

TORTURE – IMMORAL, ILLEGAL, INEFFECTIVE --
AND A DANGER TO THE NATION

The Challenge:

Short of the decision to go to war in Iraq, **nothing has proved more damaging to America's stature as a world power than the iconic pictures of the prison at Guantanamo Bay and the hooded man, wired with electrical cables, standing on a box at Abu Ghraib.** Yet, all of these are inextricably tied to the corrosive policy of torture; and while the troops may be withdrawn, the lingering anger and damage will haunt us in a strategic region where injustices and grievances from a thousand years ago are the accelerants of so many modern conflicts. **It was the presidential decision to make torture an instrument of national policy that provided the war's pretext.** The claim that Saddam Hussein had trained al-Qaida in the use of chemical weapons of mass destruction was based upon false information elicited during the torture of Ibn Sheikh al Libi.

Since torture is prohibited under three major treaties signed and accepted, through Senate ratification, by the United States (and under the supremacy clause in Article VI of the Constitution, such treaties become part of the "supreme Law of the Land"),¹ and by four federal statutes (two criminal and two civil in nature),² how did torture become an instrument of national policy?

¹ Common Article Three of the Geneva Convention Relative to Treatment of Prisoners of War (ratified in 1955); International Covenant on Civil and Political Rights (ratified in 1992); United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment (ratified in 1994).

I. THE DESCENT INTO TORTURE

America got into the torture business because too many otherwise smart people took counsel of their fears, put their faith in psychological hucksters who had no actual experience with the arts of interrogation, relied upon lawyers who would craft legal opinions more fig leaf than substance, and were careful to exclude from the decision process anyone with actual interrogation or legal expertise in the law of armed conflict or international law. The political decision-makers took pains to disregard the contrary advice of the chief judge advocates general of the armed services, and resorted to classifying those dissenting opinions as secret documents so that they would never become public. As with virtually every regime in history that has resorted to torture, once the dogs were loosed, they roamed at will and freely, in Afghanistan, Iraq, nations that would accept rendered persons to be tortured, and CIA black sites around the world.

The sleight-of-hand that made all this possible was straight from Lewis Carroll's Humpty Dumpty: "When I use a word, it means just what I choose it to mean — neither more nor less." Torture became "enhanced interrogation," and Humpty Dumpty's lawyers said there was no law against that. These techniques

² Torture Act, 18 U.S.C. § 2340, 2340A (2000); War Crimes Act, 18 U.S.C. 2341 (Supp. 2006); Prohibition on Cruel, Inhuman, or Degrading Treatment or Punishment of Persons Under Custody or Control of the United States Government, 42 U.S.C. § 2000dd (Supp. 2006); Additional Prohibition on Cruel, Inhuman, or Degrading Treatment or Punishment, 42 U.S.C. § 2000-dd-0 (Supp. 2006).

included waterboarding,³ temperature manipulation,⁴ stress positions,⁵ sleep deprivation,⁶ beatings and slammings,⁷ sensory deprivation,⁸ nudity,⁹ used singly or in combination. Contracted torture to cooperating countries was likely to be ordinary torture. The Torture Act defines “torture” as “..specifically intended to inflict severe physical or mental pain or suffering.” Humpty Dumpty’s lawyers pretzeled themselves into making “enhanced interrogation” legitimate. A better test under the plain language of the Torture Act is: what would be acceptable if done to your own son or daughter?

II. WHAT WE GOT FROM TORTURING

Enhanced interrogation apologists claim that pragmatism and national security justifies all that was done, because information was gained that “saved thousands of lives.” To date, not a single such claim can be validated.

If, in fact, such an instance existed and is classified,¹⁰ there is no longer a legitimate reason to keep it secret: that the CIA and military interrogators relied upon specific kinds of torture or enhanced interrogation (a semantic distinction without a difference) to obtain information has been a matter of record for several

³ Waterboarding is sometimes called “simulated drowning,” but since the victim ingests water into the lungs, from a medical standpoint it is not “simulated” at all. It is actual drowning and will lead to death if not stopped.

⁴ Naked prisoners are confined to a cold cell and repeatedly doused with cold water.

⁵ Standing for multiple days and nights.

⁶ Denial of sleep for multiple days and nights.

⁷ Slamming prisoners into walls, beating, physical violence which leaves no lasting marks or injuries.

⁸ Confinement in coffin-like boxes to create feelings of isolation in a sightless, soundless environment.

⁹ Used to play upon a prisoner’s senses of modesty, vulnerability, and loss of control.

¹⁰ The only justifiable reason for classifying intelligence is to protect sources and methods of collection.

years; the persons from whom the information was derived are or were in U.S. custody, and their information is no longer of current value. The claims by politicians of thwarted plots from timely intelligence that was obtained only by torture have been repudiated by the interrogators who questioned the prisoners and relied upon legitimate interrogation techniques.¹¹ **Experienced and professional interrogators eschew torture as unlawful, unnecessary and unreliable.**¹²

The tragedy of 2001 was primarily the work of one man: Osama bin Laden. We got into a war with Iraq that wasn't necessary or justified, at an incredible cost in blood and treasure, but bin Laden was never there. None of the intelligence which led to his eventual death in Pakistan was obtained through coercive interrogation. **The net strategic effect of torture was zero intelligence and the immense loss of moral stature. We cannot lecture the world about the rule of law or moral imperative when we abandon it and pretend nothing was amiss.**

III. DID WE LEARN ANYTHING FROM A NATIONAL MISTAKE?

Evidently not. Since 2006, an informal group of fifty-plus retired military admirals and generals led by two retired Marine 4-star generals have been urging the White House (under two presidents) and Congress to uphold U.S. laws and international treaties prohibiting torture (and enhanced interrogation), as a matter

¹¹ http://www.newyorker.com/arts/critics/books/2010/03/29/100329crbo_books_mayer; Ali H. Soufan, "The Black Banners: The Inside Story of 9/11 and the War Against al-Qaeda," Chap. 22, W.H. Norton & Co., Inc., 2011.

¹² Statement of Principles, Fifteen Senior Interrogators, Interviewers, and Intelligence Officials who served with the CIA, FBI, and U.S. military services, 2008: <http://www.humanrightsfirst.org/2008/06/24/top-interrogators-declare-torture-ineffective-in-intelligence-gathering/>.

of bolstering national security and re-affirming the nation's commitment to its historic values. Among them have been former chairmen of the Joint Chiefs of Staff; combat commanders; directors of the Central Intelligence Agency, Defense Intelligence Agency, and National Security Agency; and chief judge advocates general. They have consistently argued that because torture is unnecessary and unreliable, reliance upon it endangers the nation and undermines our stature as a leader among nations.¹³

The work of this group was instrumental in President Obama's issuance of Executive Order 13491, ensuring lawful interrogations, on January 20, 2009.¹⁴ This Order required all federal intelligence agencies to abide by the interrogation techniques authorized in Army Field Manual 2-22.3., techniques which conform to federal and international law. By an Executive Order, which can be revoked at any time, the United States is, at least temporarily, out of the grisly business of torture.

Torture, as a policy, could be jump-started at any time. Polling data by the Pew Center and Investor's Business Daily/Christian Science Monitor between 2001-2011 shows a decline of those who believe torture is "never" or "rarely" justified from 66% to 42%, and an increase of those who believe

¹³ <http://www.humanrightsfirst.org/wp-content/uploads/pdf/06913-etn-military-let-ca3.pdf>;
<http://www.humanrightsfirst.org/wp-content/uploads/pdf/06914-etn-vessey-geneva-ltr.pdf>;

¹⁴ <http://www.humanrightsfirst.org/wp-content/uploads/Retired-Generals-Admirals-on-Ten-Year-Anniversary-of-GTMO.pdf>.

torture is “sometimes” or “often” justified from 32% to 53%. Since this is a topic with which most people have no direct experience, public opinion is driven by politicians and pundits who first seek to make us afraid, and then request extraordinary powers to guarantee security – a story as old as Pompeius Magnus and the Mediterranean pirates who raided Rome.

The 2012 elections will be a referendum on torture as an instrument of policy. For the Republicans:

Newt Gingrich claims that “Waterboarding is by every technical rule not torture,” and that “the right balance is that a prisoner can only be waterboarded at the direction of the president in a circumstance which the information was of such great importance that we thought it was worth the risk of doing it and I do that frankly only out of concern for world opinion. But we do not want to be known as a country that capriciously mistreats human beings.”¹⁵

Ron Paul says, “Torture is illegal. And – by our laws. It’s illegal by international laws. Well, waterboarding is torture . . . it’s illegal under international law and our law. It’s also immoral. There’s no evidence that you get really reliable evidence. Why would you accept the position of torturing 100 people because you know one person might have information? And that’s what you do when you accept the principle of torture . . . [it] is really un-American to accept on principle that we need to torture people that we capture.”¹⁶ “The real tragedy is that sadistic cruelty is contagious and dehumanizes those who employ torture. Sadism begets sadism. The ‘need’ for torture and the acceptance of it comes from unabashed fear, insecurity, and ignorance.”¹⁷

Mitt Romney says, “I want to make sure that what happened to Khalid Sheikh Mohammed [enhanced interrogation, waterboarded 183 times in a

¹⁵ November 29, 2011, <http://thinkprogress.org/security/2011/11/29/377907/gingrich-waterboarding-not-torture/>

¹⁶ November 12, 2011, http://blogs.suntimes.com/sweet/2011/11/_cbsnational_journal_gop_debat.html

¹⁷ http://www.washingtonpost.com/opinions/we-read-so-you-dont-have-to-ron-pauls-liberty-defined/2011/05/13/AFFjsk2G_story.html

month] happens to other people who are terrorists.”¹⁸ “I’m not going to specify the specific means of what is and what is not torture so that the people that we capture will know what things we’re able to do and what things we’re not able to do.”¹⁹ “Some people have said we ought to close Guantanamo. My view is we ought to double Guantanamo.”²⁰

Rick Santorum says, “We are at war. The last time we had a – we had a threat like this-was during the Civil War. And, of course, Abraham Lincoln ran right over civil rights. Why? Because we had a present domestic threat. In the previous wars that we’ve had, we haven’t had this type of threat that we have here in the homeland. And we have to deal with it differently.”²¹ “. . .the enhanced interrogation program – which, by the way, I do not believe is torture – that is something that is necessary for our security in a world where we’re playing against people who don’t play by the rules that the civilized world plays by.”²²

With the exception of Ron Paul, it’s clear that if any of the other Republican contenders is elected in 2012, the nation will see a return to the policies of torture approved by President George W. Bush. Indeed, some of Mr. Romney’s national security advisors for his 2012 campaign may have been instrumental in promoting the torture policies of the Bush administration, such as Cofer Black (Director of the CIA Counter-Terrorism Center (1999-2002) and Department of State Coordinator for Counter-Terrorism (2002-2004)); Eric Edelman (Principal Deputy Assistant to the Vice President for National Security Affairs (2001-2003) and Under Secretary of Defense for Policy (2005-2009)).

¹⁸ November 28, 2007,

http://www.democracynow.org/2007/11/29/romney_mccain_spar_on_waterboarding_and

¹⁹ November 28, 2007, <http://www.alternet.org/blogs/peek/69207/>

²⁰ May 16, 2007, <http://thinkprogress.org/2007/05/16romney-guantanamo/>

²¹ November 22, 2011, <http://www.lawfareblog.com/2011/11/gop-national-security-debate-roundup/>

²² May 18, 2011, <http://www.therightscoop.com/rick-santorum-calls-out-tpm-for-smearing-him/>

While **President Obama** deserves credit for what he has done to stop the resort to torture by U.S. agencies and personnel, an executive order alone does nothing to embed that commitment in the fabric of the agencies of the government or within the culture of those who will direct and execute national policy in the future. **He has failed to persuade the American people that torture is both dangerous and wrong, not only as a matter of practice, but as a matter of national morality.** The Obama decision to exempt from prosecution anyone who ordered or implemented torture – and not to even investigate American torture²³ -- is a powerful signal that no matter what federal law or the treaties (which are part of the supreme law of the land) may prohibit, the Humpty Dumpty Exception -- “Words mean exactly what I choose them to mean” – will excuse barbarous conduct in all our names whenever any president sees fit to employ it.

Every president swears an oath to preserve, protect and defend the Constitution. He or she may not be selective about enforcing the laws, through the office of the Attorney General, and yet the current Democratic president has declined to enforce one of the solemn obligations he has under the United Nations Convention Against Torture (ratified by the United States in 1994), which requires

²³ With this single exception: Special Counsel John Durham was appointed to examine interrogators whose cruelty exceeded “authorized” interrogation techniques. Of 100 cases of alleged abuse, examined, Mr. Durham recommended that only two cases be converted to a Department of Justice criminal investigation. Thus, the inquiry accepted the legitimacy of “enhanced interrogation techniques” and looked only at instances where an interrogator went outside what was “authorized” and it is uncertain whether a criminal inquiry will go beyond these interrogators to those who directed their actions.

signatories to investigate and prosecute, even in times of war, instances of torture. This anomaly is more than a technicality. **A president can hardly call upon other nations to abide by treaty obligations in general, or, more specifically, investigate torture by others and prosecute war criminals or crimes against humanity when we refuse to acknowledge that Americans may have tortured – and nothing is done.** This president even refuses to convene an independent, nonpartisan commission of inquiry into past policies and practices of torture.

Rocky Anderson's Opposition to Torture

As president, I will uphold federal law, our international treaty commitments, and I will oppose the use of torture by any agency, officer, or employee of the United States government. I will establish an independent, nonpartisan commission to inquire into past U.S. policies and practices of torture and abuse at all federal government agencies and levels. I will direct the Attorney General to prosecute criminal misconduct where it has occurred. I will call upon the nations of the world to follow America's lead and commitment to the rule of law.

Much is made of America's religious heritage. How ironic that torture became acceptable as a matter of policy under a president who, more than many, wore religion on his sleeve. **How ironic that the 2009 Pew study showed that 54% of those who attend church services at least once a week find the use of**

torture against suspected terrorists “often” or “sometimes” justified, and among white evangelicals, the number jumped to 62%.²⁴ Irrespective of creed, torture is a moral issue, not just a tactic.

Time and again, political candidates decry the dissolution of a moral society or the abandonment of moral values. Yet, on this critical issue of torture, which has corroded our national honor and standing in the world like nothing else, those who stand poised to lead the nation for the next four years, Republican and Democratic alike, are either calling for a robust return to torture, or are whiffing the ball, hoping that the issue will go away. Both positions are on the wrong side of history and human experience.

What we have failed to learn from the British in Ireland, the French in Algiers, and the Israelis with Palestinians, we are doomed to repeat. Torture and torturers have NO place in a democratic society. Waterboarding is as much torture today as it was during the Spanish Inquisition, and a candidate’s personal opinion that it isn’t is either uninformed or dishonest.

²⁴ April 29, 2009, <http://www.pewforum.org/Politics-and-Elections/The-Religious-Dimensions-of-the-Torture-Debate.aspx>