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NYU Publishes Bush Administration Memos Justifying Torture

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A myriad of so-called "torture memos" providing legal justification for the brutal military interrogation of terror suspects, starkly demonstrated at Iraq's Abu Ghraib prison, has been published this week in four volumes by the Center on Law and Security at New York University School of Law.

In her introduction to "Torture: Volumes I-IV," Karen J. Greenberg, the center's executive director, comes to a troubling conclusion about policy developed by White House lawyers as well as attorneys in the Defense and Justice departments:

The administration asked for — and was granted — the right to interrogate prisoners with techniques possibly outlawed by the Geneva Convention and by the American military and civil law and then justified them on the grounds that in these specific cases, the legal restrictions did not apply.

The assent to coercive interrogation techniques, defined under international law as torture, constitutes a landmark turn in American legal and political history.

Further laws that have been "likely" violated by White House policy, Ms. Greenberg contends, include those cited in an appendix to Volume I, including:

- The U.S. Torture Statute, 18 U.S.C. §2340, which establishes torture as a federal crime;
- The United Nations Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, ratified in 1994 by the United States;
- The International Covenant on Civil and Political Rights, a U.N. action ratified by the United States in 1992.

The timeline of the four volumes runs from Oct. 7, 2001, with a presidential announcement of military strikes on Al Qaeda training camps in Afghanistan, to March 19, 2003, when President George W. Bush launched the invasion of Iraq.

"From the beginning," Ms. Greenberg said in an interview, military and executive branch officials "anticipate they'll have to defend themselves legally. From day one, they envision criminal proceedings. They're trying to make sure they're not tried for war crimes."

Referring to the Abu Ghraib prison scandal that erupted earlier this year and reportedly similar conduct at Guantánamo Bay in Cuba, she added, "The idea that these were random acts of abuse doesn't go with the record."

In response to a flood of inquiries from lawyers, human rights activists and journalists, Ms. Greenberg enlisted help in gathering that record from New York attorney Joshua L. Dratel, counsel to an Australian national in custody at Guantánamo.

Mr. Dratel said the volumes tell an "illuminating tale" of Washington attorneys acting as facilitators for an executive branch objective.

"They didn't consider where their loyalties lay," said Mr. Dratel. "They didn't ask, 'Who is my master — my immediate superior or the Constitution?' They just marched slavishly forward."

One who did not always march so was Secretary of State Colin L. Powell, whose memo warning that extreme interrogation methods would "undermine the protections of the law of war for our troops" is included. Mr. Powell also warned of "negative international reaction" that would make "military cooperation more difficult to sustain." Additional protests were written by William H. Taft, legal advisor to Mr. Powell, and Guantánamo Bay Staff Judge Advocate Diane E. Beaver.

'Request for Approval'

But the bulk of writings — including those by Attorney General John Ashcroft; Judge Jay S. Bybee, appointed this year to the U.S. Court of Appeals for the Ninth Circuit; John C. Yoo, former deputy assistant under Mr. Ashcroft and now a professor at Boalt Hall School of Law at the University of California, Berkeley; William J. Haynes II, general counsel to the Department of Justice; and White House Counsel Alberto R. Gonzales — comport with a formerly secret memo of October 2002 on the subject "Request for Approval of Counter-Resistance Strategies."

In that memo, a Defense Department officer named Jerald Phifer, assigned to Joint Task Force 170 at Guantánamo Bay, wrote, "During the initial category of interrogation the detainee should be provided a chair and the environment should be generally comfortable. . . . The use of rewards like cookies or cigarettes may be helpful."

But if the detainee "is determined by the interrogator to be uncooperative," Mr. Phifer advocated "techniques" such as using the detainees' "individual phobias . . . to induce stress," such as the fear of dogs, the removal of clothing and the use of a wet towel and dripping water "to induce the misperception of suffocation."

In publishing the memos, Ms. Greenberg and Mr. Dratel mean to begin debate in the legal community over current military and White House policy. Beyond that, they express concern with the media and general public.

"The use of coercive interrogation techniques was downplayed, not only by the military, but by the American press," Ms. Greenberg wrote in her introduction. "The American public insisted in the early stages . . . that the practice could not possibly be systematic, reasoned, or intended. The general consensus was that Americans could not possibly be involved in such tactics."