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The Everyday Evil of America's Torture State

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After Daniel Chong was arrested in a federal drug raid, he wasn't taken to Gitmo. Instead, the Feds thoughtfully arranged to bring Gitmo to him, nearly torturing him to death in the process.

Chong, a senior at the University of California-San Diego, was one of nine people swept up in an April 21 narcotics raid by the Drug Enforcement Administration. After his arrest he spent four hours handcuffed in a cell before being questioned. One of the agents who questioned Chong described him as someone who was "in the wrong place at the wrong time."

After being interrogated, the student was told that he would be released and provided with paperwork to sign. He was then handcuffed and put into a five-by-ten-foot detention cell, where he was held for five days in conditions that qualify as torture under any rational reading of either domestic or international law.

The DEA's story was that Chong was simply "forgotten." A likelier explanation is that he was ignored, or even singled out for deliberate abuse. Chong shouted and screamed for help, kicking against the heavy door of his cell. Although his hands were cuffed, he managed to tear a small fragment from his jacket, which he shoved under the door in an effort to get the attention of his jailers.

Since Chong had no difficulty hearing conversations and other sounds outside his cell, there's no reason to doubt that his pleas were heard, and simply disregarded.

For at least two days and nights, Chong was left alone, handcuffed, in complete darkness, and began to hallucinate. Fearing that he might die in captivity, Chong shattered his eyeglasses and used broken shards to carve the words "Sorry, mother" into his arm.

Although Chong has admitted he had gone to a friend's house to commemorate "4/20," an unofficial observance celebrating recreational marijuana use, he was not charged with a narcotics offense. Through its prohibition enforcement action, DEA managed to create conditions in which Chong ingested substances much worse for him than marijuana. Left for several days without food or water to sustain him, Chong made a futile attempt to trigger an overhead fire sprinkler, and then eventually drank his own urine. Tormented by the insistent protests of an empty stomach, he consumed a small amount of a white, powdery substance that was found to be methamphetamine.

By the time two agents "discovered" him, Chong was literally pleading for his captors to kill him. After being released, he was hospitalized for severe dehydration, renal failure, a perforated esophagus, and cramps. He had shed 15 pounds. He has never received an apology.

If a dog had been subjected to treatment similar to the abuse inflicted on Daniel Chong, those responsible would face felony charges. Thanks to the spurious principle of "supremacy clause immunity," there is no measurable likelihood that the people who nearly tortured Chong to death will face criminal charges. It's quite likely they will never be identified.

It's not just the Feds employed by the DEA – an agency best described as the CIA's slow-witted sibling – who enjoy this privilege.

No criminal charges have been filed against the Lee County, Florida Sheriff's Deputies responsible for the torture death of Cleveland resident Nick Christie. The emotionally disturbed 62-year-old man was detained for several days in March 2009 after his frantic wife Joyce made the fatal mistake of calling the police for "help."

Mr. Christie, who had recently been prescribed a potent anti-depressant called Lexapro, suddenly left his home in Cleveland to visit family in Ft. Myers. When he arrived at his brother's house, Christie's behavior became dangerously erratic.

Acting on the common and entirely misplaced assumption that police intervention is a good idea in situations of this kind, Joyce called the Lee County Sheriff's Department to ask them to find Nick and get him to a hospital. After deputies found the retired boilermaker, they arrested him on trespassing charges.

Over the next 43 hours, Christie was repeatedly shackled in a restraint chair, hooded, and attacked with military-grade pepper spray. The chemical assault was so intense that it left other inmates gagging on the fumes. Christie, who suffered from respiratory and heart disease, pleaded with deputies to remove the spit mask because he couldn't breathe. One inmate described how Nick turned "purple and almost blue" as he suffocated.

When medical personnel arrived to check on Nick, they were overwhelmed by the pepper spray residue. The victim died of heart failure two days after his arrest. The death was ruled a homicide – but the State Attorney's office insisted that there is no evidence of criminal wrongdoing on the part of the deputies who tortured Nick Christie to death.

The same blanket immunity from prosecution shields the members of the thugscrum –at least ten and as many as fifteen officers – from Fresno, California, who beat, pepper-sprayed, and repeatedly tasered a man named Raul Rosas.

The police had arrived at Rosas's residence on June 6 of last year in response to an unspecified "domestic disturbance." When the police arrived, Rosas took refuge in the bathroom. One of the

officers kicked open the front door and dragged out the unarmed man, who was immediately hit with a dose of pepper spray. The chemical weapon attack was a prelude to a full-scale onslaught: Witnesses reported hearing the sounds of a taser being used for at least eight to ten minutes.

After hog-tying Rosas, the assailants earned extra points for creative sadism by using a garden hose to drown him as he pleaded for water – a crude but effective simulacrum of waterboarding. This atrocity was witnessed by Rosas's horrified children and several neighbors, who repeatedly warned that the victim was suffocating. "After some time had passed, [Rosas] had clear spit bubbles coming out of his mouth," recounts a lawsuit filed by the victim's family. "Witnesses observed [his] lips turn purple."

When one of the witnesses told the cops they were killing Rosas, one of them sneeringly insisted that the victim was "faking it." Eventually one of the officers felt for a pulse and found nothing. None of the officers involved in this torture-murder has ever been publicly identified, much less subjected to prosecution or administrative punishment.

Given the foregoing cases, it could be said that Pennsylvania resident Derena Marie Madison was comparatively fortunate: Although she was physically abused and humiliated, she wasn't killed or severely injured.

At about 2:30 a.m. on February 3, 2011, Pennsylvania State Troopers Chad Weaver and Michael Zampogna pulled over a vehicle driven by Jamie Cornell, who was arrested on suspicion of driving while intoxicated. After Cornell was taken into custody, the troopers threatened to have the vehicle towed. This prompted Madison, who was a passenger, to exit the car in protest. This gave the troopers an excuse to arrest her for public drunkenness and disorderly conduct.

Shackled at the wrists and ankles, Madison was taken to a nearby State Police barracks, where she was chained to a bench with her hands cuffed behind her back. Without provocation, Weaver hit Madison with two blasts of pepper spray to her face. None of the other officers intervened.

Still trussed with handcuffs and leg shackles, Madison was unable to wipe the pepper spray residue from her face. In response to her pleas for help, several troopers – whom she couldn't identify, because she was blinded from the pepper spray -- carried her downstairs and outside the barracks. After being thrown to the snowy ground and doused with a large quantity of water, Madison blacked out. When she regained consciousness, she quickly realized that one or more of the assailants had urinated on her head, face, and neck.
Taken back to inside the barracks, Madison was chained to the bench again and briefly held before being released without receiving medical attention. Eleven days later, she was formally charged with public drunkness and disorderly conduct, and eventually found guilty on both charges.

Responding to Miss Madison's lawsuit, the State Troopers didn't contest her account; instead, they claimed that their actions were taken pursuant to their duties, and therefore they were protected by "sovereign immunity," maintaining that "subduing persons is one of the acts law enforcement officers are employed to perform [and that] officers are also permitted to use force, if necessary, in the commission of their duties."

Although the Troopers described Madison as an “out-of-control person,” there is no evidence that she did anything other than express her displeasure over the prospect of being abandoned once Cornell’s vehicle had been towed away.

Displaying an honesty uncommon among those in his profession, U.S. District Judge Gary L. Lancaster rejected the “sovereign immunity” claim. Repeatedly assaulting a handcuffed woman with pepper spray and urinating on her serves “no legitimate law enforcement purpose,” but indicates a “personal motivation, rather than intent to serve the Commonwealth of Pennsylvania.” This raises the troubling possibility that behavior of this kind could be considered appropriate if it were “authorized” as a matter of official policy.

A similar possibility was raised by a ruling in the case of Niagara, New York resident Ryan S. Smith, who was tortured into providing a DNA sample to police.

Smith, a repeat offender, was suspected of involvement in a July 2006 home invasion and kidnapping. When three of the suspects took one of the hostages to another home, Smith allegedly remained behind to guard two small children, who had been bound and gagged. While there, the suspect helped himself to a soda, apparently unaware that by doing so he would leave behind potentially incriminating DNA evidence.

The DNA residue from the soda can was eventually matched by the FBI's Combined DNA System (CODIS) with a sample previously taken from Smith. In August 2008, Niagara County Court Judge Sara Sheldon Sperrazza issued an order requiring Smith to provide a DNA sample via a painless swab of his inner cheek. Smith didn't object, and the sample was taken without difficulty.
At this point, the story becomes complicated by professional incompetence. The Niagara Falls Police sent the sample to the wrong lab, where it was opened and contaminated.

The investigators went back to Judge Sperrazza for a second order, which -- unlike the first one – was granted *ex parte*. This means that Smith's defense counsel was not informed or consulted. Smith refused to provide a second DNA sample.

This prompted the police to consult with the County District Attorney's office to learn how much force they could employ to compel Smith to provide potentially self-incriminating evidence – a question that should be foreclosed by the Fifth Amendment.

As Detective Lt. William Thomson would later testify, Assistant Niagara County D.A. Doreen M. Hoffmann, who is presiding over the prosecution of Ryan Smith, instructed the police that "we could use the minimum force that was necessary" to force the suspect to submit to a DNA test.

That formulation is a tautology, since it *authorizes the use of any amount of force needed to extract the sample*. As long as the police were reasonably careful in calibrating the duress the applied, they could continue escalating the level of force until it broke the suspect; wherever they end up would obviously be the "minimum" necessary to accomplish their objectives.

Smith was brought in handcuffs to the police station and informed that the investigators had been authorized to use physical force. Although nobody intended to harm him, Smith was told, the sample was going to be surrendered; it was just a question of how much he wanted to endure before it was. Smith still refused to comply.

At this point, the police were implicitly authorized to use any method of "pain compliance" they considered appropriate. They could have waterboarded Smith, subjected him to "stress positions," locked him in a small cell with an insect – in short, they could have employed any of the methods recently extolled by CIA torture supervisor Jose Rodriguez in his recent 60 Minutes interview.

The police elected to use a taser in "drive stun" mode in order to force Smith to cough up the DNA sample. On the basis of that evidence – which was extracted through torture, albeit of a comparatively mild variety, Smith was hit with a 24-count criminal indictment. He was also charged with "criminal contempt of court" *for forcing his interrogators to torture him.*

When Smith's defense counsel filed a motion to suppress the evidence based on Fourth and Fifth Amendment protections, the same Judge who issued the *ex parte* orders produced a ruling validating the use of taser torture as means of forcing compliance, as long as it's not done "maliciously" or to "excess."

Judge Sperrazza is "the first judge in western civilization to say you can use a Taser to enforce a court order," complained Patrick Balkin, Smith's defense counsel. He also pointed out that the precedent could inspire other practical applications of electro-shock "pain compliance": "They have now given the Niagara Falls police discretion to Taser anybody anytime they think it's reasonable. [Sperrazza's] decision says you can enforce a court order by force. If you extrapolate that, we no longer have to have child support hearings; you can just Taser the parent."

In a lawsuit filed against the City of Niagara Falls, Smith alleged that he was "tortured into unconsciousness" by repeated Taser charges. The police investigators insist that they were much gentler in the application of electro-shock trauma, but their testimony regarding the number and duration of shocks is mutually self-contradictory (as well as inconsistent with the record kept by the Taser unit itself).

Smith was eventually convicted of nearly two dozen offenses. Last March, the New York State Supreme Court overturned Smith's conviction and ordered a new trial, ruling that the use of a taser to compel the prisoner to surrender a DNA sample was "excessive force." At the time, Smith "posed no immediate threat to the safety of himself or officers, nor did he attempt to evade the officers by flight," recounts the decision. Smith "was handcuffed, seated on the floor, and surrounded by three patrol officers and two detectives…. [He] did not threaten, fight with, or physically resist the officers at any time; rather, he simply refused to open his mouth to allow the officers to obtain a buccal swab."

This is not to say that the ruling foreclosed the future use of taser torture as a police interrogation method. The court suggested that the police could have arrested Smith for "criminal contempt,"

and then obtained “judicial approval to use physical force if necessary to extract the DNA sample.”

On this construction, torture is acceptable as long as it’s committed pursuant to a court order. This would be something akin to a “torture warrant” of the kind suggested by Alan Dershowitz.

That proposal was offered by Dershowtiz a decade ago as a way of addressing a “ticking bomb” scenario involving a hidden nuclear weapon; the New York Supreme Court’s standard would authorize the use of judicially sanctioned torture as an instrument of prosecutorial convenience.

"Criminal means, once tolerated, are soon preferred," warned Edmund Burke, a maxim abundantly vindicated by the quiet normalization -- and the resulting near-ubiquity -- of torture as a law enforcement tactic in contemporary America.