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THE POLITICS OF TORTURE

So now what do we do with prisoners?

Since 9/11, questions about torture and who's doing it have been deftly sidestepped and hotly debated. Recent events have dragged Canada deeper into the fray

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MICHELLE SHEPHARD
NATIONAL SECURITY REPORTER

At a rally in Iowa last year, U.S. presidential candidate Rudy Giuliani told voters that he supported "aggressive questioning" of terrorism suspects and "using means that are a little tougher."

What about waterboarding, the process whereby CIA agents have simulated drowning by pouring water over the hooded head of a terrorism suspect to get them to talk, someone asked? Wasn't that torture?

Giuliani wasn't sure. "I'd have to see what the real – what they really are doing. Not the way some of these liberal newspapers have exaggerated it."

Then, without pausing, he continued: "Now the question of torture. We should not torture. America should not stand for torture. America should not allow torture."

The voters clapped.

Ever since the U.S. administration tried to redefine torture in order to harshly interrogate suspects caught in Afghanistan after 9/11, questions about its practice have been both deftly sidestepped and hotly debated.

The UN definition of torture – the intentional infliction of "severe pain or suffering, whether physical or mental," on an individual – had always been the international norm. But in 2002, the White House's legal advisers wrote in what's now known as the "torture memo" that CIA agents could push the limits when interrogating terrorism suspects without violating the law. Torture, the memo stated, only occurred when there was "serious physical injury, such as organ failure, impairment of bodily function, or even death."

The White House eventually backtracked following the memo's leak and scandals such as the treatment of prisoners at Iraq's Abu Ghraib prison, but questions about torture haven't gone away.

What is torture? Does it work? Can it be condoned in limited circumstances?

For the most part, Canada has remained at a comfortable distance from the debate. But with the inadvertent disclosure earlier this month of a Department of Foreign Affairs training manual on torture, along with the lawsuit over alleged torture of detainees handed over to Afghan authorities by Canadian Forces, and a federal inquiry probing intelligence sharing with countries known to torture, Ottawa is having trouble avoiding the issue. Canada's own "torture memo," as it's now being called, is a 93-page Power Point presentation given to foreign affairs consular officials to instruct them how to detect signs of torture of Canadians held abroad.

Most embarrassing for the government in its mistaken release of "Torture Awareness Workshop Reference Materials" in early January was the inclusion of the U.S., Israel and Guantanamo Bay on a list of countries or places where foreign affairs believed torture may occur.

"The truth may set us free, but it can just as easily be embarrassing and, yes, inconvenient," read



PETER POWER/TORONTO STAR
A guard makes his rounds while, inside the fence, two detainees sit on the floor and chat in the recreation area of Camp 5 at Guantanamo Bay in January, 2007.

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an editorial last Wednesday in the *Seattle Post-Intelligencer*. "That's a lesson Canada is learning the hard way – publicly – after putting the U.S. on the list of countries connected to 'possible torture/abuse' of prisoners." **their 'closest allies,'**

they would have to 'review and rewrite' the references to sensory deprivation, forced nudity, isolation, sleep deprivation, and lights as well, as it is undisputed that all of this has been done at Guantanamo'

ALMERINDO OJEDA, Director of the University of California's Center for the Study of Human Rights in the Americas

last weekend, declaring in a statement that the manual "wrongly includes some of our closest allies" and that he had directed the manual be "reviewed and rewritten." That prompted Khadr's Canadian lawyer, Dennis Edney, to accuse the government of becoming "an apologist for U.S. policy."

"Mr. Bernier's actions are an insult to each and every Canadian. We are a country that has always been prepared to speak out against oppression wherever it occurs. Human rights and the value of the rule of law are important to us. However, this government has now told the world at large that Canadian interests are secondary to the wishes of the Bush administration."

Now some are questioning just how the manual will be revised. It seems the list of countries and places will change. But what about the sections that deal with types of torture and include "verbal abuse" and "sensory" or "sleep deprivation," or the page entitled, "U.S. interrogation techniques?" Questions to Bernier's spokesperson and foreign affairs last week were met with the same response: "The statement speaks for itself. The manual is being reviewed and rewritten."

"It cannot be corrected simply by deleting some of the perpetrators from their list," Almerindo Ojeda, director of the University of California's Center for the Study of Human Rights in the Americas, argued during an interview with the *Toronto Star*. "To make amends with their 'closest allies,' they would have to 'review and rewrite' the references to sensory deprivation, forced nudity, isolation, sleep deprivation, and lights as well, as it is undisputed that all of this has been done at Guantanamo."

Alex Neve, Canada's secretary general of Amnesty International, says he's worried that Bernier's backtracking could undo the progress that had been achieved in the past few years, following the Maher Arar federal inquiry. Arar was awarded \$11.5 million and an apology from the federal government for Canada's role in his arrest by the U.S and rendition to Syria, where he was held for a year without charges and tortured.

Justice Dennis O'Connor, who presided over the Arar Commission following Arar's return to Canada, found that government officials missed telltale signs that the Ottawa engineer had been tortured into giving a false confession. O'Connor's recommendation for better training helped shape the torture-awareness manual that recently became public.

"The materials that have been developed for this (manual) are commendable," Neve wrote to Bernier last week.

"Minister, we certainly agree that materials and lists of this nature should be regularly reviewed and updated. Any changes made, however, should reflect the human rights reality on the ground, regardless of whether the country concerned is our closest friend or most implacable foe."

Another inquiry – this one presided over by retired Supreme Court Justice Frank Iacobucci and concerning three Canadians who were tortured and detained in Syria when they traveled there – may implicate Canada more directly. While the Arar inquiry found the RCMP gave the U.S. erroneous information about Arar linking him to terrorism, Iacobucci is probing claims by the three men that the Canadian Security Intelligence Service directly provided Syria with information about the Canadians, which they say led to their detentions.

Amnesty International and the B.C. Civil Liberties Association have also taken the government to court, seeking an injunction against the transfer of detainees captured by Canadian Forces into the custody of Afghan authorities.

The foreign affairs torture manual was part of the disclosure released to Amnesty International for this case.

Civil libertarians, along with opposition parties, have warned that Canada could be violating international treaties by turning over captives to Afghan authorities with the knowledge that they could be tortured.

After months of dismissing allegations that detainees were abused while in the hands of Afghan

Traditionally, Canada has given the U.S. the benefit of the doubt. Ever since Toronto-born Omar Khadr was transferred to Guantanamo in October 2002, the federal government has publicly stated that Canada accepts assurances from the U.S. that detainees are being treated humanely.

Back in February 2003, when countries worldwide were starting to question the conditions and interrogation techniques used in Guantanamo, the then-Liberal government was drafting press lines in anticipation of reporters' questions about Khadr's case. An early draft of press lines compiled by foreign affairs and obtained by the *Toronto Star* under Access to Information legislation, stated: "The United States continues to acknowledge its willingness to treat all detainees humanely and in a manner consistent with the principles of the Geneva Conventions. Given these statements, and our own observations, the Canadian government is satisfied."

The press lines were later changed when it was noted that Canadian officials had not yet seen Guantanamo, so being assured that the conditions were humane by "our own observations," was simply wrong.

Now the release of the Foreign Affairs training manual, which has been used since 2004, shows that while the public message was Canada didn't believe torture existed at Guantanamo, privately consular officials were instructed to be wary.

The ambassadors of Israel and the U.S. lashed out at Ottawa for the inclusion of their countries on the list of possible torture venues, and Foreign Affairs Minister Maxime Bernier apologized

for the manual "wrongly includes some of our closest allies" and that he had directed the manual be "reviewed and rewritten."

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authorities, it was revealed, this week in court that a secret policy shift took place three months ago halting the transfer of detainees, because Canadian soldiers feared previous detainees had been abused or killed.

What's not clear now is what Canadian troops are doing with their captives – releasing them, or holding them in temporary cells on Kandahar Air Base or, as they have done in the past, turning them over to U.S. forces, which operate a prison at Bagram.

When Khadr was first held in the U.S. prison in Bagram in September 2002, Canada said it was satisfied detainees were treated "humanely" while in U.S. custody.

Three months later, the bodies of two Afghan detainees at Bagram were found dead, hanging by their wrists. A U.S. military investigation concluded they had been deprived of sleep and struck so often their legs looked as if they had been run over by a bus.

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