

## As Bush administration prepares to issue new guidelines for CIA interrogation

# New admissions of widespread prisoner abuse

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The Bush administration is finalizing new guidelines for Central Intelligence Agency (CIA) interrogation methods that will give broad latitude for torture techniques, according to a report last week in the *New York Times*.

The move comes amidst fresh evidence, including a lecture by a prominent former advisor to Secretary of State Condoleezza Rice, that the administration has sought, since 2002, to systematically implement a program of techniques that amount to torture. These techniques were used not only by the CIA in its secret prisons overseas, but also by the military in Guantánamo Bay, Afghanistan and Iraq.

The *Times* article of May 29 reports that the administration is drawing up “secret new rules governing interrogations” for the CIA. While the rules are expected to prohibit waterboarding—the most infamous of the torture techniques used by the US government and reported in the press—it will sanction “some methods that go beyond those allowed in the military by the Army Field Manual,” according to the *Times*.

These so-called “enhanced interrogation” methods have been strongly defended by the administration, and will likely include prolonged stress positions, exposure to harsh elements, and other examples of physical and mental torture.

The new directive follows the passage of the Military Commissions Act of 2006 in September of last year. That bill, passed with substantial bipartisan support, sanctioned military tribunals and the indefinite detention of prisoners. It also modified the War Crimes Act and gave the president the explicit authority to interpret the Geneva Conventions. This was done to shield government officials from prosecution and pave the way for a presidential directive that would authorize the CIA to carry out methods that amount to violations of Common Article III of the Geneva Conventions.

An indication of what the new directive will sanction was given by Philip Zelikow, the former advisor to Rice and now a professor at the University of Virginia. In a largely unreported April 26 lecture before a conference of the

Houston Journal of International Law, Zelikow acknowledged that, beginning in 2002, “the United States made carefully, deliberate choices to place extreme physical pressure on captives, with accompanying psychological effects.”

Zelikow made clear that the Bush administration employed shoddy legal reasoning to justify these new extreme measures. “The international legal strictures [including the Geneva Conventions] were interpreted so that they would not add any constraints beyond the chosen reading of American law,” he said. At the same time, “Brilliant lawyers worked hard on how they could then construe the limits of vague, untested laws. They were operating so close to the frontiers of our law that, within only a couple years, the Department of Justice eventually felt obliged to offer a second legal opinion, rewiring their original views of the subject,” Zelikow said. [The full text of the lecture is available here: <http://www.hjil.org/lecture/2007/lecture.pdf>]

Zelikow is here referring to the “torture memo” drawn up by Justice Department lawyers under the guidance of then White House Counsel and current Attorney General Alberto Gonzales. The memo interpreted the term “torture” so narrowly as to allow virtually any technique, while at the same time arguing that the President has the constitutional authority to order torture.

The public outcry following the revelations of torture at Abu Ghraib in Iraq in 2004 forced the administration to formally withdraw the original memo. Nevertheless, the abuse has continued, while the administration and Congress have sought to place the CIA program within what Zelikow called “a more durable legal framework.”

Last month, the Office of the Inspector General of the Department of Defense declassified a report that reviewed 13 separate Department of Defense investigations into different aspects of the prisoner abuse scandal. Like these earlier investigations, the summary investigation is a whitewash of the role of top administration and military

officials. It nevertheless gives some sense of the scope of the torture programs employed by the US government over the past five years. [The full report can be found here: <http://www.fas.org/irp/agency/dod/abuse.pdf>]

The report describes how methods that violate the Army Field Manual were incorporated into interrogation programs in Guantánamo Bay, and subsequently transferred to Iraq. These methods were developed by “reverse engineering,” a military program designed to train US soldiers in resisting torture methods they could encounter if captured by other governments.

In the fall of 2002, Joint Task Force-170, responsible for interrogation at Guantánamo Bay, requested from the US Southern Command approval of several torture techniques, including waterboarding, exposure to cold weather, and the threat of torture or death. In November 2002, then Secretary of Defense Donald Rumsfeld signed a memo authorizing a number of these requested techniques. While this memo was later officially revoked, the methods it sanctioned, including the use of prolonged stress positions and dogs in interrogations, continued to be employed and were extended to US operations in Afghanistan and Iraq.

The Inspector General report notes that the Army Field Manual defines “physical torture” to include “electric shock, forcing an individual to stand, sit, or kneel in abnormal positions for prolonged periods of time, food deprivation, and any form of beating.” It describes “mental torture” as “mock executions, abnormal sleep deprivation, and chemically induced psychosis.” In other words, JTF-170 was requesting, and received, authorization for the military to engage in what its own field manual defined as torture.

Many of the new torture techniques came from the CIA and from a military program known as SERE, for Survival, Evasion, Resistance and Escape training. According to the *New York Times* article quoted above, “Because the training was developed during the cold war, the techniques later adopted by the CIA and Special Operations officers in Iraq were based, at least in part, on how the Soviet Union and its allies were believed to treat prisoners. Such techniques included prolonged use of stress positions, exposure to heat and cold, sleep deprivation and even waterboarding.”

The Inspector General report states that SERE training “incorporates physical and psychological pressures, which act as counterresistance techniques, to replicate harsh conditions that the Service member might encounter if they are held by forces that do not abide by the Geneva Conventions.” Having itself repudiated the Geneva Conventions, it was only logical for the US government to employ these same methods.

The report relates that the methods used in Guantánamo were then transferred to Afghanistan and Iraq, though it does

not mention the fact that this was done under the direction of Rumsfeld and, ultimately, the White House.

In a backhanded way, the report states that the CIA (always included in such reports under the category “Other Government Agencies”) was involved in interrogations in Iraq. “Other Governmental Agencies (OGAs) operated with military units and used military facilities without interagency agreements that clearly defined roles and responsibilities,” the report stated. There is some evidence that the CIA was involved in the interrogation of prisoners at Abu Ghraib, as some of those involved have reported the presence of officials apparently unconnected to the military.

The Inspector General report confirms once again that the abuses at Abu Ghraib were not the product of a few bad apples, but arose out of a deliberate government policy to abuse prisoners in a response to a rising insurgency in Iraq during the fall of 2003. “Counterresistance interrogations techniques migrated to Iraq,” the report admits, “in part because operations personnel believed that traditional interrogation techniques were no longer effective for all detainees.”

The report has regenerated discussion within the political establishment over how to regulate CIA interrogations. Democrats on the Senate Intelligence Committee are seeking to incorporate in the next intelligence authorization bill a requirement for a legal review of CIA interrogation programs. At the same time, the Intelligence Science Board, set up to advise intelligence agencies on interrogation, has produced a report and is providing testimony arguing that the methods employed by the CIA are not effective.

The main concern of these sections of the political and intelligence establishment is that the Bush administration’s drive to authorize extreme techniques and rationalize torture has undermined US interests in Iraq and elsewhere, by increasing popular opposition without producing intelligence that actually aids the occupation.



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