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Torture Becomes a Matter of Definition

Bush nominees refuse to say what's prohibited. U.S. dilemma is that it wants to disavow abuse but retain leeway in pressuring suspects.

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WASHINGTON — The question Democratic senators put to Condoleezza Rice last week seemed easy enough to answer: Did the secretary of State nominee consider interrogation practices such as "water-boarding," in which a prisoner is made to believe he will drown, to be torture?

She declined to answer.

"I'm not going to speak to any specific interrogation techniques," Rice said, adding that it was up to the Justice Department to define torture.

About the same time, senators on another committee were asking nearly identical questions and getting nearly identical answers from Alberto R. Gonzales, President Bush's choice for attorney general.

The back-to-back confirmation flare-ups spotlight a problem the Bush administration faces in its policies for detaining and interrogating terrorism suspects.

In the months since the Abu Ghraib prison scandal, the administration has insisted that America does not and will not use torture. At the same time, the government has tried to preserve maximum leeway in the interrogation of terrorism suspects by not drawing a clear line between where rough treatment ends and torture begins.

"What the administration is saying is we're not going to torture people," said John C. Yoo, a UC Berkeley law professor who, as a deputy assistant attorney general during Bush's first term, worked on torture policies.

"What the administration does not want to say, and I think for good reasons too, is what methods the United States might or might not use short of torture."

Opponents say it is a moral, political and tactical mistake for the United States to blur that line. They charge that the administration, while condemning outright torture, deliberately has sought loopholes in laws and treaties that would allow U.S. intelligence officers to use extreme interrogation methods on terrorism suspects held abroad.

To protest the administration's Iraq and anti-terrorism policies — and what they charged was the evasiveness of Rice and Gonzales under questioning — Democratic senators have delayed both confirmation votes until this week.

As a result, the full Senate likely will debate the definition of torture in a session that could embarrass the administration and provide fodder for its international critics.

Ambiguity on prisoner treatment is causing discomfort among some of the administration's allies. Current and former military officers in particular fear it will result in the mistreatment of captured American soldiers.

"We've dramatically undermined the war effort by getting on the slippery slope in terms of playing cute with the law, because it's come back to bite us," Sen. Lindsey Graham (R-S.C.), a former military judge, told Gonzales during a hearing earlier this month.

Graham said he was an "ardent" Iraq war supporter and agreed with the controversial administration view that the Geneva Convention — which bans not only torture but also cruel treatment — should not apply to terrorists. However, Graham said, "humane treatment is the way to go, the only way we can win this war."

Others say the Bush administration is right to preserve some secrecy about its methods for interrogating prisoners, lest terrorists learn how to thwart them.

"The only way we can stop future attacks by Al Qaeda is by learning from [captured suspects] what their plans are," Yoo said. "It doesn't make sense to take options off the table at this time."

Others have questioned the effectiveness of harsh interrogation methods. The FBI has said that the aggressive techniques its agents witnessed at Guantanamo Bay, Cuba, and elsewhere were not effective in producing usable information.

The United States has recovered Al Qaeda training manuals that tell members what to expect if captured and instruct how not to crack under pressure — just as the U.S. military trains its members on how to withstand questioning if captured.

"The last thing you'd want to do is publicly disclose how you interrogate people, because it would allow them to prepare their people to resist interrogations," Yoo said.

Gonzales made the same argument in a written response to senators' questions after he was faulted for dodging the question during his oral testimony.

A web of laws and treaties governs how prisoners are dealt with at home and abroad. The torture convention bans both torture and "cruel, inhumane or degrading" treatment. The U.S. military code bans cruel treatment of prisoners, and CIA officials can be prosecuted for crimes such as assault when they are abroad. The Constitution prohibits cruel and unusual punishment within the United States.

Congress has defined torture as conduct intended to cause severe pain or suffering, according to the Justice Department, which noted in its latest memo that "there is no clear, objective, consistent measurement" of pain.

But legal experts differed last week over whether cruel treatment that fell short of torture was prohibited in the case of foreigners held abroad.