More revelations from Bush torture memos

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The Bush administration memos released last Thursday by the US Justice Department demonstrate that Washington carried out a studied and systematic torture operation for years.

The documents, written by lawyers in the Office of Legal Counsel (OLC) to a Central Intelligence Agency (CIA) counsel, make clear that the CIA was carrying out torture prior to, and during the time the memos were written in 2002 and 2005.

They also show that Bush administration officials were well aware that the methods discussed could be construed as torture. They therefore sought to develop an *ex post facto* and pseudo-legal rationale for specific acts of torture, in defiance of US and international laws.

"Phases of the Interrogation Process"

A memo dated May 10, 2005, describes the "enhanced interrogation." It broadly corroborates findings of a recently leaked International Committee of the Red Cross (ICRC) report that outlined various violations of international law committed by the Bush administration in the "war on terror." (see, "Red Cross report details CIA war crimes")

The memo, quoting a document referred to as a *Background Paper*, describes the abduction of prisoners and their shipment to black site prisons:

Before being flown to the site of interrogation, a detainee is given a medical examination. He then is 'securely shackled and is deprived of sight and sound through the use of blindfolds, earmuffs, and hoods' during the flight... Upon arrival at the site, the detainee 'finds himself in complete control of Americans' and is subjected to 'precise quiet, and almost clinical' procedures... His head and face are shaved; his physical condition is documented through photographs taken while he is nude....

From there, "three interrogation techniques are typically used" to initiate the inmate to torture by

'demonstrating to the [detainee] that he has no control over basic human needs' and helping to make him 'perceive and value his personal welfare, comfort, and immediate needs more than the information he is protecting.' The three techniques used to establish this 'baseline' are nudity, sleep deprivation (with shackling and, at least at times, with use of a diaper), and dietary manipulation.

The memo then proceeds to describe what it refers to as "a prototypical interrogation." This begins with the threat of violence, an act specifically outlawed by US and international law.

"The interrogators remove the hood and explain that the detainee can improve his situation by cooperating and... that the interrogators 'will do what it takes to get important information.'" It continues:

As soon as the detainee does anything inconsistent with the interrogators' instructions, the interrogators use an insult slap or abdominal slap. They employ walling [slamming the prisoner into a hollow wall by a rope attached to his neck by a collar] if it becomes clear that the detainee is not cooperating...This sequence 'may continue for several more iterations as the interrogators continue to measure the [detainee's] resistance... The interrogators... then put the detainee into position for standing sleep deprivation, begin dietary manipulation... and keep the detainee nude (except for a diaper). The first interrogation session, which could have lasted from 30 minutes to several hours, would then be at an end.

The second session could begin in one hour, the memo explains. In this, the interrogators proceed more rapidly to beatings ("abdominal slaps" and "insult slaps") and walling.

After this, the interrogators then increase the pressure on the detainee by using a hose to douse the detainee with water for several minutes. They stop and start the dousing as they continue the interrogation. They then end the session by placing the detainee into the same circumstances as at the end of the first session; the detainee is in the standing position for sleep deprivation [hands chained to the ceiling above him], is nude (except for a diaper), and subjected to dietary manipulation. Once again, the session could have lasted from 30 minutes to several hours.

This phase is followed by further sessions in which beating, walling, and water dousing would be considerably intensified. The process, the memo concludes, "may last 30 days [unless] additional time is required."

The memos claim to set parameters for waterboarding, a long-time torture method by which agents pour water over the cloth-covered mouth of a supine individual, inducing suffocation and drowning. According to the memo, the method's use should be limited to cases where the CIA believes the suspect to be aware of an imminent terrorist attack and "other interrogation methods have failed" to break the suspect.

Yet since the CIA interrogators alone determined these criteria, the potential use of the method was unlimited.

The two memos written in 2005 leave no doubt that the practice of waterboarding was much more widespread than the Bush administration admitted, and that it continued through at least 2005.

A threadbare legal defense

The first three memos signed by OLC lawyers Jay Bybee and Steven G. Bradbury—one was written on August 1, 2002, and two are dated May 10, 2005—deal primarily with the potential legal consequences of violating Section 2340A of title 18 of the United States Code, which defines torture and outlaws it.

The fourth memo, written on May 30, 2005, addresses the potential bearing of international law on the CIA's methods—specifically Article 16 of the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment and Punishment (hereafter "UN Convention"), to which the US is a signatory, and the relationship of that law to the US Constitution.

Any objective analysis of Section 2340A would leave no doubt that the CIA's methods violated US statutes. The law reads, in part,

‘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... upon another person within his custody or physical control; ‘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... (C) the threat of imminent death.

The memos analyze, in nauseating detail, each particular form of torture, and conclude time and again that these methods do not inflict suffering “severe” enough to meet the US Code’s definition of torture.

More astounding still, the memos claim that since it was not the specific intention of the torturers to inflict pain and suffering, but to gather intelligence, no interrogator has violated the law. Using this rationale, ripping out teeth, nails, or dismembering a body would also fall outside the scope of the law—so long as these forms of torture were means to an end, rather than an end in and of themselves.

The pseudo-legal claims attempting to free torturers from the constraints of international law and the Constitution are equally dubious.

The central argument of the fourth memo is that since the UN Convention applies to territories under US jurisdiction, it cannot apply to the US prison black sites where torture took place, as these were in the territory of other sovereign states such as Afghanistan, Poland, Morocco and Thailand. Therefore, according to the Bush administration, the laws agreed to by the US in the UN Convention have no bearing.

This is a lie. The secret US military prisons were entirely under the control of the US. However, the local ruling elites, by virtue of allowing the US to torture on their territories, are a party to the crime and should also face investigation.

In a parallel argument, the memo claims that as the “war on terror” is not a typical war, it is not covered by the prohibitions against torture spelled out in the Geneva Conventions.

In a second major argument, the fourth memo cites a US Senate reservation to the UN Convention that stipulated that for the US, the Convention’s prohibition on “cruel, inhuman, or degrading treatment or punishment” would be defined by those actions prohibited by the 5th, 8th, and 14th amendments to the Constitution.

Unsurprisingly, Bradbury’s memo finds that none of these amendments prohibit any of the actions in question. In other words, neither international nor domestic law prohibiting torture applied to prisoners in “the war on terror.”

However, just to be safe, the memo notes that the CIA has “asked whether the interrogation techniques at issue would violate” the UN Convention if the sweeping claims made by the Justice Department failed to stand up to judicial scrutiny. Obligingly, the Justice Department attorney found, once again, that none of the specific instance of torture actually violate the UN Convention prohibiting torture.

Regarding the 5th Amendment, the Justice Department claimed that the methods deployed on terror suspects could not possibly “shock the conscience”—the traditional legal standard for determining violations of due process—as they were necessary to avert the potential of a terrorist attack.

Notwithstanding the fact that Washington has never provided a shred of credible evidence that its violations of law and human rights have prevented any terrorist attack, it should be noted that, in modern history, every regime that has ever carried out systematic torture—including Nazi Germany—has always claimed that it was necessary to do so for national security reasons.

The presence of medical personnel

The memos prove, beyond a shadow of a doubt, that CIA medical personnel were heavily involved in torture. This substantiates evidence from the ICRC report.

The ICRC noted “The role of the physician and any other health professional involved in the care of detainees is explicitly to protect them from such ill-treatment and there can be no exception of circumstances invoked to excuse this obligation.”

And further, “any interrogation process that requires a health professional to either pronounce on the subjects’ fitness to withstand such procedure, or which requires a health professional to monitor the actual procedure, must have inherent health risks. As such, the interrogation process is contrary to international law and the participation of health personnel in such a process is contrary to international standards of medical ethics.”

The second OLC torture memo notes, “Medical and psychological personnel are on-scene throughout (and, as detailed below, physically present or otherwise observing during the application of many techniques, including all techniques involving physical contact with detainees).”

The memos are replete with references to medical and psychological personnel. They leave no doubt that the primary purpose of these doctors, nurses, and healthcare professionals was not to provide medical assistance, but to gauge how much physical and mental duress the tortured could withstand in order to avoid death or total incapacitation.

The presence of the doctors at the torture black sites recalls nothing so much as the doctors and scientists at the Nazi concentration camps of WWII.

These CIA doctors and psychologists must be investigated, and their professional credentials should be stripped immediately by the governing professional associations, including the American Medical Association and the American Psychological Association.

The author recommends:

Torture memos reveal brutality of US imperialism
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