



USING TORTURE ON SUSPECTED TERRORISTS

A Module for Democracy/Civic Mission Classrooms

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Using Torture on Suspected Terrorists

Overview

The United States has signed the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, which defines torture as “any act by which severe pain or suffering is intentionally inflicted on a person.” Since the al-Qaeda attacks of September 11, 2001, however, allegations have surfaced regarding American treatment of detainees in the “Global War on Terror.”

This unit introduces a definition of torture and provides information about its use in human history and today. It examines how most countries prohibit torture and explores why torture is still considered a possible tool for preventing future losses of innocent life. It also provides an opportunity to discuss some of the facts, the misperceptions, the arguments, and the alternatives surrounding this controversial practice.

Focus Question

§ Should the United States consider using torture on suspected terrorists to gain information about imminent attacks on the United States and/or U.S. citizens?

Objectives

- § Provide a working definition of torture.
- § Enhance understanding of the uses of torture in human history and today.
- § Assess the ethical, ideological, and political advantages and disadvantages—both domestically and internationally—of using torture on suspected terrorists.

Materials

- A: Reading: Using Torture on Suspected Terrorists
- B: Activity: Sorting Out Positions on Torturing Suspected Terrorists
- C: Using Torture on Suspected Terrorists Selected Resources

Procedures

- (1) Have students read the selection “Using Torture on Suspected Terrorists.” Address any questions raised by students. If there are questions for which no one has a definite answer, list them on the board for later research.
- (2) Distribute the activity sheet “Sorting Out Positions on Torturing Suspected Terrorists.” Ask students to work in pairs to classify the statements as either “for” or “against” using torture on suspected terrorists.
- (3) Ask each pair to select together three statements which they consider most compelling. These statements may be in favor, in opposition, or a combination.
- (4) Group students in quartets (two pairs). Ask each quartet to reach a consensus on which statement you feel is the most persuasive for each position. Have students report out and explain their decisions to the class.
- (5) Conclude the class by polling your students: “Do you agree, disagree, or are you still undecided about the Focus Question?”

A: Reading: Using Torture on Suspected Terrorists

The word “torture” brings immediate and unwelcome associations: The Gestapo, the purges under Stalin, the Spanish Inquisition. Whether to discover evidence, to gain a confession, to establish dominance, or ultimately to destroy another person, torture conjures up the very worst images of what human beings are capable of doing to each other.

For many years, the United States and other nations have led the world in trying to abolish the use of torture and condemn those persons and regimes who use it. Yet since the attacks of September 11, there has been a quiet discussion of whether torture might have a place after all in the “global war on terror.”

On April 28, 2004, CBS *60 Minutes II* aired photos from the Abu Ghraib prison complex in Baghdad that sent shockwaves across the United States and around the world. The photos showed Iraqi prisoners in a variety of circumstances: some in classic positions of torture, some combined in humiliating sex acts, some posed as trophies with U.S. Armed Forces, some dead and packed in ice. Following these revelations in the print and electronic media, several news outlets began posting a series of legal memoranda dating back to January 2002 from officials in the Bush Administration devoted to the legal status of al Qaeda and Taliban detainees. As a result, questions have been raised about what happened, who was responsible, and what is the current U.S. policy for treatment of detainees.

Defining Torture

The United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, to which the United States is a signatory, defines torture as “any act by which severe pain or suffering is intentionally inflicted on a person.” Torture has been part of Roman Law, English Law, even Church Law. Whenever and wherever it is used, torture usually is applied toward one or more of the following goals.

Evidence. Torture is often used to get information or evidence from a prisoner who is otherwise unwilling to give it. It can be very effective; contrary to what the movies portray, most people do talk when subjected to the threat of intense, repeated pain. Even people who are ready to die—and who know they will be executed regardless—will talk when tortured (“Torture in History: The Sighting of the Rack,” *The Economist*, January 9, 2003).

Confession. Another use for torture is to gain a confession from people suspected of wrongdoing. During the Inquisition in 17th and 18th Century Spain, for example, inquisitors would warn prisoners to tell the truth before and during torture, and they would explain that this was their sole motivation. The confession would allow the suspect to acknowledge the crime – the key to repentance, the salvation of their soul, and possible readmission to society. In essence, the inquisitors were torturing the victims for their own good. (Tamar Herzog, “Torture in Early Modern Spain and Latin America,” 1999). In modern times, and for quite different reasons, police and state security officials have used torture to gain confessions because of the unique persuasive power of a confession in a trial.

Dominance. Sometimes torture is used by one person or group to demonstrate their power over another person. Often, totalitarian regimes have subjected people to torture for absurd reasons or no reason at all. More than simply instilling fear, torture conducted for power’s sake is ultimately about the torturer’s need to convince the tortured. As Elaine Scarry has written about torture, “The physical pain is so incontestably real that it seems to confer its quality of ‘incontestable reality’ on that power that brought it into being. It is, of course, precisely because the reality of that power is so highly contestable, the regime so unstable, that torture is being used” (*The Body in Pain*, p. 27).

Torture in U.S. and International Law

In response to the horrors of World War II, the United States through the United Nations was a leader in the creation of the Universal Declaration of Human Rights, a turning point in international law and human rights law. The Declaration was intended to be “a common standard of achievement for all peoples and all nations” (*Human Rights for All*, Street Law, Inc., 1996). While not binding, it is an important statement of principle to which the United States was an original signatory. The Declaration has 30 articles, including Article 5, which states that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” The United States is also a signatory of the United Nations Convention Against Torture.

The United States and Torture After September 11

Following September 11, some people asked whether more extreme means should be used in interrogating Zacarias Moussaoui and others arrested in connection with the planning of the attacks. Some voiced approval for the harsh tactics employed against captured al-Qaeda and Taliban fighters in Afghanistan in 2001, including American John Walker Lindh.

In the subsequent years of the “global war on terror,” stories have surfaced about the use of torture as well as cruel, degrading, and inhumane treatment by the United States Armed Forces, its contractors, members of the Central Intelligence Agency, and other civilian organizations. These charges include the use of interrogation methods such as sleep deprivation, sensory deprivation, and being held in painful and awkward positions for many hours. These and other activities have been uncovered at Abu Ghraib prison in Iraq. Following this disclosure, a series of secret memoranda, written between 2001 and 2003 by officials within the U.S. Department of Defense, U.S. Department of Justice, and the White House Office of Legal Counsel, were disclosed. They suggested a radical re-thinking of what is meant by torture and the policies of the United States.

The United States has also been accused of practicing “rendition,” or the forcible transfer without legal process to foreign intelligence services whose governments allow the use of torture during interrogation. Dana Priest of the *Washington Post* has reported that “the CIA has been hiding and interrogating some of its most important al Qaeda captives at a Soviet-era compound in Eastern Europe” (“CIA Holds Terror Suspects in Secret Prisons,” November 2, 2005).

Does Torture Work?

The assumption behind this quiet discussion is that torture is effective. As noted earlier, torture is effective at getting people to talk. What they say, however, is more problematic. Torture is very effective at getting people to give up vital information, but it is also effective at getting people to say *anything* in order to make the torture stop.

Moreover, the short-term gains in intelligence may have drawbacks in the long-term. “Anybody with real combat experience understands that torture is counterproductive,” said F. Andy Messing, a retired U.S. Special Forces major. “Everyplace it has been used that I have studied – the French were big for it in Algeria – it comes back and bites you” (“Is Torture an Option in the War on Terror? *Insight on the News*, January 21, 2003). Many soldiers are concerned that if the United States uses torture then captured Americans would be subject to similar treatment. Diplomats point out that, as with the death penalty, otherwise friendly countries might refuse to turn over prisoners to the United States because of the possibility of torture.

Torture Against Terrorism: The Case of Israel

Can a democracy face the extremes of terrorist attacks against innocent civilian targets and not use equally extreme measures to defend itself? Can it afford the luxury of “playing by

the rules?" Many people point to the example of Israel. Like Spain and Great Britain, Israel has faced attacks against civilian targets for decades. Unlike these countries, Israel for many years allowed its General Security Services (also known as the Shabach) to use "the application of non-violent psychological pressure" and "a moderate degree of physical pressure" against a suspect ("Commission of Inquiry Report," Supreme Court of Israel, 1987). Persons considered terror suspects could have their upper torso forcefully shaken, be forced to hold particular and uncomfortable positions (often hooded) for long periods of time, and be deprived of sleep as part of their interrogation.

In response to numerous suits brought before it, the Supreme Court of Israel in 1999 again considered the means that could be employed for interrogation purposes. While recognizing that "an interrogation, by its very nature, places the suspect in a difficult position" (Decision of the Court, September 6, 1999, par. 22), it nonetheless ruled that "a reasonable investigation is necessarily one free of torture, free of cruel, inhuman treatment of the subject and free of any degrading handling whatsoever" (par. 23). Moving from the general to the particular, the Court held that "shaking," the use of the forced crouch, the "Shabach position," (where the suspect is hooded, handcuffed, seated on a low chair and subjected to powerfully loud music), and/or a suffocating hood, are prohibited methods of investigation (pars. 24-32).

The Court also rejected the "necessity defense" as a basis of authority for using physical means during an interrogation (par. 36). The Court concluded that "the destiny of democracy" is that "not all means are acceptable to it, and not all practices employed by its enemies are open before it. Although a democracy must often fight with one hand tied behind its back, it nonetheless has the upper hand." While allegations of prisoner abuse and even torture are still leveled against Israel, the law no longer sanctions such activities.

The Global War on Terror and United States Policy on Torture

Will the United States decide to "bend the rules" on torture? On December 30, 2004, the U.S. Department of Justice formally repudiated many of the policies toward torture and cruel and inhumane treatment that were discussed and apparently approved in previous memoranda. President Bush also has repeatedly stated that "We do not torture" ("Bush Declares: 'We Do Not Torture'," Associated Press, November 7, 2005). At the same time, the President and Vice President Dick Cheney have opposed legislation to explicitly ban torture and inhumane treatment by the U.S. Armed Forces and the CIA of prisoners. The realities of war with al-Qaeda, and the need for information when innocents face immediate harm, have made a once academic question very real. But treaty obligations and American leadership in human rights around the world are no less compelling and have equally long-term consequences. Like so many other issues in this new era, the answers are uncertain.

B: Activity: Sorting Out Positions on Torturing Suspected Terrorists

With a partner, review the list of statements below. Together, decide whether each statement is an argument for or against the use of torture on suspected terrorists. Write "For" (argument for using torture) or "Against" (argument against using torture) next to each statement.

	In the case of a "ticking bomb," torture may convince a prisoner to give information that would prevent deaths.
	Having an open debate and establishing careful legal limits on torture is responsible democratic behavior instead of pretending it doesn't happen.
	Establishing a precedent that legitimizes torture in only extreme circumstances will make it easier to extend its use.
	In the past, attempts to use torture selectively have lead to widespread abuse.
	Harsh Israeli interrogations have not stopped suicide bombings.
	Moderate "physical pressure" would only be used after psychological pressure has failed.
	All major human rights agreements since WWII have absolute bans on torture.
	If the U.S. uses torture systematically against al-Qaeda suspects, they can expect backlash.
	Using torture selectively would send a message of "zero tolerance" by the U.S. to terrorists.
	Using systematic torture may cause problems for the U.S. with European governments who signed international treaties that prohibit the use of torture under any circumstance.
	Federal law enforcement agents will employ torture against suspected terrorists regardless of whether or not it is legal. A "torture warrant" issued by a judge would ensure that torture is limited and monitored and used only in extreme cases.
	The crimes committed on September 11, were unique in character and execution, and the U.S. has no choice but to respond to these crimes with extreme measures.

- § After sorting the statements, select three which you and your partner find most compelling. These statements may be in favor, in opposition, or a combination.
- § Working in a quartet (you, your partner, and another pair), reach consensus on which statement you feel is the most persuasive in favor of each position.
- § Share your choices with the rest of the class. Be ready to explain your reasoning.

Using Torture on Suspected Terrorists: Selected Resources*

DOCUMENTS ON TREATMENT OF DETAINEES

January 9, 2002

"Application of Treaties to al Qaeda and Taliban Detainees" [Memo from John Yoo, Deputy Attorney General, Office of Legal Counsel, U.S. Department of Justice]
<http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/02.01.09.pdf>

January 25, 2002

"Decision re Application of the Geneva Convention on Prisoners of War to the Conflict with al Qaeda and the Taliban" [Memo from Alberto R. Gonzales, White House Counsel]
<http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/02.01.25.pdf>

January 26, 2002

"Draft Decision Memorandum for the President on the Applicability of the Geneva Convention to the Conflict in Afghanistan" [Memo from Colin L. Powell, U.S. Secretary of State]
<http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/02.01.26.pdf>

February 2, 2002

"Comments on Your Paper on the Geneva Convention"
[Memo from William H. Taft, IV, Legal Advisor, U.S. Department of State]
http://www.nytimes.com/packages/html/politics/20040608_DOC.pdf [pp. 1-5]

February 7, 2002

"Humane Treatment of al Qaeda and Taliban Detainees," President George W. Bush
<http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/02.02.07.pdf>

August 1, 2002

"Re: Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340-2340A" [Memo of Jay S. Bybee, Office of Legal Counsel, U.S. Department of Justice]
<http://news.findlaw.com/nytimes/docs/doj/bybee80102mem.pdf>

March 6, 2003

"Working Group Report on Detainee Interrogation in the Global War on Terrorism: Assessment of Legal, Historical, and Policy Considerations"
http://www.nytimes.com/packages/html/politics/20040608_DOC.pdf [pp. 6-58]

April 16, 2003

"Counter Resistance Techniques in the War on Terrorism" [Memo from Donald Rumsfeld, U.S. Secretary of Defense]
<http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/03.04.16.pdf>

December 30, 2004

"Memorandum for James B. Comey, Deputy Attorney General, Re: Legal Standards Applicable Under 18 U.S.C. §§ 2340-2340A" [Memo from Daniel Levin, Acting Assistant Attorney General, U.S. Department of Justice], <http://www.usdoj.gov/olc/dagmemo.pdf>

CHRONOLOGY

Torture, rendition, and other abuses against captives in Iraq, Afghanistan, and elsewhere
Center for Cooperative Research

http://www.cooperativeresearch.org/timeline.jsp?timeline=torture,_rendition,_and_other_abuses_aga_inst_captives_in_iraq,_afghanistan,_and_elsewhere

ABU GHRAIB REPORTS

Article 15-6 Investigation of the 800th Military Police Brigade [The Taguba Report]
http://www.publicintegrity.org/docs/AbuGhraib/Taguba_Report.pdf

The Investigation of Intelligence Activities at Abu Ghraib [The Fay Report]
<http://www4.army.mil/ocpa/reports/ar15-6/AR15-6.pdf>

Final Report of the Independent Panel to Review DoD Detention Operations [The Schlesinger Report]
<http://www.defenselink.mil/news/Aug2004/d20040824finalreport.pdf>

SELECTED SECONDARY RESOURCES

Jack Balkin and Marty Lederman. "The Anti-Torture Memos: Balkinization Posts on Torture, Interrogation, Detention, War Powers, Executive Authority, and OLC,"
<http://balkin.blogspot.com/2005/09/anti-torture-memos-balkinization-posts.html>

Emily Bazelon, Phillip Carter, and Dahlia Lithwick. "What Is Torture? An interactive primer on American interrogation," Posted Thursday, May 26, 2005, at 12:36 PM ET, <http://www.slate.com/id/2119122/>

Phillip Carter, "The Road to Abu Ghraib," *Washington Monthly*, November 2004,
www.washingtonmonthly.com/features/2004/0411.carter.html

Mark Danner, "Torture and Gonzales: An Exchange," *The New York Review of Books*, February 10, 2005, [tp://www.markdanner.com/nyreview/021005_torture_gonzales.htm](http://www.markdanner.com/nyreview/021005_torture_gonzales.htm)

Joshua L. Dratel, "The Torture Memos," *Counterpunch*, February 1, 2005,
<http://www.counterpunch.org/dratel02012005.html>

Seymour Hersh, "Chain of Command," *The New Yorker*, May 10, 2004,
http://www.newyorker.com/fact/content/?040510fa_fact and May 17, 2004,
http://www.newyorker.com/fact/content/?040517fa_fact2

Michael Hirsch, John Barry, and Daniel Klaidman, "The Torture Debate," *Newsweek*, June 21, 2004.
Michael Isikoff, "Memos Reveal War Crimes Warnings," *Newsweek*, May 19, 2004 [web exclusive].

Sanford Levinson. *Torture: A Collection*. 2004: Oxford University Press.

Adam Liptak, "Legal Scholars Criticize Memos on Torture," *The New York Times*, June 25, 2004.

Ed O'Brien, "Torture and the War on Terror," *Social Education*, 68(7), pp. 453-456.

Amanda Ripley, "Redefining Torture," *Time*, June 21, 2004.

Donald Rumsfeld, "Secretary Rumsfeld Interview with Sean Hannity, ABC Radio," U.S. Department of Defense, Thursday, June 24, 2004, <http://www.defenselink.mil/transcripts/2004/tr20040624-secdef0941.html>

OTHER DOCUMENT COLLECTIONS

American Civil Liberties Union. "Records Released in Response to Torture FOIA Request"
<http://www.aclu.org/torturefoia/>

Center for Public Integrity. "The Abu Ghraib Supplementary Documents: Classified documents that form the basis of the Taguba Report" <http://www.publicintegrity.org/report.aspx?aid=396&sid=100>

The Memory Hole. "'Photos of Iraqis Being Abused by US Personnel"
http://www.thememoryhole.org/war/iraqis_tortured/

National Security Archive. "The Interrogation Documents: Debating U.S. Policy and Methods"
<http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB127/>

The New York Times. "A Guide to the Memos on Torture,"
www.nytimes.com/ref/international/24MEMO-UIDE.html

Washington Post. "Bush Administration Documents on Interrogation"
<http://www.washingtonpost.com/wp-dyn/articles/A62516-2004Jun22.html>