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Legalizing Torture

Wednesday, June 9, 2004; Page A20

THE BUSH administration assures the country, and the world, that it is complying with U.S. and international laws banning torture and maltreatment of prisoners. But, breaking with a practice of openness that had lasted for decades, it has classified as secret and refused to disclose the techniques of interrogation it is using on foreign detainees at U.S. prisons at Guantanamo Bay and in Afghanistan and Iraq. This is a matter of grave concern because the use of some of the methods that have been reported in the press is regarded by independent experts as well as some of the Pentagon's legal professionals as illegal. The administration has responded that its civilian lawyers have certified its methods as proper -- but it has refused to disclose, or even provide to Congress, the justifying opinions and memos.

This week, thanks again to an independent press, we have begun to learn the deeply disturbing truth about the legal opinions that the Pentagon and the Justice Department seek to keep secret. According to copies leaked to several newspapers, they lay out a shocking and immoral set of justifications for torture. In a paper prepared last year under the direction of the Defense Department's chief counsel, and first disclosed by the Wall Street Journal, the president of the United States was declared empowered to disregard U.S. and international law and order the torture of foreign prisoners. Moreover, interrogators following the president's orders were declared immune from punishment. Torture itself was narrowly redefined, so that techniques that inflict pain and mental suffering could be deemed legal. All this was done as a prelude to the designation of 24 interrogation methods for foreign prisoners -- the same techniques, now in use, that President Bush says are humane but refuses to disclose.

There is no justification, legal or moral, for the judgments made by Mr. Bush's political appointees at the Justice and Defense departments. Theirs is the logic of criminal regimes, of dictatorships around the world that sanction torture on grounds of "national security." For decades the U.S. government has waged diplomatic campaigns against such outlaw governments -- from the military juntas in Argentina and Chile to the current autocracies in Islamic countries such as Algeria and Uzbekistan -- that claim torture is justified when used to combat terrorism. The news that serving U.S. officials have officially endorsed principles once advanced by Augusto Pinochet brings shame on American democracy -- even if it is true, as the administration maintains, that its theories have not been put into practice. Even on paper, the administration's reasoning will provide a ready excuse for dictators, especially those allied with the Bush administration, to go on torturing and killing detainees.

Perhaps the president's lawyers have no interest in the global impact of their policies -- but they should be concerned about the treatment of American servicemen and civilians in foreign countries. Before the Bush administration took office, the Army's interrogation procedures -- which were unclassified -- established this simple and sensible test: No technique should be used that, if used by an enemy on an American, would be regarded as a violation of U.S. or international law. Now, imagine that a hostile

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government were to force an American to take drugs or endure severe mental stress that fell just short of producing irreversible damage; or pain a little milder than that of "organ failure, impairment of bodily function, or even death." What if the foreign interrogator of an American "knows that severe pain will result from his actions" but proceeds because causing such pain is not his main objective? What if a foreign leader were to decide that the torture of an American was needed to protect his country's security? Would Americans regard that as legal, or morally acceptable? According to the Bush administration, they should.

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