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Central Intelligence Agency
Office of General Counsel
Washington, D.C. 20505

(28 April 2003)

To:	John Yoo
Organization:	DoJ
Phone:	
Fax:	
Subject:	Legal Principles Applicable to CIA Detention and Interrogation of Captured Al-Qa'ida Personnel
From:	Scott W. Muller
Organization:	Office of General Counsel
Phone:	
Fax:	

Number of Pages (Including Cover) 3

Comments: I would like to discuss this with you as soon as you get a chance. Thank you. Scott

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Legal Principles Applicable to
CIA Detention and Interrogation
of Captured Al-Qa'ida Personnel

- The international Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment applies to the United States only in accordance with the reservations, declarations and understandings articulated by this country in connection with the Convention. Accordingly, the United States prohibits torture only as proscribed in 18 U.S.C. §2340; and prohibits otherwise "cruel, inhuman and degrading" treatment only where, in all the circumstances (including the justification for the treatment), the treatment would violate the Eighth Amendment prohibition against cruel and unusual punishment or the Fifth and Fourteenth Amendment prohibitions against conduct that "shocks the conscience."
- Customary international law imposes no limitation on the treatment of al-Qa'ida detainees beyond the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment, as interpreted by the United States.
- The United States is at war with al-Qa'ida. Accordingly, US criminal statutes do not apply to official government actions directed against al-Qa'ida detainees except where those statutes are specifically applicable in the conduct of war or to official actions.
- The federal war crimes statute (18 U.S.C. §2441) does not apply to al-Qa'ida, since al-Qa'ida is not subject to the Geneva Conventions or any other applicable conventions.
- CIA interrogations of foreign nationals are not within the "special maritime or territorial jurisdiction" of the United States where the interrogation takes place on foreign territory in buildings that are not owned or

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leased by or under the legal jurisdiction of the US Government.

- The use by CIA of the following techniques (and of comparable, approved techniques) in the interrogation of al-Qa'ida detainees is lawful, and violates neither Federal criminal law nor the Fifth, Eighth, or Fourteenth Amendments, in circumstances where the interrogators do not have the specific intent to cause the detainee to undergo severe physical or mental pain or suffering: isolation, sleep deprivation, reduced caloric intake (so long as the amount is calculated to maintain the general health of the detainee), deprivation of reading material, loud music or white noise (at a decibel level calculated to avoid damage to the detainee's hearing), the attention grasp, walling, the facial hold, the facial slap (insult slap), the abdominal slap, cramped confinement, wall standing, stress positions, sleep deprivation, the use of diapers, the use of harmless insects, and the water board.

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**Legal Principles Applicable to CIA
Detention and Interrogation of Captured Al-Qa'ida Personnel**

- The Convention Against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment ("the Convention") applies to the United States only in accordance with the reservations, understandings, and declarations that the United States submitted with its instrument of ratification of the Convention.
 - The Convention's definition of torture, as interpreted by U.S. understandings, is identical in all material ways to the definition of torture contained in 18 U.S.C. § 2340. The standard for what constitutes torture under section 2340 and under the Convention is therefore identical.
 - The Convention also requires that state parties undertake to prevent other cruel, inhuman, or degrading treatment or punishment. Because of U.S. reservations to the Convention, the U.S. obligation to undertake to prevent such treatment or punishment extends only to conduct that would constitute cruel and inhuman treatment under the Eighth Amendment or would "shock the conscience" under the Fifth and Fourteenth Amendments. Moreover, the Convention permits the use of such treatment or punishment in exigent circumstances, such as a national emergency or war.
- Customary international law imposes no obligations regarding the treatment of al-Qa'ida detainees beyond that which the Convention, as interpreted and understood by the United States in its reservations, understandings, and declarations, imposes. The Convention therefore definitively establishes what constitutes torture and cruel, inhuman, or degrading treatment or punishment for the purposes of U.S. international law obligations.
- CIA interrogations of foreign nationals are not within the "special maritime and territorial jurisdiction" of the United States where the interrogation occurs on foreign territory in buildings that are not owned or leased by or under the legal jurisdiction of the U.S. government. The criminal laws applicable to the special maritime and territorial jurisdiction therefore do not apply to such interrogations. Additionally CIA interrogations of foreign nationals are not within the sovereign territory of the United States. Thus, the federal criminal laws that apply within that territory do not apply to these interrogations. The only two federal criminal statutes that might apply to these interrogations are: the War Crimes Statute, 18 U.S.C. § 2441, the prohibition against torture, 18 U.S.C. § 2340-2340A.
- The federal War Crimes Statute, 18 U.S.C. § 2441, does not apply to al-Qa'ida because the Geneva Conventions and the Hague Convention IV, the conventions that the conduct must violate in order to violate section 2441, do not apply to al-Qa'ida. Al-Qa'ida is a non-governmental international terrorist organization whose members cannot be considered POWs within the meaning of the Geneva

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Conventions or receive the protections of the Hague Convention IV. Because these conventions do not protect al-Qa'ida members, conduct toward those members cannot violate section 2441.

- The interrogation of al-Qa'ida detainees does not constitute torture within the meaning of section 2340 where the interrogators do not have the specific intent to cause the detainee to experience severe physical or mental pain or suffering. The absence of specific intent is demonstrated by a good faith belief that severe physical or mental pain or suffering will not be inflicted upon the detainee. A good faith belief need not be a reasonable belief. The presence of good faith can be established through evidence of efforts to review relevant professional literature, consulting with experts, or reviewing evidence gained from past experience.
- The interrogation of members of al-Qa'ida, who are foreign nationals, does not violate the Fifth, Eighth, and Fourteenth Amendments because these amendments do not apply. The Due Process Clauses of the Fifth and Fourteenth Amendments, which would be the only clause in these amendments that could arguably apply to the conduct of interrogations, do not apply extraterritorially to aliens. The Eighth Amendment has no application because it applies solely to those persons upon whom criminal sanctions have been imposed. The detention of enemy combatants is in no sense the imposition of a criminal sanction and thus the Eight Amendment does not apply.

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