Pushing the Envelope on Presidential Power

Web Q&A: Monday, 1 p.m. ET

» Reporter **Barton Gellman**, will be online on Monday, June 25 to answer readers' questions about the Cheney series. Submit a Question Here.

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Shortly after the first accused terrorists reached the U.S. naval prison at Guantanamo Bay, Cuba, on Jan. 11, 2002, a delegation from CIA headquarters arrived in the Situation Room. The agency presented a delicate problem to White House counsel Alberto R. Gonzales, a man with next to no experience on the subject. Vice President Cheney's lawyer, who had a great deal of experience, sat nearby. The meeting marked "the first time that the issue of interrogations comes up" among top-ranking White House officials, recalled John C. Yoo, who represented the Justice Department. "The CIA guys said, 'We're going to have some real difficulties getting actionable intelligence from detainees'" if interrogators confined themselves to humane techniques allowed by the Geneva Conventions.

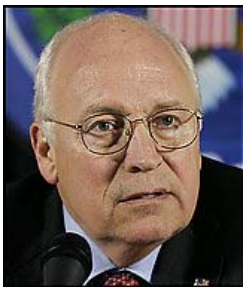
From that moment, well before previous accounts have suggested, Cheney turned his attention to the practical business of crushing a captive's will to resist. The vice president's office played a central role in shattering limits on coercion in U.S. custody, commissioning and defending legal opinions that the Bush administration has since portrayed as the initiatives, months later, of lower-ranking officials.

The vice president's office pushed a policy of robust interrogation that made its way to the U.S. naval prison at Guantanamo Bay, Cuba, above, and Abu Ghraib prison in Iraq. More Cheney photos...

Cheney and his allies, according to more than two dozen current and former officials, pioneered a novel distinction between forbidden "torture" and permitted use of "cruel, inhuman or degrading" methods of questioning. They did not originate every idea to rewrite or reinterpret the law, but fresh accounts from participants show that they translated muscular theories, from Yoo and others, into the operational language of government.

A backlash beginning in 2004, after reports of abuse leaked out of Iraq's Abu Ghraib prison and Guantanamo Bay, brought what appeared to be sharp reversals in courts and Congress -- for both Cheney's claims of executive supremacy and his unyielding defense of what he called "robust interrogation."

But a more careful look at the results suggests that Cheney won far more than he lost. Many of the harsh measures he championed, and some of the broadest principles undergirding them, have survived intact but out of public view.



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The vice president's unseen victories attest to traits that are often ascribed to him but are hard to demonstrate from the public record: thoroughgoing secrecy, persistence of focus, tactical flexibility in service of rigid aims and close knowledge of the power map of government. On critical decisions for more than six years, Cheney has often controlled the pivot points -- tipping the outcome when he could, engineering stalemate when he could not and reopening debates that rivals thought were resolved.

"Once he's taken a position, I think that's it," said James A. Baker III, who has shared a hunting tent with Cheney more than once and worked with him under three presidents. "He has been pretty damn good at accumulating power, extraordinarily effective and adept at exercising power."

'No More Secret Opinions'

David S. Addington, Cheney's general counsel, set the new legal agenda in a blunt memorandum shortly after the CIA delegation returned to Langley. Geneva's "strict limits on questioning of enemy prisoners," he wrote on Jan. 25, 2002, hobbled efforts "to quickly obtain information from captured terrorists."

No longer was the vice president focused on procedural rights, such as access to lawyers and courts. The subject now was more elemental: How much suffering could U.S. personnel inflict on an enemy to make him talk? Cheney's lawyer feared that future prosecutors, with motives "difficult to predict," might bring criminal charges against interrogators or Bush administration officials.

Geneva rules forbade not only torture but also, in equally categorical terms, the use of "violence," "cruel treatment" or "humiliating and degrading treatment" against a detainee "at any time and in any place whatsoever." The War Crimes Act of 1996 made any grave breach of those restrictions a U.S. felony [**Read the act**]. The best defense against such a charge, Addington wrote, would combine a broad presidential direction for humane treatment, in general, with an assertion of unrestricted authority to make exceptions.

The vice president's counsel proposed that President Bush issue a carefully ambiguous directive. Detainees would be treated "humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of" the Geneva Conventions. When Bush issued his public decision two weeks later, on Feb. 7, 2002, he adopted Addington's formula -- with all its room for maneuver -- verbatim.

In a radio interview last fall, Cheney said, "We don't torture." What he did not acknowledge, according to Alberto J. Mora, who served then as the Bush-appointed Navy general counsel, was that the new legal framework was designed specifically to leave room for cruelty. In international law, Mora said, cruelty is defined as "the imposition of severe physical or mental pain or suffering." He added: "Torture is an extreme version of cruelty."

How extreme? Yoo was summoned again to the White House in the early spring of 2002. This time the question was urgent. The CIA had captured Abu Zubaida, then believed to be a top al-Qaeda operative, on March 28, 2002. Case officers wanted to know "what the legal limits

of interrogation are," Yoo said.

This previously unreported meeting sheds light on the origins of one of the Bush administration's most controversial claims. The Justice Department delivered a classified opinion on Aug. 1, 2002, stating that the U.S. law against torture "prohibits only the worst forms of cruel, inhuman or degrading treatment" and therefore permits many others. [**Read the opinion**] Distributed under the signature of Assistant Attorney General Jay S. Bybee, the opinion also narrowed the definition of "torture" to mean only suffering "equivalent in intensity" to the pain of "organ failure ..... or even death."

When news accounts unearthed that opinion nearly two years later, the White House repudiated its contents. Some officials described it as hypothetical, without disclosing that the opinion was written in response to specific questions from the CIA. Administration officials attributed authorship to Yoo, a Berkeley law professor who had come to serve in the Office of Legal Counsel.

But the "torture memo," as it became widely known, was not Yoo's work alone. In an interview, Yoo said that Addington, as well as Gonzales and deputy White House counsel Timothy E. Flanigan, contributed to the analysis.

The vice president's lawyer advocated what was considered the memo's most radical claim: that the president may authorize any interrogation method, even if it crosses the line of torture. U.S. and treaty laws forbidding any person to "commit torture," that passage stated, "do not apply" to the commander in chief, because Congress "may no more regulate the President's ability to detain and interrogate enemy combatants than it may regulate his ability to direct troop movements on the battlefield."

That same day, Aug. 1, 2002, Yoo signed off on a second secret opinion, the contents of which have never been made public. According to a source with direct knowledge, that opinion approved as lawful a long list of specific interrogation techniques proposed by the CIA -- including waterboarding, a form of near-drowning that the U.S. government classified as a war crime in 1947. The opinion drew the line against one request: threatening to bury a prisoner alive.

Yoo said for the first time in an interview that he verbally warned lawyers for the president, Cheney and Defense Secretary Donald H. Rumsfeld that it would be dangerous as a matter of policy to permit military interrogators to use the harshest techniques, because the armed services, vastly larger than the CIA, could overuse the tools or exceed the limits. "I always thought that only the CIA should do this, but people at the White House and at DOD felt differently," Yoo said. The migration of those techniques from the CIA to the military, and from Guantanamo Bay to Abu Ghraib, aroused worldwide condemnation when abuse by U.S. troops was exposed.

Cheney and national security adviser Condoleezza Rice confer in February 2002, around the time that detainee interrogation limits were being discussed. Rice wouldn't learn about the 'torture memo' until June 2004. More Cheney photos...

On June 8, 2004, national security adviser Condoleezza Rice and Secretary of State Colin L. Powell learned of the two-year-old torture memo for the first time from an article in The Washington Post [**Read the article**]. According to a former White House official with firsthand knowledge, they confronted Gonzales together in his office.

Rice "very angrily said there would be no more secret opinions on international and national

security law," the official said, adding that she threatened to take the matter to the president if Gonzales kept them out of the loop again. Powell remarked admiringly, as they emerged, that Rice dressed down the president's lawyer "in full Nurse Ratched mode," a reference to the ward chief of a mental hospital in the 1975 film "One Flew Over the Cuckoo's Nest."

Neither of them took their objections to Cheney, the official said, a much more dangerous course.

'His Client, the Vice President'

In the summer and fall of 2002, some of the Bush administration's leading lawyers began to warn that Cheney and his Pentagon allies had set the government on a path for defeat in court. As the judicial branch took up challenges to the president's assertion of wartime power, Justice Department lawyers increasingly found themselves defending what they believed to be losing positions -- directed by the vice president and his staff. One of the uneasy lawyers was Solicitor General Theodore B. Olson, a conservative stalwart whose wife, Barbara, had been killed less than a year before when the hijacked American Airlines Flight 77 crashed into the Pentagon. Olson shared Cheney's robust view of executive authority, but his job was to win cases. Two that particularly worried him involved U.S. citizens -- Jose Padilla and Yaser Esam Hamdi -- who had been declared enemy combatants and denied access to lawyers.

Federal courts, Olson argued, would not go along with that. But the CIA opposed any outside contact, fearing relief from the isolation and dependence that interrogators relied upon to break the will of suspected terrorists.

Flanigan said that Addington's personal views leaned more toward Olson than against him, but that he beat back the proposal to grant detainees access to lawyers, "because that was the position of his client, the vice president."

Decision time came in a heated meeting in Gonzales's corner office on the West Wing's second floor, according to four officials with direct knowledge, none of whom agreed to be quoted by name about confidential legal deliberations. Olson was backed by associate White House counsel Bradford A. Berenson, a former law clerk to Supreme Court Justice Anthony M. Kennedy.

Berenson told colleagues that the court's swing voter would never accept absolute presidential discretion to declare a U.S. citizen an enemy and lock him up without giving him an opportunity to be represented and heard. Another former Kennedy clerk, White House lawyer Brett Kavanaugh, had made the same argument earlier. Addington accused Berenson of surrendering executive power on a fool's prophecy about an inscrutable court. Berenson accused Addington of "know-nothingness."

Gonzales listened quietly as the Justice Department and his own staff lined up against Addington. Then he decided in favor of Cheney's lawyer.

John D. Ashcroft, who was attorney general at the time, declined to discuss details of the dispute but said the vice president's views "carried a great deal of weight. He was the E.F. Hutton in the room. When he talked, everybody would listen." Cheney, he said, "compelled people to think carefully about whatever he mentioned."

When a U.S. District Court ruled several months later that Padilla had a right to counsel, Cheney's office insisted on sending Olson's deputy, Paul Clement, on what Justice Department lawyers called "a suicide mission": to tell Judge Michael B. Mukasey that he had erred so grossly that he should retract his decision. Mukasey derided the government's "pinched legalism" and added acidly that his order was "not a suggestion or request."

Cheney's strategy fared worse in the Supreme Court, where two cases arrived for oral argument alongside Padilla's on April 28, 2004.

For months, Olson and his Justice Department colleagues had pleaded for modest shifts that would shore up the government's position. Hamdi, the American, had languished in a Navy

brig without a hearing or a lawyer for two and a half years. Shafiq Rasul, a British citizen at Guantanamo Bay, had been held even longer. Olson could make Cheney's argument that courts had no jurisdiction, but he wanted to "show them that you at least have some system of due process in place" to ensure against wrongful detention, according to a senior Justice Department official who closely followed the debates.

The vice president's counsel fought and won again. He argued that any declaration of binding rules would restrict the freedom of future presidents and open the door to further lawsuits. On June 28, 2004, the Supreme Court ruled 8 to 1 in the Hamdi case that detainees must have a lawyer and an opportunity to challenge their status as enemy combatants before a "neutral decision maker." The Rasul decision, the same day, held 6 to 3 that Guantanamo Bay is not beyond the reach of federal law.

Eleven days later, Olson stepped down as solicitor general. His deputy succeeded him. What came next was a reminder that it does not pay to cross swords with the vice president.

Ashcroft, with support from Gonzales, proposed a lawyer named Patrick Philbin for deputy solicitor general. Philbin was among the authors of the post-9/11 legal revolution, devising arguments to defend Cheney's military commissions and the denial of habeas corpus rights at Guantanamo Bay. But he had tangled with the vice president's office now and then, objecting to the private legal channel between Addington and Yoo and raising questions about domestic surveillance by the National Security Agency.

Cheney's lawyer passed word that Philbin was an unsatisfactory choice. The attorney general and White House counsel abandoned their candidate.

"OVP plays hardball," said a high-ranking former official who followed the episode, referring to the office of the vice president. "No one would defend Philbin."

'Unacceptable to the Vice President's Office'

Rumsfeld, Cheney's longtime friend and mentor, gathered his senior subordinates at the Pentagon in the summer of 2005. Rumsfeld warned them to steer clear of Senate Republicans John McCain, John W. Warner and Lindsay O. Graham, who were drafting a bill to govern the handling of terrorism suspects.

"Rumsfeld made clear, emphatically, that the vice president had the lead on this issue," said a former Pentagon official with direct knowledge.

Defense Secretary Donald H. Rumsfeld, a longtime Cheney mentor, tours Abu Ghraib in May 2004. In 2005, he made it clear that Cheney 'has the lead on this issue,' said a Pentagon official, referring to the treatment of detainees
More Cheney photos...

Though his fingerprints were not apparent, Cheney had already staked out a categorical position for the president. It came in a last-minute insert to a "statement of administration policy" by the Office of Management and Budget, where Nancy Dorn, Cheney's former chief of legislative affairs, was deputy director. Without normal staff clearance, according to two Bush administration officials, the vice president's lawyer added a paragraph -- just before publication on July 21, 2005 -- to the OMB's authoritative guidance on the 2006 defense spending bill [**Read the document**].

"The Administration strongly opposes" any amendment to "regulate the detention, treatment or trial of terrorists captured in the war on terror," the statement said. Before most Bush

administration officials even became aware that the subject was under White House review, Addington wrote that "the President's senior advisers would recommend that he veto" any such bill.

Among those taken unawares was Deputy Defense Secretary Gordon R. England. More than a year had passed since Bush expressed "deep disgust" over the abuse photographed at Abu Ghraib, and England told aides it was past time to issue clear rules for U.S. troops.

In late August 2005, England called a meeting of nearly three dozen Pentagon officials, including the vice chief and top uniformed lawyer for each military branch. Matthew Waxman, the deputy assistant secretary for detainee affairs, set the agenda.

Waxman said that the president's broadly stated order of Feb. 7, 2002 -- which called for humane treatment, "subject to military necessity" -- had left U.S. forces unsure about how to behave. The Defense Department, he said, should clarify its bedrock legal requirements with a directive incorporating the language of Geneva's Common Article 3 [**Read Common Article 3**]. That was exactly the language -- prohibiting cruel, violent, humiliating and degrading treatment -- that Cheney had spent three years expunging from U.S. policy.

"Every vice chief came out strongly in favor, as did every JAG," or judge advocate general, recalled Mora, who was Navy general counsel at the time.

William J. Haynes II, a close friend of Addington's who served as Rumsfeld's general counsel, was one of two holdouts in the room. The other was Stephen A. Cambone, Rumsfeld's undersecretary for intelligence.

Waxman, believing his opponents isolated, circulated a draft of DOD Directive 2310. Within a few days, Addington and I. Lewis "Scooter" Libby, Cheney's chief of staff, invited Waxman for a visit.

According to Mora, Waxman returned from the meeting with the message that his draft was "unacceptable to the vice president's office." Another defense official, who made notes of Waxman's report, said Cheney's lawyer ridiculed the vagueness of the Geneva ban on "outrages upon personal dignity," saying it would leave U.S. troops timid in the face of unpredictable legal risk. When Waxman replied that the official White House policy was far more opaque, according to the report, Addington accused him of trying to replace the president's decision with his own.

"The impact of that meeting is that Directive 2310 died," Mora said.

'Total Indifference to Public Opinion'

Over the next 12 months, Congress and the Supreme Court imposed many of the restrictions that Cheney had squelched.

"The irony with the Cheney crowd pushing the envelope on presidential power is that the president has now ended up with lesser powers than he would have had if they had made less extravagant, monarchical claims," said Bruce Fein, an associate deputy attorney general under President Ronald Reagan. Flanigan, a founding member of that crowd, said he still believes that Addington and Yoo were right in their "application of generally accepted constitutional principles." But he acknowledged that many battles ended badly. "The Supreme Court," Flanigan said, "decided to change the rules." Even so, Cheney's losses were not always as they appeared.

On Oct. 5, 2005, the Senate voted 90 to 9 in favor of McCain's Detainee Treatment Act, which included the Geneva language [**Read the bill**]. It was, by any measure, a rebuke to Cheney. Bush signed the bill into law. "Well, I don't win all the arguments," Cheney told the Wall Street Journal.

Yet Cheney and Addington found a roundabout path to the exceptions they sought for the CIA, as allies in Congress made little-noticed adjustments to the bill.

The final measure confined only the Defense Department to the list of interrogation techniques specified in a new Army field manual. No techniques were specified for CIA officers, who were forbidden only in general terms to employ "cruel" or "inhuman" methods. Crucially, the new law said those words would be interpreted in light of U.S. constitutional law. That made a big difference to Cheney.

The Supreme Court has defined cruelty as an act that "shocks the conscience" under the circumstances. Addington suggested, according to another government lawyer, that harsh methods would be far less shocking under circumstances involving a mass-casualty terrorist threat. Cheney may have alluded to that advice in an interview with ABC's "Nightline" on Dec. 18, 2005, saying that "what shocks the conscience" is to some extent "in the eye of the beholder."

Eager to put detainee scandals behind them, Bush's advisers spent days composing a statement in which the president would declare support for the veto-proof bill on detainee treatment. Hours before Bush signed it into law on Dec. 30, 2005, Cheney's lawyer intercepted the accompanying statement "and just literally takes his red pen all the way through it," according to an official with firsthand knowledge.

Addington substituted a single sentence. Bush, he wrote, would interpret the law "in a manner consistent with the constitutional authority of the President to supervise the unitary executive branch and as Commander in Chief."

Cheney's office had used that technique often. Like his boss, Addington disdained what he called "interagency treaties," one official said. He had no qualms about discarding language "agreed between Cabinet secretaries," the official said.

Top officials from the CIA, Justice, State and Defense departments unanimously opposed the substitution, according to two officials. The ranking national security lawyer at the White House, John B. Bellinger III, warned that Congress would view Addington's statement as a "stick in the eye" after weeks of consensus-building by national security adviser Stephen J. Hadley.

None of that mattered. With Cheney's weight behind it, White House counsel Harriet E. Miers sent Addington's version to Bush for his signature. "The only person in Washington who cares less about his public image than David Addington is Dick Cheney," said a former White House ally. "What both of them miss is that ..... in times of war, a prerequisite for success is people having confidence in their leadership. This is the great failure of the administration -- a complete and total indifference to public opinion."

Not 'Exactly as the Vice President Would Have Wanted'

On June 29, 2006, the Supreme Court struck its sharpest blow to the house that Cheney built, ruling 5 to 3 that the president had no lawful power to try alleged terrorists in military commissions [**Read the opinion**]. The tribunal order that Cheney brought to Bush's private dining room, and the game plan Cheney's lawyer wrote to defend it, fetched condemnation on disparate legal grounds. The majority relied, as Addington's critics foresaw, on Justice Kennedy's vote. Not only did the court leave the president beholden to Congress for the authority to charge and punish terrorists, but it rejected a claim of implicit legislative consent that Bush was using elsewhere to justify electronic surveillance without a warrant. And not only did it find that Geneva's Common Article 3 protects "unlawful enemy combatants," but it said that those protections -- including humane treatment and the right to a trial by "a regularly constituted court" -- were enforceable by federal judges in the United States.

The court's decision, in Hamdan v. Rumsfeld, was widely seen as a calamity for Cheney's war plan against al-Qaeda. As the Bush administration formed its response, the vice president's position appeared to decline further still. White House strategists agreed that they had to submit legislation to undo the damage of the Hamdan case. Cheney and Addington, according to a former official with firsthand knowledge, favored a one-page bill. Their proposal would simply have stated that the Geneva Conventions confer no right of access to U.S. courts,

stripped U.S. courts of jurisdiction over foreign nationals declared to be enemy combatants and affirmed the president's authority to create military commissions exactly as he had already done. Bush chose to spend the fall of 2006 negotiating a much more complex bill that became the Military Commissions Act. The White House proposal, said Bolten, the chief of staff, "did not come out exactly as the vice president would have wanted."

In another reversal for Cheney, Bush acknowledged publicly on Sept. 6 that the CIA maintained secret prisons overseas for senior al-Qaeda detainees, a subject on which he had held his silence since The Post disclosed them late in 2005. The president announced a plan to empty the "black sites" and bring their prisoners to Guantanamo Bay to be tried.

The same day, almost exactly a year after the vice president's office shelved Waxman's Pentagon plan, Waxman's successor dusted it off. DOD Directive 2310.01E, the Department of Defense Detainee Program, included the verbatim text of Geneva's Common Article 3 and described it, as Waxman had, as "a minimum standard for the care and treatment of all detainees." [**Read the directive**] The new Army field manual, published the next day, said that interrogators were forbidden to employ a long list of techniques that had been used against suspected terrorists since Sept. 11, 2001 -- including stripping, hooding, inflicting pain and forcing the performance of sex acts.

For all the apparent setbacks, close observers said, Cheney has preserved his top-priority tools in the "war on terror." After a private meeting with Cheney, one of them said, Bush decided not to promise that there would be no more black sites -- and seven months later, the White House acknowledged that secret detention had resumed. The Military Commissions Act, passed by strong majorities of the Senate and House on Sept. 28 and 29, 2006, gave "the office of the vice president almost everything it wanted," said Yoo, who maintained his contact with Addington after returning to a tenured position at Berkeley.

The new law withstood its first Supreme Court challenge on April 2. It exempts CIA case officers and other government employees from prosecution for past war crimes or torture. Once again, an apparently technical provision held great importance to Cheney and his allies.

Without repealing the War Crimes Act, which imposes criminal penalties for grave breaches of Geneva's humane-treatment standards, Congress said the president, not the Supreme Court, has final authority to decide what the standards mean -- and whether they even apply.

'I'd Like to Close Guantanamo'

Air Force Two touched down in Sydney this past Feb. 24. Cheney had come to discuss Iraq. Prime Minister John Howard brought the conversation around to an Australian citizen who had unexpectedly become a political threat. Under pressure at home, Howard said he told Cheney that there must be a trial "with no further delay" for David Hicks, 31, who was beginning his sixth year at the U.S. naval prison at Guantanamo Bay. Five days later, Hicks was indicted as a war criminal. On March 26, he pleaded guilty to providing "material support" for terrorism. At every stage since his capture, in a taxi bound for the Afghan-Pakistan border, Hicks had crossed a legal landscape that Cheney did more than anyone to reshape. He was Detainee 002 at Guantanamo Bay, arriving on opening day at an asserted no man's land beyond the reach of sovereign law. Interrogators questioned him under guidelines that gave legal cover to the infliction of pain and fear -- and, according to an affidavit filed by British lawyer Steven Grosz, Hicks was subjected to beatings, sodomy with a foreign object, sensory deprivation, disorienting drugs and prolonged shackling in painful positions.

Ankle cuffs are seen locked to the floor of an interrogation room at Guantanamo Bay. The new legal framework for interrogations was designed to leave room for cruelty. More Cheney photos...

The U.S. government denied those claims, and before accepting Hicks's guilty plea it required him to affirm that he had "never been illegally treated." But the tribunal's rules, written under principles Cheney advanced, would have allowed the Australian's conviction with evidence obtained entirely by "cruel, inhuman or degrading" techniques.

Shortly after Cheney returned from Australia, the Hicks case died with a whimper. The U.S. government abruptly shifted its stance in plea negotiations, dropping the sentence it offered from 20 years in prison to nine months if Hicks would say that he was guilty.

Only the dramatic shift to lenience, said Joshua Dratel, one of three defense lawyers, resolved the case in time to return Hicks to Australia before Howard faces reelection late this year. The deal, negotiated without the knowledge of the chief prosecutor, Air Force Col. Morris Davis, was supervised by Susan J. Crawford, the senior authority over military commissions. Crawford received her three previous government jobs from then-Defense Secretary Cheney -- appointed as his special adviser, Pentagon inspector general and then judge on the U.S. Court of Appeals for the Armed Forces.

Yet the tactical retreat on Hicks, according to Bush administration officials, diverted attention from the continuity of U.S. policy on detainees.

A year after Bush announced at a news conference that "I'd like to close Guantanamo," plans to expand it are proceeding. Senior officials said Cheney, standing nearly alone, has turned back strong efforts -- by Rice, England, new Defense Secretary Robert M. Gates and former Bush speechwriter Mike Gerson, among others -- to give the president what he said he wants.

Cheney and his aides "didn't circumvent the process," one participant said. "They were just very effective in using it."

'His Great Virtue and His Weakness'

More than a year after Congress passed McCain-sponsored restrictions on the questioning of suspected terrorists, the Bush administration is still debating how far the CIA's interrogators may go in their effort to break down resistant detainees. Two officials said the vice president has deadlocked the debate.

Bush said last September that he would "work with" Congress to review "an alternative set of procedures" for "tough" -- but, he said, lawful -- interrogation. He did not promise to submit legislation or to report particulars to any oversight committee, and he has not done so.

Two questions remain, officials said. One involves techniques to be authorized now. The other is whether any technique should be explicitly forbidden. According to participants in the debate, the vice president stands by the view that Bush need not honor any of the new judicial and legislative restrictions. His lawyer, they said, has recently restated Cheney's argument that when courts and Congress "purport to" limit the commander in chief's warmaking authority, he has the constitutional prerogative to disregard them.

If Cheney advocates a return to waterboarding, they said, they have not heard him say so. But his office has fought fiercely against an executive order or CIA directive that would make the technique illegal.

"That's just the vice president," said Gerson, Bush's longtime chief speechwriter, referring to Cheney's October remark that "a dunk in the water" for terrorists -- a radio interviewer's term -- is "a no-brainer for me."

Gerson added: "It's principled. He's deeply conscious that this is a dangerous world, and he wants this president and future presidents to be able to deal with that. He feels very strongly about these things, and it's his great virtue and his weakness."

Staff researcher Julie Tate contributed to this report.

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