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Gonzales OK could be seen as OK for torture rules

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After a year of near-constant revelations and allegations, the controversy over the use of torture in the war on terror is reaching its crucial moment in the Senate debate over whether to confirm Alberto Gonzales as attorney general. If Gonzales is confirmed, which appears likely, the Bush administration is likely to claim that Congress has given a firm mandate for its interrogation policies, just as President Bush said his re-election victory in November was a new mandate for his policies on Iraq.

"People who wanted a public discussion of this issue of interrogation methods have had it, for almost a year now," said John Yoo, a UC Berkeley law professor who played a key role in helping craft the administration's policies on torture when he was a Justice Department official from 2001 to 2003.

"There has been debate, press leaks, hearings. Sen. (John) Kerry could have attacked President Bush on torture during the election campaign, but in fact, he tried to outflank the president on the right on terrorism. Congress could have expanded the statute on terrorism to tighten interrogation rules, but it hasn't. The election and the confirmation of Gonzales are a sign of general support of the administration's anti-terrorism policies, which include interrogation and the Patriot Act."

Many human rights advocates, however, say the confirmation would encourage further abuse by U.S. forces.

"It would send the wrong signal, it would say that Abu Ghraib-style abuses are to be winked at," said Avidan Cover, a lawyer for Human Rights First, a New York legal group, referring to the Iraqi prison that sparked worldwide outrage when abuses there were revealed last May.

The debate hinges on three questions: When does interrogation cross the line into torture? How much pain and suffering is acceptable? And are the international treaties that bar harsh tactics not applicable to U.S. forces abroad? Although the subject of torture may seem simple, the public debate over Gonzales has been obscured by a thick tangle of legal briefs, international treaties and Bush administration secrecy. The exact interrogation methods used by U.S. forces abroad -- and especially the CIA, which is reputed to use the harshest tactics -- are unclear. Administration officials have refused to say exactly what methods are being used, and in his Senate testimony in recent weeks, Gonzales repeatedly declined to answer senators' questions about these methods.

Amid the silence and confusion, the issue has mostly been played out in the media. A string of Abu Ghraib exposes by investigative reporter Seymour Hersh has prompted a belated flurry of investigations and prosecutions of low-level U.S. military prison guards.

A similar controversy is now brewing for Michael Chertoff, the nominee for homeland security secretary. On Tuesday, White House officials confirmed a recent New York Times report that Chertoff, as a Justice Department official, had advised the CIA on how far its interrogators could go without violating the federal anti-torture statute.

Tom Malinowski, advocacy director of Human Rights Watch in Washington, notes that the administration responded to the scandals by issuing new interrogation rules in December that are much more restrictive than previous standards espoused by Gonzales and the Pentagon. But these new standards apply only to the U.S. military, not the CIA, he adds.

"The CIA is still a black hole, and we don't know exactly what standards it is using," said Malinowski. However, he noted that several media reports --

not denied by the administration -- have indicated the CIA is using the following tactics, many of which were used in Abu Ghraib:

- Forced nudity and sexual situations (intended to violate Muslims' moral codes).
- Use of unmuzzled dogs to threaten prisoners.
- Exposure to extremes of hot and cold.
- Sleep deprivation (keeping prisoners awake for many days at a time).
- Use of stress positions (binding in contorted or painful stances for long periods, or forced standing in one place).
- Water-boarding (tying the prisoner to a board and either dunking him in water or suffocating him with a soaking wet cloth, repeatedly to the point of near-drowning).

"These practices are designed to seem innocuous, to not leave physical scars on the prisoner, even though in fact they induce tremendous amounts of pain," said Malinowski. "They have been adopted from notorious dictatorships elsewhere."

The key document in the case against Gonzales is a memo he wrote Bush on Jan. 25, 2002, advising that the Geneva Conventions were inapplicable to captured members of al Qaeda or other suspected terrorists detained abroad.

Gonzales' legal finding reversed long-standing U.S. policy and military code, and it came to govern U.S. military interrogations in the ensuing two years -- the same period as abuses at Abu Ghraib and by U.S. forces in Afghanistan and Guantanamo Bay, Cuba. A Pentagon-appointed committee headed by former Defense Secretary James Schlesinger blamed Gonzales' finding for helping to create a permissive atmosphere that led to these abuses.

In the Senate hearings, lawmakers grilled Gonzales on whether it is legally permissible for U.S. personnel to engage in "cruel, inhuman or degrading treatment" of noncitizens detained outside of the United States. Gonzales replied that "aliens interrogated by the United States outside the United States enjoy no substantive rights" under the U.S. Constitution or the Convention Against Torture, a treaty ratified by the Senate in 1994 that bans all interrogation methods that cause severe pain or discomfort. In a written response to California Sen. Dianne Feinstein, who requested further clarification, Gonzales said, "there is no legal obligation under the Convention Against Torture on cruel, inhuman or degrading treatment with respect to aliens overseas."

However, some legal scholars accuse Gonzales of distorting the convention.

Abraham Sofaer, a senior fellow at the Hoover Institution at Stanford University who was the State Department's chief legal adviser under the Reagan and George H.W. Bush administrations, said Gonzales' assertion that international treaties do not apply to interrogations carried out by U.S. forces outside U.S. territory is wrong.

The administration's position "is completely inconsistent with the spirit, the legislative history, and in some respects with the language" of the convention, said Sofaer, who was the Bush administration's point man when the convention was presented to the Senate for ratification in 1990. In the hearings, Gonzales was also asked whether he agreed with a 2002 memo he commissioned from the Justice Department's Office of Legal Counsel -- where Yoo was a lawyer

-- that concluded that all harsh tactics were acceptable up to the point of "intentionally causing permanent damage to vital organs or permanent emotional trauma."

Gonzales answered: "I don't recall today whether or not I was in agreement with all of the analysis, but I don't have a disagreement with the conclusions then reached by the department."

In his written responses submitted after testifying, Gonzales still could not recall his prior views on the 2002 memo and refused to disclose any documents related to it.