

By David Swanson

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Following a joint blogosphere [drafting effort](#), here's a revised draft indictment of Bush for torture. As before, this does not attempt to include the vast majority of Bush's crimes or any of Bush's worst crimes. Nor does it attempt to indict the vast majority of those probably guilty of conspiracy to torture. This is just Bush and just torture.

United States of America,  
Plaintiff  
v.  
George W. Bush,  
Defendant

18 U.S.C. Section 2340A  
18 U.S.C. Section 2441

INDICTMENT

THE GRAND JURY CHARGES:

Introductory Allegations:

At times relevant to this Indictment:

1. The primary law of the United States Federal Government was set forth in the U.S. Constitution ("Constitution"), which provides that the Executive Power of the United States is vested in the President, who is also the Commander in Chief of the Armed Services.
2. Defendant GEORGE W. BUSH ("BUSH") served as President of the United States from January 20, 2001, to January 20, 2009. BUSH took a constitutionally mandated oath to faithfully execute the Office of President and to preserve, protect, and defend the Constitution. BUSH is also constitutionally obligated to take care that the laws be faithfully executed.
3. As Chief Executive, BUSH exercised authority, direction, and control over the entire Executive Branch, which includes the White House, the Office of the Vice President, the Departments of State, Defense, and others, and the Central Intelligence Agency.
4. As an employee of the Executive Branch, BUSH was governed by Executive Orders 12674 and 12731. These Orders provide that Executive Branch employees hold their positions as a public trust and that the American people have a right to expect that they will fulfill that trust in accordance with certain ethical standards and principles. These include abiding by the Constitution and laws of the United States, as well as not using their offices to further private goals and interests.
5. Pursuant to the Constitution, his oath of office, his status as Executive Branch employee, and his presence in the United States, BUSH is required to obey Amendment VIII of the Constitution which prohibits the infliction of cruel and unusual punishment; as well as treaties which under Article VI of the Constitution are the supreme law of the land, including the Universal Declaration of Human Rights which prohibits torture or cruel, inhuman, or degrading treatment or punishment; the Third Geneva Convention relative to the Treatment of Prisoners of War, the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, and Common Article 3 of the Geneva Conventions which prohibits violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture, as well as outrages upon personal dignity, in particular, humiliating and degrading treatment; the International Covenant on Civil and Political Rights which prohibits torture or cruel, inhuman, or degrading treatment or punishment; the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment which requires that the United States work to prevent all forms of torture; as well as Title 18, United States Code, Section 2340A which prohibits conspiring to torture; and Title

18, United States Code, Section 2441 which prohibits conspiring to torture or inflict cruel or inhuman treatment or murder.

6. As used in Section 2340A, the term "torture" means an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control; "severe mental pain or suffering" means the prolonged mental harm caused by or resulting from — (A) the intentional infliction or threatened infliction of severe physical pain or suffering; (B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality; (C) the threat of imminent death; or (D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality.

7. As used in Section 2441, the term "torture" means the act of a person who commits, or conspires or attempts to commit, an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind.

8. As used in Section 2441, the term "cruel or inhuman treatment" means the act of a person who commits, or conspires or attempts to commit, an act intended to inflict severe or serious physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions), including serious physical abuse, upon another within his custody or control.

9. As used in Section 2441, the term "murder" means the act of a person who intentionally kills, or conspires or attempts to kill, or kills whether intentionally or unintentionally in the course of committing any other offense under this subsection, one or more persons taking no active part in the hostilities, including those placed out of combat by sickness, wounds, detention, or any other cause.

The Conspiracy to Commit Torture, Cruel or Inhuman Treatment, and Murder in Violation of US Treaty Obligations and Statutes

1. On Sept. 17, 2001, BUSH produced an executive order authorizing the CIA to set up unacknowledged detention facilities around the world. For years after this date, prisoners in these facilities were not identified to the International Committee of the Red Cross or provided due process.

2. On January 25, 2002, the White House Legal Counsel Alberto Gonzales produced a Memorandum for the President on the subject of "Decision Re Application of the Geneva Convention on Prisoners of War to the Conflict With Al Qaeda and the Taliban." In this memorandum, Gonzales stated that he had advised BUSH on January 18th that "the Department of Justice had issued a formal legal opinion concluding that the Geneva Convention III on the Treatment of Prisoners of War (GPW) does not apply to the conflict with al Qaeda," and that "DOJ's opinion concludes that there are reasonable grounds for you to conclude that GPW does not apply with respect to the conflict with the Taliban." Gonzales stated that BUSH drew that conclusion: "I understand that you decided that GPW does not apply and, accordingly, that al Qaeda and Taliban detainees are not prisoners of war under the GPW." Gonzales reported that the Secretary of State, Colin Powell, had requested that the president reconsider his decision. Gonzales advised BUSH that a positive consequence of adhering to his earlier determination was that it "substantially reduces the threat of domestic criminal prosecution under the War Crimes Act (18 U.S.C. 2441)." Negative consequences listed by Gonzales included: "The War Crimes Act could not be used against the enemy," and "Concluding that the Geneva Convention does not apply may encourage other countries to look for technical 'loopholes' in future conflicts to conclude that they are not bound by GPW either." Gonzales recommended that BUSH not reconsider his decision.

3. On February 7, 2002, BUSH produced a Memorandum for the Vice President, the Secretary of State, the Secretary of Defense, the Attorney General, Chief of Staff to the President, Director of Central Intelligence, Assistant to the President for National Security Affairs, and Chairman of the Joint Chiefs of Staff on the subject of "Humane Treatment of al Qaeda and Taliban Detainees." In this memorandum, BUSH "determined" that "none of the provisions of Geneva apply to our conflict with al Qaeda in Afghanistan or elsewhere throughout the world," and "[C]ommon article 3 of Geneva does not apply to either al Qaeda or Taliban detainees," and "[T]he Taliban detainees are unlawful combatants and, therefore, do not qualify as prisoners of war under article 4 of Geneva," and "al Qaeda detainees also do not qualify as prisoners of war."

The "Inquiry Into the Treatment of Detainees in U.S. Custody," produced on November 20, 2008, and released on April 22, 2009, by the Senate Armed Services Committee included a section with the heading "Presidential Order Opens the Door to Considering Aggressive

Techniques," which stated: "The President's order closed off application of Common Article 3 of the Geneva Conventions, which would have afforded minimum standards for humane treatment, to al Qaeda or Taliban detainees. While the President's order stated that, as 'a matter of policy, the United States Armed Forces shall continue to treat detainees humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of the Geneva Conventions,' the decision to replace well established military doctrine, i.e., legal compliance with the Geneva Conventions, with a policy subject to interpretation, impacted the treatment of detainees in U.S. custody."

The same report drew this conclusion: "On February 7, 2002, President George W. BUSH made a written determination that Common Article 3 of the Geneva Conventions, which would have afforded minimum standards for humane treatment, did not apply to al Qaeda or Taliban detainees. Following the President's determination, techniques such as waterboarding, nudity, and stress positions, used in SERE training to simulate tactics used by enemies that refuse to follow the Geneva Conventions, were authorized for use in interrogations of detainees in U.S. custody."

4. On June 29, 2006, the United States Supreme Court ruled in *Hamdan v. Rumsfeld* that the Geneva Convention applies to prisoners held under BUSH's command at Guantanamo Bay.

5. BUSH's subordinates, through the years of his presidency, established an official policy of torture, and cruel and inhuman treatment. The CIA produced secret guidelines authorizing torture. The Office of Legal Counsel in the Department of Justice produced secret opinions authorizing torture.

The Senate Armed Services Committee report cited above included a section titled "Department of Justice Redefines Torture" which stated: "On August 1, 2002, . . . the Department of Justice's Office of Legal Counsel (OLC) issued two legal opinions. The opinions were issued after consultation with senior Administration attorneys, including then-White House Counsel Alberto Gonzales and then-Counsel to the Vice President David Addington. Both memos were signed by then-Assistant Attorney General for the Office of Legal Counsel Jay Bybee. One opinion, commonly known as the first Bybee memo, was addressed to Judge Gonzales and provided OLC's opinion on standards of conduct in interrogation required under the federal torture statute. That memo concluded: '[F]or an act to constitute torture as defined in [the federal torture statute], it must inflict pain that is difficult to endure. 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. For purely mental pain or suffering to amount to torture under [the federal torture statute], it must result in significant psychological

harm of significant duration, e.g., lasting for months or even years.' In his book 'The Terror Presidency', Jack Goldsmith, the former Assistant Attorney General of the OLC who succeeded Mr. Bybee in that job, described the memo's conclusions: 'Violent acts aren't necessarily torture; if you do torture, you probably have a defense; and even if you don't have a defense, the torture law doesn't apply if you act under the color of presidential authority.'"

6. BUSH's subordinates engaged in the widespread use of officially sanctioned torture. Incidents of torture, cruel and inhuman treatment, and murder by torture are extensively documented, including by a February 2007 International Committee of the Red Cross Report on the Treatment of Fourteen 'High Value Detainees' in CIA Custody.

7. Numerous incidents of torture have resulted in murder. On October 24, 2005, the government released to the American Civil Liberties Union military records that included 44 autopsies and death reports as well as a summary of autopsy reports of individuals apprehended in Iraq and Afghanistan. The documents showed that detainees died during or after interrogations by Navy Seals, Military Intelligence and "OGA" (Other Governmental Agency) -- a term used to refer to the CIA. According to the documents, 21 of the 44 deaths were homicides. Eight of the homicides appeared to have resulted from abusive techniques used on detainees, in some instances, by the CIA, Navy Seals and Military Intelligence personnel. On March 16, 2005, the Associated Press reported that "At least 108 people have died in American custody in Iraq and Afghanistan, most of them violently, according to government data provided to The Associated Press. Roughly a quarter of those deaths have been investigated as possible abuse by U.S. personnel."

8. In his January 28, 2003, Address to Congress on the State of the Union, BUSH stated: "All told more than 3,000 suspected terrorists have been arrested in many countries. And many others have met a different fate. Let's put it this way: they are no longer a problem to the United States." On April 11, 2008, ABC News produced a video interview of BUSH during which he was asked about meetings his top subordinates had held to approve of specific instances of torture. BUSH stated: "And yes, I'm aware our national security team met on this issue. And I approved." The National Security Council's Principals Committee, which held the meetings, included Vice President Dick Cheney, National Security Adviser Condoleezza Rice, Defense Secretary Donald Rumsfeld, Secretary of State Colin Powell, CIA Director George Tenet, and Attorney General John Ashcroft. In the same interview, BUSH defended the use of the drowning torture on prisoner Khalid Sheikh Mohammed, stating: "We had legal opinions that enabled us to do it. And no, I didn't have any problem at all trying to find out what Khalid Sheikh Mohammed knew." On January 11, 2009, Fox News aired a video interview of BUSH in which he admitted personally authorizing the torture of Khalid Sheikh Mohammed, stating: "One such person who gave us information was Khalid Sheikh Mohammed. ... And I'm in the Oval Office and I am told that we have captured Khalid Sheikh Mohammed and the professionals believe he

has information necessary to secure the country. So I ask what tools are available for us to find information from him and they gave me a list of tools, and I said are these tools deemed to be legal? And so we got legal opinions before any decision was made."

The Senate Armed Services Committee report cited above drew this conclusion: "Members of the President's Cabinet and other senior officials participated in meetings inside the White House in 2002 and 2003 where specific interrogation techniques were discussed. National Security Council Principals reviewed the CIA's interrogation program during that period."

9. On January 15, 2009, Susan Crawford, the convening authority for the Guantanamo military commissions, was quoted in the Washington Post as saying that the United States had tortured prisoner Mohammed al-Qahtani. "We tortured Qahtani," she said. "His treatment met the legal definition of torture."

10. On January 29, 2009, John Yoo, a former official in the Office of Legal Counsel who had drafted secret memos authorizing torture, published an article in the Wall Street Journal with the headline "Obama Made a Rash Decision on Gitmo," in which he wrote: "On the advice of his intelligence advisers, the president could have authorized coercive interrogation methods like those used by Israel and Great Britain in their antiterrorism campaigns. (He could even authorize waterboarding, which he did three times in the years after 9/11.)"

11. On May 10, 2009, former Vice President Richard Cheney appeared on the CBS News television program "Face the Nation." Asked what BUSH had known about torture methods, Cheney replied, "I certainly, yes, have every reason to believe he knew -- he knew a great deal about the program. He basically authorized it. I mean, this was a presidential-level decision. And the decision went to the president. He signed off on it."

12. BUSH never voluntarily made public what he knew about torture, cruel and inhuman treatment, or murder by his subordinates. Instead, for years, he publicly denied that the United States ever used torture. When evidence of torture was made public, including photographs from Abu Ghraib prison in Iraq made public in 2004, BUSH did not investigate the problem, remove those responsible from office, or punish them. The military convicted several low-ranking soldiers, but did not pursue responsibility up the chain of command.

13. In furtherance of the above-described conspiracy, the defendant and his coconspirators committed and caused to be committed the following overt acts:

#### Overt Acts

1. On February 7, 2002, BUSH produced a Memorandum for the Vice President, the Secretary of State, the Secretary of Defense, the Attorney General, Chief of Staff to the President, Director of Central Intelligence, Assistant to the President for National Security Affairs, and Chairman of the Joint Chiefs of Staff on the subject of "Humane Treatment of al Qaeda and Taliban Detainees." In this Memorandum, BUSH denied rights protected by the Geneva Conventions to certain categories of prisoners.

2. On December 30, 2005, BUSH signed a signing statement, "President's Statement on Signing of H.R. 2863," in which he claimed the power to ignore a new prohibition on torture contained in the bill he had just signed into law.

3. BUSH personally authorized the torture of Khalid Sheikh Mohammed and authorized meetings by his top subordinates at which they approved the torture of other prisoners.

All in violation of Title 18, United States Code, Sections 2340A and 2441.

A TRUE BILL