

Counterpoint – 26 March 2007

Torture

Torture is condemned by just about everyone, yet it's frequently portrayed as a tactic of last resort on popular TV shows as a way to get vital information. But according to Neil James, executive director of the Australian Defence Association, torture doesn't work. Apart from it being an unreliable source of information, it's unnecessary because a skilled interrogator can elicit the information through normal questioning.

Michael Duffy: What can we say about torture? It's condemned by commentators, lawyers and human rights groups. On the other hand it's often portrayed as a necessary evil; for example, on television shows like *24*. But note that both sides usually assume that torture works, but does it? Well, not everyone thinks so, and to find out more *Counterpoint* regular Paul Comrie-Thomson and I talked to Neil James. He's a former Australian Defence Force interrogator. In fact he's the author of the ADF's interrogation manual. He's now the executive director of the Australia Defence Association. Paul Comrie-Thomson began our interview.

Paul Comrie-Thomson: Khalid Sheikh Mohammed has admitted to just about everything you could think of, from 9/11 to Bali, and there is a statement that he claims he made admissions after he was tortured. You've read some of the reports on this, what's your opinion? Did he confess because he was tortured? Does that sound reasonable to you?

Neil James: It's a bit hard to tell, but it may be unlikely. They've held him for such a long time and given that he's immensely proud of what he did, you might find that he admitted everything just in normal conversational interviews. He may indeed have been water-boarded but I suspect not.

Paul Comrie-Thomson: Water-boarding is something that's talked about a lot. It's even shown...I think there was even a B-grade movie called *GI Jane* with Demi Moore and so on. For our listeners, what is water-boarding?

Neil James: Water-boarding is where you try and simulate drowning on the subject. It's grossly illegal. Any Australian policeman or intelligence agent or Service [ADF] interrogator that did it would be prosecuted. It was a method perfected by the Gestapo in World War II. Essentially you lay someone flat or with their head slightly down, you put a very thick face washer over their face and you keep pouring water on it and it makes you feel like you're actually under water and you can't breathe.

Paul Comrie-Thomson: The press reports have said that water-boarding produces actionable intelligence, it gets people to speak the truth. Why don't we ask you, as a former interrogator and the author of the ADF interrogation manual, does torture really produce useful intelligence?

Neil James: It tends not to, for the simple reason that if you torture someone they'll tell you anything to stop being tortured. This is a principle long known in moral philosophy and indeed in the history of torture. If you go back and you look at the legislative and practical controls they had over the use of torture in Tudor and Stuart England, you find that one of the main objections to it was that it didn't actually get truthful information. This is the thing about intelligence. Intelligence, to be useful, has to be first of all accurate, and second it has to be timely, and here you get the problem and the arguments over the use of torture. Torture may help you in some cases produce something that's timely but in most cases it won't produce something that's accurate.

Michael Duffy: Neil, what about the Gestapo in World War II? I grew up...one of the classic torture scenarios was where they caught a member of the resistance or someone who just parachuted in and they were trying to extract the names of their contacts, other members of a cell, so they'd torture someone. If that person gave them incorrect information, they could come back and torture them again. Did torture work for the Germans?

Neil James: It worked in narrow circumstances like that, but it's not quite as hard and fast. There are many well known cases, both of people being tortured by the Gestapo in World War II, and indeed very well documented cases of American airmen being tortured by the North Vietnamese, where they just resisted the torture. They were people that were so motivated or so tough that it didn't matter what was done to them, they weren't going to surrender to an enemy they regarded as unmitigated bastards, so it's not as hard and fast as it seems when you first look at it.

Paul Comrie-Thomson: Neil, in terms of international law, just for our listeners, the definition of torture I believe is 'the infliction on an individual of severe physical or mental pain, either for punishment or to extract information'. What's the difference between that and an interrogation? How would you define 'interrogation'?

Neil James: It's quite clear. The definition of torture comes from the 1984 UN-sponsored Torture Convention which establishes the universal prohibition on the use of torture. Comparing interrogation to torture is just crazy as they are not synonymous. What interrogation is, it's done by proper countries in accordance with the law, it's the systematic extraction of information from an individual, either willing or unwilling, by the use of psychological attack only. And in most cases that's all that's required.

Michael Duffy: What about sleep deprivation or sensory deprivation or isolation? Do they assist in interrogation?

Neil James: Yes, they do. They fall under the category of what's known as conditioning where you manipulate the conditions of the interrogation and the subject so they are more cooperative. However, if you carry them to extremes they can fall under the definition of torture. This is one of the problems; some things that are not torture can become torture if you do them for a long time. I

always use the ice cream test. If people talk about how shocking sleep deprivation or sensory deprivation is, you say, well, yes it is if you abuse it, but if I make you eat ice cream three meals a day for six months that's torture too, but it doesn't make eating ice cream once or twice necessarily torture.

Michael Duffy: And you said it makes the subject more amenable. Why does it do that? Presumably it's because it's a physically unpleasant experience.

Neil James: There's a vast range of historical and legal precedents here but basically in modern law there was a series of higher court decisions to do with interrogation of subjects during the security force operations in Northern Ireland in the late 1960s and 1970s and 1980s, and what these decisions by the Law Lords essentially say is if you are arrested you naturally go through conditions of nervousness, worry, and even to an extent fear and hardship, and the interrogator isn't bound either morally or legally necessarily to mitigate those things you're going through, and in fact it's to their advantage in many cases not to. For example, in battlefield interrogation where you have a prisoner of war, they go through something called capture shock where the complete dislocation of expectations in their personal circumstances means that most people go through a period of shock and what you try and do is prolong that period of shock so you can get inside their head much more easily.

Paul Comrie-Thomson: Let's go to allegations about torture. I understand that Al-Qaeda training manuals captured in Afghanistan had something interesting to say about making claims that you've been tortured.

Neil James: That's very true. A number of Al-Qaeda training manuals at different levels of Al-Qaeda training...in fact, at every level...basically said the first thing you do if you're arrested or detained by a western democratic government is scream 'torture' at the top of your voice for the simple reason that there'll always be people in western societies who will believe the worst of their own governments. Even if you've never been tortured you'll automatically elicit some sympathy from the more gullible, and it's also a handy protection in legal cases, just like many criminals when they're captured say they've been verbally by the police when they later confess. It's a classic accepted method by terrorists to scream that they've been tortured, even if they haven't. Anyone who looks at this with any element of critical judgement, you have to say that yes some of them may have been tortured but it's pretty unlikely that all of them have been tortured all the time in the custody of western democracies.

Paul Comrie-Thomson: I'd like you to apply your critical judgment to the following item. It was printed in the *Guardian* Tuesday, December 6th, 2005, and it reads as follows:

Mamdouh Habib, 49, an Australian citizen...his lawyers say he was bundled aboard a small jet by men speaking English with American accents and flown to Egypt. For the next six months, they say, he was held in a Cairo jail, where he was hung from hooks, beaten, given shocks from an electric cattle prod, and told he was to be raped by dogs. He also says that he was shackled and

forced into three torture chambers: one filled with water up to his chin, requiring him to stand on tiptoe for hours, a second with a low ceiling and two feet of water, and within sight of an electric generator which his captors said would be used to electrocute him.

Do you believe that? Does it have the ring of any sort of truth to you at all? What would you say?

Neil James: I think you'd have to say, on the balance of probability given the history of the Egyptian security intelligence services, probably at least part of that is true. But it depends on whether he was actually handed over to the Egyptians or not. There is still some doubt about that. It would appear he was but he hasn't been able to conclusively prove it and independent investigations haven't as yet been able to do so. This is one of the down-sides of what the Americans call 'extraordinary rendition'. It's a policy brought in with undue haste that has really come home to haunt them in a big way, because if you hand people over, or semi-legally extradite them, to regimes that have a bad habit of torturing people then you lose a lot of moral standing in the international community. But the other aspect of such reports, even in the *Guardian* article, refer to things he was threatened with rather than what was actually done to him. That's not a method of conditioning that would necessarily be legal in Australian circumstances but it's unfortunately fairly common overseas.

Paul Comrie-Thomson: Would it work in the sense of eliciting useful information, the threat of certain things? I'm asking about pragmatics rather than the legal status.

Neil James: The simple answer to that is yes, it will work with many people, and there are numerous documented cases where it has. Even in Tudor and Stuart England they often took people in to the Tower [of London] and showed them the rack and that was enough for people then to decide that they'd rather cooperate. And in any normal police questioning of a suspect, they offer different things and threaten different things to do with the legal consequences of what the person may or may not have done, so the actual technique can be quite effective. It's how you use the technique and what you threaten at various times that can get you into moral and legal trouble.

Paul Comrie-Thomson: Okay, talking about cattle prods and being raped by dogs brings us to Abu Ghraib. What actually happened at Abu Ghraib? What's your take on what happened and why it happened and how could it have been avoided?

Neil James: Abu Ghraib was the result of a complex range of factors and causes, and it's had damage out of all proportion to the actual incident. There were two main problems. The first one was that the legal shemozzle the Americans have got themselves into in their campaign against proscribed international Islamist terrorist groups meant that people perhaps had this odd belief that they could perhaps get away with more than they could or should get away with. This also unfortunately coincided with a breakdown in

discipline in one floor of one cell block in Abu Ghraib, and from that point of view it actually was quite an isolated incident.

Look, if you're stupid enough to recruit a reservist military police company from the Appalachian mountains of West Virginia, you've got to understand that occasionally you'll have problems as a result. The problem at Abu Ghraib wasn't so much an interrogation one as a jailer one. Only one interrogator at Abu Ghraib has been prosecuted and found guilty. In fact, I think only one of them has actually been prosecuted. Most of the abuse of the prisoners occurred by very low ranking jailers. That's not to say that the whole system that was set up to supervise those people was necessarily competent or as efficient as it should be. One of the key mistakes the Americans made at Abu Ghraib was that they had the control of the detention and the control of the interrogation under different chains of command and that's a fatal mistake.

You always make sure in any facility where people are to be interrogated as well as detained that the senior interrogator is in charge so they can control all aspects of it. One of the reasons you do that is the senior interrogator is normally the person who has the best understanding of international law and the best understanding of what needs to be done to make sure that people are presented for interrogation in a process where they can actually be interrogated effectively, both in terms of making them co-operative and in terms of making sure they've been treated properly.

Paul Comrie-Thomson: Neil, we've been talking about the real world of interrogation, I'd like you to discuss the unreal world of interrogation we see on televised hypotheticals and shows like *24*. They often bring up what's called the 'dirty bomb' scenario. Our listeners are probably familiar with this; there's a nuclear bomb in New York City, it's going to explode in one hour, you're in a room with one person and he knows where the bomb is and it's suggested in that situation that torture must be justified. But you've got some objections to that whole scenario, haven't you?

Neil James: I certainly have and I think that any intelligence professional would. Geoffrey Robertson's *Hypotheticals* are a classic for this. They have a sequential chain proposition where you've only got to knock out one link in the chain and the whole scenario falls in a huge heap. But he also generally puts the wrong people in his audiences because he never wants to actually confront this. The last *Hypothetical* he ran on this scenario had a plot that just jumped all over the place in such a ridiculous fashion it wasn't funny. Similarly, on shows like *Spooks* and *24*, you have a small team of generalists trying to solve a situation. Well, it doesn't work like that in real life in police work or security intelligence work. You have a whole organisation with different teams of specialists all working towards the same end.

The problem with the dirty bomb scenario theories is a simple one. Even if you found the bloke, and he was the only bloke that had all the information (and both two suppositions are questionable), how do you know you've got the truth out of him and how do you know he's just not luring you into a trap so when you raid the room where the bomb is it isn't booby-trapped and blows

everyone to kingdom come? Also too, all intelligence work and a vast amount of police work is done by confirmatory intelligence and confirmatory evidence, and it's very unlikely in any situation that any one link in the chain is the only link that you'll be able to track down to detect where the so-called dirty bomb is. Then there's the interesting moral question that people like Professor Raymond Gaita note, even if 100,000 people are going to die, does that justify actually torturing one person? Now, I don't want to get into the realm of moral philosophy but it's an interesting argument.

Paul Comrie-Thomson: Neil James, as an interrogator, just summing up what you've been saying, why don't you think torture works as a tool of interrogation?

Neil James: It doesn't work because while it may provide you with timely information, there's no guarantee the information will be accurate. We knew this in the early 17th century and there's really nothing that's changed in the interim. That's why all the people calling for the return of torture tend to be lawyers, and they tend to be academic lawyers at that, and you don't find one professional interrogator anywhere in the world, basically, who's in favour of the return of torture.

Paul Comrie-Thomson: So what we're seeing on television is sort of fantasy land. It might be good television but it's got nothing to do with the real world.

Neil James: Television and reality are two quite different beasts. I can assure you that most television depictions of intelligence and counterintelligence work, and interrogation, bear no or very little resemblance to reality.

Paul Comrie-Thomson: Neil James, thank you very, very much.

Neil James: Thank you.

Michael Duffy: Neil James is executive director of the Australia Defence Association, he's a former Australian Defence Force interrogator and he's also the author of the ADF interrogation manual.

Guests

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