

## Extra Feature Story

### **Memo Reveals Bush Administration Legal Theory on Interrogation**

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**A recently released 2003 Department of Justice memo has rekindled debate over interrogation tactics with its assertion that the president's authority in times of war overrides laws against torture and cruel treatment.**

Congress and the Bush administration have had major disputes over the definition of torture and which interrogation methods are effective -- yet humane enough -- to be used on terror suspects.

#### **The controversial memo**

Federal laws prohibit assault, maiming and other physical abuse, and there are laws and treaties against torture.

The 2003 memo argues that physically aggressive tactics should be legal in wartime and that the international treaties should not apply to U.S. interrogators in foreign countries because of a presidential power to trump the laws.

John Yoo, a former Department of Justice lawyer and professor at the University of California -- Berkeley School of Law, wrote the memo in the context of what to do with captured members of al-Qaida, the terrorist network that claimed responsibility for the Sept. 11 attacks on New York and Washington.

"If a government defendant were to harm an enemy combatant during an interrogation...he would be doing so in order to prevent further attacks on the United States by the al Qaeda terrorist network," Yoo wrote, according to the Washington Post.

Yoo goes on to argue that the "executive branch's constitutional authority to protect the nation from attack" should be enough to justify such actions.

#### **Interrogation at Guantanamo and Abu Ghraib**

The memo served as a basis for some of the most controversial tactics used by U.S. interrogators, including those at the Guantanamo Bay detention camp and Abu Ghraib prison.

Under the legal justifications set up by the Bush administration, interrogators have used extreme temperatures, head-slapping and a simulated drowning technique called "waterboarding" against terror suspects.

Inhumane treatment of prisoners at the Abu Ghraib prison in Iraq was revealed to the world through photos of U.S. military personnel forcing prisoners to strip, wear hoods and leashes, threatening them with dogs and chaining them in stressful positions.

Martin S. Lederman, a former lawyer with the Office of Legal Counsel and a professor at Georgetown University, told the Washington Post that the Yoo memo created a sense of lawlessness in Iraq. "It created a world in which everyone on the ground believed the laws did not apply," Lederman said.

### **Fifth and Eighth Amendments**

Yoo concluded in his memo that the "Fifth and Eighth Amendments, as interpreted by the Supreme Court, do not extend to alien enemy combatants held abroad."

The Fifth Amendment guarantees the right of due process of law. The Eighth Amendment prohibits cruel and unusual punishment.

The memo argues that the president's constitutional duty is to protect the nation, which overrides any U.S. or international laws preventing aggressive tactics.

The memo was sent to the Pentagon as a guide before the invasion of Iraq. Nine months later, the Department of Defense was told to stop following the memo.

### **What qualifies as torture**

The memo reignited debate over what qualifies as torture. In the memo, "the bar was very, very high for what would be considered torture...essentially something approaching the level of almost imminent death or extreme pain and suffering," New York Times reporter Eric Lichtblau told the NewsHour.

The United Nations Convention Against Torture, which the United States signed in 1988, defines torture as:

"Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed...or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person."

### **Waterboarding controversy**

One technique at the center of the torture debate is waterboarding, a method that is approved for use by the CIA.

Waterboarding is a way of simulating drowning that involves binding the suspect to an inclined board, covering his or her head with cloth or cellophane, and pouring water repeatedly over the head. In some cases water will enter the nose and mouth. Psychologically, the person's brain registers that it is drowning, and a gag reflex reacts as choking.

The technique was brought to public attention and became very controversial in 2007. Many members of Congress wanted to see the CIA limited to the same methods used by military questioners, which do not include waterboarding or sensory deprivation.

President Bush vetoed a bill banning waterboarding in March saying it "would take away one of the most valuable tools in the war on terror."

In response, Senator Edward Kennedy, D-Mass., said in a statement, "Unless Congress overrides the veto, it will go down in history as a flagrant insult to the rule of law and a serious stain on the good name of America in the eyes of the world."

-- Compiled by Talea Miller and Quinn Bowman for NewsHour Extra

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