

QUIT Conference, Ben Lomond, CA
September 25, 2010

American Prisons and Torture

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It is an honor to be here. There are people in the room whose work I know and greatly respect, including the organizers of this conference as well as Fr. Roy Bourgeois, who has been a hero of mine for a long time.

I talk about torture in American prisons, but sometimes I feel like a voice in the wilderness. I testify as a psychiatric expert in large class action lawsuits, about solitary confinement in supermax prisons, about denying mental health care to prisoners with serious mental illness and then locking them away in solitary, about prison rape, for instance custodial misconduct where the perpetrators are prison guards and the women, or it can be men, who are raped are prisoners.

Rape by staff of women in captivity is torture, of course. And obviously the prison situation is the same as in prisoner of war camps - the perpetrator is in charge of the women, has a duty to take care of them, but their captivity and his control make rape easy to get away with and especially damaging to the women, who are not only raped but also are in captivity.

So is the denial of treatment to individuals suffering from serious mental illness.

So are horrific conditions of confinement. Let me give you an example of horrific conditions of confinement.

In a 2002 Declaration about Death Row at Mississippi State Penitentiary in Parchman (Willie Russel v. Epps). The "special punishment cell" was remarkable:

Willie Russell describes his experience being housed in Cell 225 for two years, one of four "punishment" cells on Death Row with plexiglass doors (covering the standard door). I have seen this kind of double door in super-maximum security units in other

states. Once one is locked inside such a cell, the temperature and humidity begin to rise within minutes because the plexiglass (or lexsan, an indestructible form of plastic) retains the heat and humidity within the cell. The temperature rises rapidly, and life in the cell becomes unbearable. In the summer heat at Parchman, this one aspect of the punishment cells would make them entirely unacceptable by any standard of human decency or of health and mental health minimum standards. But in addition to this cruel and entirely excessive and punitive measure that clearly serves no legitimate penological objective, Mr. Russell reports that his cell is always filthy, the rain pours in through the walls onto his bed, the toilet floods the cell with backflow from other prisoners' toilets, there are bugs everywhere, the cell is filled with mosquitoes at night, he cannot sleep at night because the lights are on 24 hours per day, he is not permitted to have a fan, he is not permitted television or radio and there are no activities, and he is even more isolated than other prisoners on Death Row because the lexsan shield on his door makes it impossible for him to talk to anyone. For two years, he was permitted no mattress, no pillow and no sheets, and had only a blanket and the concrete for a bed. This kind of punitive deprivation and degradation is barbaric, and shocking to human sensibilities. It is the kind of cruel and unusual punishment that is well known to cause intense anxiety and rage, psychiatric breakdown, and in a large proportion of cases, suicide.

In American courts, international law is given little weight. The Eighth Amendment, or ADA, are the yardsticks of abuse. But I always mention torture - to educate judges and attorneys about the existence of agreements to which the USA is signatory.

A high point in my career as a forensic psychiatrist was the Walker case in Montana, the State Supreme Court used the word torture.

Torture definition - sometimes ambiguous -

United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines torture:

"Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes

as obtaining from him or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

- Convention Against Torture, Article 1.1

Of course, there are debates about the meaning of "severe" pain or suffering; whether there lasting marks are a criterion; whether psychological torture fits the definition as well as physical; Professor Dershowitz wants to make it relative to the security issue - i.e. some torture is acceptable if national security is at stake. So we get the bizarre historical development that Vice Pres Cheney and advisor Carl Rove, citing a Boalt Hall Law Professor's theory, claim that waterboarding, sleep deprivation and other components of "enhanced interrogation" are perfectly constitutional and do not constitute torture (or, better, the torture they constitute is acceptable, given security concerns).

People generally ignored that whole debate - until Abu Ghraib. People were shocked at the headlines. It was a shocking exposé of horrendous practices, a rare opportunity to bring our concerns about torture to the front burner. I remember Defense Secretary Donald Rumsfeld's initial public pronouncement: I am sorry the public had to learn about this - in other words, shoot the messenger, the fact of torture is not regrettable, the public discovering it is the regrettable development. People were shocked. There were lingering questions: Was Abu Graib - an extraordinary event or a regular occurrence? Was it the fault of Bad Apples or Good Soldiers following orders? And if the latter, from how high up the line of command came the orders?

There is a parallel with prison rape: An officer rapes a woman prisoner. Was he a bad apple? Or was there "deliberate indifference?" - this is a complicated question - in one famous case out of Michigan, the Neal v. MDOC case that settled last year for \$100 million for the 500 women sexually molested by staff over two decades, a guard took a woman prisoner to a storage room that

should have been off-limits to the prisoner, on the way there they passed a sergeant who was supervising the unit and that sergeant who did not ask why he was taking a woman to an off-limit place - the perpetrator raped her in the storage room and left her there. There's the complicity of silence by the sergeant - but also there's a general lapse in policy and practice that, for example, does not require investigators of the rape to demand that the sergeant sitting at the desk and witnessing the assault testify as to what happened. This is "deliberate indifference." The code of silence in prisons quite often amounts to deliberate indifference, as staff remain silent about crimes and torture committed by their fellow staff-members.

Back to Abu Ghraib. Of course the actions were designed, ordered and supported by higher-ups. There is an interesting film, *The Tillman Story*, out now, which shockingly illustrates the way the military and government designate a fall guy - in that case a lower level general - to take the rap, and thereby clear all higher ups of knowledge and complicity. Abu Ghraib, like the Tillman story, was a moment when the public, if they chose not to be blind, had to realize that the cover-up was outrageous. The higher-ups definitely not only condoned it, but designed the torture.

Mark Danner, in a poignant series of articles making public the investigative reports about Abu Ghraib, talks about the photos on the front page of the papers:

"They have long since taken their place in the gallery of branded images, as readily recognizable in much of the world as Marilyn struggling with her billowing dress or Michael dunking his basketball: Hooded Man, a dark-caped figure tottering on a box, supplicant arms outstretched, wires trailing from his fingers; and Leashed Man, face convulsed in humiliation above his leather collar, naked body twisted at the feet of the American female in camouflage pants who gazes down at him without expression, holding the leash casually in hand.

General George R. Fay writes, in a section of his report that was classified and kept from the public:

Policies and practices developed and approved for use on Al Qaeda and Taliban detainees [in Afghanistan and Guantánamo] who were not afforded the protection of the Geneva Conventions, now were applied to detainees who did fall under the Geneva Conventions' protections.

According to General Fay, these “policies and practices” included, among others, “removing clothing, isolating people for long periods of time, using stress positions, exploiting fear of dogs and implementing sleep and light deprivation.”

Mark Danner, in *The Logic of Torture*, NYRB, 6/24/04, writes:

"Viewed in this light, the garish scenes of humiliation pouring out in the photographs and depositions from Abu Ghraib—the men paraded naked down the cellblock with hoods on their heads, the forced masturbation, the forced homosexual activity, and all the rest—begin to be comprehensible; they are in fact staged operas of fabricated shame, intended to “intensify” the prisoner’s 'guilt feelings, increase his anxiety and his urge to cooperate.'.... some of the techniques seem clearly designed to exploit the particular sensitivities of Arab culture to public embarrassment, particularly in sexual matters.

Danner proceeds to expose a cynical, sadistic twist to the military's handling of prisoners:

"The American military, of course, is well aware of these cultural sensitivities; last fall, for example, the Marine Corps offered to its troops, along with a weeklong course on Iraq’s customs and history, a pamphlet which included these admonitions:

Do not shame or humiliate a man in public. Shaming a man will cause him and his family to be anti-Coalition.

The most important qualifier for all shame is for a third party to witness the act. If you must do something likely to cause shame, remove the person from view of others.

Shame is given by placing hoods over a detainee's head. Avoid this practice.

Placing a detainee on the ground or putting a foot on him implies you are God. This is one of the worst things we can do.

Arabs consider the following things unclean:

Feet or soles of feet.

Using the bathroom around others. Unlike Marines, who are used to open-air toilets, Arab men will not shower/use the bathroom together.

Do not permit public display of bodily fluids because that is considered very unclean.

These precepts, intended to help Marines get along with the Iraqis they were occupying by avoiding doing anything, however unwittingly, that might offend them, are turned precisely on their heads by interrogators at Abu Ghraib and other American bases. Detainees are kept hooded and bound; made to crawl and grovel on the floor, often under the feet of the American soldiers; forced to put shoes in their mouths. And in all of this, as the Red Cross report noted, the public nature of the humiliation is absolutely critical; thus the parading of naked bodies, the forced masturbation in front of female soldiers, the confrontation of one naked prisoner with one or more others, the forcing together of naked prisoners in "human pyramids." And all of this was made to take place in full view not only of foreigners, men and women, but also of that ultimate third party: the ubiquitous digital camera with its inescapable flash, there to let the detainee know that the humiliation would not stop when the act itself did but would be preserved into the

future in a way that the detainee would not be able to control.

A note on psychological harm. It is clearly accepted in international debates that psychological harm can constitute torture - i.e., it isn't necessary that physical marks be left on the body of those tortured. So there are prohibitions against trauma, rape, inhumane conditions of confinement known to cause psychological harm, etc. I would add a note here: the current emphasis on biological psychiatry makes the line between physical and psychological harm entirely outdated and moot - there are adrenal gland discharges of adrenaline and cortisol, and pathways in the brain that become habitual, means that trauma actually causes brain damage. So psychological trauma causes physical changes in the brain, and all torture is physically harming.

There is also the duty to treat. In international circles, including the UN, denying mental health care to individuals in need of it, along with causing psychiatric damage, constitutes torture. This principle has been enunciated in detail in relation to HIV treatment, substance abuse treatment and reproductive rights. But leaving someone in an acute state of distress such as a psychotic episode or suicidal crisis, without supplying needed mental health care, constitutes torture.

In the USA, denial of health and mental health care is repeatedly deemed by federal courts to be unconstitutional - for example, the Platta Case in California, or the Coleman case - both of which are headed for the Supreme Court in October regarding the population cap from the 9th Circuit federal judges - the judges ruled that the State of California has so abysmally failed to correct the unconstitutionally deficient medical and mental health care that a reduction in the prison population is the only method left to correct the problem. The governor has appealed that ruling to the Supreme Court.

Thus we have a list of practices from Abu Ghraib that can be employed to assess U.S. prisons. I will quickly go down the list and, sad-to-say, provide illustrations of widespread practices in American jails and prisons that, in fact, constitute that very type of torture:

1. Actual excessive physical force/physical hurting -

unnecessarily. I give the example of a death in custody at the LA County Jail. A Mexican-American man, with a job and a family, had an alcohol problem and was arrested on a minor charge. He was found several days later hanging from a noose made out of his sheet in a segregation cell (i.e. nobody but staff had access to him). The L.A. coroner deemed the death a suicide by hanging, and opined that multiple bruises all over his body had nothing to do with the cause of death. His attorneys hired the recently retired ex-coroner from San Diego, who did an independent examination and concluded that this was no suicide. The small bone fractures in his neck fell on a horizontal line, which suggests a choke hold. If his death had been by hanging, the breaks in the small bones of the neck would have been in a "U-shaped" pattern because the noose would pull upward. Then, because the horizontal breaks definitely proved foul play, the bruises all over his body would obviously be related - he was badly beaten, strangled, and then after he died he was hung up to make the death look like a suicide. L.A. County immediately settled the civil wrongful death suit - but the shocking thing to me is that the Sheriff of L.A. County who administrates the jail, Sheriff Baca, never did an investigation to find out which of his officers murdered this inmate.

2. Putting someone in physically uncomfortable conditions - whether by holding under water, confining in horrible conditions, etc. I already read to you my testimony about Willie Russell - just about all jails and prisons have a "hole," and then they have a "hole within the hole" - consider the notorious "Adjustment Center" at San Quentin before the advent of supermax prisons - or the ADX in the Federal Bureau of Prisons today - it is not uncommon in federal segregation units to have 3 or 4 men jammed into a cell built for one.

3. Removing clothing unnecessarily - Cf. Strip search of women prisoners - or even pat search - or, Behavior Management Plan in Montana and other states - as punishment, for a man already in extreme isolation/segregation, they take away his clothes, his bedding, his pillow, all possessions, and they give him only "loaf" to eat - the ground up and compressed leftovers of previous prisoner meals.

4. Isolating people for long periods of time - no need for an illustration here - the entire penal strategy of segregation today - entire prisons

built for the sole purpose of solitary confinement - Pelican Bay State Prison, ADX and so forth.

7. Implementing sleep and light deprivation - one of the most universal complaints of prisoners in solitary confinement - they can't sleep - the lights are on all the time, at the same time it is too dark to read, and they can't sleep at night because of incessant noise (clanging of doors, screams of prisoners with serious mental illness in nearby cells, etc.), and uncomfortable conditions.

8. Add sexual humiliation - often involved in the removal of clothing - demeaning of a person's sexual attributes or body shape. We see it all the time in prison, guards telling men to bend over and spread their cheeks, and then mocking the size of a man's penis, or making sexist and demeaning comments about women prisoners' bodies.

9. Sexual assault - pervasive in American prisons - The Prison PREA is beginning to have an effect, and we are settling class action cases - but there are still outrageous abuses - Cf. case of Alexis Giraldo, a transsexual (male to female) who, pre-operatively, was imprisoned in California and double-celled with a tough prisoner who proceeded to rape her repeatedly. When she complained to guards, they told her "What's the matter, you like dick." That case is about to go for re-trial, the issue is the state's failure to provide a safe place for Alexis to serve her sentence.

10. Inducing fear of death such as by hooking up to an electric wire or putting on a hood and/or noose - that very practice has been reported in the Philadelphia and Chicago police departments - to obtain false confessions.

11. Disrespecting the person's religion in such a way as to induce lasting shame. Cell searches are omnipresent in prison, and religious materials are typically seized or destroyed. Then there is the denial of opportunities to practice religion - Native American and Muslim prisoners have launched lawsuits about this around the country.

Abu Ghraib was not an anomaly, rather it was a reflection of usual practices in American prisons.

I have not mentioned race. American prisons are a mirror on system-wide race relations and racism. Begin with the fact that 50% of prisoners are African American. This statistic in itself reflects the gross racism that characterizes the criminal justice system at every level. I will not dwell on this obvious and overwhelming aspect of our criminal justice system, except to say that where the victim of torture perceives that to a large extent his or her subjection to torture is based on race, the pain and suffering are magnified.

How is it tolerated by this society?

There is ignorance and there is secrecy. The torturer craves secrecy, invisibility. Mark Danner cites Sergeant Javal S. Davis, a soldier at Abu Ghraib who was asked why he didn't protest the abusive behavior. He answered that he "assumed that if they were doing anything out of the ordinary or outside the guidelines, someone would have said something."

Silence = Collusion - if it is related to behavior known to cause harm, or torture, that's deliberate indifference according to American courts.

Remember Rumsfeld's regret - that Abu Ghraib came to public notice, not that it happened.

Remember the sergeant in the prison who sat at a desk while the guard perpetrating rape walked the woman past his desk on the way to the storage closed where he would rape her, and that sergeant did not do anything to stop the rape and did not testify about it in the subsequent investigation.

Prison, like Abu Ghraib prior to the exposé, is a secret place to disappear populations. (Prison systems constantly try to make visiting more difficult - the prisons are far from population centers, there are so many rules for visits that often, family members are turned away even after making the trip, there are exorbitant rates for phone calls to prisoners, mail is censored, and the press in many states is barred from contact with prisoners - at the same time, it is the case that prisoners with little or no contact with loved ones and other people outside the prison are the most at risk for beatings, rape

and other abuses.) Then, torture occurs there - it's akin to extraordinary rendition.

As an aside, re extraordinary rendition, I saw the HBO documentary, "My Trip to Al Qaeda," Lawrence Wright's experience in the Middle East, where he interviewed various members of Al Qaeda. One of his disturbing findings was that many, like some key plotters of 9/11, spent time in the Cairo Prison where the US military sends captives for extraordinary rendition. Torture is pervasive, as he chronicles. Chillingly, he says "they enter the prison as subversives, they emerge as monsters." I believe he is right - it's a particular example of the larger dark secret: VENGEANCE, including torture in black sites, extraordinary rendition, harsh punishment in American prisons (harsh punishment is a form of vengeance), and capital punishment - breed more murderous rage and more vengeance - in the survivors, but also in the population at large. That's what's going on in the Middle East and why the Taliban and Al Qaeda are expanding their ranks even as so many adherents commit suicide bombings, and that's why our prison system is causing an increase in recidivism - it's the same mechanism.

Back to the discussion of parallels between Abu Ghraib and American Prisons.

The way the captives were tortured at Abu Ghraib was a deliberate attempt to break them - permanently. In general, the aim of torture is to destroy the individual's will, to break the individual down and obliterate a sense of autonomy and agency, thus turning that individual into a shell of a person who lacks the will to resist or even to be human in the sense that being human requires personal agency. But this is too often a permanent state of brokenness. In fact, it's the aim of permanent brokenness that define the abuse as torture.

The parallel in American prisons is Supermax solitary confinement. It is touted as a way to control violence in the prisons - that doesn't work. More recent studies show that prison violence has not declined since the advent of supermax.

There is this alarming cycle: Prisoners with serious mental illness go untreated or inadequately treated, they run afoul of the prison disciplinary system and get locked in long-term solitary confinement, and there the harsh deprivation, isolation and idleness exacerbate their mental illness.

There is this shocking statistic about prison SUICIDE - 50% of prison suicides occur among the less than 10% of prisoners in solitary confinement at any given time.

The Decimation of Life Skills in American prisons is a form of torture. (See my chapter, "Prison and the Decimation of Pro-Social Life Skills," in The Trauma of Psychological Torture, Editor Almerindo E. Ojeda, Vol 5 of Disaster and Trauma Psychology Series, Praeger, 2008. At Abu Ghraib - soldiers purposely made a mockery of their captives' religion and sexually humiliated them - the cynical aim was permanent damage to the captives' religious life, sense of manliness and quality of intimacies. Similarly, in American prisons, rehabilitation has been massively downscaled, prisoners are left in overcrowded inhumane conditions, a large proportion are subjected to longterm solitary confinement - and then they are released only to return to drugs and be re-arrested in record numbers. Their life skills have been decimated, whether or not they are beaten or raped and develop PTSD, and that is a form of widespread torture. There are the obvious individual acts of torture, like the stripping naked, humiliating, beating, rape, and so forth. And then there is the widespread devastating form of torture, the purposeful (i.e., by policy and even deliberate indifference) decimation of life skills among a growing population of people who spend significant stints in jail and prison today.

The fact that this decimation of life skills is predictable, and therefore avoidable, but yet it goes on - this is what makes it deliberate indifference in American courts, and this is what makes it torture in the international discussion on that subject.

In other words, I am not saying that incarceration is torture. That equation would dilute the very concept of torture. Rather it is the unnecessary infliction of pain and suffering - the extraordinary abusive acts such as beatings, rape and so forth, and the very ordinary

abusive acts such as denying prisoners meaningful rehabilitation opportunities and confining them in conditions such as solitary confinement where it is predictable their spirit will be broken and, on average, they will emerge as very dysfunctional human beings.

It is also cynical and sadistic - in the same way torture is, be it the South American Colonels, Abu Ghraib, or ADX supermax prison.

I am very pleased that QUIT, and NRCAT, are including American prisons in the campaign to end torture. Thank you so much for this opportunity to meet with you.