

Torture Endorsed, Torture Denied

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Global Research, October 08, 2007

The Jurist 8 October 2007

Theme: [Crimes against Humanity](#), [Law and Justice](#)

JURIST Contributing Editor [Marjorie Cohn](#) of Thomas Jefferson School of Law says that the Bush administration's repeated insistence that it has not endorsed the torture of prisoners rings hollow in light of newly-disclosed US Department of Justice memos supporting the harshest techniques the CIA has ever used...



The April 2004 publication of grotesque photographs of naked Iraqis piled on top of each other, forced to masturbate, and led around on leashes like dogs, sent shock waves around the world. George W. Bush declared, "I shared a deep disgust that those prisoners were treated the way they were treated." Yet less than a year later, his Justice Department issued a secret opinion endorsing the harshest techniques the CIA has ever used, according to a report in the New York Times. These include head slapping, frigid temperatures, and water boarding, in which the subject is made to feel he is drowning. Water boarding is widely considered a torture technique. Once again, Bush is compelled to issue a denial. "This government does not torture people," he insisted.

This was not the first time the Bush administration had officially endorsed torture, however. John Yoo, writing for the Justice Department's Office of Legal Counsel, penned an August 2002 memorandum that rewrote the legal definition of torture to require the equivalent of organ failure. This memo violated the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, a treaty the United States ratified, and therefore part of U.S. law under the Supremacy Clause of the Constitution.

In December 2002, former Secretary of Defense Donald Rumsfeld approved interrogation methods that included the use of dogs, hooding, stress positions, isolation for up to 30 days, 20-hour interrogations, deprivation of light and sound, and water boarding. U.S. Navy General Counsel Alberto Mora told William Haynes, the Pentagon's general counsel, that Rumsfeld's "authorized interrogation techniques could rise to the level of torture." As a result, Rumsfeld rescinded some methods but reserved the right to approve others, including water boarding, on a case-by-case basis.

When Bush maintained last week that his government doesn't torture prisoners, he stressed the necessity of interrogation to "protect the American people." Notwithstanding the myth perpetuated by shows like "24," however, torture doesn't work. Experts agree that people who are tortured will say anything to make the torture stop.

One of the first victims of the Bush administration's 2002 torture policy was Abu Zubaydah, whom they called "chief of operations" for al Qaeda and bin Laden's "number three man." He was repeatedly tortured at the secret CIA "black sites." They water boarded him, withheld his medication, threatened him with impending death, and bombarded him with continuous deafening noise and harsh lights.

But Zubaydah wasn't a top al Qaeda leader. Dan Coleman, one of the FBI's leading experts on al Qaeda, said of Zubaydah, "He knew very little about real operations, or strategy ... He was expendable, you know, the greeter . . . Joe Louis in the lobby of Caesar's Palace, shaking hands." Moreover, Zubaydah was schizophrenic; according to Coleman, "This guy is insane, certifiable split personality." Coleman's views were echoed at the top levels of the CIA and were communicated to Bush and Cheney. But Bush scolded CIA director George Tenet, saying, "I said [Zubaydah] was important. You're not going to let me lose face on this, are you?" Zubaydah's minor role in al Qaeda and his apparent insanity were kept secret.

In response to the torture, Zubaydah told his interrogators about myriad terrorist targets al Qaeda had in its sights: the Brooklyn Bridge, the Statue of Liberty, shopping malls, banks, supermarkets, water systems, nuclear plants, and apartment buildings. Al Qaeda was close to building a crude nuclear bomb, Zubaydah reported. None of this was corroborated but the Bush gang reacted to each report zealously.

Moreover, Khalid Sheikh Mohammed, considered the mastermind of the September 11 attacks, was tortured so severely – including by water boarding – that the information he provided is virtually worthless. A potentially rich source of intelligence was lost as a result of the torture.

Bush's insistence that his administration doesn't torture rings hollow. He lied about weapons of mass destruction and a Saddam-al Qaeda connection in Iraq. He lied when he assured us his officials would not wiretap without warrants. As evidence of secret memos detailing harsh interrogation policies continues to emerge, we can't believe Bush's denials about torture.

Democrats in Congress have demanded they be allowed to see the memos, but Bush said the interrogation methods have been "fully disclosed to appropriate members of Congress." Senator John D. Rockefeller IV was unmoved. "I'm tired of these games," he said. "They can't say that Congress has been fully briefed while refusing to turn over key documents used to justify the legality of the program."

It is incumbent upon the Senate Judiciary Committee to vigorously interrogate Michael Mukasey during his attorney general confirmation hearing. As AG, Mukasey would oversee the department that writes interrogation policy. Mukasey should know that the Convention Against Torture prohibits torture in all circumstances, even in times of war.

Torture is a war crime. Those who commit or order torture can be convicted under the U.S. War Crimes Statute. Techniques that don't rise to the level of torture but constitute cruel, inhuman or degrading treatment or punishment also violate U.S. law. Congress should provide for the appointment of a special independent counsel to fully investigate and prosecute all who are complicit in the torture of prisoners in U.S. custody.

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