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“CIA Torture: At it Again”

It's the torture, stupid.

President Bush just doesn't get it. Last week brought new revelations of secret memos authorizing torture. Our Torturer in Chief, given a legal green light by former Attorney General Alberto Gonzales, believes that he can make us safer by abusing prisoners – simulating their drowning and subjecting them to temperature extremes, deafening music, and contorted physical positions, in combination for hours on end, all while holding them *incommunicado* for months in secret locations.

Iraq should by now have taught the White House, if nothing else, that we cannot pummel our way to victory in the “war” against terrorism. We are in a global contest for hearts and minds, and we are losing. Not only among young Muslim *jihadists*, but among nations and peoples all over the world.

Our degrading of prisoners has instead degraded America. By flaunting a cynical disdain for world sensibilities, we have lost the world's respect. Nowadays, when President Bush solemnly intones, as he did again last week, that the United States does not torture, the international reaction ranges from snickers to guffaws.

CIA torture chambers also cost us our credibility on human rights elsewhere. We can no longer credibly defend freedom around the world. When President Bush last month asked the United Nations to safeguard human rights in Myanmar, the assembled diplomats heard not a moving plea for liberty, but a hollow ring of hypocrisy.

And the torture is made worse by the lying. The Administration has now renounced torture so many times, only to be caught doing it again, that even if we now truly abandon it, who will believe us?

Early revelations of our torture of terrorism suspects came in a lengthy investigative report published by the *Washington Post* in December 2002. What was the Administration's response? We don't torture.

This lie was exposed by the video and photos of prisoner abuse at Abu Ghraib in 2004. In response, the Justice Department withdrew the infamous memo, authored by John Yoo, which pronounced interrogation techniques lawful so long as they fall short of causing organ failure, impairment of bodily function, or death.

In late 2004, on the eve of Alberto Gonzales' confirmation hearings as Attorney General, a new Justice Department memo was made public. Our government now officially recognized that causing severe pain amounts to torture.

But not for long. Once Mr. Gonzales took over the Justice Department, the author of that memo was replaced. A more *simpático* lawyer, Mr. Stephen Bradbury, was brought in as acting head of the Office of Legal Counsel. And – as we now learn from last week's *New York Times* – Bradbury issued new, secret memos.

The memos remain secret. But according to the *Times*, Bradbury advised that pressure techniques like simulated drowning and the rest, even in combination, are not torture. Under some circumstances, he reportedly opined, they do not even reach the arguably lower threshold of “cruel, inhuman or degrading treatment.” Such treatment is banned both by a United Nations treaty we joined in 1994, and by congressional legislation enacted in 2005.

By international legal standards, Bradbury's free pass for the CIA is hogwash. Torture means the intentional infliction of severe pain, physical or mental, for purposes such as interrogation. Without such a purpose, infliction of severe pain is cruel and inhuman. Techniques like those reportedly okayed by Bradbury have been ruled unlawful – either as torture or as cruel and inhuman – by, among others, the United Nations Committee Against Torture, the European Court of Human Rights and the Supreme Court of Israel.

How, then, could a bright lawyer plausibly give such bad advice? The answer comes in two steps. First, when the U.S. ratified the UN Convention against Torture, we added a declaration that we understand the term “cruel, inhuman or degrading treatment” to bar only conduct prohibited by the Fifth, Eighth or Fourteenth Amendments to the Constitution.

Second, Bradbury interpreted this standard to incorporate the Supreme Court's “shocks the conscience” test for treatment violating the Fifth Amendment. Cruel and inhuman treatment of terrorism suspects, apparently, does not shock his conscience.

The United States should make clear, once and for all, that we are out of the torture business. Bradbury's secret memos should be made public. Then, like the earlier Yoo memo, they should be withdrawn and replaced by legal guidance that meets international standards.

And the formal U.S. “understanding” of the Convention against Torture should be withdrawn. As long as it remains on the books, some future Bradbury may again interpret this vague standard in a way that may not “shock” him or her, but nonetheless dismays the world.

Expert interrogators testify that torture leads to unreliable confessions, and that better information can be obtained through smart but lawful interrogation. But torture is far worse than ineffective; it offends universal values. If we are to have any hope of regaining respect and credibility in the world, there is no better place to begin than by a clear, transparent ban on torture and cruel, inhuman or degrading treatment of prisoners.

Doug Cassel's commentaries are generally broadcast Wednesdays during the noon hour of the Worldview program on Chicago Public Radio, 91.5 FM, and rebroadcast at 9 PM in the evening. Views expressed are personal views of the author and not necessarily those of Notre Dame Law School, the Center for Civil and Human Rights or Chicago Public Radio.