

The following text may be printed, copy/pasted, or downloaded and emailed.

Justice Dept. memo redefines acts of torture

R. Jeffrey Smith and Dan Eggen
Washington Post
December 31, 2004

WASHINGTON — The Justice Department late yesterday published a revised and expansive definition of acts that constitute torture under domestic and international law, overtly repudiating one of the most-criticized policy memorandums of President Bush's first term.

In a statement published on the department's Web site, the head of its Office of Legal Counsel declared that "torture is abhorrent both to American law and values and international norms" and went on to reject a previous statement that only "organ failure, impairment of bodily function, or even death" constitute torture punishable by law.

That earlier definition of torture figured prominently in complaints by Democrats and human-rights groups about White House counsel Alberto Gonzales, who oversaw its creation and is Bush's nominee to become attorney general. The new memo's public release came one week before the start of Senate Judiciary Committee hearings on Gonzales's nomination.

Acting Assistant Attorney General Daniel Levin said in the new memo that torture may consist of acts short of provoking excruciating and agonizing pain and thus may include physical suffering or lasting mental anguish. His opinion is meant, according to its language, to undermine any notion that those who conduct harmful interrogations may be exempt from prosecution.

This second effort by the Bush administration to parse the legal meaning of the word "torture" was provoked by the damaging political fallout from the disclosure last summer of the first memo, drafted in August 2002 and criticized by human-rights lawyers and experts.

Many critics charged that the first memo, which they said laid out a very narrow view of what behavior might constitute torture and was crafted to help interrogators at the CIA evade prosecution, created the context for a record of persistent ill treatment of detainees at prisons in Iraq, Afghanistan, Guantánamo Bay and undisclosed locations.

"Clearly the release of this now is backfilling for Gonzales' confirmation hearing," said Michael Greenberger, a senior Justice Department official in the Clinton administration who now heads the Center for Health and Homeland Security at the University of Maryland.

One of the most controversial provisions of the earlier memorandum, signed by Levin's predecessor, Jay Bybee, was an assertion that the president's executive powers were sufficient to permit tolerance of torturous acts in extraordinary circumstances. The International Committee of the Red Cross had declared in response that the prohibition on torture, embodied in a global convention signed by the United States, had no exceptions.

But advocates of strict adherence to the convention previously lost interagency battles to hard-liners in the Defense Department, the Justice Department and the White House. The new memo pointedly sidesteps this issue, stating that the "consideration of the bounds of any such authority would be inconsistent with the president's unequivocal directive that United States personnel not engage in torture."

The memo, which states that it "supersedes the August 2002 memorandum in its entirety," also drops an attempt in the earlier version to rule that acts not specifically intended to cause severe pain and suffering might be legal.

