

# report PUBLIC JUSTICE

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## **Outlawed** **A Documentary on American Treatment of Prisoners**

“Some years ago the United States was a leading voice in deploring regimes that ‘disappeared’ their opponents. It’s time to reestablish our credentials as a critic of this practice.” That is the mild understatement of William H. Taft IV, former U.S. ambassador to NATO, former deputy defense secretary (1984-89), and a legal adviser to the State department from 2001-05 (Taft, “Accounting for the Detainees,” *Washington Post*, 9/27/06).

What is implied by Taft’s statement is that the United States needs to reestablish its credentials as a country that can demonstrate that it does not “disappear” or torture its opponents. This is not the time or the place to evaluate the ongoing and strong criticism of America’s detention and torturing of captives taken in the “war” on terrorism. The issues are complicated; much evidence is held in secret by the government; the U.S. Supreme Court and many lower courts are currently handling related cases; many articles and books are exposing practices that are in question.

A recently released documentary DVD titled *Outlawed: Extraordinary Rendition, Torture and Disappearances in the “War on Terror”* will not answer all your questions, but it will alert you to realities of which you may not be aware. The 27-minute film tells the stories of Khaled El-Masri and Binyam Mohamed who survived rendition, secret detention, and torture at the hands of the U.S. government cooperating with other governments around the world. The al-Masri case was in the news November 28-29, 2006 because of his appearance before the U.S. Court of Appeals for the 4<sup>th</sup> Circuit in Richmond, Virginia to try to get his case considered in the United States.

If you want to know how and why America’s secret practices (which, by all the evidence, violate the laws of war and other international laws) are being kept secret, and why the Bush administration justifies this, then the book you’ll want to read is one by John Yoo, *The Powers of War and Peace: The Constitution and Foreign Affairs After 9/11*. Yoo worked in the Justice department when the 9/11 attacks took place and wrote many of the subsequent legal memos that justified current detention practices. Yoo argued (and still argues) that according to the U.S. Constitution, the President of the United States is not

bound by the law when acting in his capacity as Commander-in-Chief. While granting that certain limits on torture should obligate the president in his conduct of the “war” on terror, Yoo nonetheless argued in one of his memos that if anything limits the president’s flexibility to conduct the war, the president is free, if he judges it necessary, to order outright torture. “Any law limiting the president’s authority to order torture during wartime, the memo claimed, would ‘violate the Constitution’s sole vesting of the Commander-in-Chief authority in the President.” (David Cole, “What Bush Wants to Hear,” *The New York Review of Books*, 11/17/05).

If you want to read a critical evaluation of some of the suspect practices the U.S. is now using to detain and torture prisoners, then you might start with books by Joseph Margulies, *Guantanamo and the Abuse of Presidential Power*, and Stephen Grey’s *Ghost Plane: The True Story of the CIA Torture Program*. Margulies’ book is a scathing criticism of the legal confusion and arbitrary use of power exhibited by the president’s office. It is written by an attorney who filed the case of *Rasul and others v. George W. Bush*, by which Margulies was seeking clarity on the role of the U.S. courts in dealing with prisoners held in Guantanamo. Grey’s book reports his in-depth investigation of the extraordinary renditions and torture carried out by the CIA in cooperation with other countries since 9/11, including accounts of particular cases. Raymond Bonner has just published a review of the Grey book as well as the Canadian commission report (2006) on the Maher Arar kidnapping and torture case: Bonner, “The CIA’s Secret Torture,” *The New York Review of Books* (1/11/07).

The debates over whether the president, the military, and the CIA have been violating international law and the U.S. Constitution have been intensifying in the last two years. They will not end soon. Litigation and congressional investigations will continue long into the future. *Outlawed* is one place to begin (or continue) your education on these crucial matters. For information on how to obtain the DVD, call the producer and distributor, “Witness,” at 718-783-2000 or go to its web site: [www.witness.org](http://www.witness.org).

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