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Interview and Interrogation: A Perspective and Update from the USA

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Chapter 6

Interview and Interrogation: A Perspective and Update from the USA

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Since September 11, 2001, the military and law enforcement agencies of United States Government (USG) have faced a serious challenge in planning how to re-organize and re-deploy their resources against threats from terrorists, extremist factions, and insurgents. Law enforcement has been shifting from its traditional focus on post-incident investigation to focusing on intelligence-driven prevention efforts. Emerging voices within the military establishment have increasingly called for its transformation from a traditional high-tech, equipment-driven battleforce into an intelligent system that relies more on understanding the cultural and contextual dynamics of the battlespace and that derives more of its actionable intelligence from human sources than from electronic intercepts.

With a renewed interest in, and reliance on, human intelligence (HUMINT), an opportunity exists for the USG to re-examine its policies and practices for interviewing and interrogation to discern whether or not it is relying on best practices that are consistent with American values, international human rights and legal requirements. It is clear that, to protect national security interests, the USG is now – and for the foreseeable future will be – required to gather information from human sources either for purposes of intelligence gathering or for investigations that may lead to criminal prosecution. Broadly speaking, the purpose of these interviews and interrogations is to gather accurate, useful, timely information that furthers security, intelligence, and investigative interests.

After 9/11, the USG's need and demand for effective interview and interrogation methods unfortunately outpaced existing knowledge, capacity and experience. An overwhelming urgency existed, however, to obtain information to protect the homeland,

despite a dearth of systemic knowledge about our adversaries' culture and mindset. Troubling reports emerged about certain methods used with detainees in Cuba, Iraq, Afghanistan and elsewhere. As Robert Fein notes, the "shortfall in advanced, research-based interrogation methods at a time of intense pressure from operational commanders to produce actionable intelligence from high-value targets may have contributed significantly to the unfortunate cases of abuse that have recently come to light" (Fein, 2007, p.xiii).

In this chapter, we will modestly attempt to review a few recent developments in US law and policy for this vital security-related function and to describe a very promising initiative that seeks to chart a course for the future of interrogation, particularly in intelligence-gathering contexts.

Multiple Constituencies

At least three types of agencies within the USG have interests in gathering national security information from human sources: Law Enforcement (including federal as well as state and local); Intelligence; and Military (Mayer, 2005). Each tends to have its own set of information requirements and its own tradition of methods and approaches.

Law enforcement interrogators historically have made a distinction between the concepts of an interview and an interrogation. One commonly understood difference is that the purpose of an interview is to gather information, whereas the primary purpose of an interrogation is to garner a confession from a suspect who is presumed to be guilty. American law enforcement personnel operate explicitly under the legal strictures of the U.S. Constitution, gathering information (which typically must be corroborated) and pursuing confessions for purposes of facilitating a criminal prosecution.

Interrogators from intelligence and military units typically have much different requirements. Although military interrogators may be required to have a "confession" in order to justify a detainee's continued confinement, in many military interrogations, the confession is regarded as being less central and less useful than "actionable intelligence" (i.e., definitive information about persons, places, and plans that will inform concrete responses). Intelligence information within this context is used to guide U.S. actions and protect national assets and interests, not principally to provide documentation for criminal prosecution. Because there is usually no subsequent court process for fact-finding, intelligence and military personnel often must act quickly on information they receive, making the accuracy and timeliness of gathered information all the more critical. These differing demands, in part, have led to different trends in interrogation approaches.

The official interrogation approaches currently used by agencies and personnel from the U.S. Intelligence Community have not been proffered in open source documents. Historically, documents such as the KUBARK Manual have outlined some of the strategies and techniques – both coercive and non-coercive - that were perhaps used in the 1960s. The nature and extent to which these approaches continue to be used is unclear, although the U.S. Government long ago abandoned any official use of

KUBARK along with the collateral research programs on which it was based. Because intelligence officers operate outside the U.S. and do not interrogate U.S. citizens, many of the constitutional and legal proscriptions that apply unambiguously to law enforcement, may not apply in the same way to intelligence collection. Nevertheless, these agencies do represent the U.S. Government and their actions do reflect upon the values and policies of our Nation, so their actions in interrogations and human intelligence gathering operations are a relevant topic of public interest.

More widely recognized and thoroughly documented are the intelligence interrogation policies and tactics of the U.S. military. Most U.S. Armed Forces have historically relied on *U.S. Army's Field Manual for Intelligence Interrogation*. This manual outlines approximately 17 techniques that have remained relatively intact for more than 50 years across successive editions and despite the fact that no one seems able to produce any research studies or systematic analyses that support their effectiveness. In 2006, this Field Manual went through its most extensive revision to date. The current version is *U.S. Army Field Manual 2-22.3, Human Intelligence Collector Operations*. In it "there are 18 approach techniques that can be employed on any detainee regardless of status or characterization" and one additional "restricted" technique called "separation" that is not authorized for use with enemy prisoners of war. The 18 approach techniques, again, are quite similar to those appearing in prior iterations of the manual, though Clarke (2004) observes that "the chapter on Approach Techniques has been expanded and introduces some additional rapport-building methodologies that support debriefing and elicitation rather than only addressing interrogation in the tactical setting" (p. XX). Prior to the release of the new Field Manual, the U.S. Army also revised its organization and operation plan to separate and distinguish the disciplines of HUMINT and counterintelligence (CI), and changed the official military occupational specialty (MOS) designation from "Interrogator" to "HUMINT Collector" (97-E).

Interestingly, perhaps the most hotly debated issues in public discourse over interrogation approaches used by U.S. personnel have centered on what is permissible, rather than what is effective. Intelligence interrogation is sometimes portrayed as an "across-the-table" battle of wills that is resolved only when the interrogator exerts enough pressure that the suspect or detainee ultimately "breaks." The underlying idea behind this blunt and arguably erroneous assumption is that there is a single formula or method for success in getting information and that one just varies the "level" or degree to comport with the existing rules of engagement. With that assumption, debates over interrogation methods have focused mainly on the amount and kinds of pressures that can permissibly be applied to a subject or detainee.

These policy debates evoked discussion of what rules should bind U.S. operations in human intelligence gathering activities, how the language of those rules should be interpreted (e.g., how functionally to define what constitutes "torture"), to whom the rules should apply (e.g., prisoners of war vs. unlawful enemy combatants), and in what settings or venues they might be obtain (e.g., within or outside the U.S.).

The Torture Question

At the center of these debates is what some have called the torture question. The issue is whether, and if so under what circumstances, it is (or should be) permissible to use highly coercive techniques - including those that produce significant physical pain or enduring and severe psychological distress - to elicit information from uncooperative human sources. In many ways, this is not a new question for America or any other nation, but the debate has become substantially less theoretical for contemporary Americans in the post 9/11 climate of global insecurity.

At one extreme of the situational continuum is the hypothetical “ticking bomb” scenario (Dershowitz, 2001). The hypothetical posits a set of circumstances in which an identified, detained person is “known” to have specific information about a bomb that has already been activated and set to detonate imminently, and which is certain to cause a large number of (American) deaths and casualties. Given this set of facts, some argue that it should be ethically and legally permissible to do “anything necessary” to extract information that will save American lives. Commentator Charles Krauthammer has said that under these circumstances “Not only is it permissible to hang this miscreant by his thumbs. It is a moral duty” (December 5, *The Weekly Standard*). Others argue, however, that the long-term values and interests of the U.S. would be severely compromised by allowing the end to justify any means even under the most dire circumstances.

The ticking bomb scenario, on its face, is a vexing one. Many scholars, operators and warriors over the years have thoughtfully argued the merits of differing courses of action. The hypothetical itself, of course, is rife with assumptions that run counter to nearly any known “real world” intelligence interrogation and that make it a rather poor platform for a broader discussion of U.S. intelligence interrogation policy. In actual practice, interrogators typically cannot be certain, in advance, about whether a given source possesses the information that is needed. Moreover, the assumption that a high degree of pressure or even pain will cause and otherwise uncooperative source to suddenly cooperate in providing accurate, actionable intelligence has not been systematically tested, and certainly runs counter to the experience of many seasoned intelligence interrogators. A source may “talk” under duress, but often the accuracy or reliability of the information they provide would be highly suspect. Just as asset validation has become a vital element in managing HUMINT operations, source veracity remains a critical - and often vexing - element of interrogation operations.

The dilemma extends far beyond the emergent “ticking bomb” case, however, and involves a range of techniques that may or may not be universally regarded as comprising torture, cruel, inhuman or degrading treatment. The U.S. agreed in 1994 by signing on to the UN Convention Against Torture to extend its domestic prohibition against torture to non-US venues as well. The treaty also bound its participants to “undertake to prevent ... other acts of cruel, inhuman or degrading treatment or punishment” that might not rise to the level of torture. Yet, when the US Army investigated allegations of detainee abuse at Guantanamo Bay, Cuba (Schmidt Report), it found that detainees were sometimes

subjected to loud, noxious music and lights, threats from attack-trained dogs, threats to harm the detainee's family members, questioning for 18-20 hours a day, and various techniques of humiliation, such as sexual tauntings and being led around on a dog leash. Based on these findings from the Army's own report and the array of pictures released showing similar treatment of detainees in *Abu Ghraib* prison, America's image in the eyes of the world was arguably tainted (Luban, 2005). Moreover, there was scant, if any, evidence that the more extreme techniques produced any vital security information, or that other less coercive approaches might not have done as well or better.

Following these events, the U.S. Congress enacted legislation that set discernible parameters around the nature of U.S. interrogation methods and its treatment of detainees in U.S. custody. A main point of contention was whether the provisions should apply only to the U.S. military (or Department of Defense, DOD) or to all U.S. intelligence and other governmental agencies. Some policy-makers argued that intelligence agencies' effectiveness, while operating covertly, would be compromised by a public declaration of what they could or could not do in collecting human intelligence. Nevertheless, the Congress eventually passed two laws: the National Defense Authorization Act for FY 2006 (P.L. 109-163) and the Department of Defense Supplemental Appropriations (P.L. 109-48). Both contain identical provisions that require Department of Defense personnel to employ the United States Army Field Manual (FM 2-22.3) guidelines while interrogating detainees and specifically prohibit cruel and inhuman and degrading treatment or punishment of persons under the detention, custody or control of the United States Government.

U.S. Senator John McCain, himself a former prisoner-of-war in Vietnam, proposed an amendment to this legislation that would extend the purview of these boundaries beyond DOD personnel. The McCain Amendment does not require non-DOD agencies such as non-military intelligence and law enforcement to employ Army Field Manual guidelines with respect to interrogations they conduct. A second provision of the amendment, however, does protect persons in the custody or the control of the U.S. government - regardless of their nationality or physical location - from being subjected to cruel or inhuman or degrading treatment or punishment.

Cruel, inhuman, or degrading treatment or punishment is defined in the amendment to mean the "cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States, as defined in the United States Reservations, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment done at New York, December 10, 1984." This seems fundamentally to allow only techniques that would also be permissible for use by U.S. law enforcement personnel with U.S. citizens. Importantly, that provision applies not only to DOD activities, but also intelligence and law enforcement activities occurring both inside and outside the jurisdiction of the United States, essentially extending the protections of the U.S. Constitution to all persons - regardless of citizenship - under the custody or control of the U.S. Government.

Toward a New Focus on Effectiveness

Resolving a practical or policy-oriented debate over what techniques and approaches can permissibly be used in interrogation is only a first step toward determining what approaches *should* be used. The effectiveness of those approaches for acquiring reliable, actionable intelligence is critical. If a source “talks”, but provides unreliable information, the resulting action – at best – may waste valuable resources and – at worst – may erode the strength and resiliency of our security apparatus. The need to understand what approaches, techniques, and strategies are likely to produce accurate, useful information from an uncooperative human source seems self-evident. Surprisingly, however, these questions have received scant scientific attention in the last 50 years. “*Almost no empirical studies in the social and behavioral sciences directly address the effectiveness of interrogation in general practice, or of specific techniques in generating accurate and useful information from otherwise uncooperative persons*” (Borum, 2007, p. 18, emphasis in original).

Historically, within the U.S., there has been some divergence of opinion between the law enforcement and the defense/intelligence communities over “what works” for meeting their respective information requirements, particularly where national security interests are at stake. U.S. law enforcement agents and professionals in the DOD and Intelligence Community each have had a role in human intelligence collection in the Global War on Terrorism. Even within the US law enforcement community, however, there are differing views about the relative merits of approaches that emphasize interpersonal influence versus psychological pressure. The Reid Technique probably continues to be the most influential approach and the predominant model of interrogation used by law enforcement professionals in the US. Though the Reid Technique includes the need for establishing “rapport” during the interview stage, in the interrogation, psychological leverage is garnered less from the relationship itself than from the interrogator’s ability to build a suspect’s anxiety and to offer psychologically and emotionally appealing alternatives to, and reasons for, confessing.

The range of techniques emphasizing influence and persuasion has sometimes been referred to generically as a “rapport-based” or “relationship-based” approach. That term, however, may not adequately capture the essence of the approach or what distinguishes it most from other approaches.

According to published anecdotes and declassified material, it appears that a range of interrogation strategies have been successfully employed with al-Qaeda-affiliated persons and other militant Islamist extremists since even before the 1993 attack on the World Trade Center. Interrogators and agencies have ostensibly attempted to refine these approaches along the way and to integrate “lessons learned” from their collective experiences in cases such as the 1998 U.S. Embassy bombings in Kenya, the 2000 attack on the USS Cole, and the 11 September 2001 attacks. Some in the U.S. law enforcement community believe that experience with detainees in Guantanamo Bay,

Afghanistan and Iraq - both positive and negative – generally support the effectiveness of “rapport-based” methods and reveal the myriad of problems that are associated with more coercive or aggressive tactics. Still, there is no known systematic study of the comparative effectiveness of different approaches that have, thus far, been employed.

It has become quite clear, however, that at least within the foreseeable future, the U.S. will continue to need critical intelligence from (presumably uncooperative) human sources. In the interest of national security, the future of U.S. interrogation and human intelligence collection methods arguably should be guided, at least in part, by an appraisal of effectiveness that can be integrated within the boundaries set forth by law, ethics, and policy.

A key objective in developing any future approach to interrogation is to provide its practitioners with a useful skill-set for discerning meaningful information within an inherently ambiguous strategic environment. At least for high-value detainees, this future effort is likely to require an adaptable strategic framework, not just the application of certain techniques. An ongoing US-based initiative holds some promise for prompting a next generation of ideas to guide intelligence interrogation.

Educing Information: A New Era in U.S. Intelligence Interrogation

While the fundamental interrogation objective of accurate, useful, timely information may be relatively uncontroversial, there is often a divergence of opinion how to accomplish that task most effectively. As a result, the term *interrogation* has come to suggest dramatically different processes involving often radically different means. In an effort to better understand both the art and science of interrogation, an effort is underway to introduce more precision into the language, assumptions, and strategies used in this complex dynamic exchange.

In 2004, Robert Fein, a psychologist serving on the U.S. Intelligence Science Board (ISB), proposed, and subsequently Chaired an ISB study to explore what was currently known about the effectiveness of interrogation, with consideration for what kinds of knowledge might need to be developed and applied in the future to improve the USG’s ability to gather accurate, useful information from human sources to protect and advance the security interests of the United States. This initiative was called the *Intelligence Science Board Study on Educing Information*. In the following section, we will describe a few highlights from the Phase I study and discuss some developments in the use of teams and consultants in intelligence interrogation.

Within the ISB study, interrogation was deliberately framed as a process of *educing information* (EI). The term *educer* was chosen because it denotes a drawing out or elicitation of information, specifically information that may be hidden, unexpressed, or latent. Educing information, therefore, involves deriving meaningful information that might otherwise be unavailable to analysts and decision-makers. The term “meaningful information” refers to knowledge and understanding that may be “of interest” to persons,

organizations, activities, capabilities, and/or intentions that may impact U.S. national security. This might include, but is not solely limited to “actionable” information.

Two principal tasks arguably drive the pursuit of meaningful information. The first is managing the information exchange. This involves not only the information the source can provide the interrogator (e.g., information of intelligence value, information that sheds light on the source’s interests and motivations, etc.), but also information the interrogator may provide to the source (e.g., current realities outside the detention environment, timeline for release, approval/disapproval of a source’s request for additional amenities, etc.).

The second task is managing the relationship. This requires the interrogator to take a wholistic view of the source and of the dynamics between the two of them. Rather than focusing on which techniques to apply, the interrogator continuously assesses, monitors, and integrates a thorough understanding of the source’s needs, hopes, fears, and interests as a basis for building a climate of cooperation. Without tending to the relationship, managing the information exchange may become needlessly problematic. But when these two processes work in synergy, it is possible to create a situation in which the source *realistically perceives* that providing accurate and comprehensive information is the best alternative and is in his or her best interests given the present circumstances. Moreover, it may prompt the serendipitous discovery of important operational information that was not even anticipated during the planned interrogation.

Within the EI framework, the operational relationship between the interrogator (often called the “educing information professional” or EIP) and source is the fulcrum to leverage a climate of cooperation. While the term “rapport” is commonly used to describe the desired state for a productive interrogation relationship, it has been suggested that the term *operational accord* may be more useful. Operational accord between an interrogator and a source often involves a degree of conformity by the source and/or apparent mutual affinity based on a mutual understanding of—and perhaps even guarded appreciation for—each party’s respective concerns, intentions, and desired outcomes.

Findings and a report from Phase I of the *ISB Study on Educating Information* were recently published as a monograph by the National Defense Intelligence College (Fein, 2007). The monograph contains a collection of eleven chapters exploring normative and empirical bases for forming an American approach to intelligence interrogation. Chapters include reviews of the relevant social and behavioral science literature, analyses of historical interrogation documents, a review of custodial interrogation studies and practices, explorations of negotiation theory’s potential applications to interrogation, and critical essays on barriers and to success and needed research to chart a course for the future of intelligence interrogations.

Toward a Team Approach to HUMINT Collection

Another idea supported by the EI study is the value of using multidisciplinary teams. The assumption is that a team approach operating within a coordinated systems framework is likely to provide the most effective environment for EI, particularly from high-value

sources during long-term custodial detention. Team members' perspectives and input can be integrated to create a working "case conceptualization" based on everything that is known about a source, interests, beliefs, and sources of leverage. The team ideally should include an array of relevant subject matter experts to provide advice and counsel on various elements of the EI process. Team members might include intelligence analysts, cultural and linguistic experts, and behavioral science consultants.

Integrating the expertise of psychologists and behavioral scientists into HUMINT collection / interrogation planning has been implemented on a very limited basis. The expertise has been drawn principally from psychologists serving in the military or working for federal law enforcement agencies cooperating with DOD operations. Those consulting in this capacity, which in US military venues are known as *Behavioral Science Consultation Teams* (BSCT), do not conduct or even manage interrogations, but rather served as a resource to the interrogator and other members of the team for planning and for monitoring behavioral and relational aspects of the interrogation.

Psychologists' and psychiatrists' involvement in military interrogations has become an issue of substantial professional controversy, however – not from the military or law enforcement agencies - but within the professions themselves. Both the American Psychological Association and the American Psychiatric Association have deliberated over the issue within their respective disciplines, and come to somewhat different conclusions. Both associations agreed without equivocation that members of their profession should not engage in or facilitate torture or any cruel, inhuman or degrading treatment.

The President of the American Psychological Association (then, Ron Levant, Ph.D.) appointed a Task Force on Psychological Ethics and National Security (PENS). The Association adopted the PENS Task Force Report as its official position, declaring, in part, that "Psychologists may serve in various national security-related roles, such as a consultant to an interrogation, in a manner that is consistent with the Ethics Code...". Approximately one year after the PENS Report, the American Psychiatric Association issued a *Position Statement on Psychiatric Participation in Interrogation of Detainees*, stating that "No psychiatrist should participate directly in the interrogation of person held in custody by military or civilian investigative or law enforcement authorities, whether in the United States or elsewhere. Direct participation includes being present in the interrogation room, asking or suggesting questions, or advising authorities on the use of specific techniques of interrogation with particular detainees." While the language is clearly prescriptive, the Association's President Steven Sharfstein, M.D., clarified that the position statement did not constitute "an ethical rule" and that individual psychiatrists who did not abide by its provisions "wouldn't get in trouble with the APA." Despite some continued dissension within the professions, psychologists and psychiatrists continue to consult to interrogations. In addition to serving as a technical resource, their role in military interrogations now explicitly includes a safety / monitoring function to help ensure that these HUMINT collection activities are conducted in a safe, effective manner.

Conclusions

The six years since the September 11 attacks on America have been a critical time for intelligence interrogation in the U.S. and for American personnel throughout the globe. Faced with an emergent threat to the homeland, security forces faced an unprecedented urgency to uncover information that might prevent acts of terrorism or save American lives. It also became increasingly clear that potentially lifesaving, actionable intelligence— to the extent that it existed – would be most likely to come from human sources.

The US law enforcement, intelligence and military communities have faced new demands to acquire crucial intelligence from new adversaries in a variety of contexts. Many well-intentioned agencies found themselves lacking detailed, pertinent knowledge of religion or culture or requisite language skills. Working through acknowledged mistakes and attempting to learn from ongoing experiences, security forces – and the American public – have struggled with the entangled questions of effectiveness and ethics in interrogations.

No large-scale, sweeping changes are yet apparent in the USG's ethos or national strategy for intelligence interrogation. In fact, in late 2007 there was still active debate *within* sectors of the Government about whether specific techniques such as “waterboarding” would or should constitute “torture,” with little discussion of whether those were even effective, necessary or useful.

Some modest changes, however, have occurred. The US Army's Field Manual for intelligence interrogation – used throughout the DOD - has undergone a major text revision and has been prescribed through legislation as the doctrinal basis for all authorized military interrogation techniques. U.S. Congress passed legislation to explicitly prohibit any DOD personnel from participating in torture, cruel, inhuman, or degrading treatment of U.S. detainees. Professional associations have examined the roles that behavioral science and medical professionals may play in consulting to interrogations and have outlined the ethical contours governing their professional conduct when engaged in those activities.

The *Intelligence Science Board Study on Educating Information* has produced the first systematic attempt to look toward the future of interrogations. The early objective of the ISB Study was to soberly examine the science – or lack of science – that might lay beneath nearly a half century of U.S. doctrine. Although the effectiveness of long-used approaches remains an open question, there was not compelling scientific evidence to support their use or to affirm many of their underlying assumptions. The EI initiative has also probed the research literature in behavioral and social science and begun exploring possible applications from new scientific and relational frameworks, such as social psychology and negotiation theory. Whether any of the Study's findings or recommendations will translate into governmental action remains to be seen.

An important question to guide the future of US interrogation policy and practices is arguably: “What kind of research or knowledge is needed to point us toward the most effective approaches in HUMINT collection?” In attempting to better understand the “effectiveness” of these efforts, it will likely be necessary not just to explore whether a specific technique does or does not “work,” but to consider how and why different kinds of approaches or strategies might work for certain kinds of detainees, with certain kinds of information, in certain circumstances (or under certain conditions). The future of America’s approach to interrogation and HUMINT collection will need to recognize the needs and requirements of expediency while acknowledging the fundamental importance of attaining information that is comprehensive, accurate, reliable and actionable in an operationally relevant context.

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