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# Interrogation Methods Rejected by Military Win Bush's Support

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By [ADAM LIPTAK](#)

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Many of the harsh interrogation techniques repudiated by the Pentagon on Wednesday would be made lawful by legislation put forward the same day by the Bush administration. And the courts would be forbidden from intervening.

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The proposal is in the last 10 pages of an 86-page bill devoted mostly to military commissions, and it is a tangled mix of cross-references and pregnant omissions.

But legal experts say it adds up to an apparently unique interpretation of the Geneva Conventions, one that could allow [C.I.A.](#) operatives and others to use many of the very techniques disavowed by the Pentagon, including stress positions, sleep deprivation and extreme temperatures.

"It's a Jekyll and Hyde routine," Martin S. Lederman, who teaches constitutional law at [Georgetown University](#), said of the administration's dual approaches.

In effect, the administration is proposing to write into law a two-track system that has existed as a practical matter for some time.

So-called high-value detainees held by the C.I.A. have been subjected to tough interrogation in secret prisons around the world.

More run-of-the-mill prisoners held by the Defense Department have, for the most part, faced milder questioning, although human rights groups say there have been widespread abuses.

The new bill would continue to give the C.I.A. the substantial freedom it has long enjoyed, while the revisions to the Army Field Manual announced Wednesday would further restrict military interrogators.

The legislation would leave open the possibility that the military could revise its own standards to allow the harsher techniques.

John C. Yoo, a law professor at the [University of California, Berkeley](#), and a former Justice Department official who helped develop the administration's early legal response to the terrorist threat, said the bill would provide people on the front lines with important tools.

"When you're fighting a new kind of war against an enemy we haven't faced before," Professor Yoo said, "our system needs to give flexibility to people to respond to those challenges."

In June, in *Hamdan v. Rumsfeld*, the Supreme Court ruled that a provision of the Geneva Conventions concerning the humane treatment of prisoners applied to all aspects of the conflict with [Al Qaeda](#). The new bill would keep the courts from that kind of meddling, Professor Yoo said.

"There is a rejection of what the court did in *Hamdan*," he said, "which is to try to judicially enforce the Geneva Conventions, which no court had ever tried to do before."

Indeed, the proposed legislation takes pains to try to ensure that the Supreme Court will not have a second bite at the apple. "The act makes clear," it says in its introductory findings, "that the Geneva Conventions are not a source of judicially enforceable individual rights."

Though lawsuits will almost certainly be filed challenging the bill should it become law, most legal experts said Congress probably had the power to restrict the courts' jurisdiction in this way.

The proposed legislation would provide retroactive immunity from prosecution to government agents who used harsh methods after the Sept. 11 attacks. And, as President Bush suggested on Wednesday, it would ensure that those techniques remain lawful.

"As more high-ranking terrorists are captured, the need to obtain intelligence from them will remain critical," Mr. Bush said. "And having a C.I.A. program for questioning terrorists will continue to be crucial to getting life-saving information."

Mr. Bush said he had never authorized torture but indicated that aggressive interrogation techniques short of torture remained important tools in the administration's efforts to combat terrorism.

"I cannot describe the specific methods used — I think you understand why," he said. "If I did, it would help the terrorists learn how to resist questioning, and to keep information from us that we need to prevent new attacks on our country. But I can say the procedures were tough, and they were safe and lawful and necessary."

A senior intelligence official said that the new legislation, if enacted, would make it clear that the techniques used by the C.I.A. on senior Qaeda members who had been held abroad in secret sites would not be prohibited and that interrogators who engaged in those practices both in the past and in the future would not face prosecution.

The official, who spoke on the condition of anonymity, would not discuss the techniques the agency had used or was prepared to use.

Other senior administration officials, all of whom declined to speak on the record, said there was no intention to undercut the interrogation rules in the new Army Field Manual, which does not include some of the most extreme techniques used on some suspected terrorists in American custody.

The intent of the legislation, they said, is to prevent the prosecution of interrogators under amendments to the War Crimes Act that were passed in the 1990's.

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Neil A. Lewis contributed reporting from Washington.

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