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Military Cites Risk of Abuse by CIA

By Charlie Savage
The Boston Globe

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New Bush rules on detainees stir concern.

Washington - Top military lawyers have told senators that President Bush's new rules for CIA interrogations of suspected terrorists could allow abuses that violate the Geneva Conventions, according to Senate and military officials.

The Judge Advocates General of all branches of the military told the senators that a July 20 executive order establishing rules for the treatment of CIA prisoners appeared to be carefully worded to allow humiliating or degrading interrogation techniques when the interrogators' objective is to protect national security rather than to satisfy sadistic impulses.

The JAGs expressed their concerns at a meeting late last month with Senators John Warner of Virginia, Lindsey Graham of South Carolina, and an aide representing John McCain of Arizona, who could not attend because he was campaigning for president. All three senators are Republicans who have been key proponents of laws banning the abuse of detainees, and have vowed to monitor the Bush administration's treatment of prisoners.

The top JAG for the US Army, Major General Scott C. Black, followed up on the meeting this month by sending a memo to lower-ranking soldiers reminding them that Bush's executive order applies only to the CIA, not to military interrogations. Black told soldiers they must follow Army regulations, which "make clear that [the Geneva Conventions are] the minimum humane treatment standard" for prisoners.

"This Executive Order does not change the standard for the Army.... I want to ensure that there is no confusion concerning the Executive Order's lack of applicability to the Army," Black wrote in the memo, a copy of which was obtained by the Globe. "As a Corps, we must be diligent to ensure that all interrogation and detention operations comply with the Army standard."

In an e-mail yesterday, a Justice Department spokesman defended Bush's order as "consistent" with the minimum standards of humane treatment required by the Geneva Conventions.

But the JAGs told the senators that a key part of the order opens the door to violations of the section of the Geneva Conventions that outlaws "cruel treatment and torture" and "outrages upon personal dignity, in particular, humiliating and degrading treatment," officials familiar with the discussion said.

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The JAGs cited language in the executive order in which Bush said CIA interrogators may not use "willful and outrageous acts of personal abuse done for the purpose of humiliating or degrading the individual." As an example, it lists "sexual or sexually indecent acts undertaken for the purpose of humiliation."

Among lawyers, "for the purpose" language is often used to mean that a person must specifically intend to do something, such as causing humiliation, in order to violate a statute. The JAGs said Bush's wording appears to make it legal for interrogators to undertake that same abusive action if they had some other motive, such as gaining information.

Other law-of-war specialists agreed that this part of Bush's executive order creates an escape clause allowing abusive treatment.

Two former Reagan administration officials, Robert S. Turner and P.X. Kelley, wrote an op-ed page piece in The Washington Post on July 26 criticizing Bush's order as a violation of the Geneva Conventions that could endanger captured US soldiers by eroding respect for the treaty. Among their criticisms, they also singled out the "for the purpose" wording.

"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,' " the two wrote.

Erik Ablin, a Justice Department spokesman, yesterday rejected that interpretation of the order. In an e-mail, he said the order "simply requires AN intent to humiliate and degrade the individual" - for any reason - before an interrogator's conduct would be considered a war crime. He said this standard was consistent with how international war crimes tribunals have interpreted the treaty.

But in an interview yesterday, Turner, who is now a University of Virginia law professor, said the Justice Department was "playing games," and called its explanation "a con." He said "the only reasonable interpretation of that language is that if your purpose in doing this is not to humiliate and degrade the guy, then that clause doesn't apply."

Turner's vehement criticism is particularly significant because he has been a rare and outspoken defender of the Bush administration in other controversies related to presidential power and the war on terrorism. Turner has repeatedly testified before Congress that Bush's signing statements and his warrantless wiretapping program are lawful and appropriate, for example.

The current dispute grew out of a June 2006 Supreme Court ruling that the Geneva Conventions apply to the war on terrorism. The court rejected Bush's declaration after the terrorist attacks of Sept. 11, 2001, that suspected Al Qaeda and Taliban prisoners are not protected by the war-crimes treaties.

After the ruling, Congress passed a law requiring that Bush issue a public order detailing his interrogation policy. That led to Bush's July 20 executive order.

The Bush administration legal team had previously invoked a similar "intent" loophole to give legal cover to harsh interrogations. In a once-secret Aug. 1, 2002, Justice Department memo about an antitorture law, the administration legal team said interrogators could avoid violating anti-torture laws if they said their motivation was protecting national security.

"Even if the [interrogator] knows that severe pain will result from his actions, if

causing such harm is not his objective, he lacks the requisite specific intent," the 2002 memo read.

The memo was leaked after the Abu Ghraib torture scandal in 2004 and sparked an outcry over its permissive attitude toward torture.

It was subsequently withdrawn by the Justice Department.

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