



Are Dick Cheney and Michael Hayden Afraid of Torture Prosecution?

Former Vice President Dick Cheney (right) and CIA Director Michael Hayden (left) have been out front in the media defending the torture methods used by the CIA in the past decade in the wake of the Senate Intelligence Committee's torture report, and the language of the federal statute on felony torture may help explain why. It's quite possible that Cheney, Hayden, and other Bush-era officials who ordered the torture techniques will face criminal convictions on felony torture charges if they do not generate enough political pressure to prevent a wave of indictments.



The federal felony torture statute imposes a sentence upon people who order torture — conspiracy to torture — equivalent to those who actually carry out torture. Felony torture and conspiracy charges under Title 18, Section 2340 of the U.S. Code carry sentences of up to 20 years in prison, and a life sentence for torture involving a death. CIA officials engaged in the torture/death of suspected Taliban militant [Gul Rahman](#) in 2002 at the CIA's prison at Bagram in Afghanistan; the man died of hypothermia after having his shoulders dislocated during days of being suspended by his arms and his kneecaps pulpified in beatings. While the Senate torture report focused upon only CIA prisons, at least [nine detainees died at the U.S. Army-managed Guantanamo Bay prison](#) alone, while other detainees died in the custody at [other U.S. Army prisons after severe beatings](#).

"I think that what needed to be done was done. I think we were justified in doing it. And I'd do it again in a minute," Cheney boldly [told](#) Fox News' Bret Baier November 10, adding that the CIA officials "did one hell of a job and they deserve our gratitude."

Pressed by Baier about some of the most brutal techniques used by the CIA, as described in the Senate report, Cheney claimed he had vetted his techniques with Justice Department lawyers:

Baier: Mr. Vice President, some of the tactics described in this report are, horrifying. Is there anything that U.S. officials — interrogators — are alleged to have done that you would consider torture?... At one point, this report describes interrogators pureeing food of one detainee and inserting it in his anus, something the agency called "rectal rehydration." Is that torture?

Cheney: I don't know anything about that specific instance. I can't speak to that.... That was not one of the authorized, or approved, techniques. There were 12 of them, as I recall.

But while Cheney deferred an answer on the rectal feeding torture technique, former CIA Director Michael Hayden vigorously defended it. Hayden [told](#) CNN's Jake Tapper November 11 that it "was done five times and each time for the health of the detainee, not part of the interrogation program, not to soften him up for any questioning." This flatly contradicted both the Senate report and basic medical knowledge. "I'm not a doctor and neither are you," Hayden told Tapper. "What I am told is that this is



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one of the ways that the body is rehydrated.”

While it is technically true that hydration *can* be accomplished this way, there was no medical reason to do this rectally. Rehydration is ordinarily done in any hospital in America with an intravenous tube, and feedings are done with regular food or — in extraordinary circumstances — with a feeding tube down the throat. In this case, the CIA elected to use the rectal method in order to anally rape the detainee using a pseudo-medical excuse.

Vice President Cheney did vigorously defend the practice of waterboarding, where a person is drowned by a CIA interrogator and revived in the seconds before permanent brain damage takes hold. “People have been very concerned about waterboarding, calling it torture,” Cheney [claimed](#). “It was not deemed torture by the lawyers.”

But there had already been a 100-year legal tradition of prosecuting people criminally under U.S. torture law by the time the Bush administration officially approved the waterboarding procedure in 2002. Major Edwin Glenn was [court-martialed](#) by the U.S. Army in 1902 during the Filipino insurrection for using waterboarding, and Japanese soldiers Chinsaku Yuki and Yukio Asano were both [convicted of war crimes after the Second World War and sentenced to long prison sentences for waterboarding Americans](#) during the war. San Jacinto County Sheriff James C. Parker and two others were [convicted](#) on September 14, 1983 of, according to the *New York Times*, “conspiring to violate the rights of prisoners by subjecting them to water torture.” The three men had entered guilty pleas and received 10-year prison sentences in order to avoid convictions on felony torture charges, which carried double the sentence. “We all live by rules and they all apply throughout the land, and that includes San Jacinto County,” Assistant U.S. Attorney Pat Mulloy said at the time. Interestingly, the *New York Times* reported that the water torture resulted in false confessions. “Two of the victims testified that they had falsely confessed to crimes because of the torture,” the *Times* reported.

The [Senate Intelligence Committee report](#) contains one paragraph that matches up with nearly every provision of the felony torture statute. That paragraph reads:

At least five CIA detainees were subjected to “rectal rehydration” or rectal feeding without documented medical necessity. The CIA placed detainees in ice water “baths.” The CIA led several detainees to believe they would never be allowed to leave CIA custody alive, suggesting to one detainee that he would only leave in a coffin-shaped box. One interrogator told another detainee that he would never go to court, because “we can never let the world know what I have done to you.” CIA officers also threatened at least three detainees with harm to their families — to include threats to harm the children of a detainee, threats to sexually abuse the mother of a detainee, and a threat to “cut [a detainee’s] mother’s throat.

The [federal felony torture statute](#) defines torture this way:

- (1) “torture” means an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control;
- (2) “severe mental pain or suffering” means the prolonged mental harm caused by or resulting from
 - (A) the intentional infliction or threatened infliction of severe physical pain or suffering;
 - (B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;



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(C) the threat of imminent death; or

(D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality”

“torture shall be fined under this title or imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life....

Conspiracy. — A person who conspires to commit an offense under this section shall be subject to the same penalties (other than the penalty of death) as the penalties prescribed for the offense, the commission of which was the object of the conspiracy.

Obviously, the Senate report documents not just brutal physical treatment of detainees (many of whom ended up being [innocent and suffering permanent injuries](#)) and anal rape, but also death threats and death threats against family members — acts also deemed felony torture under the law.

Thus, Cheney and others in the Bush administration open themselves to criminal prosecution when they say on Fox News, “The men and women of the CIA did exactly what we wanted to have them do in terms of taking on this program.” Cheney hopes to avoid his felony torture charge by making the following political argument: “I keep coming back to the basic, fundamental proposition, Bret. How nice do you want to be to the murderers of 3,000 Americans on 9/11?”

Of course, the vast majority of those detained ended up not being terrorists or even Taliban fighters, but rather [innocents caught up in the fog of war and sold by greedy bounty hunters to Americans for promises of a lifetime of wages](#). Seton Hall Law School Professor Mark Denbeaux [found](#) that only seven percent of detainees at the Guantanamo Bay prison had been captured on the battlefield by U.S. or coalition armed forces. Bounty hunters often just scooped up the first foreigners, ethnic minorities, or rival tribesman they found in order to cash in. For example several dozen Uyghurs — Chinese ethnic Turks who were [cleared even by Bush administration investigators as innocent](#) — were tortured and spent as much as a decade behind bars without either a trial or even criminal charges.

Photo of Dick Cheney and Michael Hayden: AP Images



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