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Exclusive: Secret Memo—Send to Be Tortured

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An FBI agent warned superiors in a memo three years ago that U.S. officials who discussed plans to ship terror suspects to foreign nations that practice torture could be prosecuted for conspiring to violate U.S. law, according to a copy of the memo obtained by NEWSWEEK. The strongly worded memo, written by an FBI supervisor then assigned to Guantanamo, is the latest in a series of documents that have recently surfaced reflecting unease among some government lawyers and FBI agents over tactics being used in the war on terror. This memo appears to be the first that directly questions the legal premises of the Bush administration policy of "extraordinary rendition"—a secret program under which terror suspects are transferred to foreign countries that have been widely criticized for practicing torture.

In a memo forwarded to a senior FBI lawyer on Nov. 27, 2002, a supervisory special agent from the bureau's behavioral analysis unit offered a legal analysis of interrogation techniques that had been approved by Pentagon officials for use against a high-value Qaeda detainee. After objecting to techniques such as exploiting "phobias" like "the fear of dogs" or dripping water "to induce the misperception of drowning," the agent discussed a plan to send the detainee to Jordan, Egypt or an unspecified third country for interrogation. "In as much as the intent of this category is to utilize, outside the U.S., interrogation techniques which would violate [U.S. law] if committed in the U.S., it is a per se violation of the U.S. Torture Statute," the agent wrote. "Discussing any plan which includes this category could be seen as a con-spiracy to violate [the Torture Statute]" and "would inculcate" everyone involved.

A senior FBI official, who asked not to be identified because the issue is sensitive, said the memo was not an official bureau legal conclusion. Its author was at Gitmo to advise on interrogation techniques, not to render legal opinions, the official said. (The memo's author, a former New York City prosecutor, declined to comment to NEWSWEEK.) But another senior U.S. law-enforcement official familiar with the memo, who also asked not to be identified, said the memo reflects concerns among many agents and lawyers about "rendition." Intel officials estimate that more than 100 terror suspects have been rendered to foreign countries by the CIA under a classified directive signed by President George W. Bush after 9/11. A senior U.S. intelligence official, who asked not to be identified because the program is classified, said rendering suspects to their country of origin can aid intel because local interrogators speak the language better and understand the cultural sensitivities of the suspects. "No one is sent anywhere for the purpose of being tortured," the official said. A Pentagon spokesman said the Defense Department does not engage in renditions, but officials have confirmed that 65 detainees have been transferred from Guantanamo for further detention or prosecution by foreign governments, including 29 to Pakistan, seven to Russia, five to Morocco and four to Saudi Arabia—countries the State Department criticizes for practicing torture.