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The Efficacy of Coercive Interrogation

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After President Obama issued executive orders forbidding the use of any interrogation techniques harsher than those specified in the Army Field Manual, former Vice President Dick Cheney criticized him for putting the United States at risk by forbidding their use. Republican candidates for the presidency in 2011 and 2012 agreed that the use of “enhanced interrogation techniques” (EITs), particularly waterboarding, was necessary in order to protect the United States. Representative Michelle Bachman declared, “If I were president I would be willing to use waterboarding. I think it was very effective ” (Rugenberg and Parker 2011). Candidates Herman Cain and Rick Santorum and Governor Rick Perry agreed. In July 2012 Mitt Romney ‘s aides said that he did not believe that waterboarding is torture, and that he would not rule out using EITs (Gharib 2012). Only libertarian Ron Paul and former Utah Governor John Huntsman refused to endorse coercive interrogation.

Thus torture continues to be an important public policy debate in the United States.

Defenders of coercive interrogation techniques justify their position by arguing that:

- 1) EITs are not torture
- 2) EITs are justified
- 3) EITs are effective interrogation techniques

This paper will address the following three question regarding EITs:

1. Are they torture? Critics of the use of EITs argue that in many cases they constitute torture. With some techniques, this judgment depends on matters of degree; the paper will address the ways in which some techniques constitute torture, both in theory and as practiced.
2. Are they Moral? Defenders of coercive interrogations argue that coercive techniques are justified under some circumstances, particularly when the nation is under threat of hostile

attacks, such as terrorism. The paper will review the arguments about the justification of torture under certain circumstances.

3. Do they work? Officials of the Bush administration and some former intelligence leaders argue that coercive techniques work well, have produced important intelligence, and their use has saved US lives. The paper will juxtapose those assertions with the judgments of experienced interrogators during the war on terror.

New evidence on the efficacy of Enhanced Interrogation Techniques (EITs) has come out over the past several years. Veteran professional interrogators in military service, the FBI, and CIA have written books arguing that harsh interrogations are counterproductive to gaining accurate intelligence and describing the successful use of traditional techniques of interrogation. The testimony of these professionals who have interrogated hundreds of suspects during the war on terror will be contrasted with the arguments of political leaders, pundits, and defenders of the use of EITs.¹

The conclusion will be that EITs that amount to torture are not morally defensible and not sufficiently efficacious to be justified in U.S. public policy.

I. Do EITs Constitute Torture?

Some defenders of coercive techniques point out that shortly after 9/11 US officials believed that another wave of terrorist attacks were planned and were about to be carried out. Thus, they argue, we should not judge their actions in hindsight from a safer perspective; under great pressure, US officials were convinced that their actions were necessary to defend the country. This is certainly a reasonable position, but the current debate is not what was justified in the past but about whether US policy in the future should allow coercive interrogation techniques. Defenders of coercive interrogation insist that EITs continue to be necessary to protect the United States from terrorist attacks. The most important issue on EITs is not what did happen or even what should have happened, but what should be the policy of the United States with regard to interrogations.

Shortly after 9/11, suspects of terrorism came under control of the United States. Hundreds of them were sent to Guantanamo for interrogation, though only five percent of them were captured by US troops (Felter and Brachman 2007). Guantanamo was controlled by the US military, and memoranda by Defense Secretary Rumsfeld authorized a range of harsh techniques that could be used to extract intelligence from suspects. The CIA acted under separate authorization to use EITs on high value detainees.

This paper argues that at least some of the authorized military techniques and some of the EITs amounted to torture, and that in their application, both the military and CIA used techniques that involved torture. Though not all the authorized techniques amounted to torture, the paper will use the terms “coercive,” “brutal,” and “harsh” interchangeably to refer to techniques that amount to torture.

A. Military interrogation and SERE techniques

The established policy in the United States military, since Revolutionary times had been that torture of enemy captives was not allowed. After World War II and passage of the Geneva Conventions, this policy was formalized in the U.S. Army Field Manual 34-52 which “expressly prohibit[s] acts of violence or intimidation, including physical or mental torture, threats, insults or exposure to inhumane treatment as a means of or aid to interrogation . . .” (U.S. Army 1992). The manual specified seventeen techniques that were allowed during interrogation, ranging from silence, to trickery, to good-cop-bad-cop scenarios. None of these techniques approach torture or violate the Geneva Convention rules on the treatment of detainees.

In fall 2002 military leaders were under intense pressure from the White House to provide actionable intelligence on possible future terrorist attacks. High-level Bush administration officials as well as military and CIA lawyers traveled to Guantanamo to brief its commanders on the legal aspects of using harsh interrogation techniques. In December 2002 SERE (Survival, Evasion, Resistance, Escape) specialists went to Guantanamo to train interrogators in how to use the techniques (JTF GTMO). According to the Church Report, 24,000 interrogations took place at Guantanamo from 2002 to 2005 (Church 2005, 14).

Secretary of Defense Rumsfeld in the fall of 2002 replaced leaders at Guantanamo who felt bound by the Geneva Conventions with those willing to use harsh methods. In 2002 and 2003, Rumsfeld approved lists of techniques that included “environmental manipulation (e.g. adjusting temperature),” “dietary manipulation,” “hooding,” “stress positions,” “isolation,” and “sleep adjustment.” In addition, SERE training techniques included “degradation tactics” including slapping, “physical debilitation tactics” (stress positions), and “demonstrate omnipotence techniques (manhandling and walling)” (JTF GTMO 2002). These SERE techniques had been developed from studying the methods that Chinese and North Koreans used to force false confessions from captured US personnel. The techniques memoranda “migrated” to Bagram Air Force Base in Afghanistan and to Abu Ghraib in Iraq (Schlesinger 2004; Knowlton 2009).

In practice, these techniques were interpreted to authorize a range of harsh tactics that were documented by several official military investigations. Army investigators documented the use of harsh tactics, including: hooding, use of dogs, “prolonged solitary confinement” of detainees, “naked in totally empty concrete cells and in total darkness,” “prolonged short shackling in stress positions,” and “extreme temperatures”. SERE techniques were interpreted to include “forced nudity,” “sexual taunting by females,” “light deprivation,” and “forced physical training” (Fay 2004; Church 2005; Rumsfeld 2002, 2003; Schlesinger 2004; Taguba 2003; Pfiffner 2010, 58-69). Although some of these techniques, when applied in limited ways, may not amount to torture, there is ample evidence that US military personnel applied some of the authorized techniques in ways that constituted torture. Military professionals as well as FBI agents judged the treatment of some of the detainees to legally constitute torture and officially recorded their objections to the treatment of detainees (Justice OIG 2008; Mora, 2004).

For instance, Mohammed al Qahtani was interrogated in 20-hour sessions for forty days in Guantanamo (Sands 2008, 12). This level of sleep deprivation constitutes torture. In addition, other detainees were subject to stress positions and short shackling, prolonged solitary confinement of up to 30 days, kept in empty concrete cells in total darkness, and subject to extreme temperatures. FBI agents at Guantanamo reported brutal beatings, prolonged short shackling in stress positions, temperature extremes of heat and cold, and sexual taunting by females (Justice OIG). In May 2008 Susan J. Crawford, the convening authority for military commissions at Guantanamo, felt compelled to dismiss charges against Mohammed al-Qahtani because she judged he had been tortured (Woodward 2009).²

In addition to use of the authorized techniques, official military investigations documented military treatment of prisoners far in excess of the authorized techniques, including “beating detainee with a broomhandle,” “sodomizing a detainee with chemical light,” “deprivation of food and water,” “brutal beating,” and “intentional violent or sexual abuse” (Taguba 2003; Justice OIG 2008). These brutal actions were in no way authorized by official documents, but they were used on detainees by military guards. These abuses illustrate the difficulty of limiting harsh interrogations to those techniques specified in formal documents.

Torture is contagious, and when interrogators are frustrated in dealing with detainees they think are responsible for killing US personnel, brutality tends to escalate. Despite the fact that Rumsfeld’s memos were specifically limited to Guantanamo, copies of his memo were circulated to Bagram, and were used in interrogations there (Pfiffner 2010, 52). In addition, personnel from Guantanamo and Bagram (e.g. General Miller and Captain Barbara Fast) were transferred to Iraq to teach and implement the techniques at Abu Ghraib (even though the Geneva Convention rules applied to Iraq.)

Some detainees died after the application of interrogation techniques, that is, they were tortured to death (Mayer 2008, 224-225). The Army investigated some of these as possible homicides. Abusing prisoner to the point of death is torture by anyone’s definition (Jehl and Schmitt 2005; Pfiffner 2010, 63). Thus US policy guidance at high levels led to the torture of detainees by interrogators at the implementation level. US policy and military leadership did condone torture in military prisons. (It must be noted that many top-level military commanders and JAG officers objected to the policies, but they were overridden by White House officials and political appointees at the Justice and Defense Departments (Pfiffner, 34-39, 158).

B. The CIA and Enhanced Interrogation Techniques

“Alternative” CIA interrogation methods, officially EITs, were authorized primarily in the Bybee II memo of August 1, 2002 (Bybee 2002b; written specifically for the CIA) and the Bradbury memos of 10 May 2005 (Bybee 2002b). According to the CIA, the techniques which “have all been adapted from military Survival, Evasion, Resistance, Escape (‘Sere’) training” (Bradbury 2005c, 3), included walling, facial slap, cramped confinement, wall standing, stress positions, sleep deprivation, and waterboarding. In 2005, acting director of

the Justice Department's Office of Legal Counsel (OLC) Steven Bradbury authorized the application of these techniques *in combination* and asserted that they did not constitute torture (Bradbury 2005b). Former head of the CIA's Clandestine Service, Jose Rodriguez, asserts in his book, that "none of these steps, when appropriately applied, amounted to torture" (Rodriguez 2012, 65).

Official CIA and OLC documents, however, describe allowable techniques that clearly amount to torture both as described in the memos, that is, officially authorized techniques, and as actually applied by CIA personnel. The following is a list of some of the techniques:

Walling, as described in the Bradbury memo of May 10, 2005, involves putting a towel around a prisoner's neck and the use of "considerable force" to "propel" the person's head into a "flexible" wall "twenty to thirty times consecutively when the interrogator requires a more significant response to a question." (Bradbury 2005a, 32; Rodriguez 2012, 66)

"Cramped confinement" of a detainee in a dark "small box" was limited to 2 hours a day and 18 hours a day in a larger box (Bradbury 2005b, 6).

"Water dousing" of a naked detainee was allowed, with water temperature of 41 degrees for 20 minutes, and at 59 degrees for 60 minutes (Bradbury 2005a, 6).

Sleep Deprivation: Interrogators were authorized to deprive a detainee of sleep for up to 180 hours (more than a week), at which time the detainee must be allowed 8 hours of sleep before another session of sleep deprivation is begun. Three detainees were subjected to sleep deprivation of more than 96 hours (Bradbury 2005a, 35). In the "primary method" of sleep deprivation, the subject's feet are shackled to the floor while he wears handcuffs, which are attached by a chain to the ceiling. The chain keeps his hands "between the level of his heart and his chin." If the detainee nods off, his body weight shifts from his legs to his cuffed hands, which wakes him up (Bradbury 2005a, 11).

Waterboarding is the most extreme technique that was authorized for use by the CIA. Waterboarding, has historically been used as torture, and is considered to be torture by most Western nations. The CIA admits waterboarding three detainees. According a Bradbury OLC memo of 10 May 2005, waterboarding is administered by placing a cloth over the person's nose and mouth and pouring water over it to restrict his breathing to the point where he has the sensation of drowning. The Bradbury memo said that in addition to the normal application, "water may enter, and accumulate in – the detainee's mouth and nasal cavity, preventing him from breathing" (Bradbury 2005a, 10). According to the memo, the detainee might aspirate the water, and if the detainee suffers from "spasms of the larynx," a physician would be present to perform a tracheotomy' (Bradbury 2005a, 14).

Jose Rodriguez dismisses the CIA's previous use of waterboarding as mere "splashes of water," but it is clear from the above accounts of the techniques by the Office of Legal Counsel that the techniques do constitute torture (Rodriguez 2012, 236). Rodriguez and others argue that SERE training of US soldiers means that the techniques are not torture,

but they are “impossible to resist” (Rodriguez 2012, 238). The OLC Bradbury quotes the CIA Inspector General report as saying that “the SERE waterboard experience [in training] is so different from the subsequent Agency usage as to make it almost irrelevant” (Bradbury 2005a, 41). According to Philip Zelikow, former counselor to secretary of State Condoleezza Rice and executive director of the 9/11 Commission: “Before getting to waterboarding, the captive had already been stripped naked, shackled to ceiling chains keeping him standing so he cannot fall asleep for extended periods, hosed periodically with cold water, slapped around, jammed into boxes, etc. etc.” (Zelikow 2009).

Because the detainee’s body reacts as if it were drowning, waterboarding also constitutes a threat of death, which is considered torture. The Bybee II memo of August 1, 2000 states: “We find that the use of the waterboard constitutes a threat of imminent death” (Bybee 2002b, 15). Death threats are considered torture by the Convention Against Torture and Title 18, section 2340 of the US code. The actual application of waterboarding by the CIA exceeded the rules that were set out in the Bybee and Bradbury memos: Abu Zubaydah (AZ) was waterboarded 83 times, and Khalid Sheikh Mohammed (KSM) was waterboarded 183 times (Bradbury 2005a, 37). According to the Bradbury memo, the waterboard would be used only if there was “credible evidence” of an “imminent” terrorist attack and that other methods “have failed or are unlikely to yield actionable intelligence in time to prevent the attack” (Bradbury 2005a, 41).

According to John McCain, who was tortured by the North Vietnamese, waterboarding “is not a complicated procedure. It is torture” (Santora 2007).

In the public debate over torture and interrogations, waterboarding has been used to illustrate the difference between the critics and defenders of EITs. If one favors use of the waterboard, one is assumed to favor the use of the “lesser” techniques listed above. Critics argue that waterboarding is torture, and defenders of EITs maintain that it is not torture.

The application of some of the techniques described above, when applied in a very limited way, might not constitute torture. But as actually applied, many of them did amount to torture. For instance, several slaps to the face, if delivered in the constrained way specified in documents, would not amount to torture. But walling a prisoner 20 or 30 times would be torture. A few hours spent in a dark box might not be torture, but confinement in a dark box for 18 hours a day would be torture. Dousing a naked person with water at 41 degrees for 20 minutes or 59 degrees for an hour would be torture. Depriving a person of sleep for 36 hours might not be torture, but for 180 hours it certainly is. Waterboarding a US military trainee briefly might not be considered torture, but waterboarding a person 183 is certainly torture.

Brutal treatment of captives, who might have had intelligence information, to the point of death, has got to be considered torture (Mayer 2008, 224-225). About 100 detainees died while in US captivity; the US military classified 34 of them as homicides. In one analysis, eight of those resulted from torture; that is, they were tortured to death (Jehl 2004; Shamsi 2006).³

From the official memos cited above, it is clear that the Bush administration and CIA authorized torture techniques, both in official authorizing memos and in the actual application of those techniques. Thus those who argue in favor of authorizing those techniques are arguing for the use of torture as public policy in the United States. The assertions by Jose Rodriguez that that the United States is “unilaterally disarming” by abandoning EITs or that a few splashes of water are legitimate techniques of interrogation, constitute the advocacy of using torture during interrogation as US policy (Rodriguez 2012, 70). Thus the arguments in the rest of this paper will posit that the use of torture as an interrogation technique was authorized by public policy, even if some of the less brutal EITs, in themselves, do not constitute torture. The advocacy of a return to those same techniques is an argument for using torture.

II. Are EITs Morally Acceptable?

Although torture as an instrument of governmental authority was used in the past, for instance in legal trials in early Europe or during the Grand Inquisition, it has been condemned (though sometimes practiced) in modern, civilized democracies. It has also been absolutely forbidden in the Geneva Conventions, the Convention Against Torture, United States Law, and conventional international law (Pfiffner 2010, 115-142). Torture also has been widely rejected in the scholarly literature in law and philosophy.

Some scholars reject torture as absolutely wrong because the victim is entirely under the control of his captors, and the captors’ actions (whatever the justification) are intended to undermine his humanity by taking away his will and break his spirit. Torture is treating a human being as an instrument rather than an end in itself. Charles and Gregory Fried argue that torture is absolutely forbidden under any circumstances (Fried and Fried 2010). Jeremy Waldron argues that torture is absolutely wrong because it (like terrorism) “instrumentalizes the pain and terror of human beings; it involves the deliberate, studied, and sustained imposition of pain to the point of agony on a person who is utterly vulnerable . . . and it aims to use that agony to shatter and mutilate the subject’s will, twisting it against itself and using it for the purposes of the torturer” (Waldron 2010, 5). Richard Falk argues that torture is distinguished from violence in combat: “Torture is an individualized and personalized instance of one-sided violence in which the perpetrator inflicts unspeakable pain while facing no risk of retaliation It is . . . this contrast between the helplessness of the victim and the total control of the perpetrator that properly causes such moral revulsion” (Falk 2011, 122).

The United States regularly condemns torture in countries where it is commonly practiced. But after the atrocities of 9/11, many US politicians and intellectuals modified their principles about torture. They justified their position by arguing that future terrorist attacks on the United States were probable and that some forms of torture might be necessary to gain intelligence to prevent those attacks.

Defenders of coercive techniques reason that using torture might be necessary as the choice of the lesser of two evils: deaths from terrorist attacks and the evil of torturing

individuals for intelligence to prevent those attacks. In this case, torture would be the lesser of two evils. Defenders of torture most often justify it because of the time constraint embedded in the ticking time-bomb scenario. This scenario posits that the authorities have captured a terrorist who knows where a nuclear bomb is hidden in a large city. Clearly, in such a case, the lesser evil would be to torture the terrorist in order to save the city. But it is very difficult to find such situations, and the Bush administration did not cite any in its defense of its interrogation techniques. The closest they came was the rational conviction that attacks on the United States were being planned by terrorists.

Much of the ticking bomb argument depends on how certain one is that using the evil of torture will succeed in avoiding the evil of the ticking bomb exploding. In order to use the ticking bomb scenario to justify torture, there first must be a plot to explode the bomb, and the time pressure must be genuinely short. In addition, the authorities must be certain that they have a person who definitely knows where the bomb is hidden; that is, they must not have the wrong man. If they are certain that they do have the right man, torture must be the only way to elicit the information. Finally, the captive must supply accurate information (not diversionary answers), and there must be sufficient time and skill to defuse the bomb (or thwart the plot). If any one of these predicates is missing, torture will not solve the problem.

The closest his accounts come to the ticking bomb scenario was when asked about future attacks during an interrogation, KSM said when 'you will know soon.' This could arguably constitute a ticking bomb situation (Rodriguez 2012, 91-92). But Rodriguez does not say that KSM immediately gave up information about his implied knowledge of a planned terrorist attack, and KSM did not start talking to the CIA for two weeks after he was subject to EITs.

The use of the ticking bomb scenario to justify torture assumes that you have the terrorist who knows about a bomb or plot. But if the suspect is not the person you thought he was, his denials of the knowledge you seek might be truthful. FBI agent Ali Soufan says that AZ did not play the role in al Qaeda that the CIA originally thought he did. Thus CIA expectations about what he knew were inaccurate, even though important intelligence was elicited from him (Rodriguez 2012, 53; Soufan 2011, 413). In another instance, CIA officer Glen Carle, after lengthy interrogations, concluded that Haji Pacha Wazir did not play the role the CIA thought he did, and thus the orders from Washington to subject him to EITs would not elicit the information he was assumed to possess. In several other cases in the war on terror, US personnel thought they had captured a terrorist, when in fact they had the wrong man, for instance Maher Arar, Khaled el-Masri (confused with al-Masri), or Huzaifa Parhat, one of the Uighurs at Guantanamo (Piffner 2010, 103-112).

Absent the ticking bomb scenario, torture becomes merely a means to extract useful intelligence. The Bush administration and defenders of torture assert that EITs elicited important intelligence that "saved lives." This may very well be true, but is that criterion sufficient to justify torture? If so, then torture would be acceptable to use on anyone who probably would know important information, such as the structure or leadership of al Qaeda. Jose Rodriguez, defending the use of EITs by the CIA, asserts that the intelligence

gained from the use of EITs was responsible for foiling terrorist plots to kill civilians. It is certainly good that the plots were foiled, but he does not claim that they knew of specific plots before applying EITs, which is required by the ticking bomb justification. Otherwise, torture could be justified in interrogating all high value terrorists; any one of whom might know of planned attacks. Does this justify torture? If so, then this justification would cover a broad range of individuals captured by the United States or any other country.

The justification of using torture in military situations, when any captive might know when the next attack was coming, was the reason that the Geneva Conventions and other prohibitions on torture were adopted. According to former Marine Commandant Charles Krulak, “Our soldiers in Iraq confront ‘ticking time bomb’ situations every day, in the form of improvised explosive devices, and any degree of ‘flexibility’ about torture at the top drops down the chain of command like a stone—the rare exception fast becoming the rule” (Krulak and Hoar 2007). For this reason, in 2007 David Petraeus warned his troops in Iraq against torture: “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” (Petraeus 2007).

Torture and coercive techniques are contagious; once begun, they are difficult to stop or constrain. The use of SERE and other harsh techniques at Guantanamo was initially justified because the captives from Afghanistan might be associated with al Qaeda and know of future attacks. But the interrogations descended into gratuitous brutality, often conducted by untrained recruits. At Abu Ghraib the “softening up” of prisoners to break their will to resist was carried out by military police at the encouragement of military interrogators and CIA practices (Taguba 2004; Fay 2004). Suspected militants were tortured in order to gain tactical intelligence. The problem here is that once torture for military tactical intelligence is justified, all armies would be justified using torture on any captive in virtually any combat situation.

Thus, the logic of justifying torture in order to gain “actionable intelligence” or intelligence that “saves lives,” necessarily implies the acceptance of torture as a regular and legitimate tool of interrogation by intelligence agencies and military units.

This paper makes the overall argument that the ticking bomb scenario does not often occur in the real world, and so the moral arguments against torture cannot be overcome by citing it. Nevertheless, for purposes of this paper, it will be posited that torture (if it works) might be justified in a genuine ticking bomb situation. At the same time, torture should be absolutely forbidden by law (which it is in the United States). Thus any interrogator would be liable for prosecution under the law for using torture on a captive.

The two assertions – all torture should be against the law and that it might be morally permitted in a genuine ticking bomb situation – could be reconciled by forcing the torturer to engage in civil disobedience (Lango 2011, 112). That is, by the interrogator using torture, he is consciously and openly choosing to violate the law because of the

seriousness of the situation. If his reasoning is compelling, and a genuine ticking bomb case is seen as legitimate, it is highly unlikely that a prosecutor would prosecute him, a grand jury would indict him, or that a jury of his peers would convict him. The torturer puts himself at risk, but the gravity of the situation must be sufficient for someone to take that risk. If the person is not absolutely convinced that the obtained information will save the lives in danger, other methods of interrogation (which may be more effective than torture) should be used.

III. Are EITs Effective?

Even if one concludes that torture can sometimes be squared with moral objections, the argument for coercive techniques depends on the assumption that torture is an effective means of obtaining information. This is a dubious assumption. Scientific investigations of the efficacy of torture as an effective tool of interrogation have found no evidence that it is effective (Intelligence Science Board, 2006). If torture is not an effective means to educe information from a suspect, it is difficult to justify torture, even if you posit that it is morally acceptable in certain circumstances. In addition, even if torture may work, if there are other ways to elicit information, the use of torture is not necessary; and its gratuitous use is morally reprehensible.

As a result of experience in the war on terror, we now have empirical evidence about the efficacy of torture. Several professional interrogators -- veterans of the military, FBI, and CIA -- have written books describing their techniques of getting enemy captives to give up important intelligence without resorting to torture. They also argue that harsh treatment is counterproductive to obtaining intelligence and immoral. The judgment of these interrogators contrasts sharply with the arguments of Washington-based officials of the Bush administration, pundits, and particularly Jose Rodriguez, former head of the CIA's Clandestine Service.

In the US military the policy debate about torture is no longer an issue; interrogation policy has returned to pre-9/11 standards that comply with the Geneva Conventions. Military professionals and particularly JAG officers initially objected to the harsh techniques insisted upon by the political levels of the Bush administration. And immediately after the Hamdan decision by the Supreme Court ruling that the United States was bound by the Geneva Conventions, the Army issued a revised field manual that returned interrogation policy to exclude coercive techniques. Nevertheless, the military experience with coercive interrogation sheds important light on the efficacy of using force to extract intelligence from individuals.

A. Military Interrogators and Torture

The United States military opened the Guantanamo prison in late 2002 and detainees began arriving from Afghanistan in January 2003. For the first several months, the facility was run "by the book," that is, by officers who enforced the Geneva agreements rules conscientiously. But in the spring of 2002, high-level officials in the Pentagon demanded "actionable intelligence." Secretary Rumsfeld replaced the top levels of

command at Guantanamo with officers more willing to approve of harsh techniques in the treatment of prisoners. In December 2002 Rumsfeld approved of a range of techniques that could be used during interrogation, and in April 2003 he replaced it with another.

There have been few claims of valuable, high-level intelligence gained from military interrogations using the authorized or unauthorized methods. But after their duty, several professional military interrogators have written books describing the use of harsh methods and arguing that traditional interrogation methods are more effective. For instance, Eric Saar described his experience as a linguist assisting interrogations at Guantanamo. In his book he does not cite any intelligence breakthroughs and he expresses his regrets for having participated in the brutality. He concludes that, "Our tactics were way out of bounds. What we did was the antithesis of what the United States is supposed to be about" (Saar 2005, 229).

Tony Lagouranis was an Army interrogator from 2001 to 2005, and spent time in Abu Ghraib as an interrogator. He participated in more than 400 interrogations, some of them using harsh techniques (Lagouranis 2007, 251). After a while, he became disillusioned with his participation and ashamed of the way detainees were treated. In his book, *Fear Up Harsh* (2007), he tells of beatings, sleep deprivation, and confining detainees in small cells. He filed complaints to report the abuse, but his superiors did not respond to his reports.

From his personal experience, Lagouranis concluded that once begun, torture is very difficult to contain. "Once I got started, it seemed pointless to stop, and each escalation appeared seamless, natural, and justified (Lagouranis 2007, 245). Torture used on one category of prisoners, soon spread to all prisoners (Lagouranis 2007, 146). For instance, harsh techniques were used on petty criminals who got thrown in with the terrorist suspects (Lagouranis 2007, 113). It seemed that any detainee might have some information that might save the lives of US troops. In addition, the purpose of the interrogations changed, "we moved from seeking intelligence, our original justification, to seeking confessions" (Lagouranis 2007, 246). Lagouranis testified to the contagious nature of torture: "Once introduced into war, torture will inevitably spread because the ticking bombs are everywhere" (Lagouranis 2007, 146).

Matthew Alexander (a pseudonym) served 17 years in the Air Force, including five combat tours, and was assigned to Iraq as an interrogator. When he arrived in Iraq he became disillusioned with the use of brutal techniques of interrogation, such as "using dogs and other 'enhancements' like hypothermia that qualify as torture even under the most nonchalant readings of international law" (Alexander 2006).

During his time in Iraq he personally interrogated more than 300 detainees and supervised the interrogation of more than 1,000, all without using coercive techniques. Alexander is very critical of the use of brutality in interrogations. He argues that using harsh techniques is morally unacceptable and not an effective means of interrogation. In his books he argues that traditional, nonviolent approaches to interrogation are more effective in educing information.

In *How to Break a Terrorist*, he explains that his mission was to obtain intelligence from detainees so that US troops could “find Zaraqwi and kill him” (Alexander 2008, 17). (Abu Masab al Zarqawi was a terrorist who masterminded the killing of many innocent people in Iraq.) Alexander was the one who, through interrogation, discovered the location of Zaraqwi, who was killed in a US raid of the house he was in. That Alexander was able to accomplish his mission without using violence or threats of coercion, is an important example of the efficacy of traditional approaches to interrogation.

Alexander explained that his approach to interrogation requires good intelligence and background in order to be successful; the interrogator must “know the subject better than he knows himself and then manipulate[ing] him by role-playing, flattering, misleading” (2008, xii). It is important to be fluent in the local language and dialects, with an appreciation for the culture of the detainee. Alexander emphasizes the importance of treating captives civilly, and using “respect, rapport, hope, cunning, and deception,” in order to extract information from detainees (Alexander 2008, 6). Deception is often necessary: “Sometimes I must have a wife or children so I can swap stories with the prisoner, though I have neither” (Alexander 2008, 91).

In another book, *Kill or Capture*, Alexander explains his techniques further. He denounced arguments in favor of harsh interrogations: “The argument that the supporters of torture make is that torture and abuse are necessary to save lives. That is a lie. . . . it slows the progress of the interrogation or results in bad information” (Alexander 2011, 273). He refutes directly the “ticking bomb” defense of torture: “What works best in the ticking time bomb scenario is relationship building, which is not a time consuming effort when conducted by a properly trained interrogator, and noncoercive deception” (Alexander 2011, 287). In his approach he argues that: “The first and most important victory is to get inside the mind and heart of the prisoner” (Alexander 2011, 291). The “best interrogators are one-third salesman, one-third dramatic actor, and one-third psychologist” (Alexander 2011, 2). Finally, he argues that torture is immoral: “We are Americans. . . . We cannot become our enemy in trying to defeat him” (Alexander 2011, 2). In addition, torture is self defeating; torture is the “number one recruiting tool for foreign fighters” (Alexander, 2011, 283).

The consensus of these military personnel who interrogated hundred of detainees is that traditional means of interrogation are most effective. They believe that torture is immoral and counterproductive to gaining useful intelligence, even in a time-limited situation.

B. The CIA and Enhanced Interrogation Techniques

Even if EITs were deemed to be morally acceptable, the question remains as to how effective they are in educing intelligence. Here is where there is a difference of opinion between experienced interrogators of high value detainees during the war on terror and defenders of EITs. In his book, *Hard Measures*, Jose Rodriguez, former head of the CIA’s Clandestine Service, has made the most detailed and full-throated defense of using EITs to

interrogate suspected terrorists: “I am certain beyond any doubt, that these techniques . . . shielded the people of the United States from harm and led to the capture and killing of Usama bin Laden” (Rodriguez 2012, xiii).

Military and CIA uses of coercive interrogations during the war on terror differed in several ways. First, the CIA received special authorization to use specific Enhance Interrogation Techniques, beyond those authorized for the military, in a secret OLC memo (Bybee II). Second, the military interrogated many thousands more detainees than the CIA, which focused on high value detainees (about 100) who might know about al Qaeda. Third, the military use of harsh techniques was often linked directly to questioning and the techniques applied during interrogations, while the CIA used EITs to “break” the suspect; after the detainee agreed to talk, the interrogators would take over to “debrief” the person. Fourth, the CIA had explicit approval from the top levels of the White House staff and cabinet to use specific techniques on particular detainees.

IV. Contrasting Theories of Interrogation

The claim that EITs are effective techniques in convincing detainees to provide intelligence has been challenged by several experienced interrogators, particularly Ali Soufan. Soufan was an FBI agent, fluent in Arabic, who interrogated many suspects of terrorism before and after 9/11. In his book, *The Black Banners*, he describes his years of experience interrogating terrorists using approved, non-coercive FBI techniques. His book contrasts sharply with the book by Jose Rodriguez, *Hard Measures*, in which Rodriguez argues that EITs are effective, necessary, and morally justified. Most people consider the claim of the efficacy of torture to be plausible because they can imagine that they would likely give up any information under the threat of torture. (They would also likely confess to whatever crimes their torturers wanted them to confess.) But both Rodriguez and Soufan stress that the suspects they are concerned with are hardened, professional terrorists who are ideologically or religiously committed to their causes; they are trained and able to resist interrogation. Rodriguez argues that only coercion will get them to reveal all information that is sought, and Soufan argues that only traditional interrogation is necessary and sufficient to gain intelligence from them.

A. The Traditional Approach

Ali Soufan argues that he was able to get valuable intelligence from terrorists through his traditional methods of interrogation, which involved no coercive techniques. In his book, he recounts a number of successful interrogations before 9/11. His major success was tricking Abu Zubaydah into revealing that the pseudonym “Muktar” was actually Khalid Sheikh Mohammed, the mastermind of the 9/11 atrocities (McDermott and Meyer 2012, 19-21; Soufan 2011, 384-391).

Soufan described his traditional approach to interrogation this way. First, it is crucial to know the language of the person to be interrogated, his cultural background, and his personal history. Only by demonstrating that the interrogator knows the terrorist’s

past actions in detail, will the interrogator be able to trip up the suspect, detect lies, and get him to, intentionally or inadvertently, reveal the truth. The interrogator always has the upper hand, and non-coercive approaches are based on the reality that the interrogator controls the physical and often mental state of the suspect. One of his simple insight is that humans crave human contact, and the interrogator is often the only person with whom the detainee can interact. Human contact and conversation are powerful incentives for the suspect to continue a conversation that can then be manipulated by the interrogator to get the suspect to reveal the information the interrogator seeks. Even Rodriguez admits that at times, “The sense of isolation alone was sufficient to motivate many of the detainees to begin cooperation” (Soufan 2011, 115).

According to the traditional paradigm of interrogation, if the detainee is to cooperate consciously with the interrogator, he must be able to respect himself and believe he is doing the right thing in cooperation with his captors. This can be done by appealing to his humanity or his religion or by convincing him that his cause is wrong. Coercive techniques, according to Soufan, lead to resistance or misleading information. Getting the detainee to brag about his exploits is often very useful in gaining information. High-level terrorists often have delusions of grandeur, which can be exploited. For instance, Rodriguez reports that KSM liked to “instruct” his captors with his version of the “history of the world” (Rodriguez 2012, 96).

Glen Carle, another professional interrogator also challenges the claims and reasoning of Rodriguez. Glen Carle served in the CIA’s Clandestine Service for 23 years. When he retired in 2007, he was Deputy National Intelligence Officer for Transnational Threats. He was strongly committed to the war on terror because one of his close friends was co-pilot of the second plane that hit the World Trade Towers. But he began to have doubts about the tactics used to interrogate suspects after he had conducted several months of interrogations with the high value detainee, Haji Pacha Wazir (whom Carle called “CAPTUS” in his book).

The major focus of Carle’s book deals with Wazir, whom the CIA thought was “a senior member of the al-Qaida network,” and who they thought could lead them to OBL (Carle 2011, 72, 274). Initially, Carle also believed that Wazir was the senior AQ operative that CIA headquarters believed him to be. When he began to interrogate Wazir, he “was in solitary isolation, but well treated otherwise” (Carle 2011, 224). Carle’s approach to interrogation conformed to the traditional approach and was based on developing a rapport with the detainee. He argued that the “decisive factor” in gaining useful information was “The rapport the interrogator has with the detainee,” which cannot be achieved thorough pain and fear (Carle 2011, 218).

Carle argues that, trust and respect are essential to a successful interrogation. In order to get a suspect to commit a dangerous act by “selling out his associates, betraying his oaths . . . or committing treason, an individual must come to depend upon and believe in a case officer . . .” “Even a terrorist must retain some piece of himself . . . for him to be potentially a useful interlocutor, or source of trustworthy information” (Carle 2011, 234).

Carle concludes: “It is both inhumane and operationally harmful to oblige a prisoner to choose between moral debasement and betrayal.” [234]

After interrogating Wazir for several months, Carle concluded that the CIA “got the wrong guy,” and that his relationship with AQ was “tangential, inadvertent, and unwanted” (Carle 2011, 218, 274). Carle concluded “that Wazir was not the critical member of al-Qaida we had convinced ourselves he was . . .” (Carle 2011, 293). Wazir was willing to be cooperative, despite the fact that he continued to lie about some things (Carle 2011, 233, 238). Nevertheless, those at CIA headquarters at Langley continued to believe that Wazir had high level connections with al Qaeda, but had not yet divulged all that he knew. According to Carle, those at headquarters concluded that, “not providing information was interpreted as proof that there was information to provide” (Carle 2011, 238). They insisted that he be taken to “Hotel California” (a black site) and subjected to EITs. But the EITs did not elicit the information that CIA HQ thought he had.

Carle’s overall conclusion was that “The contention that enhanced interrogation techniques [sic] provided critical intelligence and saved many lives is flat wrong In almost every case, the ‘intelligence’ obtained was faulty and subsequently discredited or suspect or of secondary importance (Carle 2011, 297; “sic” in original). In addition to being ineffective, Carle concluded that the EITs were wrong. “It was stupid, self-defeating, demeaning, and operationally useless” (Carle 2011, 233).

B. The Coercive Approach

Jose Rodriguez, in his book, *Hard Measures*, has offered the most detailed defense of using coercive techniques in interrogating detainees. The premise of the CIA approach to EITs was that the more disoriented and dependent on his captors the subject is, the more likely he will be willing to disclose information. The person is disoriented by the shock of his capture; this, along with sensory deprivation (or overload), and by convincing him that his captors have complete control over his fate, should make the captive compliant (Rodriguez 2012, 64; Bradbury 2005b, 4).

If initial disorientation did not convince the suspect to cooperate with interrogators, he would be subject to “conditioning” techniques, such as “sleep deprivation, dietary manipulation, and enforced nudity” (Rodriguez 2012, 67). If these were unsuccessful the next level included “corrective” techniques, such as the attention grasp, the facial hold, and the “insult slap, water dousing, or stress position” (Bradbury 2005b, 5; Rodriguez 2012, 67). The next level involved the use of “coercive” techniques including walling, putting the detainee in a “confined space,” such as a box, “wall standing,” and finally, if all else failed, the detainee was subject to the waterboard (Rodriguez 2012, 69). Rodriguez argues that “none of these steps, when appropriately applied, amounted to torture,” including waterboarding, “which in no way could accurately be considered ‘torture’” (2012, 65, 69).

The CIA practice was to separate interrogation from the application of EITs. That is, if the detainee was judged not to be forthcoming about questions asked, he would be subject to escalating EITs. Once the detainee became “compliant,” CIA interrogators would

begin to question him again, using the types of methods that are used in the traditional approach. Rodriguez argues, “Without EITs, AQ operatives would have had little incentive to tell us anything” (Rodriguez 2012, 111). But clearly, much valuable intelligence came from many interrogations without the use of EITs.

C. Cases of Interrogation

The FBI and CIA accounts of the interrogation of Abu Zubaydah illustrate the differing arguments of the two opposing theories of interrogation. Veteran FBI interrogator, Ali Soufan, was the first person to interrogate Abu Zubaydah when he was captured in the spring of 2002. Soufan and Rodriguez disagree about the effectiveness of AZ’s interrogation, Soufan argues that his non-coercive approach was more successful in eliciting information than the coercive techniques that were later (August, 2002) applied by the CIA. In addition, disagreements over the interrogation of Mohammed al Qahtani at Guantanamo and the discovery of the location of Osama bin Laden will be examined.

Abu Zubaydah

Soufan was brought in to interrogate Abu Zubaydah shortly after his capture in April 2002; Soufan talked to him as he became conscious after medical treatment for injuries inflicted during his capture. Soufan reports that AZ “was cooperating” in answering the questions asked by Soufan. One important discovery that Soufan elicited from AZ was that the terrorist known as “Mokhtar,” whom Osama bin Laden publicly thanked for the success of the 9/11 atrocities was actually another name for Khalid Sheikh Mohammed (Soufan 2011, 387; Rodriguez 2012, 85). This was a major breakthrough. Soufan also elicited information that was used to thwart several planned attacks (Soufan 2011, 389-392). (Even though the FBI had previously judged that his book did not reveal sensitive intelligence information, CIA censors redacted much of the material in Soufan’s book, so many of the details are not available.)⁴

Despite Soufan’s success with AZ, CIA contractors were convinced that AZ was not revealing all that he knew, and they felt that Soufan’s approach was wasting valuable time. Thus CIA Director Tenet ordered that Soufan abandon his approach and that CIA officers and contractors (who had no interrogation experience) take over the interrogation and apply EITs in order to get AZ to reveal more information. CIA personnel then took control of AZ and subjected him to EITs, despite Soufan’s argument that they would not be effective.⁵ Soufan observed the coercive application of EITs for a while and concluded that, “the interrogation was stepping over the line from borderline torture. Way over the line” (Soufan 2011, 421). After he reported to FBI headquarters, Director Mueller ordered Soufan to leave the CIA interrogation site and return to the United States. Soufan concluded “This is out of control, un-American, and downright dangerous” (Soufan 2011, 422).

Jose Rodriguez in his book, *Hard Measures*, disputes Soufan’s account and argues that EITs were essential intelligence tools and that they were effective interrogation techniques. Rodriguez is broadly dismissive of the FBI and their “standard methods” of interrogation, calling the FBI “ham-handed” [60] and having a “prosecution at all costs

mentality” (Rodriguez 2012, 62). He even quotes AZ disparaging FBI interrogators (Rodriguez 2012, 59). Rodriguez concludes that Soufan was “telling stories” but that “The truth is quite different” (Rodriguez 2012, 55). Soufan concluded that the EITs were “techniques that no reputable interrogator would even think of using” (Soufan 2011, 398).⁶

Mohammed al Qahtani

Another example of the contrast in approaches between advocates of traditional interrogation techniques and defenders of EITs was the interrogation of Mohammed al Qahtani at Guantanamo. Qahtani was thought to have received training in al Qaeda camps and had tried to enter the United States just before 9/11 to join the other hijackers of 9/11. Though it was taking time, Soufan reports that he and other FBI interrogators were making progress in learning Qahtani’s role in terrorism. Again, as with the interrogation of AZ, officials in Washington insisted they knew more than the interrogators who were actually interrogating the detainee. After a visit from high-level lawyers from the White House, the CIA, and DOD, military interrogators began to use harsh techniques on Qahtani (Soufan, 2011, 460-470). He was subjected to brutal coercive treatment, including sleep deprivation, extreme temperatures, threats against female members of his family, prolonged stress positions, and beating (Sands 2008). When the treatment got too harsh, FBI Director Mueller again withdrew their agents so as not to be implicated in illegal activity.

Later, Soufan drew more details from al Qahtani, but concluded that the previous interrogation with coercive techniques led to no major breakthroughs. Qahtani was a “muscle hijacker” according the 9/11 Commission rather than a high level member of al Qaeda (Soufan 2011, 469). Again, the detainee did not play the role with al Qaeda that Washington officials thought he did. Later Qahtani recanted his statements implicating other detainees in al Qaeda plots, saying that he was acting under torture. Military Commission Judge, Susan J. Crawford refused to prosecute Qahtani for war crimes because he was tortured (Woodward 2009).

Discovering Osama bin Laden’s Location

Osama bin Laden, the leader of al Qaeda, was killed by US forces in May 2011, and defenders of coercive techniques attributed the intelligence leading to his death to the use of EITs. According to former Attorney General Michael Mukasey, the capture of KSM, “began with a disclosure from Khalid Shiekh Mohammed (KSM), who broke like a dam under the pressure of harsh interrogation techniques -- that included waterboarding. He loosed a torrent of information – including eventually the nickname of a trusted courier of bin Laden” (Feinstein and Levin 2012). Jose Rodriguez stated that, “Information provided by [CIA detainees] KSM and Abu Faraj al- Libbi about bin Laden’s courier was the lead information that eventually led to the location of [bin Laden’s] compound and the operation that led to his death” (Feinstein and Levin 2012).

Senators Diane Feinstein and Carl Levin, however, released a statement saying that “The suggestion that the operation was carried out based on information gained through the harsh treatment of CIA detainees is not only inaccurate, it trivializes the work of individuals across multiple U.S. agencies that led to UBL and the eventual operation. . . . The

CIA detainee who provided the most significant information about the courier provided the information *prior to* being subjected to coercive interrogation techniques” (Feinstein and Levin 2012; emphasis in original). John McCain added, “The trail to bin Laden did not begin with a disclosure from Khalid Sheikh Mohammed, who was waterboarded 183 times” (Kessler 2011).

According to defenders of EITs, KSM provided one of the clues that Abu Ahmed (“al Kuwaiti”) was a courier for bin Laden and the key contact between bin Laden and the rest of al Qaeda. In response to a question about al Kuwaiti, KSM seemed excessively concerned to deny Kuwaiti’s importance, and this led the CIA to believe that al Kuwaiti might be a key figure in locating bin Laden (Rodriguez 2012, 110). However, the importance of al Kuwaiti had already been established without using EITs, and this reaction of KSM was a reinforcement of that discovery. Thus KSM’s denial was useful, but merely another clue about al Kuwaiti’s importance (Soufan 2011, 515, 536).

KSM’s revealing reticence when questioned about al Kuwaiti cannot be attributed to the success of EITs, because KSM was *not* cooperating with his interrogators; he was lying and trying to cover up al Kuwaiti’s importance. It is just as likely that KSM would have had the same reaction if asked about al Kuwaiti without having been subjected to EITs. The clue came from good interrogation techniques, not EITs. In addition, this clue was merely one small thread in the total intelligence effort that led to the discovery of bin Laden’s whereabouts, painstakingly put together by hundreds of FBI and CIA intelligence analysts over the previous ten years.

V. Contrasting the two approaches

Defenders of coercive interrogation often make broad claims about their success. In his book, Jose Rodriguez says, “Of all the other tools in the U.S. intelligence arsenal, none provided the quantity or quality of critical information that we got from this handful of al-Qa’ida operatives” (Rodriguez 2012, 101). Former CIA Director Michael Hayden and Attorney General Michael Mukasey asserted that, “fully half of the government’s knowledge about the structure and activities of al Qaeda came from those interrogations” (Hayden and Mukasey, 2012).

One problem with many of these claims of intelligence success by defenders of coercive interrogation techniques is that they often conflate intelligence in general or intelligence gained from high level detainees with information gained from those who were subjected to EITs. For example, Rodriguez says “we were absolutely convinced that people like AZ had information in their head that would save countless American lives. We were right” (Rodriguez 2012, 70). More specifically, he asserts that, “441 of the 1,700 footnotes in the 9/11 Commission’s final report came from senior al-Qa’ida detainee interrogations” (Rodriguez 2012, 93).

Donald Rumsfeld, provides another instance of conflating intelligence learned by traditional interrogation with intelligence gained as a result of the coercive techniques he approved. In his memoir, he states that, “Interrogations led to some of the most

impressive successes in the war on terror . . . the death of the leader of al-Qaida in Iraq, Abu Musab al-Zarqawi” (Rumsfeld 2011, 577). But Matthew Alexander (discussed above), the interrogator who developed the intelligence that led to Zarqawi, refused to use coercive techniques, and got his information by using traditional interrogation techniques.

Many of these carefully constructed statements by defenders of coercive interrogation often do not specify which intelligence was gained from those high level detainees *after* they had undergone EITs. Some of them responded to traditional interrogation techniques (e.g. AZ with Soufan) and gave up information before suffering EITs. In addition, the defenders of EITs assume that all intelligence learned from high value detainees (months) *after* they were subjected to EITs, was a *direct result* of the EITs. It is entirely possible that the traditional approaches to interrogation, employed months after EITs were inflicted, were successful by themselves and would have been successful without the use of EITs.

The CIA claimed that, “once enhanced techniques were employed,” Abu Zubaydah “identified KSM as the mastermind of the September 11 attacks” (Bradbury 2005c, 10). But Ali Soufan, employing traditional interrogation techniques, was the interrogator who first found out that KSM was the mastermind of 9/11, well before EITs were used (Soufan 2011, 563). They also claimed that Zubaydah “provided significant information on” Jose Padilla (Bradbury 2005c). Jose Padilla was captured in May 2002 as a result of information elicited by Ali Soufan (several months before EITs were authorized).

Despite the certainty of Rodriguez’s conclusions, his assertions about the success of specific EITs are often vague, though at times specific. But if we are to accept the argument that EITs were necessary and justified in order to gain important intelligence, we must address the issues of whether information was obtained A) *because* of EITs, B) whether the imminent nature of the threat justified EITs, and C) how certain it was that the detainee had the information being sought.

A. Post Hoc Claims

In his book, Rodriguez explains that the EITs are not directly a part of interrogations, they are meant to bring the detainee to the point of cooperation, that is break the detainee. Some detainees are able to resist cooperation for a long time, as were AZ and KSM, who were waterboarded 83 and 183 times, respectively. Once the person agrees to cooperate, questioning closely resembles traditional tactics of interrogation, e.g. establishing rapport, catching lies, tricking the detainee into believing you know much more than you do, etc.

Rodriguez admits that agreeing to cooperate is no guarantee that a detainee will tell the truth, and he admits that KSM and others continued to lie. Nevertheless, he argues that, “Without EITs, AQ operatives would have had little incentive to tell us anything. With them, they told us much, but not everything we wanted to know” (Rodriguez 2012, 111). For instance, KSM did not disclose the Madrid bombings, the London subway plot, or cells in the US and UK; all of which information he should have known (McDermott and Meyer

2012, 270). In addition, KSM provided false information that led the CIA and FBI to chase down many non-existent plots. Despite detainees lying and misleading the CIA interrogators, Rodriguez cited no instance of returning to EITs after detecting lies. Thus the threat of further EITs did not keep detainees from lying or misleading their interrogators.

It is likely that other motives than fear of a return to EITs led KSM to give some information to his interrogators. As Rodriguez reports, KSM had a huge ego and liked to brag about his knowledge and exploits. For instance, after one interrogation session, far removed from his EITs, he told his interrogator that there was “something you should know” and described convincingly (which checked out) that he was the murderer of Daniel Pearle in 2002. Since this information was voluntarily offered, it was doubtful that KSM was acting out of fear of renewed EITs (Rodriguez 2012, 94). Thus it is difficult to distinguish information given up as a direct result of EITs and information that could be elicited without torture.

B. Time Pressure Arguments

Jose Rodriguez argued that time pressure was central and the CIA was driven by a sense of urgency for fear that there would be another terrorist attack in the United States. He asserts the “more traditional” approach can “work well when you have all the time in the world to employ it,” but they feared a “second wave of devastating attacks” (Rodriguez 2012, 63). According to what the CIA told the Office of Legal Counsel, the use of waterboarding is limited by the requirement that “credible intelligence that a terrorist attack is *imminent*” and that “the subject has actionable intelligence that can prevent, disrupt or delay this attack” (Bradbury 2005, 29; emphasis added). But Rodriguez reports that the use of EITs (including waterboarding) on Abu Zubaydah did not begin until August 2002 (when they were authorized), well after he had been captured in March. Rodriguez does not give any examples of quick admissions of detainees shortly after the initiation of EITs. And he admits that EITs “did not produce immediate results” from KSM. (Rodriguez 2012, 92). According to Rodriguez the application of EITs took “as little as seven to at most less than thirty days” (Rodriguez 2012, 234).

Rodriguez says that the CIA got a “treasure trove” of information from KSM after he endured the EITs for two weeks, but not “what we wanted most.” If KSM knew of a planned attack, Rodriguez does not report what it was. So the success of EITs in this case was that KSM began to talk with his interrogators, but he did not disclose what they really wanted to know. After EITs, CIA interrogators used techniques that resemble the traditional approach. For example, KSM “enjoyed thinking of himself as a professor,” which led to useful information (Rodriguez 2012, 93). They checked his statements against other intelligence to see when he was lying, as would be the case with traditional interrogation.

Rodriguez’s account demonstrates that EITs did not elicit valuable information quickly. Since he reports that EITs took from 7 to 30 days to bring a detainee into compliance, the ticking bomb scenario of a threatened imminent attack loses much of its justification. Without the time pressure justification, defenders of coercive interrogations

must justify the use of torture to obtain valuable intelligence. It may very well be that traditional methods of interrogation could discover the important information within the same time period, as Soufan, Carle, and Alexander argue.

C. The Wrong Man Problem

Rodriguez writes that the use of EITs would only be used if the detainee was not cooperating, which could be concluded if the detainee was obviously lying. But it is very difficult to detect lying if you do not know the answer to the question being asked. This could lead to the infliction of EITs on people who genuinely could not answer the questions being asked.

Initially the CIA thought that Abu Zubaydan was high in the al Qaeda hierarchy, possibly the number three leader, but he turned out to be the coordinator of al Qaeda travel rather than working at the policy making level (Soufan 2011, 412-423). The CIA also thought that Pacha Wazir was closer to al Qaeda than he was and that he knew much more than he did. Mohammed al Qahtani turned out to be a “muscle hijacker” rather than the planner they thought he was. Other examples of the CIA and the military mistaking the identity or importance of detainees subjected to coercive interrogations include: Ibn-al-Shaykh al Libi, Maher Arar, Khaled el-Masri, and Huzafa Parhat (Pfiffner 2010, 102-109).

D. Questionable Efficacy

Attempts to verify that coercive techniques are successful have been inconclusive. The Intelligence Science Board, after an extensive review of the scientific literature on interrogation, concluded in a 374 page report that there is little evidence that coercive interrogation techniques are effective and also that torture might be counterproductive to obtaining truthful statements (Intelligence Science Board 2006). The Office of Legal Counsel concluded: “It is difficult to quantify with confidence and precision the effectiveness of the [EIT] program” (Bradbury 2005c, 10). The CIA Inspector General said, “It is difficult to determine conclusively whether interrogations have provided information critical to interdicting specific imminent attacks” (Bradbury 2005c, 10). When asked whether EITs had thwarted any terrorist attacks, FBI Director Robert S. Mueller, responded: “I don’t believe that has been the case” (Shane 2009).

Even the CIA’s KUBARK Manual, which contains an analysis of a full range of interrogation techniques, concludes, “Intense pain is quite likely to produce false confessions, concocted as a means of escaping from distress. A time-consuming delay results, while investigation is conducted and the admissions are proven untrue” (KUBARK 1963, 94). One experienced FBI investigator in the war on terror recalled, with respect to coercive interrogations, “At least 30 percent of the F.B.I.’s time, maybe 50 percent, in counterterrorism has been spend chasing leads that were bullshit” (Rose 2008, 11).

Conclusion

This paper has argued that some EITs do amount to torture and that there are compelling moral arguments against using them on suspected terrorists. It has also argued that, for purposes of gaining important intelligence, EITs are not as effective as traditional means of interrogation.

That valuable information was elicited from detainees after they had been subject to EITs is certainly true. But that intelligence was disclosed after a minimum of 7 to 30 days of EITs, undermining the ticking bomb and imminent attack arguments. Experienced interrogators, such as Soufan, Carle, and Alexander dispute the claim that most valuable intelligence came directly as a result of EITs. Soufan maintains that little of importance was gained from Khalid Sheikh Mohammed, Mohammed al Qahtani, or Abu Zubaydah as a result of coercive techniques. Even if valuable intelligence was gained after subjecting terrorists to EITs, does that justify torture?

In addition to its questionable efficacy, one of the most important arguments against a policy of using torture in special situations is that, once authorized, it is very difficult to contain. Torture is contagious. If a special unit is authorized to use coercion, other units want access to the same tools. According to General George Fay, Army intelligence soldiers were influenced by the harsh techniques that the CIA was using at Abu Ghraib (Fay 2004).⁷ Once torture has begun, it is difficult to stop, and it is easy for inflictors of torture to get carried away, as is evident from the photos from Abu Ghraib, from CIA waterboarding exceeding authorized rules, and from the deaths that resulted from coercive interrogations. It is tempting to believe that if one harsh technique does not work, a harsher technique might. That is why bright lines are needed to prohibit torture. The Army Field Manual might not cover every legitimate interrogation technique possible, but the bright line of compliance with the Geneva Conventions is crucial.

Rodriguez accuses President Obama of endangering Americans by his policies. “The United States has chosen to unilaterally disarm itself in the war on terror. . . .” (Rodriguez 2012, 12). Yet by his own account, the CIA had abandoned some EITs: “we elected to stop using some of them . . . we simply weren’t comfortable with their use and never again employed them” (Rodriguez 2012,68), and in late 2005 the CIA had stopped using all EITs. So how can Rodriguez accuse the Obama administration of “unilateral disarmament” and being “afraid to use successful, legal, and safe tactics of the past”? (Rodriguez 2012,255-256). The threat of future attacks did not disappear in 2005.

In addition to moral objections and the doubtful efficacy of EITs, the use of torture harms the image of the United States around the world. Dennis Blair, former Director of National Intelligence, concluded: “The bottom line is these techniques have hurt our image around the world, the damage they have done to our interest far outweighed whatever benefit they gave us and they are not essential to our national security” (Warrick 2009, A4). Ultimately, the strongest argument against torture is the moral argument. As John McCain said: “This is not about who they are, it is about who we are.”

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ENDNOTES

¹ This analysis is not meant to impugn the motives of all U.S. military personnel or intelligence officers, most of whom served their country honorably. Any blame attributed should rest primarily with the policy makers and other leaders who encouraged or condoned any illegal or unethical behavior. Legal liability for coercive interrogations should be limited to those actions that clearly exceeded the techniques justified in legal memoranda and authorized by political leaders.

² Definitions of torture and prohibitions of it:

UN Convention Against Torture, Part I, Article 1, section 1

“any 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”

United States Code, Title 18, section 2340

“An 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.”

Jay S. Bybee memo, August 1, 2002

“Physical pain amounting to torture must be equivalent in intensity to the pain accompanying serious physical injury such as organ failure, impairment of bodily function, or even death.”

Geneva Convention, Common Article 3

prohibits: “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture” and “outrages upon personal dignity, in particular, humiliating and degrading treatment.”

Detainee Treatment Act, Section 1003 (2005)

“no individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment.”

³ For an analysis of deaths of detainees in US custody and detailed case studies of twenty deaths, see Shamsi 2006.

⁴ Soufan asserts, probably with some justification, that CIA censors redacted more material than was necessary, including words from a televised exchange between Soufan and a U.S. Senator (Soufan, frontmatter). Also, many of the redacted words were obviously simple pronouns, such as “he,” “we,” and “I” (Soufan, *passim*).

⁵ Another example of the CIA preempting FBI progress in an interrogation was the case of Ibn al-Shaykh al-Libi, who was captured in December 2001. He had been chief of an al Qaeda training camp, and was revealing valuable information, including information that led to the foiling of a plot to attack the US Embassy in Yemen. The CIA, however, felt that Libi was withholding other information and took custody of him and sent him to Egypt, where he was tortured into confessing that he had given advice on poisons and biological weapons to Saddam Hussein's regime in Iraq. This false information found its way into President Bush's speech on war in October 2002 (Mayer 2008, 103-108; Pfiffner 2010, 79, 92).

⁶ Rodriguez dismisses the "standard methods" of the FBI as not very effective and mocks FBI officers as being naive for giving AZ a candy bar while trying to build rapport (Rodriguez 2012, 59). Nevertheless, Rodriguez recounts the way that KSM and CIA officers watched movies together "complete with popcorn" (Rodriguez 2012, 96) and developed "a strange symbiotic relationship" (Rodriguez 2012, 94) and that KSM had a "playful side" (Rodriguez 2012, 95). One CIA interrogator even called Abu Zubaydah a "mensch," because "He loves his mother" (Rodriguez 2012, 81).

⁷ Rodriguez maintains that "the disgraceful and disgusting treatment of these prisoners [at Abu Ghraib], had absolutely nothing to do with the interrogation program run by the CIA (Rodriguez 2012, 189). But the CIA, known as the Other Government Agency (OGA), did interrogate prisoners there, one of whom, Manadel al-Jamadi, was killed (Mayer 2008, 238-239, 251-258). The Fay Report stated that, "CIA detention and interrogation practices led to a loss of accountability, abuse, reduced interagency cooperation and an unhealthy mystique that further poisoned the atmosphere at Abu Ghraib" (Fay 2004; quoted in Mayer 1008, 251).

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