Setting an Agenda for the High-Value Detainee Interrogation Group

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> [The] barbarous custom of whipping men suspected of having important secrets to reveal must be abolished. It has always been recognized that this method of interrogation, by putting men to the torture, is useless. The wretches say whatever comes into their heads and whatever they think one wants to believe. Consequently, the Commander-in-Chief forbids the use of a method which is contrary to reason and humanity.
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> —Napoleon Bonaparte to Major General Louis-Alexandre Berthier, during the French military campaign in Egypt, 1798

Some may argue that we would be more effective if we sanctioned torture or other expedient methods to obtain information from the enemy. They would be wrong. Beyond the basic fact that such actions are illegal, history shows that they also are frequently neither useful nor necessary. Certainly, extreme physical action can make some "talk"; however, what the individual says may be of questionable value. In fact, our experience in applying the interrogation standards laid out in the Army Field Manual (2–22.3) . . . that was published last year shows that the techniques in the manual work effectively and humanely in eliciting information from detainees.

> —General David H. Petraeus, U.S. Army, Commanding, to Soldiers, Sailors, Airmen, Marines, and Coast Guardsmen serving in Multi-National Force–Iraq, 2007

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A Campaign Promise Kept

Within two days of his inauguration, fulfilling a campaign pledge to end abusive practices relating to detainees and interrogation, President Barack Obama issued an executive order that revoked all previous Bush administration "executive directives, orders, and regulations" dealing with detainee interrogation. Also overturned by the order were any previous "interpretations of the law governing interrogation" emanating from the Bush administration's Department of Justice. The order established Army Field Manual (FM) 2–22.3, *Human Intelligence Collector Operations*, as the new standard for conducting intelligence interrogations, applicable to all agencies of the U.S. government, including the Central Intelligence Agency (CIA). Specifically, the executive order prohibits "any interrogation technique or approach, or any treatment related to interrogation that is not authorized by and listed in [FM 2–22.3]."[1]

The adoption, by executive order, of the Army Field Manual as the broad standard for intelligence interrogation had its origin in passage of the Detainee Treatment Act of 2005. The act made Army Field Manual 34–52, *Intelligence Interrogation*, the predecessor document to FM 2–22.3 (published in September 2006), the legal template for all Department of Defense interrogation procedures.[2] Beginning in 2007, Congress pushed to extend that authority to the other elements of the intelligence community. This effort culminated in language included in section 327 of the Intelligence Authorization Act for Fiscal Year 2008, stipulating that all intelligence interrogation methods conform to those currently authorized in FM 2–22.3.[3]

On March 8, 2008, President George W. Bush vetoed this proposed legislation. In his message to the House of Representatives explaining the veto, the president highlighted his disagreement with Congress over its attempt to restrict the CIA's continued use of enhanced interrogation techniques. Bush emphasized that implementing such restrictions would jeopardize national security. "It is vitally important that the Central Intelligence Agency . . . conduct a separate and specialized interrogation program for terrorists who possess the most critical information in the War on Terror[, which] has helped the United States prevent a number of attacks."[4] Bush clarified that his disagreement was "not over any particular interrogation technique . . . [but] the need . . . to shield from disclosure to al Qaeda and other terrorists the interrogation techniques they may face upon capture."[5] His comments were consistent with the July 2007 Executive

Order 13440 ("Interpretation of the Geneva Conventions Common Article 3 as Applied to a Program of Detention and Interrogation Operated by the Central Intelligence Agency"), confirming that the CIA interrogation program "fully complies with obligations of the United States under Common Article 3 [of the Geneva Conventions of 1949]" regarding humane treatment of detainees.[6]

The visceral nature of Obama's opposition to enhanced interrogation techniques and his rejection of the Bush administration's underlying legal rationale for them became even more apparent with his personal decision, taken against the advice of several former and serving senior intelligence officials,[7] to authorize the Department of Justice to release (with minimal redactions) four highly classified memoranda written by its Office of Legal Counsel (OLC) in August 2002 and May 2005.[8] The memoranda, addressed to CIA senior deputy general counsel John A. Rizzo, are grim, clinical legal opinions that describe and justify the various enhanced interrogation techniques CIA officers were permitted to use to question suspected al-Qaeda terrorist detainees regarding critical national security information they refused to divulge under traditional methods.[9] On June 11, 2009, the OLC recommended a fifth memorandum, written in July 2007 and dealing with the legality of the techniques in terms of specific domestic and international statutes, also be authorized for public release.[10]

The earliest of the memoranda (dated August 1, 2002), specifically dealing with the interrogation of Zayn al-Abidin Muhammed Hussein (also known as Abu Zubaydah), explained how the techniques are to be applied, justified their utility against a resistant subject, dispelled concerns about their potential long-term harmful effects, and elaborated on medical and psychological safeguards to be observed. This memorandum also built a considerable legal argument to absolve any interrogator using enhanced techniques of allegations of torture if that individual has no "specific intent to inflict severe pain or suffering."[11] In painstaking detail and applying heavily footnoted legal research, two memoranda dated May 10, 2005, explained how the techniques may be applied individually or in combination so as not to inflict "severe physical or mental pain or suffering" in violation of U.S. domestic statutes and international law prohibiting torture.[12] The memorandum of May 30, 2005, offered the following insight on the national security necessity of applying these techniques: "We understand that since the use of enhanced techniques, 'KSM [Khalid Shaykh Muhammad] and Abu

Zubaydah have been pivotal sources because of their ability and willingness to provide their analysis and speculation about the capabilities, methodologies, and mindsets of terrorists.'"[13] The last of the five memoranda (dated July 20, 2007) justified in meticulous detail the continued availability of six previously authorized enhanced interrogation techniques in terms of recent changes in U.S. law dictated by the 2006 Supreme Court decision in *Hamdan v. Rumsfeld* and subsequent legislation responding to it. According to the memorandum, the "proper interpretation of Common Article 3 does not prohibit the United States from employing the CIA's proposed interrogation techniques." Additionally, the memorandum provides the legal foundation for and its reasoning "is wholly consistent" with Executive Order 13440.[14]

In his statement approving the release of the first four memoranda, however, Obama did not find their arguments morally, legally, or substantively sufficient. According to the president, the approved techniques "undermine our moral authority and do not make us safer. . . . A democracy as resilient as ours must reject the false choice between our security and our ideals."[15] On May 21, 2009, in a major address describing his national security priorities, Obama further defended his decision regarding the memoranda and his rejection of enhanced interrogation techniques, emphasizing the importance of "strik[ing] the right balance between transparency and national security." "Faced with an uncertain threat," he said, "our government made decisions based on fear rather than foresight. . . . Instead of strategically applying our power and our principles, too often we set those principles aside as luxuries that we could no longer afford."[16]

Tougher Interrogation Equals Better Intelligence?

Human intelligence is the oldest of the intelligence disciplines, and the questioning of captured enemies to obtain information of intelligence value is equally ancient. Throughout the long history of interrogation there persists the seductive expectation, especially common among leaders who demand quick solutions to complex problems, that tougher interrogation provides better intelligence.

In an October 2006 interview, Vice President Dick Cheney agreed with his host that the use of waterboarding on high-value detainees was a "no-brainer" because it "provided us enormously valuable information" that contributed to saving American lives.[17] Speaking to the Heritage Foundation on January 23, 2008, Cheney expanded

on this subject: "Among the most effective weapons against terrorism is good intelligence—information that helps us figure out the movements of the enemy, the extent of their operations, the location of their cells, the plans that they're making, the methods they use, and the targets that they want to strike. Information of this kind is also the very hardest to obtain." So how does the United States get access to this information? Not surprisingly, according to Cheney, we get it by talking to the terrorists themselves. For the really hard-core terrorists, like 9/11 mastermind Khalid Shaykh Muhammad, Cheney advocated a "tougher program run by the CIA." The result, he confided to his audience, is a "wealth of information that has foiled attacks against the United States; information that has saved countless innocent lives."[18]

Since leaving office, the former vice president's position has, if anything, become more entrenched. In a February 2009 interview with *Politico* regarding the value of coercive interrogation, Cheney was dismissive of its critics. In the wake of Obama's executive orders on interrogation and detention policy, Cheney suggested the Obama administration is naive, if not negligent, in leaving the United States vulnerable to a catastrophic terrorist attack. Eventually, he said, the president will have to rescind these orders or the American people will suffer the consequences, because protecting America against terrorism is "a tough, mean, dirty, nasty business. These are evil people. And we're not going to win this fight by turning the other cheek." When the classified files on terrorism are opened, Cheney continued, his controversial positions will be vindicated, and the record will show that waterboarding and other coercive techniques he advocated prevented another 9/11.[19] In late March, Cheney formally requested the declassification and public release of two CIA reports that he felt would validate his pronouncements on the value of coercive interrogation, a request initially denied by the CIA.[20]

The former vice president's most combative declaration on this issue occurred on May 21, 2009, in a speech at the American Enterprise Institute. Taking his detractors head-on, Cheney was unapologetic for his endorsement of enhanced interrogation techniques and defiant in his defense of the Bush administration's national security record. "I was and remain a strong proponent of our enhanced interrogation program. The interrogations . . . were legal, essential, justified, successful, and the right thing to do . . . because they prevented the violent death of thousands, if not hundreds of thousands, of

innocent people." Ridiculing his opponents' "feigned outrage based on a false narrative" and condemning their "contrived indignation and phony moralizing," Cheney was unequivocal: "Releasing the interrogation memos was flatly contrary to the national security interest of the United States." Furthermore, he accused the Obama administration of trying to have it both ways, selectively redacting portions of the released memos and refusing to release others that if divulged would prove his case. "For reasons, the administration has yet to explain, they believe the public has a right to know the method of the questions, but not the content of the answers." The president's decision to prohibit enhanced interrogation, according to Cheney, is "recklessness cloaked in righteousness, and would make the American people less safe."[21] His clear message, delivered in an earlier Fox News interview, is that tough interrogations worked: "[T]hey kept us safe for seven years."[22]

Cheney is not alone in his convictions. U.S. Supreme Court Justice Antonin Scalia, a fan of the Fox network's hit drama *24*, has championed the show's federal agent protagonist, Jack Bauer, who regularly saves the nation by violently interrogating and suppressing terrorists. During a panel discussion on terrorism and torture law with Canadian jurists in June 2007, Scalia asserted that the law should provide some allowance for officials who attempt to stop catastrophic events, even if their actions require them to exceed legal norms. It is unreasonable in such circumstances for laws designed for civil society to restrict a counterterrorism agent's behavior, he said. "So the question is really whether we believe in these absolutes. And ought we believe in these absolutes." Perhaps one of Bauer's favorite lines may be useful to Scalia in future Supreme Court deliberations on coercive interrogation: "I don't want to bypass the Constitution, but these are extraordinary circumstances."[23]

A softer version of the mantra implying that extraordinary circumstances may demand exceptional responses circulated last year among unlikely commentators, including at least one of the former Bush administration's fiercest critics. Senator Diane Feinstein, chairman of the Senate Select Committee on Intelligence, championed the 2008 legislation to apply FM 2–22.3 to CIA interrogations, the measure President Bush vetoed. In a December 2008 interview with the *New York Times*, however, Feinstein said, "I think that you have to use the noncoercive standard to the greatest extent possible," but she seemed to leave that standard open to exceptions under extreme

circumstances, such as an impending terrorist attack.[24] Because of questions raised by her comments, she twice clarified them in prepared statements to the media in which she emphasized her commitment to "a single, clear standard for interrogation across the federal government," and stipulated the Army Field Manual was that standard. As a caveat, she added, "If the incoming administration decides to propose an alternative to this legislation, I am willing to hear its views. But I believe we must put an end to coercive interrogations by the C.I.A."[25]

Director of the CIA Leon Panetta, in his February 2009 confirmation hearing before the Senate Select Committee on Intelligence, also acknowledged there might be a need for exceptional responses to an uncooperative terrorism suspect "if we had a ticking bomb situation, and obviously, whatever was being used I felt was not sufficient."[26] In later questioning, however, Panetta said he would examine the information obtained by enhanced interrogation methods to determine "how effective they were or weren't and whether any appropriate revisions need to be made." Additionally, he promised to examine what damage may have been done to U.S. national security by using such techniques, irrespective of whether they were useful in obtaining accurate information. According to Panetta, "Our greatest weapon is our moral authority. . . . The sense that we were willing to set that aside, I think, did damage our security."[27]

Critics have argued that even Obama seemed to have allowed himself some wiggle room for an exceptional response in extraordinary circumstances. In addition to making FM 2–22.3 the common standard for interrogations across the intelligence community, the executive order created a Special Task Force on Interrogation and Transfer Policies. The mission of that task force, regarding interrogation, was "to study and evaluate whether the interrogation practices and techniques in Army Field Manual 2–22.3, when employed by departments or agencies outside the military, provide an appropriate means of acquiring the intelligence necessary to protect the Nation, and, if warranted, to recommend any additional or different guidance for other departments or agencies."[28] Cheney has wondered aloud why, if Obama considers enhanced interrogation techniques ineffective and immoral, he "has reserved unto himself the right to order [their] use . . . should he deem it appropriate."[29] Such doublespeak, critics allege, could potentially immobilize intelligence operatives, uncertain of which standard they will be held to, and jeopardize national security in the process.[30]

Vital Resource or Pernicious Practice?

In his weekly radio address to the American people on March 8, 2008, the day he vetoed the Intelligence Authorization Act for Fiscal Year 2008, Bush intimated that the CIA's special interrogation program was a key factor in the United States' escaping further attacks by al-Qaeda since 9/11. Conceding to Congress, according to Bush, by restricting the "CIA to methods in the Field Manual . . . could cost American lives. We have no higher responsibility than stopping terrorist attacks. And this is no time for Congress to abandon practices that have a proven track record of keeping America safe."[31] In the waning days of the Bush administration, Director of National Intelligence Admiral Michael McConnell and CIA director General Michael Hayden vociferously reinforced Bush's assertions. McConnell, in a television interview, said limiting all interrogators to the methods in FM 2–22.3 would undermine national security, insinuating that they won't work on "a hardened terrorist who is willing to die for his cause, who wants to have mass destruction right here in New York, who will not talk to you or give you information."[32]

Hayden was even more adamant. In a January 2009 media interview done before the announcement of the executive order on interrogation, he projected a grim picture of lost opportunities to protect American citizens if enhanced interrogation techniques were outlawed entirely. Military interrogators are trying to obtain "transient battlefield information," while "[the CIA is] trying to get strategic intelligence from the highest-value detainees about imminent threats to the homeland." The bottom line, according to Hayden, is "these techniques worked. . . . Do not allow others to say it didn't work. . . . It worked."[33] Hayden's remarks echo those of an earlier director of central intelligence (DCI), George Tenet, on whose watch the 9/11 attacks occurred. In an April 2007 *60 Minutes* interview, Tenet declared, "I know that this program has saved lives. I know we've disrupted plots. . . . I know this program alone is worth more than the FBI, the Central Intelligence Agency, and the National Security Agency put together have been able to tell us."[34]

The strongest on-the-record endorsement for Hayden's claim comes from CIA operations officer John Kiriakou, who oversaw the capture and interrogation of Abu Zubaydah. This interrogation, according to Kiriakou in an interview with ABC News correspondent Brian Ross, led to major intelligence breakthroughs that "disrupted

a number of attacks, maybe dozens of attacks. . . . Once the information started coming in and we were able to corroborate it with other sources—and able to . . . disrupt other . . . al Qaeda operations, that was a big victory."[35] Kiriakou, who chose not be to be trained in enhanced interrogation techniques,[36] nonetheless believes their use to break down Abu Zubaydah's resistance had a powerful emotional effect on convincing him to cooperate. Kiriakou says that shortly after Abu Zubaydah was waterboarded "he told his interrogator that Allah had visited him in his cell during the night and told him to cooperate because his cooperation would make it easier on the other brothers who had been captured. And from that day on he answered every question just like I'm sitting here speaking to you."[37]

Critics of enhanced interrogation techniques, such as Milt Bearden, a thirty-year veteran of CIA clandestine operations, have consistently challenged the former Bush administration's position on how much safer the American people are as a result of the CIA's aggressive methods. Writing in the *Washington Independent*, Bearden took the Bush administration to task for its repeated assurances that by revealing terrorist plots before they were hatched, enhanced interrogation techniques have saved American lives. Bearden maintained, "The [Bush] administration's claims of having 'saved thousands of Americans' can be dismissed out of hand because credible evidence has never been offered—not even an authoritative leak of any major terrorist operation interdicted based on information gathered from these interrogations in the past seven years." Rather, Bearden saw Bush administration statements reflecting the battle raging since 9/11 between the "old hands" in the CIA, who reject coercive techniques because they consider them ineffective and, even worse, undermining of American values, and the "take off the gloves group," most of whom are not interrogators, but who rose to positions of prominence after 9/11 by playing to the Bush administration's desire to get tough with the terrorists.[38]

Reporting by Dan Eggen and Walter Pincus in the *Washington Post* noted that Federal Bureau of Investigation (FBI) officials were skeptical about the accuracy and completeness of the information extracted from Abu Zubaydah after CIA interrogators subjected him to waterboarding and other enhanced techniques. Officials from both the FBI and the CIA agree that Abu Zubaydah provided crucial information during earlier, noncoercive interrogations. For example, he confirmed the identities of 9/11 operations chief Khalid Shaykh Muhammad and American al-Qaeda operative Jose Padilla. Ques-

tions about the truthfulness of information Abu Zubaydah supplied afterward, however, raised a furor between the two agencies.[39]

FBI special agent Ali Soufan, who conducted the early interrogations of Abu Zubaydah, has now broken his seven-year silence. In an April 23, 2009, *New York Times* op-ed, a *Newsweek* article by Michael Isikoff, and testimony before the Senate Committee on the Judiciary, Soufan has contradicted "false claims magnifying the effectiveness of so-called enhanced interrogation techniques like waterboarding." According to Soufan, "[T]here was no actionable intelligence gained from using enhanced interrogation techniques on Abu Zubaydah that wasn't, or couldn't have been, gained from regular tactics. The short-sightedness behind the use of these techniques ignored the unreliability of the methods, the nature of the threat, the mentality and modus operandi of the terrorists, and due process."[40] Whatever one's moral scruples about enhanced interrogation techniques, their ultimate value is supposedly expediency—to quickly elicit time-sensitive and vital information, like that required to defuse the proverbial "ticking time-bomb." It is therefore particularly damning that Soufan, who has "personally interrogated many terrorists and elicited important actionable intelligence," found that such techniques operationally are "ineffective, slow and unreliable, and as a result harmful to our efforts to defeat al Qaeda." The problem with enhanced interrogation, Soufan maintained, is that it attempts to replace a "knowledge-based approach," focused on a "detainee's history, mindset, vulnerabilities, or culture," with one based on "submission through humiliation and cruelty."[41] Even more damaging, Soufan contended, was the exclusion of FBI agents from further contact with detainees after the agents refused to adopt the CIA's enhanced techniques. "Our agents who knew the most about the terrorists could have no part in the investigation."[42]

Special Agent Dan Coleman, who, until he retired in 2004, was the FBI's lead investigator on Osama bin Laden and al-Qaeda, contradicts Tenet's contention that "Abu Zubaydah had been at the crossroads of many al-Qaeda operations and was in position to—and did—share critical information with his interrogators." As a result of the harsh methods used to interrogate Abu Zubaydah, Coleman declared, "I don't have confidence in anything he says, because once you go down that road, everything you say is tainted. . . . He was talking before they did that to him, but they didn't believe him. The problem is they didn't realize he didn't know all that much." Coleman, having carefully studied Abu Zubaydah's diary, which

was confiscated when he was taken into custody, believes he exaggerated his own role in al-Qaeda. The CIA, on the other hand, was convinced Abu Zubaydah was simply resisting interrogation. When he was not forthcoming with information the CIA expected him to know, CIA interrogators used enhanced techniques to break his spirit. In reality, Coleman contends, after being waterboarded Abu Zubaydah became more talkative but not more truthful. The threat information he provided postwaterboarding was "crap," according to Coleman. "There's an agency mind-set that there was always some sort of golden apple out there, but there just isn't, especially with guys like him."[43] Given that the CIA director of operations in November 2005 ordered the destruction of videotapes documenting the interrogations of Abu Zubaydah and other alleged senior al-Qaeda leaders, the debate over the significance of their revelations and the value of enhanced interrogation techniques in obtaining them may never be known.

According to Major Matthew Alexander of the U.S. Air Force, the senior interrogator who supervised and conducted interrogations that helped locate and kill al-Qaeda in Iraq leader Abu Musab al-Zarqawi, talk was more important than threats in breaking down the resistance and gaining the cooperation of captured al-Qaeda operatives. Old-guard interrogators, who had honed their skills in Guantanamo, Afghanistan, and Iraq at an earlier time, "mocked those of us who didn't imitate their methods of interrogation, which were based on fear and control." Such tactics reinforced terrorists' prejudices and played into al-Qaeda's propaganda, severely undermining U.S. counterterrorism efforts. What worked for Alexander and a small group of his cohorts, he said, was embracing "America's strengths—cultural understanding, tolerance, compassion and intellect. . . . We will win this war by being smarter, not harsher. For those who would accuse me of being too nice to our enemies, I encourage you to examine our success in hunting down Zarqawi and his network. The drop in suicide bombings in Iraq at two points in the spring and summer of 2006 was a direct result of our smarter interrogation methods."[44]

On August 24, 2009, in response to a Freedom of Information Act request by the American Civil Liberties Union, the CIA released a heavily redacted *Special Review* by its inspector general on allegations of human rights abuses that occurred during interrogations of suspected al-Qaeda terrorists from September 2001 to October 2003. The *Review* acknowledged a few instances of flagrant behav-

ior: One debriefer used an unloaded handgun and a power drill to frighten a resistant detainee, and later threatened to kill or sexually assault his family; another individual, during an interrogation, kicked and beat a detainee with a flashlight so severely that he died in custody; a third agency officer used his weapon to "buttstroke" a suspect, then kneed him repeatedly because he reacted "inappropriately" to questioning. Other documented excesses, while not as egregious, clearly stretched the limits of the approved enhanced interrogation techniques, to include waterboarding.[45] For example, the *Review* noted that "[o]ne key Al-Qaida terrorist was subjected to the waterboard at least 183 times . . . and was denied sleep for a period of 180 hours. In this and another instance, the technique of application and volume of water differed from the [Department of Justice] opinion."[46]

The overall message from the *Review* is not of rampant abuse, however, but of careful weighing of legal and medical considerations, generally precise execution of the approved techniques, and yet nagging doubts about their appropriateness.[47] Deviations were subject to criminal prosecution.[48] Despite Department of Justice legal assurances, documented above, CIA officers at all levels were concerned that enhanced interrogation techniques were "inconsistent with the public policy positions the United States has taken regarding human rights." The techniques also were worrisome because they "diverg[ed] sharply from previous Agency policy and practice, [and from] rules that govern interrogations by U.S. military and law enforcement officers."[49] Rather than depraved perpetrators eager to inflict pain, the *Review* depicted most interrogators as doing their duty despite their "concern about the possibility of recrimination or legal action resulting from their participation." In some cases, interrogators complained, this involved continuing the enhanced techniques on a detainee even after they felt he was fully compliant, because analysts at CIA headquarters believed the detainee was not disclosing all he knew.[50]

Regarding the value of the information extracted from high-value detainees, the *Review* stressed its critical impact on the U.S. government's knowledge of al-Qaeda. "[It] has enabled the identification and apprehension of other terrorists, warned of terrorist plots planned for the United States and around the world, and supported finished intelligence publications . . . for senior policymakers and war fighters." The largest share of the more than three thousand intelligence reports produced during the period examined in the

Review came from high-value detainee interrogations. While these reports undoubtedly saved lives by uncovering plots for future terrorist attacks, the *Review* "did not uncover any evidence that these plots were imminent."[51]

More problematic for the inspector general, however, was determining the effectiveness of enhanced interrogation techniques in extracting this information. Despite the DCI's insistence about the value of the techniques, the *Review* acknowledged significant uncertainties related to individual and situational factors affecting the outcomes of interrogations using enhanced techniques. With specific reference to the effectiveness of the most notorious technique, waterboarding, results among the three detainees who were subjected to it were mixed. After being waterboarded "at least 83 times during the month of August 2002 . . . Abu Zubaydah . . . appeared to be more cooperative." But, according to the *Review*, "[i]t is not possible to say definitively that the waterboard is the reason for [his] increased production, or if another factor, such as the length of detention, was the catalyst." Abd Al-Rahim was subjected to waterboarding as well as other enhanced techniques, and while the *Review* specified that "it is difficult to identify why [he] became more willing to provide information," after their application his answers covered "current operational planning . . . as opposed to the historical information he provided before." Khalid Shaykh Muhammad, "an accomplished resistor," provided minimal information before being subjected to the waterboard, and it was "outdated, inaccurate, or incomplete." During March 2003 he was waterboarded 183 times.[52] Following that experience he was described in another CIA analytical product as "one of the U.S. Government's key sources on al-Qa'ida."[53]

The CIA publication *Khalid Shaykh Muhammad: Preeminent Source on Al-Qa'ida*, published in July 2004, was one of two reports requested by Cheney to be declassified and released that he felt unequivocally confirmed the importance of enhanced interrogation techniques. A redacted version was released on August 24, 2009, the same day as the CIA inspector general's *Special Review*. Among its key findings: Khalid Shaykh Muhammad "provided . . . reports that have shed light on al-Qa'ida's strategic doctrine, plots and probable targets, key operatives, and the likely methods for attacks in the US homeland, leading to the disruption of several plots against the United States."[54] A second report, *Detainee Reporting Pivotal for the War against Al-Qa'ida*, published in June 2005 and also released in heavily redacted form on August 24, noted in its key findings that

"detainee reporting has become a crucial pillar of US counterterrorism efforts, aiding intelligence and law enforcement operations to capture additional terrorists, helping to thwart terrorist plots, and advancing our analysis of the al-Qa'ida target."[55] In the wake of the CIA's posting of these documents, Cheney, in an exclusive statement to the *Weekly Standard*, immediately reiterated his previous claims that the "documents . . . clearly demonstrate that the individuals subjected to Enhanced Interrogation Techniques provided the bulk of intelligence we gained about al Qaeda. This intelligence saved lives and prevented terrorist attacks."[56] The problem with Cheney's contention is that while even the redacted versions of the reports are rich in detail about the importance of what the intelligence community learned from high-value detainees, neither of those redacted reports provided a definitive statement about the value of enhanced interrogation techniques in actually obtaining that information. The only source that addressed this subject was the *Special Review*, and, as previously discussed, its wording was carefully noncommittal.

Despite this accumulation of anecdotal information, the controversy over what works in interrogation remains unresolved. In his statement to the Senate Committee on the Judiciary, Philip Zelikow, former counselor to Secretary of State Condoleezza Rice, explained that "the point is not whether the CIA produced useful intelligence. Of course it did. Quite a lot. The CIA had exclusive custody of a number of the most important al Qaeda captives in the world, for years. . . . And, even though the program may have some value against some prisoners, it has serious drawbacks."[57] Among those drawbacks, according to Generals Charles Krulak and Joseph Hoar, former senior U.S. Marine Corps commanders, is that information gained through coercion creates a "false security" that leads to other negative consequences. What are those consequences? For one thing, Krulak and Hoar explain, coercive interrogation, initially implemented as an exceptional response to extraordinary circumstances, quickly becomes normal behavior. Subordinates begin to see every "captured prisoner . . . [as] the key to defusing the potential ticking time bomb"; what was once "the rare exception fast [becomes] the rule." Additionally, enemies use the issue of coercive interrogations to rally the support of terrorist sympathizers, win recruits, and justify brutal treatment of U.S. prisoners.[58] Ultimately, the most costly consequence of coercive interrogations is the potential weakening of our own values. Despite enemy provocations, the United States cannot fail in upholding its values. "To do differently," Senator John

McCain told the U.S. Senate in 2005, "not only offends our values as Americans, but undermines our war effort. . . . [Although] the enemy we fight has no respect for human life or human rights . . . this isn't about who they are. This is about who *we* are. These are the values that distinguish us from our enemies, and we can never, never allow our enemies to take those values away."[59]

Even if enhanced interrogation techniques are effective in gaining accurate information, what is the cost/benefit trade-off if noncoercive measures could have garnered equivalent or even better results? Anecdotal accounts from former interrogators and selective case studies provide some insight, but there have been no systematic studies that address this question.[60] This situation is changing. Leon Panetta, during Senate hearings on his nomination to be the new CIA director, acknowledged the importance of answering it. He has engaged a formal process to evaluate, separately and in cooperation with the interagency task force, the sufficiency of FM 2–22.3 to meet CIA requirements. Additionally, Panetta is overseeing a review of the actual effectiveness of enhanced interrogation techniques, examining both the value of information provided to CIA interrogators and the costs associated with extracting that information compared to noncoercive approaches.[61] Not to be outdone, Feinstein, chair of the Senate Select Committee on Intelligence, has commissioned a similar study on the comparative value of coercive and noncoercive interrogation techniques.[62] No results are yet forthcoming from any of these studies.

High-Value Interrogation Group

Where do we go from here? Attorney General Eric Holder provided an answer to that question on August 24, 2009, when he announced the recommendations of the Special Task Force on Interrogations and Transfer Policies, the interagency deliberative body created by Executive Order 13491. As a major finding, the task force determined that FM 2–22.3 provides "appropriate guidance on interrogation for military interrogators and that no additional or different guidance was necessary for other agencies." This unanimous conclusion by the task force reaffirmed the authority of the Army Field Manual, established in the executive order, as the common standard for all U.S. government interrogations. And it deemed that the "practices and techniques" of FM 2–22.3 or those "currently used by law enforcement provide adequate and effective means of con-

ducting interrogations." Structurally, the task force recommended creation of a High-Value Detainee Interrogation Group (HIG) within the FBI, to be staffed, according to Holder, by "the best personnel from across the government to conduct interrogations that will yield valuable intelligence and strengthen our national security. There is no tension between strengthening our national security and meeting our commitment to the rule of law, and these new policies will accomplish both." In carrying out its mission, the HIG will be "subject to policy guidance and oversight coordinated by the National Security Council."[63]

The action arm of the HIG will be a set of mobile interrogation teams, consisting of an elite cadre of highly experienced U.S. government professionals—interrogators, analysts, linguists, and other specialists—deployable anywhere in the world to conduct interrogations of designated high-value detainees. "The primary goal of the HIG [is] gathering intelligence to prevent terrorist attacks and otherwise to protect national security." The proposed cadre must utilize the best knowledge available worldwide, including contributions from behavioral and social sciences; share the best people and ideas from intelligence, law enforcement, and military organizations; and operate within a clear legal and ethical framework. Based on additional interagency tasking and coordination, the cadre must be capable of adapting assigned interrogations to support criminal proceedings as well. Other duties envisioned for the HIG include developing a set of interrogation "best practices" to draw on the current experience of HIG members to improve interrogation training for all U.S. government agencies that require interrogators. To support these duties the cadre must be dedicated to developing robust new ideas and practices to guide present and future operations in noncoercive, ethical interrogation. Finally, the task force recommended that the HIG establish an interrogation research program.[64]

As pointed out in the Intelligence Science Board's 2006 landmark study *Educing Information: Interrogation: Science and Art, Foundations for the Future*, the U.S. government has funded no significant research programs on interrogation-related topics in the past forty years. There is no objective scientific basis for the techniques commonly used by U.S. interrogators, and no single intelligence community organization with current responsibility, authority, capability, and accountability to develop the range of operational, training, and research activities on interrogation needed now and in the future.[65] The creation of the HIG provides an opportunity to remedy

this situation by coordinating the creation of a "scientific research program for interrogation . . . to study the comparative effectiveness of interrogation approaches and techniques, with the goal of identifying the existing techniques that are most effective and developing new lawful techniques to improve intelligence interrogations."[66] The existing roles of the National Defense Intelligence College in developing a library of interrogation-related case studies and the Defense Intelligence Agency Counterintelligence and Human Intelligence Directorate's sponsorship of scientific research responsive to operational requirements, both have merit in supporting a common research agenda.

The creation of a High-Value Interrogation Group provides an excellent opportunity to end abusive practices and to propose a new agenda for intelligence interrogation that increases the capability to collect accurate information from enemy detainees effectively and humanely. Seizing this opportunity is essential to increasing the chances of success for counterterrorism operations worldwide and reducing risks to the lives of American service members and civilians, as well as detainees. Doing so enhances the broader national security agenda, while not sacrificing American values.

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