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# THE NATION ON TORTURE

## Catch-33

The weekly journal *The Nation* (New York) published a special issue entitled "The Torture Complex" (26 December 2005). Spurred by the information coming out on practices by US authorities at Guantánamo Bay, Abu Ghraib, Afghanistan, and other (some unknown) places, the journal devoted an editorial, Naomi Klein's weekly column and nine articles to the subject. These articles cover a range of aspects: responsibility within the Bush administration, problems with the investigations conducted by the military, the roles of the medical profession and of academia, the rule of law and the response of the legal profession, the role and use of culture in torture, and the example of one Army man convicted in regard to the abuse at Abu Ghraib. The issue also included a two-page centrespread entitled "The Torture Tree," which depicts a tree with its base of President Bush, Vice-President Cheney and Secretary of Defense Rumsfeld, and then branching up to depict medium and small players, with brief quotes or explanations as to their role.

To quote just a few people on the tree, going from top to bottom:

Charles Krauthammer (neoconservative columnist):  
"We must all be prepared to torture."

Rush Limbaugh (national radio talkshow host): "Abu Ghraib was like a "Skull and Bones [Yale University exclusive, secret society] initiation. ... I'm talking about people having a good time. ... You ever heard of needing to blow some steam off?"

Kenneth Anderson (American University Law professor): "Waterboard Zarqawi? In a heartbeat."

Michael Ignatieff (Harvard Kennedy School professor): defined "acceptable degrees of coercive interrogation" including "forms of sleep deprivation ... disinformation and disorientation (like keeping prisoners in hoods)."

Senator John Warner: an investigation into detainee abuse is "simply unnecessary."

The issue's lead editorial is entitled "Conspiracy to Torture." It notes that the Nuremberg Tribunals had established the principle of "command responsibility."

Despite overwhelming evidence to the contrary, the Bush administration insists that detainee treatment does not constitute torture. But what is happening is not just occasional abuse in a "back room in Bagram [base in Afghanistan] or Baghdad," but systematic torture and extralegal imprisonment. "... it is a wide-ranging conspiracy to facilitate torture, in which many sectors of American society are now implicated." The new torture complex is centered in the executive branch, but it extends to sectors of the military, law, medicine, the media and academia. The editorial concludes that there is enough evidence to warrant a criminal investigation of renditions, secret prisons and interrogations; there is a conspiracy to violate federal statutes and constitutional procedures.

Naomi Klein, in her column entitled "'Never Before!' Our Amnesiac Torture Debate," refutes the idea that the present scandal represents a new phenomenon, and criticizes the anti-historicism of the current debate. She notes that in early November President Bush stated that, "We do not torture," while speaking in Panama City. The locale was just a one and a half hour drive from the former site of the US military's School of the Americas (1946-1984), which is now located at Fort Benning in Georgia. The roots of the present scandal are located in this school, where (foreign military) students were taught techniques of "coercive interrogation." These techniques included: early morning capture in order to maximize shock; immediate hooding and blindfolding; forced nudity; sensory deprivation; sensory overload; sleep and food "manipulation"; humiliation; extreme temperatures; isolation; and stress positions. In 1996 the Intelligence Oversight Board appointed by President Clinton stated that a US government-produced manual condoned the "execution of guerrillas, extortion, physical abuse, coercion and false imprisonment."

Klein notes that over the years a great volume of evidence has been amassed on the US connection with torture, and on the integral role of torture in foreign policy since the Vietnam War; much of this evidence is presented in a book by Alfred McCoy entitled *A Question of Torture*. From the 1950s the CIA conducted experiments on psychiatric patients and prisoners in "no-touch torture," i.e., torture that does not leave bodily marks. These experiments were field-tested by the CIA in Vietnam, as part of the Phoenix program, and in Latin

America and Asia via police training programs. The CIA ran forty interrogation centers in South Vietnam, and according to McCoy killing over 20,000 suspects.

While the use of torture has a history, says Klein, what is unprecedented is the present openness — which denies all involved the possibility of plausible deniability. In addition, while there is much talk about "outsourced torture," the "real innovation" is its in-sourcing — it is being conducted by US citizens, in US-run prisons, using US planes to transport detainees. Finally, Klein criticizes the amendment banning prisoner abuse that was passed by the Senate in October (the McCain amendment); its provisions protect detainees in the custody of the US government, but do not deal with training, or with the buying of information from private, for-profit interrogators. In Iraq, detainees are being handed over to Iraqi squads that have been trained by the US.

The lead article in the issue is by Anthony Lewis, former journalist at *The New York Times*, and is entitled "The Torture Administration." Lewis notes that the US public was outraged after seeing the Abu Ghraib photos that were published in April 2004; after that, however, the administration withheld the release of new photos, and public outrage has lessened. This is at the same time that new information had continued to come out, including documentation by the American Civil Liberties Union (ACLU) of the deaths of 44 prisoners in US custody, 21 of which were officially termed homicides.

Lewis notes that torture and humiliation are forbidden laws — by the Geneva Conventions, the UN Convention Against Torture, and the US Uniform Code of Military Justice. Right after September 11, 2001, however, the Justice Department, under Attorney General John Ashcroft, produced memos that narrowly defined torture as the production of pain equivalent to that from "serious physical injury, such as organ failure, impairment of bodily function, or even death." Memos also stated that the president had the power to order the use of torture, and that the Geneva Conventions do not apply to Guantánamo Bay. In addition, it was claimed that the UN Convention Against Torture does not apply to action taken against non-Americans outside the US (and in this connection Vice-President Cheney tried to have the CIA exempted from the McCain amendment). The purpose of the memos was to override any objections (such as those that came from military lawyers and from then Secretary of State Powell), and to provide immunity to those carrying out the torture.

Lewis notes that the memos were approved by then White House Counsel (and now Attorney General) Alberto Gonzales.

Another actor was John Yoo, a lawyer in the Justice Department from 2001 to 2003. Yoo is now a professor at the University of California/Berkeley law school, Boalt Hall, and is a visiting scholar at the American Enterprise Institute. He argues that the US constitution, and its framers, intended the president to have the war powers "of a king." Countering this is New York lawyer Scott Horton (of the firm Patterson, Belknap, Webb and Tyler), who likens Yoo's views to those of the German interwar legal expert Carl Schmitt, who held that when it came to the Soviet Union, Germany did not have to comply with international law. Lewis advocates the appointment of a special prosecutor. He adds that the Nuremberg Tribunals not only established command responsibility for abuse, but also punished those who wrote legal memos stating that officials could ignore conventions.

Tara McKelvey, a senior editor of *The American Prospect*, explores investigations conducted by the US military in her article entitled "Brass Tacks." Citing instances where evidence has been destroyed, lost or misdirected, she paraphrases the view held by Deborah Perlestein of Human Rights First: there has been a "pattern of disregard for the niceties of evidence collection, storage and processing — as well as the handling of witnesses — in dozens of cases in which detainees have died in US custody." There have been 12 large-scale internal military investigations, producing reports that are inadequate and flawed. Investigative arms of the military are understaffed; in 2004, for example, there was no pathologist authorized to do autopsies on detainees who died in US-run facilities in Iraq, so that remains were often held until there were enough to warrant the visit of a medical examiner from abroad. The Army Criminal Investigation Command had three agents to cover all of Iraq. As another example, if a case file was lost, the case was closed. Finally, complaints led to few changes.

The role of the medical profession is dealt with in an article entitled "The Silence of the Doctors," by Jonathan H. Marks, a barrister at Matrix Chambers, London. The military has formed Behavioral Science Consultation Teams (known as "Biscuits") made up of psychologists and/or psychiatrists. The former camp commander at Guantánamo Bay, Major General Geoffrey Miller, considered the Biscuits as essential to the interrogation process, and introduced them into the camp in late 2002. The presence of Biscuits has been acknowledged by the Department of Defense. Some team members have been sent to Fort Bragg in North Carolina, to the SERE school (Survival, Evasion, Resistance and Escape), which trains military personnel to resist capture and conditions of detention. The school teaches tactics that are designed to

break detainees and to obtain false confessions. Personnel at the SERE school would be exposed to techniques of hooding, prolonged isolation, stress positions, sleep deprivation, exposure to loud noise and temperature extremes. The idea is to produce extreme stress in order to erode established patterns of behavior; then, "stressors" can be tailored to fit the personality of a detainee. At Guantánamo Bay, Biscuits offer opinions on the character of detainees, interrogation plans and approaches, and feedback on interrogation techniques. At times they sit in on interrogations.

Marks notes that in 1982 the UN General Assembly unanimously passed a resolution stating that it contravenes medical ethics for health professionals to be complicit in torture or cruel, inhuman or degrading treatment. Medical personnel are also prohibited from using their knowledge and skills to assist in interrogation that adversely affects health or contravenes international law. The World Medical Association has stated that even in armed conflict it is unethical for doctors to weaken physical or mental health "without therapeutic justification." In addition, detainee medical records are confidential; this has been violated at Guantánamo Bay. Medical personnel are also prohibited from force-feeding hunger-strikers; this has also been violated at Guantánamo Bay. The president of the American Psychiatric Association, Dr. Steven Sharfstein, has stated that it is inappropriate for psychiatrists to serve on Biscuits. Two groups, Physicians for Human Rights and Physicians for Social Responsibility, have condemned medical participation. The American Medical Association, however, has only commissioned a report, which is due out in June 2006. The American Psychological Association formed a task force that issued guidelines; these guidelines prohibit the facilitation of torture or cruel, inhuman or degrading treatment, but "adopt as a "touchstone" US rules and regulations as "developed and refined" in the "war on terror.""

Tara McKelvey has a second article in the issue, on academia and entitled "Rogue Scholars." She notes the following people:

Alan Dershowitz, professor, Harvard Law School: Dershowitz has come out for the issuance of "torture warrants," that would be signed by the president or other high-level official, in cases involving the "ticking bomb" scenario — where information obtained via torture would at the last minute save lives.

Richard Parker, professor, Harvard Law School: Parker believes that torture cannot be absolutely forbidden.

Philip Heymann, professor, Harvard Law School, and Juliette Kayyem, lecturer, Harvard's Kennedy School of Government: believe harsh techniques can be used under certain conditions.

John Yoo, UC Berkeley: noted earlier, he studied at Harvard and obtained a law degree from Yale.

Richard Posner, senior lecturer, University of Chicago Law School, and judge on the US Court of Appeals, Seventh Circuit: he agrees with Dershowitz.

Arthur Caplan, chair of the Department of Medical Ethics at the University of Pennsylvania: can see instances for the use of torture.

Michael Levin, professor of philosophy, City University of New York: has argued the case for torture.

Fritz Allhoff, assistant professor of philosophy, Western Michigan University: has argued the case for torture.

Mirko Bagaric, head of Deakin University Law School, Australia: for the regulation of torture.

Kenneth Anderson, professor, American University's Washington College of Law: says waterboarding is alright.

Eric Posner, professor, University of Chicago Law School: says it is alright to use threats.

Opposing such views are Harold Hongju Koh, the dean of Yale Law School; Ruth Wedgwood, at Johns Hopkins School of Advanced International Studies; and Jeremy Waldron of Columbia University.

Karen J. Greenberg, the executor director of the Center on Law and Security at NYU School of Law, synthesizes the unfolding of the scandal in "Secrets and Lies." She notes that only in a few cases have individuals been charged in connection with torture. The exact number of detainees is still unknown, as is when, how and where detentions have been carried out. The present national-security paradigm disparages the courts, and the rule of law.

The growing number of people in the legal profession who are working to counter this is dealt with by Lisa Hajjar in

"An Army of Lawyers." She notes that in July 2005 a Judge Advocate General (JAG) of the Air Force read into the Congressional Record memos by JAG lawyers in all branches of the military opposing the Department of Defense policy on torture. There is growing and already extensive cooperation among various individuals and groups, including:

Human Rights Watch: monitors and reports on Iraq and Afghanistan; and tracks CIA "black sites."

ACLU: spearheads the campaign to obtain information via the Freedom of Information Act; and with Human Rights First is handling litigation on behalf of eight torture victims.

Human Rights First: has also brought in twelve former JAG lawyers.

Center for Constitutional Rights: coordinates legal representation, trains newcomers in filing habeas corpus petitions in federal court.

Tom Wilner, Shearman and Sterling.

Marty Lederman, constitutional law expert at Georgetown University: analyses key documents from the White House, Department of Defense and Justice Department; see his blog, [balkin.blogspot.com](http://balkin.blogspot.com).

Scott Horton, corporate lawyer and lecturer at Columbia University.

David Cole, Georgetown University.

Richard Wilson: runs the human rights law clinic at American University.

Two articles deal with connections between torture and culture. Richard Kim, in "Pop Torture," notes that the right wing in the US has blamed the doings at Abu Ghraib on pop culture and pornography. Pop culture and torture, however, have a history, being added to today via, for example, such television cop shows, crime dramas and spy thrillers as *Law and Order*, *NYPD Blue*, *24*, *Alias* and *CSI*. In such shows, torture is often used in instances where obtaining information is 'lifesaving.'

Moustafa Bayoumi deals with the use of loud music in torture in his article entitled "Disco Inferno." Detainees are often exposed to hours of loud music, by such bands as Eminem, Bruce Springsteen, Metallica, Britney Spears, Limp Bizkit and Rage Against the Machine. And the practice has been made fun of in the US press. In 1997, however, the UN Committee Against Torture, in consideration of the Israeli use of the technique, qualified this as torture, and called for its ban. In 1978 the European Court of Human Rights took up the matter. This was in regard to Britain's use loud noise (not music) in the early 1970s against Irish detainees. This was one of five techniques favored, the others being wall-standing, hooding, sleep deprivation and the withholding of food and drink. The Court labelled the use of loud noise as inhuman and degrading, and found all five to be breaches of the European Convention on Human Rights; Britain promised not to use them again.

Bayoumi notes that the use of loud music — the use of culture as a instrument of torture — has been approved by Secretary of Defense Rumsfeld and Lt. Gen. Ricardo Sanchez (military commander in Iraq until the Abu Ghraib scandal); they approved the use of auditory stimuli or music, and the varying of techniques depending on a detainee's culture. Bayoumi says that it is time for US musicians to protest such use of their music.

In the final article, "Seeds of Abu Ghraib," Sasha Abramsky (of the New York thinktank Demos) looks at the example of one of the Army men convicted in connection with Abu Ghraib. This is Charles Graner, Jr., who was found guilty of assault, conspiracy, dereliction of duty and indecent acts. Graner had served in the Marines, and then became a correctional officer at a super maximum security prison in western Pennsylvania, SCI Greene. Most of the guards at the prison had served in the military, as there is a preferred hiring scheme for veterans. Many of the guards have been activated into the National Guard or Army Reserves, serving in Iraq and Afghanistan. At the prison, guards deal with high populations of blacks, Hispanics and Muslims (many black Muslims), and there had been a prisoner abuse scandal there in 1998. Despite a record that included accusations of wife beating, stalking and threatening (with the ex-wife receiving three legal protection orders), Graner was seen as fit for duty in Iraq. ■

*The Nation* regularly covers issues related to the Iraq War; many articles are available at [www.thenation.com](http://www.thenation.com)