

**TORTURED: WHEN GOOD SOLDIERS DO BAD THINGS<sup>1</sup>**REVIEWED BY MAJOR MARK T. SCHNAKENBERG<sup>\*</sup>

*The war waged within the detention centers and the damage it does to both soldiers and detainees is far subtler than what happens in combat. When compared to soldiers who have had their faces melted and limbs blown off by IEDs, it is difficult to see the soldiers who worked in prisons as true victims of war.<sup>2</sup>*

**I. Introduction**

In *Tortured: When Good Soldiers Do Bad Things (Tortured)*, Justine Sharrock makes a sweeping attempt to portray all soldiers assigned to the Guantanamo Bay and Abu Ghraib detention facilities as torturers. To Sharrock, they are merely victims of a higher chain-of-command and must unquestionably follow orders. *Tortured* serves as excellent entertainment reading and even offers some insight for military criminal attorneys. However, the book ultimately fails as scholarly writing because it lacks accuracy, reliability, and legal perspective. As the following sections explore, Sharrock defeats her own thesis by taking a number of shortcuts.

**II. The Vague Concept of “Torture Lite” and the Failure to Define Torture**

With torture in the title of her book, any reader would expect the author to define the term with clarity and precision. The concept “torture” is admittedly difficult to define, and a universal definition has been the source of much consternation between scholars and practitioners in the United States and the international community.<sup>3</sup>

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<sup>1</sup> JUSTINE SHARROCK, *TORTURED: WHEN GOOD SOLDIERS DO BAD THINGS* (2010).

<sup>2</sup> *Id.* at 235.

<sup>3</sup> Torture is defined by the 1984 UN Convention against Torture as follows:

While Sharrock describes detailed examples of what she believes to be torture,<sup>4</sup> common sense and logic dictate that one must define torture prior to condemnation.<sup>5</sup>

Sharrock would have the reader believe torture encompasses almost anything if the action is taken against a detainee's will. Rather than

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[A]ny 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. It does not include pain or suffering arising only from, inherent in, or incidental to, lawful sanctions.

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 23 I.L.M. 1027 (1984).

Contrastingly, torture is defined in 18 U.S.C. § (1) (2006) as follows:

[A]n act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control; **(2)** "severe mental pain or suffering" means the prolonged mental harm caused by or resulting from—**(A)** the intentional infliction or threatened infliction of severe physical pain or suffering; **(B)** the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality; **(C)** the threat of imminent death; or **(D)** the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality; and **(3)** "United States" means the several States of the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States.

<sup>4</sup> SHARROCK, *supra* note 1, at 5 (referring to the abandonment of a detainee in a restraint chair for days without food or water); *id.* (referring to the practice of keeping detainees standing throughout the night in a hot Conex box); *id.* at 65 (commenting on subjecting detainees to sleep deprivation, stress positions, and forced physical exercise such as jumping jacks).

<sup>5</sup> *Id.* at 4. According to the author, "the legal definition of torture is based on the level of intensity, a nuance the [Bush] administration, its lawyers, the military, the perpetrators, and even the general public have tried to turn into a loophole." *Id.*

explaining the necessary elements of torture, Sharrock spends infinitely more time on how torture impacts the victim and perpetrator.<sup>6</sup>

Instead of defining torture, Sharrock sidesteps the issue with the adoption of the undefined term “torture lite.”<sup>7</sup> This vague concept, which literally means less than torture, allows her to conclude that nearly all detainee handling amounts to torture.<sup>8</sup> She cites examples of solitary confinement, short-shackling, forced standing, and even sleep deprivation to illustrate instances of torture.<sup>9</sup> Instead of allowing the reader to develop his or her own definition of torture (in the absence of her own definition), the author imposes the vague overly-broad term torture lite on the reader. This enables Sharrock to keep anti-torture activism relevant to any current or future conflict.

Sharrock also misses a perfect opportunity to define and expand upon appropriate detainee handling methods. The reader is left without guidance to address the treatment of unprivileged enemy belligerents. Sharrock tells us what is wrong, but cannot, or utterly fails to, define what is right.

In the end, Sharrock disappoints the reader on three fronts. She fails to provide a precise definition of torture, she provides the vague concept of torture lite which essentially encompasses everything, and then she fails to address appropriate detainee handling. The author’s oversight in defining torture is compounded by her view that all soldiers are victims.

### III. The Concept of Soldiers as Victims

Sharrock takes an unrealistic and uninformed perspective on military functions, roles, and customs without putting any effort into understanding the overall military culture. The result is an over-emphasis

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<sup>6</sup> *Id.* (“So-called torture lite has been proven to cause complete psychological breakdowns, permanent physical ailments, and sometimes death. Forced standing, for instance causes ankles to swell to twice their size within twenty-four hours, which makes walking excruciating.”); *see also id.* at 5 (“[A]s Albert Camus explained, torture is a crime that attacks the victim and the perpetrator. It has proved to be so insidious a machine that every cog—even those merely associated with it—is affected.”).

<sup>7</sup> *Id.* at 3.

<sup>8</sup> *Id.* at 3–6 (explaining that torture includes “harsh techniques” to “soften up” detainees such as short shackling, solitary confinement, sleep deprivation, missing meals, and blaring foghorns throughout the night).

<sup>9</sup> *Id.* at 4.

on the personal human qualities of her four featured soldiers<sup>10</sup> and an avoidance of basic professional military skills, qualities, and responsibilities.

Sharrock's broader thesis is that America tortures,<sup>11</sup> the Bush Administration is the victimizer,<sup>12</sup> and low-level rank-and-file soldiers are the victims.<sup>13</sup> If this last prong of her expansive thesis falls apart, then Sharrock's entire assertion is unfounded.

In Sharrock's view, the decision to serve in the military signals the death of the human spirit, transforming a soldier into nothing more than a robot. The U.S. Government has the ability to place any man or woman into the military machine and create torturers. Soldiers are helpless against military leadership because they are required to follow orders. Sharrock never delves into instances in which U.S. soldiers reject unlawful orders, the absence of which thoroughly undermines the third prong of her argument that would characterize U.S. soldiers as pawns.

To emphasize the victimization, Sharrock repeatedly reminds us that her featured soldiers are human beings. Sharrock continually urges the reader to be sympathetic to their plight. Her over-simplistic view mirrors the humanistic approach used by military outsiders and protesters who criticize military service.

However, military service is infinitely more sophisticated than Sharrock's model. Despite its demanding requirements, the military service facilitates independent critical thinking and cultivates leaders at every level. When orders are issued, each soldier is expected to evaluate the order and the situation. It is the responsibility of each individual soldier to seek clarification when necessary and his or her obligation to disregard illegal orders.<sup>14</sup>

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<sup>10</sup> *Id.* at 3 (referring to the author's interview subjects: "It was strange to think that these young all-American men could be counted as our country's torturers. They were run-of-the mill blue-collar folks—the guy next door, the kid in the back of your high school class room, the teenager bagging your groceries.").

<sup>11</sup> *Id.* at 238.

<sup>12</sup> *Id.* at 237–39.

<sup>13</sup> *Id.* at 235–36.

<sup>14</sup> MANUAL FOR COURTS-MARTIAL, UNITED STATES pt. IV, ¶ 14(c)(2)(a)(i) states that "an order requiring the performance of a military duty or act may be inferred to be lawful and it is disobeyed at the peril of the subordinate. This inference does not apply to a patently illegal order, such as one that directs the commission of a crime."

The mere presence of whistleblowers, inspector general complaints, congressional inquiries, mast request procedures, and Article 138 complaints in the military undermines and ultimately defeats the assertion that low-level service members are helpless robotic pawns and therefore victims of so-called torture policy. Each process listed above represents a necessary check-and-balance that also contravenes the author's thesis. In the end, each soldier is trained to be a leader, and is encouraged to be an independent critical thinker with a variety of recourse methods at his or her disposal.

Sharrock's failure to define torture and her belief in the victimization of soldiers are largely based on her flawed investigative approach to this book. Sharrock broke a key rule of journalism: she became too close to her subjects.

#### IV. The Adoption of an Overly-Sympathetic Viewpoint

A cardinal sin of journalism is to become so attached to the subjects that the journalist loses perspective, objectivity, and therefore credibility.<sup>15</sup> In *Tortured*, Sharrock becomes so attached to her subjects that she assumes their respective roles and abandons her position as narrator.<sup>16</sup> Generally accepted principles of journalism indicate one cannot report on events and also participate in them.<sup>17</sup> When a journalist becomes attached to those he covers, this clouds all other tasks he must perform as a disinterested reporter.<sup>18</sup> Objectivity, professionalism and persuasion are diminished, and the journalist no longer holds the trust of sources or participants on each side of the issue.<sup>19</sup> Sharrock's tone, perspective, and agenda are so slanted that she becomes untrustworthy in the eyes of the reader.<sup>20</sup> Sharrock's comments about her research verify her attachment to her characters: she traveled to the various homes of her

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<sup>15</sup> BILL KOVACH & TOM ROSENSTIEL, *THE ELEMENTS OF JOURNALISM* 12–13 (2001).

<sup>16</sup> SHARROCK, *supra* note 1, at 7. The following quotes indicate the magnitude of the author's bias on this topic and the degree to which she has stepped into the shoes of her four featured characters. "Even within war, there are certain lines that should not be crossed. In this war—and the next and the next—someone will always argue that there is a line, a moral line, that divides us from our enemies." *Id.* at 235. "The war waged within the detention centers and the damage it does to both soldiers and detainees is far subtler than what happens in combat." *Id.*

<sup>17</sup> KOVACH & ROSENSTIEL, *supra* note 15, at 97.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> SHARROCK, *supra* note 1, at 235.

subjects, spent weeks at a time with them and their families, asked them endless questions,<sup>21</sup> hung-out with them in bars, and even acted as a “wingman” to help a subject converse with a girl.<sup>22</sup> By telling this story through their eyes, Sharrock necessarily limited her narrative perspective.

Sharrock’s literary resume also provides evidence of bias. She’s an investigative journalist by trade, but her twenty-five plus articles have all been published in well established left-leaning works such as *Mother Jones*, *Alternet*, and the *San Francisco Chronicle*.<sup>23</sup> Ultimately, the veracity of Sharrock’s work is questionable given her overly sympathetic viewpoint, loss of objectivity, and the nature of her past publications. In the discussion which follows, it is clear that poor character selection also detracts from the value of *Tortured*.

#### IV. Untrustworthy Cast of Characters

Sharrock’s featured characters and their various agendas also diminish the quality of *Tortured*. She selected four “easy targets” that are particularly sympathetic to her position. They are the most troubled soldiers with the most moving stories.

First, she tells the story of self-proclaimed tough guy Specialist Brandon Neely, the notoriety-seeker,<sup>24</sup> who successfully dodged redeployment as a member of the Individual Ready Reserve.<sup>25</sup> Neely is the Guantanamo Bay detention facility guard-turned-activist, who

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<sup>21</sup> *Id.* at vii (acknowledgements).

<sup>22</sup> *Id.* at 239 (referring to Sharrock’s promise to play wingman for Chris Arendt as they search for a girl: “One night, Chris Arendt and his roommate, Danny, and I rode rickety bikes across Portland on our way to a bar. We were in search of a girl whom Chris had a crush on, as was often the case when hanging out with Chris. I had promised to play wingman in helping to reel her in, although it didn’t seem like he would need much help.”).

<sup>23</sup> A search of the www.lexis.com news articles database on 14 September 2010 revealed a range of twenty-five articles in the publications noted above in the text.

<sup>24</sup> *Id.* at 20 (referring to Brandon Neely observing a medic punch a detainee in the face twice while he blocked the line of sight from the watchtower at the Guantanamo Bay detention facility: “Finally, Brandon thought, something akin to being a tough soldier and not just a guard.”). *See also id.* at 27 (“Brandon knew he was a good soldier and saw it as his responsibility to ensure that it was the Iraqis who were killed and not Americans.”).

<sup>25</sup> *Id.* at 41 (“When Brandon was stop-lossed in May 2007 he refused to go. Despite the potential threat of prison time, he managed to hold out until his discharge date.”).

administered the first detainee beating at the facility.<sup>26</sup> Later in life, he withdrew his Iraq Veterans Against the War membership because the organization was ironically no longer aligned with his ideals.<sup>27</sup>

The next character is renowned Abu Ghraib whistleblower, Specialist Joe Darby, who secretly turned over photos depicting detainee abuse to the Army Criminal Investigative Division.<sup>28</sup> Darby, who appears to be the most honest among this group, likely turned over the evidence in order to settle the score with some fellow soldiers or draw attention away from his weight issues and general poor military performance.<sup>29</sup> Darby received the John F. Kennedy Profile in Courage Award in 2005 and has been celebrated for his noble decision to turn over the evidence. At the same time, he is not a particularly bright or dedicated soldier and even refers to himself as “crooked.”<sup>30</sup>

Sergeant Andrew Duffy, the Abu Ghraib medic from Iowa, serves as the third character in this book.<sup>31</sup> Duffy lacks all respect for authority and became an activist out of revenge.<sup>32</sup> The intolerable Duffy became so enraged about Abu Ghraib medical practices and his war experience that

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<sup>26</sup> *Id.* at 17 (“Brandon had the honor of being the first soldier to get to beat up a terrorist. That night, soldiers kept coming up to him to congratulate him.”).

<sup>27</sup> Brandon Neely, *Two more IVAW resignations* (December 1st, 2009), THIS AIN’T HELL BUT YOU CAN SEE IT FROM HERE, <http://thisainhell.us/blog/?p=15854> (last visited Sept.14, 2010).

<sup>28</sup> SHARROCK, *supra* note 1, at 66–67.

<sup>29</sup> According to Colin Engelback, a Veterans of Foreign Wars post member from the unit’s home town, Darby’s motivations were not pure. Engelbach speculates that Darby turned over the evidence to avoid duty, go home, or receive a promotion without passing a physical fitness test. Others speculate the action was motivated by revenge against the members of his unit that picked on him and called him “fat bastard.” Even Darby admits that he was partially motivated for personal reasons and his general disdain for Sabrina Harman, Charles Graner and Chip Frederick. *Id.* at 83.

<sup>30</sup> *Id.* at 62–63.

<sup>31</sup> *Id.* at 105.

<sup>32</sup> *Id.* at 128 (“Being so impotent in the face of authority enraged Andy, and he had a hard time keeping it bottled up inside.”); *id.* at 118 (referring to his experience as an Abu Ghraib medic, “Andy was angry with his commanders and the situation in general—the living conditions were appalling, the war was a joke, they didn’t have the proper medical equipment to do their job.”); *id.* at 129 (“At his last stop, at Camp Victory, Andy filed an online complaint about his commander’s behavior and medical negligence with the Inspector General’s office. Since he was on his way out, there was a relative level of safety—by the time anyone discovered what he’d done, he would be back home.”). *id.* at 144 (referring to Duffy’s decision to become an anti-war activist: “Part of what motivates him is revenge. Speaking out is a way to get back at his superiors, who had put him in that position in the first place.”).

he sought to publicly slander his immediate supervisors.<sup>33</sup> His rage affected him to such a degree that he occasionally tears yellow “support the troops” stickers and magnets off vehicles in his hometown.<sup>34</sup>

The final misfit is the overwhelmingly fragile<sup>35</sup> Specialist Chris Arendt, who primarily worked at the Detention Operations Center in Guantanamo Bay.<sup>36</sup> Arendt can be best described as a gross recruiting error.<sup>37</sup> As a member of the Michigan National Guard, he actually reported to a weekend drill with blue hair.<sup>38</sup> On his priority list, smoking marijuana stands above serving his country.<sup>39</sup> Among soldiers, Arendt solidified his spot at the bottom of the worst ten percent in the unit.<sup>40</sup> Anti-war activism became his final refuge because he has lacked an identity his entire life.<sup>41</sup>

The portrayal of Sharrock’s featured characters is a major concern throughout the book. All four characters have reason to sensationalize their message to further anti-war activism. Sharrock, who has diminished journalistic integrity, takes no action to guard against bias. The author and her characters portray themselves in any fashion they choose with total subjectivity. The reader is forced to take their word at face value with no scrutiny regarding the accuracy of their statements.

## V. Conclusion and Lessons for Judge Advocates

Sharrock claims that America tortures, the Bush Administration is the

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 133.

<sup>35</sup> *Id.* at 169–70 (Fellow soldier Mike Ross refers to Arendt as unique, soft, and the type of guy that someone might get beat up. Arendt is described by the author as a “sensitive mama’s boy who wanted to read and play video games.”).

<sup>36</sup> *Id.* at 188.

<sup>37</sup> *Id.* at 169. “A lot of [S]oldiers simply felt sorry for Chris. He was clearly not cut out for the job.” Among weekend warriors, who are generally considered a lesser class within the military, Arendt was “the biggest slacker and the least interested.”

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 161 (referring to Arendt arrival in Guantanamo Bay, Cuba, “Days earlier, Chris had been at home, consumed with thoughts of losing his virginity, making new friends at college, and getting high.”).

<sup>40</sup> *Id.* at 169.

<sup>41</sup> *Id.* at 207 (referring to Arendt’s new found identity with Iraq Veterans Against the War, “Some of his nonmilitary friends weren’t exactly sure what to make of all this. Most of all it seemed odd that Chris had gone from trying to have nothing to do with the military to making his status as a vet his primary identity.”).



victimizer, and low-level soldiers are the victims. These claims fail for a number of reasons. Sharrock neglects to sufficiently define torture, and her facts are unreliable. Additionally, she compromises her journalistic integrity as she investigated, researched, and wrote the book. Her arguments fail in part because they are an appeal to passion rather than to reason.

In spite of the author's failures, the book retains some value for judge advocates. *Tortured* is extremely informative on the manner in which a detainee abuse case may be sensationalized and dramatized by the media. This book is also enlightening in terms of case preparation for trial counsel and defense counsel. Defense counsel can use this book as a model and manual in painting their clients as victims. Although the blame-shifting may be unpersuasive, there are various examples of poor command climate, "fog of war" issues, and insufficient leadership guidance in this book. *Tortured* likewise provides instruction for trial counsel in anticipating these defense arguments and the perspective of the liberal media.

For the reader seeking factual accuracy, objectivity, and a comprehensive account of detainee operations at the Abu Ghraib and Guantanamo Bay detention facilities, *Tortured* proves to be of minimal value. Any scholar or historian would be disappointed with this book and should look elsewhere for valuable insights into the much debated aspect of torture in war.