

## Companion Curriculum

# OUTLAWED:

## Extraordinary Rendition, Torture and Disappearances in the War on Terror

In Plain Sight: Volume 6

A WITNESS and Amnesty International Partnership



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# How to Use This Guide

The companion guide for *Outlawed: Extraordinary Rendition, Torture, and Disappearances in the War on Terror* provides activities and lessons that will engage learners in a discussion about issues which may seem difficult and complex, such as federal and international standards regarding treatment of prisoners and how the extraordinary rendition program impacts America's success in the war on terror. Lesson One introduces students to the topic of torture in an age appropriate manner, Lesson Two provides background information and activities about extraordinary rendition, and Lesson Three examines the limits of executive authority and the issue of accountability.

Designed to be as comprehensive and informative as possible, this guide can be used in its entirety as an in-depth unit of study or individual activities can stand alone as learning extensions after watching the film. For more ideas regarding using film in educational settings, please use the tip sheet included in this curriculum guide. For additional sources such as international documents, fact sheets, and links to actions and reports, please visit the following websites:

**Amnesty International – Counter Terror With Justice Campaign** – <http://www.amnesty.org/en/counter-terror-with-justice>

**WITNESS** – <http://www.witness.org>

Prior to showing the film, educators should prepare learners by discussing key topics addressed in the film, such as current events surrounding the war on terror and recent legal rulings about detainee treatment and legal rights. Because this film includes some disturbing footage, be sure to give learners time to share their reactions and questions after viewing the film. Use the movie discussion guide to facilitate critical thinking and thoughtful discussion.

This guide can be adapted for use in middle school and high school classes, college classes, and community groups. For additional ideas, refer to the Further Study section of each lesson and to Amnesty International's [Counter Terror With Justice Action Guide](#), which provides additional information, fact sheets, and lesson ideas.

**Note to Community Groups** – Though some of the small group and project ideas may take more time than groups have during a meeting, groups can show the film and use the discussion guides, supplemental materials, informational resources, and action ideas to educate people about extraordinary rendition.

If you have questions or would like additional support, please contact the Human Rights Education Program of Amnesty International ([education@aiusa.org](mailto:education@aiusa.org)) or visit our website ([www.amnestyusa.org/education](http://www.amnestyusa.org/education)).

# HRE 201: UN Convention against Torture (UNCAT)

## The United Nations Convention against Torture (UNCAT) 201

The United Nations Convention against Torture was adopted in 1984 and came into force in June 1987. The Convention has a number of important features. It defines torture (Article 1) as both a human rights violation and a crime, involving the intentional infliction of severe pain or suffering for purposes such as punishment, intimidation and the obtaining of information, when done by officials, at their instigation or with their consent or acquiescence. It requires each state party to “take effective legislative, administrative, judicial or other measures to prevent torture,” makes clear that “[n]o exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency,” justify torture and rules out any defense of superior orders (Article 2).

Article 3 prohibits the transfer (*refoulement*) of anyone to a place where he or she risks torture and Article 4 requires that all acts of torture be defined as a crime. States must investigate when anyone suspected of torture is found on their territory (Article 6), must provide for universal jurisdiction over such persons (Article 5 (2)) and, if such suspects are not extradited, submit the case to their prosecutors (Article 7 (1)). They must investigate promptly and impartially whenever there are reasonable grounds to believe that an act of torture has occurred in territory subject to their jurisdiction or such an act is alleged (Articles 12 and 13).

States must train all law enforcement personnel not to torture (Article 10), provide reparations to victims (Article 14) and exclude any statement made as the result of torture in any proceeding, except to prove that torture occurred (Article 15). The Convention also requires states to take measures against other cruel, inhuman or degrading treatment or punishment (Article 16).

Amnesty International. “The UN Convention Against Torture at 20 – Remarkable Achievements, Formidable Challenges.” [Amnesty International Public Statement](#). 25 June 2007.

# Lesson Overview

The following lesson will introduce students to the articles in the UNCAT that are relevant when discussing the film *Outlawed*. They will engage in discussions to explore the importance of these rights and how they are applicable to their daily lives.

## Students will:

- Discuss the significance and implications of the UNCAT
- Demonstrate an understanding of the rights outlined the UNCAT
- Analyze why some countries have not ratified the UNCAT

## Materials

- Poster paper to record student answers and post in classroom
- Handout 1.1: Relevant articles of the UNCAT

## Procedure:

Distribute Handout 1.1 and give students time to read it over individually, asking them to note any initial reactions they have to it as they read. Either as a class, or in small groups, facilitate a discussion about the information on Handout 1.1 using the discussion questions below.

## Discussion Questions:

1. Which of the articles listed on Handout 1.1 do you most strongly *agree* with?
2. Which of the articles listed on Handout 1.1 do you most strongly *disagree* with?
3. Why do you think some countries have decided against ratifying UNCAT?
4. What is the aim of UNCAT?
5. Name some concrete examples of things you believe to be torture.
6. What instances of torture have you heard about in the news in recent years?  
Who was the perpetrator? Where did it take place?

## Handout 1.1: UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)

### Map of Countries which have signed UNCAT (darkened)

The *United Nations Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment* (UNCAT) came into force in June 1987. The most relevant articles are articles 1, 2, 3, 15 and the first paragraph of article 16.



### Article 1

1. Torture is defined as, "Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."
2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

### Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.
3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

### Article 3

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

### Article 15

1. Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

### Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhumane or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhumane or degrading treatment or punishment.

# Lesson One: The Torture Question

**Time:** Time will vary depending on activities chosen.

## Questions:

Is the CIA outsourcing torture? If so, is it acceptable to use torture to gain intelligence and is intelligence gained from torture usable or reliable? How have American policies regarding torture impacted the war on terror? How has the war on terror impacted American policies regarding torture?

## Overview:

Before delving into the topic of extraordinary rendition in Lesson Two, students will engage in a series of activities designed to introduce the topic of torture in an age appropriate manner. All of the men featured in *Outlawed* were subjected to physical or psychological torture, and implied that many of the other prisoners in the CIA's extraordinary rendition program were also tortured, despite administration assurances to the contrary. As will be discussed more in the next lesson, the goal of the extraordinary rendition program is to gain actionable intelligence from prisoners. Many of the prisoners have been transferred to countries such as Syria and Uzbekistan that routinely use torture to gain confessions. This lesson will encourage students to critically think about the following questions: Is the CIA outsourcing torture? If so, is it acceptable to use torture to gain intelligence and is intelligence gained from torture usable or reliable? How have American policies regarding torture impacted the war on terror? How has the war on terror impacted American policies regarding torture?

## Objectives:

### Students will:

1. Define torture.
2. Debate the necessity and effectiveness of using torture in various situations.
3. Analyze the effects of adopting a foreign policy that allows torture.

## Preparation:

1. Resource 1.1: Draw the Line
2. Handout 1.2: A Tortured Debate Part I
3. Handout 1.3: A Tortured Debate Part II
4. Copy of *Outlawed: Extraordinary Rendition, Torture, and Disappearances in the War on Terror*
5. DVD Player
6. Overhead Projector or White Board

## Procedure:

### Activity One: Draw the Line (45 minutes)

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*\*Note – This activity is adapted from Lesson 3 of Amnesty International’s Counter Terror With Justice Action Guide.*

1. Ask students to define torture. Write responses on the board. Continue with the following questions: What are some situations in which people might torture others? Do you think torture is ever justifiable? Explain your answer.
2. View the introductory minute of *Outlawed*. Point out the opposing assertions made by the United States government, as highlighted by Louise Arbour, United Nations High Commissioner for Human Rights. One assertion is that Americans do not support a policy of torture. The other assertion is that torture, or cruel, inhuman and degrading treatment (CID), is necessary to combat terrorism. Why might it be important for America to claim it does not support a policy of torture? Do you think the war on terror necessitates torture? Does it necessitate CID (“enhanced interrogation techniques”)? Why or why not?
3. After 9/11, intelligence about future attacks was at a premium. Ask students to imagine they are at a closed-door meeting with the director of the CIA, the President, the Secretary of Defense, the Secretary of State, and various legal advisers from the Department of Justice the day after 9/11. It is their job to determine acceptable interrogation techniques to gain intelligence from terrorist suspects. If a suspected terrorist who might have information about future attacks is captured, how aggressively should the military question him or her to gather information? Where should the person be detained after he or she is captured? Who should question the suspect? Which international laws should apply to the treatment of terrorist suspects? Pose the questions to students and ask them to explain their responses.
4. Label one side of the room “Torture” and the other side of the room “Acceptable Treatment.” Read the scenarios from Resource 1.1 and ask students to move to the side of the room that best matches their opinion. Ask student volunteers to explain their responses to each scenario. For many students and policy makers, the line between acceptable interrogation practices and torture depends on the situation in question. Proceed to the next activity to allow students to critically analyze the use of torture in various scenarios. (*Note – Many of these scenarios were taken directly from stories of prisoner abuse at Abu Ghraib and Guantanamo Bay. If you have more time, talk with students about Abu Ghraib and Guantanamo.*)

### Activity Two: Ticking Time Bomb (30 minutes)

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**Overview:** Due to television shows such as *24*, many people associate the use of torture with the ticking time bomb scenario, and use it to defend the systemic use of torture. According to counterterrorism experts and policy analysts, however, the ticking time bomb scenario rarely occurs in real life. The following activity is designed to encourage critical thinking about the use of torture in a variety of scenarios, including the ticking time bomb. (*Note – Many of these scenarios were taken directly from stories of prisoner abuse at Abu Ghraib and Guantanamo Bay. If you have more time, talk with students about Abu Ghraib and Guantanamo.*)

1. Divide students into small groups. Distribute Handout 1.2 and assign each group one of the six scenarios. Each group will complete the discussion questions and choose a group representative to share their responses with the class.

2. When all groups have finished working, the group representative will read the group's scenario and explain the group's responses. Allow time for class discussion after each group presentation.

### **Activity Three: The Torture Debate (45 minutes)**

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**Overview:** Many of the scenarios in Activity Two center around two assumptions: 1) Guilt of the accused and 2) Torture can and often does produce good intelligence. The following activity will engage students in a debate challenging these assumptions.

1. In the 1937 case of *Brown v. Mississippi*, the Supreme Court ruled that confessions obtained through police brutality (in this case, suspending the suspect from a tree and beating him with a whip) were inadmissible in court. Confessions were also considered involuntary if the police held a suspect for an extended period of time, deprived the suspect of food, water, or bathroom facilities, or threatened harm if the suspect did not confess. Why do you think the Supreme Court ruled that involuntary confessions are inadmissible? Do you agree with the court's decision? Do you think the same rules should apply to terrorist suspects? Why or why not?
2. After the September 11<sup>th</sup> attacks, many people felt that extraordinary means, including torture and degrading treatment, were acceptable if they helped to produce actionable intelligence and protected America from future attacks. Others felt that the use of torture would only increase terrorism. Distribute or post Handout 1.3. Read each case study together as a class. Discuss each case study and ask students the following questions:
  - Was torture or the use of degrading treatment effective in this case study? Explain your answer.
  - What were the effects of using torture or degrading treatment in this case study? Explain your answer.
  - What policy lessons can be learned from this case study? Explain your answer.

#### ***If You Have More Time***

3. The torture debate is being argued at all levels of American society, including on Capitol Hill. Do terrorist suspects deserve the same humane treatment as other prisoners of war? Does terrorism present an immediate threat that requires harsher methods of interrogation? In October, 2005, Senator John McCain, who was himself tortured as a POW in Vietnam, proposed an anti-torture amendment to a Defense Appropriations bill. This amendment banned all torture or cruel, inhuman and degrading treatment of detainees in U.S. custody. The amendment passed in a vote of 90-9. President Bush threatened to veto the bill, however, if it included the anti-torture amendment and Vice President Cheney lobbied to add provisions that would exempt the CIA from the amendment. Read more about the anti-torture amendment and ask students to vote either for or against the amendment, explaining the reasons behind their votes.  
<http://www.tortureisnotus.org>
4. Divide students into small groups. Assign half of the small groups to argue in favor of using torture to gain intelligence from suspected terrorists. Assign the other half to argue against using torture in any situation. Students may use the handouts, international documents, websites listed in the Resources section, the film *Outlawed*, or the PBS Special "Debating Torture" (listed in the Further Study section) to gather evidence to support their point of view. Each group will have 3 minutes to present their initial arguments, and 2 minutes each for rebuttal.  
After the debates, ask students to list points students made in favor of using torture and points students made against using torture. Write the points on the board. Students will write a one page essay explaining their views on the issue, using evidence presented during the debates.

## Further Study

1. The “torture memos,” a series of legal memos written by Administration lawyers in the White House, the Justice Department, and the State Department, revised the official definition of torture, sought to expand executive authority to define torture, and explained why White House legal counsel felt the Geneva Conventions should not apply to prisoners captured in the war on terror. Read and discuss the [torture memos](#).
2. To spark additional debate about the effectiveness of torture as an interrogation tactic, view or read the transcript of PBS Online Newshour Special [“Debating Torture.”](#)

If you would like to put this lesson in the context of the war on terror and want additional lesson plans on the topic, refer to the list of lesson plans at the following website: [http://www.crf-usa.org/terror/terrorism\\_links.htm](http://www.crf-usa.org/terror/terrorism_links.htm)

## Handout 1.1: Draw The Line

### Directions:

Designate one side of the room “Torture” and the other side of the room “Acceptable Treatment.” Read the following scenarios. After each scenario, ask students to move to the side of the room that best matches their opinion. Ask student volunteers to explain their response.

### Scenarios:

1. A prisoner is provided three meals per day.
2. A prisoner is a vegetarian and is given only meat dishes to eat.
3. A prisoner is given rotten food.
4. A prisoner is denied access to one or more meals per day.
5. A prisoner is denied access to food for days at a time.
6. A prisoner is given one uniform and one blanket in prison.
7. A prisoner is not given clean clothes or a blanket in prison.
8. A person is arrested and is allowed a phone call and access to a lawyer.
9. A person is arrested and is prohibited from making any phone calls.
10. A person is arrested and is denied an explanation for his or her detention.
11. A person is arrested and is denied access to an attorney.
12. A person is arrested and is held indefinitely without charges or due process.
13. A person is arrested and is held incommunicado.
14. A person is arrested and is taken out of the country for detention and questioning.
15. An interrogator questions a suspect without his or her attorney present.
16. An interrogator seeks to obtain a confession by threatening violence.
17. An interrogator seeks to obtain a confession by slapping or pushing a suspect.
18. An interrogator seeks to obtain a confession by depriving the suspect of food and/or sleep.
19. An interrogator makes use of a prisoner’s phobias during interrogations to make the prisoner more compliant.
20. An interrogator seeks to obtain a confession by intimidating the suspect with attack dogs.
21. An interrogator seeks to obtain a confession by keeping a suspect’s head under water and threatening drowning.
22. An interrogator seeks to obtain a confession by administering electric shock.
23. A prisoner’s privileges are taken away for not cooperating with interrogators.
24. A prisoner is placed in solitary confinement for not cooperating with interrogators.
25. A prisoner is threatened with severe beatings for not cooperating with interrogators.
26. A prisoner is severely beaten for not cooperating with interrogators.
27. A prisoner is allowed medical attention when he or she is sick.
28. A prisoner is allowed to see a doctor when ill, but is not given medication.
29. A prisoner is denied access to the Red Cross or other medical care.

### Critical Thinking Questions

- Who should determine what constitutes acceptable treatment and what constitutes torture?
- Is information extracted using torture or degrading treatment reliable? Explain your answer.
- Should information extracted using torture be admissible in court? Why or why not?

## Handout 1.2: A Tortured Debate Part I

### Directions:

Read your assigned scenario and answer the discussion questions below.

### Scenario One: Ticking Time Bomb

It is 9:00 on Saturday morning and investigators have just arrested a man accused of planting a bomb at a local mall. According to the suspect, the bomb is scheduled to explode at noon. Bomb experts fear hundreds of deaths if the bomb cannot be located and defused before the scheduled explosion. Investigators have already tried traditional interrogation techniques, but the suspect refuses to answer any questions and has demanded to speak to his lawyer. Answer the discussion questions below.

### Scenario Two: Routine Interrogation

Police arrest a man suspected of kidnapping his girlfriend and bring him to the police station for questioning. The man answers initial questions, but soon asks for a lawyer. According to current law, once a suspect asks for a lawyer, the interrogation must stop immediately. The police are worried, however, that the woman may be alive and injured somewhere and are desperate to find her quickly. Answer the discussion questions below.

### Scenario Three: Terrorist Suspect/Enemy Combatant

A man accused of recruiting members of his local mosque to fight with al Qaeda is arrested by the United States military. He is transported to Guantanamo Bay, where he is questioned and held without charge. Interrogators believe he may be connected to senior al Qaeda members, but have no direct evidence to prove this theory. They hope that the man will reveal important intelligence during interrogation. Answer the discussion questions below.

### Scenario Four: American Prisoner

While fighting in Iraq, an American soldier is captured by insurgents and interrogated. The insurgents want to know where the Americans plan to strike next so they can plan a counterattack. Answer the discussion questions below.

### Scenario Five: Outsourcing Interrogation

CIA agents arrest an Egyptian man suspected of being a member of a terrorist cell in London. They fly him to Egypt and transfer him over to Egyptian authorities, despite Egypt's record of torturing prisoners. The man is held without charge and interrogated. The CIA wants to know whether or not the man is plotting a terrorist attack in London or the United States, and has asked Egyptian officials to turn over any useful information to the United States. Answer the discussion questions below.

### Discussion Questions:

1. What is the goal in this situation?
2. Do you think the interrogators should be allowed to use torture or cruel, inhuman and degrading treatment (CID) in this situation? Why or why not? What are the alternatives to torture or CID in this situation?
3. Who should decide what methods are appropriate in this situation?
4. What happens to the prisoner/suspect after the event in this scenario? If you decided torture was acceptable in this situation, how do you think the use of torture will impact the suspect? The interrogator? Society in general?

## Handout 1.3: A Tortured Debate Part II

### **The Case of Britain and Ireland**

When fighting intensified between Catholics and Protestants in Northern Ireland in the late 1960s, the British were called in as peacekeepers. The goal of the Irish Republican Army (IRA), which was comprised of Catholics and designated as a terrorist organization, was to unify Northern Ireland with the Republic of Ireland and to expel the British at all costs, including the use of violence and terrorist acts. Protestant groups opposed to the IRA and loyal to Britain responded with further violence. Direct rule from London and the presence of British troops only intensified the situation. In an attempt to gain actionable intelligence on the activities of the IRA, the British used torture, including wall standing, hooding, and sleep deprivation, with devastating results. Not only was the intelligence they gathered unreliable, but public support for the IRA intensified when Britain's interrogation techniques became public. In the 1978 case *Ireland v. the United Kingdom*, the European Court on Human Rights ruled that the interrogation techniques Britain used were illegal and amounted to inhuman and degrading treatment.

In a RAND study entitled "Counterinsurgency Intelligence in a 'Long War': The British Experience in Northern Ireland," author Brian A. Jackson notes that the general population is an important source of information about insurgents, and that public perception of both sides is critical. He writes, "Where insurgents or terrorists take actions that are perceived as particularly brutal or inexcusable by the general population, citizens may pass on information in spite of such fears [of retribution] . . . When the actions of security forces are seen as inappropriate or repressive, public trust can be quickly lost. . . If the counterinsurgent's practices are unduly harsh, the insurgent will use them for propaganda purposes. . . The interrogation issue was a political setback for the security forces and a propaganda victory for the IRA" (7).

### **The Case of the U.S. Embassies**

*The following story is a summary of a passage from Ghost Plane by Stephen Grey, an Amnesty International award-winning journalist for excellence in human rights reporting.*

In the summer of 1998, the CIA, in cooperation with Albania and Egypt, arrested four Egyptian men in Albania who were allegedly members of a terrorist cell plotting to blow up a U.S. embassy. The suspects were arrested by the Albanian police, interrogated by the CIA, and flown to Egypt to face trial. Two of the men were executed without standing trial, and all of them were brutally tortured. Though the Albanian terrorist cell had been neutralized, Egypt's cruel treatment of the prisoners helped garner public support for Islamic extremists.

Allegedly reacting to these stories of torture, Ayman al-Zawahiri, a senior al Qaeda member who declared war on the United States after his own imprisonment and torture in Egypt's prisons, stated that he would retaliate in kind. Three days after his announcement, on August 07, 1998, al Qaeda bombed the U.S. embassies in Nairobi, Kenya, and Dar-es-Salaam, Tanzania, injuring 5,000 people and killing 257.

At his 1982 trial for his alleged connection to the assassination of Egyptian President Anwar Sadat, al-Zawahiri spoke about his treatment in the Egyptian jails. He stated, "There they kicked us, they beat us, they whipped us with electric cables, they shocked us with electricity! They shocked us with electricity! And they used the wild dogs! And they used the wild dogs! And they hung us over the edges of the doors with our hands tied at the back! . . . So where is democracy? Where is freedom? Where is human rights? Where is justice? Where is justice? We will never forget! We will never forget!" (As qtd. in Ghost Plane 261).

### **Is Torture Effective?**

*The following passage is an excerpt from Ghost Plane by Stephen Grey, an Amnesty International award-winning journalist for excellence in human rights reporting.*

"In the war on terror, there are examples of those who provided false or misleading information and of those whose torture or coercive interrogation proved effective. Among the examples of effective interrogation were:

*Khalid Sheikh Mohammed*, the architect of 9/11, was said to have talked almost immediately after the application of physical pressure, reported to have included simulated drowning. He provided a stream of detailed information about the al Qaeda network, which is described in the appendices of the *9/11 Commission Report*.

Others, however, provide misleading evidence:

*Ibn al-Sheikh al-Libi*. Colin Powell's claims on the links between Saddam Hussein and al Qaeda were based on a false confession from al-Libi after he was rendered to Egypt" (242-243).

### **"The Jenin Paradox"**

*The following passage is an excerpt from Ghost Plane by Stephen Grey, an Amnesty International award-winning journalist for excellence in human rights reporting.*

"If viewed purely tactically, the positive success of any repressive tactic like rendition (or assassination, or even just longer prison sentences) would have to be balanced against its side effects. This is what Alastair Crooke, a former senior officer in Britain's MI6, calls the 'Jenin Paradox.' For years during his MI6 career, Crooke acted as an intermediary with militant groups, including in Afghanistan, in southern Africa, and, on behalf of the European Union, in Israel and Palestine. He explained that when speaking to Israeli officers after military raids on the town of Jenin, in the West Bank, they would say something like this: 'There were ten terrorists in Jenin; we took out six of them, and now there are only four left.'

Crooke would then go into Jenin and ask the Palestinians what had happened, and they would say, 'There used to be ten terrorists in the city. The Israeli Army came in and killed six, and now there are twenty-four.' A violent strategy had served to recruit more extremists" (246-247).

### **Resources**

Grey, Stephen. *Ghost Plane: The True Story of The CIA Torture Program*. St. Martin's Press: New York, 2006.

Jackson, Brian P, PhD. "Counterinsurgency Intelligence in a 'Long War': The British Experience in Northern Ireland." *Military Review*. January – February 2007.  
([http://www.rand.org/pubs/reprints/2007/RAND\\_RP1247.pdf](http://www.rand.org/pubs/reprints/2007/RAND_RP1247.pdf))

# Lesson Two:

## Outsourcing Torture? An Introduction to Extraordinary Rendition

**Time:** Time will vary depending on activities chosen.

### Questions:

Is extraordinary rendition necessary? Is it effective? Is it legal? What are the effects of the extraordinary rendition program on the war on terror? What are the effects of the war on terror on the extraordinary rendition program?

### Overview:

Extraordinary rendition is the transfer of prisoners from the country of arrest to a third party country primarily for the purpose of interrogation. Though the rendition program dates back to the 1990s, it changed significantly after 9/11. The current program's main goal is to gather intelligence through interrogation rather than to bring suspects to trial. Since September 11<sup>th</sup>, the CIA has transferred many high profile prisoners to CIA black sites and to countries known to torture their prisoners. This lesson will provide a basic introduction to extraordinary rendition through a series of case studies and the critical analysis of the film *Outlawed: Extraordinary Rendition, Torture and Disappearances in the War on Terror*. Because this is a current events topic that continues to gain worldwide media attention, refer to the further study and resources sections to find current and supplemental material on the topic.

### Objectives:

#### Students will:

1. Define the term 'extraordinary rendition.'
2. Understand the difference between the rendition program of the 1990s and the current extraordinary rendition program.
3. Analyze the goals and effects of the extraordinary rendition program.
4. Critically view clips of *Outlawed: Extraordinary Rendition, Torture and Disappearances in the War on Terror*.
5. Debate the effectiveness of the current extraordinary rendition program.

### Preparation:

- DVD Player
- Copy of *Outlawed: Extraordinary Rendition, Torture and Disappearances in the War on Terror*
- Resource 2.1: Introduction to Extraordinary Rendition
- Resource 2.2: Case Studies
- Resource 2.3: Movie Discussion Guide
- Resource 2.4: Introduction to Habeas Corpus
- Resource 2.5: Introduction to the Geneva Conventions
- Handout 2.6: Court of Human Rights Activity

## Procedure:

### Activity One: Introduction to Extraordinary Rendition (30 min.)

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1. Present the following scenario to students at the beginning of class:  
Working closely with British authorities, you discover what you believe to be a terrorist cell operating in London. After intercepting communications between group members, you believe the cell may be planning an attack in London or in an unspecified U.S. city within the next few weeks. Several members of the suspected group are refugees from Egypt. You have no evidence that any of the group members have done anything illegal yet, but you need more information to protect citizens from the suspected threat. How do you proceed with the case?
2. Allow students time to discuss this scenario in small groups. When all groups are finished, review student responses as a large group and ask groups to explain their rationales.
3. If this imaginary terrorist cell were targeted by the CIA, its members might become part of the CIA's extraordinary rendition program. Use Resource 2.1 to introduce the concept of extraordinary rendition.

### Activity Two: An Insider's Perspective of Extraordinary Rendition (45 min.)

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1. Explain that you will be watching clips from *Outlawed: Extraordinary Rendition, Torture and Disappearances in the War on Terror* about Khaled El-Masri and Binyam Mohamed, two prisoners captured by the CIA's extraordinary rendition program. Refer to Resource 2.2 for more information about their cases. Ask students to take notes on human rights violations they hear about in the film and to consider the essential questions for the lesson. View the film, pausing every few minutes to review information and answer student questions.
2. Allow students a few moments to finish their notes and to write down any questions they may have. Use Resource 2.3 to guide class discussion about the film. As an extension, use a world map to track each man's journey while in CIA custody.

### Activity Three: International Law and Extraordinary Rendition (90 minutes)

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1. In 2002, President Bush signed an executive order stating that al Qaeda operatives and other terrorist suspects are unlawful enemy combatants and are not subject to the protections of the Geneva Conventions. The Geneva Conventions and the writ of habeas corpus provide the historical cornerstone of federal and international laws regarding treatment of prisoners during war. Use Resource 2.4 and 2.5 to provide a brief overview of the history of the Geneva Conventions and the writ of habeas corpus.
2. Make two columns on the board. One should be labeled "POWs" and the other should be labeled "Unlawful Enemy Combatants." Use Resources 2.4 and 2.5 to help students understand the legal implications of this distinction. What rights do POWs have that enemy combatants do not? Do you think this distinction is important? Why or why not? Do you think this distinction is just? Why or why not?
3. Divide students into six small groups. In the following activity, the students will represent the men featured in *Outlawed* before a fictional Court of Human Rights. In this fictional activity, the men are seeking to prosecute the CIA and hold it accountable for the men's treatment while in prison. The students may use the film, international human rights law, federal laws, and materials in the Resources section to help prepare their cases.

- Assign one group to represent Khaled El-Masri, one to represent Binyam Mohamed, and one to represent Maher Arar. Assign three groups to represent the CIA (one group per case).
  - Distribute Handout 2.6 along with the appropriate case studies (Resource 2.2) for each group. Allow each group time to research and prepare a case.
  - Each group will elect one representative to sit on the judge's panel for the court. (There should be six judges on the panel). Each group will also elect one representative to present the group's case to the court. Allow each side 3-5 minutes to present their case and 2 minutes for rebuttal.
  - The six judges will then discuss the case and determine whether the defendants (the CIA) are guilty or not guilty. The judges will briefly explain the rationale behind their ruling. In the case of a hung jury, the teacher will have the deciding vote.
4. After the court has heard all cases, ask students to evaluate and reflect on their experience.

### Further Study:

1. *24* and other primetime television shows frequently depict torture, leading many viewers to believe that the military condones and uses torture and that torture frequently yields effective results. For a detailed look at the effect television has had on the treatment of prisoners in U.S. custody, view [Primetime Torture](#), a 14-minute film developed by Human Rights First. The film is accompanied by discussion questions, interviews, and lesson plans.
2. Ask students to imagine that they are presidential advisers and that they are in charge of crafting an alternative to the extraordinary rendition program. How should detainees be arrested, jailed, and tried? Should they be interrogated? If so, what are the rules of interrogation? Advise students that their plans must comply with national and international human rights law. Share student plans as a class.
3. The United States has rendered suspects to the following countries: Uzbekistan, Morocco, Lebanon, Afghanistan, and Egypt among others. Research the human rights records of each of the above countries. What has the United States State Department reported about each of these countries in the past? Did the reports change after 9/11? Considering each country's human rights record, should the United States send prisoners to any of the above countries? Is the United States permitted to send prisoners to any of the above countries? Explain, using research to support your answers.

## Resource 2.1: Introduction to Extraordinary Rendition

### What is extraordinary rendition?

Extraordinary rendition is the forcible transfer of a person from one country to another without judicial oversight, primarily for interrogation purposes.

### How do we know that the program exists?

Administration officials, including Secretary of State Condoleezza Rice, have openly acknowledged and defended the extraordinary rendition program, though all have been quick to acknowledge that the U.S. government receives assurances from foreign governments that they will not torture prisoners who are rendered to their custody. Additionally, several persons involved in the extraordinary rendition program have been released without charge and have testified to the program's existence. Flight patterns of planes leased by the CIA for renditions have also been well documented.

### How long has the program existed?

According to Stephen Grey in his investigative book Ghost Plane: The True Story of the CIA Torture Program, the first known rendition by the United States occurred in 1883, when Frederick Ker was kidnapped in Peru and flown back to Chicago to face trial for grand larceny. From 1883 to 1995, the FBI published an annual report on "irregular renditions" involving people who were arrested in foreign countries and brought to trial in the United States without extradition hearings. In 1995, during the Clinton administration, Michael Scheuer, chief of the Bin Laden unit of the CIA from 1995 to 1999, helped to craft a more aggressive rendition program designed to disrupt terrorist activity.

### What were the goals of the program from 1995 to 9/11?

Prior to 9/11, the goal of the rendition program was to arrest people who had been involved or who were suspected of involvement in terrorist activities, seize documents in their possession when arrested, and transport them back to the United States for trial or to another country where they were wanted on an outstanding warrant. Originally, countries with poor human rights records that were known to torture prisoners, such as Syria, were off limits for renditions. The goal of the program was to disrupt terrorist cells and to render suspects to justice, either in the United States or elsewhere.

### How did the goals of the program change after 9/11?

After 9/11, the primary goal of the rendition program changed from rendering suspects to justice to gathering intelligence through interrogation. Many suspects are now rendered to countries where they do not have outstanding arrest warrants, such as Morocco, solely for the purpose of interrogation. Also, suspects are rendered to countries known to torture prisoners, prompting some organizations to accuse the CIA of exporting torture. Some of the prison sites, known as "black sites," are run by the CIA in foreign countries, while others are run directly by foreign nations. Several people who have been released from the extraordinary rendition program have reported torture at the hands of their captors. The principal complaints against the current rendition program are that suspects are arrested without judicial oversight, held indefinitely without charge, transported to countries that engage in torture, denied access to the Red Cross, denied access to lawyers, and held incommunicado.

### What laws apply to the program? (See *the Appendices for more detailed descriptions of these laws*)

**1949** – The United States signs the revised Geneva Conventions prohibiting torture and inhuman or degrading treatment. The Geneva Conventions form the cornerstone of international humanitarian law.

**1994** – Congress ratifies the United Nations Convention Against Torture (CAT), which prohibits the transfer of prisoners to a country where it is believed that they will “more likely than not” face torture.

**1996** – Congress passes the War Crimes Act, which allows federal courts to prosecute grave war crimes including torture, inhuman or degrading treatment, unlawful deportation and transfer of prisoners, and other breaches of the Geneva Conventions, whether the acts occurred inside the United States or in a foreign country. Originally, the intent was to punish Vietnamese soldiers who tortured American POWs during the Vietnam War, but it may also be applied to war crimes committed by U.S. soldiers.

**1998** – Congress passes the Foreign Affairs Reform and Restructuring Act (FARRA), which states that it is the policy of the United States not to “expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, *regardless of whether the person is physically present in the United States.*”

**2002** – President Bush signs an executive order declaring that “unlawful enemy combatants” will not be granted many of the protections under the Geneva Conventions.

**2004** – Deputy Secretary of Defense orders the establishment of the Combatant Status Review Tribunals (CSRTs), the bodies tasked with determining which detainees are “enemy combatants” – those who were “part of or supporting Taliban or al Qaeda forces, or associated forces that are engaged in hostilities against the United States or its coalition partners.” At CSRTs, detainees are presumed guilty, have no legal representation, and may have evidence obtained by torture used against them.

**2006** –

**June** – The U.S. Supreme Court rules in *Hamdan v. Rumsfeld* that the military tribunal system being used to try terrorist suspects violates U.S. law and the Geneva Conventions. The Court also decrees that Common Article 3 of the Geneva Conventions applies to suspects detained under the war on terror.

**October** – Congress passes the Military Commissions Act, stripping federal courts of the ability to hear habeas corpus cases brought by detainees at Guantanamo Bay, Cuba, and establishing the military commissions regime still in use. In these unfair trials, evidence obtained through coercion is admissible, and the defendant is restricted from hearing some of the evidence against him, and from confronting witnesses against him.

### **Doesn't the federal government receive assurances from foreign governments that they will not torture prisoners who are rendered to their custody?**

Michael Scheuer, former chief of the CIA's Bin Laden unit, states that assurances from other nations are virtually worthless. The U.S. government must examine the human rights records of each country and make an informed decision about whether or not they believe prisoners will “more likely than not” face torture if transferred into that state's custody.

### **What are unlawful enemy combatants?**

Lawful combatants are defined by the Geneva Conventions as “being commanded by a person responsible for his subordinates,” “having a fixed distinctive sign recognizable at a distance,” “carrying arms openly,” and “conducting operations in accordance with the laws and customs of war.” They are entitled to the rights afforded by Prisoner of War (POW) status.

Unlawful combatants do not follow the established rule of war, including by failing to meet the conditions above and by targeting civilians. Under U.S. law, according to a 1942 Supreme Court case, unlawful combatants include those “without uniform who come secretly through the lines for the purpose of waging war.” Unlawful combatants are not entitled to the protections granted to POWs under the Geneva Conventions, including immunity from civilian prosecution for lawful acts of war and repatriation to their countries of origin at the end of the war. Under the Geneva Conventions (Convention III, Article 5), however, it is required that an impartial tribunal determine whether a person will be afforded the status of POW, unlawful combatant, or noncombatant. In 2002, President Bush issued an executive order declaring all al Qaeda and Taliban operatives “unlawful enemy combatants.”

### **What is habeas corpus and how does it apply to extraordinary rendition?**

The writ of habeas corpus guarantees people seized and detained by the government the right to question the grounds of their detention before an impartial tribunal and request the government to provide a legal and factual basis for the detention. The writ appeared in the Magna Carta in 1215, was passed into law by the British Parliament in 1679, and was later included in the United States Constitution. In *The Federalist Papers*, Alexander Hamilton writes that secret imprisonment is the “most dangerous engine of arbitrary government.” A petition for habeas corpus asks whether or not a person should be detained based on available legal evidence and prevents indefinite detention without charge. Persons caught in the system of extraordinary rendition have not been charged, have not been allowed access to lawyers, and have no access to courts where they can challenge the legitimacy of their detention.

### **[Interactive map of the Extraordinary Rendition Program](#)**

### **[Timeline of the Extraordinary Rendition Program](#)**

#### **Resources:**

“Extraordinary Rendition.” Frontline/World. November 2007.

<http://www.pbs.org/frontlineworld/stories/rendition701/>

“Fact Sheet: Extraordinary Rendition.” ACLU.

<http://www.aclu.org/safefree/extraordinaryrendition/22203res20051206.html>

“Frequently Asked Questions on Extraordinary Rendition.” Amnesty International.

[http://www.amnestyusa.org/uploads/file/FAQ\\_Renditions.pdf](http://www.amnestyusa.org/uploads/file/FAQ_Renditions.pdf)

Hafetz, Jonathan. “Brennan Center for Justice White Paper: Ten Things You Should Know About Habeas Corpus.” Brennan Center for Justice 2007.

[http://www.brennancenter.org/dynamic/subpages/download\\_file\\_48810.pdf](http://www.brennancenter.org/dynamic/subpages/download_file_48810.pdf)

## Resource 2.2 Case Study: Khaled el-Masri



Khaled el-Masri, a German citizen of Lebanese origin, was arrested and unlawfully detained while on a trip to Macedonia in December 2003. He was kept in a hotel room under armed guard where he was repeatedly questioned by Macedonian authorities regarding his alleged involvement with al Qaeda. While in detention, he was not allowed to call his wife, his lawyer, or the German embassy, and he was not informed of any charges brought against him. After twenty-three days, he was handed over to CIA agents, beaten, drugged, and flown to Afghanistan's "Salt Pit" prison as part of the CIA's extraordinary rendition program.

Khaled, a Muslim who attends his neighborhood mosque regularly, has lived in Germany since 1985, is fluent in German, and secured German citizenship in 1995. He and his wife, Aischa, have six children, all of whom were born in Germany. While Khaled was in detention, he had no contact with his wife, and she was forced to return to Lebanon to live with relatives during his absence.

During his detention, Khaled was kept in a small cell with only a dirty blanket in place of a bed. He states that the prison was run by Afghan guards, and that he was interrogated by Americans. Khaled does not claim physical torture, but said he faced the psychological torture of being held incommunicado and without charge. After several months, he rallied the other prisoners together and staged a hunger strike which lasted for thirty-seven days. At the end of this period, guards forced him to eat through a feeding tube. He lost more than 60 pounds while in captivity.

After 149 days in captivity, Khaled was flown to a remote region in Albania and released. He immediately filed an official complaint about his treatment with the German police. The ACLU filed a lawsuit on Khaled's behalf against George Tenet, former director of the CIA, charging him with violating United States and international human rights law. In 2006, a judge dismissed the case, stating that hearing the case would force the government to reveal state secrets, denying Khaled a trial in the United States. In May 2007, the ACLU petitioned the US Supreme Court to hear the case; in October of the same year, the Supreme Court declined to hear the case. The ACLU has now filed a petition with the Inter-American Commission on Human Rights. On June 25, 2007, German prosecutors decided to seek the extradition of 13 U.S. citizens allegedly involved with the case, but later, after meeting with U.S. officials, decided not to follow through with the requests.

### Resources:

Abadi, Cameron. "Disappeared, But Not Silenced." *Amnesty International Magazine*. Spring 2007.

Grey, Stephen. *Ghost Plane: The True Story of The CIA Torture Program*. New York: St. Martin's Press, 2006. (82-102)

"Extraordinary Rendition: El-Masri v. Tenet." ACLU. December 2007.

<http://www.aclu.org/safefree/torture/29868res20070524.html>

## Resource 2.2 Case Study: Binyam Mohamed



In 1994, at the age of 16, Binyam Mohamed sought political asylum in London shortly after the fall of the communist regime in his home country of Ethiopia. His older brother and sister had already emigrated to the United States and were living in the Washington D.C. area. He remained in London for seven years and eventually enrolled at Paddington Green College to pursue an engineering degree. In 2001, Binyam traveled to Afghanistan, where he intended to live for a few months to see if the Taliban regime was a “good Islamic country or not” (Grey 48). In addition, Binyam claimed he wanted to escape from the drug culture in London.

On April 10, 2002, Binyam attempted to fly from Pakistan to Zurich, and then home to London, but was detained and arrested at the airport for using a false passport. He was accused of plotting to plant a dirty bomb on American soil, and was interrogated at several Pakistani detention centers. After giving his name and address and explaining that he had lost his passport during his travels, Binyam asked for a lawyer and refused to answer additional questions. On July 21, 2002, Binyam was transferred into the custody of the CIA and flown to a prison in Morocco where he was held and allegedly tortured for eighteen months.

According to Binyam, the interrogators stated that Jose Padilla and senior al Qaeda members had implicated him in a plot to detonate a dirty bomb in America. Though he initially denied knowing Padilla or being involved in al Qaeda, he eventually confessed to being involved in the plot. Later, when allowed access to a lawyer, he claimed that the confessions were false and were extracted under severe torture. In his declassified diaries, Binyam describes being beaten, cut with razors, sleep deprived, denied access to bathroom facilities and food, and being exposed to continuous loud music, most frequently Eminem’s song “White America” (Grey 90). On January 21, 2004, Binyam was transferred to a CIA run prison in Kabul, Afghanistan, where he was held for five months before spending four months at another prison facility in Bagram.

In September 2004, Binyam was transferred to Guantanamo Bay, where he was finally allowed access to a lawyer and to the Red Cross. Binyam’s family, who had been searching for him since 2001, was also notified of his whereabouts. Jose Padilla, an American from Chicago who was also charged in the dirty bomb plot, was tried in an American court on lesser charges. Binyam’s confessions, allegedly extracted under severe torture, are the main evidence proving his involvement in the plot. Binyam remains incarcerated at Guantanamo and faces trial by military tribunal.

### Resources:

“Biography of Plaintiff Binyam Mohamed.” ACLU. December 2007.  
<http://www.aclu.org/safefree/torture/29912res20070530.html>

Grey, Stephen. *Ghost Plane: The True Story of the CIA Torture Program*. New York: St. Martin’s Press, 2006. (45-61)

## Resource 2.2 Case Study: Maher Arar



On September 26th, 2002, Maher Arar, a Canadian citizen who immigrated from Syria, was taken into custody by the U.S. Immigration and Naturalization Service (INS) at Kennedy Airport on his way home to Canada after visiting his wife's family in Tunisia. He was questioned about his alleged links to al Qaeda for 9 hours without a lawyer and was then removed to the Metropolitan Detention Center in New York.

Awakened by U.S. officials in the early hours of October 8th, 2002, he was told that he would be deported to Syria, where torture and incommunicado detention are commonplace for political prisoners. He was never given a hearing nor did the Canadian consulate, his lawyer or his family know of his fate.

After a brief stopover in Jordan, where he was shackled and beaten, Arar was driven to Syria and taken to the "Far Falestin," the Palestine Branch of Syrian military intelligence, known for the routine torture of political prisoners. While there he was severely beaten with electrical cable during six days of interrogation, and threatened with electric shocks and the "metal chair" - a torture device that stretches the spine. Eventually he says he broke down and signed a document falsely confessing to having been in Afghanistan.

He reports he was held alone in a tiny, basement cell without light, which he called "the grave," for more than 10 months. A small grate in the ceiling opened up into a hallway above and cats and rats urinated on him through it. There was no furniture in the cell, only two blankets on the floor. He had no exposure to natural light for the first six months.

Canadian consular officials visited Arar in detention, but were never allowed to speak to him alone. Between April 22 and August 14, 2003, they were not permitted to see him at all despite numerous requests.

On October 5th, 2003, the eve of his trial before the State Security Court, Mr. Arar was suddenly released to the Canadian Consulate in Damascus by Syrian authorities. The next day he was flown home to Canada to be reunited with his wife and two young children.

On February 5th, 2004, the Canadian government established the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar. This marks the first time that a government has launched an independent review of the post 9/11 security laws and practices. In January 2007, the Canadian government issued a formal apology to Arar and offered him \$10.5 million as compensation.

### Resource:

[http://www.amnesty.ca/human\\_rights\\_issues/maher\\_arar\\_overview.php](http://www.amnesty.ca/human_rights_issues/maher_arar_overview.php)

## Resource 2.3: Movie Discussion Guide

### General Questions

1. What images or stories in the film surprised or disturbed you? What would you like to learn more about?
2. What human rights violations did you see or hear about in the film? Did you feel those violations were justified? Why or why not?
3. Imagine that you are from a foreign country. How might the images and stories in this film influence your opinion about the United States?
4. What is extraordinary rendition? What are the short-term and long-term goals of extraordinary rendition?
5. According to Michael Scheuer, chief architect of the CIA rendition program, how has the extraordinary rendition program changed since 09/11?
6. Do you think the changes in the rendition program are necessary? Do you think that the changes are just? Use the film to support your answer.
7. What do you think are America's long-term goals in the war on terror? Do you think that the treatment of prisoners described in the film will help America meet its long-term goals? Why or why not? Use examples from the film to support your answer.
8. Explain your views of the extraordinary rendition program after watching this film. What other questions do you have about extraordinary rendition?

### **Khaled El-Masri**

9. Describe what happened to Khaled El-Masri. What human rights violations did you hear about in his story?
10. Why do you think the CIA transported him to another country to be questioned? What do you think might have happened if German authorities arrested and questioned him?
11. How do you think Khaled El-Masri's treatment will impact his future decisions and actions? How might his treatment impact others who hear his story?
12. Why did Khaled El-Masri stage a hunger strike? What were the results of his strike?
13. Who do you think should be held accountable for what happened to Khaled? How do you think they should be held accountable?

### **Binyam Mohammed**

14. Describe what happened to Binyam Mohamed. What human rights violations did you hear about in his story?
15. What do you think might have happened if he had been returned to Britain for questioning?
16. Do you think that Morocco's fear of being considered unsupportive of the United States in the War on Terror impacts the way that they treat prisoners transferred to them by the Americans?
17. Binyam Mohamed confessed to plotting to detonate a dirty bomb in the United States along with alleged co-conspirator Jose Padilla. He charges that this confession is false and was extracted under torture. Do you feel his confession is reliable? Explain your answer. Should Binyam Mohamed's confession be admissible in court? Why or why not?

## Resource 2.4: Introduction to Habeas Corpus

### What is the writ of habeas corpus?

The writ of habeas corpus, originally recorded in the Magna Carta in 1215, is a legal action filed by or on behalf of a person detained by the government which allows that person to protest his or her detention in front of an independent court. Habeas corpus, included in Article 1, Section 9 of the United States Constitution, has been a historic safeguard against arbitrary detention, and is considered to be a cornerstone of civil liberties. After a writ has been filed, the custodian must appear in court to defend the prisoner's detention. If the court does not find sufficient grounds for detention, the prisoner will be released. In the event that the prisoner is being held incommunicado, someone may seek a writ of habeas corpus on his or her behalf. Under the Constitution, "the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it."

### Does the writ of habeas corpus apply to unlawful enemy combatants?

**November 13, 2001** – President Bush issues an executive order declaring that non-citizens accused of connections to terrorism could be held as unlawful enemy combatants, allowing suspects to be held indefinitely without charge, without a court hearing, and without access to legal counsel.

**2004: *Hamdi v. Rumsfeld*** – The Supreme Court declares that American citizens have the right to petition their detentions under the writ of habeas corpus even if they have been declared enemy combatants.

**2004 – *Rasul v. Bush*** – The Supreme Court rules that U.S. courts have jurisdiction to hear habeas corpus petitions filed by or on behalf of foreign nationals detained at Guantanamo Bay.

**2004** - Deputy Secretary of Defense orders the establishment of the Combatant Status Review Tribunals, the bodies tasked with determining which detainees are "enemy combatants." At CSRTs, detainees are presumed guilty, have no legal representation, may have evidence obtained by torture used against them.

**2005 – Detainee Treatment Act** – Congress passes a law stating that no federal court has the jurisdiction to hear a habeas corpus claim brought by or on behalf of a detainee at Guantanamo Bay who has been declared an unlawful enemy combatant.

**2006 – *Hamdan v. Rumsfeld*** - The Supreme Court rules that Congress does not have the authority to prevent the federal courts from hearing *pending* habeas corpus petitions filed by or on behalf of detainees at Guantanamo Bay. The court also rules that the military commissions regime established by presidential order did not meet the legal requirements for such trials, and that absent a new law from Congress, military trials of "enemy combatants" must take place under the guidelines of the Uniform code of Military Justice.

**2006 – Military Commissions Act** – This act strips federal courts of the ability to hear any habeas corpus petitions filed by or on behalf of detainees at Guantanamo Bay, including those pending review. It also establishes a new system for military commissions that have fewer protections for the defendants than regular trials. For example, the prosecution may use as evidence statements obtained through coercion and cruel, inhuman, and degrading treatment and evidence obtained through waterboarding, a form of torture. The defense has only limited access to materials used to prosecute the defendant, and the defendant has no right to confront accusers – this includes preventing the defendant from seeing some witnesses testify and from learning the content of their testimony.

**2008 – *Boumediene v. Bush*** – The Supreme Court rules that detainees held at Guantanamo Bay, Cuba, have the right to have their habeas corpus requests heard in U.S. federal court. The provisions of the Military Commissions Act that removed federal court jurisdiction are declared unconstitutional. The Court also expresses concern about the CSRT procedures as defined in the Detainee Treatment Act.

### For More Information:

[Habeas Corpus and Detainees](#)

## Resource 2.5: Introduction to the Geneva Conventions

### What are the Geneva Conventions?

The Geneva Conventions are actually a set of four treaties that establish rules governments and militaries must follow during war: Convention (I) for the Amelioration of the Condition of the Wounded and the Sick in Armed Forces in the Field; Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea; Convention (III) Relative to the Treatment of Prisoners of War; and Convention (IV) Relative to the Protection of Civilian Persons in Time of War. Henri Dunant, the founder of the Red Cross, inspired the writing of the first versions of the Geneva Conventions in 1864. The Geneva Conventions were updated and expanded following World War I, in 1929, and following World War II, in 1949. The Geneva Conventions continue to evolve to meet the changing face of warfare. For example, two additional protocols were written in 1977 and another was written in 2005. Not all of the countries that have agreed to follow the Geneva Conventions have agreed to follow these additional protocols. Today, the United Nations is debating what rules apply to the use of landmines, and the United States is debating what protections should apply to enemy combatants. The Red Cross continues to play a central role in interpreting and monitoring states' compliance with the Geneva Conventions.

Possibly the most important provision in the Geneva Conventions is Article 3, so called because each of the four Geneva Conventions has the same Article 3. Although most of the provisions of the Geneva Conventions apply only to some types of war and only to some groups in those wars, Common Article 3 applies to all people in any conflict who are not involved in the fighting, including those who can no longer fight because of injury. It provides that these people must always be treated humanely and without discrimination, and specifically that they cannot be subject to violence or harm, that they may not be taken hostage, that they may not be subjected to humiliating and degrading treatment, that they must be given fair trials, and that the wounded and the sick among them must be cared for.

### How do the Geneva Conventions Apply to Prisoners of War?

To be considered a prisoner of war, combatants must belong to certain groups. Nearly all prisoners of war belong to one of the following two groups:

1. Members of the armed forces party to the conflict, or
2. Members of an organized resistance movement belonging to a party to the conflict who:
  - Are commanded by a person responsible for his subordinates; and
  - Have a fixed distinctive sign recognizable at a distance (they do not try to blend in with civilians); and
  - Carry arms openly; and
  - Conduct their operations in accordance with the laws and customs of war.

### ***Prisoners of war have the following rights:***

1. Prisoners of war must be humanely treated at all times. Any unlawful act which causes death or seriously endangers the health of a prisoner of war is a grave breach of the Geneva Conventions. In particular, prisoners must not be subject to physical mutilation, biological experiments, violence, intimidation, insults, and public curiosity. ([Convention III, Art. 13](#))
2. Prisoners of war must be interned on land, and only in clean and healthy areas. ([Convention III, Art. 22](#))
3. Prisoners of war are entitled to the same treatment given to a country's own forces. ([Convention III, Art. 25](#))
4. Prisoners of war must receive enough food to maintain weight and to prevent nutritional deficiencies, with account of the habitual diet of the prisoners. Food must not be used for disciplinary purposes. ([Convention III, Art. 26](#))
5. Prisoners of war must receive adequate clothing, underwear and footwear. The clothing must be kept in good repair and prisoners who work must receive clothing appropriate to their tasks. ([Convention III, Art. 27](#))

6. Prisoners of war must have adequate sanitary facilities, with separate facilities for women prisoners. ([Convention III, Art. 29](#))
7. Prisoners of war must receive adequate medical attention. ([Convention III, Art. 30](#))
8. Prisoners of war must receive due process and fair trials. ([Convention III, Art. 82-88](#))
9. Collective punishment for individual acts, corporal punishment, imprisonment without daylight, and all forms of torture and cruelty are forbidden. ([Convention III, Art. 87](#))
10. Prisoners whose status has not yet been determined are to be treated as prisoners of war until their status has been confirmed by a fair tribunal. (Convention III, Art. 5)

### **How do the Geneva Conventions Apply to Unlawful Enemy Combatants?**

Suspected terrorists, who often act outside the control of any state, attempt to blend in with civilians, engage in hostile activities against civilians, and do not necessarily follow a formal, recognized military hierarchy. According to international humanitarian law and U.S. federal law, they do not fit the criteria of a POW.

In the Military Commissions Act of 2006, the United States defines “unlawful enemy combatant” as anyone who has “engaged in hostilities or who has purposefully and materially supported hostilities” against the United States. This includes members of al Qaeda and the Taliban.

According to Common Article 3 of the Geneva Conventions, even unlawful combatants are protected from human rights abuses, such as torture and cruel or degrading treatment. Unfortunately, the majority of the people captured by the extraordinary rendition program have no way to enforce these rights. In addition to being held incommunicado and being subjected to questionable interrogation practices, those held at secret prisons are also denied access to the Red Cross.

Remember that the Geneva Conventions (Convention III, Art. 5) specify that prior to a formal hearing to determine a prisoners’ status, that prisoner is to be held as a prisoner of war and granted all the rights such a designation would entail.

### **Does extraordinary rendition violate the Geneva Conventions?**

On June 29, 2006, the Supreme Court ruled in *Hamdan v. Rumsfeld* that al Qaeda members were protected from torture and cruel, inhuman and degrading treatment as outlined in Common Article 3 of the Geneva Conventions, even though they did not qualify for POW status. The ruling also required access to due process for detainees. The CIA’s enhanced interrogation practices (including waterboarding which is a form of torture under international and U.S. law), incommunicado and indefinite detention of prisoners, and transfer of prisoners to third parties to be tortured and interrogated all violate the Geneva Conventions.

### **For More Information:**

[Geneva Conventions – A Reference Guide](#)

[The Red Cross – International Humanitarian Law](#)

## Handout 2.6: Court of Human Rights Activity

### Overview:

**Note: The following activity is fictional, designed to stimulate critical thinking and discussion.**

Khaled El-Masri, Binyam Mohamed, and Maher Arar are seeking justice from the Court of Human Rights. They want to hold the CIA accountable for the treatment they experienced while detained as part of the extraordinary rendition program. The CIA seeks to defend its actions in the international arena. A panel of six judges will determine whether or not the CIA is guilty of any criminal acts under international human rights law, and if so, how the CIA should be held accountable.

### Directions:

You have been assigned to represent either the prosecution (for Khaled El-Masri, Binyam Mohamed, or Maher Arar) or the defense (for the CIA) before the Court of Human Rights. Use the questions below to guide your research about your assigned case. Use the film, the appendices, and the resource guide to find more information.

Elect one person from your group to sit on the judge's panel for the Court of Human Rights. Elect another person to present your group's case to the court. After the court hears both sides of the case, the members of the court will rule on the case and explain their ruling. The teacher will be the deciding vote in the case of a hung jury.

### Guiding Questions

1. What was the charge against the person (Khaled, Binyam, Maher)? Were the charges justified?
2. What human rights violations did the person face while in CIA or foreign custody? Were any of these violations justifiable? Explain your answer.
3. Did the person's arrest, transport, or treatment violate federal or international laws? If so, which laws were violated?
4. Did the person confess to the charge? If so, should the person's confession be admissible in court? Why or why not?
5. Who, if anyone, should be held accountable for this person's treatment? How should that person or group be held accountable?
6. How do you think this person's treatment will positively or negatively affect the war on terror?

### Applicable Federal and International Laws

War Crimes Act of 1996

Foreign Affairs Reform and Restructuring Act of 1998

Military Commissions Act of 2005

The Detainee Treatment Act of 2006

Geneva Conventions of 1949

United Nations Convention Against Torture (UNCAT)

Universal Declaration of Human Rights (UDHR)

# Lesson Three:

## Above the Law? The Limits of Executive Authority

Time: Time will vary depending on activities chosen.

### Questions:

How does extraordinary rendition impact an individual's civil liberties/human rights? Is suspension of civil liberties necessary during war time? What are the limits of executive power? How can citizens take action to hold the government accountable for its actions?

### Overview:

In the years since 9/11, political analysts have increasingly discussed the importance of winning the hearts and minds of the people in Iraq and Afghanistan. Not only is the world watching how America conducts its domestic affairs, it is carefully watching how America wages war, how America treats civilians in occupied territories, and, perhaps most importantly, how America treats its enemies, especially its prisoners. Will America treat prisoners according to international conventions and democratic principles even during war time or does war constitute justification for the suspension of civil liberties and international agreements? This lesson helps students analyze the American system of checks and balances and leads them in a discussion of the limits of executive power.

### Objectives:

#### Students will:

1. Analyze the effects of the extraordinary rendition program on the war on terror.
2. Understand the system of checks and balances within the context of extraordinary rendition
3. Debate the limits of executive authority during war time.

### Preparation:

- Handout 3.1: Checks and Balances Timeline
- Handout 3.2: Checks and Balances
- Resource 3.3: Checks and Balances Discussion Questions

## Procedure:

### Activity One: Democratic Principles and the war on terror (30 min.)

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1. Make two columns on the board. Label one column “Long-Term Goals” and the other column “Short-Term Goals.” Ask students to list what they consider to be America’s long-term and short-term goals in the war on terror. As a class, debate how the following contribute to or detract from America’s success in meeting its long-term and short-term goals.
  - National wiretapping program
  - Occupation of Afghanistan
  - Detaining prisoners indefinitely at Guantanamo Bay
  - U.S. military presence in Iraq
  - Extraordinary rendition
  - Cruel, Inhuman and Degrading Treatment (“enhanced interrogation techniques”)
  - Information sharing with foreign intelligence services
  - Putting terrorist suspects on trial in U.S. civilian courts
2. In his address to a joint session of Congress on September 20, 2001, President George W. Bush outlined the original themes and goals of the war on terror, themes which have been repeated many times over the past years. Read, or ask a student to read, the following quote:

*“Our war on terror begins with al Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped and defeated. Americans are asking, why do they hate us? They hate what we see right here in this chamber -- a democratically elected government. Their leaders are self-appointed. They hate our freedoms -- our freedom of religion, our freedom of speech, our freedom to vote and assemble and disagree with each other. . . . This is not, however, just America’s fight. And what is at stake is not just America’s freedom. This is the world’s fight. This is civilization’s fight. This is the fight of all who believe in progress and pluralism, tolerance and freedom. . . . I ask you to uphold the values of America, and remember why so many have come here. We are in a fight for our principles, and our first responsibility is to live by them. No one should be singled out for unfair treatment or unkind words because of their ethnic background or religious faith.”*

*President George W. Bush, September 20, 2001.*

In his speech, President Bush states that the war on terror is an effort to protect democracy and freedom. Ask students to individually list characteristics and values of a democracy. What civil liberties are protected in a democracy? Ask students to share responses with the class and list answers on the board.

3. Review the case of Khaled El-Masri, Binyam Mohamed, or Maher Arar (see Resource 2.2). Ask students the following questions. If you have time, repeat these questions with the other two cases.
  - In what ways does his treatment while in custody reflect democratic principles? In what ways does his treatment subvert democratic principles?
  - Does his treatment by the American court system reflect democratic principles? Explain your answer.
  - What civil liberties was he granted? What civil liberties was he denied?
  - How does his treatment help or prevent America from fulfilling its short-term goals in the war on terror?
  - How does his treatment help or hinder the fulfillment of America’s long-term goals in the war on terror?

### Activity Two: Checks and Balances (45 minutes)

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1. One of the distinguishing features of American democracy is its system of checks and balances. Review with students how the checks and balances system is designed to work (refer to the [PBS Checks and Balances Lesson](#) for a detailed review).
2. Divide students into small groups and distribute Handouts 3.1 and 3.2. Review directions with students and model a sample for the class. It may be helpful for students to use different colored highlighters to mark the actions of each branch of government as they read through the timeline (Ex. Highlight Supreme Court rulings in blue, executive actions in yellow, and Congressional acts in green).
3. Review answers together as a class and use Resource 3.3 to guide class discussion about the activity.

### Activity Three: The America I Believe In (30 minutes)

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1. Another cornerstone of democracy is the people's ability to hold the government accountable for its actions through voting, signing petitions, lobbying representatives, and holding protests. How can citizens take action to ensure that America is meeting its long-term and short-term goals in the war on terror while also abiding by democratic principles, including a respect for human rights and the rule of law? Brainstorm student ideas on the board.
2. Amnesty International has created a campaign entitled "[The America I Believe In](#)" to help Americans recreate a positive, unified vision of an America that respects democracy, human rights, and the rule of law. Ask students to individually write down at least three endings to the sentence: "The America I Believe In . . ." (promotes, protects, values, etc.). Share student responses as a class.
3. Instruct students to create posters or other art using their sentences. Display student work in the hallway as one piece of a Taking Action campaign. Refer to the In Plain Sight website for other ideas on how to take action on the issues outlined in this lesson.

### Further Study:

1. According to the book [Ghost Plane](#) by Stephen Grey, the Pentagon held a special viewing of the 1966 film *The Battle of Algiers* in August of 2003. The screening flyer reads: *How to win a battle against terrorism and lose the war of ideas . . . Children shoot soldiers at point blank range. Women plant bombs in cafes. Soon the entire Arab population builds to a mad fervor. Sound familiar? The French have a plan. It succeeds tactically, but fails strategically. To understand why, come to a rare showing of the film. (245)*  
Host a viewing of the film and compose a panel discussion comparing the events in the film to the CIA's program of extraordinary rendition. Could the United States develop a policy in the war on terror that wins both strategically and tactically? What might such a policy look like? What would "winning the war of ideas" look like?
2. How have journalists impacted the war on terror? Ask students to research several articles about extraordinary rendition and explain how the articles work together to impact foreign policy or public opinion.
3. How have activists impacted the war on terror? Research the actions Amnesty International (or another activist group) has taken to challenge the government's policy on extraordinary rendition and torture. What are the successes of each initiative? What are the challenges that remain? How can the students get involved?

## Handout 3.1: Timeline of Checks and Balances

**August 1949 – Geneva Conventions** - The United States signs the revised Geneva Conventions which prohibit torture and inhuman or degrading treatment and form one of the cornerstones of international humanitarian law.

**October 1994 – United Nations Convention Against Torture (UNCAT)** - Congress ratifies (UNCAT), which, among other things, prohibits the transfer of prisoners to a country where they face a “substantial” risk of torture.

**August 1996 – War Crimes Act** – Congress passes this act which allows federal courts to prosecute grave war crimes including torture, inhuman or degrading treatment, unlawful deportation and transfer of prisoners, and other breaches of the Geneva Conventions, whether the acts occurred inside the United States or in a foreign country. Originally, Congress passed the War Crimes Act in order to prosecute Vietnamese soldiers who tortured American POWs during the Vietnam War.

**April 1998 – Foreign Affairs Reform and Restructuring Act (FARRA)** – Congress passes this act which states that it is the policy of the United States not to “expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, *regardless of whether the person is physically present in the United States.*” President Clinton signs in May 1998.

**September 2001** – Congress passes a joint resolution giving the President the power to “use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.”

**November 2001** – President Bush issues an executive order declaring that non-citizens accused of connections to terrorism could be held as unlawful enemy combatants, allowing suspects to be held indefinitely without charge, without a court hearing, and without access to legal counsel.

**January 2002** – White House counsel Alberto Gonzales writes a memo supporting President Bush’s decision to declare Al Qaeda operatives outside the protections of the Geneva Conventions, thereby preventing U.S. officials from being tried under the War Crimes Act for treatment and interrogation of detainees.

**January 2002** – Secretary of State Colin Powell urges President Bush to uphold the Geneva Conventions in a memo stating that declaring the conventions inapplicable would, “reverse over a century of U.S. policy and practice in supporting the Geneva Conventions and undermine the protections of the law of war for our troops” in addition to “undermin[ing] public support from critical allies.”

**February 2002** – William H. Taft IV, State Department Legal Adviser, issues a memo explaining America’s legal obligations under international law. It states that “customary international law cannot bind the Executive Branch under the Constitution, because it is not federal law.” Also, the memo concludes that “Congress may no more regulate the President’s ability to detain and interrogate enemy combatants than it may regulate his ability to direct troop movements in the battlefield.” Finally, the memo states that the federal Torture Statute (Section 2340A) “does not apply to the President’s detention and interrogation of enemy combatants pursuant to his Commander-in-Chief authority.”

**February 2002** – President Bush issues an executive order that the Geneva Conventions do not apply to Al Qaeda operatives and that they are not entitled to POW status, but that the United States intends to continue to treat its prisoners humanely and in a manner consistent with the Geneva Conventions.

**June 2004: *Hamdi v. Rumsfeld*** – The Supreme Court declares that American citizens have the right to petition their detentions under the writ of habeas corpus even if they are declared enemy combatants.

**June 2004 – *Rasul v. Bush*** – The Supreme Court rules that U.S. courts do have jurisdiction to hear habeas corpus petitions filed by or on behalf of foreign nationals detained at Guantanamo Bay.

**2005 – *Detainee Treatment Act*** – In this act, Congress declares that no court, justice, or judge has jurisdiction to hear petitions of habeas corpus filed by or on behalf of detainees at Guantanamo Bay. It also passes the McCain Anti-Torture Amendment in a vote of 90-9. When President Bush signed the bill into law, he included a signing statement reserving his right to bypass the new law under his authority as Commander-in-Chief.

**June 2006 – *Hamdan v. Rumsfeld*** - The Supreme Court rules that Congress does not have the authority to prevent the courts from hearing habeas corpus petitions filed by or on behalf of detainees that were pending when the DTA was passed. It also finds that trying terrorist suspects in front of the military tribunals outlined by the president violates U.S. military law and the Geneva Conventions, and that Article 3 of the Geneva Conventions does apply to suspects arrested during the War on Terror.

**October 2006 – *Military Commissions Act (MCA)*** - Congress responds to the Court's decision by passing this act, which states that no court, justice, or judge has the jurisdiction to hear petitions filed by or on behalf of detainees who the United States has determined to be enemy combatants. Enemy combatant status is determined by executive order, and is confirmed when a prisoner is brought before a Combat Status Review Tribunal (CSRT). Persons declared enemy combatants may seek habeas corpus **appeals** in U.S. courts only after they have appeared before the CSRTs. There is no legal time limit for bringing a prisoner before a CSRT, effectively allowing for indefinite detention without recourse, regardless of citizenship. The act also allows the CIA to continue its secret interrogation program.

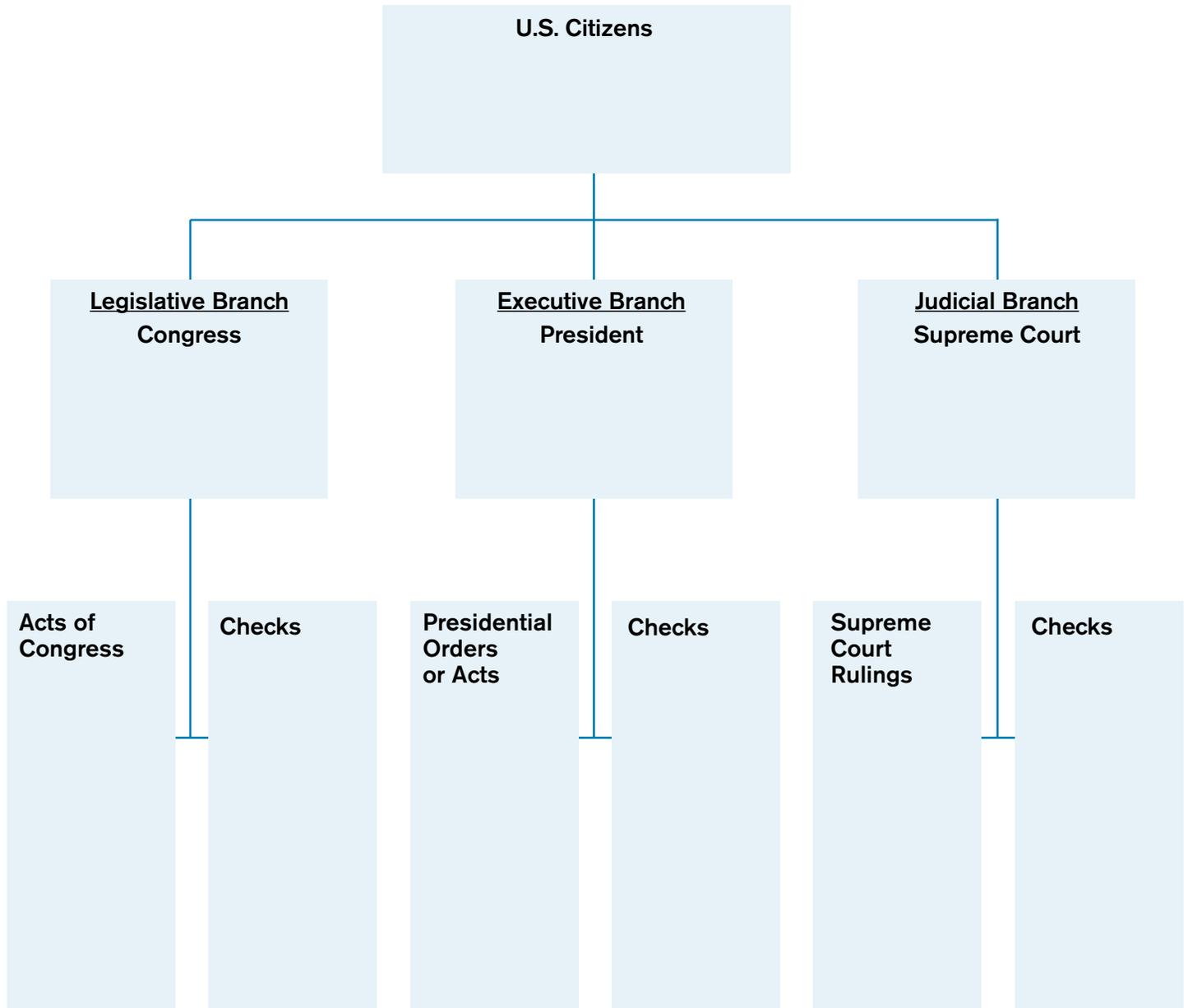
**2007** – Germany issues arrest warrants for and Italy indicts CIA agents allegedly involved in the kidnapping of their nationals as part of the U.S. scheme of extraordinary renditions.

**June 12, 2008 – *Boumediene v. Bush*** – The Supreme Court rules that U.S. federal courts have the jurisdiction to hear habeas corpus cases brought by or on behalf of detainees at Guantanamo Bay because Congress's suspension of the writ had been unconstitutional.

## Handout 3.2: Checks and Balances

### Directions:

Read the timeline on Handout 3.1 as a group. List actions taken by each branch of government in the appropriate box in the graph below. How did that action check or balance another branch of government? In the box marked “Checks” write what branch of government the action was intended to check or balance. Brainstorm ways that U.S. citizens could provide checks or balances on each branch of government and write your answers in the “U.S. Citizens” box.



## Handout 3.3: Critical Thinking Questions

1. What world event had just ended when the United States signed the Geneva Conventions? Why do you think the United States signed the Geneva Conventions?
2. Why do you think Congress ratified UNCAT? How do UNCAT and the Geneva Conventions impact how American POWs are treated by foreign nations?
3. Why did Congress pass the War Crimes Act? Do you think the War Crimes Act should apply to American military personnel? Why or why not?
4. Do you think the extraordinary rendition program is legal according to the War Crimes Act and FARRA? Do you think the President has or should have the authority to authorize a program that acts outside of these laws? Explain your answer.
5. Do you think that the federal wiretapping program, the extraordinary rendition program, and the use of enhanced interrogation techniques fall under the congressional mandate of 2001, allowing the President to “use all necessary and appropriate force”? Do you think Congress has or should have the authority to limit presidential powers regarding these programs? Explain your answer.
6. Do you think the president has or should have the authority to declare people unlawful combatants indefinitely? If not, when should this power sunset?
7. Do you think that the Geneva Conventions should apply to Al Qaeda operatives? Why or why not? How do you think detainees, including high profile detainees, should be treated?
8. Do you agree or disagree with Colin Powell’s statement that declaring the Geneva Conventions inapplicable would “undermine the protections of the law of war for our troops”?
9. Does the current international situation necessitate enhanced interrogation techniques for terrorist suspects? Explain your answer. Do you think the president should have the authority to authorize enhanced interrogation techniques? Why or why not? Should there be any checks and balances on this authority? If so, what would that system look like?
10. How long do you think detainees should be held without trial at Guantanamo Bay? Where and when should the detainees stand trial?
11. Do you agree or disagree with Taft’s finding that international law does not bind executive authority? Explain your answer.
12. Do you think Congress should have the authority to regulate the President’s ability to detain and interrogate enemy combatants? Explain your answer.
13. Should the president have the authority to deny unlawful combatants the right to file writs of habeas corpus? Explain your answer.
14. President Bush has used signing statements to interpret and challenge Congressional legislation. For example, when he signed Defense Appropriations Act containing the Detainee Treatment Act into law, he reserved the right not to enforce the anti-torture provision. Do you think this is an appropriate expression of executive authority or an abuse of executive power? Explain your answer.
15. Explain how the checks and balances system operated regarding the rights of detainees to file writs of habeas corpus in U.S. courts. What did the President say about the issue? How did Congress respond? How did the Supreme Court respond? Where does the issue currently stand?
16. Explain how the checks and balances system operates regarding enemy combatant status.
17. Do you think the checks and balances system has worked effectively on issues surrounding the war on terror? Explain your answer.
18. In what ways do you think U.S. citizens can provide checks and balances on government? How can citizens hold the government accountable for its actions?

## Appendix A: U.S. and International Standards Against Torture

### **United States Bill of Rights (1789), Amendment 8**

“...nor (shall) cruel or unusual punishment be inflicted.”

### **Universal Declaration of Human Rights (1948), Article 5**

“No one shall be subjected to torture or to cruel, inhumane or degrading treatment or punishment.”

### **Geneva Conventions (1949) Article 99, Third Convention**

“no moral or physical coercion may be exerted on a prisoner of war in order to admit himself guilty of the act of which he is accused “

### **UN Minimum Standards for the Treatment of Prisoners (1957), Rule 31**

“Corporal punishment, punishment by placing in a dark cell, and all cruel, inhumane or degrading punishments shall be completely prohibited...”

### **International Convention on the Elimination of All Forms of Racial Discrimination**

“... to guarantee the right of everyone, without distinction to race, color or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

“(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution...”

### **America Convention on Human Rights (1969)**

“...All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.”

### **UN Declaration on the Protection of All Persons from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1975)**

“No State may permit or tolerate torture...Exceptional circumstances such as a state of war ...or any other public emergency may not be invoked as a justification of torture or other cruel inhumane or degrading treatment or punishment.”

### **UN Code of Conduct for Law Enforcement Officials (1979), Article 5**

“No law enforcement official may inflict, instigate or tolerate any act of torture...nor may any law enforcement official invoke superior order or exceptional circumstances...as a justification of torture...In this code of conduct, the term “law enforcement officials is said to include all officer of the law who exercise police powers, especially the powers of arrest or detention.”

### **Source:**

[http://www.amnestyusa.org/Reports\\_Statements\\_and\\_Issue\\_Briefs/US\\_and\\_International\\_Standards\\_Against\\_Torture/page.do?id=1031035&n1=3&n2=38&n3=1052](http://www.amnestyusa.org/Reports_Statements_and_Issue_Briefs/US_and_International_Standards_Against_Torture/page.do?id=1031035&n1=3&n2=38&n3=1052)

## Appendix B: Federal Laws Regarding Torture

### War Crimes Act of 1996

#### Chapter 118, Section 2441 of US Crimes and Criminal Procedure Code

(a) **Offense.**— Whoever, whether inside or outside the United States, commits a war crime, in any of the circumstances described in subsection (b), shall be fined under this title or imprisoned for life or any term of years, or both, and if death results to the victim, shall also be subject to the penalty of death.

(b) **Circumstances.**— The circumstances referred to in subsection (a) are that the person committing such war crime or the victim of such war crime is a member of the Armed Forces of the United States or a national of the United States (as defined in section 101 of the Immigration and Nationality Act).

(c) **Definition.**— As used in this section the term “war crime” means any conduct—

1. defined as a grave breach in any of the international conventions signed at Geneva 12 August 1949, or any protocol to such convention to which the United States is a party;
2. prohibited by Article 23, 25, 27, or 28 of the Annex to the Hague Convention IV, Respecting the Laws and Customs of War on Land, signed 18 October 1907;
3. which constitutes a violation of common Article 3 of the international conventions signed at Geneva, 12 August 1949, or any protocol to such convention to which the United States is a party and which deals with non-international armed conflict; or
4. of a person who, in relation to an armed conflict and contrary to the provisions of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended at Geneva on 3 May 1996 (Protocol II as amended on 3 May 1996), when the United States is a party to such Protocol, willfully kills or causes serious injury to civilians.

### Detainee Treatment Act 2005

#### SEC. 1002. UNIFORM STANDARDS FOR THE INTERROGATION OF PERSONS UNDER THE DETENTION OF THE DEPARTMENT OF DEFENSE.

(a) In General- No person in the custody or under the effective control of the Department of Defense or under detention in a Department of Defense facility shall be subject to any treatment or technique of interrogation not authorized by and listed in the United States Army Field Manual on Intelligence Interrogation.

#### SEC. 1003. PROHIBITION ON CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT OF PERSONS UNDER CUSTODY OR CONTROL OF THE UNITED STATES GOVERNMENT.

(a) In General- No individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment.

### Military Commissions Act of 2006

*Because the Supreme Court ruled in Hamdan v. Rumsfeld that Article 3 of the Geneva Conventions applied to the War on Terror, many people, including Alberto Gonzales, worried that US soldiers could be prosecuted under the War Crimes Act of 1996. In response to this fear, the Military Commissions Act of 2006 was developed.*

#### “§ 948a. Definitions

“In this chapter:“(1) UNLAWFUL ENEMY COMBATANT.—(A) The term ‘unlawful enemy combatant’ means—

“(i) a person who has engaged in hostilities or who has purposefully and materially supported hostilities against the United States or its co-belligerents who is not a lawful enemy combatant (including a person who is part of the Taliban, al Qaeda, or associated forces); or

“(ii) a person who, before, on, or after the date of the enactment of the Military Commissions Act of 2006, has been determined to be an unlawful enemy combatant by a Combatant Status Review Tribunal or another competent tribunal established under the authority of the President or the Secretary of Defense.

**“§ 948b. Military commissions generally**

“(b) AUTHORITY FOR MILITARY COMMISSIONS UNDER THIS CHAPTER.—The President is authorized to establish military commissions under this chapter for offenses triable by military commission as provided in this chapter.”

“(g) GENEVA CONVENTIONS NOT ESTABLISHING SOURCE OF RIGHTS.—No alien unlawful enemy combatant subject to trial by military commission under this chapter may invoke the Geneva Conventions as a source of rights.”

**SEC. 5. TREATY OBLIGATIONS NOT ESTABLISHING GROUNDS FOR CERTAIN CLAIMS.**

IN GENERAL.—No person may invoke the Geneva Conventions or any protocols thereto in any habeas corpus or other civil action or proceeding to which the United States, or a current or former officer, employee, member of the Armed Forces, or other agent of the United States is a party as a source of rights in any court of the United States or its States or territories.

(b) REVISION TO WAR CRIMES OFFENSE UNDER FEDERAL CRIMINAL CODE.—

“(e)(1) No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

“(2) Except as provided in paragraphs (2) and (3) of section 1005(e) of the Detainee Treatment Act of 2005 (10 U.S.C. 801 note), no court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.”

# Glossary

**Actionable Intelligence** – Having the information necessary to take informed action.

**Cruel, Inhuman or Degrading Treatment (CID)** – Though there is no internationally agreed upon definition of CID, international law has made it clear that torture includes “cruel, inhuman, or degrading treatment.” In addition to acts causing severe pain and suffering that most people agree are torture, CID includes being forced to stand spread eagled against the wall for hours (wall-standing); being subjected to bright lights or blindfolding; being subjected to continuous loud noise; being deprived of sleep, food or drink; being subjected to forced constant standing or crouching; or violent shaking. It also includes acts that cause mental suffering, such as threats against family or loved ones.

**Enhanced Interrogation Techniques** – Six techniques authorized in 2002 for the CIA to use in interrogations. These techniques include the attention grab, the attention slap, the belly slap, long-term standing, and waterboarding. Many CIA officers prefer to build a relationship of trust rather than resort to these tactics, which can often yield unreliable results. According to CIA officials, interrogators must receive approval to use the techniques on a case-by-case basis, and the interrogation must be carefully monitored. Many of these techniques amount to cruel or degrading treatment under international law. Waterboarding is torture under international law and has been prosecuted as such in the United States for a century.

**Extradition** – The official process by which one nation or state requests and obtains from another nation or state the surrender of a suspected or convicted criminal. Usually, a suspect is extradited back to the country where the crime occurred in order to stand trial. Extraditions are regulated by treaties, and countries reserve the right not to extradite a suspect if the suspect is wanted for a political crime, will likely be tortured, or will face the death penalty. Extradition of suspects is subject to judicial review.

**Extraordinary rendition** – The process of transporting a suspect from one country to another for the purpose of interrogation without judicial oversight. Extraordinary rendition usually entails abducting the suspect in a foreign country (with or without the country’s knowledge) and flying the suspect to a third country for interrogation. According to a 2006 Council of Europe report, over 100 people have been kidnapped by the CIA since 2002 and transferred to other countries, many of which are known to engage in torture.

**Habeas Corpus** – The writ of habeas corpus, included in the Magna Carta in 1215 and in Article 9 of the U.S. Constitution, allows prisoners to challenge the grounds of their detention. After a prisoner has applied for a writ of habeas corpus, a judicial mandate may be issued requiring that evidence for their detention be presented to the court. If the detention is found to be unlawful, the prisoner will be released. Detainees at Guantanamo Bay have the right to file habeas corpus petitions with U.S. courts.

**Incommunicado Detention** – A form of detention in which a prisoner is prevented from contact with family, friends, or legal counsel.

**Indefinite Detention** – A form of detention in which a suspect is detained without charge for a long period of time with no guaranteed release date.

**Lawful Combatants** – Lawful combatants fight for an organized army or state, report to a commanding officer, wear recognizable uniforms, carry arms openly, and respect the laws of war. If a lawful combatant is captured during a war situation, he or she is eligible for POW status under the Geneva Conventions.

**Prisoner of War (POW)** – A lawful combatant captured during war time is eligible for POW status and is afforded many rights under the Geneva Conventions. POWs must be treated humanely, given adequate food, water, and shelter, provided access to medical care and restroom facilities, and guaranteed due process. In addition, POWs are eligible for repatriation (return) to their home countries at the end of hostilities.

**Rendered** – In the case of extraordinary rendition, to render a suspect to another country for interrogation means to transport the suspect from one country to the other and release the suspect to foreign custody.

**Signing Statement** – A signing statement is a presidential proclamation that accompanies the signing of a bill into law, and is typically used to record a president's views on the bill. President George W. Bush has used the signing statement as a way to interpret and challenge bills, thereby increasing his power to shape the law without congressional oversight. Prior to 1986, only 75 presidential signing statements had been issued. As of 2006, President Bush had issued 134 signing statements.

**Unlawful enemy combatants** – Unlawful combatants often do not fight for an organized army, do not follow or recognize the laws of war, do not carry arms openly, do not wear recognizable uniforms, and often target civilians. Unlawful combatants are not eligible for POW status under the Geneva Conventions and may be tried as war criminals. In 2002, President Bush issued an executive order declaring all terrorists and suspected terrorists are unlawful enemy combatants. Remember that the Geneva Conventions (Convention III, Art. 5) specify that prior to a formal hearing to determine a prisoner's status, that prisoner is to be held as a prisoner of war and granted all the rights such a designation entails.

## Resources

### Articles and Reports

Congressional Joint Hearing. "Extraordinary Rendition in U.S. Counterterrorism Policy: The Impact on Transatlantic Relations." April 2007. (PDF Transcript)

<http://www.foreignaffairs.house.gov/110/34712.pdf>

Garcia, Michael John. "Renditions: Constraints Imposed by Laws on Torture." Congressional Research Service. 12 October 2007.

<http://www.fas.org/sgp/crs/natsec/RL32890.pdf>

Jackson, Brian A., Ph.D. "Counterinsurgency Intelligence in a 'Long War': The British Experience in Northern Ireland." *Military Review*. Jan./Feb. 2007: (74-85).

[http://www.rand.org/pubs/reprints/2007/RAND\\_RP1247.pdf](http://www.rand.org/pubs/reprints/2007/RAND_RP1247.pdf)

Mayer, Jane. "The Black Sites: A Rare Look Inside the CIA's Secret Interrogation Program." *The New Yorker* 13 August 2007.

[http://www.newyorker.com/reporting/2007/08/13/070813fa\\_fact\\_mayer](http://www.newyorker.com/reporting/2007/08/13/070813fa_fact_mayer)

### Books

Grey, Stephen. *Ghost Plan: The True Story of the CIA Torture Program*. New York: St. Martin's Press, 2006.

### Court Cases and Bills

Bill (S 1876) National Security with Justice Act of 2007

[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110\\_cong\\_bills&docid=f:s1876is.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:s1876is.txt.pdf)

*Hamdan v. Rumsfeld*. <http://www.law.cornell.edu/supct/html/05-184.ZS.html>

Jose Padilla. *Human Rights First*.

[http://www.humanrightsfirst.org/us\\_law/inthecourts/supreme\\_court\\_padilla.htm](http://www.humanrightsfirst.org/us_law/inthecourts/supreme_court_padilla.htm)

McCain Anti-Torture Amendment

[http://www.humanrightsfirst.org/us\\_law/etn/mccain/index.asp](http://www.humanrightsfirst.org/us_law/etn/mccain/index.asp)

Mohamed Arar. *The Arar Commission*. <http://www.commissionarar.ca/>

### Films

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