

Report details secret Bush administration memos authorizing torture

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Since 2005, the Bush administration has produced at least three secret orders and memoranda justifying extreme interrogation methods banned under international law as forms of torture, according to a newspaper report published on Thursday.

The existence of the memos was revealed in a *New York Times* article (“Secret US Endorsement of Severe Interrogations,” by Scott Shane, David Johnston, and James Risen) published on Thursday. None of these opinions or memos have been released to the public.

The authors highlight the attempt by Justice Department lawyers, under the leadership of former Attorney General Alberto Gonzales, to conceal the illegal actions of the administration and allow its policy to continue despite an unfavorable Supreme Court ruling and a bill prohibiting “cruel, inhuman and degrading” treatment.

One memo, a Justice Department legal opinion, was approved by Gonzales shortly after taking the post of attorney general in February 2005. It was “an expansive endorsement of the harshest interrogation techniques ever used by the Central Intelligence Agency,” the *Times* reports, citing unnamed officials briefed on the memo.

The memo authorized the use in combination of several torture techniques. “The new opinion, the officials said, for the first time provided explicit authorization to barrage terror suspects with a combination of painful physical and psychological tactics, including head-slapping, simulated drowning and frigid temperatures.”

Another opinion was issued later that year declaring that none of the methods used by the CIA constituted “cruel, inhuman and degrading treatment,” and in 2006 Bush signed an executive order authorizing “enhanced interrogation techniques.”

According to the *Times*, the CIA is once again holding prisoners in secret overseas prisons. Some prisoners who had been held in these torture facilities were transferred to Guantánamo Bay in 2005.

These findings and memos have their roots in disputes that emerged within the political establishment surrounding the administration’s assertion of virtual dictatorial powers for the president. Memos arguing for these powers were produced immediately after the September 11, 2001 terrorist attacks by a group of officials that included Vice President Dick Cheney’s legal counsel David Addington, then-White House counsel Alberto Gonzales, and then-Deputy Assistant Attorney General John Yoo.

The opinions expressed an open contempt for international law

and constitutional constraints on executive power. They asserted, among other things, that the Geneva Conventions did not apply to the “war on terror,” that the president can detain anyone (including a US citizen) indefinitely and subject him or her to drumhead military commissions, and that the president can spy on the population without a warrant.

The most infamous of these memoranda, however, was the “torture memo,” written largely by Yoo. The memo gave an extremely narrow definition of torture, while at the same time declaring that the president has the power to order torture as commander-in-chief. According to this theory, any law that abridges this power is unconstitutional. The *Times* article makes clear that this original opinion is still the guiding doctrine of the administration.

In April 2004, the revelations and photographs of outrageous torture and sexual abuse at Abu Ghraib prison were published in the media, and in June of that year the “torture memo” was leaked. The resulting international public outrage generated concerns within sections of the American ruling elite, including within the Bush administration, that open arguments for torture were undermining the occupation of Iraq and the legitimacy of the American government.

A number of officials in the Justice Department started questioning certain aspects of the administration’s prior arguments. These included Jack Goldsmith, appointed in 2003 to head the Office of Legal Counsel, and James Comey, who became deputy attorney general in December 2003. While Goldsmith was a close associate of Yoo with ties to the right-wing Federalist Society, he began to question certain aspects of the theory of unconstrained executive power that had been developed over the previous two years.

The “torture memo” was officially withdrawn in June 2004, and was later replaced by one declaring that torture is “abhorrent.”

According to the *New York Times*, the Justice Department was “wrenched back into line” with the resignation later that year of Ashcroft, who was replaced by Gonzales in February 2005. In June 2005, Steven Bradbury replaced Goldsmith as head of the Office of Legal Counsel.

Bradbury, whose legal views were close to those of Addington and Yoo, was, according to the *Times*, selected only after he had proven himself. “White House officials, still smarting from Mr. Goldsmith’s rebuffs, chose to delay his nomination,” the *Times* reports. “Harriet E. Miers, the new White House counsel, ‘decided

to watch Bradbury for a month or two. He was sort of on trial,' one Justice Department official recalled."

Bradbury followed the memo written by Gonzales in early 2005 on CIA techniques with one of his own in late 2005. At the time, Senator John McCain was pushing for a bill that would nominally outlaw torture and "cruel, inhuman or degrading treatment." This language was eventually included in the December 2005 Defense Authorization bill, after McCain reached a compromise with the Bush administration.

As the *World Socialist Web Site* wrote at the time, and the *Times* article substantiates, the bill was "a ploy to cover up Washington's past defiance of international laws banning torture and provide a pseudo-legal cover for the continuation of the same methods." (See "McCain-Bush 'anti-torture' measure gives legal cover for continued abuse").

There were no explicit prohibitions of any torture methods in the bill. However, according to the *Times* article, "At least a few administration officials argued that no reasonable interpretation of 'cruel, inhuman or degrading' would permit the most extreme CIA methods, like waterboarding." Bradbury's task was to generate an unreasonable interpretation that would permit these methods.

The administration required such a legal finding for a number of reasons. First, it wanted to continue using these techniques and preserve its expansive interpretation of executive power. Second, top administration officials needed a legal cover for their blatantly illegal acts, fearing the possibility of prosecution.

The *Times* writes, "Mr. Bradbury was placed in a tough spot, said Mr. [Philip] Zelikow, the State Department counselor, who was working at the time to rein in interrogation policy. 'If Justice says some practices are in violation of the CID standard,' Mr. Zelikow said, referring to cruel, inhuman or degrading, 'then they are now saying that officials broke current law.'"

The *Times* presents this as primarily a concern originating from CIA officers. However, if the CIA officers are guilty of crimes, so too are those who ordered them to commit these crimes.

"In the end, Mr. Bradbury's opinion delivered what the White House wanted: a statement that the standard proposed by Mr. McCain's Detainee Treatment Act would not force any change in the CIA's practices, according to officials familiar with the memo," the *Times* reports.

The administration suffered a setback in June 2006, when the Supreme Court struck down the military commissions established after September 11 and ruled that all prisoners held by the US, including presumed Al Qaeda members held by the CIA, are protected by the Geneva Conventions' prohibition of torture and cruel treatment. This again raised the question of the administration's violation of international and domestic law.

According to the *Times*, "[I]n July, after a monthlong debate inside the administration, President Bush signed a new executive order authorizing the use of what the administration calls 'enhanced' interrogation techniques—the details remain secret—and officials say the CIA again is holding prisoners in 'black sites' overseas. The executive order was reviewed and approved by Mr. Bradbury and the Office of Legal Counsel."

The Supreme Court case also led to the passage of the Military

Commissions Act in October 2006, which gave congressional approval to the Bush administration's policy of torture, indefinite detention and drumhead tribunals, while shielding it from prosecution. It gave the president explicit authority to "interpret" the Geneva Conventions, which served to bolster the earlier executive order referred to by the *Times*.

On Thursday, administration officials issued statements declaring that the US "does not torture." These statements have no more credibility than those made repeatedly in the past.

The determination by the Bush administration to continue its policy of torture has nothing to do with a supposed "war on terror," as is presented by the *Times* and the media as a whole. The attack on democratic rights has its roots in the policy of the American ruling elite, which has provoked and will continue to provoke massive opposition around the world, including in the United States. The methods of torture are ultimately directed against anyone who comes into conflict with this policy.

Throughout the period covered in the *Times* article, the Democratic Party has been entirely complicit, facilitating the policy of torture and covering up its real significance from the American people. Democrats refused to filibuster Gonzales when he was nominated for attorney general, in spite of his known involvement in the production of the "torture memo." They also helped pass the Military Commissions Act.

This complicity is again on display with Bush's nomination of Michael Mukasey for attorney general to replace the outgoing Alberto Gonzales. Mukasey is a strong supporter of state power. In one of the most important cases before him as judge on the US District Court for the Southern District of New York, Mukasey ruled that Jose Padilla, a US citizen, could be held indefinitely by the military. Padilla was subsequently tortured during his three-and-a-half years of military confinement.

Leading Democrats have announced that they will not make any attempt to block the nomination of Mukasey. Senate Judiciary Committee Chairman Patrick Leahy said on Wednesday that he was dropping any suggestion that the confirmation would be blocked until the White House turned over documents relating to the firing of US attorneys and the Bush administration's warrantless wiretapping program.



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