interrogation techniques to be used by the CIA were lawful under the Convention Against Torture and the Geneva Convention?

Mr. RIZZO. In 2002, yes, sir.

Chairman ROCKEFELLER. Both.

Mr. RIZZO. Yes, sir.

Chairman ROCKEFELLER. Mr. Rizzo, during the operation of the CIA detention and interrogation program, were you made aware of any concerns expressed by CIA officers that they could be exposed to criminal prosecution for their involvement in the program?

Mr. RIZZO. I'm sorry—at the outset of the program or in the course of the entire program?

Chairman ROCKEFELLER. In the course of.

Mr. RIZZO. There have been some concerns so expressed, yes, sir.

[snip]

Chairman ROCKEFELLER. That is your right. Final question from me, Mr. Rizzo. The Department of Justice's Office of Legal Counsel drafted an unclassified memo dated August 1, 2002 about standards of conduct under the Convention Against Torture and the criminal prohibitions on torture. That opinion concluded that 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," and that prosecution under the criminal torture statute might be barred "because enforcement of the statute would represent an unconstitutional infringement of the President's authority to conduct war." The Office of Legal Counsel later repudiated the opinion. Did you concur with the legal analysis in this memo? If not, what portions did you disagree with?

Mr. RIZZO. I obviously was aware of that legal memo when it was issued on August 1, 2002. I did not, certainly, object to the memo. As with most legal memos, my reaction was it was an aggressive, expansive reading, but I can't say that I had any specific objections to any specific parts of it. I do agree with the Department of Justice later analysis that the language that you cited did appear overbroad for the issue that it was intended to cover.

Chairman ROCKEFELLER. Thank you, sir.

Torture wrong, illegal

Senator WHITEHOUSE. Let me ask you one other question on another topic. Recently General Petraeus sent a letter to all of our forces in Iraq, and he wrote the following:

"Some may argue that we would be more effective if we sanctioned torture or other expedient methods to obtain information from the enemy. They would be wrong. Beyond the basic fact that such actions are illegal, history shows that they also are frequently neither useful nor necessary. "Certainly extreme physical action can make someone 'talk.'

However, what the individual says may be of questionable value. In fact," he went on to say, "our experience in applying the interrogation standards laid out in the Army Field Manual on Human Intelligence Collector Operations that was published last year shows that the techniques in the manual work effectively and humanely in

eliciting information from detainees.” Do you believe that statement by General Petraeus to be correct?

Mr. RIZZO. Yes, I don't have an objection to that statement.

[NOTE: His previous actions speak to the contrary. Apparent flip-flop proves either extreme incompetence or an utter lack of moral courage.]

[snip]

Establishment of Torture techniques

Senator LEVIN. Now, on Bybee number two, did you request that the Office of Legal Council produce that memo?

Mr. RIZZO. Yes, sir.

Senator LEVIN. And who gave the Department of Justice the interrogation practices which they analyzed?

Mr. RIZZO. Well, the——

Senator LEVIN. Did you do that?

Mr. RIZZO. My office was the vehicle for getting that to the Department of Justice, yes, sir.

Senator LEVIN. And you were in charge of the office?

Mr. RIZZO. Yes, sir.

[snip]

Torture program humane

Senator LEVIN. At the time it was approved in 2002, did you think the CIA's interrogation program was humane?

Mr. RIZZO. Yes, sir.

Senator LEVIN. Is that what you told me in the office?

Mr. RIZZO. I hope that's what I told you in the office because that's what I believe.

Geneva Convention as law of land

Mr. Rizzo, is the CIA bound by the Geneva Convention, particularly Article III? And I would like to know if you think we're bound by Article III in its entirety.

Mr. RIZZO. Well, we're certainly bound by Article III of the Geneva Convention as interpreted and made in statutory form by the Congress, yes, sir.

Senator WYDEN. So—in its entirety?

Mr. RIZZO. In its entirety as interpreted and enacted by statute, yes, sir.

Senator WYDEN. I believe that “as interpreted” means that you comply with it in its entirety? I'll just ask it once more.

Mr. RIZZO. Yes, sir.

Senator W. Thank you.

[snip]

Rendition Program

Senator LEVIN. I'd ask unanimous consent that a statement of the President in December of 2005 that we do not render to countries that torture—a statement made in public—be inserted in the record at this point, in contrast to Mr. Rizzo's statement that he could not answer that question in public.

Chairman ROCKEFELLER. It will be done.

[snip]

Article II, Constitution, Executive Powers

Senator FEINGOLD. In 2002, the Department of Justice concluded even if an interrogation method might violate the statutory prohibition against torture, the statute would be “unconstitutional if it impermissibly encroached on the President's constitutional power to conduct a military campaign.” Do you believe that the statutory prohibition against torture encroaches on the President's constitutional power?

Mr. RIZZO. No. The statutory prohibition on torture is absolute. There are no countervailing considerations. So no, that's an absolute ban.

APPLICABLE LAW PROHIBITING TORTURE

The U.S. Constitution -- The Supreme Law of the Land

As the initial U.S. report to the *UN Convention against Torture* wrote:

“...the protections of the right to life and liberty, personal freedom and physical integrity found in the Fourth, Fifth and Eighth Amendments to the United States Constitution provide a nationwide standard of treatment beneath which no governmental entity may fall.” [49, p. 13, Initial Report submitted by the United States to the *Convention against Torture* in 1999 (CAT/C/28/Add.5)]

U.S. citizens are guaranteed these protections. Jose Padilla is one example of a U.S. citizen who was held without charge for several years, and subject to the extreme interrogation techniques advocated by Mr. Rizzo. Citizens of other countries are similarly protected when in United States custody. The Eighth Amendment specifically prohibits cruel and unusual punishment.

The Geneva Convention (1949) Exhibit H

Common Article 3 of the *Geneva Conventions* broadly prohibits "violence to life and person," and specifically prohibits "mutilation, cruel treatment and torture" including "outrages upon personal dignity, in particular humiliating and degrading treatment". These terms include "other forms of cruel, inhuman and degrading treatment or punishment."

The drafters of common Article 3 avoided a detailed list of prohibited acts in order to ensure that it had the broadest possible reach, leaving no loophole.

[<http://www.amnestyusa.org/war-on-terror/reports-statements-and-issue-briefs/torture-and-the-law/page.do?id=1107981>]

The **Army Field Manual** on detainee treatment and interrogation is predicated on the Geneva Convention and specifically requires humane treatment of prisoners and detainees. Exhibit B

UN Convention Against Torture (1994) Exhibit L.

Adopted by the United Nations in 1984, the Convention requires states to take effective measures to prevent torture within their borders. The United States ratified the Convention against Torture in October 1994 and it entered into force for the United States on November 20, 1994. To date there are over 146 nations that are party to the convention.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted by the United Nations General Assembly in 1984 and entered into force on June 26, 1987.

It defines torture as any act by which: “severe pain or suffering, whether physical or mental; is intentionally inflicted on a person; for such purposes as”:

- a) obtaining from him/her or a third person information or a confession
- b) punishing him/her for an act s/he or a third person has committed or is suspected of having committed
- c) intimidating or coercing him/her or a third person,
- d) or for any reason based on discrimination of any kind;

When such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.*

<http://www.amnestyusa.org/war-on-terror/reports-statements-and-issue-briefs/torture-and-the-law/page.do?id=1107981>

The Convention Against Torture is implemented by Sections 2340-2340A of title 18 of the United States Code. (see below)

Article 2(2) of the Convention states that:

"No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."

Hamdan v. Rumsfeld (2002) -- Due Process and Legal Protections

The Supreme Court in *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006), held that the Geneva Conventions are applicable to accused members of al-Qaeda. Thus, due process and protections apply to all detainees in U.S. custody, including those in military prisons (Guantanamo, Abu Grahیب, Bagram) as well as so-called "black sites" in Poland, Diego Garcia and elsewhere.

U.S. Criminal Code

TITLE 18 § 2340A. Torture

(a) Offense.— Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

(b) Jurisdiction.— There is jurisdiction over the activity prohibited in subsection (a) if—
(1) the alleged offender is a national of the United States; or
(2) the alleged offender is present in the United States, irrespective of the nationality of the victim or alleged offender.

(c) Conspiracy.— A person who conspires to commit an offense under this section shall be subject to the same penalties (other than the penalty of death) as the penalties prescribed for the offense, the commission of which was the object of the conspiracy.

TITLE 18 § 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.

(b) Circumstances.— The circumstances referred to in subsection (a) are that the person

committing such war crime or the victim of such war crime is a member of the Armed Forces of the United States or a national of the United States (as defined in section 101 of the Immigration and Nationality Act).

(c) Definition.— As used in this section the term “war crime” means any conduct—
(1) 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

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin Zeese', with a long horizontal flourish extending to the right.

Kevin Zeese
Attorney at Law
301-996-6582