

# We Have Ways...

The Bush administration continues to disavow torture—and to officialize its practice.

By James Bovard

ON OCT. 4, the *New York Times* blew another ten-foot hole in the Bush administration's torture cover-up. The *Times* revealed that the Justice Department produced a secret legal opinion in early 2005 permitting CIA interrogators to use "combined effects" on detainees, including head slapping, waterboarding, frigid temperatures, manacled for many hours in stress positions, and blasting with loud music to assure sleep deprivation. The *Times* labeled the memo as an "expansive endorsement of the harshest interrogation techniques ever used by the Central Intelligence Agency."

Within hours of the paper hitting the streets, President Bush issued the same moth-eaten denial he has used many times since Abu Ghraib: "This government does not torture people. You know, we stick to U.S. law and our international obligations." But it is the "law" as contorted by administration lawyers who rubberstamp whatever methods Bush or Cheney demand. The same lawyers who tell Bush he has "inherent authority" to wiretap Americans' phone calls also tell him he has authority to redefine torture, regardless of the English-language precedents dating back to Chaucer.

The *Times* detailed how, after 9/11, the CIA constructed an interrogation program by "consulting Egyptian and Saudi intelligence officials and copying Soviet interrogation methods long used in training American servicemen to withstand capture." For decades, the United States government condemned Soviet, Egyptian, and Saudi torture. But interrogation systems designed to compel victims to sign false confessions

now provide the model for protecting America in the new millennium.

In late 2005, Congress passed the McCain Detainee Treatment Act, which prohibited the U.S. government from using "cruel, inhumane, or degrading" interrogation methods. The *Times* revealed that the Justice Department responded to the new law with another secret memo declaring that all the techniques listed above were not "cruel, inhumane or degrading." The secret torture memos, written by Steven Bradbury, the head of the Justice Department Office of Legal Counsel, relied on "a Supreme Court finding that only conduct that 'shocks the conscience'" would go too far.

While Bush may believe he has sole discretion to define torture, CIA interrogators increasingly fear facing grand juries. The *Times* noted, "From the secret sites in Afghanistan, Thailand and Eastern Europe where C.I.A. teams held al-Qaeda terrorists, questions for the lawyers at C.I.A. headquarters arrived daily. Nervous interrogators wanted to know: Are we breaking the laws against torture?"

According to Joanne Mariner, a lawyer with Human Rights Watch, the purpose of the secret Justice Department memos was to "to immunize US officials from prosecution for abusive conduct. They were meant to facilitate abuses, not to prevent them." The fact that the Justice Department officially blessed torturous methods makes it far more difficult to prosecute CIA and other interrogators for breaking the law.

As usual, the administration claimed it was doing Americans a favor by keeping them in the dark. White House Press Sec-

retary Dana Perino declared, "It's appropriate that applications of the laws and techniques are kept secret. And I don't think that providing those to the American public would serve them well." Yale law Professor Jack Balkin summed up the administration's position: "I could tell you why what I'm doing is legal, but then I'd have to shoot you."

As part of the procedure for establishing the "legal" limits of interrogation, last year's Military Commission Act required the president to put in writing his definition of what constitutes "outrages upon personal dignity, in particular humiliating and degrading treatment." The executive order that Bush finally issued on July 20 decreed that everything in CIA detention and interrogation programs was legal—even though the secret CIA prison sites scattered around the globe clearly violate the Geneva Conventions, which are binding under U.S. law.

Bush offered a "good intention" definition of non-torture. He stressed that interrogators were prohibited from "intentionally causing serious bodily injury" and "acts intended to denigrate the religion, religious practices, or religious objects of the individual." He banned "willful and outrageous acts of personal abuse done for the purpose of humiliating or degrading the individual in a manner so serious that any reasonable person ... would deem the acts to be beyond the bounds of human decency, such as sexual or sexually indecent acts undertaken for the purpose of humiliation..."

Former Marine Corps Commandant Paul X. Kelley condemned the new guidelines for encouraging abuses: "As

long as the intent of the abuse is to gather intelligence or to prevent future attacks, and the abuse is not 'done for the purpose of humiliating or degrading the individual'—even if that is an inevitable consequence—the president has given the CIA carte blanche to engage in 'willful and outrageous acts of personal abuse.'" Georgetown University law Professor David Cole noted that Bush's order "appears to permit cutting or bruising a suspect so long as the injury does not risk death, significant functional impairment or 'extreme physical pain,' an entirely subjective term."

The key portion of the executive order—the list of approved techniques—was kept secret. Tom Malinowski of Human Rights Watch observed, "All the order really does is to have the president say, 'Everything in that other document that I'm not showing you is legal — trust me.'"

To prevent detainees and former detainees from disclosing to their defense attorneys the specific extreme interrogation methods used against them, the Bush administration is using claims of "state secrets." A Justice Department spokeswoman asserted that letting a former Maryland resident tell his lawyer the methods he suffered would be "inadequate to protect unique and potentially highly classified information that is vital to our country's ability to fight terrorism."

Unfortunately, the Supreme Court appears to be swallowing this argument. On Oct. 9, the Court refused to hear the case of Khaled el-Masri, a German of Lebanese descent who was kidnapped by the CIA during a 2003 vacation in Macedonia. He was stripped, beaten, shackled, and flown to a secret interrogation center in Afghanistan, where he was tortured for four months. The CIA eventually realized that they had the wrong guy, so Masri was flown to Albania and dumped on the side of the road.

German Chancellor Angela Merkel said that Secretary of State Condoleezza Rice admitted to her that the CIA had mistakenly grabbed Masri. The European Union confirmed Masri's allegations, and the German government issued arrest warrants for 13 CIA agents earlier this year for their role in Masri's kidnapping and torture. Masri's story was all over Europe and he was interviewed by "60 Minutes" and other American media.

Masri sued CIA chief George Tenet, three private aviation companies, and 20 unnamed employees of the CIA and the companies. The ACLU, which represented him, declared that the Supreme Court should not allow the "government to engage in torture, declare it a state secret and ... avoid any judicial accountability."

But the Court accepted the Justice Department's claims and banned Masri from American courtrooms. Apparently, as long as the U.S. government has not publicly confessed, then it is still a "state secret" that U.S. officials committed heinous crimes. (A similar case, involving an innocent Canadian who was seized at JFK International Airport and flown to Syria for torturing, continues to percolate in the U.S. courts.)

In his Oct. 5 statement, Bush declared, "the techniques that we use have been fully disclosed to appropriate members of the United States Congress." But House Speaker Nancy Pelosi and Sen. Jay Rockefeller, the chairman of the Senate Intelligence Committee, angrily denied having been informed.

Not that they are doing much about it. Bush continues to benefit from a largely spineless Congress. Michael Ratner, president of the Center for Constitutional Rights, said, "Congress by its actions and inactions is the handmaiden of the torture program. Despite the publicly revealed memos authorizing torture and the testimony of its widespread use, Congress, even under the Democ-

rats, has yet to hold even one hearing regarding the responsibility of high administration officials." Congressional Democrats apparently believe that being criticized by Bush is a fate worse than torture. One exception is Sen. Ron Wyden of Oregon, who singlehandedly recently blocked the nomination of John Rizzo, who approved of the administration's extreme definitions of torture, to be the general counsel of the CIA.

The Democrats initially indicated that they would refuse to hold confirmation hearings for Michael Mukasey, Bush's nominee for attorney general, until they received the confidential legal rationales on interrogation policy and other matters. But fearing criticism, Democratic leaders dropped the demand.

There is little reason to expect that Mukasey, if confirmed, will rein in federal torture. According to *Newsweek*, he assured the Bush administration in private meetings that he "understood the need for the CIA to use enhanced interrogation methods" and that he did not support naming a special prosecutor for potential Bush administration crimes. In a 2004 speech, Mukasey declared, "the hidden message in the structure of the Constitution" is that the government is entitled to "the benefit of the doubt." Does he believe government deserves a codified benefit of the doubt, regardless of perpetual misconduct or perfidy?

Still—gutless congressmen and compliant lawyers notwithstanding—the administration's torture policy is under a Damocles Sword. The *New York Times* article caused a far greater splash than the Bush team expected. And if the memos themselves or Bush's secret order to the CIA authorizing torture-like methods leak out, the White House could find itself in far more peril. ■

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# Putin's Progress

With the end of his presidential term in sight, Russia's leader digs in.

By John Laughland

IS THERE SUCH A THING as Slavophobia? To be sure, not all Slavic nations are vilified in the West, but the recent demonization of the Serbs and the Russians has an especially vicious quality. Perhaps it results from unconscious memories of Dracula myths, which originated in Bohemia, or is simply a carry-over from the Cold War, but when Slavic leaders become unpopular, the Western mind attributes to them the most sinister of motives, as if they were the embodiment of evil itself.

As I prepared to leave for Russia recently, a trip that culminated in a three-hour meeting with Vladimir Putin, people in London warned me—only half-jokingly—not to accept so much as a cup of coffee from the Russian president for fear that it would be laced with polonium-210.

Relations between Russia and the West have declined spectacularly since George W. Bush looked Putin in the eye in Slovenia in 2001 and said he was a man he could trust, and that decline has been especially sharp in relations between Moscow and London. The British capital has become, for anti-Putin oligarch exiles like Boris Berezovsky, what Zurich was for Lenin—a safe haven from which to plot the violent overthrow of the Russian government, which is what Berezovsky has twice said he is doing—and their opinions are treated with reverence in the corridors of Whitehall and the BBC.

The contrast between the image of Putin in the West and Putin in the flesh could hardly be greater. I was part of a

group of Western journalists and academics known as the Valdai Discussion Group, and the Russian president received us for a long afternoon in an enormous conference center erected on the grounds of the presidential villa at Sochi on the Black Sea, where the warm sea air hangs heavy with the fragrance of pine and eucalyptus.

The first thing you notice about Vladimir Putin is his relaxed body language. Often presented as cold and even aggressive, Putin in fact smiles easily and speaks quietly. His eyes are soft, and there is no aura of intimidation around him. During the meeting, he sat forward in his chair, his body taut, speaking intently without notes or prompts from any officials. This was the impressive performance of a professional, not the zeal of a fanatic. Putin's language is often direct, but he is polite and happy for people to argue back. Even the security arrangements around him are astonishingly light.

The second thing you notice about Putin is the language he uses. In the former USSR, much of the vocabulary of political discourse remains unchanged since Soviet times. This is particularly noticeable in the former Soviet republics, and had been, too, in the so-called "Republic of Tartarstan," one of the 85 components of the Russian Federation that we visited at the beginning of our week. Tartarstan's president, Mintimer Shaimiev, is an old Soviet retread who has been in power continuously since 1985 and who rattles off Stakhanovite statistics about milk pro-

duction and harvest yields as he boasts of his republic's five-year plan. But the way in which he and other post-Soviet politicians use phrases such as "our republic," and the way in which local minority languages or dialects are elevated to official status, betray the fact that these political units are artificial creations with little basis in history or even political reality. The USSR tried to create legitimacy by pretending to be not the successor state to the old Tsarist empire but a new kind of ideological enterprise. Today it is no longer *homo sovieticus* that is being promoted but *homo ukrainus* or even *homo tartarus*. The ideology is the same.

The men who govern Russia today no longer speak like this. Although the main party political leaders have remained unchanged since the early 1990s, real power in the Kremlin has shifted under Putin to people who place a high premium on their abilities as managers. Many of them, indeed, are both ministers and bosses of Russia's mega-enterprises. They are studiously non-ideological, and they keep their eyes firmly on the bottom line. Putin was doubtless being teasingly politically incorrect when in our meeting, he heaped praise on the man he had appointed prime minister two days previously, Victor Zubkov, saying that he had been "an excellent Soviet administrator" who had turned an unproductive collective farm into an efficient one. But he added by way of qualification, "Zubkov has never been ideological, only practical. He is very professional."