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Invisible in Plain Sight: CIA Torture Techniques Go Mainstream

Azmat Begg speaks with reporters about the return of his son Moazzam Begg from U.S. military custody in Guantanamo Bay, Cuba. Moazzam Begg was released from Guantanamo Bay in January 2005 and returned to England. He was never charged with a crime. © AFP/Getty Images/Jim Watson

Critical loopholes in the McCain amendment show that the once-clandestine practice of torture is now an official weapon in the War on Terror.

BY ALFRED W. MCCOY

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Watch the multimedia feature, "**Torture and U.S. Impunity**."

Just before Christmas last, President Bush and Senator John McCain appeared in the Oval Office to announce an historic ban on torture by any U.S. agency, anywhere in the world. Looking straight into the cameras, the president declared with a steely gaze that this landmark legislation would make it "clear to the world that this government does not torture."

This meeting was the culmination of a tangled legislative battle that had started six months before when Senator John McCain introduced an amendment to the must-pass Defense Appropriation Bill, calling for an absolute ban on "cruel, inhumane and degrading" treatment. The White House fought back hard, sending Vice President Cheney to Capitol Hill for a wrecking effort so sustained, so determined that a Washington Post editorial branded him "The Vice President for Torture." At first, Cheney demanded that the amendment be dropped. The senator refused. Next, Cheney insisted on an exemption for the CIA. The senator stood his ground. Then, in a startling rebuke to the White House, the Senate passed the amendment last October by a 90-9 margin, a victory celebrated by Amnesty International and other rights groups. With the White House still threatening a veto, the appropriation gridlocked in an eyeball-to-eyeball standoff.

Then came that dramatic December 15th handshake between Bush and McCain, a veritable media mirage that concealed furious back-room maneuvering by the White House to undercut the amendment. A coalition of rights groups, including Amnesty International, had resisted the

executive's effort to punch loopholes in the torture ban but, in the end, the White House prevailed. With the help of key senate conservatives, the Bush administration succeeded in twisting what began as an unequivocal ban on torture into a legitimization of three controversial legal doctrines that the administration had originally used to justify torture right after 9/11.

In an apparent compromise gesture, McCain himself inserted the first major loophole: a legal defense for accused CIA interrogators that echoes the administration's notorious August 2002 torture memo allowing any agents criminally charged to claim that they "did not know that the practices were unlawful."

Next, the administration effectively neutralized the McCain ban with Senator Lindsey Graham's amendment stipulating that Guantanamo Bay detainees cannot invoke U.S. law to challenge their imprisonment. Complaining that detainees were filing trivial lawsuits over the quality of their food, Graham's amendment thereby attempted to nullify the Supreme Court decision in Rasul v. Bush that had allowed detainees to pursue habeas corpus appeals in U.S. courts. In sum, McCain's original amendment banned torture, but Graham's later amendment , as finally approved by the Senate, removed any means for enforcement. For a mess of bipartisan pottage, Congress thus bartered away this nation's constitutional birthright of habeas corpus, a foundational legal protection born, ironically, of the British Parliament's long struggle to ban royal torture writs by the infamous Court of Star Chamber.

For the final loophole, on December 30 President Bush issued a "signing statement" insisting that his powers as commander-in-chief and head of the "unitary executive branch" still allowed him to do whatever is necessary to defend America—the same key controversial doctrine the administration had first used to allow torture. Instead of marking closure to the Abu Ghraib scandal, the McCain torture ban has thus sparked a renewed campaign by human-rights advocates to end the use of torture in Washington's War on Terror—an effort that may well prove to be a long, uphill battle.

Only days after Bush signed the legislation containing the McCain amendment, the White House used a portion of the new law, now called the Detainee Treatment Act of 2005, to quash any judicial oversight of its actions. On January 3 the Justice Department notified federal judges that it would seek the immediate dismissal of all 160 habeas corpus cases filed by Guantanamo detainees. One week later, the U.S. Solicitor General, citing this law, told the Supreme Court it no longer had jurisdiction over Guantanamo and asked the justices to dismiss the potential landmark "unlawful combatant" case, Hamdan v. Rumsfeld. In late March, when the court began to hear oral arguments in this critical test case of U.S. military tribunals, several justices appeared to reject the solicitor general's argument after vigorously questioning him.

In retrospect, McCain's proposed torture ban seems another victim of the Bush administration's unrelenting drive to win unchecked wartime powers. In response to continuing controversy over Abu Ghraib and Guantanamo, the White House has thus initiated what seems an historic shift in US interrogation policy—from the highly secretive tortures by the Central Intelligence Agency during the Cold War to an open, even defiant use of coercive interrogation as an official weapon in the arsenal of American power during the "war on terror." Until 9/11, the United States government had successfully protected its intelligence community from censure by outsourcing torture to foreign allies and using subtle psychological techniques that elude ready detection—in striking contrast to the crude physical methods once favored by dictators around the world.

Even now, the continuing use of these psychological techniques has complicated efforts to prohibit torture. Right after Congress approved McCain's torture ban, Attorney General Gonzales parsed the word "severe" to insist the new law adds only "clarification" to the existing definition of torture as "intentional infliction of severe physical or mental pain," echoing Justice Department subordinates who were arguing anonymously that the ban would still allow "water boarding"—the

harshest of the agency's enhanced psychological techniques. When future investigators try to judge the slippery signs of psychological torture, whether by the military or CIA, each of the Attorney General's words—"intentional," "severe," and "mental"—will open yet another loophole.

Indeed, these psychological techniques are so elusive that they remain, even today, invisible in plain sight. After CBS broadcast those notorious photos from Abu Ghraib prison in the April 2004, Defense Secretary Donald Rumsfeld dismissed them as unrepresentative acts "by a small number of U.S. military," whom the conservative New York Times columnist William Safire branded "creeps."

If, however, we read these prison photos carefully, they reveal CIA torture techniques that have metastasized like an undetected cancer inside the U.S. intelligence community over the past half-century. That iconic photo of a hooded Iraqi with fake electrical wires hanging from his arms shows, not the sadism of a few "creeps," but the telltale signs of sophisticated torture. The prisoner is hooded for sensory deprivation. His arms are extended for self-inflicted pain. These are the key components of the CIA's psychological paradigm, first developed during the Cold War and then disseminated within the U.S. intelligence community and among allied agencies around the world.

Indeed, over the past 40 years, psychological torture, as practiced by US intelligence community, has proven destructive, elusive, and adaptable. Although seemingly less brutal than physical methods, this "no touch" torture is highly destructive of the human psyche, leaving searing psychological scars experts consider more crippling than physical pain. And the lack of visible physical evidence eludes detection, greatly complicating attempts at investigation, prosecution, or prohibition.

Moreover, each extended application of this psychological method has produced innovation—an adaptability evident today in the war on terror. Under the command of General Geoffrey Miller, Guantanamo became an ad hoc behavioral laboratory for innovative interrogation techniques that, in sum, perfected the CIA's psychological paradigm. Moving beyond the agency's original, generic attack on sensory receptors universal to all humans, Guantanamo's interrogators intensified the psychological assault by exploiting Arab cultural sensitivities to sexuality, gender identity and fear of dogs. Miller also formed teams of military psychologists to probe each detainee's phobias. Significantly, after repeated visits to Guantanamo in 2002-2004, the International Committee of the Red Cross described these practices as "an intentional system of cruel, unusual and degrading treatment and a form of torture."

With his new Guantanamo methods codified in a top-secret manual, General Miller exported these techniques with a personal visit in September 2003 to Iraq, where the U.S. commander, General Ricardo Sanchez, incorporated them into his orders for aggressive interrogation at Abu Ghraib. Beyond Abu Ghraib and Guantanamo, the administration has also built a global network for torture at a half-dozen "black sites" worldwide that used these techniques and even more extreme methods, including one particularly cruel CIA technique called "water boarding."

Outside its own black sites, the CIA, continuing a tactic used against Al-Qaeda suspects since the 1990s, engaged in "extraordinary rendition"—that is, the practice of sending detainees to nations notorious for torture, including Morocco, Egypt, Jordan, Syria and Uzbekistan. Knitting this far-flung prison network together, the agency shuttled detainees around the globe in a fleet of some two dozen jets operated by thinly veiled front companies responsible for some 2,600 rendition-related flights since 2001. Despite a formal ban on rendition in the U.N. Convention Against Torture, the United States has persisted in a practice which is, in fact, illegal. "Renditions," as Amnesty International explains in its recent report Below the Radar, "involve multiple layers of human rights violations. Most victims…were arrested and detained illegally in the first place; some were abducted; others were denied access to any due process."

The United States is at a fateful crossroads, both in its relations with the international community and in the relationship between its own executive and judicial branches. In its aggressive defense of presidential prerogatives over "unlawful combatants," exemplified by its handling of Hamdan v. Rumsfeld and the hundreds of habeas corpus cases in federal courts, the Bush White House seeks to exempt its actions from any judicial oversight. And just last February, the actions of our executive branch have earned an unprecedented rebuke from United Nations Secretary General Kofi Annan, who called for the closure of Guantanamo.

In the aftermath of the Abu Ghraib scandal, the White House has defended torture as a presidential prerogative and blocked reform efforts. By contrast, a loose coalition of civil-liberties lawyers and human rights groups has mobilized to stop the abuse. In June 2004 the Supreme Court ruled in a landmark case, Rasul v. Bush, that Guantanamo detainees were, in fact, on territory leased to the United States and thus deserved access to U.S. courts. Leading U.S. law firms responded by filing 160 habeas corpus cases for 300 detainees.

Since 9/11, the White House and its media allies have shaped the debate over detainees as a false choice between tortured intelligence and no intelligence at all. Yet there are, in fact, alternatives to torture such as an approach we might call empathetic interrogation—first used by the U.S. Marine Corps to extract accurate intelligence from Japanese prisoners during World War II and practiced by the FBI with great success in the decades since. After the East Africa bombings of U.S. embassies in 1998, for example, the FBI employed this method to gain some of our best intelligence on Al Qaeda and won convictions of all the accused in U.S. courts.

For the human rights community, the first steps to reform are surprisingly simple: call upon our legislators to heed Kofi Anan's call for closure of Guantanamo and transfer the detainees to the US courts for trial. More ambitiously, the human rights community can press Congress to amend the Detainee Treatment Act 2005, banning torture without reservations, loopholes, or qualifications. Yet even if we close Guantanmo and prohibit abuse by U.S. authorities, the CIA can still elude the force of this prohibition, as it has done so often over the past 40 years, by outsourcing torture to foreign allies like Morocco, Egypt, or Uzbekistan. For real reform, Congress must close the ultimate loophole: the rendition of detainees to foreign security services that torture systematically and savagely.

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