

The following text may be printed, copy/pasted, or downloaded and emailed.

New Loopholes May Exist for Abuse

Alfred W. McCoy (op-ed)
San Francisco Chronicle
January 8, 2006

Legislation championed by Sen. John McCain to stop physical abuse of prisoners held in U.S. custody around the world was signed into law nine days ago by President Bush. It marks the third time in 30 years that Congress has voted to prohibit torture. Twice before, in 1975 and 1994, investigations of horrific abuse, secret prisons and CIA complicity led to legislation with hidden loopholes -- a history we may be about to repeat.

The fundamental problem, despite McCain's statements to the contrary, is that torture is neither a recent nor an aberrant American practice. Purging torture and punishing perpetrators is particularly difficult for the United States because it has long relied on an elusive form -- psychological not physical, masked by any absence of visible scars -- complicating any legal definition of "torture."

Indeed, the most notorious of photographs from Abu Ghraib prison, showing a hooded Iraqi on a box with fake electrical wires on his arms, reveals a hidden history of CIA torture. From 1950 to 1962, the agency led a costly effort to crack the code of human consciousness, a veritable Manhattan Project of the mind that culminated in creation of psychological torture -- the first revolution in this cruel science in centuries.

Experimenting with sensory deprivation, CIA contract researchers at Harvard and McGill universities discovered that simply isolating subjects in goggles, gloves and earmuffs induced a state akin to psychosis in just 48 hours. Neurologists at Cornell Medical Center explored the KGB's self-inflicted pain that forced victims to stand for days until they broke. In 1963, the CIA combined these two methods in an interrogation manual that soon spread among allied agencies at home and abroad. Forty years later, that Iraqi photo shows these trademark techniques: arms extended for self-inflicted pain, head hooded for sensory deprivation.

In its clandestine journey across continents, the CIA's paradigm would prove adaptable, evasive and resilient. Even in the roughest hands, each application produced innovation beyond the original shotgun assault on universal human stimuli: sight and sound, heat and smell.

In the Philippines, Ferdinand Marcos' CIA-trained torturers discovered the potency of sexual humiliation in a society with strict Catholic mores. Similarly, at Abu Ghraib, U.S. interrogators attacked Arab cultural sensitivity to gender and sexual identity. At Guantanamo, military psychologists perfected the CIA's paradigm by probing individual phobias such as fear of the dark or attachment to mother.

Unlike conventional torture, with telltale physical marks, psychological abuse eludes easy definition, as Lord Parker found when investigating British use of these CIA techniques on IRA suspects in 1971. "Where," he asked, "does ... humiliating treatment ... end and torture begin?" The answer, he said, turns on "words of definition" and thus "opinions will inevitably differ."

When Dublin complained about this abuse, the European Court of Human Rights found Britain guilty of "inhuman and degrading treatment" but not torture. Alone among the 17 justices, Judge Demetrios Evrigenis of Greece understood that there are "new forms of suffering that have little in common with the physical pain caused by conventional torture" which can produce "the disintegration of an individual's personality ... and the crushing of his will."

After investigating Guantanamo, Air Force Lt. Gen. Randall Schmidt told the U.S. Senate last summer that standards for physical torture were clear, but "anything else beyond that was fairly vague." Like Lord Parker, the general found "something might be degrading but not necessarily torture." Even though "the twentieth hijacker," Mohamed al-Qahtani, was subjected to 160 days of isolation; cold so extreme he twice required hospitalization; exposure to a dog "directed to growl, bark and show his teeth"; "forced positions"; being told "his mother and sister were whores"; and being "led around by a leash" like a dog, this was not, the general insisted, "torture." On the slippery slope of these psychological techniques, there are no clear definitional footholds.

But, above all, psychological torture is surprisingly difficult to eradicate. With its legitimating scientific aura and avoidance of obvious brutality, the CIA method has long provided a pretext for torture in the U.S. intelligence community. Finding torture training by the Office of Public Safety, a CIA-U.S. aid program, Congress abolished it in 1975. Because senators failed to probe further, the agency shifted its cover to the Army and continued torture training in Central America during the 1980s.

Similarly, in ratifying the U.N. Convention Against Torture in 1994, then-President Bill Clinton included four "reservations," drafted by the Reagan administration, to evade just one word in its 26 pages -- i.e., "mental." By re-defining "torture" to exempt psychological techniques, while adopting a U.N. convention that condemned them, Congress buried this contradiction like a land mine that exploded, just 10 years later, at Abu Ghraib.

This linguistic legerdemain also created a definitional chasm between America and its allies. Secretary of State Condoleezza Rice says, with utter conviction, America "does not tolerate ... torture," and Europeans feel, with equal conviction, her words are an "artful dodge."

Since the start of the War on Terror, the Bush administration has revived torture and resisted reform. When McCain attached a torture ban to Defense appropriations this summer, requiring interrogators to follow the Army Field Manual, the White House fought back with loopholes.

First, Vice President Dick Cheney pressed McCain to exempt the CIA. When he refused, the White House threatened to veto -- a bluff that ended in October when the Senate passed the torture ban by a resounding 90-9 vote.

Next, national security adviser Stephen Hadley urged legal exemptions for CIA torturers, and again the senator refused.

Then, the Pentagon rewrote the U.S. Army Field Manual to teach interrogators, as the New York Times reported, "how to walk right up to the line between legal and illegal interrogation" -- changes one Defense official called "a stick in McCain's eye."

After the House voted overwhelmingly to support McCain, President Bush grudgingly accepted his torture ban in exchange for quasi-military tribunals for accused CIA interrogators. After that, a Senate staffer said, only a few "refinements" remained.

The success or failure of this, Congress' third attempt in 30 years to outlaw torture, lies in those "refinements." In a related compromise, the Senate approved coerced detainee confessions at Guantanamo's military tribunal. Moreover, Attorney General Alberto Gonzales told CNN the proposed ban adds only "clarification" to Congress' existing definition of torture as "intentional infliction of severe physical or mental pain."

When these two tribunals judge the slippery signs of psychological torture, each of his words -- "intentional," "severe" and "mental" -- will open another loophole, another eye of the needle through which the CIA can pass to continue this cruel practice.

Alfred W. McCoy is professor of history at the University of Wisconsin-Madison and the author of "A Question of Torture: CIA Interrogation, from the Cold War to the War on Terror."