

CONFRONTATION OR COLLABORATION?

CONGRESS AND THE INTELLIGENCE COMMUNITY



INTERROGATIONS AND INTELLIGENCE

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INTERROGATIONS AND INTELLIGENCE

On January 22, 2009, President Obama issued an executive order mandating that all government agencies conducting interrogations follow the guidelines outlined in the U.S. Army Field Manual on Interrogation. Administration officials nevertheless left open the possibility that new, separate guidelines could be established in the future to govern interrogations conducted by intelligence agencies.

This memo provides new members of Congress with an overview of the guidelines for interrogations conducted by the military or intelligence agencies. This memo also provides a brief background on the debate about ‘coercive interrogations’ that transpired over the past several years.

Defining Interrogation

U.S. military intelligence doctrine states that interrogation is:

“The systematic effort to procure information to answer specific collection requirements by direct and indirect questioning techniques of a person who is in the custody of the forces conducting the questioning.”

U.S. Army Field Manual 2-22.3 (FM 2-22.3) entitled “Human Intelligence Collector Operations,” suggests that a successful interrogation produces needed information that is timely, complete, clear, and accurate.

- The goal of any interrogation is to obtain usable and reliable information, in a lawful manner and in the least amount of time, which meets intelligence requirements of any echelon of command.

The Detainee Treatment Act of 2005 and FM 2-22.3 provide “uniform standards” for interrogation, as well as prohibit “cruel, inhuman, or degrading treatment or punishment” of detainees, as interpreted through the United States Constitution.

- According to the U.S. Army/Marine Corps Counterinsurgency Field Manual, U.S. law “clearly prohibits U.S. forces, including officials from other government agencies, from using certain methods to obtain information.” Nevertheless, the Detainee Treatment Act appears to only apply to individuals in Department of Defense (DoD) facilities, and not to other facilities maintained by other government agencies.
- In March 2008, President Bush vetoed a bill that would have compelled all U.S. interrogators—including individuals working for the Central Intelligence Agency (CIA)—to comply with the U.S. Army field manual on interrogations.

- On January 22, 2009, President Obama issued Executive Order 13491 which restricted the U.S. Government's interrogation methods to the measures dictated by the U.S. Army Field Manual.

Who May be Detained and Interrogated in Wartime?

Beyond uniformed enemy belligerents, and given U.S. commitments in counterterrorism and counterinsurgency operations in Iraq and Afghanistan, the types of detainees who may be interrogated in DoD facilities generally fall into two categories:

- Persons who have engaged in, or assisted those who engage in, terrorist or insurgent activities.
- Persons who have incidentally obtained knowledge regarding insurgent and terrorist activity, but who are not guilty of associating with such groups.

U.S. regulations and war doctrine assume that the Geneva Conventions apply to all aspects of detention and interrogation operations. Military personnel who engage in cruel or inhuman treatment of detainees during interrogation can be punished under the Uniform Code of Military Justice (UCMJ).

- Only people who are trained and certified to be interrogators may officially conduct interrogations. These interrogators use legal, approved methods of convincing detainees to give their cooperation.
- The interrogation manual stipulates that the “stated policy of the U.S. Army [is] that military operations will be conducted in accordance with the law of war obligations of the U.S.”

A Brief History of U.S. Interrogation Programs since WWII

The U.S. has implemented several different interrogation programs during various conflicts with varying degrees of success.

- In the Pacific theater during the latter part of WWII, the U.S. Marines established an interrogation program based on establishing rapport with captured Japanese prisoners. This program proved so successful that the Marines in June 1944 were able to provide U.S. commanders with the complete Japanese order-of-battle within 48 hours of arriving on Saipan and Tinian.
- The CIA in 1960s and early 1980s published interrogation manuals that described various coercive techniques that might elicit information such as “threats and fear,” “pain” and “debility.” Some of these manuals were subsequently amended to state that certain practices were both illegal and immoral.
- In the current conflicts in Iraq and Afghanistan, tens of thousands of individuals have been interrogated without the use of coercive or harsh techniques.

The CIA Interrogation Program

Significant debate about interrogation policy emerged after revelations that the Bush Administration ordered and authorized the CIA to utilize “enhanced interrogation techniques” on high-value al-Qaeda detainees. In the weeks and months following the 9/11 attacks, political leaders and the Intelligence Community (IC) alike felt pressure to take steps necessary to prevent future—and possibly imminent—terrorist attacks. Thus, after being given permission by the White House and the Department of Justice, the CIA began using alternative interrogation techniques to gather intelligence from high-value al-Qaeda detainees. The subsequent disclosure of these techniques to the public, referred to as “coercive interrogation” or “enhanced interrogation techniques,” fueled an ongoing debate over whether these interrogation techniques are effective, lawful and ethical.

It remains controversial whether coercive interrogation methods effectively elicit timely and accurate information from detainees. During a 2006 speech, President Bush claimed that enhanced interrogation techniques on a number of al-Qaeda members protected U.S. interests and gave interrogators information that stopped new attacks from reaching the operational stage.

- During the same speech, President Bush said these procedures were designed to “be safe, to comply with our laws, our Constitution, and our treaty obligations.”
- The CIA director in 2007 claimed that interrogations of high-value detainees have been “historically the single greatest source of information we’ve had” on al-Qaeda.

Coercive techniques, however, may result in the U.S. obtaining faulty information, which in turn may lead to poor analytical outcomes and misinformed policy decisions.

- Experts still disagree whether Abu Zubaydah, one of the first al-Qaeda operatives caught after 9/11, provided critical information to U.S. interrogators through enhanced interrogation techniques. According to press reports from 2009 quoting senior U.S. officials, Abu Zubaydah provided the most useful information prior to being subjected to harsh measures, and no significant al-Qaeda plot was thwarted because of his debriefings.
- A Senate Intelligence Committee report found that Ibn Shaykh al-Libi, an al-Qaeda operative may have provided false or coerced information regarding a high-level relationship between al-Qaeda and Saddam Hussein prior to Operation Iraqi Freedom after he was detained and possibly aggressively interrogated by a third country.

The Obama Administration in April 2009 declassified another four subsequently-retracted memos from the Department of Justice that described, in detail, the legal justification for enhanced interrogation techniques.

- An August 2002 memo gave approval for specific coercive techniques, including waterboarding; since these techniques were not “specifically intended” to cause “severe physical or mental pain or suffering,” the opinion stated they were indeed legal.
- Three May 2005 memos opined that waterboarding and other harsh techniques, whether individually or in concert, did not violate the federal criminal prohibition against torture since CIA had identified certain safeguards and limitations to the techniques. However, a footnote in one of the memos noted the CIA inspector general reported these rules were not always followed.

After releasing these controversial memos, the Obama Administration stated it was not interested in prosecuting current and former CIA officers who carried out coercive interrogations based on the Department of Justice’s legal reasoning.

- President Obama however left open the possibility that the lawyers and policymakers who authored and authorized these opinions may face some civil or criminal penalties.
- Some Members of Congress as of May 2009 are planning to perform an independent public investigation into the CIA’s coercive interrogation program.

Issues for the 111th Congress

As the 111th Congress debates the issue of enhanced interrogation, it will likely consider several factors, including:

- *The efficacy of coercive interrogation techniques.* Have coercive techniques provided the government with crucial, reliable information about actual threats? How many pieces of quality intelligence has the IC successfully generated from these techniques?
- *The costs and benefits of utilizing these techniques.* How does the intelligence gleaned weigh against the potential damage to the United States’ international reputation? How significant is the threat that U.S. soldiers abroad face the risk of reciprocal treatment if captured by our enemies?
- *The feasibility of a single standard.* Should a U.S. Army Field Manual be the single standard for governance on interrogation methods for the U.S. intelligence community? Or should the IC have its own, possibly classified, standard?
- *The importance of secrecy.* Should interrogations guidelines for intelligence agencies be classified to deter foreign enemies from preparing resistance to these interrogation methods?

INTERROGATION DEVELOPMENTS

1949 1949

The United Nations adopts the Third Geneva Convention governing the treatment of prisoners of war.

SEPTEMBER 2001 2001

President George W. Bush in a sweeping Presidential Finding six days after 9/11 authorizes the CIA to kill, capture and detain al-Qaeda members globally.

AUGUST 2002 2002

The Justice Department's Office of Legal Counsel issues several opinions narrowly defining torture and discusses measures that could be used on high-value al-Qaeda detainees. These opinions are subsequently withdrawn as legally flawed.

1940

1950

1960

1970

1955 1955

The United States ratifies the Geneva Conventions.

MARCH 2002 2002

U.S. and Pakistani authorities in Pakistan capture senior al-Qaeda lieutenant Abu Zubaydah and transfer him to the CIA's detention and interrogation program.

JUNE 2004 2004

The existence of the Office of Legal Counsel's opinions on torture and interrogation techniques leaks to the media.

DECEMBER 2004

The Justice Department issues a revised finding to the since withdrawn August 2002 memo, providing a broader definition of torture.

INTERROGATION DEVELOP

2008

FEBRUARY 2008

CIA Director Michael Hayden confirms during Congressional testimony that the CIA waterboarded three detainees—senior al-Qaeda lieutenant Abu Zubaydah, external operations chief Khalid Sheikh Mohammed and USS Cole mastermind Abd al-Rahim al-Nashiri—during the 2002-2003 period.

SEPTEMBER 2006 2006

President Bush confirms the existence of the CIA detention and interrogation program in a public speech, adding that 14 high-value detainees had been transferred to Guantanamo Bay, Cuba for prosecution.

NOVEMBER 2005

2005

The Washington Post publicizes the existence of secret CIA detention centers, or “black sites,” in several countries.

1980

1990

2000

2010

JANUARY 2009

2009

President Obama issues an Executive order mandating all government agencies follow the U.S. Army Field Manual when conducting interrogations.

JULY 2007

2007

President Bush signs Executive Order 13440, which prohibits the CIA from engaging in torture, as defined by the Detainee Treatment Act of 2005, and “willful and outrageous acts of personal abuse” done “beyond the bounds of human decency.”

DECEMBER 2005

2005

Congress passes the Detainee Treatment Act of 2005, which requires the humane treatment of prisoners and restricts the U.S. military to the use of interrogation techniques approved by the U.S. Army Field Manual.

APRIL 2009

2009

The ACLU posts four previously classified Department of Justice memos detailing the use and extent of waterboarding by U.S. interrogators.

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