

CIA TORTURE: The Zelikow Memo: Internal Critique of Bush Torture Memos Declassified

Document Sheds Light on Disputes over Treatment of Detainees

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Washington, DC, April 3, 2012 - The State Department today released a February 2006 internal memo from the Department's then-counselor opposing Justice Department authorization for "enhanced interrogation techniques" by the CIA. All copies of the memo ([Document 1](#)), which reflect strong internal disagreement within the George W. Bush administration over the constitutionality of such techniques, were thought to have been destroyed. But the State Department located a copy and declassified it in response to a Freedom of Information Act request by the National Security Archive.

The author of the memo, Philip D. Zelikow, counselor to then-Secretary of State Condoleezza Rice, described the context of the memo in congressional testimony on May 13, 2009, and in an article he had previously published on foreignpolicy.com site on April 21, 2009.



Philip D. Zelikow, State Department Counselor, 2005-2007

"At the time, in 2005 [and 2006]," he wrote, "I circulated an opposing view of the legal reasoning. My bureaucratic position, as counselor to the secretary of state, didn't entitle me to offer a legal opinion. But I felt obliged to put an alternative view in front of my colleagues at other agencies, warning them that other lawyers (and judges) might find the OLC views unsustainable."

OLC refers to the Justice Department's Office of Legal Counsel.

"My colleagues were entitled to ignore my views," he continued. "They did more than that: The White House attempted to collect and destroy all copies of my memo. I expect that one or two are still at least in the State Department's archives."

Zelikow attached two other memos to his May 2009 congressional testimony ([Document 3](#)) that were publicly released at that time ([Document 4](#) and [Document 5](#)), but his February 2006 memo remained classified. In later public statements, Zelikow argued that the latter document should also be released since the OLC memos themselves had already been opened to the public by the Obama administration.

The memo released today, labeled "draft," concludes that because they violate the Constitutional ban on "cruel and unusual punishment," the CIA techniques of "waterboarding, walling, dousing, stress positions, and cramped confinement" were "the techniques least likely to be sustained" by the courts. Zelikow also wrote that "corrective techniques, such as slaps" were the "most likely to be sustained." The last sentence of the memo reads: "[C]ontrol conditions, such as nudity, sleep deprivation, and liquid diets, may also be sustainable, depending on the circumstances and details of how these techniques are used."

According to Zelikow's accounts, he authored the memo in an attempt to counter the Bush administration's dubious claim that CIA could still practice "enhanced interrogation" on enemy combatants despite the president's December 2005 signing into law of the McCain Amendment, which, in Zelikow's words, "extended the prohibition against cruel, inhuman, or degrading treatment to all conduct worldwide."

[The Zelikow memo](#) becomes the latest addition to [The Torture Archive](#) - the National Security Archive's online institutional memory for issues and documents (including the OLC's torture memos themselves) relating to rendition, detainees, interrogation, and torture.

DOCUMENTS

[Document 1](#): Philip D. Zelikow, State Department Counselor, Draft Memorandum, "The McCain Amendment and U.S. Obligations under Article 16 of the Convention Against Torture," Top Secret, February 15, 2006
Source: Freedom of Information Act request

Written following passage of the so-called McCain Amendment against "cruel, inhuman, or degrading treatment or punishment," this memo offers alternative legal argumentation to the opinions that the Justice Department's Office of Legal Counsel continued to put forward into 2006. According to Zelikow, he was told that some officials in the Bush administration sought to gather all copies of his memo and destroy them, but the State Department located this one and released it under the Freedom of Information Act.

[Document 2](#): Stephen G. Bradbury, Justice Department, Office of Legal Counsel, Memorandum for John A. Rizzo, "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," Top Secret, May 30, 2005
Source: [The Torture Archive, the National Security Archive](#)

This memo follows up previous OLC opinions on interrogation methods, providing an even more expansive vision of what kinds of “enhanced techniques” would be acceptable against al Qaeda and other detainees. Zelikow specifically refers to this memo in his February 2006 counter-argument.

[Document 3](#): Philip D. Zelikow, Statement before the United States Senate Committee on the Judiciary, Subcommittee on Administrative Oversight and the Courts, Unclassified, May 13, 2009

Source: Provided by Philip Zelikow to the National Security Archive (originally posted online by the [Federation of American Scientists](#))

After the Obama administration declassified the controversial Office of Legal Counsel opinions on so-called “enhanced interrogation techniques,” Congress weighed in on the question. Here, Zelikow lays out his critique of the OLC position in detail.

[Document 4](#): Philip D. Zelikow, State Department Counselor, and Gordon R. England, Deputy Secretary of Defense, “Elements of Possible Initiative,” Sensitive but Unclassified, June 12, 2005

Source: Provided by Philip Zelikow to the National Security Archive (originally posted online by the [Federation of American Scientists](#))

Zelikow and Gordon England, the acting deputy secretary of defense, put together this draft of a possible presidential initiative on detainee treatment and interrogation. The document was appended to Zelikow’s May 2009 congressional testimony. According to his prepared statement, this memo describes a “big bang” approach to dealing with the larger issues, but after Defense Secretary Donald Rumsfeld rejected its ideas, the National Security Council staff decided to pursue each issue piecemeal.

[Document 5](#): Philip D. Zelikow, State Department Counselor, and John B. Bellinger III, State Department Legal Advisor, “Detainees – The Need for a Stronger Legal Framework,” Unclassified, July 2005

Source: Provided by Philip Zelikow to the National Security Archive (originally posted online by the [Federation of American Scientists](#))

In his May 2009 congressional testimony, Zelikow describes this document as part of an attempt by the State Department to enlist other U.S. government agencies to define legal standards for detainee treatment that were less “technical” and more “durable – politically, legally, and among our key allies.” The memo was appended to his testimony.

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