

# Condoning Torture?

By Abra Pollock | October 8, 2007

Senate Democrats plan to closely question Michael Mukasey, the nominee for the next U.S. attorney general, about his views on torture following revelations that the Justice Department issued secret directives legally justifying harsh interrogation techniques used by the Central Intelligence Agency.

Sen. Patrick Leahy (D-VT), who chairs the Senate Judiciary Committee, said last Friday that the series of memoranda, issued in 2005 and disclosed in the *New York Times* last week, had “reinstated a secret regime by, in essence, reinterpreting the law in secret.”

Leahy and Rep. John Conyers Jr. (D-MI), chair of the House Judiciary Committee, have long been stymied in their efforts to obtain copies of the confidential opinions, which were drafted by the Justice Department’s Office of Legal Counsel under disgraced former attorney general Alberto Gonzales, a longtime George W. Bush loyalist.

Shortly after Gonzales took office in 2005, the Office of Legal Counsel found a loophole to protect CIA interrogation techniques from legal scrutiny. Officials decided privately that according to the restrictions outlined by the international Convention Against Torture, the CIA is barred from using torture, but it did not necessarily have to abide by the convention’s ban on “cruel, inhumane, or degrading” treatment.

The explicitly approved methods included what the *New York Times* described as a “barrage ... of painful physical and psychological tactics.”

Prominent human rights groups are also urging Congress to closely scrutinize Mukasey when confirmation hearings begin on October 17. A former federal judge, he is widely regarded as a consistent conservative with a reputation for independence.

“The Senate Judiciary Committee should seek a commitment from the next attorney general that the Justice Department will no longer rubber-stamp White House requests for legal cover for torture,” said Elisa Massimino, Washington director for Human Rights First.

“Congress should be clear: it will not confirm another attorney general who advises the president that it is okay to break the law,” said Joanne Mariner, a director for Human Rights Watch, which is also urging Congress to

hold hearings on the role of Gonzales and other administration officials in facilitating detainee abuses.

Previous attempts have been made in recent years by both the Justice Department and Congress to define what is on-the-books legal for interrogations.

The original “torture memo,” as it has become known, was drafted in August 2002 by John Yoo, who was then assistant attorney general. The memo notoriously advocated the possible legality of torture and argued that “enemy combatants” could be denied protection under the Geneva Conventions.

But when Yoo left the Justice Department in 2003, the new head of the department’s Office of Legal Counsel, Jack Goldsmith, did not agree with Yoo’s conclusions. The policy was formally withdrawn in 2004, and a new legal opinion with an overtly anti-torture tone was then posted on the department’s website.

In 2005, Arizona Republican Sen. John McCain introduced an amendment to the 2006 Defense Department Appropriations Bill prohibiting “cruel, inhuman, or degrading treatment of detainees.” But just before the bill passed, the Justice Department issued another legal opinion stating that techniques used by the CIA did not breach these standards.

Even while detaining suspected terrorists at “black sites” in Afghanistan, Thailand, and Eastern Europe, CIA officers questioned whether techniques being used were legal. As their concerns filtered back to the CIA legal counsel, the Bush administration turned to the Justice Department for the approval it needed to give CIA officers the go ahead.

These techniques—sometimes used in combination—included holding prisoners for hours in freezing cells while they were naked, slapping their heads, confining them in stress positions for hours, depriving them of

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sleep, and “waterboarding,” a technique that simulates for prisoners the experience of drowning.

Still, Bush defended the techniques at a press conference last Friday, insisting: “This government does not torture people. We stick to U.S. law and our international obligations.”

“The American people expect us to find out information, this actionable intelligence, so we can help protect them. That’s our job,” he added. In July, Bush signed a new executive order permitting “enhanced” interrogation techniques; exactly what they are remains secret.

Bush also said the techniques had been “fully disclosed to appropriate members of the United States Congress.”

However, some key legislators say they were left out of the loop and have demanded copies of all legal opinions issued by the Justice Department relating to interrogation techniques since 2004.

“I find it unfathomable that the committee tasked with oversight of the CIA’s detention and interrogation program would be provided more information by the *New York Times* than by the Department of Justice,” Sen. John D. Rockefeller IV (D-WV), who chairs the Senate Intelligence Committee, wrote in a letter to acting attorney general Peter Keisler.

According to the *New York Times*, the CIA is also again holding suspects in so-called black sites, secret overseas prisons where detainees are kept incommunicado, with little or no public oversight.

“The administration often asserts that the rules for interrogation are somehow unclear,” said Massimino of

Human Rights First. The *Times*’ “revelations about more secret Department of Justice memos show once again that it is not the rules that are unclear, but rather the administration’s commitment to upholding them.”

“This is the fundamental problem that you get when your approach is, ‘How do we circumvent the law?’ instead of, ‘How do we interpret the law?’” said Jumana Musa, advocacy director for Domestic Human Rights and International Justice at Amnesty International’s USA chapter.

Many CIA professionals now believe that these types of extreme techniques are unnecessary for interrogation. Instead, they feel that measured and consistent interrogations, undertaken by well-informed officials, are often equally effective.

With a new attorney general waiting in the wings, rights groups are looking to the revelations as a moment of opportunity to change the course of the administration’s track record.

“After experiencing nearly three years of a broken Justice Department under an attorney general with one of the worst civil liberties legacies in our nation’s history, it is long overdue for the Bush administration to come clean on its record on torture. This despicable episode highlights the need for renewed scrutiny and accountability,” said American Civil Liberties Union Executive Director Anthony D. Romero.

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*Abra Pollock writes for the Inter Press Service.*

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