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## **A few questions about torture**

Congress should get answers from the policy-makers

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The "torture memos," as they have come to be known, reveal much about the Bush administration. They point to a level of secrecy matching, or even surpassing, any sought or achieved by the executive branch in prior eras, even during wartime.

They point to a lack of concern for accountability that veers far from previously acknowledged limits on unchecked executive power. They deliberately disregard, even nullify, the balance-of-powers doctrine that has defined the United States since its inception.

Essentially, much of what has been put in place by the Bush administration since Sept. 11, 2001, has relied on the fear of terror as a means to establish a new doctrine of state; it is a doctrine that, before the attacks on the World Trade Center and the Pentagon, had lingered in the outer corridors of power.

Much of the Patriot Act, for instance, had already been drafted before Sept. 11; and the proposal for the Department of Homeland Security was also in draft form at that time. So, too, were plans for a war in Iraq.

The torture memos developed inside the White House by a task force of lawyers headed by presidential confidant and White House legal counsel Alberto Gonzales, whose Senate confirmation vote on his nomination for attorney general was delayed on Wednesday, are important, and not just as evidence of a policy that disregards human rights and reciprocity in the treatment of soldiers, civilians and prisoners.

The torture memos are also, perhaps primarily, important because they reveal the most basic attitudes with which the administration greets the Congress, the courts, the American public and the world at large.

One of the chief figures in turning legal questions on torture into policy in the matter of the treatment of prisoners has been Secretary of Defense Donald Rumsfeld, who oversaw the approval of harsh interrogation methods in 2002 and who became personally responsible for approving or disapproving the use of coercive interrogation and "Category 3" torture after the spring of 2003.

It seems only apt and fitting, then, that he, as well as Gonzales, be brought before Congress and asked questions about this policy and his role in it.

Based on a careful reading of the hundreds of pages of torture memos that poured out of the White House, the thousands of pages of military reports, investigations and original documents that have emerged from Abu Ghraib prison in Iraq, as well as the flood of recent FBI e-mails and prisoner complaints that have emerged from the Guantanamo Bay prison in Cuba, we might -- as a lawyer and an historian who have been working in this area for the last two years -- suggest the following series of questions:

-- Does torture work? Given the detailed attention shown in the White House memos to describing three levels of interrogation (from questioning to physical abuse) to be applied in the

war on terror, is there an underlying assumption that torture in fact really works? That it is more effective than ordinary means of questioning prisoners? And, if so, what does it work to produce?

Have you considered whether it is a means of venting frustration or a means of obtaining reliable information? Is there clinical, verifiable evidence that torture produces better information more quickly and more accurately than other methods of interrogation?

Did your discussions of torture involve consulting experts in Israel, Britain, Egypt and elsewhere? If so, what did those sources have to say in recommending torture? Or was the administration convinced of the efficacy of torture before it began drawing up its legal documents?

-- Assuming, for a moment, that torture is effective, what is the difference between this conflict and these detainees, and previous conflicts and prisoners?

After all, the rationale that torture is necessary to save lives, if true, applies to any war. Surely the torture of German and Japanese soldiers -- particularly officers -- in World War II could have yielded information that might have "saved lives"?

Wouldn't this then apply no less to U.S. soldiers and officers -- either in or, as in the case of Special Forces troops, out of uniform -- captured by the enemy? Indeed, why would it not apply to any situation in which lives are in the balance: cigarette manufacturers, polluters, ordinary criminals? Wouldn't torturing them for information "save lives"?

-- Why was one of the first tasks of your administration finding a place -- Guantanamo Bay -- that was meant to be beyond the reach of the courts? Do you fear review by the courts? Why do you dismiss the role of the courts and ordinary law enforcement in eliciting information from prisoners in the war on terror?

Isn't it possible that the art of interrogation, practiced by law enforcement officers and professional lawyers, might in fact elicit more important and more accurate information in assessing the motives, networks and plans of terrorists than, say, dogs at Guantanamo Bay or water boarding in some CIA holding area? What exactly was it you felt it was so important to keep secret from the courts?

-- In the war on terror, do you see the Department of Justice as essentially an adjunct of the Department of Defense? Is there an expectation that what the Pentagon deems necessary in the war on terror and the war in Iraq will simply be justified after the fact by the Justice Department?

What is your response to observers who have noted that the lawyers in the White House's Office of Legal Counsel acted more like corporate lawyers than protectors of the U.S. Constitution; that they followed the corporate model of providing arguments and justifications for their superiors -- in this case, justifying secrecy, torture and the disregard of the Geneva Conventions -- rather than approaching them objectively and independently as matters of legal inquiry?

-- Do you think terrorists and alleged terrorists deserve to be tortured as a form of punishment? In a Nov. 27, 2002, memo on acceptable interrogation methods, you personally handwrote the following comment: "I stand for 8-10 hours a day. Why is standing (as a counter-resistance technique) limited to 4 hours?"

Is there a sense that the prisoners in Guantanamo, though not yet tried, let alone convicted, deserve the punitive treatment they receive, including acts that may be outlawed internationally and in domestic law? Do you consider them, by virtue of their potential association with terrorists, to deserve fewer rights than others?

-- Can you address the timing of the development of a Bush administration torture policy and your decision to step away so quickly from the Geneva Conventions to which we are signatories?

Why, as early as autumn 2001, before you even had prisoners who might have been available for torture, was the administration so willing to consider torture as a practice?

Had such a policy been privately discussed prior to Sept. 11, 2001, and already deemed necessary to the security of the United States, and if so, what was the rationale for considering such a policy? What was your basis for concluding that traditional methods consistent with international law were a failure?

-- Why have you not consulted Congress on the question of torture? What role, if any, do you think Congress should play in overseeing either the treatment of military prisoners or the military commissions you are planning to set up to try them?

In the August 2002 memo from the Office of Legal Counsel, Congress, it was claimed, did not have the power to prohibit torture if the president, acting as commander-in-chief, deemed it necessary. Do you still agree with this, as Gonzales seems to, given his recent Senate testimony? Do you really think that, in times of war, the president has the power to do whatever he wants?

-- Why did the complaints from detainees like David Hicks and the Tipton Three, NGOs, the International Red Cross, military whistle-blowers and other governments regarding the mistreatment of detainees fall on deaf ears for so long?

The recently released FBI memoranda and the recently unsealed court filings by Guantanamo detainees establish the existence of torture, abuse and mistreatment beyond any doubt. Why did Pentagon investigations (of which there have now been so many) not uncover this abuse, and why didn't the investigators pay any attention to the claims made by knowledgeable outside parties?

-- If Gonzales were not involved in confirmation hearings, would the government's position on torture have been revised, as it was just before he testified? Who or what precipitated the administration's decision to suddenly change its definition of torture? How long had such a change been in the works? Who was responsible for that change, and who was involved in crafting the new definition(s)?

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