





# Jordan Paust AT THE FRONT

In a time of war, Law Center professor asks a simple question: *Are we a nation committed to the rule of law?*

**W**hen the chilling photographs from Abu Ghraib prison were first leaked to the news media, Jordan Paust immediately saw them as something more than compelling evidence of soldiers abusing their charges in Iraq. Instinctively, the long-time professor of international law knew the portfolio of pictures might haunt this generation in the same way that photographs of the My Lai massacre had done nearly 40 years earlier. He felt a distinct sense of déjà vu – but instead of bodies of men, women and children in Vietnam, the cover of TIME magazine now displayed a hooded detainee in Baghdad, struggling to balance on a box with electrical wires attached to both hands.

Paust was a young Army JAG officer in 1969 when the horrors of the My Lai massacre began trickling out, and he recalls how the disturbing news from Vietnam made him question how and why people commit atrocities. As a lawyer in uniform, he also questioned what the military could do about it. “I had always been aware of the need to promote human dignity,” he says, “but especially in that time of atrocities and war.” When Lt. William Calley was tried by a military tribunal, Paust was stunned by the testimony about the brutality and callousness of the bloodbath in a small Vietnamese hamlet. “I struggled with that, personally, as a captain training people how not to violate the laws of war,” Paust says.

After his military service ended in 1973, and a subsequent two years in an advanced degree program at Yale Law School, Paust joined the Law Center as an associate professor of international law. He now holds the Mike and Teresa Baker Law Center Professorship, and is widely known for his relentless questioning of

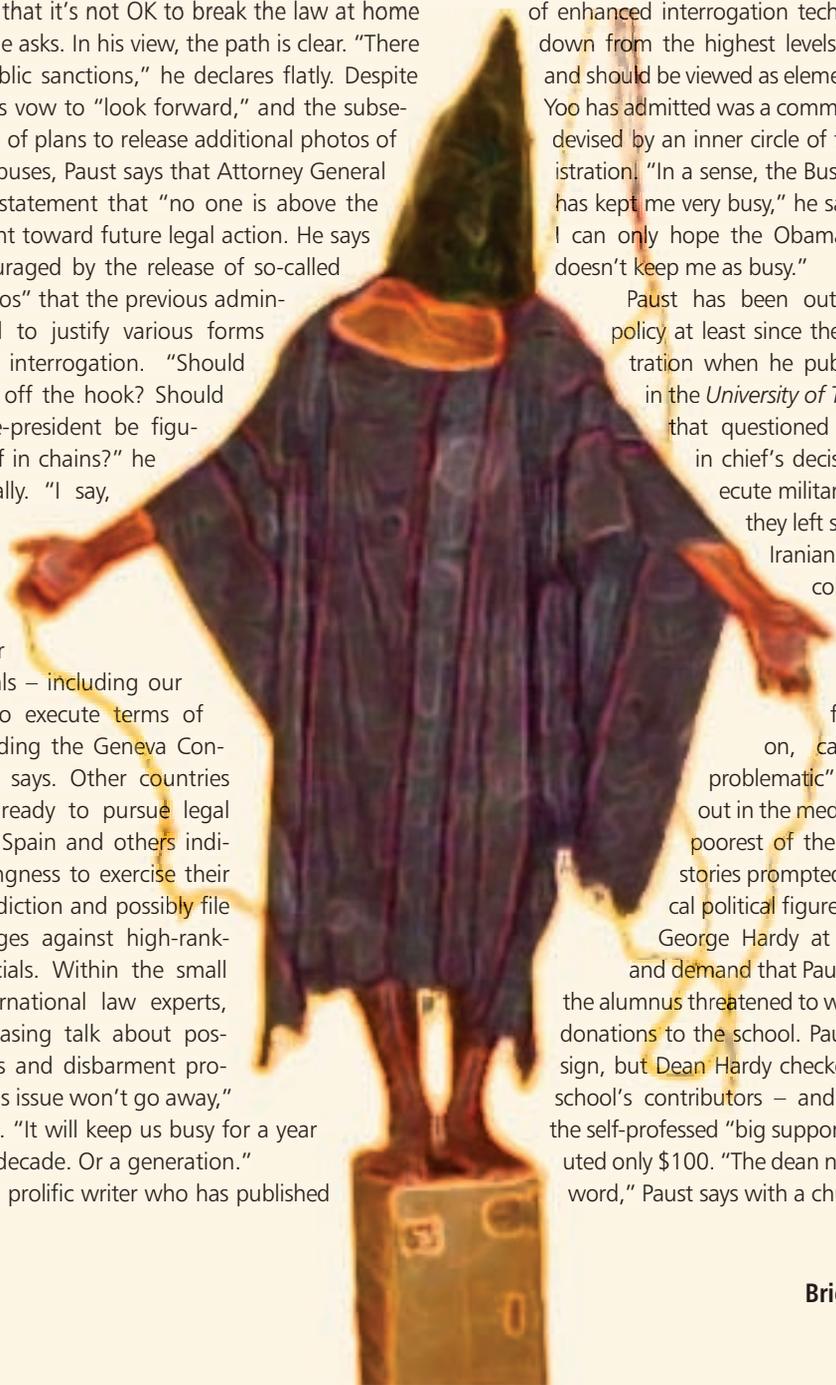
the Bush Administration's conduct during the so-called "war on terror." In journal articles, on-line postings and a critically acclaimed book, he continues to espouse a firm belief that high-level officials of the U.S. government should be prosecuted for war crimes. In his view, these future trials would play an important role in reinforcing how the "rule of law" does not recognize international boundaries. "There is a sense among some that anything is acceptable if it is not being openly done in the United States. It seems that as long as it is being done 'over there,' it's acceptable. To me, that view misses the point of international law," he says, sitting comfortably behind an antique desk piled high with books and papers in his Law Center office.

"We're at a serious crossroads," he cautions. "President Obama says it's time to move forward, but the domestic impact of doing that could be disastrous. Are we a nation committed to the rule of law? And if not, how can we teach that it's not OK to break the law at home or abroad?" he asks. In his view, the path is clear. "There should be public sanctions," he declares flatly. Despite the President's vow to "look forward," and the subsequent reversal of plans to release additional photos of Abu Ghraib abuses, Paust says that Attorney General Eric Holder's statement that "no one is above the law" may point toward future legal action. He says he was encouraged by the release of so-called "torture memos" that the previous administration used to justify various forms of unlawful interrogation. "Should politicians be off the hook? Should a former vice-president be figuratively led off in chains?" he asks rhetorically. "I say, 'Why not?' There is an unavoidable obligation of our elected officials – including our President – to execute terms of treaties, including the Geneva Conventions," he says. Other countries now appear ready to pursue legal actions, with Spain and others indicating a willingness to exercise their universal jurisdiction and possibly file criminal charges against high-ranking U.S. officials. Within the small circle of international law experts, there is increasing talk about possible civil suits and disbarment proceedings. "This issue won't go away," Paust predicts. "It will keep us busy for a year at least. Or a decade. Or a generation."

Paust is a prolific writer who has published

more than 165 articles, essays, book chapters and a recent book at Cambridge University Press, *Beyond the Law – The Bush Administration's Unlawful Responses in the "War" on Terror*. He is among the most cited international law professors in the United States and has appeared on panels and international committees throughout the world. In recent years he has carved an on-line niche as a regular contributor to *Jurist*, an electronic news service hosted by the University of Pittsburgh School of Law. Even a cursory review of his recent postings will emphasize the clarity of his stance: he firmly believes former President Bush, Vice President Dick Cheney, Secretary of State Condoleezza Rice, Attorney General Alberto Gonzales, Department of Justice attorney John Yoo and others are reasonably accused of complicity in war crimes by skirting the laws of war, or facilitating crimes by others. It is his view that the abuses of Abu Ghraib accrued not from a few bad apples, but from "serial criminality." Approval of enhanced interrogation techniques cascaded down from the highest levels of government, and should be viewed as elements of what John Yoo has admitted was a common, unifying plan devised by an inner circle of the Bush Administration. "In a sense, the Bush Administration has kept me very busy," he says ruefully, "and I can only hope the Obama Administration doesn't keep me as busy."

Paust has been outspoken on U.S. policy at least since the Nixon Administration when he published an article in the *University of Texas Law Review* that questioned his commander in chief's decision not to prosecute military personnel after they left service. When the Iranian hostage crisis colored the Carter Administration, Paust questioned the use of food as a weapon, calling it "highly problematic" and pointing out in the media that it hurt the poorest of the poor. The news stories prompted a prominent local political figure to contact Dean George Hardy at the Law Center and demand that Paust be fired. If not, the alumnus threatened to withhold all future donations to the school. Paust offered to resign, but Dean Hardy checked the list of the school's contributors – and discovered that the self-professed "big supporter" had contributed only \$100. "The dean never said another word," Paust says with a chuckle.





**Jordan Paust**, a young Army JAG officer, receives a service medal from his then-commandant, and later Law Center colleague, **John Jay Douglass**. Paust was recognized this year as among the nation's Top 10 most frequently cited professors in his specialty of International Law.

Paust remains a lightning rod for comments from all sides of the political spectrum, and he concedes others may not be as passionate about the laws of war and human rights as he is – especially in a world that lives under constant threat of terrorism. “I suppose a lot of people would take the Obama approach of just moving on. But you can’t do that and remain a nation of laws,” he says in his trademark matter-of-fact tone. Paust says it is unprecedented for a high-ranking U.S. government official to be prosecuted for international crimes, although many foreign leaders have been prosecuted in foreign and international tribunals. Moreover, it is unprecedented for a sitting president to approve them – which he believes Bush did. “I understand there is a political will not to prosecute,” he says. But if new information emerges, the pendulum may change direction – and Paust believes high-level officials ultimately would be convicted.

Regardless of the criticism aimed in his direction, Paust feels compelled to pursue his course of legal reasoning that is firmly grounded in axioms of international law. “As a professor, I feel a commitment to speak out. There simply is no reason not to,” he says. And as part of his commitment, he is upfront about his viewpoints during classroom discussions where students mull the potential applications of international law. Openness and transparency – the ideals of any rule of law – are the characteristics he strives for as a teacher.

Forty years ago, when Paust and other U.S. Army attorneys practiced “preventive lawyering” by making sure everyone understood and observed the boundaries of war in the wake of My Lai, Paust says the former Commandant of the Judge Advocate General’s School (and future Law Center colleague) John Jay Douglass told them their job in prosecuting alleged war crimes was to assure that “military justice is just.” Paust feels a duty to pursue that goal today by holding accountable those who may have lost sight of American ideals and possibly crossed over – in the words of former Vice President Cheney – to “the dark side.” •

## 2001

- Sept. 11** Al Qaeda attacks U.S. Nearly 3,000 killed.
- Sept. 16** Vice-President Dick Cheney says on NBC’s *Meet the Press* that the government will have to work through “the dark side” and “in the shadows” to learn what is needed to fight terrorism. “It’s going to be vital to use any means at our disposal.”

## 2002

- Feb. 7** President Bush issues order denying Geneva Conventions protections to Taliban and al Qaeda detainees.
- July 26** Attorney General John Ashcroft concludes waterboarding is legal.
- Aug. 1** Memos from the Department of Justice and White House counsel Alberto Gonzales advise that escalating interrogation techniques that result in pain equivalent to “organ failure, impairment of bodily function, or even death” are torture. Everything else is legal.
- August** Al Qaeda operative Abu Zubayda, captured March 28, is waterboarded more than 80 times.

## 2003

- March** Top al Qaeda operative Khalid Sheikh Mohammed is captured March 1 and waterboarded 183 times.
- March 14** Department of Justice attorney John Yoo sends memo to Department of Defense counsel citing national “self-defense” in the treatment of detainees and stating the executive power of the president is paramount.
- April 28-May 10** Seymour Hersh of the *New Yorker* and CBS News break the story of abuse at Abu Ghraib.

## 2005

- December** Congress passes Detainee Treatment Act outlawing “cruel, inhumane or degrading” treatment of prisoners.

## 2007

- June 29** Supreme Court rules U.S. must comply with Geneva Conventions in treatment of Guantanamo detainees.
- July 20** Bush signs executive order authorizing CIA to use harsher interrogation techniques than allowed by the military.

## 2009

- Jan. 6** President Obama signs executive order to close Guantanamo.
- April 16** Obama releases a number of Bush Administration interrogation memos and the ACLU releases four detailing the extent of the waterboarding of Abu Zubayda and Khalid Sheikh Mohammed. The White House says CIA officers involved will not be prosecuted.
- May 13** Obama reverses himself after first saying he would release more pictures of prisoner abuse.