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The Bush Administration and Guantanamo Bay: The Difference Between Public and Private Information

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The Bush Administration and Torture in Guantanamo Bay Lying, Denial, and Misinformation By: Emma Quenneville

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Overview

- One major factor of George Bush's tenure was the War on Terror, and the aftermath, specifically Guantanamo Bay prison.
- Bush and his cabinet consistently put out public information denying the use of enhanced interrogation techniques, or more commonly known as torture.
- The American public is led to believe that their government is imprisoning terrorists and handling them according to their crimes, when in reality that could not be further from the truth.
- The Department of Justice then issued memorandums that "justified" torture.
- The differences between "public" and "private" information are vast, and truly expose the conditions of Guantanamo Bay.

Legal Issues

There is no question as to whether or not torture is illegal in U.S. jurisdiction. These laws, one domestic and one international, directly outlaw torture:

- Section 2340A of Title 18, United States Code, prohibits torture committed by public officials under color of law against persons within the public official's custody or control. Torture is defined to include acts specifically intended to inflict severe physical or mental pain or suffering. (It does not include such pain or suffering incidental to lawful sanctions.) U.S. Code, Section 2340A
- No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation. ICCPR

Limitations

- Many of the official government records of what happened in GTMO are still classified. • There are hundreds of
- memorandums and speeches that are about the use of torture in GTMO, which would be impossible for me to go though alone in this time period.

Methods & Procedures

- Document analysis
- Interviews of human subjects (former detainees)
- Legal research
- reading memoirs/first hand accounts of GTMO

Mansoor Adayfi, 14 Years Detained



"Guantanamo Bay is one of the most expensive prisons in the world, why not tell the truth to the media about it if there's nothing to hide?"

Through all of this research, the best place to educate yourselves about th happenings in Guantanamo Bay remains directly through survivors. Mohamedou Ould Slahi and Mansoor Adayfi are 2 former detainees who have made their stories public. These are direct quotes from them regarding the political atmosphere, but their entire stories are worth reading.

"Private" Information



U.S. Department of Justice Office of Legal Counsel

Washington, D.C. 20530

Office of the Assistant Attorney General

August 1, 2002

Memorandum for Alberto R. Gonzales Counsel to the President

Re: Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340-2340A

You have asked for our Office's views regarding the standards of conduct under the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment as implemented by Sections 2340-2340A of title 18 of the United States Code. As we understand it, this question has arisen in the context of the conduct of interrogations outside of the United States. We conclude below that Section 2340A proscribes acts inflicting, and that are specifically intended to inflict, severe pain or suffering, whether mental or physical. Those acts must be of an extreme nature to rise to the level of torture within the meaning of Section 2340A and the Convention. We further conclude that certain acts may be cruel, inhuman, or degrading, but still not produce pain and suffering of the requisite intensity to fall within Section 2340A's proscription against torture. We conclude by examining possible defenses that would negate any claim that certain interrogation methods violate the statute.

In Part I, we examine the criminal statute's text and history. We conclude that for an act to constitute torture as defined in Section 2340, 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 Section 2340, it must result in significant psychological harm of significant duration, e.g., lasting for months or even years. We conclude that the mental harm also must result from one of the predicate acts listed in the statute, namely: threats of imminent death; threats of infliction of the kind of pain that would amount to physical torture; infliction of such physical pain as a means of psychological torture; use of drugs or other procedures designed to deeply disrupt the senses, or fundamentally alter an individual's personality; or threatening to do any of these things to a third party. The legislative history simply reveals that Congress intended for the statute's definition to track the Convention's definition of torture and the reservations, understandings, and declarations that the United States submitted with its ratification. We conclude that the statute, taken as a whole, makes plain that it prohibits only extreme acts.

The key statutory phrase in the definition of torture is the statement that acts amount to torture if they cause "severe physical or mental pain or suffering." In examining the meaning of a statute, its text must be the starting point. See INS v. Phinpathya, 464 U.S. 183, 189 (1984) ("This Court has noted on numerous occasions that in all cases involving statutory construction, our starting point must be the language employed by Congress, . . . and we assume that the legislative purpose is expressed by the ordinary meaning of the words used.") (internal quotations and citations omitted). Section 2340 makes plain that the infliction of pain or suffering per se, whether it is physical or mental, is insufficient to amount to torture. Instead, the text provides that pain or suffering must be "severe." The statute does not, however, define the term "severe." "In the absence of such a definition, we construe a statutory term in accordance with its ordinary or natural meaning." FDIC v. Meyer, 510 U.S. 471, 476 (1994). The dictionary defines "severe" as "[u]nsparing in exaction, punishment, or censure" or "[I]nflicting discomfort or pain hard to endure; sharp; afflictive; distressing; violent; extreme; as severe pain, anguish, torture." Webster's New International Dictionary 2295 (2d ed. 1935); see American Heritage Dictionary of the English Language 1653 (3d ed. 1992) ("extremely violent or grievous: severe pain") (emphasis in original); IX The Oxford English Dictionary 572 (1978) ("Of pain, suffering, loss, or the like: Grievous, extreme" and "of circumstances . . .: hard to sustain or endure"). Thus, the adjective "severe" conveys that the pain or suffering must be of such a high level of intensity that the pain is difficult for the subject to endure.

Mohamedou Ould Slahi, **15 Years Detained**



"I spoke personally to the Director of Intelligence. He told me I would be going home in a year. It took 8."

Results

• As outlined in the "Public vs. Private" section, Cheney and Yoo make direct contradictions of each other. • Yoo explains how detainees were treated with "severe, cruel, and

- be declared torture.

Why Is This Important?

- media should be concerning to all Americans.

B. "Severe Pain or Suffering"

Congress's use of the phrase "severe pain" elsewhere in the United States Code can shed more light on its meaning. See, e.g., West Va. Univ. Hosps., Inc. v. Casey, 499 U.S. 83, 100 (1991) ("[W]e construe [a statutory term] to contain that permissible meaning which fits most logically and comfortably into the body of both previously and subsequently enacted law."). Significantly, the phrase "severe pain" appears in statutes defining an emergency medical condition for the purpose of providing health benefits. See, e.g., 8 U.S.C. § 1369 (2000); 42 U.S.C § 1395w-22 (2000); id. § 1395x (2000); id. §

torture is the statement that acts amount to torture if they cause "severe physical or mental pain or **suffering."** In examining the meaning of a statute, its text must be the starting point. See INS v. Phinpathya, 464 U.S. 183, 189 (1984) ("This Court has noted on that the legislative purpose is expressed by the plain that the infliction of pain or suffering per se, whether it is physical or mental, is insufficient to amount to torture. Instead, the text provides that pain or suffering must be "severe." The statute does not, however, define the term "severe." "In the absence of such a definition, we construe a statutory term in accordance with its ordinary or natural meaning." FDIC v. Meyer, 510 U.S. 471, 476 (1994). "

-John Yoo & Department of Justice



inhumane treatment," but that it does not reach the necessary severity to

• Cheney, however, denies all cruel punishment and torture.

• The Bush administration displays a pattern of this behavior, denying torture claims in public and to the media, but there have been hundreds of documents discovered to prove otherwise.

• I have included direct quotes from survivors for context. These men were tortured for over a decade and are willing to speak about their experiences publicly, yet the government will deny it every time. They are not the only

• The difference in information discussed in private settings vs. given to the

• These memorandums, written to and by the Bush administration, were initially classified until they were leaked. If they were never leaked, the question rises of would this information ever have been released?

• The government should be held to a standard of legitimacy and honesty when dealing with such sensitive topics as torture.

• The governemt should be held legally accountable as well, as torture is clearly outlined as illegal in multiple U.S. statutues.

"The key statutory phrase in the definition of

"Public" Information

"On the question of so-called "torture," we don't do torture, we **never have.** It's not something that this administration subscribes to. Again, we proceeded very cautiously we checked, we had the Justice Department issue the requisite opinions in order to know where the bright lines were that you could not cross. The professionals involved in that program were very, very cautious, very careful, wouldn't do anything without making certain it was authorized and that it was legal. And any suggestion to the contrary is just wrong." -Dick Cheney