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An independent weekly internet magazine
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The Lawyers Who Would Torture Color of Law

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BlackCommentator.com Editorial Board

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America's current economic meltdown has crippled many professions, and the legal professional is no exception. As major law firms are engaging in the wholesale layoffs of lawyers, and freezing hiring for two years, newly minted lawyers must seek employment at department stores and fast food restaurants. One cannot help but conclude that collectively, lawyers are paying the price for the crimes of an errant minority.

I speak of that group of lawyers that, over the past decade, wrote the 30-page credit card contracts that are destroying millions of lives—contracts that are so intentionally murky and deceptively convoluted that even [Elizabeth Warren](#), Harvard law professor and Congressional TARP overseer, cannot understand them. There were the Ponzi-scheming lawyers who conspired to swindle honest, hard-working citizens out of billions of dollars in life savings. And there were the lawyers and judges who knowingly placed the innocent behind bars—or even worse, sent them to their untimely death.

And finally, there were the government lawyers who wrote memos to the President, justifying the torture of terror suspects, and giving the green light to lawbreaking. These documents were not mere academic exercises, but rather weapons used to harm and oppress others. Further, these memos were a violation of international treaties and federal criminal statutes, denying its victims a fair trial governed by the

rule of law. If there is a hell, whether actual or metaphysical, such a place would undoubtedly reserve a special wing for such lawyers. And they will be made to wear those proverbial gasoline drawers on their journey to that select subterranean locale.

To coincide with the Obama administration's release of a report on the CIA's brutal and coercive interrogations techniques, Georgetown legal scholar David Cole has presented a new book called [*Torture Memos: Rationalizing the Unthinkable*](#) (The New Press, 2009). As its name suggests, the book discusses and presents in their entirety the actual legal memoranda that Bush administration lawyers wrote to justify torture. An important point which Cole makes is that while the actual CIA torturers should be held accountable for their brutal and illegal acts, the authors of these memos are culpable for their contortions of the law to sanction human rights abuses.

"Law at its best is about seeking justice, resolving disputes pursuant to principle and reasoned judgment, regulating state power, respecting human dignity, and protecting the vulnerable", Cole says (p. 35). "Law at its worst treats legal doctrine as infinitely manipulable, capable of being twisted cynically in whatever direction serves the client's desires....[T]hey used law not as a check on power, but as a facilitator of brutality, deployed against captive human beings who had absolutely no other recourse."

Acting in bad faith, the legal hacks who crafted the torture memos engaged in sham analysis and tricky legal gymnastics. Motivated by a desire to please their superiors and little else, they merely invented law out of thin air, and created a law-free zone where perpetrators could act as they pleased. No superior legal analysis was presented from these allegedly superior legal minds. Ignoring that the prohibition on cruel, inhuman, and degrading treatment is absolute, they began with a false, predetermined conclusion that torture is acceptable. They proceeded to twist the law to rationalize their predetermined conclusion. Most of all, the analysis always absolved the CIA torturers— and the officials who authorized torture— of any wrongdoing. It makes you wonder what some people actually learn in law school, and what they hope to do with their law degree.

A nation is only as good as the laws that govern it. Unfortunately, throughout history we have witnessed the ways in which societies compromise their legal system to oppress the many, benefit the few, and sanction the unconscionable. The law becomes a political game in which the powerful are exempt from the rules, and some are more equal than others. An arbitrary and capricious legal system can cloak injustice and the unjust with a veneer of legitimacy, fully backed by the apparatus of the state and the prestige of the courts. *The Torture Memos* reminds us through its post-game analysis that a free society must guard against such abuses of the law. Failure to do so will ensure that official criminal wrongdoing will occur. And as a matter of fact, it just did over the course of the Bush years.


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