

# Transfer and Torture of Iraqi Prisoners

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Legal opinions permitting the U.S. to torture prisoners and authorize their transfer out of Iraq were respectively accepted or written by Harvard law professor Jack Goldsmith while he headed the Justice Department's Office of Legal Counsel(OLC).

In that capacity, Goldsmith drafted a memo on March 19, 2003, that was a green light for the transfer of up to a dozen prisoners from Iraq to CIA prisons where they were tortured, writes Lawrence Velvel, dean of the Massachusetts School of Law at Andover. Velvel makes his comments in a thorough critique – giving both pros and cons – of Goldsmith's self protecting book entitled "The Terror Presidency," a book in which Goldsmith seeks to make himself look good in order to evade the criticism he deserves.

And while Goldsmith withdrew a torture memorandum written by government lawyer John Yoo on August 1, 2002, he accepted a second Yoo memo of the same date apparently spelling out harsh interrogation techniques to be used on prisoners-techniques said to be torture by international law authorities, Velvel said.

Goldsmith has succeeded in his effort to falsely make himself look good: the MSM and Congress have anointed him a hero when it is more likely he aided and abetted violations of law, says Velvel.

In his thorough, two sided critique, Velvel describes the ways in which Goldsmith deserves sympathy and credit (e.g., in standing up to David Addington, Vice President Dick Cheney's Chief of Staff ), as well as the ways in which he abetted crimes. CIA torture methods such as electric shocks, stress positions and waterboardings must have been approved in the second memo, Velvel writes, which Goldsmith did not withdraw "because it was devoted to the actual tactics (as) the CIA people were demanding a golden shield that would protect them from later prosecutions, and only a memo approving specific tactics could do that." Velvel said that Goldsmith in his book entitled "The Terror Presidency"(W.W. Norton), published last year, tells us "he read and was horrified by torture memos after he was put in charge of the OLC and long before he wrote the transfer memo...He is convicted out of his own mouth."

"His (Goldsmith's) admission that he read the second, still secret memo that detailed specific interrogation techniques being used by the CIA makes it flatly impossible that he did not know or suspect what was going on when he wrote the transfer memo," Velvel writes.

Goldsmith's memo "was used to facilitate the ghost detainee program in which various prisoners were hidden from the International Red Cross so that nobody would learn that they were prisoners," Velvel wrote, "and contrary to the Geneva Conventions I gather, their

status, health and whereabouts were not disclosed to their families.” Goldstein’s memo, Velvel added, was tantamount to a “get out of jail free card” for torturers who could later claim legal authorization for their acts.

Velvel wrote that Goldsmith’s transfer memo held that by not charging prisoners the U.S. could transfer them out of the country. “By not formally accusing them in any judicial way, we could, according to Goldsmith, transfer them out of Iraq because formally they were not yet ‘accused persons’ although in fact our government had already accused and convicted them every way but sideways. This is true dissembling. This is true reliance on minimal form over gigantic substance. And this is exactly what Jack Goldsmith did in his memo of March 19, 2004.”

Goldsmith also protected criminals and shielded their criminal conduct in other ways, Velvel said. He noted Goldsmith admits in his own book that he flatly lied to New York Times reporter Eric Lichthblau when, prior to the 2004 election, he denied he knew anything about a secret, illegal NSA spying program. Had Goldsmith truthfully conceded (extensive) knowledge, thereby affirming the (at the time unconfirmed) existence of the program, says Velvel, or if he even had merely said “no comment” or “I can’t discuss that,” the NY Times might have broken the story of the NSA spying before the 2004 election, instead of delaying a year and thereby greatly advancing Bush’s reelection prospects.

What’s more, Velvel charges, Goldsmith lengthened the period of U.S. conduct regarding torture by maintaining his three-year silence “until the time came to garner publicity in September, 2007, for his new book.” He pointed out: “Goldsmith was an enabler of evil, including evil and crime justified by the tortured rationalizations of lawyers who set out to provide legal cover for torture, for cruelly inhuman conduct and other horrors.”

At issue, Velvel says, is “whether lawyers, in order to justify and provide a basis for supporting vicious and illegal actions of the government, are free to assert the most outlandish arguments in favor of these actions, are free to invent astonishing, even evil, arguments in favor of the positions, are free to facilitate the government’s evil actions and not to counsel against the positions even though the positions and actions are in violation of domestic criminal laws, in violation of international law, contrary to the American constitutional system, and taken without consideration of the traditions and values of this country.”

Velvel added that any lawyer in private practice who attempted to provide cover for a client’s “gravely illegal conduct in this way would be subject to disbarment, subject to criminal prosecution, and disqualified from being on any respectable law school faculty.”

Velvel’s views, previously set forth in a blog posting, have now been published in “An Enemy of the People: The Unending Battle Against Conventional Wisdom,” a collection of essays published by Doukathsan Press.

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