By Any Means Necessary: The Quandary the CIA Now Faces In Light of Employing Enhanced Interrogation Methods to Combat the War on Terror

Joshua Laufer
BY ANY MEANS NECESSARY: THE QUANDARY THE CIA NOW FACES IN
LIGHT OF EMPLOYING ENHANCED INTERROGATION METHODS TO
COMBAT THE WAR ON TERROR

A Thesis
Submitted to the McAnulty College and Graduate School of Liberal Arts

Duquesne University

In partial fulfillment of the requirements for
the degree of Master of Arts

By

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May 2011
By Any Means Necessary: The Quandary the CIA Now Faces in Light of Employing Enhanced Interrogation Methods to Combat the War on Terror

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ABSTRACT

BY ANY MEANS NECESSARY: THE QUANDARY THE CIA NOW FACES IN LIGHT OF EMPLOYING ENHANCED INTERROGATION METHODS TO COMBAT THE WAR ON TERROR

By
Joshua Laufer
May 2011

Dissertation supervised by

The outcry of torture being used during CIA interrogations of enemy combatants at Guantanamo Bay and other sites certainly jolted international humanitarians. With modern warfare evolving towards unconventional warfare, the notion of interrogation has become more controversial and linked hand-in-hand with torture methods. This study is not trying to make a case for torture, but instead seeks to provide qualitative reasoning through primary and secondary sources which some seek to support enhanced interrogation.

It will be important to identify why enhanced interrogation techniques are effective and deemed essential by some. If certain enhanced methods create extreme physical and emotional duress, then they will be considered methods of torture and inappropriate to employ to extract intelligence from combatants. This study expects to
find that there is a tautological connection between counterterrorism and the interrogation methods. Although positive international law permits the use of certain techniques, there is an ever-growing negative opinion of all borderline methods throughout the international community.
DEDICATION

This work is dedicated to the brave men and women who work for every aspect of the CIA. They truly are the first line of defense for this country and without their hard work and dedication; I do not know where our country would be today. Also, this paper is dedicated to my family and friends, especially my fiancé Mandy, without their love and support I would never have been able to get to where I am today.
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<td>CIA</td>
<td>Central Intelligence Agency</td>
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<td>OSS</td>
<td>Office of Strategic Services</td>
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<td>US</td>
<td>United States</td>
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<td>NSC</td>
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<td>DCI</td>
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<td>DDCI</td>
<td>Deputy Director of Central Intelligence</td>
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<td>D/CIA</td>
<td>Director of the Central Intelligence Agency</td>
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<td>DNI</td>
<td>Director of National Intelligence</td>
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<td>NCTC</td>
<td>National Counterterrorism Center</td>
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<td>UN</td>
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<td>KSM</td>
<td>Khalid Sheikh Mohammed</td>
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<td>ICRC</td>
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<td>FBI</td>
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<td>KUBARK</td>
<td>CIA cryptonym for their counterintelligence interrogation methods</td>
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<td>DIA</td>
<td>Defense Intelligence Agency</td>
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<td>MACV</td>
<td>U.S. Military Assistance Command, Vietnam</td>
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<td>ARVN</td>
<td>Army of the Republic of Vietnam</td>
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<td>WTC</td>
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<td>MP</td>
<td>Military Police</td>
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<td>POW</td>
<td>Prisoner of War</td>
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<td>EPW</td>
<td>Enemy Prisoner of War</td>
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<td>GITMO</td>
<td>Guantanamo Bay</td>
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<td>ACLU</td>
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<td>Jemaah Islamiyah</td>
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<td>Specific Information Requirement</td>
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<td>Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field</td>
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<td>Geneva Convention Relative to the Treatment of Prisoners of War</td>
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<td>Geneva Convention Relative to the Protection of Civilian Persons in Time of War</td>
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<td>CI</td>
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<td>Joint Task Force</td>
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<td>SERE</td>
<td>Survival, Evasion, Resistance, and Escape Training</td>
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<td>OPR</td>
<td>Office of Professional Responsibility</td>
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1 INTRODUCTION

1.1 BACKGROUND ON THE CIA

Does the Central Intelligence Agency (CIA) utilize enhanced interrogation techniques or torture methods when attempting to extract intelligence from enemy combatants? This has been the question military personnel, the mainstream media, and the Federal Government have been asking themselves for years. Since its creation in 1947, the CIA has been considered the final arbiter in intelligence collection and analysis for American national security. With the War on Terror raging and the numerous cries from prisoners claiming ill treatment at the hands of CIA personnel, however, the Agency seems to have moved into a gray area of intelligence operations compared to its original intent.

Views on the current mission of the CIA have changed dramatically since the Agency’s inception. It reflects how the organization operates today combating the War on Terror and carrying out its other intelligence responsibilities.

We are the nation’s first line of defense. We accomplish what others cannot accomplish and go where others cannot go. We carry out our mission by: collecting information that reveals the plans, intentions, and capabilities of our adversaries and provides the basis for decision and action; producing timely analysis that provides insight, warning, and opportunity to the President and decision makers charged with protecting and advancing America’s interests; conducting covert action at the direction of the President to preempt threats or achieve US policy objectives.¹

This mission is reflective on how operations are being conducted today as the Agency goes through the proper channels in the Intelligence Community and the Federal Government. When looking back on the beginning of the CIA, however, the duties of the Agency seemed to be more basic in intelligence gathering, analysis, and covert action.

At the beginning of American operations in World War II, President Franklin Delano Roosevelt appointed William J. Donovan to become first the Coordinator of Information and then the head of the Office of Strategic Services (OSS) in 1942. The main purpose of this newly formed organization was to collect and then analyze strategic information during the war. It was uncertain that if the OSS was going to be used further after the war, or if it would be discarded altogether. It turned out that the latter occurred, and the OSS was abolished along with many other wartime agencies and OSS functions were transferred to the State and War Departments. This agency was the predecessor to the CIA. Once WWII ended and the OSS was disbanded, however, it only took a couple years for President Harry S. Truman to come to the realization that an intelligence organization was needed despite the fact that there was no war occurring at the time.

The moment President Truman signed the National Security Act of 1947 the dynamic in Washington and the Intelligence Community changed forever as the CIA was born.

The National Security Act of 1947 mandated a major reorganization of the foreign policy and military establishments of the U.S. Government. The act created many of the institutions that Presidents found useful when formulating and implementing foreign policy, including the National Security Council (NSC)… The act also established the Central Intelligence Agency (CIA), which grew out of World War II era Office of Strategic Services and small post-war intelligence organizations. The CIA served as the primary civilian intelligence-gathering organization in the government. This single act passed by President Truman placed the CIA in charge of the United States’ intelligence activities, which included “coordinating the nation’s intelligence activities and correlating, evaluating and disseminating intelligence affecting national

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3 Ibid.
security.”⁵ The DCI was in charge of overseeing all intelligence operations across the United States.⁶ Despite many grievances being brought forth against the CIA over the next fifty years after the act was signed into law, there was relatively little restructuring until December 17, 2004.⁷ On this date, “President George W. Bush signed the Intelligence Reform and Terrorism Prevention Act which restructured the Intelligence Community by abolishing the Director of Central Intelligence (DCI) and Deputy Director of Central Intelligence (DDCI) and creating the position of the Director of the Central Intelligence Agency (D/CIA).”⁸ The act also created the position of Director of National Intelligence (DNI). This person oversees the entire Intelligence Community, including the National Counterterrorism Center (NCTC).

Along with the restructuring of the Intelligence Community, the discussion of terrorism prevention is prevalent throughout the act. It will be discussed later in this study as it is a vital component to the current discussion on the CIA’s implementation of enhanced interrogation techniques on terrorists and other enemy combatants. Once again, it is important to note that the CIA is an independent agency and is not a branch of the United States military. The D/CIA and other top officials report directly to the DNA, the President, and other senior US policymakers involved with the intelligence committees in the House and Senate. Historically, once approval for any covert or intelligence operation is received, the D/CIA is in charge of the operations, budgets, and personnel from the CIA’s main headquarters in Langley, Virginia.

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⁵ CIA, History of the CIA.
⁶ Ibid.
⁷ The Pike and Church Commissions during the 1970s occurred because the clandestine operations conducted by the CIA were extremely unpopular. These operations were at the time the CIA was given the ability to do whatever it needed to do to get the job done and maintain US national security. The Pike and Church commissions stopped the leniency granted to the Agency as they put many restrictions on what it was capable of doing in the field.
⁸ CIA, History of the CIA.
Since the CIA’s main responsibility in preserving American national security is to collect and analyze intelligence, the question that continuously comes up is how do they go about doing that? As will be discussed later on, there are several methods that can be utilized to obtain this vital intelligence. As the CIA duly notes, “(T)ranslating foreign newspaper and magazine articles and radio and television broadcasts provides open-source intelligence. Imagery satellites take pictures from space, and imagery analysts write reports about what they see…Signals analysts work to decrypt coded messages sent by other countries. Operations officers recruit foreigners to give information about their countries.” Finally, another method used to gather intelligence from potential foreign threats is to engage in covert action at the President’s direction; but most importantly, the thing that has caused such a controversy and discredited the Agency is that this action must be carried out in accordance with applicable law.

As the War on Terror moves forward and the memories of 9/11, the Fort Hood shootings, the failed Christmas 2009 Detroit-airliner underwear-bombing, and the failed Times Square truck bombing remain fresh in the minds of Americans, the CIA continues to conduct its business. Interrogations are in use at places like Guantanamo Bay and Abu Ghraib, but with the country’s national security at stake and being the first line of defense, it would seem that the Agency is going to take these risks and conduct these enhanced methods in order to prevent future attacks on the country and its people. Now, analyzing how the CIA carries out these interrogations, learning just what laws it must adhere to on an international platform and what legal precedent there is for the enhanced interrogation methods to be used are the meat of this study.

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10 Ibid.
1.2 RESEARCH AIM

This study intends to analyze the legal reasoning that is applied to justify the CIA employing enhanced interrogation techniques to combat the War on Terror. The purpose of discussing these techniques acknowledges four given suppositions. First, given how controversial enhanced interrogation methods are, there will be no consensus for or against enhanced interrogation. Second, since there is no consensus, it will be important to identify why these interrogation techniques are effective and essential. The physical and emotional duress from extreme pain by some of these methods, however, cannot be ignored. If those particular methods create such duress, then they will be considered methods of torture and should be inappropriate to extract intelligence from combatants. Third, this study expects to find that there is a tautological connection between counterterrorism and the interrogation methods. Finally, although positive international law permits the use of certain interrogation methods, there is an ever-growing negative opinion of all borderline interrogation methods throughout the international community.

1.3 QUESTIONS TO BE ANALYZED

- Is there a consistent basis for CIA practices?
- If the CIA has arenas of operations and carries out operations in that jurisdiction outside of American law, then why is the Justice Department the main component in investigating the agency?
- If people in the CIA are interrogating enemy combatants on and off the battlefield in order to protect America and its people domestically and abroad, then why is
the Federal Government focusing on how they are carrying out these interrogations?

- Are there occasions that justify enhanced methods to gather intelligence, and if so, what constitutes intelligence?

- If the CIA or the military cannot hold these Guantanamo Bay prisoners or interrogate them due to rules in the Geneva Conventions, then why can the US bring these people into the country and treat them as citizens when they are not even naturalized citizens?

- How far can an intelligence agency or a military group go in regards to interrogating spies, prisoners of war, terrorists, or other radical extremists?

1.4 LIMITATIONS

This study is going to consist primarily of Open Source normative and qualitative data due to the inability to acquire substantial quantitative data. There are certain things that occur in the CIA that are never leaked to the press or divulged to the public. This is the main limitation of this research project. Court cases, national law, and international treaties pertaining to interrogating enemy combatants will be consulted where appropriate. The amount of declassified information is limited to protect national security. If classified national secrets were available for everyone to see it could cause disruption in the ebb and flow of the agency as well as putting Americans’ lives at great risk. So, only information obtained via sources that have been declassified and available to all can be used in this project.
The positives and negatives of the CIA’s methods need to be looked at and understood as best as possible. One thing that must be understood, however, is that this study is not trying to make a case for torture. What this study is going to attempt is provide qualitative reasoning and legal justification in support of enhanced interrogation. If some of these methods are revealed to be torture as the study unfolds, then they will be deemed as such and not considered an acceptable method of interrogation.

1.5 METHOD AND STRUCTURE OF THE THESIS

The method chosen is an impartial approach to look at the interrogation/torture issue from an objective standpoint. There are a multitude of events, court cases, treaties, laws, and other supplements to assess this neutral framework to see what can and cannot be considered acceptable methods and torture. The thesis will be broken down into four parts:

1. *Introduction and Development*. Chapter One consists of the background of the CIA and the main focus of this study. It concludes with the structure of the thesis. Chapter Two will define key terminology that will be needed throughout this paper. Chapter Three will move into the main historic and current events that have brought this topic up into the forefront, and the significance each single event has involving whether utilizing enhanced interrogation methods could be related to torture or not. There will be some primary argumentation here, but it will not be expanded until later. This is just to provide a backdrop to the legal explanation of the methods the CIA employs.
2. **Further Development and Comparisons.** Chapter Four will develop the legal argument to justify enhanced interrogation and also to look at it as torture. The Geneva Conventions of 1949 that pertain to this matter will be discussed and analyzed as well as the treaty from the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Finally, the CIA’s codes of interrogation will be interpreted as well as comparing it to the codes of the *Army Field Manual*.

3. **Analysis and Justification.** Chapter Five will delve into the factors for and against interrogations being used at all. Looking at examples from Abu Ghraib and Guantanamo Bay with references to Michael Schmitt’s paper on international law and counterintelligence, it will be necessary to look at the methods that have already been deemed torture and compare them to the ones that still receive international approval. This will cover the cases that help support the CIA’s stance on interrogating enemy combatants as well as those opposed to their methods. The declassified CIA memos, research by Richard Saccone and Marc Thiessen, an interrogation document involving Khalid Sheikh Mohammed (KSM), and other materials will be used to provide the bulk of the analysis for the CIA using enhanced interrogation. On the other hand, prison incidents at Abu Ghraib and Guantanamo Bay, court testimonies, and other materials will be used as the counterpunch to the main argument.

4. **Looking at the Present and Future.** Chapter Six will be the point where the study will look at where the CIA is today on the subject. Looking at the controversies that surround the Agency internationally and internally and any differences that
have been made to their operations are the focus of this section. Chapter Seven will provide the concluding remarks of the study involving points from what was learned. Finally, Chapter Eight will provide an analysis of implications regarding the potential civilian trial of KSM and other al Qaeda terrorists as well as looking at where the United States and the rest of the world goes from here regarding the War on Terror.

2 DEFINING TERMS AND CONCEPTS

2.1 INTRODUCTION

Since this study is concerned with the CIA enhanced interrogation techniques to combat the War on Terror it is critical to define some of the key terminology that will be employed throughout this paper. The purpose here is not to start the debate nor begin to analyze anything specific about the topic, but to understand the definitions of the terms and start to consider the interpretations contained in the literature.

Critics against enhanced interrogation make the continuous claim that it violates human rights and that its torture, but it does not seem that they truly know what enhanced interrogation means. The same goes for the supporters of interrogation in regards to torture. It is unclear if they have a firm grasp on the definition. Also, a general understanding needs to be established in regards to human rights itself due to this being the main charge when CIA personnel interrogate enemy combatants. Finally, the interrogation techniques themselves that are in question need to be defined, such as: waterboarding and extradition.
2.2 INTERROGATION AND TORTURE

Interrogation is used to acquire information about potential threats to one’s
country or specific intelligence regarding enemy movements and strategies during war,
and it is permitted under the Laws of War. Many men and women in the military and
the intelligence field began to gather vital information to help win the War on Terror
dating back to September 11th, 2001. This is where events can become unclear.
Interrogations claimed to be torture to get the information from a detainee are neither
condoned in positive international law nor US law.

Torture as defined at the 1984 Convention against torture:

…means 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, punishing him for an act he or a third
person has committed or is suspected of having committed, or intimidating or
coercing him or a third person, or for any reason based on discrimination of any
kind, when such pain or suffering is inflicted by or at the instigation of or with the
consent or acquiescence of a public official or other person acting in an official
capacity.

This is a very thorough definition and understanding of torture, but this convention and
subsequent treaty only looked at one moral side of the issue and not the other. The other
side might be why government personnel would perform such acts that are considered
brutal and unnecessary. It can truly be a fine line between aggressive interrogation and
torture.

Steven Kleinman notes, “(B)eyond this challenge is the Orwellian, repellant
nature of the topic itself—the pulling-out-of-fingernails connotation that the word
‘interrogation’ carries. The extraction of information from unwilling subjects is

13 Hans Danelius, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,
(United Nations: December 10, 1984), Article 1: Section 1.
obviously an unpleasant matter."\textsuperscript{14} Interrogations do not start when the interrogators begin questioning the prisoners in the holding rooms. The process begins before the interrogators enter the room. They plan out a line of questioning to ask the prisoners, but even before that, the prisoners have been worn down by days of sleep deprivation, severe room temperature changes, flashing of bright lights, and other stimuli.

The above tactics used to wear down prisoners all cause physical and mental strain, but it is simply a judgment call as to whether these tactics are legal or not. The legal debate of the enhanced interrogation methods being considered torture has facts on both sides, but at the same time, is very objective. Those in the CIA in favor of enhanced interrogations will cite that the United States has not been attacked since 9/11 and that due to the capture of numerous al Qaeda operatives, like KSM, many future terrorist plots have been prevented. Those who view those interrogations as torture, like human rights groups, the United Nations (UN), and others will note that the military, under CIA oversight, treatment of prisoners at Abu Ghraib in Iraq and Guantanamo Bay in Cuba are forms of torture. All the talk about torture has its precedent set from the Geneva Conventions.

Inhumane treatment and torture is what caused the nations of the world to come together to codify the Geneva Conventions. One of the many aspects of international humanitarian law that the Geneva Conventions also focuses on is prisoners of war being protected against violence and coercion to reveal information. The well cited Common Article 3 points out, “Captured combatants and civilians who find themselves under the authority of the adverse party are entitled to respect for their lives, their dignity, their

personal rights and their political, religious and other convictions. They must be protected against all acts of violence or reprisal. They are entitled to exchange news with their families and receive aid. They must enjoy basic judicial guarantees.”\textsuperscript{15} The New York Times reported that, “Khalid Sheikh Mohammed, the alleged mastermind of the Sept. 11 terror attacks, was water boarded 183 times in one month by CIA interrogators. The Times and dozens of other outlets wrote that the CIA also water boarded senior Al Qaeda member Abu Zubaydah 83 times, but Zubaydah himself, a close associate of Usama bin Laden, told the Red Cross he was water boarded no more than 10 times.”\textsuperscript{16} The varying reports make it difficult to decipher who is telling the truth and who is not.

2.3 HUMAN RIGHTS

According to John Locke, every person had the basic rights of “life, liberty, and property.”\textsuperscript{17} During the American Revolution, Thomas Jefferson altered it slightly to make it life, liberty, and the pursuit of happiness. Today, human rights have been defined more specifically to include other necessities like food, shelter, and clothing.\textsuperscript{18} According to the International Committee of the Red Cross (ICRC), “…human rights are inherent to the human being and protect the individual at all times, in war and in peace.

\textsuperscript{17} John Locke and Peter Laslett, Two Treatises of Government, (Cambridge: Cambridge University Press, 1988), Second Treatise: Ch. 5, p. 10-11.
\textsuperscript{18} Franklin Delano Roosevelt, FDR: Selected Speeches of President Franklin D. Roosevelt, (St. Petersburg, Fla.: Red and Black Publishers, 2010), p. 135.
International humanitarian law, on the other hand, only applies in situations of armed conflict, but goes hand in hand with international human rights laws.”\textsuperscript{19}

Every year the United Nations holds a council on human rights to discuss any potential violations to the international laws by any countries. The UN bases the laws that they make on human rights off of the Universal Declaration of Human Rights, which they adopted on December 10, 1948. There are two distinct lines in the declaration that coincide with this study: “Everyone has the right to life, liberty and the security of person. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”\textsuperscript{20} There is no question that torture is morally wrong and violates human rights, but when a country’s national security is at stake, the moral implications might be blurred or bent by zealous officials, or ill-trained lower echelon personnel.

### 2.4 INTERROGATION METHODS: WATERBOARDING AND EXTRADITION

The CIA, FBI, and other federal agencies are supposed to adhere to the \textit{Army Field Manual} regarding proper interrogation procedures. An addition to the \textit{Army Field Manual} discussing these techniques was added in September of 2006. This is not a long time ago but issues regarding the treatment of prisoners at Guantanamo Bay, secret facilities and bases run by the CIA, and the waterboarding interrogation technique have been brought up more and more over the last year and a half. “In accordance with the Detainee Treatment Act of 2005, the only interrogation approaches and techniques that are authorized for use against any detainee, regardless of status or characterization, are


\textsuperscript{20} The Universal Declaration of Human Rights, (United Nations: December 10, 1948), Articles 3 and 5.
those authorized and listed in this *Army Field Manual*.” According to the manual, despite all the provisions, stipulations, and guidelines that have to be followed, any changes “of the approaches and techniques authorized and listed in this *Army Field Manual* also require additional specified approval before implementation.”

All interrogation techniques that the CIA and military have relied upon in the War on Terror have the potential to be considered forms of torture under the Geneva Conventions. The *Army Field Manual* notes:

“While we do not stress the use of coercive techniques, we do want to make you aware of them and the proper way to use them,” the CIA’s KUBARK Interrogation Manual’s introduction states. The manual says such methods are justified when subjects have been trained to resist noncoercive measures. Forms of coercion explained in the interrogation manual include: Inflicting pain or the threat of pain: The threat to inflict pain may trigger fears more damaging than the immediate sensation of pain. In fact, most people underestimate their capacity to withstand pain.

The fine line easily crossed occurs when the coercion referred to in the *Manual* becomes the severe pain and suffering stated in the UN Convention. Out of all the techniques used in interrogation, waterboarding has been the one that has human rights’ activists domestic and abroad, the media, and politicians inserting that the CIA is torturing prisoners.

For use in this study, waterboarding is a form of simulated drowning by placing cellophane over the prisoner’s face, which creates a gagging reflex. This is supposed to be a quick interrogation method to last no longer than a couple of minutes in order to get necessary information. Next, extraordinary rendition may be implemented when laws of the country where the prisoner was apprehended do not permit enhanced techniques to be

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22 Ibid., p. 8.
23 CIA KUBARK (cryptonym for the Agency) Interrogation Manual was first produced in July 1963. It was created to establish the techniques that the Agency would use when interrogating prisoners of war. The Manual would later be declassified and available to the public in the late 1990s.
used on the person to extract necessary information. So the prisoner is transferred to another country where those laws either do not exist or are not enforced. Then, that country can implement those methods in order to get the information that the previous country wanted to obtain.

3 EVENTS LEADING TO ENHANCED INTERROGATION/TORTURE

Robert Fein notes: “In World War II, the United States military developed a secret offensive program, called MIS-Y, designed to obtain intelligence from captured adversaries. This ‘educing information’ program (though it was not described as such at the time) was designed to obtain intelligence from senior German officials, officers, and scientists in U.S. custody.”

These military and intelligence entities have studied effective information techniques for some time.

3.1 INTRODUCTION

This chapter introduces the significant events that brought the CIA’s enhanced interrogation techniques to the forefront, and the reasons given for why those techniques are considered torture and why they are not. It creates the framework of the analysis for the reasoning the Agency uses these methods to prosecute the War on Terror.

Section 3.2 will analyze the starting point of the CIA’s use of different interrogation techniques. Also, waterboarding used in the Vietnam War by American military personnel, then condemned by military generals and considered a method of

torture will be addressed. A brief look first at the development stages of the interrogation process for the CIA will help in the understanding and analysis of why the techniques are currently employed by the Agency. This will also provide a contrast to how the military conducted interrogations for intelligence purposes. As in Vietnam, the military used interrogations for defensive purposes while the CIA wanted to use those same methods for offensive purposes in order to strike the enemy first. The purpose here is to provide analysis on a wider platform to expand on the definition of torture and interrogation and establish the first significant event that caused the Agency to employ enhanced interrogation methods on a large scale.

Section 3.3 will discuss the first attack on the World Trade Center in 1993 and the Bojinka Plot in 1995. These two terrorist acts can be presented as support and reasoning as to why the CIA decided to carry out interrogations of any terrorist members whom it could apprehend during covert missions. Those events were only the precursor to what al Qaeda had planned, however, and it would set in motion the logic for later attacks and the United States entering the War on Terror.

Section 3.4 discusses how 9/11, the most devastating attack to occur on American soil, impacted the CIA and how it conducts its covert operations including its interrogations of terrorists and other enemy combatants. Shortly after the events of 9/11 occurred the United States embarked on what would be called the War on Terror. This is

27 Robert A. Fein, p. xii.
29 Ibid., Section 3.7, p. 106-107.
where the most in-depth analysis will start for the rest of this study as the CIA’s enhanced methods have come under fire more and more as the war progresses.

Section 3.5 will discuss and analyze the two controversial sites where the CIA employed their enhanced interrogation methods on enemy combatants; Abu Ghraib prison in Iraq and Guantanamo Bay prison in Cuba. Also, this will be the section where the hypothesis of this paper will be developed for analysis. The question developed therein is why the CIA decided to employ enhanced interrogation techniques to combat the War on Terror.

Are waterboarding and other enhanced techniques illegal as declared by Geneva and the Convention against Torture? Does the Agency’s resolve grow stronger and more defiant to push the proverbial envelope to extract intelligence from enemy combatants by their enhanced methods? Does former President George W. Bush and others have it right when they say that “the Agency’s enhanced interrogation program, which included controversial techniques such as waterboarding, was legal and garnered valuable information that prevented terrorist attacks?”

### 3.2 ORIGINS OF CIA’S INTERROGATION PROGRAM AND VIETNAM

#### 3.2.1 ORIGINS OF CIA’S INTERROGATION PROGRAM

Though American interrogations to extract intelligence from prisoners have taken place for many years, the CIA has only been around officially for slightly over half a century. The CIA only began developing ways to interrogate prisoners throughout the

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1950s and 1960s.\textsuperscript{33} It was not until the early 1960s, like the *Army Field Manual* outlining proper interrogation techniques for the military, did the CIA establish an interrogation manual of their own. The manual is entitled the *KUBARK* (a cryptonym for the CIA) *Counterintelligence Interrogation Manual* and was created in July of 1963 and publicly released in the late 1990s.\textsuperscript{34} The primary focus of this manual was to establish the techniques that the Agency would use when interrogating prisoners of war. Also publicly released in the late 1990s was the CIA’s updated manual that was written in 1983. It is entitled the *Human Resource Exploitation Training Manual*.\textsuperscript{35}

During its early years, the CIA conducted research and studies regarding which techniques would be most effective in extracting the most intelligence from a certain individual. “The CIA sponsored studies designed to explore how drugs (LSD, for example), sensory deprivation, and hypnosis might be used as techniques to elicit information.”\textsuperscript{36} The *KUBARK* manual does not sugarcoat any of the reasons for interrogating prisoners of war and explains the Agency’s interpretation of what an interrogation is and what is entailed during the process. “There is nothing mysterious about interrogation. It consists of no more than obtaining needed information through responses to questions…But sound interrogation nevertheless rests upon knowledge of the subject matter and on certain broad principles, chiefly psychological, which are not hard to understand.”\textsuperscript{37}

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\textsuperscript{33} Robert A. Fein, p. xiii.  \\
\textsuperscript{34} Ibid., p. xiii.  \\
\textsuperscript{36} Robert A. Fein, p. xiii.  \\
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The CIA has been accused of torturing prisoners in order to get the intelligence they need to help American national security.\textsuperscript{38} When the interrogation program was developed and updated, however, the Agency condemned any type of torture being used even if useful intelligence could be obtained. “The use of force, mental torture, threats, insults, or exposure to unpleasant and inhumane treatment of any kind as an aid to interrogation is prohibited by law, both international and domestic; it is neither authorized nor condoned.”\textsuperscript{39} It seems that the Agency made it quite clear in their manuals that any form of torture would not be tolerated and could result in legal ramifications. Both manuals have sections that outline proper procedures for conducting interrogations as well as when or if to use coercive methods. In that regard, proper authorization is required before an interrogator can even begin to think about using coercive measures.

“Use of force is a poor technique, yields unreliable results, may damage subsequent collection efforts, and can induce the source to say what he thinks the interrogator wants to hear. Additionally, the use of force will probably result in adverse publicity and/or legal action against the interrogator (et. al) when the source is released.”\textsuperscript{40} “For both ethical and pragmatic reasons no interrogator may take upon himself the unilateral responsibility for using coercive methods. Concealing from the interrogator’s superiors intent to resort to coercion, or its unapproved employment, does not protect them. It places them, and KUBARK, in unconsidered jeopardy.”\textsuperscript{41}

\textsuperscript{40} Ibid., p. 1.
\textsuperscript{41} It might be argued that the KUBARK Manual and the Human Resource Exploitation Manual could be themselves a deception, although no empirical evidence indicates this is the case.
CIA has never had the intention to use torture or inflict pain on the people from whom they attempt to extract intelligence.\textsuperscript{42} The Agency knew that in order to remain behind the scenes and maintain their level of anonymity and limited public recognition; interrogators had to make sure that their interrogations could not bring national and international controversy their way. As time progressed and technology advanced with radio, television, and computers, however, the Agency’s secrets were not as secret anymore as their interrogation methods seemed to first come to light during the Vietnam War.\textsuperscript{43}

3.2.2 VIETNAM WAR

After being researched and developed in the ‘50s and ‘60s, the CIA evolved their interrogation. The CIA precursor, the OSS, during World War II, developed an interrogation process which followed the military’s. One could consider this the first generation of the interrogation of enemy combatants. Then the CIA evolved and developed their own process which was used in Korea, Vietnam, and the Cold War. That stage can be considered the second generation of interrogating enemy combatants. During this time, the Pike and Church Commissions of the 1970s condemned what the CIA carried out as the Agency did not seem to have any borders or boundaries. Finally, 9/11 and the War on Terror has forced the Agency to move into a third generation of...
interrogations as they question enemy combatants in secret prisons and facilities using enhanced techniques.\textsuperscript{44}

When the United States entered Vietnam, the Agency was not sure what rule exactly they would end up playing. It was only in 1963 when George Allen, a senior intelligence expert on Vietnam for the newly formed Defense Intelligence Agency (DIA), took a job with the Agency that the CIA’s role became clear. Their main job was to provide support to the military and any necessary intelligence on the Viet Cong. “His (Allen’s) CIA team was given access to MACV (U.S. Military Assistance Command, Vietnam) and ARVN (Army of the Republic of Vietnam) intelligence, made field inspections to the different U.S. military zones countrywide, pushed for coordinated intelligence efforts such as interrogation centers, and even briefed William Colby during the CIA director’s visit to Saigon.”\textsuperscript{45} The controversy surrounding the CIA’s interrogation methods began with Vietnam as waterboarding became a perceived and well-documented technique there. “Waterboarding was designated as illegal by U.S. generals in Vietnam 40 years ago. A photograph that appeared in The Washington Post of a U.S. soldier involved in waterboarding a North Vietnamese prisoner in 1968 led to that soldier's severe punishment.”\textsuperscript{46}

This technique was altered slightly from the CIA’s \textit{KUBARK} interrogation manual. In the manual, “subjects were suspended in tanks of water wearing blackout masks that allowed for breathing. Within hours, the subjects felt tension and so-called environmental anxiety. ‘Providing relief for growing discomfort, the questioner assumes


a benevolent role,’ the manual states.” In Vietnam, however, the United States military took the waterboarding technique in a slightly different direction. “On Jan. 21, 1968, a photograph of a U.S. soldier supervising the questioning of a captured North Vietnamese soldier who is being held down as water was poured on his face while his nose and mouth were covered by a cloth. The picture, taken four days earlier near Da Nang, had a caption that said the technique induced ‘a flooding sense of suffocation and drowning, meant to make him talk.’”

Once American military leaders declared that waterboarding was illegal, and any use of it could be subjected to a court martial, it would be logical that waterboarding would not be used anymore and the controversy would go away. The CIA and other covert operations units in the military thought differently. “In the post-Vietnam period, the Navy SEALs and some Army Special Forces used a form of waterboarding with trainees to prepare them to resist interrogation if captured. The waterboarding proved so successful in breaking their will they stopped using it because it hurt morale.” As will be discussed in the next few sections, the 1993 World Trade Center bombing, 1995 Bojinka Plot, and 9/11 changed how the CIA went about conducting their interrogations of prisoners. The Agency still went through the same authorized channels and still followed the two manuals, but the terrorists who were captured post-9/11 were more defiant and challenging to extract useful information. It seemed that more coercive methods were needed due to how emboldened the terrorists had become.

48 Ibid.
49 Ibid.
3.3 FIRST BOMBING OF THE WORLD TRADE CENTER AND BOJINKA PLOT

3.3.1 1993 BOMBING OF THE WORLD TRADE CENTER

The first bombing of the World Trade Center (WTC) was no 9/11, but it went a long way in putting Osama Bin Laden and al Qaeda’s names out there as threats to American national security. “On February 26, 1993, a huge bomb went off in the parking garage of the WTC. It was not a suicide bombing as the terrorists had parked a truck bomb in the garage and used a timing device to set it off. It caused damage seven stories up into the towers killing six people and wounding over a thousand. The FBI said it was an absolute miracle that more people were not killed.”\(^{51}\)

Once Langley was debriefed on the situation, they went into intelligence gathering and analysis mode to see what they could have missed in their intelligence and what sources they could look into to uncover the source of the attacks.\(^{52}\) Once the WTC was hit for the first time, the CIA would never be the same. Covert actions needed to occur in order for the Agency to live up to their mission of being the nation’s first line of defense. Interrogations needed to take place as soon as reliable information came to the Agency involving the terrorists responsible for the attack. At the same time, CIA leaders knew that they had to go through the proper channels before anything could be carried out. “During the 1990s, tension sometimes arose, as it did in the effort against al Qaeda, between policymakers who wanted the CIA to undertake more aggressive covert action

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\(^{51}\) The 9/11 Commission Report, Chapter 3, Section 3.1, p. 71.

\(^{52}\) Ibid., p. 71.
and wary CIA leaders who counseled prudence and making sure that the legal basis and presidential authorization for their actions were undeniably clear.\textsuperscript{53}

The 9/11 Commission observed that “…in 1996, the CIA set up a special unit of a dozen officers to analyze intelligence and plan operations against Bin Laden.”\textsuperscript{54} Interrogations were occurring to obtain the intelligence on Bin Laden by capturing associates of the terrorist leader. KSM and Ramzi Yousef came onto the scene at this time admitting they also had a hand in 9/11 like Bin Laden. Luckily, the plot set up in the Philippines in 1995 was foiled, and the CIA had yet another major terrorist to track and gather intelligence. “KSM first came to the attention of the U.S. law enforcement as a result of his cameo role in the first World Trade Center bombing…Yousef’s instant notoriety as the mastermind of the 1993 World Trade Center bombing inspired KSM to become involved in planning attacks against the United States.”\textsuperscript{55}

3.3.2 1995 BOJINKA “BOOM” PLOT

The Bojinka (Arabic for boom) Plot was supposed to occur in the Pacific in 1995 with the bombing of 12 U.S. commercial airliners. KSM and Yousef based their operations in the Philippines. This planned attack was the first time KSM had a hand in organizing an operation. Yousef and KSM acquired chemicals and timers to create the bombs as well as scouted where those 12 airliners were departing, where they had layovers, and where their final destinations were in the United States. The terrorists did not spend their entire time in the Philippines; they both left to go back to the Middle East at certain periods of time. “Late in 1994, Yousef returned to Manila and successfully

\textsuperscript{53} Ibid., p. 90.
\textsuperscript{54} The 9/11 Commission Report, Chapter 3, Section 3.1, p. 147.
\textsuperscript{55} Ibid., p. 109.
tested the digital watch timer he had invented, bombing a movie theater and a Philippine Airlines flight en route to Tokyo."\(^\text{56}\)

At this point the CIA was tracking both KSM and Yousef, and the Agency tipped off the Philippine authorities that Yousef was behind the bombing. The Agency also mentioned that the attacks might not be over, and that they should go investigate. So, early in 1995, “the plot unraveled after the Philippines authorities discovered Yousef’s bomb-making operation in Manila, but by that time, KSM was safely back at his government job in Qatar. Yousef attempted to follow through on the cargo carriers plan, but he was arrested in Islamabad by Pakistani authorities on February 7, 1995, after an accomplice turned him in.”\(^\text{57}\) While this plot was being foiled, the Agency knew that al Qaeda was well financed, but at the time did not know how their finances were networked. “Enemy combatants, including al Qaeda, came to the forefront in the 1990s when the terrorist group attacked the US Embassy in Kenya and Tanzania on August 7, 1998, and then later attacked the USS Cole on October 12, 2000 in the Yemeni port of Aden.”\(^\text{58}\) These attacks marked the eruption of the operational ability of al Qaeda. The Agency knew it had to step up its efforts in the interrogations of captured al Qaeda members, but when September 11, 2001 occurred, it changed their plans yet again.

### 3.4 9/11

September 11, 2001 is a day that will be remembered by all and a day that set into motion the start of a counter-offensive against not just Osama Bin Laden and al Qaeda, but all terrorism. “On September 11, 2001, terrorists seized control of four passenger

\(^{56}\) Ibid., p. 147.  
\(^{57}\) The 9/11 Commission Report, Chapter 3, Section 3.1, p. 148.  
\(^{58}\) Ibid., p. 115 and 190.
aircraft in the United States. Two were flown into the Twin Towers of the World Trade Center in New York City, a third was flown into the Pentagon in Washington D.C. and the fourth crashed in Pennsylvania following a heroic attempt by passengers to regain control from the highjackers. Roughly 3,000 people of over 80 nationalities perished."

It was not until after those four planes crashed in New York, Washington, and Pennsylvania did the CIA learn that KSM was the mastermind behind the attacks. It was not until after thousands of United States’ citizens were announced dead due to 9/11 that the CIA learned that Bin Laden and al Qaeda gave KSM the green light to carry out the operation. “Bin Laden, apparently at Atel’s urging, finally decided to give KSM the green light for the 9/11 operations sometime in late 1998 or early 1999.” It was only after the attacks that it was discovered that KSM wanted to expand 9/11 even further and attack Jewish sites and financial institutions in New York, but although Bin Laden liked the idea, he wanted KSM to focus solely on the initial operation. After the WTC came crumbling to the ground, a huge hole was left in the outer rings of the Pentagon, and a large crater remained in the fields of Pennsylvania, President Bush stated that those responsible would pay.

How did the United States receive all this information about the specific details of 9/11 and the Bojinka Plot? Yes, it was documented in the 9/11 Commission, but where did the Commission obtain the information? Simply put, the CIA captured KSM on March 1, 2003 and interrogated him at a secret CIA facility. They used enhanced

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61 Ibid., p. 149.
interrogations on him, including waterboarding, and he began describing in full detail the plots of 9/11 as well as many other attacks al Qaeda was planning on America.

“For its part, Congress passed a joint resolution that authorized the President to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.”\(^62\)

9/11 marked the day where President Bush, after receiving approval by Congress, authorized the CIA to find those responsible in the attacks.\(^63\) This leads to what the CIA has been doing since 9/11: capturing terrorists and interrogating them about plots against America and its allies at secret facilities as well as highly controversial prisons at Abu Ghraib, Iraq and Guantanamo Bay, Cuba.

3.5 ABU GHRAIB AND GUANTANAMO BAY

3.5.1 ABU GHRAIB

Torture is cruel and unusual punishment and has no place in any type of interrogation. The CIA knows this and knows that it is illegal domestically and internationally. The Agency always walks that fine line between what is legal and moral to what is reprehensible. It is not as if the Agency does this out of personal satisfaction or for political reasons, but it always acts on what it feels is right for the Agency and for the country’s national security. Abu Ghraib in Iraq not only became an international

\(^{62}\) Michael N. Schmitt, p. 5.
scandal regarding torture against Iraqi prisoners, but it supposedly involved U.S. military personnel implementing methods they had been taught by the CIA.\textsuperscript{64}

Even as late as July, the Army's inspector general, Paul Mikolashek, claimed that ‘these abuses should be viewed as what they are: unauthorized actions taken by a few individuals.’ A month later, after human rights groups pointed to evidence of much wider culpability, two government reports - one released by an Army panel chaired by Major Gen. George Fay, the other by a commission headed by former Defense Secretary James Schlesinger - confirmed what many already sensed: that the abuse went far beyond the seven arrested MPs.\textsuperscript{65}

The alleged abuse of the prisoners at the Iraqi detention facility escalated when The\textit{Washington Post} leaked photos of prisoners not being treated in a manner acceptable under United States law or under Geneva.

Major General George R. Fay was appointed to conduct an investigation into the prison abuses at Abu Ghraib. His report added to the growing debate regarding the War on Terror, especially the military and the CIA’s involvement in it to obtain intelligence from captured combatants. His report mentioned that “When hostilities were declared over, US forces had control of only 600 Enemy Prisoners of War (EPW) and Iraqi criminals...The primary causes (of abuse) are misconduct (ranging from inhumane to sadistic) by a small group of morally corrupt soldiers and civilians, a lack of discipline on the part of the leaders and Soldiers of the 205\textsuperscript{th} Military Intelligence Brigade (MI BDE).”\textsuperscript{66}

This report caught national media attention for months as reporters of the\textit{National Catholic Reporter}, James Hodge and Linda Cooper, wanted the nation to know


the specifics of the abuses that the Fay Report revealed. “It (Fay Report) found dozens of cases of abusive treatment of prisoners, including stripping them naked and subjecting them to intense heat or cold or holding them in stress positions for long periods of time. The most graphic revelation was of a game between two teams of dog handlers who used their animals to try to induce involuntary bowel movements in terrified teenage boys.”

What the report does not state was how overcrowded and underemployed the prison was and how mismanaged it was. Also, personnel at the prison did not have accurate records documenting more than half of the prisoners that were detained there. Dr. Saccone confirms this by stating, “Unphased by my revelation, they (American advisors at Abu Ghraib) confided that the Iraqi authorities only really kept an accurate count of about 40% of the prisoners.”

Marc Thiessen goes on further to explain the panel that was established to investigate the prisoner abuses and the guilty parties involved. “Indeed, the Independent Panel (set up by Secretary of Defense Rumsfeld to investigate alleged prisoner abuse/torture at CIA secret sites, Abu Ghraib, and Guantanamo Bay) found that one of the principal reasons for the abuses at Abu Ghraib was the fact that Abu Ghraib was seriously overcrowded (7,000 detainees), under-resourced (guard force of just ninety MPs), under continual attack.” Not to mention, the report did not appear to directly implicate the CIA as one of the guilty parties to the prisoner abuse. The Fay Report seemed to just implicate both civilian and active military personnel only.

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67 Ibid., p. 3.
Senator Kerry and other political leaders on Capitol Hill felt that it was not just
the military that should be held culpable in this situation, but also the CIA and civilian
leaders, and specifically the Bush Administration. Things got worse for the Agency and
the Administration when the CBS News program, 60 Minutes, on April 28, 2004,
displayed photos of tortured prisoners at Abu Ghraib by military and CIA ghost
personnel that were obtained by the Washington Post. Less than a month later, the paper
released the photos via their website. What happened in those photos had nothing to do
with CIA interrogations, military interrogations, or interrogations of any sort. None of
the pictured abuses at Abu Ghraib, in the words of one official investigation, ‘bear any
resemblance to approved policies at any level in any theater.’ Mr. Thiessen’s account
seems to reflect another person’s account on the prison as he got to see firsthand what
occurred on a daily basis at the infamous prison.

Interrogators will try to ascertain further information such as how he (a prisoner)
was selected for the training, how he made his way to Afghanistan, which countries
he traveled through, who assisted him, what travel documents were used, were any
documents forged, how and when did he obtain them, can he identify any persons
attending training at the same time, can he identify persons working at the camp,
can he describe the training curriculum, what weapons did he learn to use, what
bomb making techniques, and who taught them…Strategic information can take
months to acquire and may lead to other lines of questioning developed from the
detainee’s answers.

Dr. Saccone was able to experience the daily occurrences at the prison, while Mr.
Thiessen learned about those occurrences via classified CIA and military documents due
to his status as presidential aide and speechwriter for President Bush.

20, 2010. Photos located in Appendix B.
71 Marc A. Thiessen, p. 38-39.
72 Richard Saccone, p. 38.
By the time one of the major leaders in the al Qaeda organization, Abu Faraj al-Libbi (third in command only behind Osama Bin Laden and Ayman al-Zawahiri) was captured, Abu Ghraib was permanently cemented in the world’s mind. Senators John McCain, Lindsey Graham, and John Warner in late 2005 fought to pass the Detainee Treatment Act. In short, this bill restricted how interrogations of enemy combatants could be conducted. So, once the Abu Ghraib scandal broke, and the CIA had the third in command of al Qaeda detained, they were limited in what they could do to interrogate him and extract vital information from him.

“The entire world knew about Abu Ghraib; but few knew about the capture of al-Libbi, the vital intelligence he possessed, or the damage that could be done by restricting the ability of the CIA to get that information. And the damage was immediate and lasting. Once enhanced interrogation techniques could not be used, al-Libbi had no incentive to talk.” That legislation suspended the CIA interrogation program for approximately two years. Director of National Intelligence Admiral Mike McConnell wanted the CIA program to continue, but he needed sound logic to present to Congress in light of the Detainee Treatment Act. So, after reviewing the legal reasoning provided by the Justice Department from 2002 to 2004 authorizing the use of enhanced techniques, he was granted authorization to sign papers permitting the Agency to continue utilizing the program.

There is no doubt that the abuses that some of the prisoners took at Abu Ghraib were not only unnecessary but illegal. The military police (MPs) at Abu Ghraib were under direct orders from the Pentagon to treat the prisoners there like other prisoners of

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73 Marc A. Thiessen, p. 41.
74 Ibid., p. 118.
war under the Geneva Conventions. “The aberrant behavior on the night shift in Cell Block 1 at Abu Ghraib would have been avoided with proper training, leadership, and oversight. It faulted the ‘predilections of the noncommissioned officers in charge,’ and stated, ‘had these noncommissioned officers behaved more like those on the day shift, these acts, which one participant described as just for the fun of it, would not have taken place.’”75

Unfortunately, the damage that Abu Ghraib did to the public image of the United States and its military/intelligence organizations did not help in convincing politicians that enhanced interrogations should continue unchanged. It is true that Admiral McConnell did reinstate the CIA program, but waterboarding was one of the techniques that was not among the approved techniques. “Abu Ghraib created a disadvantage for the United States. My view of the political rationale for the decision (removal of waterboarding as a technique under the CIA interrogation program) was it regained what was lost at Abu Ghraib, but that it gave away a technique that might be vital to the protection of Americans and American interests.”76 When Abu Ghraib is looked at in the long run, there has been no empirical evidence of the CIA being linked to that abuse and that interrogations were involved to justify the abuse.

As Mr. Thiessen put it, “(C)ritics charge that the CIA program was part of a wider policy of abuse that began at CIA black sites and spread to Guantanamo Bay, Afghanistan, and Iraq—and led directly to the abuses at Abu Ghraib. And they charge that coercive interrogations are immoral and unnecessary—and that in the war on terror we can remain safe while avoiding the difficult choices that create tension between our

76 Marc A. Thiessen, p. 235.
values and our security.”77 If Abu Ghraib was not bad enough for the Agency, the Bush Administration, and the military, controversy did not fade away when information was leaked about abuse and torture being carried out at the Cuban prison site, Guantanamo Bay.

3.5.2 GUANTANAMO BAY

Abu Ghraib has certainly been difficult and trying on the CIA and the United States as a whole, but the controversy that has surrounded Guantanamo Bay for the last couple of years could quite possibly give the Iraqi prison a run for its money. “Since the counter-terrorism operations began, controversy has surfaced regarding a number of legal issues. Most notable among these have been the detention, treatment and proposed prosecution of the detainees held at US Naval Base Guantanamo Bay.”78 KSM was moved to this facility from CIA custody along with a few other high end al Qaeda detainees, including a couple more that were involved in the planning, financing, and execution of 9/11. Guantanamo was where KSM and other detainees began claiming that torture had been used against them, including waterboarding, and that their overall treatment was poor. Because of this, during his first week in office, President Obama decided to take quick action.

He issued Executive Order 13491 on January 22, 2009, which discontinued the CIA enhanced interrogation program and closed CIA secret facilities and bases in the Middle East as well as in different places around the world where illegal actions and

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77 Ibid., p. 71.
78 Michael N. Schmitt, p. 11.
harsh treatments of prisoners had been taking place.\textsuperscript{79} Also that same day, the extremely controversial military base, Guantanamo Bay, was placed on Executive Order 13492 to be closed down within a year due to its “cruel and unusual punishment to the prisoners that are detained there as well as the wrongful imprisonment of some of the people at the facility.”\textsuperscript{80} Fortunately for the CIA, these executive orders did not place another ban on their interrogation program, but it will require the Agency as well as all other intelligence organizations and the military to adhere to the interrogation process in the \emph{Army Field Manual}. That manual will be discussed in the next chapter.

There are two points to criticize with Executive Orders 13491 and 13492 by President Obama. First, the closing of Guantanamo Bay will and has forced the United States and other countries to find places to transfer these detainees, many of them high level terrorists that included KSM, and then decide whether to try them in a civilian criminal court or in a military tribunal. That will be talked about in later chapters. Second, having to follow the \emph{Army Field Manual’s} interrogation program to the letter forces the CIA to treat these detainees as military prisoners of war (POWs) and hinders the Agency’s ability to properly extract vital intelligence from them. “The rule would prevent trained interrogators at the CIA from using lawful interrogation techniques against terrorists who have been trained to withstand \emph{Army Field Manual} Techniques.”\textsuperscript{81}

Critics of the detention facility have claimed that Guantanamo (Gitmo) has become a recruiting tool for terrorism, specifically for al Qaeda. “Blair (Director of National Intelligence Dennis Blair) responded that Guantanamo has become a major

\textsuperscript{80} Ibid.
\textsuperscript{81} Ibid.
recruiting tool for al Qaeda, setting off an exchange with Senator Orrin Hatch of Utah that concluded with Blair saying: ‘Guantanamo has achieved a sort of mythic quality that helps al Qaeda.’”

In the absence of any hard information in the document - including in particular the interrogation logs that may have been kept - it serves as a timely reminder that those who seek to justify abuse and torture are dependent on a culture of secrecy, and on the publication of selective extracts of partial and (most likely) self-serving views. Even if these techniques were effective, they were illegal and they were wrong. Most likely they served only to extend the conflict, to create a recruiting tool for those on whom they were used, as has happened more recently with Guantanamo and Abu Ghraib.

Due to the fact that so many al Qaeda operatives and other terrorist detainees have been there, however, Democrats opposed to enhanced interrogation are also against President Obama’s decision to close the facility within a year of signing Executive Order 13492 due to the uncertainty of where the detainees would be transferred. “Senate Democrats rejected President Obama's request for funding to close the Guantanamo Bay prison and vowed to withhold federal dollars until the president decides the fate of the facility's 240 detainees.” These critics have realized that the detainees at Guantanamo Bay have unprecedented access to U.S. legal counsel, representation by the American Civil Liberties Union (ACLU), and the ability to enter into U.S. courts like U.S. citizens.

The two biggest unknowns about the Gitmo facility are exactly how many detainees are there and what treatment/interrogations have been thrust upon them.

“Enhanced interrogation techniques were applied to a small number of individuals. Of

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the tens of thousands captured in the War on Terror, fewer than 800 combatants were moved to Guantanamo Bay for detention and interrogation. Of these, only two individuals at Guantanamo had any special interrogation plans approved for them—and the techniques used by military interrogators were far less coercive than the techniques used by the CIA.”86 Not only were there misconceptions that the detainees at Guantanamo were being treated abusively, but there were also claims that there were people imprisoned at Gitmo that were just considered common criminals to be taught a lesson at the hardened facility. “While there were some individuals who were taken to Guantanamo who did not belong there, and subsequently released, the vast majority held at the facility were not common criminals or bystanders who were accidentally arrested. They were dangerous terrorists who had made it their life’s mission to kill Americans or America’s allies—and, if set free, would immediately return to fulfilling that mission (as some did).”87

Mr. Thiessen helped to write President Bush’s address regarding Guantanamo Bay, the transfer of KSM and other al Qaeda members to the facility, and the CIA’s enhanced interrogation program. This was in an attempt to push Congress into passing legislation to allow military commissions to begin as soon as possible to try KSM and the others. The address did work because the president signed the Military Commissions Act on October 17, 2006 a month after his September 6th address.88 The legislation also allowed the CIA to continue with its interrogation program, “This bill provides legal

86 Marc A. Thiessen, p. 34.
87 Ibid., p. 51.
protections that ensure our military and intelligence personnel will not have to fear lawsuits filed by terrorists simply for doing their jobs.”

The one question that should be asked is if the released detainees of Gitmo were ill-treated so horribly then why would they potentially risk receiving more of the same treatment if captured again after proceeding to go back to their terrorist ways? “In January, the Pentagon reported that as of December 2008 at least 60 former Guantanamo detainees who were released from the facility have returned to terrorism. (Gitmo has held nearly 800 enemy combatants since 2002; more than 500 have been released so far.)” These numbers, however, have not stopped critics from making the same claims that prisoners at Guantanamo Bay continue to be mistreated and tortured. “Human rights groups and civil liberties advocates who beat the drum to try them or set them free continue to rail against Gitmo, affecting international perceptions of the United States across the globe.” By closing Guantanamo and pronouncing abuse of detainees there, this seems to be hurting the fight against terrorism more so than it is trying to strengthen and reestablish a domestic and international high morality by the United States.

“Detainees in American custody—particularly those at Guantanamo Bay—have been treated humanely, in a manner that recognizes their inherent dignity as human beings. They are well fed, given time to exercise, and provided with opportunities to practice their faith. Indeed, they are treated better than criminals held in domestic prisons in the United States and the detention centers of Europe.” The importance here is to understand that Guantanamo Bay was exploited in public relations campaigns as being a

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89 Marc A. Thiessen, p. 56.
91 Ibid.
92 Marc A. Thiessen, p. 193.
facility where detainees were mistreated and tortured.93 It has been refuted with evidence, however, that they are treated humanely and though the CIA and military interrogate them, it is for national security due to the intelligence the detainees possess.94

Guantanamo Bay was the location where KSM divulged the 2006 airlines plot where al Qaeda members were planning on carrying out another Bojinka-style attack about a month before the five-year anniversary of 9/11. The plot was to hijack seven commercial planes and blow them up over the Atlantic Ocean. KSM gave up this information after being waterboarded for just under two minutes.95 This was just a fraction of what KSM told the interrogators and only one half of refuting the myth of abuse at the facility. The other half occurred when Guantanamo got particularly high marks in Admiral Albert Church’s report. “At GTMO, where there have been over 24,000 interrogation sessions since the beginning of internment operations (2002), there are only three cases of closed, substantiated interrogation related abuse, all consisting of minor assaults in which…interrogators exceeded the bounds of approved interrogation policy.”96 Even now in 2011, President Obama has kept Guantanamo Bay open and has decided to move forward with military tribunals of detainees at the facility as opposed to civilian trials.

94 Ibid., p. 2.
95 Marc A. Thiessen, p. 6-7.
4 RULES OF INTERROGATION

4.1 INTRODUCTION

In this chapter, the discussion will become more concrete regarding the interrogation process of the intelligence and military communities. The rules of interrogation will be looked at and analyzed. In section 4.2, the Geneva Conventions will be looked at in more detail than before to achieve a better understanding of the guidelines for prisoner treatment and intelligence extraction.

Section 4.3 will go over the UN’s Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment. It will reflect the Geneva Conventions stance on prisoner treatment and demonstrate the fine line that the CIA and military walk in their interrogations.

Section 4.4 will discuss the Army Field Manual, and its guidelines to conducting proper interrogations to extract intelligence from prisoners of war. This manual is the barometer that President Obama and his administration set when they first entered office for intelligence and military personnel to follow when conducting interrogations.97

Section 4.5 will revisit the CIA’s laws when regarding their interrogation program and also look at the more specific interrogation methods the Agency employs. The KUBARK Manual and the Human Resource Exploitation Manual will also be revisited to further evaluate the CIA’s interrogation program.

4.2 GENEVA CONVENTIONS

Due to the Geneva Conventions that were restated in 1949, countries in general and the CIA and the United States military in particular, were forced to adhere to stricter

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rules and regulations regarding interrogating prisoners and what means and lengths they could go to in order to get information out of those prisoners. “The Geneva Conventions and their Additional Protocols are international treaties that contain the most important rules limiting the barbarity of war. They protect people who do not take part in the fighting (civilians, medics, aid workers) and those who can no longer fight (wounded, sick and shipwrecked troops, prisoners of war).” 98 Since these laws are international treaties, all states and non-actors are bound to these treaties if they are ever to come into conflict with one another or within themselves. 99 These treaties have a worldwide acceptance and must be treated as law. It is very difficult for a nation to work its way around the language of the treaties. One of the aspects of international humanitarian law that the Geneva Conventions heavily focuses on is the importance of prisoners of war being protected against violence and coercion to reveal information.

This is one of the main items that nations like the United States and other military and intelligence powers have the most difficulty avoiding. “Captured combatants and civilians who find themselves under the authority of the adverse party are entitled to respect for their lives, their dignity, their personal rights and their political, religious and other convictions. They must be protected against all acts of violence or reprisal. They are entitled to exchange news with their families and receive aid. They must enjoy basic judicial guarantees.” 100 Political, military, and intelligence leaders alike have all put their opinions in regarding proper interrogation techniques and walking the proverbial fine line

99 Ibid.
of crossing over to torture. The Associated Press notes, “Sen. Richard Durbin, D-Ill. said some of the approved enhanced techniques ‘go far beyond the Geneva Convention,’ a reference to international rules governing the treatment of prisoners of war.” The overall background and essence of what the Geneva Conventions mean is known, but the actual treaties and protocols themselves have to be broken down to get a better idea of what the international community deems as permissible interrogation. Moreover, one can only assume that full knowledge of the accords is hardly likely for all the enemy combatants and soldiers in the world.

The very first Convention took place at the Hague in 1907 to 1908 and primarily dealt with the care of wounded soldiers whether in the battlefield or out at sea, and included certain weapons prohibitions. The wounded needed to be properly taken care of and not harmed further in any physical, mental, or emotional way. These notions were reiterated after the first World War Convention at Geneva. It was then that the notions of prisoners of war and interrogation techniques leading to gruesome and unnecessary torture were also addressed. An interesting note to this portion of the Convention process was that the members of the treaty process included language that stated “these conventions must be upheld during times of war between two of the signing parties of this convention, even if the conflict is not recognized by one side.” If this is correct, then the United States, Great Britain, and the other Coalition Forces fighting in the War on Terror must extend their protection to al Qaeda combatants, and al Qaeda may not be obliged to follow them in turn, since they are not state actors. Those radical terrorist

102 Ibid.
104 International Committee of the Red Cross, Convention (III): Treatment of Prisoners of War, Article 2, August 12, 1949.
groups opposing them in Iraq and Afghanistan need to adhere to the Conventions, however, because their states’ signatures are on the papers of the treaties. Consequently, they are obliged to follow suit given it seems clear that non-state groups like al Qaeda do not care about international law thus distinction may be irrelevant.

To this point, they have not adhered to the Geneva Conventions. Early War on Terror operations indicated when terrorists captured, not military personnel, but foreign civilians (journalists from the United States) and local civilians, they were beheaded on camera. There was no application of the law of war to these prisoners. There is no guarantee that the prisoners were interrogated about anything. It is pure speculation that the terrorists had interrogated them and abused them, then killed them or if they just killed them to prove a point to the Coalition forces. This is one of the main reasons why the debate of enhanced interrogation is so prominent. On one hand, the United States is obligated under the Geneva Conventions to grant captured individuals, during a period of war, human rights and proper treatment. On the other hand, terrorists of al Qaeda and other terror cells do not adhere to these laws. So, if they do not adhere to these laws when they have captured civilian and military personnel, then why do the CIA and the military have to adhere to the rules?

There has been much debate and legal dispute about the status of captured terrorists and whether they have combatant rights under the Geneva Convention, which would preclude torture and humiliating treatment. By mid-2008, there were several official and conflicting views, including a Supreme Court decision ruling that detainees had Geneva Convention rights and a new executive order that would allow the resumption of detention and interrogation as defined by the DCIA and compliant with the convention.

The next aspect of the third Geneva Convention treaty—revisited after World War II—confirmed what the world community felt was proper interrogation techniques, what torture was, and what was proper treatment of prisoners.

Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) taking of hostages; (c) outrages upon personal dignity, in particular, humiliating and degrading treatment; (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.\textsuperscript{107}

So according to this aspect of the Conventions, all countries who have signed onto and agreed to the terms of the Conventions cannot in any way, or under any circumstances, mistreat or abuse the captives or prisoners of war. Also, it indicates that those terrorist groups who beheaded those prisoners clearly violated the Conventions as they were not given a proper trial or charged with a crime. This has become more of an issue over the last decade or so because of how the militaries, intelligence agencies, and terrorist groups have treated captured civilians and military officers throughout this current conflict.

The limitations of the Geneva Conventions are apparent as those conventions did not prevent the US Embassy bombings in Kenya and Tanzania, the suicide attack on the USS \textit{Cole}, the 1993 attack on the WTC, or 9/11 from happening. “Preventing such attacks is the real purpose of Geneva. Most people think of the Geneva Conventions as a set of rules requiring humane treatment of prisoners of war. But their actual objective is much broader than that. The Conventions were created to protect innocent civilians by

\textsuperscript{107} International Committee of the Red Cross, \textit{Convention (III)}: \textit{Treatment of Prisoners of War}, Article 3: Section 1, August 12, 1949.
deterring violations of the laws of war.”\textsuperscript{108} The Conventions go even further in detail about how prisoners of war should be treated and how the Detaining Power, as the Conventions put it in the treaty, should go about this:

Art 13. Prisoners of war must at all times be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited, and will be regarded as a serious breach of the present Convention. In particular, no prisoner of war may be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoner concerned and carried out in his interest. Likewise, prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity. Measures of reprisal against prisoners of war are prohibited.\textsuperscript{109}

There has been controversy as to which tactics the CIA employs in order to gain necessary intelligence of benefit to national security. Radical terrorist groups, like al Qaeda, Hamas, and Hezbollah, however, have members who are citizens in states like Iraq, Afghanistan, Israel, Iran and Saudi Arabia. They seem to feel like the rules that their countries adhere to do not apply to them. Then when some of their compatriots get captured by Coalition forces or CIA operatives, these groups expect the Geneva Conventions and all the rules about legal interrogation to be applied to them.\textsuperscript{110} Otherwise, they threaten to go to the press with what is done to them, and the military and intelligence agencies look like the criminals.\textsuperscript{111} This confirms the CIA viewpoint of terrorists not as prisoners of war but as enemy combatants because they do not act like opposing military forces in an armed conflict; the Army Field Manual, however, still sees

\textsuperscript{108} Marc A. Thiessen, p. 29.
\textsuperscript{109} International Committee of the Red Cross, \textit{Convention (III): Treatment of Prisoners of War}, Articles 13-14, August 12, 1949.
the terrorists as prisoners of war and treats them that way under Geneva and the rules of war.

As Jack Goldsmith writes in his book, *The Terror Presidency*, under Geneva, “(I)f a soldier wears a uniform and complies with the basic laws of war, he would be treated well if caught. But if (as terrorists do) he wears ordinary clothes and hides among civilians, he endangers the innocent and acts treacherously toward rival soldiers, and thus receives no rights under Geneva.”112 This relates to the Agency’s argument as to why the enhanced program should be used as the terrorists are not part of an organized and known military force.

Current Attorney General Eric Holder stated on CNN in 2002,

(O)nne of the things we clearly want to do with these prisoners is to have an ability to interrogate them and find out what their future plans might be, where other cells are located under; the Geneva Convention you are really limited in the amount of information that you can elicit from people. It seems to me that given the way in which they conducted themselves, however, that they are not, in fact, people entitled to the protection of the Geneva Convention. They are not prisoners of war.113

Furthermore, Paula Zahn goes on to ask Holder about John Walker Lindh, the American Taliban and statist, regarding how much pressure the United States Government should place on him to extract information out of him while they interrogate him. Holder responded, “Well, I mean, it’s hard to interrogate him at this point now that he has a lawyer and now that he is here in the United States. But to the extent that we can get information from him, I think we should.”114 Since Holder took the Attorney General position in the Obama Administration and reviewed the July 29, 2009 Office of

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112 Marc A. Thiessen, p. 29.
114 Ibid.
Professional Responsibility report on the CIA’s enhanced interrogation program, he has changed his stance on rights accorded by the Conventions. In a statement on August 24, 2009 following his review of the OPR report, Attorney General Eric Holder said:

I have reviewed the OPR report in depth. Moreover, I have closely examined the full, still-classified version of the 2004 CIA Inspector General’s report, as well as other relevant information available to the Department. As a result of my analysis of all of this material, I have concluded that the information known to me warrants opening a preliminary review into whether federal laws were violated in connection with the interrogation of specific detainees at overseas locations.¹¹⁵

Allowing the Geneva Conventions to apply to the detainees of the CIA would, in essence, undermine the Conventions and put America and its allies at great risk.

4.3 CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Despite the fact that memos released in 2005 by the Justice Department stated that the enhanced interrogation program conducted by the CIA was in accordance with the UN convention and Geneva, the legality and morality of the program remained in question. “We conclude that use of these techniques, subject to the CIA’s careful screening criteria and limitations and its medical safeguards, is consistent with United States obligations under Article 16 of the United Nations Convention against Torture.”¹¹⁶

The USA has tried to comply with Geneva as well as the Convention against Torture, but unlike Geneva, there were not nearly as many nations that signed to support this measure. Nearly ninety countries less than those which signed Geneva signed the Convention


against Torture. Interestingly, Iraq and Cuba never signed the Convention, but Afghanistan did. Though the CIA still has to maintain the standards of Geneva and the Torture Convention, interrogating enemy combatants in Cuba and Iraq provides the Agency with some legal wiggle room, albeit very little room.

The Torture Convention includes language stipulating those who will be interrogating detainees of any kind, on any level of law enforcement, should emphasize the prohibition against torture. The Treaty also notes treatment which is appropriate and humane. As will be discussed in the next section regarding the Army Field Manual, the Convention also states that all interrogations and the interrogators must be kept under review to prove that the laws are being followed and torture is not occurring. This point is demonstrated by Thiessen when he writes:

The Justice Department found they (CIA’s techniques) did not violate this standard (cruel, inhuman, or degrading treatment) under U.S. law either. But even if they had, the Convention Against Torture (the international treaty barring torture) itself permits an exception for cruel, inhuman, and degrading treatment in exigent circumstances, such as a national emergency or war…Many of the enhanced interrogation techniques used by our Intelligence Community have been declared not to be torture by our allies and by the European Court of Human Rights.

Articles 2, Section 2 of the Convention discusses torture and only torture not the lesser side regarding cruel, inhuman, and degrading treatment. In order for the Agency to avoid the torture classification in their interrogation program, they have to be extremely careful as to whom they capture. A low-level captive being interrogated the same way as a high-level captive will only create more problems than the information obtained will

118 Ibid., Article 10: Section 1.
119 Ibid., Article 11.
120 Marc A. Thiessen, p. 172-173.
In a related article regarding torture, Geneva, and al Qaeda, Steven Bradbury points out:

The CIA must conclude based on available intelligence, that the detainee is an important and dangerous member of an al Qaeda-affiliated group. The CIA must then determine, at the Headquarters level and on a case-by-case basis with input from the on-scene interrogation team that enhanced interrogation methods are needed in a particular interrogation. Finally, the enhanced techniques, which have been designed and implemented to minimize the potential for serious or unnecessary harm to the detainees, may be used only if there are no medical or psychological contraindications.\(^\text{121}\)

The Convention, like the Justice Department and Geneva, has seen a commitment from the CIA on this last point. As the United States moves through the era of the Obama Administration, on the other hand, the Federal Government has tried to be more sensitive towards international public opinion and human rights groups.

4.4 ARMY FIELD MANUAL AND PENTAGON PROTOCOL

The Intelligence Community, especially the CIA, view interrogation as a necessity of the job they are trained to do. John Yoo, deputy assistant Attorney General at the Justice Department’s Office of Legal Counsel from 2001 to 2003, helped to write and review the memos between the CIA and the Justice Department regarding the enhanced interrogation program. During this time, he stated: "To be sure, Article 31 of the Fourth Convention prohibits any ‘physical or moral coercion’ of civilians ‘to obtain information from them,’ and there is a clear prohibition of torture, physical abuse, and denial of medical care, food, and shelter."\(^\text{122}\) President Obama and his Administration have spoken about it since he entered into the White House and stated that the military,

\(^{121}\) Steven G. Bradbury, p. 4-5.

CIA, and any other intelligence agency or law enforcement agency needed to adhere not only to the Geneva Conventions but also to the *Army Field Manual*. The latest edition to the *Army Field Manual* was back in September of 2006, which is not a long time ago but issues regarding the treatment of prisoners at Guantanamo Bay, secret facilities and bases run by the CIA, and the waterboarding interrogation technique have come up repeatedly since then. “In accordance with the Detainee Treatment Act of 2005, the only interrogation approaches and techniques that are authorized for use against any detainee, regardless of status or characterization, are those authorized and listed in this Field Manual.” This seems to reiterate and strengthen not just the military’s stance on interrogation methods crossing the line into torture, but it seems that it reflects the country as a whole politically.

If the Pentagon did not enforce these rules, then the bureaucrats from Washington would be coming down hard on them. High-ranking officials at the Pentagon have a lot at stake in regards to their careers and political lives because they have interaction with Capitol Hill as well as the White House. They do not want to be making policy or disturbing the equilibrium that they have with the politicians in Washington. According to the manual, despite all the provisions, stipulations, and guidelines that have to be followed, use “of the approaches and techniques authorized and listed in this *Field Manual* also require additional specified approval before implementation.”

One presumes, when it comes to national security and defending the nation during a time of crisis, those same officials will try to do what is right for the country. They just

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125 Ibid., p. 8
might be kept in the dark by those in the Intelligence Community, especially by the CIA.

Certainly the *Army Field Manual* limits interrogation:

Interrogation, the HUMINT subdiscipline responsible for MI exploitation of enemy personnel and their documents to answer the supported specific information requirements (SIRs), requires the HUMINT collector to be fully familiar with both the classification of the source and applicable law. The principles and techniques of HUMINT collection are to be used within the constraints established by US law including the following:

- The Uniform Code of Military Justice (UCMJ).
- Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (including Common Article III), August 12, 1949; hereinafter referred to as GWS.
- Geneva Convention Relative to the Treatment of Prisoners of War (including Common Article III), August 12, 1949; hereinafter referred to as GPW.
- Geneva Convention Relative to the Protection of Civilian Persons in Time of War (including Common Article III), August 12, 1949; hereinafter referred to as GC.
- Detainee Treatment Act of 2005, Public Law No. 109-163, Title XIV.126

This can give the American people a background as to how many laws might be violated in order to acquire HUMINT that would affect the national security of the country. The FBI has chiefly domestic authority. But abroad, it is the CIA’s responsibility to gather information among other countries. The Agency should be run this way in order to not just save American lives but innocent lives of foreign allies throughout the world.

The manual outlines what exactly HUMINT (human intelligence) is and what it entails. One of the main aspects of HUMINT, according to the *Army Field Manual*, is interrogating Enemy Prisoners of War and other detainees.127 Another interesting aspect of the Manual is that it points out that the potential sources for obtaining HUMINT include threat, neutral, and friendly military and civilian personnel. Those people providing the information do not have to be detainees/prisoners of war or members of a military group or government. They can also be non-governmental organizations, local...
residents of the country, refugees, or even friendly military forces who pose a resistance to radical groups causing disruptions to their countries.

It then reiterates that interrogations are allowed to be carried out to develop and gather intelligence on their enemies and other aspects that might impact America’s national security. It goes on to state that it is solely the position of the Department of Defense and military personnel, however, to carry out appropriate and legal interrogations of detainees and others under the accordance of the laws of war, U.S. law, international law, and other treaties. It then goes on to state that CI agents should not be confused with HUMINT collectors. Those agents are specially trained and should be used primarily to prevent intelligence from being accumulated by enemies. “HUMINT collectors are not to be confused with CI agents. CI agents are trained and certified for, tasked with, and carry out the mission of denying the enemy the ability to collect information on the activities and intentions of friendly forces. Although personnel in 97E and 97B MOSs may use similar methods to carry out their missions, commanders should not use them interchangeably.”

Some might consider this stepping onto the toes of the CIA, but in a way this makes sense, as the CIA runs a clandestine operation and interrogates confidentially but hopefully within the realm of U.S. and international law.

The *Army Field Manual* goes into further detail about the interrogation process with the document including a thorough definition about interrogation as presented by the DOD.

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. Some examples of interrogation sources include EPWs and other detainees. Interrogation sources range from totally cooperative to highly antagonistic. Interrogations may be

\[128\]&nbsp;&ldquo;Ibid., p. 15.&rdquo;
conducted at all echelons in all operational environments. Detainee interrogation operations conducted at a Military Police (MP) facility, coalition-operated facility, or other agency-operated collection facility are more robust and require greater planning, but have greater logistical support. Interrogations may only be conducted by personnel trained and certified in the interrogation methodology, including personnel in MOSs 97E, 351M (351E), or select others as may be approved by DOD policy. Interrogations are always to be conducted in accordance with the Law of War, regardless of the echelon or operational environment in which the HUMINT collector is operating.\textsuperscript{129}

One key thing to look at is where interrogations can take place, according to the Army Field Manual. They can occur at any detainee collection facility. At these facilities, certified military or other official personnel legally can collect information and interrogate detainees as necessary. In some small cases, interrogations can occur out in the field but only if proper procedure has been carried out, laws are followed, and permission was granted to conduct the operation.\textsuperscript{130} Even though the CIA is a separate entity from the military because it is a non-DOD agency, it must receive special permission to utilize the Army’s facilities to commence an interrogation.

These requests must be approved by the JTF commander or, if there is no JTF commander, the theater commander or appropriate higher level official. The interrogation activity commander will assign a trained and certified interrogator to escort non-DOD interrogators to observe their interrogation operations. The non-DOD personnel will sign for any detainee they want to question from the MPs, following the same established procedures that DOD personnel must follow. In all instances, interrogations or debriefings conducted by non-DOD agencies will be observed by DOD personnel. In all instances, non-DOD agencies must observe the same standards for the conduct of interrogation operations and treatment of detainees as do Army personnel. All personnel who observe or become aware of violations of Army interrogation operation standards will report the infractions immediately to the commander. The personnel who become aware of mistreatment of detainees will report the infractions immediately and suspend the access of non-DOD personnel to the facility until the matter has been referred to higher headquarters. Non-DOD personnel conducting interrogation operations in an Army facility must sign a statement acknowledging receipt of these rules, and agree to follow them prior to conducting any interrogation operations.\textsuperscript{131}

\textsuperscript{129} Ibid., p. 18.
\textsuperscript{130} Human Intelligence Collector Operations: FM 2-22.3, p. 90.
\textsuperscript{131} Ibid., p. 90.
This debate as to who has the right and is legally able to interrogate detainees has been continuing since 9/11. As Lowenthal observes:

In late 2007, Congress was considering legislation that would limit interrogations to those contained in the *Army Field Manual*, which allows nineteen interrogation techniques but not some of the harsher techniques that intelligence officers had apparently used on terrorists. There has also been a debate about the efficacy of harsher techniques. Opponents argue that information obtained under these circumstances cannot be reliable. Proponents disagree. CIA director Gen. Michael Hayden said, in November 2007, that more than 70 percent of the intelligence used in the latest terrorism NIE (national intelligence estimate) came from interrogated terrorists.\(^{132}\)

In order to examine and evaluate the methods and conduct which the CIA employs in their interrogation program, acceptable interrogation techniques need to be scrutinized from the *Army Field Manual*. The reason is these are the techniques that the military, politicians, and the International Community have universally approved. If there are striking similarities, arguments against the CIA’s program will be harder to prove and defend.

First, there are numerous techniques which the *Army Field Manual* prohibits that will be on the CIA’s accepted list of effective methods to use while interrogating enemy combatants.\(^{133}\)

If used in conjunction with intelligence interrogations, prohibited actions include, but are not limited to— forcing the detainee to be naked, perform sexual acts, or pose in a sexual manner; placing hoods or sacks over the head of a detainee; using duct tape over the eyes; applying beatings, electric shock, burns, or other forms of physical pain; waterboarding; using military working dogs; inducing hypothermia or heat injury; conducting mock executions; and depriving the detainee of necessary food, water, or medical care.\(^{134}\)

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\(^{132}\) Mark M. Lowenthal, p. 259.

\(^{133}\) Ibid., 144-162.

\(^{134}\) Ibid., p. 97
So, the *Army Field Manual* prohibits waterboarding as well as sensory deprivation, but as
was noted earlier and will be discussed further, these techniques have been used by the
CIA for decades with very little interference.

The Federal Government wants the military and the CIA to use this manual to the
letter because it covers all the legal roadblocks that might occur during an interrogation
of an enemy combatant. Plus, with listing which methods are prohibited, it follows
Geneva and the Convention against Torture to the letter. The Manual continuously states
throughout that prisoners should be treated humanely, avoiding violations of their rights
mentally, emotionally, and physically. The Manual lists and describes 18 techniques that
are acceptable plus one additional restrictive technique.\(^{135}\)

Even though, there were techniques that were not described, it seems apparent that
these techniques all have in common the obligation not to attempt any form of coercion
in any shape or form. The Pentagon and the Federal Government want to follow Geneva
and the Torture Convention so much that they have their interrogators use a multitude of
emotional approaches to coax or trick the detainee to divulge information. The
approaches in Appendix C appear to only be used on low-level enemy combatants and
detainees. The other approaches, however, appear to be the techniques used most often
on high-level detainees to get the information that the interrogators require as quickly and
efficiently as possible.

No one could reasonably maintain that the *Army Field Manual* exhausts the
universe of lawful tactics that the United States can use in terms of the interrogation
of these unlawful enemy combatants. Except for one technique, all the policies in
the *Field Manual* are designed for use with traditional, privileged Prisoners of War.
Terrorists are unlawful enemy combatants, and are not entitled to these traditional
very, very high privileges and standards applicable to Prisoners of War.\(^ {136}\)

\(^{135}\) See Appendix C for Army Field Manual list of acceptable interrogation techniques.
\(^{136}\) Marc A. Thiessen, p. 206-207.
Once again though, the military and government are treating terrorists either like common criminals or prisoners of war, and as the world has learned since 9/11, these terrorists do not engage in a modern war; the CIA knows this, which is why their approach to extracting intelligence from these enemy combatants is slightly different.

4.5 CIA INTERROGATION PROGRAM AND CODE OF CONDUCT

Since the inception of the CIA, the intelligence agency’s goal was to gather information on American enemies and even the country’s allies in order to protect the nation on a foreign front, which in turn protects the country domestically. As time has passed, the Agency has evolved in the ways it could gather and obtain intelligence from sources through different methods, especially using interrogation. The CIA views interrogation as a necessity of the job they are trained to do. Hands-on work, such as this, is considered HUMINT (human intelligence), which many intelligence analysts and officials use to put forth strategies and plans of attack that go to the Intelligence Committees and the President or the Joint Intelligence Committees for review and approval.

The problem that the Agency has had is that even though interrogation is an essential part of gathering intelligence, the Agency has constantly debated whether their techniques are torture. One of the reasons this has occurred is because critics of the CIA’s program do not have a solid understanding of the techniques the Agency implements to extract intelligence from enemy combatants. The perfect example to

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illustrate the difference in the CIA’s interrogation practices of terrorists would be to describe how a terrorist like Saddam Hussein interrogated prisoners. “Saddam and his henchmen drew amusement from dark methods such as boiling in oil, lowering captives into shredding machines, or throwing them from atop tall buildings. In fact, they videotaped various torture sessions for posterity. He also resorted to lesser forms of torture such as electrocution of the genitals, clipping tongues, lopping off ears, gouging out eyes, or chopping off fingers.”\textsuperscript{138} If the CIA’s methods are being compared to those sadistic acts, then the CIA’s interrogation program would look inconsequential.

The CIA has been very vocal in responding to critiques by the press, human rights activists, the UN, and those in the government who are against the Agency’s very existence.\textsuperscript{139} The former Director of the CIA, General Michael V. Hayden, denied that harsh, inhumane, and illegal methods of interrogation were used on high-valued captured terrorists.

\ldots the CIA’s terrorist interrogation effort has always been small, carefully run, and highly productive. Fewer than 100 hardened terrorists have gone through the program since it began in 2002, and, of those, less than a third have required any special methods of questioning. The Agency has over the years taken custody only of those terrorists thought to have information on potential attacks or unique insights into the workings of al-Qai’da and its affiliates. The United States and its allies have used the priceless intelligence from these men to disrupt plots, unravel networks, and save lives.\textsuperscript{140}

The former Director went on to describe that the CIA has cooperated with the Department of Justice.\textsuperscript{141} Also, he stated that the Agency has kept within the limits of the law in regards to interrogation, especially the interrogation of terrorists and others who

\textsuperscript{138} Richard Saccone, p. 69.
\textsuperscript{140} Ibid.
belong to countries under protection of the Geneva Conventions and other international laws and treaties.

…this vital counter-terror initiative has been subject to multiple legal and policy reviews, inside CIA and beyond. The Agency has worked closely with the Department of Justice and others in our government to ensure that the interrogation program operates in strict accord with US law and takes full account of any changes to the law. We have been proactive in seeking opinions that anticipate new legislation or fresh interpretations of existing laws and treaties. We serve a democracy of laws, and we underscore our place in that democracy by acting in keeping with the law... a sustainable interrogation program requires not only direction and guidance from the Executive Branch, but support from Congress. Our oversight committees have been fully and repeatedly briefed on CIA’s handling of detainees. They know the exceptional value that comes from the careful, lawful, and thorough questioning of key terrorists. They know what we do, and what we do not do—and we do not torture. They also know the lengths to which CIA, and our government as a whole, has gone to place and keep this source of intelligence collection, our most valuable in terms of al-Qai‘da, on a sound and solid legal footing.¹⁴²

The former Director is going to look out for his own in the Agency, including himself, but the arguments he provided are self-evident. There are definitely some aspects of the interrogation process, however, that the Director of the CIA might never divulge to the press, the American public, or even to the Federal Government.

The other misconception that the public, media, politicians, and human rights activists make is they equate terrorists to armed forces in a conventional modern war, which the War on Terror is not. In most previous wars, America and its allies knew who they were fighting because they were equipped with military uniforms and fought with tactics outside the rule of law.

Our enemy is not an Army, wears no uniform, follows no rules recognized by us and in fact, violates both the letter and the spirit of every aspect of the Convention. So, it is logical to argue that in the case of terrorists the Convention should not apply. Of course, the counter argument most commonly used is that the U.S. must

¹⁴² Ibid.
take the high ground, forever observing the spirit of the Convention even when our adversary does not.\textsuperscript{143}

One thing is for certain, with the release and declassification of four memos between the Agency and the Justice Department regarding the interrogation of al Qaeda operatives (i.e. Abu Zubaydah), use of specific and in detail coercive techniques on Zubaydah and other high-level al Qaeda terrorists, as well as other evidence suggest that coercive techniques used in these interrogations are legal under the Convention Against Torture. There is no denying which enhanced interrogation techniques the intelligence agency utilizes, when they use them, why they use them, and the legality of these methods. The debate returns to whether these techniques are considered torture under domestic and international law. Torture is defined by Principal Deputy Assistant Attorney General Steven G. Bradbury in one of the declassified CIA - Justice Department memos:

Torture is defined as an act committed by a person acting under 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. Severe mental pain or suffering is defined as “the prolonged mental harm” caused by four acts: (1) “the intentional, infliction or threatened infliction of severe physical pain or suffering;” (2) “the administration or application, or threatened administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;” (3) “the threat of imminent death;” and (4) “the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality.”\textsuperscript{144}

As these memos show, the enhanced techniques employed by the CIA do not fall under the category of torture as described, \textit{op. cit.} “The fact is \textit{none} of the techniques

\textsuperscript{143} Richard Saccone, p. 75.
used by the CIA meet the standard of torture in U.S. law. This is for two reasons: first, because the CIA’s interrogators did not specifically intend to inflict severe pain and suffering; and second because they did not in fact inflict severe pain and suffering." \(^{145}\)

After examining the techniques that are in the CIA’s interrogation program, both enhanced and normal methods, all of the techniques were permitted to be used and considered legal. \(^{146}\) "The techniques that we analyzed were dietary manipulation, nudity, the attention grasp, walling, the facial hold, the facial slap or insult slap, the abdominal slap, cramped confinement, wall standing, stress positions, water dousing, extended sleep deprivation, and the waterboard." \(^{147}\)

The CIA does not employ its enhanced interrogation program on every single person they capture. The Agency only employs those methods on what the interrogators, head CIA personnel, and Agency bylaws consider to be high value detainees. Mr. Bradbury addresses the CIA on this issue in one of the declassified memos:

You have advised that these techniques would be used only on an individual who is determined to be a ‘High Value Detainee,’ defined as: a detainee who, until time of capture, we have reason to believe: (1) is a senior member of al Qaeda or an al Qaeda associated terrorist group (Jemaah Islamiyyah, Egyptian Islamic Jihad, al-Zarqawi Group, etc.); (2) has knowledge of imminent terrorist threats against the USA, its military forces, its citizens and organizations, or its allies; or that has/had direct involvement in planning and preparing terrorist actions against the USA or its allies, or assisting the al Qaeda leadership in planning and preparing such terrorist actions; and (3) if released, constitutes a clear and continuing threat to the USA or its allies. \(^{148}\)

\(^{145}\) Marc A. Thiessen, p. 165.


\(^{147}\) Steven G. Bradbury, “Combined Use of Certain Techniques in the Interrogation of High Value al Qaeda Detainees,” p. 3-4.

\(^{148}\) Steven G. Bradbury, “Certain Techniques that May Be Used in the Interrogation of a High Value al Qaeda Detainee,” p. 6-7.
Another misconception is that the CIA interrogates these detainees in an isolated room using any methods possible, including torture, to get them to talk as well as roughing them up when they first arrive at the CIA facility. Again, Mr. Bradbury emphasizes what the CIA has told the Justice Department regarding detainees being treated by medical personnel prior to interrogation in a May 2005 memo:

You have also explained that, prior to interrogation; each detainee is evaluated by medical and psychological professionals from the CIA’s Office of Medical Services (“OMS”) to ensure that he is not likely to suffer any severe physical or mental pain or suffering as a result of the interrogation. Technique-specific advanced approval is required for all “enhanced” measures and is conditional on on-site medical and psychological personnel confirming from direct detainee examination that the enhanced technique(s) is not expected to produce “severe physical or mental pain or suffering.” As a practical matter, the detainee’s physical condition must be such that these interventions will not have lasting effect, and his psychological state strong enough that no severe psychological harm will result.149

To further emphasize the above point, enhanced techniques, including waterboarding, are used as training exercises for the Survival, Evasion, Resistance, and Escape (SERE) military program in order for military personnel (i.e. the Navy) to withstand capture and subsequent interrogation. “It is an established fact that waterboarding has been used on tens of thousands of American service members during SERE training. According to the Department of Justice, waterboarding was used on 26,829 American trainees from 1992 through 2001 in Air Force SERE training alone. To this day, the Navy continues to use waterboarding as a part of its SERE training.”150 The CIA’s enhanced interrogation techniques consist of eleven specific methods that range from low pressure to high pressure including nudity, hooding, and dietary manipulation. “These ten techniques are: (1) attention grasp, (2) walling, (3) facial hold, (4) facial slap

149 Ibid., p. 6-7.
150 Marc A. Thiessen, p. 163.
(insult slap), (5) cramped confinement, (6) wall standing, (7) stress positions, (8) sleep deprivation, (9) insects placed in a confinement box, and (10) the waterboard.”

The techniques are described in the declassified memos and Thiessen’s book, which will provide a lead out of this section of the study, and coinciding with a lead in to the following chapter of the reasons for and against the enhanced interrogation program. In regards to Nudity, Hooding, and Dietary Manipulation, “(T)his involves keeping the terrorist nude (except for a diaper), using a hood to keep him in the dark, and replacing his regular diet with a liquid diet of Ensure nutrition shakes.”

The Attention Grasp consists of “grasping the individual with both hands, one hand on each side of the collar opening, in a controlled and quick motion. In the same motion as the grasp, the individual is drawn towards the interrogator.”

The Facial Hold is “used to hold the head immobile. One open palm is placed on either side of the individual’s face. The fingertips are kept well away from the individual’s eyes.”

The Facial Slap occurs when “the interrogator slaps the individual’s face with fingers slightly spread. The hand makes contact with the area directly between the tip of the individual’s chin and the bottom of the corresponding earlobe. The interrogator invades the individual’s personal space. The goal of the facial slap is not to inflict physical pain that is severe or lasting. Instead, the purpose of the facial slap is to induce shock, surprise, and/or humiliation.”

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152 Marc A. Thiessen, p. 166 and Jay S. Bybee, p. 2.
153 Marc A. Thiessen, p. 166 and Jay S. Bybee, p. 2.
154 Marc A. Thiessen, p. 166 and Jay S. Bybee, p. 2.
155 Jay S. Bybee, p. 2.

In 2005, the Justice Department authorized another corrective technique, the abdominal slap, in order to provide “the variation necessary to keep a high level of unpredictability in the interrogation process.” Marc A. Thiessen, p. 166.
The next technique that can be implemented during enhanced interrogation is Cramped Confinement. This “involves the placement of the individual in a confined space, the dimensions of which restrict the individual’s movement. The confined space is usually dark.”\textsuperscript{156} Interrogators will determine how long the individual remains in this type of confinement, however, based on the size of the area. “For the larger space, the individual can stand up or sit down; the smaller space is large enough for the subject to sit down. Confinement in the larger space can last up to eighteen hours; for the smaller space, confinement lasts for no more than two hours.”\textsuperscript{157} Along with utilizing Cramped Confinement, Stress Positions and Wall Standing are used to wear the individual down in their mental focus and physical resistance. Then, the debriefing can begin and the debriefers/analysts would then ask questions of the captured enemy combatants in order to extract the necessary intelligence.

In one of the declassified CIA memos between the Agency and the Justice Department, DOJ made it clear that the Stress Positions, Wall Standing, and Sleep Deprivation would be allowed under the condition that no pain to the individual would result from the certain positions that they would have to remain in for a period of time.

A variety of stress positions may be used. You have informed us that these positions are not designed to produce the pain associated with contortions or twisting of the body…they are designed to produce the physical discomfort associated with muscle fatigue… (1) sitting on the floor with legs extended straight out in front of him with his arms raised above his head; and (2) kneeling on the floor while leaning back at a 45 degree angle.\textsuperscript{158} Wall Standing is another example of a technique the interrogators use to wear down the resolve of enemy combatants in order to get them to cooperate. “It is used to induce

\textsuperscript{156} Jay S. Bybee, p. 2-3.
\textsuperscript{157} Ibid., p. 2-3.
\textsuperscript{158} Ibid., p. 2-3.
muscle fatigue. The individual stands about four to five feet from the wall, with his feet spread approximately to shoulder width. His arms are stretched out in front of him, with his fingers resting on the wall. His fingers support all of his body weight. The individual is not permitted to move or reposition his hands or feet."

One of the two final permitted forms of enhanced interrogation techniques is Sleep Deprivation.

You have indicated that your purpose in using this technique is to reduce the individual’s ability to think on his feet and, through the discomfort associated with lack of sleep, to motivate him to cooperate. The effect of such sleep deprivation will generally remit after one or two nights of uninterrupted sleep…Moreover, personnel with medical training are available to and will intervene in the unlikely event of an abnormal reaction.

Of course, the final method of enhanced interrogation, and the one that has brought forth the most controversy to the CIA’s program, is the Waterboard.

In this procedure, the individual is bound securely to an inclined bench, which is approximately four feet by seven feet. The individual’s feet are generally elevated. A cloth is placed over the forehead and eyes. Water is then applied to the cloth in a controlled manner. As this is done, the cloth is lowered until it covers both the nose and mouth. Once the cloth is saturated and completely covers the mouth and nose, air flow is slightly restricted for 20 to 40 seconds due to the presence of the cloth. This causes an increase in carbon dioxide level in the individual’s blood. This increase in the carbon dioxide level stimulates increased effort to breathe. This effort plus the cloth produces the perception of ‘suffocation and incipient panic,’ i.e., the perception of drowning. The individual does not breathe any water into his lungs. After this period, the cloth is lifted, and the individual is allowed to breathe unimpeded for three or four full breaths. The sensation of drowning is immediately relieved by the removal of the cloth. The procedure may then be repeated…but it would last no longer than 20 minutes in any given period of time…We also understand that a medical expert with SERE experience will be present throughout this phase and that the procedures will be stopped if deemed medically necessary to prevent severe mental or physical harm.

159 Jay S. Bybee, p. 3.
160 Ibid., p. 3.
161 Ibid., p. 3-4.
With these techniques in mind and knowing that the CIA has been allowed to carry out these techniques by the President and the Justice Department, it is time to move to the reasons for using these techniques. Have they been effective in fighting the War on Terror? How are they compliant with the Geneva Conventions? What is the estimated number of attacks on America and its allies that have been prevented due to the intelligence received from these techniques? What opposing arguments still remain despite the legal claims that the Agency possesses?

5 REASONS FOR AND AGAINST CIA ENHANCED INTERROGATION

5.1 INTRODUCTION

Section 5.2 will discuss the reason for the CIA to use enhanced interrogation techniques in the War on Terror. The two main factors that are involved are American national security and preventing or at least hindering terrorist efforts domestically and abroad.

Section 5.3 will look at two of the minor factors for the CIA to use their enhanced interrogation program. The first factor is to provide aid in protecting American allies across the globe. Secondly, the Agency, as per their mission statement, *op. cit.*, is one of only a few organizations in the Intelligence Community or the military that have direct authorization by the President to carry out such operations.

Section 5.4 will look at the opposing viewpoints why the CIA should not employ enhanced techniques in the War on Terror. The most publicized reason for the opposition is the enhanced technique of waterboarding.
Finally, Section 5.5 will round out the chapter by discussing a couple of the minor factors as to why the CIA should not employ enhanced methods such as physical stress while being detained. Abu Ghraib and Guantanamo Bay will be briefly revisited here as allegations of physical and psychological abuse by interrogators towards the detainees will be addressed.

5.2 MAJOR REASONS FOR: AMERICAN NATIONAL SECURITY AND HINDERING TERRORIST EFFORTS DOMESTICALLY/ABROAD

Umar Islam, who was one of the alleged plotters in the foiled transatlantic plane hijackings, aka the Heathrow Plot, stated the following in his suicide video and later used as evidence during his trial for the terrorist plot:

This is revenge for the actions of the USA in the Muslim lands and their accomplices such as the British and the Jews. This is a warning to the non-believers that if they do not leave our lands there are many more like us and many more like me ready to strike until the law of Allah is established on this earth. Know that without doubt your dead are in the hellfire whilst the Muslims who died due to your attacks will be in paradise. Martyrdom operations upon martyrdom operations will keep on raining on these Kuffar (non-believers) until they release you and leave our lands.¹⁶²

When 9/11 occurred, Americans and the world were alarmed to note just how far a terrorist organization would go to make its point about its religion and the evils of the western world.¹⁶³ The Heathrow Plot included numerous operatives. Six of the eight martyrdom videos were found, used in subsequent trials as proof of their motive to carry out the attack, and then released to BBC News in the UK.¹⁶⁴

¹⁶³ Ibid.
¹⁶⁴ Ibid.
The Allied forces deserve a lot of credit, especially when they were able to capture KSM in March of 2003 from intelligence acquired by the CIA’s counterpart in Israel, the Mossad. Without their cooperation, as well as other intelligence agencies throughout the world, there would have been no guarantees of KSM’s capture, his subsequent interrogation by the CIA, or the security of America. This was a vital piece of information not just for American national security, but for the security of American allies and innocent civilians. KSM’s information was a vital component in preventing further terror attacks, apprehending over a thousand suspects, and retrieving vital information from some of those detainees by placing them in the CIA’s enhanced interrogation program.

“As a detainee, he (KSM) has provided reports that have shed light on al-Qa’ida’s strategic doctrine, plots and probable targets, key operatives, and the likely methods for attacks in the US homeland, leading to the disruption of several plots against the United States.” Due to the hard work by American armed forces, Allied forces, federal law enforcement agencies, and the CIA, one presumes, America has not been successfully attacked for nearly a decade since 9/11.

Not all legislators on Capitol Hill share the opinion of the critics of the CIA’s program. In fact, they think that without it, there is no telling what could have happened to the security of the nation. Senator Joe Lieberman, then the Chairman of the Homeland Security and Governmental Affairs Committee in the Senate, said: “We assess that al Qaeda's homeland plotting is likely to continue on prominent political, economic and

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infrastructure targets, with the goal of producing mass casualties, visually dramatic
destruction, significant economic aftershocks, and/or fear in the U.S. population,’ end of
quote.”

As this Senate Committee testimony indicates, al Qaeda is still being perceived as a major threat despite the fact that their forces have been on the run since the War on Terror began back in 2001. Nearly six years later, Congressman and Senators were still debating whether or not the war was a wise decision, and if the CIA should be conducting interrogations in the manner that they are/were. Now, it has been almost a decade since 9/11, and in the eyes of the victims’ families as well as the men and women of the military and the CIA, they have not forgotten what their job has and always will be: to protect America from all threats, especially terrorist threats, domestically and internationally.

KSM helped the CIA foil other terrorist plots, but even without his cooperation, the CIA managed to stop other plots after capturing other leaders from al Qaeda, Hamas, and other terrorist cells. Once the Agency operatives conducted the enhanced interrogation on KSM and others, they were able to uncover numerous attacks slated to occur post-9/11 and beyond for the next couple of years. It was not just the United States, though, that was al Qaeda’s main target. The group also wanted to attack Asia, Europe, and the Middle East in order to convert the world to Islam:

He (KSM) has admitted to hatching a plot in late 2001 to use Jemaah Islamiya (JI) operatives to crash a hijacked airliner into the tallest building on the US West Coast. From late 2001 until his capture in early 2003, KSM also conceived several low-level plots, including an early 2002 plan to send al-Qa’ida operative and US citizen Jose Padilla to set off bombs in high-rise apartment buildings in an unspecified major US city and an early 2003 plot to employ a network of

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170 Ibid., p. 1-3.
Pakistanis—including Iyman Faris and Majid Khan—to target gas stations, railroad tracks, and the Brooklyn Bridge in New York. KSM has also spoke at length about operative Ja’far al-Tayyar, admitting that al-Qa’ida had tasked al-Tayyar to case specific targets in New York City in 2001…During 2000-2001, KSM plotted attacks against US and other targets in Southeast Asia using al-Qa’ida and JI operatives, but after the 11 September attacks he claims that he largely regarded JI operatives as a resource for his plots against targets in Europe and the United States. KSM took a robust role in directing and assisting operations during 2002 and early 2003, providing money to Hambali for terrorist plots in East Asia, and encouraging attacks against US targets in Saudi Arabia. He has also revealed details of the al-Qa’ida bombing of the Djerba synagogue in Tunisia in April 2002. 171

During the aforementioned Senate Committee hearing, Senator Lieberman continued with his testimony describing in general detail some of the plots the CIA has blunted in part because of KSM’s and other terrorists’ testimonies. This testimony was recorded by debriefing personnel of the Agency after enhanced interrogations were implemented:

Consider the most recent plot broken up in Germany with, I might say proudly, the help of American intelligence operatives. This plot, which German officials have said was professionally organized mostly by native Germans who were radicalized in Germany, was nonetheless carried out by these people after they traveled to al Qaeda camps in Waziristan for training. And then remember the actual and foiled attacks that originated in England, Scotland, Spain, Algeria, Denmark and so many other places, all also locally plotted, some aimed at America and/or American targets. These are the evils and dangers of our age that we must live with and defend against. 172

On the other side of this praise by the Senator, the Federal Government also must take some of the blame in placing American national security at risk when the Obama Administration declassified four memos between the Justice Department and the CIA regarding the enhanced interrogation program.

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171 Ibid., p. 3-4.
172 Senator Joe Lieberman, p. 2.
Former CIA director Michael Hayden, described it best when asked if he was against the declassification, if he was asked to provide his input to the current government, and what this does to the program and American national security:

I wasn't asked. We weren't asked. We were informed as a courtesy by the agency that this was a pending decision, and all of us self-initiated, voluntarily, to call the White House and express our views. I should add, too, that the current director, Director Panetta, shared our views. I mean, if you look — if you look at what this really comprises, if you look at the documents that have been made public, it says top secret at the top. The definition of top secret is information which, if revealed, would cause grave harm to U.S. security — the release of them would be a grave threat to national security. Now, the president made a different decision fully within his authority. The president is the ultimate classification authority.\(^\text{173}\)

The Bush Administration and their legal counsel wanted to make sure that the enhanced interrogation program complied with Geneva, the Convention against Torture, and United States laws. The head of President Bush’s legal counsel, Alberto Gonzales, and his team deemed that the CIA’s program did in fact comply with Geneva for several reasons and under several statutes. Gonzales began his legal justification with reasons why al Qaeda should not be held to Common Article III of Geneva.

We conclude that Geneva III does not apply to the al Qaeda terrorist organization. Therefore, neither the detention nor trial of al Qaeda fighters is subject to Geneva III. Three reasons support this conclusion. First, al Qaeda is not a State and thus cannot receive benefits of a State party to the Conventions. It is a non-governmental terrorist organization composed of members from many nations, with ongoing operations in dozens of nations. Conduct towards captured members of al Qaeda, therefore, also cannot constitute a violation of 18 U.S.C. § 2441 (c)(1). Second, al Qaeda members fail to satisfy the eligibility requirements for treatment as POWs under Geneva Convention III. Article 4(A)(2) of Geneva III requires that militia or volunteers fulfill four conditions: command by responsible individuals, wearing insignia, carrying arms openly, and obeying the laws of war. Al Qaeda have violated all these conditions by attacking purely civilian targets of no military value, refusing to wear uniform or insignia or carry arms openly, but instead hijacking civilian airliners, taking hostages and killing them, and they themselves do not obey the laws of war concerning the protection of the lives of civilians or the means of legitimate combat. Third, the nature of the conflict precludes application of common article 3 of the Geneva Conventions. It is not an international war.

between nation-States because al Qaeda is not a State. Al Qaeda operates in many countries and carried out a massive international attack on the United States on September 11, 2001. Therefore, the military’s treatment of al Qaeda is not limited either by common article 3 or 18 U.S.C. § 2441(c)(3).174

Lead Counsel Gonzales and Assistant Attorney General Bybee, like the legal memo above, put out several memos from 2002 through 2004 to justify legally why the CIA’s enhanced interrogation program would not be violating domestic law, Common Article III of Geneva, and the Convention against Torture. They cited several Supreme Court cases that ruled that military and intelligence officials interrogating suspects did not violate the Convention, Common Article 3, or 18 U.S.C. §§ 2340-2340A including United States v. Godwin, 272 F.3d 659, 666 (4th Cir. 2001)175; United States v. Karro, 257 F.3d 112, 118 (2d Cir. 2001)176; United States v. Wood, 207 F.3d 1222, 1232 (10th Cir. 2000)177; South Atl. Lmtd. Ptrshp. of Tenn. v. Reise, 218 F.3d 518, 531 (4th Cir. 2002)178. Bybee and Gonzales also cited a relevant international court case from 1978 when the European Court of Human Rights distinguished between torture and cruel, inhuman, or degrading treatment or punishment in Ireland v. the United Kingdom.179 What is important to note on that case is the fact that the European Court examined interrogation techniques that the UK employed at the time, specifically wall standing, hooding, subjection to noise, sleep deprivation, and deprivation of food and drink. The Court deemed that these techniques were inhuman and degrading but not torture. The CIA employed some of those techniques in their enhanced interrogation program. All the

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176 Ibid.
177 Ibid.
179 Ibid., p. 28-29.
enhanced techniques are described in full detail in the declassified memos with legal reasoning that does not violate Geneva or the Convention against Torture.\textsuperscript{180} 

Declassifying the memos regarding the program was part of the Obama Administration’s justification of ending the program in Executive Order 13491. Revealing the CIA program’s specific details about enhanced interrogation, for this or any reason could evolve into a significant national security threat. If any terrorist cell were to read those memos, they would then know how to prepare for the interrogations, what tactics the Agency would use, how to train to withstand the methods that would be used on them, and overall be more prepared to fight the War on Terror. General Hayden remarks:

Sure. At the tactical level, what we have described for our enemies in the midst of a war are the outer limits that any American would ever go to in terms of interrogating an Al Qaeda terrorist. That's very valuable information. Now, it doesn't mean we would always go to those outer limits, but it describes the box within which Americans will not go beyond. To me, that's very useful for our enemies, even if, as a policy matter, this president at this time had decided not to use one, any, or all of those techniques. It still reveals those outer limits, and that's very important.\textsuperscript{181}

James Jay Carafano of the Heritage Foundation points out, “(A)ccording to then-CIA Director George Tenet, more than two-dozen terrorists, half of them al-Qaeda suspects, were brought to justice by rendition between July 1998 and February 2000... After 9/11, the United States greatly expanded its use of rendition. Between 100 and 150 major terrorist suspects have been apprehended under the policy since 9/11.”\textsuperscript{182} President Bush made the following remarks during his national speech in September 2006 mainly

\textsuperscript{182} James Carafano, Steven Groves, and Janice Smith, p. 45.
regarding the CIA’s enhanced interrogation program and many other points all while the 9/11 victims’ families were in attendance:

“This is not for the lack of desire or determination on the part of the enemy. As the recently foiled plot in London shows, the terrorists are still active, and they're still trying to strike America, and they're still trying to kill our people. One reason the terrorists have not succeeded is because of the hard work of thousands of dedicated men and women in our government, who have toiled day and night, along with our allies, to stop the enemy from carrying out their plans. And we are grateful for these hardworking citizens of ours.”

5.3 TWO MINOR REASONS FOR CIA TO USE ENHANCED INTERROGATION

Former Director of National Intelligence John Negroponte noted the following regarding the number of terrorist threats America faces today, and what it takes to stop these threats from becoming attacks:

We live in a world that is full of conflict, contradictions, and accelerating change. Viewed from the perspective of the Director of National Intelligence, the most dramatic change of all is the exponential increase in the number of targets we must identify, track, and analyze. Today, in addition to hostile nation-states, we are focusing on terrorist groups, proliferation networks, alienated communities, charismatic individuals, narcotraffickers, and microscopic influenza. The 21st century is less dangerous than the 20th century in certain respects, but more dangerous in others. Globalization, particularly of technologies that can be used to produce WMD, political instability around the world, the rise of emerging powers like China, the spread of the jihadist movement, and of course, the horrific events of September 11, 2001, demand heightened vigilance from our Intelligence Community.

The CIA’s repeated attempts to try to prevent terrorism from affecting millions of innocent Americans have grown global and have now affected American allies. KSM admitted as much during his interrogation while in CIA custody. “KSM stated that he

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had planned a second wave of hijacking attacks even before September 2001 but shifted his aim from the United States to the United Kingdom because of the United States’ post-11 September security posture and the British Government’s strong support for Washington’s global war on terror.”

The major plot that KSM discussed was the Heathrow Plot. “In addition to attempting to prepare this so-called Heathrow Plot—in which he planned to have multiple aircraft attack Heathrow Airport and other targets in the United Kingdom—KSM launched a number of plots against the United States.”

Due to the capture and interrogation of KSM by the CIA, the plot was foiled and thousands of innocent civilians were saved on an international level.

We assessed that al Qaeda's homeland plotting is likely to continue to focus on prominent political, economic, and infrastructure targets, designed to produce mass casualties, visually dramatic destruction, significant economic aftershocks, and/or fear among our population. Al Qaeda's affiliates from Africa to Southeast Asia also pose a significant terrorist threat. Al Qaeda in Iraq, AQI as we refer to it, has been weakened during the past year, but it remains al Qaeda's most visible and capable affiliate. Another affiliate, al Qaeda in the lands of the Islamic Maghreb, or AQIM, is the most active terrorist group in northwestern Africa. We assess it represents a significant threat to U.S. and European interests in the region. Other al Qaeda regional affiliates kept a lower profile in 2007, but we judge that they remain capable of conducting attacks against U.S. interests. Home grown extremists inspired by militant Islamic ideology, but without operational direction from al Qaeda, are an evolving danger, both inside the U.S. and to our interests abroad. Disrupted plotting last year in the United States illustrates the nature of this threat. In addition, our European allies continue to uncover new extremist networks plotting against the U.S. as well as targets in Europe.

From this testimony and by the sheer volume of examples provided by KSM and other captured terrorists’ testimony, it appears that terrorism will remain a threat for quite some time. It is a matter of how it is combated, however, and if the CIA, other American
intelligence agencies, and their international counterparts will not be handcuffed by their respective governments and the United Nations in the fight. Common Article III of the Geneva Convention, and the Convention against Torture must be adhered to, but when an adversary is playing by a different set of rules—as al Qaeda and other terrorist cells have been playing by for years—it might be time to stop the debate and allow the enhanced interrogation methods to resume. There are numerous legal memos from the Bush Judicial and Defense Departments with specific justification for the CIA program by court cases, U.S. law, and international law.¹⁸⁸ Former Director of National Intelligence, John D. Negroponte, states:

Collaboration with our friends and allies around the world has helped us achieve some notable successes against the global jihadist threat. In fact, most of al-Qa’ida’s setbacks last year were the result of our allies’ efforts, either independently or with our assistance. And since 9/11, examples of the high level of counterterrorism efforts around the world are many. Pakistan’s commitment has enabled some of the most important captures to date. Saudi Arabia’s resolve to counter the spread of terrorism has increased. Our relationship with Spain has strengthened since the March 2004 Madrid train bombings. The British have long been our closest counterterrorism partners—the seamless cooperation in the aftermath of the July attacks in London reflected that commitment—while Australia, Canada, France and many other nations remain stout allies.¹⁸⁹

The War on Terror is far from over, and the United States should not forget that its enemy will not stop just because some of its leaders have been neutralized. Mr. Negroponte discusses this further by stating:

Attacking the US Homeland, US interests overseas, and US allies—in that order—are al-Qa’ida’s top operational priorities. The group will attempt high-impact attacks for as long as its central command structure is functioning and affiliated groups are capable of furthering its interests, because even modest operational capabilities can yield a deadly and damaging attack. Although an attack using conventional explosives continues to be the most probable scenario, al-Qa’ida remains interested in acquiring chemical, biological, radiological, and nuclear

¹⁸⁸ See Appendix E for list of memos with descriptions of each document and link to view documents in their entirety.
¹⁸⁹ John D. Negroponte, Director of National Intelligence, p. 2-3.
materials or weapons to attack the United States, US troops, and US interests worldwide.\textsuperscript{190}

The United States, its military, and the CIA are leading challengers to international terrorism, but with attacks in Morocco in May 2003, bombings in Spain in March 2004, and bombing in the UK in July 2005, this is no longer just the United States’ war to fight. It is affecting more and more American allies/enemies as it moves forward. This global struggle that terrorists in al Qaeda and its affiliate cells proclaim on the West is not relenting. When the United Nations, the American government, and other nations put forth international and domestic policy about restricting intelligence agencies’ capabilities to conduct interrogations to obtain information on location of cells, plots, and weapons, then the world is facing not only an internal problem, but an external one as well.

It cannot be forgotten that the CIA has helped foil numerous terrorist plots domestically and abroad since 9/11 through the use of their enhanced interrogation program as well as their sharing of intelligence with other agencies in the Federal Government.\textsuperscript{191} The Agency has also shared intelligence with their counterparts internationally to help capture numerous leaders of al Qaeda and other factions, as well as using their interrogation program to help those other agencies parry terrorist attacks that were beyond the CIA’s jurisdiction.\textsuperscript{192}

\textsuperscript{190} Ibid., p. 4.
The CIA, as the USA’s primary intelligence supplier, has been entrusted with many borderline roles in this conflict. Political leadership changes over the past couple of years have slightly altered that approach as the current Administration put forth Executive Orders 13491 and 13492 to end the enhanced interrogation program, adhere to the Geneva Conventions, close Guantanamo Bay, and follow the interrogation guidelines of the Army Field Manual.\(^{193}\) Nonetheless, the CIA continues to move forward in the War on Terror to gather useful intelligence in order to help aid America in the fight.

Although, the Agency is still first in line in obtaining intelligence to thwart terrorist efforts in the United States and abroad, it must cooperate with other agencies in the Federal Government. In the aftermath of 9/11, the CIA conducted enhanced interrogations of captured terrorists, but under the Obama Administration, those methods have been called into question and halted. This leads us into the next section of this chapter. What are the objections against the Agency’s enhanced interrogation program? What national and international legal ramifications have been raised? What aspects of the program are being called into question?

5.4 MAIN REASON AGAINST ENHANCED INTERROGATION:

WATERBOARDING

General Michael Hayden discussed the opposition to waterboarding on *Meet the Press* stating, “But John McCain, who will be the Republican nominee for president, a former POW, said this: ‘All I can say is that ‘waterboarding’ was used in the Spanish Inquisition, it was used in Pol Pot's genocide in Cambodia, and there are reports that it is

being used against Buddhist monks today...It is torture.”194 Waterboarding and physical abuse among detainees and other captured terrorists have been the most prevalent stories to come at the CIA and the White House. Human rights groups continue to demand that the detainees receive humane treatment, and the International Community continue to demand that the CIA and the United States adhere to the Geneva Conventions.195

Despite the fact that the CIA and the Federal Government have provided arguments that waterboarding is not torture and that in fact it has been used as SERE training by the Pentagon for decades as well as being deemed legal by the Justice Department,196 opponents argue that it is a form of torture to simulate a drowning sensation on the detainee.197 It is true there have been forms of water torture used in the past, but not by the CIA. In fact, there is a big difference between the water torture used by some civilizations and waterboarding.

An example would be the Japanese conducting a water torture method in WWII:

“The victim was bound or otherwise secured in a prone position; and water was forced through his mouth and nostrils into his lungs and stomach until he lost consciousness. Pressure was then applied, sometimes by jumping upon his abdomen to force the water out. The usual practice was to revive the victim and successively repeat the process.”198

Another example would be the Tokio-wine treatment in China and the rice torture in Borneo. “Interrogators used hoses and teakettles to funnel water down the throat. Torturers fed starved prisoners large amounts of uncooked rice, and then pumped them

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196 Jay S. Bybee, p. 6.
full of water causing the rice to expand, stretching the internal organs and inflicting immense pain.”

Opponents of the CIA’s enhanced interrogation program still proclaim that it is a method of torture. “Waterboarding is a technique invented by the Spanish Inquisition, perfected by the Khmer Rouge, and in between, banned—originally banned for excessive cruelty—by the Gestapo!” observed Senator Chris Dodd. This relates to the misconception of the number of times that KSM was waterboarded while being interrogated back in 2003 and 2004. It was rumored that KSM was waterboarded over 183 different times at various time intervals that each session lasted. In one of the CIA memos that President Obama declassified in 2009, the CIA provided statistics of those who were subjected to the waterboarding training while in the Navy and Air Force. “Of the 26,829 students trained from 1992 through 2001 in the Air Force SERE training, 4.3 percent of those students had contact with psychology services. Of those 4.3 percent, only 3.2 percent were pulled from the program for psychological reasons. Thus, out of the students trained overall, only 0.14 percent were pulled from the program for psychological reasons…with respect to the waterboard, you have also orally informed us that the Navy continues to use it in training.”

Opponents to this interrogation technique argue that waterboarding causes physical and psychological harm, and while there might be a rare instance as noted above, whether it is during military training or an interrogation, the results normally seem

201 Joseph Abrams, “Despite Reports, Khalid Sheikh Mohammed was not Waterboarded 183 Times,” April 28, 2009.
202 Jay S. Bybee, p. 5-6.
to come without consequences to the individual.\textsuperscript{203} When the Obama Administration came into office in January 2009 and issued Executive Orders 13491 and 13492, it was the new CIA director himself, Leon Panetta, who stated he did not want to be a part of an agency that tortured detainees.

It was partly Panetta’s rectitude that got him the C.I.A. job. During the Bush years, he decried the country’s loss of moral authority; in a blunt essay for \textit{Washington Monthly} last year, he declared that Americans had been transformed “from champions of human dignity and individual rights into a nation of armchair torturers.” He concluded, “We either believe in the dignity of the individual, the rule of law, and the prohibition of cruel and unusual punishment, or we don’t. There is no middle ground.”\textsuperscript{204}

This was not the mindset of everyone involved with the current Administration. Before the above article even came out, Attorney General Eric Holder was involved with a House Judiciary Committee hearing in May 2009 and expressed why he thought waterboarding and the enhanced interrogation program was not illegal. Holder stated: “It’s not torture in the legal sense because you’re not doing it with the intention of harming these people physically or mentally.”\textsuperscript{205} It seems that the President does not see eye to eye with his Attorney General as he said almost the exact opposite a few weeks before the hearing in a speech delivered to all CIA employees at Langley on April 20, 2009: “A democracy as resilient as ours must reject the false choice between our security and our ideals and that is why these methods of interrogation are already a thing of the past.”\textsuperscript{206}

\textsuperscript{203} Ibid., p. 5-6.
The problem opponents of the CIA interrogation program like President Obama, his Administration, members of Congress, human rights groups, and international politicians have here is the preconceived notion that waterboarding and other enhanced methods are physically and mentally harmful while producing unreliable results. They read about past uses of a method that replicates waterboarding, but is not the same technique and is not administered in the same way.

Cheap, simple, and horribly effective, waterboarding dates back at least to the Spanish Inquisition as a way of extracting information by instilling extreme fear and pain without leaving visible marks...The technique, however, has hardly varied in the past 500 years. Its intention is to simulate slow drowning and terrify the victim into a confession... Agents of the Dutch East India Company used a variation of waterboarding during the Amboyna Massacre of 1623 when twenty people, including ten employed by the British East India Company, were tortured and murdered... Many of the world’s nastiest regimes have resorted to waterboarding, including the Gestapo and Kempeitai (the Japanese military police) during the Second World War, the Khmer Rouge, and the Pinochet regime, where the method was known, with grim euphemism, as “Asian torture”... The technique of “slow motion drowning” inflicts intense mental and physical suffering, and can cause severe long-term damage to the lungs and brain, but it leaves no obvious physical marks on the body. As well as being deniable, this form of torture may be inflicted repeatedly. There is also no doubt that waterboarding works, to the extent that it producing confessions. Whether the information extracted is of any value is more doubtful. A person on the point of drowning may tell the truth, or simply what he thinks the torturer wants to hear to stop the ordeal. 207

Though the declassified CIA memos with the Justice Department have revealed that several of the high-level detainees, such as KSM, have been waterboarded and have revealed invaluable information that has helped to foil numerous terrorist plots (i.e. the Heathrow Plot, bombings of the U.S. consulate and Western residences in Karachi, Pakistan, and a U.S. Marine camp in Djibouti), 208 opponents are still unconvinced as to how reliable the information is under this technique. “Inside the CIA, waterboarding is cited as the technique that got Khalid Sheik Mohammed, the prime plotter of the Sept. 11,

208 Central Intelligence Agency, p. 2.
2001, terrorist attacks, to begin to talk and provide information -- though ‘not all of it reliable,’ a former senior intelligence official said.”\textsuperscript{209} Later in the article, Mr. Pincus quoted Senator Ted Kennedy regarding military commission legislation and former punishments for waterboarding demanded by the US after WWII: “Asano was sentenced to 15 years of hard labor, Sen. Kennedy told his colleagues last Thursday during the debate on military commissions’ legislation. We punished people with 15 years of hard labor when waterboarding was used against Americans in World War II, he said.”\textsuperscript{210}

Waterboarding has been at the forefront for why the CIA’s enhanced interrogation program should never be used again, but there is also the matter of physical abuse that has come up during the last decade. An example that tests the \textit{Army Field Manual} and Geneva Conventions’ rules is an exercise involving mock prisoners and interrogation at the now infamous Guantanamo Bay that went terribly wrong.

A National Guardsman, Sean Baker, serving as an MP at the detention facility volunteered to be a mock prisoner in a routine exercise that military personnel and intelligence agents go through in the transportation and interrogation of prisoners. The key thing here was that whenever he did not want to participate any longer or had enough of the “rough” treatment, he was to speak the code word “red” for the team to stop and for the exercise to cease.\textsuperscript{211}

Mr. Soldz continues: “However, when he uttered this word, the team started handling him roughly and began to slam his head off the concrete floor. He continued yelling out that he was a U.S. soldier and yelling the code word out. Eventually, they stopped the assault on Baker, but he ended up having permanent injuries and severe brain trauma causing him to have epileptic seizures to this day.”\textsuperscript{212} Examples of prisoner abuse

\textsuperscript{210} Ibid.
\textsuperscript{212} Ibid.
such as this should not be tolerated, but the CIA has also been known to experiment with other methods that could be considered controversial or abusive.

Soldz’s article went on to describe a very controversial method that the CIA has been experimenting with for a long time: truth serum or as others call it, mind control:

At first defensively, and then as an offensive tool, the CIA undertook what became a 25-year program of research into mind control techniques under a variety of names, including, most notoriously MKULTRA. While time precludes an extensive review of this program, [the December 1977 APA Monitor contains an account of some of these activities] two components are of special relevance to today's topic. 1) For years the Agency, as the CIA is known, searched for a magic "truth serum” that would allow them to get captives to reveal their secrets; and 2) the CIA and the military funded extensive research into potentially effective interrogation techniques, including the possible use of hypnosis, of drugs, of isolation and extreme sensory deprivation, of brain stimulation, etc.\textsuperscript{213}

All the above interrogation techniques that the CIA and military have funded have all been considered forms of torture under the Geneva Conventions. This will transition into the final section of this chapter: the minor reasons against the enhanced interrogation program. Physical abuse at Abu Ghraib and Guantanamo Bay have been discussed previously, but they are going to be revisited as well as adding some more detail and examples of the abuse that may or may not have occurred on the CIA’s watch or during interrogations.

\section{MINOR REASONS AGAINST ENHANCED INTERROGATION:}

\subsection{PHYSICAL ABUSE AND ABU GHRAIB/GUANTANAMO BAY REVISITED

“Previously secret sworn statements by detainees at the Abu Ghraib prison in Iraq describe in raw detail abuse that goes well beyond what has been made public, adding

\footnote{Ibid.}
allegations of prisoners being ridden like animals, sexually fondled by female soldiers and forced to retrieve their food from toilets.”\textsuperscript{214} Despite the documented successes of the CIA’s enhanced interrogation program, there have been some aspects of the program and how it was carried out that have been called into question.\textsuperscript{215} Previously mentioned was the main technique implemented on KSM, waterboarding, in order to acquire his cooperation in extracting invaluable information on the inner workings of al Qaeda’s infrastructure and future terrorist plots. The other aspects of the program called into question would be the treatment of the enemy combatants held at CIA black sites and other facilities operated by the Agency.

During a speech delivered to the Senate, Senator Patrick Leahy stated:

There is ample evidence that American officials, both military and CIA, have used extremely harsh interrogation techniques overseas, and that many prisoners have died in our custody. Administration officials admit that 37 foreign prisoners have died in captivity, and several of these cases are under investigation, some as homicides. On June 17, David Passaro, a CIA contractor, was indicted for assault for beating an Afghan detainee with a large flashlight.\textsuperscript{216}

One does not make light, however, of abuses that have occurred to some detainees in detention facilities, CIA facilities, and prisons. On the other hand, this does not reflect on the entire Agency or the military and does not coincide with what typically occurs in the interrogation rooms. James Carafano of the Heritage Foundation stated in a recent article:

According to Pentagon spokesmen, U.S. military policy was to treat the detainees at the Abu Ghraib facility outside Baghdad in the same manner as enemy prisoners of war. That means they should have been accorded the rights and protections granted under the Third Geneva Convention of 1949, which precludes physical and mental torture, any form of coercion, threats, insults, or disadvantageous treatment. For an


American soldier, there are few crimes more shameful than breeching the standards of conduct established by the laws of war.\textsuperscript{217}

Whoever was responsible for the abuses at these prisons and facilities should be punished to the extent of American law because they violated the rules of war. During his time in office, President Bush firmly denounced the treatment of the detainees at Abu Ghraib after the story of what was occurring at the prison became public knowledge.\textsuperscript{218} President Bush discussed the Abu Ghraib situation on what would later air on Arab TV network Al-Jazeera on December 7, 2008: “Abu Ghraib was a terrible disappointment. And admittedly, I wasn’t there on site, but I was the Commander-in-Chief of a military where these disgraceful acts took place that sent the absolute wrong image about America and our military.”\textsuperscript{219}

The report on the abuses at Abu Ghraib went further and described some of the treatments that the MPs at the prison inflicted on the detainees: “punching, slapping, and kicking detainees; jumping on their naked feet; videotaping and photographing naked male and female detainees; positioning a naked detainee on a MRE Box, with a sandbag on his head, and attaching wires to his fingers, toes, and penis to simulate electric torture; using military dogs (without muzzles) to intimidate and frighten detainees, and in at least one case biting and severely injuring a detainee; taking photographs of dead Iraqi detainees; etc.”\textsuperscript{220}

The first approach is a moral analysis of the question of torture. Ethicists of different stripes have ventured through numerous twists and turns of moral logic to


\textsuperscript{218} Ibid.


\textsuperscript{220} Ibid.
arrive at different conclusions about the morality of torture. The argument, however, can be boiled down into a debate between utilitarianism and deontology. Utilitarian approaches judge an action according to its ability to achieve the greatest good for the greatest number of people. Should torturing a single individual prove to save the lives of hundreds or thousands of others, the action of torturing could be deemed justifiable. This is ultimately the argument the Bush Administration has made. When vetoing an Intelligence Authorization bill including prohibitions against torture, for example, President Bush argued, “if we were to shut down this program and restrict the CIA...we could lose vital information from senior al Qaeda terrorists, and that could cost American lives.”

Though opponents on Capitol Hill can have hearings with intelligence officials, who will offer as much information as possible without compromising national security, the testimony will still not be complete or provide enough evidence to satisfy the skepticism. When reports of prisoner abuse at Abu Ghraib and Guantanamo Bay are released by the media, as well as photos of that abuse, it is automatically related to the entire CIA’s interrogation program.

It has been confirmed, however, that Abu Ghraib abuses were isolated, and those conducting the abuse were reprimanded and disciplined appropriately. Something that would not be made known would be how some of the prisoners at the Iraqi prison actually felt about how Americans ran the prison, as compared to Iraqis. Richard Saccone discusses this after his most recent trip to the Iraqi prison:

Inquiring where the conditions were better she (International Red Cross representative) admitted they were better at Abu Ghraib but she said, “We should expect the conditions to be worse in Vietnam and Cambodia.” I wonder how she would have responded to the September 2006, UK Telegraph report of how prisoners reacted when Americans turned over Abu Ghraib to Iraqi authorities. One prisoner was quoted as saying, “The Americans were better than the Iraqis. They treated us better.” Another reportedly shouted, “Please help us, we want the human rights officers, we want the Americans to come back.” A third, Haleem Aleulami who had been released from jail said, “The Americans had treated him better when they ran the jail.”

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221 Congressman David Price, “Torture and Interrogation: Have We Gone Too Far?” op. cit.
222 Richard Saccone, p. 32.
In their article about new details emerging about Abu Ghraib prison abuse, Scott Higham and Joe Stephens of the *Washington Post* wrote:

The detainees said they were savagely beaten and repeatedly humiliated sexually by American soldiers working on the night shift at Tier 1A in Abu Ghraib during the holy month of Ramadan, according to copies of the statements obtained by The Washington Post. The statements provide the most detailed picture yet of what took place on the cellblock. Some of the detainees described being abused as punishment or discipline after they were caught fighting or with a prohibited item. Some said they were pressed to denounce Islam or were force-fed pork and liquor. Many provided graphic details of how they were sexually humiliated and assaulted, threatened with rape, and forced to masturbate in front of female soldiers.  

We have already noted that Abu Ghraib was not the only prison that raised controversy among critics of the CIA and the handling of enemy combatants. Guantanamo Bay in Cuba also became a hot button issue for skeptics of the treatment of detainees, the interrogation program, and the legality of the detainees’ due process. Dr. Carafano, Steven Groves, and Janice Smith wrote the following: “In violation of the Geneva Conventions and the customary laws of war, Taliban and al-Qaeda fighters in Afghanistan wear no uniforms or insignia. Unlike the soldiers of every nation that seeks the protections of the Geneva Conventions and other laws of war, Taliban and al-Qaeda fighters refuse to carry their arms openly. Such choices drastically increase the dangers of war to the civilians among whom Taliban and al-Qaeda forces hide.”

If no uniform is worn by the enemy to distinguish an organized military combatant, then domestic or international criminal law cannot easily be carried out in the same way against CIA officials conducting enhanced interrogation because Geneva does not overtly apply to terrorism. Also, the Supreme Court ruled in favor of the Military Commissions Act of 2006 to allow military tribunals to commence, but members of

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224 James Carafano, Steven Groves, and Janice Smith, p. 4.
Congress still question the legality of detention facilities like Guantanamo Bay. This sentiment was defended by Congressman David Price during an ethics symposium when he stated: “While Supreme Court justices and brilliant legal scholars have engaged in fascinating debates about the legality and morality of the Bush Administration’s justice system for terrorist suspects, reaching an array of different conclusions about the theoretical validity of Guantanamo Bay, the military commissions system, and the like, few would attempt to argue that this legal regime actually works.”

One of the major criticisms about Guantanamo Bay is the fact that not only are the detainees being mistreated, but they are being held at Gitmo for too long without going through the military tribunals.

As of May 2007, approximately 380 detainees were being held at Guantanamo Bay. Only about 60 to 80 of them are expected to stand trial before military commissions for their individual criminal acts. This list includes Khalid Sheikh Mohammed, the confessed mastermind of the September 11 attacks, and Ramzi Bin al-Shib, the so-called 20th hijacker. The remaining detainees are being held not because of any alleged criminal conduct but because (1) they fought against U.S. and Coalition forces in Afghanistan and (2) U.S. special military tribunals have determined that they are too dangerous to be released back into the world and would likely rejoin the fighting against U.S. and Coalition forces.

With the experiences of National Guardsman Sean Baker at Guantanamo Bay as a less than stellar example of the facility’s track record, the ICRC, media, and human rights groups have continued to declare that the treatment of the detainees at Gitmo is inhumane. Peter Brookes, a Senior Fellow of national security and foreign affairs for the Heritage Foundation, weighed in on the topic stating, “Despite living in extraordinary times after 9/11, critics claim Gitmo is an abuse of U.S. government power and evidence of America losing its moral bearings and credibility as the leader of the free world...

225 Congressman David Price, “Torture and Interrogation: Have We Gone Too Far?” op. cit.
226 James Carafano, Steven Groves, and Janice Smith, p. 3-4.
Human rights groups and civil liberties advocates who beat the drum to ‘try them or set them free’ continue to rail against Gitmo, affecting international perceptions of the United States across the globe.\textsuperscript{227} President Obama took these concerns to heart and signed Executive Order 13492 to have the prison shut down and the prisoners to be tried, transferred, or released outright.

In view of the significant concerns raised by these detentions, both within the United States and internationally, prompt and appropriate disposition of the individuals currently detained at Guantánamo and closure of the facilities in which they are detained would further the national security and foreign policy interests of the United States and the interests of justice... If any individuals covered by this order remain in detention at Guantánamo at the time of closure of those detention facilities, they shall be returned to their home country, released, transferred to a third country, or transferred to another United States detention facility in a manner consistent with law and the national security and foreign policy interests of the United States.\textsuperscript{228}

Of course, on the other side of this argument, President Obama and other critics of Guantánamo either failed to mention or did not know that the facility has a few things going in its favor in regards to the type of treatment enemy combatants receive and the rights they enjoy:

The detainees have more access and better access to health care than the soldiers and the dependents on the island. The new detention facilities built at the camp are exactly like the most modern federal prison facilities in the United States... There are, on average, two lawyers and three reporters for every detainee in Guantánamo. The International Committee of the Red Cross has a presence there, on average, about one out of every three days. And committee representatives have unaccompanied access to the detainees whenever they want it...Every detainee at Guantánamo has had his detention status reviewed by a formal board. Of the 400 or so detainees still there, about 120 have been determined eligible to be released to their home country or other country. They are being sent home as soon as countries agree to accept them and not torture them. Three hundred and fifteen have already been released from Guantánamo, including five in the month I visited. The others are given an annual review board to determine if detention is still warranted. In

\textsuperscript{227} Peter Brookes, “Closing Gitmo—A Dangerous Decision: Are al Qaeda and Taliban Coming to a Prison Near You?” \textit{op. cit.} \textsuperscript{228} Ibid.
addition, the detainees have the right to challenge their detention in U.S. federal civilian courts.\textsuperscript{229}

Only time will tell how Executive Orders 13491 and 13492 will affect how the CIA detains and interrogates detainees.

This ends the analysis regarding whether or not the CIA should employ their enhanced interrogation program to combat the War on Terror. There were many reasons for and against the program, and as the war has continued, a leadership change in the White House and on Capitol Hill has occurred. Policies from the previous Administration have been reversed by the new Administration, and now the CIA itself is in a state of transition. What changes have been made to the interrogation program that the CIA has been implementing for nearly a decade? What current threats exist, and is the Agency equipped to handle those threats?

6 PRESENT DAY: WHERE THE CIA CURRENTLY STANDS ON ENHANCED INTERROGATION

6.1 INTRODUCTION

Chapter Six will be a look at where the CIA is today under the Obama Administration. There will be some comparisons between what the Agency is doing now and what it did under the Bush Administration. How have the executive orders that President Obama signed affected the way the CIA fights the War on Terror? How does it affect how they interrogate enemy combatants? What has happened to the al Qaeda detainees at Guantanamo Bay since President Obama signed the order to close the

\textsuperscript{229}James Carafano, Steven Groves, and Janice Smith, p. 23-24.
prison? Finally, this chapter will summarize by reviewing controversies that surround the Agency internationally and internally.

6.2 WHERE IS THE CIA TODAY?

The Associated Press stated in an article regarding future al Qaeda attacks on the United States,

Al Qaeda can be expected to attempt an attack on the United States in the next three to six months, CIA Director Panetta, Homeland Security Director Napolitano, and others told Congress Tuesday. The terrorist organization is deploying operatives to the United States to carry out new attacks from inside the country, including ‘clean’ recruits with a negligible trail of terrorist contacts, CIA Director Leon Panetta said. Al Qaeda is also inspiring homegrown extremists to trigger violence on their own, Panetta added.230

Since 9/11 the CIA has done a good job defending the country and making sure that another terrorist attack like that day would never happen again. It has been nearly ten years since that attack occurred on American soil, and since then, numerous high-level al Qaeda operatives have either been killed or captured, including Khalid Sheikh Mohammed, Abu Zabaydah, Mustafa al-Hawsawi, Ramzi bin al-Shibh, Majid Khan, and Abu Zubair Al Haili.231 All these men were involved with either al Qaeda or Osama bin Laden, all had high rankings in the terrorist network, and were either involved with 9/11, the attack on the USS Cole, or other major terrorist attacks across the globe.232

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231 Marc A. Thiessen, p. 22-23.
Since 9/11 twenty-three major terrorist plots have been foiled due to the efforts of the CIA, their counterparts around the world, and the United States military. When the elections of 2008 ended, however, critics of the CIA’s program were empowered.

When President Obama took over in January 2009 he made it very clear that the United States would no longer tolerate a CIA that went against the Constitution of the United States or international law. His Office of Professional Responsibility within the Justice Department came out with an extensive report detailing the legal reasons why the CIA’s enhanced interrogation program violated U.S. and international law. The report also noted why the declassified CIA/Justice Department memos did not accurately analyze the rationale for the program. Among some of the reasons listed for the faulty justification of the program, the OPR stated that the documented SERE training was not implemented to the full extent of an actual real-life interrogation where helplessness may occur. It also noted that Assistant Attorney General, John Yoo, was pressured by the Bush Administration to quickly justify the legality of the program. The report also goes on to detail that Yoo was asked by the CIA to see if the Agency could get advanced pardons in case of prosecution for utilizing ETI’s, as well as Yoo telling the OPR that a majority of the techniques did not come close to the legal standard of torture but waterboarding did. President Obama delivered a speech at the National Archives Museum on May 21, 2009 and stated specifically about enhanced interrogation, Guantanamo Bay, and Abu Ghraib:

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236 Ibid., p. 49, 53. See Appendix E for the link to the OPR report in its entirety.
First, I banned the use of so-called enhanced interrogation techniques by the United States of America...What’s more, they (enhanced interrogation) undermine the rule of law...The second decision that I made was to order the closing of the prison camp at Guantanamo Bay...There is also no question that Guantanamo set back the moral authority that is America’s strongest currency in the world... In the images from Abu Ghraib and the brutal interrogation techniques made public long before I was President, the American people learned of actions taken in their name that bear no resemblance to the ideals that generations of Americans have fought for... But our Constitution has endured through secession and civil rights - through World War and Cold War - because it provides a foundation of principles that can be applied pragmatically; it provides a compass that can help us find our way.\textsuperscript{237}

The decision to halt the enhanced interrogation program did not just start with Executive Orders 13491 and 13492. The volume of criticism raging over how detainees were treated at Guantanamo Bay and Abu Ghraib, and while in custody of the CIA at undisclosed black sites, were supporters of the new President and his promise to change the CIA’s interrogation program. Along with the detainee treatment, critics also pointed fingers at the Agency for committing acts of torture while interrogating the enemy combatants.\textsuperscript{238} They claimed it was in serious violation of the Geneva Conventions. This was one of President Obama’s major promises in his campaign, so the President knew he had to deliver some action within his first 100 days of office.\textsuperscript{239}

Though former Vice President Dick Cheney implored President Obama to not end the interrogation program, he went further to ask him in an interview and a written request to at least let the American people see the good the Agency has done for the nation’s national security.\textsuperscript{240} Cheney wanted only certain aspects of the program to be

\textsuperscript{238} Congressman David Price, “Torture and Interrogation: Have We Gone Too Far?” op. cit.
declassified as well as some of the findings as a result of the program to be declassified to
to show the American people that what the CIA was doing was in the nation’s best interest
and not in any violation of international or domestic policy.\textsuperscript{241} President Obama took a
different direction and decided to declassify four CIA memos in their entirety between
the Agency and the Bush Justice Department about the legality of the interrogation
program.\textsuperscript{242} Though the Bush Justice Department found what the CIA did in their
enhanced interrogation program was legal and not violating domestic or international
law, the Obama Administration has continued to this day to hold its ground and keep the
CIA’s program at a standstill.\textsuperscript{243}

The military commissions of the imprisoned terrorists at Guantanamo Bay had
been put on hold due to the \textit{Hamdan v. Rumsfeld} Supreme Court case of June 2006.\textsuperscript{244} The Court concluded that the military commission did not have the authority to try
Hamdan with the charges that were presented, and that any attempt at carrying out the
trial would be in violation of the Geneva Conventions as well as the laws of war.\textsuperscript{245}

President Bush declared this unacceptable in his speech to the nation regarding the CIA
interrogation program and the transfer of CIA prisoners to Guantanamo; he wanted
Congress to pass legislation that specifically addressed the Court’s concerns with the
commissions so the imprisoned terrorists could be brought to justice.\textsuperscript{246} Now, KSM and

\textsuperscript{241} Ibid.
\textsuperscript{242} \textit{The New York Times}, “Justice Department Memos on Interrogation Techniques,” April 16, 2009, Available online
September 17, 2010.
\textsuperscript{243} Ibid.
\textsuperscript{244} Justice Stephens, \textit{Salim Ahmed Hamdan, Petitioner v. Donald H. Rumsfeld, Secretary of Defense, et al}, Supreme
Court of the United States, June 29, 2006, Available online at: http://www.law.cornell.edu/supct/pdf/05-184P.ZO.
Viewed on September 15, 2010.
\textsuperscript{245} Ibid.
\textsuperscript{246} George W. Bush, “Creation of Military Commissions to Try Suspected Terrorists,” September 6, 2006, Available
September 2, 2010.
other high-level terrorists are still going to be placed on trial, but it is a matter of what type of trial that they will ultimately be facing. The recent Obama decision on once again employing military commissions now seems to put the debate to rest where KSM and the others will be tried.

If the War on Terror was over at this point in time a brief hiatus for the CIA interrogation program and the suspension of military commissions would seem acceptable actions for the new President to make in order to appease critics. Unfortunately, the war appears far from over, and it would also appear that terrorists’ resolve has only strengthened instead of weakened. Now that the CIA and the military have been limited by their own government, there is a fear of prosecution of any past, present, or current apprehension and interrogation of a terrorist. It was not just Executive Orders 13491 and 13492, but the release of the CIA interrogation memos in April of 2009 and the potential of former Bush Administration and CIA officials being prosecuted for violating United States law and the Geneva Conventions, which had a chilling effect on CI efforts in the War on Terror.

Officers are saying, "The things I'm doing now — will this happen to me in five years because of the things I am doing now?" And the answer they've been given by senior leadership is the only answer possible, which is, "I can't guarantee you that won't happen, but I do know it won't happen under this president." The basic foundation of the legitimacy of the agency's action has shifted from some durability of law to a product of the American political process. So I think the really dangerous effect of this, Chris, is that you will have agency officers stepping back from the kinds of things that the nation expects them to do. I mean, if you were to go to an agency officer today and say, "Go do this," and, "Why am I authorized to do this?" And I say, "Well, it's authorized by the president. The attorney general says it's lawful. And it's been briefed to Congress." That agency officer's going to say, "Yeah, I know, but I see what's going on here now. Have you run it by the

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248 Ibid.
ACLU? What's the New York Times editorial board think? Have you discussed this with any potential presidential candidates? ²⁴⁹

So despite the fact that the Bush Justice Department has reviewed the interrogation program, and it received the go-ahead by the Bush Administration, CIA officials are now concerned about future legal complications. Former CIA director, General Michael Hayden, confided in an interview with Fox News’ Chris Wallace: “Throughout the conduct of this program, over the years of its existence, the comportment of the CIA agents who have been conducting these interrogations have been entirely within United States law and the Constitution. These programs have been under a very, very strict supervision carried out by very, very professional officers who are totally committed to complying with United States law.” ²⁵⁰ Hayden continued, “Our CIA interrogators and our CIA agents want to and are committed to behaving in a constitutional, a legal and lawful manner, and in a way that is consistent with our international obligations.” ²⁵¹

The Obama Administration has gone back and forth on whether or not to prosecute CIA officials, as well as Bush Administration officials, regarding waterboarding and other enhanced interrogation techniques. The destruction of CIA interrogation tapes is also a topic of controversy and concern. Nonetheless, the Obama Administration seems to have decided not to prosecute. ²⁵² Former D/CIA Hayden thinks that this is just the beginning for the legal ramifications of the interrogation program: “If you look at the letters that Director Panetta and Director Blair put out to the Intelligence

²⁴⁹ Ibid.
²⁵¹ Ibid.
Community workforce, near the end of both letters they make it very clear this is not the end of it. In fact, they suggest it's just the beginning. There will be more revelations. There will be more commissions. There will be more investigations. And this to an agency that is at war and is on the front lines defending America." 253

Restricting the CIA to adhering strictly to the Army Field Manual’s interrogation methods and the release of the CIA memos are not the only problem. Now that all this information is available for public consumption, the terrorists now know the limits the CIA and the military can go in regards to interrogation and extracting information. 254

Also in an interview with Fox News’ Chris Wallace, former DNI, John Negroponte, opined: “Those techniques were applied only when expressly permitted by the director, and are described in these opinions in detail, along with their limits and the safeguards applied to them.” 255 In the same light, Hayden, with help from writer Michael Mukasey, echoed former DNI Negroponte and went into more specific detail by stating:

Details of these successes, and the methods used to obtain them, were disclosed repeatedly in more than 30 congressional briefings and hearings beginning in 2002, and open to all members of the Intelligence Committees of both Houses of Congress beginning in September 2006. Any protestation of ignorance of those details, particularly by members of those committees, is pretense... Of the thousands of unlawful combatants captured by the U.S., fewer than 100 were detained and questioned in the CIA program. Of those, less than one-third were subjected to any of the techniques discussed in these opinions... In addition, there were those who believed that the U.S. deserved what it got on Sept. 11, 2001. Such people, and many who purport to speak for world opinion, were resourceful both before and after the Sept. 11 attacks in crafting reasons to resent America's role as a superpower. Recall also that the first World Trade Center bombing in 1993, the attacks on our embassies in Kenya and Tanzania, the punctiliously correct trials of defendants in connection with those incidents, and the bombing of the USS Cole took place long before the advent of CIA interrogations. 256

255 Ibid.
256 Ibid.
At this point, the biggest concern would be the fact that failed attacks have occurred more frequently over the last two years. Without the CIA’s enhanced interrogation program in effect to help gather intelligence on future attacks, more seem threatening without even this small insight into the future. In 2009, the country saw the failed Underwear Bomber on Christmas Day aboard a plane bound for Detroit, Michigan.\textsuperscript{257} Even though the attack failed, it was a demonstration of the post-enhanced interrogation era in the United States. Not only was the Intelligence Community aware of Abdulmutallab, but while in FBI custody he also warned that more like him were coming.\textsuperscript{258} “The suspect's father was so concerned about his son's radicalization he actually alerted the U.S. embassy in Nigeria that his son could be a threat to America. Abdulmutallab was put on a terror watch list, along with 550,000 others, but he was not put on the no-fly list. Moreover his U.S. visa, which he obtained a year and a half ago, was not revoked. He used the visa to board the flight to Detroit Christmas morning.”\textsuperscript{259}

Fortunately, passengers prevented him from completely detonating the bomb. Soon after the FBI had him in custody, but after only an hour of questioning they gave him his Miranda rights. He now awaits civilian criminal trial for terrorist acts and attempted murder instead of being treated as an enemy combatant and placed in a military commission.\textsuperscript{260} Current DNI Dennis Blair determined that all decisions about whether terrorist suspects appear in a criminal court or in front of a military commission would be


decided on a case-by-case basis.\textsuperscript{261} Furthermore, Blair went on to say: “The handling of terror suspects requires flexibility to allow for the appropriate response in each case.”\textsuperscript{262}

The Obama Administration’s stance on reading Miranda rights to suspected terrorists maintains that useful information can be produced while the suspect is interrogated under full rights. FBI Director Robert Mueller agreed saying: “that providing a suspect with Miranda rights can bring better information than traditional military or intelligence interrogation.”\textsuperscript{263} With this failed attack, along with the failed truck bombing in Times Square on May 2, 2010, and the attack on Fort Hood months before the underwear bombing attempt, al Qaeda’s resolve appears to be stronger than ever especially now that the CIA has been kept at bay from using their enhanced interrogation program.

A collaborative report with Fox News and the \textit{London Times} stated: “Al Qaeda in the Arabian Peninsula, a terrorist cell led by a former personal secretary to Usama bin Laden, issued a statement saying that the failed attack by Umar Farouk Abdulmutallab was a response to American-backed airstrikes on the group in Yemen this month.”\textsuperscript{264} Obama D/CIA Leon Panetta, though not in favor of the enhanced interrogation program, realizes that terrorist cells especially al Qaeda need to be dealt with and brought to justice. Despite the interrogation program being suspended, Panetta might try to persuade the President to reinstate the program.

“The biggest threat is not so much that we face an attack like 9/11. It is that Al Qaeda is adapting its methods in ways that oftentimes make it difficult to detect,” Panetta told the Senate Intelligence Committee. Al Qaeda is increasingly relying on

\begin{thebibliography}{10}
\bibitem{261}Ibid.
\bibitem{262}Ibid.
\end{thebibliography}
new recruits with minimal training and simple devices to carry out attacks, the CIA chief said as part of the annual assessment of national threats provided to Congress by the top five U.S. intelligence officials. Panetta also warned of the danger of extremists acting alone: "It's the lone-wolf strategy that I think we have to pay attention to as the main threat to this country," he said.\textsuperscript{265}

7 CONCLUSION

In his national address on September 6, 2006, President Bush had the following to say regarding all terrorists who have declared war on America and the Western world:

The terrorists who declared war on America represent no nation, they defend no territory, and they wear no uniform. They do not mass armies on borders, or flotillas of warships on the high seas. They operate in the shadows of society; they send small teams of operatives to infiltrate free nations; they live quietly among their victims; they conspire in secret, and then they strike without warning. In this new war, the most important source of information on where the terrorists are hiding and what they are planning is the terrorists, themselves.\textsuperscript{266}

This study demonstrates that by thoroughly assessing the reasons for and against the CIA’s enhanced interrogation program, the legality of the program and the necessity for it can be clarified. The purpose of the enhanced interrogation program is to gather intelligence from enemy combatants on terrorist operations and potential attacks.\textsuperscript{267}

Since 9/11 the CIA has been able to use intelligence gathered from the interrogations of captured enemy combatants. The self-professed mastermind of 9/11, KSM, was apprehended. Through his interrogation utilizing enhanced methods like waterboarding, the Agency was able to apprehend numerous other high-level terrorists from various networks, learn invaluable information about al Qaeda’s operating structure, terrorist financing, communications and logistics, planning, target selection, recruitment techniques, and stopped several potentially devastating plot attempts.

\textsuperscript{266} George W. Bush, “Creation of Military Commissions to Try Suspected Terrorists,” September 6, 2006.
Critics of the program still do not understand its purpose. Despite the Bush Justice Department legal memos that the techniques were legal and did not violate any domestic or international law, opponents still adamantly state that the CIA and its program is breeding more terrorists and placing the country’s national security at greater risk. This is, however, what the terrorists want. They want to see the U.S. on the moral defensive rather than on the offensive. The Intelligence Community still looked into potential threats on the country, but before 9/11, they thought as did the whole nation that the United States was invincible.

Despite the leadership changes in the CIA and other parts of the Intelligence Community, they are still dedicated to keeping America safe and will attempt not to make the same mistakes that brought on 9/11. Recent failed attacks on this country and warnings of future attacks should spark the government to take action and allow the Agency to continue doing its job. What the Agency was doing before was not only working, it was legal. The Agency would never videotape and then broadcast beheadings of enemy combatants nor mutilate them or dismember them. That is what the enemy does. That is torture and in violation of the Geneva Conventions. The CIA closely monitors the enhanced interrogations to ensure that nothing to that extent would ever happen to not only protect their agents and officials, but to uphold the country’s laws as well as maintaining the CIA’s reputation.

Once reports of prisoner abuse came to light at Abu Ghraib and Guantanamo Bay and the elections of 2008 brought in new political leadership, the possible suspension of

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the program became a harsh reality. Now that secret black sites of the CIA are being closed down, questions are being raised as to what the United States is going to do with the remaining detainees still in custody. KSM and others still wait at Gitmo to learn their fate, but if it was not for the CIA and its enhanced interrogation program, they might still be connected to terrorism. As Steven Kleinman wrote:

> In prosecuting the Global War on Terror, the targets of primary interest from both an operational and intelligence perspective are terrorism’s critical centers of gravity: financing, transportation, logistics, communications, and safe havens. Just as it would not be reasonable to expect any single analyst to be an accomplished subject matter expert in more than one (or possibly two) of these areas, it should not be assumed that any single interrogator can be prepared to explore the full knowledge ability of sources who have information pertaining to these key target areas.

The CIA enhanced interrogation program should be employed to combat the War on Terror, and the program should not have been halted by President Obama, especially with the growing hostility presently in the Middle East. But the review and monitoring of the interrogations by the DOJ is essential to refute the morally damaging charge of torture, and reassure a sensitive Congress that all interrogations are in conformity with American law.

### 8 EPILOGUE: KSM AND AL QAEDA TERRORISTS’ TRIAL AS WELL AS THE FUTURE OF THE CIA’S ENHANCED INTERROGATION PROGRAM

From the *New Yorker*, columnist Jane Mayer conducted an interview with Obama-appointed CIA director Leon Panetta. In her article, she stated:

> But, as Panetta sees it, the C.I.A.’s effort to “disrupt, destroy, and dismantle” Al Qaeda remains its top priority. The agency continues to acquire intelligence

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270 Steven M. Kleinman, p. 104.
suggesting that Al Qaeda is planning attacks on America, he told me. “We’re conducting pretty robust operations in Pakistan, and I think we’re doing a good job of trying to disrupt Al Qaeda. But, clearly, that is a threat.” The greatest danger, he said, is that Al Qaeda will “find other safe havens to go to,” in states such as Somalia and Yemen. “Our mission is to make sure they can’t find a place to hide.” Finding and bringing to justice Al Qaeda’s leaders—in particular, Osama bin Laden and Ayman al-Zawahiri—“remains a focal point,” Panetta said.²⁷¹

There is no guarantee at this point in time what will happen to KSM and the other high-level enemy combatants in U.S. custody. They are still being held at Guantanamo despite President Obama signing Executive Order 13492 to close the facility. There was debate late in 2009 and earlier in 2010 on whether the detainees should be transferred to prisons in the United States and appear in a civilian criminal court in New York City.²⁷²

The deadline to close Gitmo has come and gone despite President Obama promising that the facility would be closed within one year of signing the order. “The executive order also stipulates: ‘If any individuals covered by this order remain in detention at Guantanamo at the time of closure of those detention facilities, they shall be returned to their home country, released, transferred to a third country, or transferred to another United States detention facility in a manner consistent with law and the national security and foreign policy interests of the United States.’”²⁷³

President Obama put an unnerving spin on this point of the order by mentioning the potential return of detainees to their home country or being granted outright release. “‘Can we guarantee that they [the detainees] are not going to try to participate in another attack? No. But what I can guarantee is that if we don't uphold our Constitution and our values that over time that will make us less safe. And that will be a recruiting tool for

²⁷² Peter Brookes, Peter Brookes, “Closing Gitmo—A Dangerous Decision: Are al Qaeda and Taliban Coming to a Prison Near You?” op. cit.
²⁷³ Ibid.
organizations like al Qaeda.”274 Over the last year and a half, a bill has been debated in Congress, H.R. 5136: the Defense Authorization Act, which has provisions to not only keep detainees at Guantanamo Bay but for military commissions to recommence at the facility for those detainees.275 With the mid-term elections of 2010 behind the nation, the Republican Party taking a majority in the House and gaining several seats in the Senate, President Obama reluctantly signed the Defense Authorization Act into law on January 7, 2011.276

Once the notion was put out to the nation that the Federal Government was thinking about moving the detainees to prisons in the States and trying KSM in a civilian criminal court in New York City, there was a substantial backlash by not just Republicans in Congress, but Democrats as well and especially by the American public.277 Though the Defense Authorization Act has now been signed into law, there is no telling how long it will remain law with ongoing debate in Congress and a constantly shifting Executive branch.

The provisions expire on September 30, at the end of the current fiscal year. What happens at that point depends on what Congress decides on defense authorization. Until then, the law will make it very difficult for the Obama administration to pursue criminal trials for terrorism suspects, including the self-professed mastermind of the September 11 attacks, Khalid Sheikh Mohammed, who had been slated to face a trial in New York.278

Despite signing the Defense Authorization Act, it is notable that the Obama Administration is still contemplating bringing them to the United States to stand trial

274 Ibid.
278 Reuters, January 10, 2011.
despite what the American people think about transferring the detainees and their overall opinion about the CIA’s enhanced interrogation program.\textsuperscript{279} “Though the Obama administration is pursuing a military trial for the suspected bomber of the USS Cole, an attack that killed 17 sailors off the coast of Yemen in 2000, the president and his team have left the door open to a civilian trial for the men thought responsible for the 9/11 attacks including Khalid Sheikh Mohammed.”\textsuperscript{280} A civilian trial could not be a worse idea for the Obama Administration, the CIA, the military, and U.S. allies across the world.

This can only strengthen and embolden the terrorists’ resolve as their militant message is placed on a grander world stage.

Moreover, KSM and his terrorist allies will use the trial as a propaganda platform...Indeed, a lawyer for one of the terrorists, Scott Fenstermaker, told the \textit{New York Times} that all five men intend to plead not guilty just ‘so they can have a trial and try to get their message out.’ Fenstermaker says that his client, Ammar al-Baluchi, readily admits he is guilty. ‘He acknowledges that he helped plan the 9/11 attacks, and he says he’s looking forward to dying.’ But now Ammar and his cohorts will deny their guilty and delay their deaths, so they can use the proceedings to put America and its tactics in the war on terror on trial.\textsuperscript{281}

The Obama Administration will not try KSM and others in New York, and it appears military commissions will resume at Guantanamo Bay. What implications will this have on the CIA’s enhanced interrogation program when more details of the program are revealed allowing other terrorists to better prepare for the future will only be revealed with time. As President Bush notes:

\begin{quote}
Information from terrorists in CIA custody has played a role in the capture or questioning of nearly every senior al Qaeda member or associate detained by the U.S. and its allies since this program began. By providing everything from initial
\end{quote}

\textsuperscript{279} See Appendix A for polling data.
\textsuperscript{281} Marc A. Thiessen, p. 380.
leads to photo identifications, to precise locations of where terrorists were hiding, this program has helped us to take potential mass murderers off the streets before they were able to kill... We will also consult with congressional leaders on how to ensure that the CIA program goes forward in a way that follows the law that meets the national security needs of our country, and protects the brave men and women we ask to obtain information that will save innocent lives... Free nations have faced new enemies and adjusted to new threats before -- and we have prevailed. Like the struggles of the last century, today's war on terror is, above all, a struggle for freedom and liberty. The adversaries are different, but the stakes in this war are the same: We're fighting for our way of life, and our ability to live in freedom. We're fighting for the cause of humanity, against those who seek to impose the darkness of tyranny and terror upon the entire world.\textsuperscript{282}

\textsuperscript{282} George W. Bush, “Creation of Military Commissions to Try Suspected Terrorists,” September 6, 2006.
APPENDIX A: POLLING DATA

As you may know, Attorney General Eric Holder has appointed a special prosecutor to investigate the U.S. government’s use of harsh interrogation techniques against terrorism suspects during the Bush administration. From what you know or have read, do you approve or disapprove of this investigation?

Gallup Poll, Aug. 31-Sept. 2, 2009

GALLUP POLL

Approve/Disapprove of Investigation Into Use of Harsh Interrogation Techniques, by Party Affiliation

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<th>Approve</th>
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<td>Democrats</td>
<td>73%</td>
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<td>55%</td>
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<td>Republicans</td>
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Gallup Poll, Aug. 31-Sept. 2, 2009

Approve/Disapprove of Investigation Into Use of Harsh Interrogation Techniques, by How Closely Follow National Political News

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<td>36%</td>
<td>63%</td>
</tr>
<tr>
<td>Somewhat closely</td>
<td>51%</td>
<td>45%</td>
</tr>
<tr>
<td>Not too closely/Not at all</td>
<td>57%</td>
<td>34%</td>
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Gallup Poll, Aug. 31-Sept. 2, 2009

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Ibid. 285
Ibid. 286
APPENDIX B: ABU GHRAIB PHOTOS

288 Ibid.
289 Ibid.
APPENDIX C: LIST OF ACCEPTED INTERROGATION TECHNIQUES IN THE ARMY FIELD MANUAL

1. Direct Approach - the HUMINT collector asks direct questions. The initial questions may be administrative or nonpertinent but the HUMINT collector quickly begins asking pertinent questions;

2. Incentive Approach - trading something that the source wants for information. The thing that you give up may be a material reward, an emotional reward, or the removal of a real or perceived negative stimulus. There is an inherent suspicion of the truthfulness of “bought” information. Sources may manufacture information in order to receive or maintain an incentive;

3. Emotional Approach - centered on how the source views himself and his interrelationships with others. Through source observation and initial questioning, the HUMINT collector can often identify dominant emotions that motivate the EPW/detainee. Although the emotion is the key factor, an emotional approach is normally worthless without an attached incentive;

4. Emotional Love Approach - focuses on the anxiety felt by the source about the circumstances in which he finds himself, his isolation from those he loves, and his feelings of helplessness and the love the source feels toward the appropriate object: family, homeland, or comrades. The key to the successful use of this approach is to identify an action that can realistically evoke this emotion (an incentive) that can be tied to a detained source’s cooperation;

5. Emotional Hate Approach - focuses on any genuine hate, or possibly a desire for revenge, the source may feel. It may be effective on members of racial or religious minorities who have or feel that they have faced discrimination in
military and civilian life. The key to the successful use of this approach is to identify an action that can realistically evoke this emotion (an incentive) that can be tied to a detained source’s cooperation;

6. **Emotional Fear-Up Approach** - The HUMINT collector identifies a preexisting fear or creates a fear within the source. He then links the elimination or reduction of the fear to cooperation on the part of the source. The HUMINT collector must be extremely careful that he does not threaten or coerce a source;

7. **Emotional Fear-Down Approach** - The HUMINT collector mitigates existing fear in exchange for cooperation on the part of the source. This is not normally a formal or even voiced agreement. Instead, the HUMINT collector through verbal and physical actions calms the source;

8. **Emotional-Pride and Ego-Up Approach** - It exploits a source's low self-esteem. Many HUMINT sources including EPWs and other detainees, retained persons, civilian internees, or refugees may suffer from low self-esteem and feelings of helplessness due to their immediate circumstances;

9. **Emotional-Pride and Ego-Down Approach** - Approach is based on attacking the source's ego or self-image. The source, in defending his ego, reveals information to justify or rationalize his actions. This information may be valuable in answering collection requirements or may give the HUMINT collector insight into the viability of other approaches;

10. **Emotional Futility** - HUMINT collector convinces the source that resistance to questioning is futile. This engenders a feeling of hopelessness and helplessness on the part of the source;
11. The other approaches require considerable time and resources: “We Know All” Approach; File and Dossier; Establish Your Identity; Repetition; Rapid Fire; Silent; Change of Scenery; Mutt and Jeff; Oversight; False Flag; and Oversight Considerations.\textsuperscript{290}

APPENDIX D: LIST OF FOILED TERRORIST PLOTS SINCE 9/11

In the days after 9/11, America immediately went to work to prevent another act of terrorism by reassessing U.S. counterterrorism abilities. Lessons emerged, including the need for more information sharing down to the state and local level and with our allies, more intelligence-gathering abilities, and greater integration among the U.S. government agencies and with state and local governments, industry, and private citizens. The U.S. addressed these needs by:

- Developing terrorism-fighting legal and investigatory tools, including the PATRIOT Act and the expansion of Foreign Intelligence Surveillance Act (FISA), to help to identify, prosecute, and convict terrorists.

- Increasing information sharing and collective security around the globe through assistance programs, information-sharing agreements, and the sharing of counterterrorism best practices.

- Developing law enforcement partnerships from the grassroots level up, which have enabled the U.S. to disrupt the flow of money and resources to terrorist groups and to prevent acts of terrorism across the United States. The creation of Joint Terrorism Task Forces has been a key part of this effort.\(^{291}\)


- Jose Padilla, May 2002.

- Lackawanna Six, September 2002.


- Yassin Aref and Mohammad Hossain, August 2004.


• Mohammad Zaki Amawi, Marwan Othman El-Hindi, and Zand Wassim Mazloum, February 2006.

• Syed Haris Ahmed and Ehsanul Islam Sadequee, April 2006.


• Assem Hammoud, July 2006.

• Liquid Explosives Plot, August 2006.

• Khalid Sheikh Mohammed, March 2007.

• Fort Dix Plot, May 2007.

• JFK Airport Plot, June 2007.

• Mohammed Jabarah, January 2008.

• Hassan Abujihaad, March 2008.

• Christopher Paul, June 2008.

• Synagogue Terror Plot, May 2009. 292

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292 Ibid.
APPENDIX E: LIST OF LEGAL MEMOS FOR AND AGAINST CIA PROGRAM

White House

Memo from White House Counsel Alberto Gonzales to Pres. George W. Bush (Jan. 25, 2002) [HTML]
- Gonzales reconsiders, at the request of Secretary of State Colin Powell, Pres. Bush's decision “that al Qaeda and Taliban detainees are not prisoners of war under the [Geneva Convention].” After detailing arguments for and against prisoner of war status, the White House Counsel concludes that “[o]n balance, I believe that the arguments for reconsideration and reversal are unpersuasive.”

Memo from Pres. George W. Bush (Feb. 2, 2002) [PDF]

U.S. Department of Justice

Memo from Asst. U.S. Attorney General Bybee to White House Counsel and Dept. of Defense General Counsel (Jan. 22, 2002) [PDF]
- Subject: Application of Treaties and Laws to al Qaeda and Taliban Detainees

Letter from U.S. Attorney General Ashcroft’s to President Bush (Feb. 1, 2002) [HTML]
- Subject: Taliban status under Geneva Convention

Memo from Asst. U.S. Attorney General Bybee to White House Counsel (Feb. 7, 2002) [HTML]
- Subject: Taliban status under Geneva Convention

Memo from Asst. U.S. Attorney General Bybee to U.S. Dept. of Defense General Counsel Haynes (Feb. 26, 2002) [PDF]
- Subject: Potential legal constraints on certain interrogation methods

Memo from the Dept. of Justice to White House Counsel (August 1, 2002) [PDF]
- Subject: Standards of Conduct for Interrogation

- Subject: Interrogation and Torture

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294 Ibid.
- Subject: Justice Dept. memo redefining standards of conduct for interrogations under federal criminal prohibitions against torture.

U.S. Department of Defense
Memoranda and correspondence among U.S. Department of Defense officials on interrogation procedures, legal analyses, and orders concerning detainees and prisoners of war.

Draft Pentagon Working Group Report on "Detainee Interrogations in the Global War on Terrorism" (March 6, 2003) [HTML]
- The arguments made in the portions of this draft report, originally revealed in an exclusive by Wall Street Journal reporter Jess Bravin, show how Bush administration lawyers rationalized that compliance with international treaties and U.S. laws prohibiting torture could be overlooked because of legal technicalities and national security concerns.

Memo from Sec'y of Defense Rumsfeld (Jan. 19, 2002) [PDF]
- Sec'y of Defense Rumsfeld tells the Joint Chiefs of Staff that al Qaeda and Taliban suspects are not entitled to prisoner of war status under the Geneva Conventions

Message from Chairman Chief of Staff (Jan. 22, 2002) [PDF]
- Message from Chairman, Joint Chief of Staff to the Unified Commands and Services, informing them that al Qaeda and Taliban detainees are not entitled to prisoner of war status

Memo to the Commander of Joint Task Force 170 (October 11, 2002) [PDF]
- From Major General Michael Dunlavey. Includes legal recommendations from a DoD lawyer, Staff Judge Advocate, LTC Diane E. Beaver, that interrogating detainees using certain strategies (e.g., 20 hour interrogations, forced shaving, use of stress-induced phobias like fear of dogs, telling detainee that he or his family are in imminent danger of "fac[ing] death or severely painful consequences"), “do not violate applicable federal law.” but “that interrogations involving Category II and III methods undergo a legal review prior to their commencement.”

Memo from U.S. Army Commander James T. Hill (Oct. 25, 2002) [HTML]
- Gen. Hill expresses frustration to the Joint Chiefs of Staff that "some detainees have tenaciously resisted our current interrogation methods," but also remains unclear about the legal status of certain interrogation techniques. He is "particularly troubled by the use of implied or expressed threats of death of the detainee or his family."

Memo from Secretary of Defense Rumsfeld approving counter resistance techniques (December 2, 2002) [PDF]

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295 Ibid.
- Rumsfeld suggests that detainees might be forced to stand for 8 – 10 hours a day, and asks “Why is standing limited to 4 hours?”

Memo from Secretary of Defense Rumsfeld’s to Commander, SOUTHCOM rescinding certain counter resistance techniques (January 15, 2003) [PDF]
- Rumsfeld rescinds all Category II interrogation techniques that he approved in his Dec. 2, 2002 memo, and one Category III technique. Requests for using such interrogation methods must be forwarded directly to Rumsfeld, along with a “thorough justification” and "a detailed plan for the use of such techniques.”

Memo from Secretary of Defense Rumsfeld’s to General Counsel, U.S. Dept. of Defense (January 15, 2003) [PDF]
- Rumsfeld asks the Pentagon's top lawyer to form "a working group" in order "to assess the legal, policy, and operational issues relating to the interrogations of detainees held by the U.S. Armed forces in the war on terrorism.

U.S. Department of Justice\textsuperscript{296}
Report by the Office of Professional Responsibility (July 29, 2009) [PDF]
- Investigation into the legality of the CIA’s use of their enhanced interrogation program

\textsuperscript{296} Office of Professional Responsibility, “Investigation into the Office of Legal Counsel’s Memoranda Concerning Issues Relating to the Central Intelligence Agency’s Use of ‘Enhanced Interrogation Techniques’ on Suspected Terrorists,” July 29, 2009.
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