OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
WASHINGTON, DC

20 December 2024

Reference: ODNI Cases DF-2022-00310, DF-2022-00311, & DF-2022-00314

This letter provides an interim response to three of your Freedom of Information Act (FOIA) request to the Defense Intelligence Agency (DIA) requesting specific theses written by students at the National Intelligence University. As previously noted by DIA, DIA transferred these cases to the Office of the Director of National Intelligence (ODNI) in 2022.

ODNI is processing these requests under the FOIA, 5 U.S.C. § 552, as amended.

This interim response addresses eight of the theses. ODNI determined that one thesis, *Why the United States Needs a Domestic Intelligence Service and How to Make it Work*, falls under the purview of another government agency. It has been referred to them for review and direct response to you. *Non-Lethal Weapons of Mass Disruption* is provided in response to case DF-2022-00311 and *Hollywood Soldier Intelligence Support for SOFTWAR Operations* is for case DF-2022-00314. The other five these were requested under case DF-2022-00310.

During the review process of the seven documents being released directly to you, we considered the foreseeable harm standard and determined that certain information must be withheld pursuant to the following FOIA exemptions:

- (b)(3), which applies to information exempt from disclosure by statute. Specifically, the National Security Act of 1947, as amended:
  - Section 102A(i)(l), 50 U.S.C. § 3024(i)(1), which protects information pertaining to intelligence sources and methods; and
  - Section 102A(m), as amended, 50 U.S.C. § 3024(m), which protects the names and identifying information of ODNI personnel.
- (b)(6), which applies to information that, if released, would constitute a clearly unwarranted invasion of personal privacy.

Be advised, we continue to process your request. If you are not satisfied with this response, a number of options are available. You may contact me, the FOIA Public Liaison, at ODNI_FOIA_Liaison@odni.gov, or the ODNI Requester Service Center, at ODNI_FOIA@odni.gov or (703)-275-1313. You may also submit an administrative appeal to the Chief FOIA Officer, c/o Chief, Information Management Office, Office of the Director of National Intelligence, Washington, DC 20511 or emailed to ODNI_FOIA@odni.gov. The appeal correspondence should be clearly marked "Freedom of Information Act Appeal of Adverse Determination" and must be postmarked or electronically transmitted within 90 days of the date of this letter.

Lastly, the Office of Government Information Services (OGIS) of the National Archives and Records Administration is available with mediation services and can be reached by mail at 8601 Adelphi Road, Room 2510, College Park, MD 20740-6001; telephone (202) 741-5770; toll-free (877) 684-6448; or email at ogis@nara.gov.

Sincerely,

Erin Morrison
Chief, Information Review and Release Group
Information Management Office

CONTROVERSIAL INTERROGATION TECHNIQUES: MUST USE TRADECRAFT OR COUNTERPRODUCTIVE METHODS?

by

(b) (6)
Major, USAF, Air Force Office of Special Investigations
NDIC Class 2008

Submitted to the faculty of the
National Defense Intelligence College
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Master of Science of Strategic Intelligence

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thesis has been classified in accordance with community standards. The thesis, in whole or in part, is not cleared for public release

The views expressed in this paper are those of the author and do not reflect the official policy or position of the Department of Defense, the Air Force Office of Special Investigation, or the U.S. Government

ABSTRACT

TITLE OF THESIS: Controversial Interrogation Techniques: Must Use Tradecraft or Counterproductive Methods?

STUDENT: Maj (b) (6), MSSI, 2009

CLASS NUMBER: NDIC 2008 **DATE:** May 2009

THESIS COMMITTEE CHAIR: Lt Colonel (b) (6)

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In recent years, controversial interrogation techniques have been the source of feverish public debate. In spite of this debate and its importance to U.S. national security concerns, little scientific study has been conducted on interrogation techniques since the 1960s.

This thesis attempts to determine, from a solely operational effectiveness perspective, whether controversial interrogation techniques that may cause some degree of pain in the subject of interrogation should be used by the Intelligence Community (IC). Through a review of pertinent scientific data and an examination of four case studies in interrogation, this thesis attempts to reach a basic conclusion on the operational

effectiveness of controversial interrogation techniques to support a recommendation of their use or non-use.

Before proposing whether controversial techniques could be operationally effective if employed, one must first determine if such techniques are, or could be, legal to administer. Ample legal guidance exists on what is and is not permissible treatment of detainees and/or POWs. However, language in bedrock U.S. and international legal guidance is currently insufficient to enduringly and/or conclusively prohibit the future application of specific controversial interrogation techniques.

Interrogation case studies chosen as part of this thesis research included situations that spanned a timeframe from WWII to post-September 11, 2001. One case study depicts the non-application of controversial interrogation techniques, known as the Military Intelligence Service-Y (MIS-Y) program. The remaining three case studies represent a mixture of coercive and non-coercive techniques being applied and the relative effectiveness of eliciting valuable intelligence information in the various circumstances. It should be noted, all case studies examined as part of this thesis were found to be consistent in many respects with conclusions reached in the Central Intelligence Agency's KUBARK Interrogation Manual and in Albert D. Biderman's study of Communist Attempts to Elicit False Confessions from Air Force Prisoners of War (POWs).

The findings of this thesis indicate that a review of available scientific data and four thesis case studies alone are insufficient to proffer a definitive conclusion either for or against the operational effectiveness of controversial interrogation techniques. However, if one is to accept scientific conclusions reached in the CIA's KUBARK

manual and in Albert D. Biderman's study of Air Force POWs as enduring and legitimate, one can conclude some degree of controversial interrogation techniques have been proven effective and should be considered for use by the IC. As to the question of what controversial techniques should be used, the circumstances necessitating the use of controversial techniques, and legal and reasonable limits of applying such techniques, the discussion will likely remain a source of fiery debate.

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ACKNOWLEDGEMENTS

To my wife and family, who endured many hours of labored discussion on this topic as well as home computer sharing…

CHAPTER 1

Introduction and Methodology

I. The Topic

The topic studied is the application of lawful but controversial interrogation techniques that may elicit physical pain from the subject. The intent of this thesis will be to examine available data on the topic of controversial interrogation techniques to include, legal considerations, a discussion of pertinent techniques available, and a sampling of four case studies regarding employment of controversial interrogation techniques. Once compiled, an analysis of the operational effectiveness of controversial interrogation techniques involving pain will be conducted from an operational perspective. The conclusion of the thesis will be to proffer a recommendation of whether such techniques should be used by the Intelligence Community (IC) during interrogation.

Since the terrorist attacks of September 11th, 2001 on the United States, much discussion of the appropriateness of controversial interrogation techniques has surfaced. The debate surrounding controversial interrogation techniques necessitates further study of whether or not controversial interrogation techniques are an operational necessity.

II. The Issue and Research Question

The Issue

With the proliferation of terrorism and the previously declared Global War on Terror (GWOT) by the United States subsequent to September 11th, 2001, the U.S. IC

has publicly struggled with the issue of intelligence interrogation and its application.[1] From a legal perspective, the Department of Justice, Congress, Supreme Court, and Office of the President of the United States have had to formulate and interpret our own laws, as well as international law and treaties, to guide a formal policy that the United States will follow with regard to intelligence interrogation. Embroiled in the interrogation discourse has been a passionate debate regarding techniques of interrogation that have been authorized, as well as a discussion of the utility of such techniques.[2] Although the topic of interrogation can be an incendiary one, a factual look at pertinent studies and views both for and against the use of controversial interrogation techniques through an operational lens may yield a recommendation for the IC on the application of such techniques.

The Research Question

From an operational effectiveness perspective, should the United States employ lawful but controversial intelligence interrogation techniques that may cause physical pain in the subject of interrogation?

III. Literature Review

Due to the fairly recent public debate about the utility and application of potentially painful intelligence interrogations, there is ample information in publicly available literature that discusses a myriad of aspects on this topic. Of particular importance to the topic of interrogations involving a suspected pain response from the

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[1] Scott Shane, David Johnson, and James Risen, "Secret U.S. Endorsement of Severe Interrogations," *New York Times*, October 4, 2007, http://www.nytimes.com/2007/10/04/washington/04interrogate.html Accessed on December 15, 2008).

[2] Ibid., 2.

subject, are the legalities which govern intelligence interrogation of this nature, scientific studies of the techniques used and their respective results, and historical examples of Prisoner of War (POW) and/or detainee case studies on interrogation. Given the subject matter at hand, there is little doubt extensive discourse exists both for and against employment of controversial interrogation techniques.[3]

In the legal arena, Department of Justice (DoJ) personnel have issued numerous legal opinions on the topic. Many of the legal memorandums issued were initially classified. However, especially pertinent and select memorandums have been declassified and released under Freedom of Information Act requests, as well as through official government channels in the way of satiating the media and public interest on the topic.[4] In addition to DoJ legal opinions, the Geneva Convention and the United Nations Convention Against Torture and Other Forms of Cruel and Inhuman or Degrading Treatment or Punishment provide guidance as to the expected treatment of POWs from an international perspective.[5] Also of note, the U.S. Congress approved guidelines concerning the treatment of detainees via the Detainee Treatment Act.[6] In addition, the U.S. Supreme Court has issued a ruling on detainee treatment in Hamdan v. Rumsfeld providing case law on this topic.[7] Finally, the DoD also abides by Departmental Field Manuals for guidance on treatment of detainees/POWs and the conductance of

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[3] Michael Hirsh, John Barry, and Daniel Klaidman, "A Tortured Debate," *News Week*, June 21, 2004, http://www.newsweek.com/id/54093, (accessed on December 15, 2008).

[4] Department of Justice, DoJ Memorandum to General Counsel of the Department of Defense, "Military Interrogation of Alien Unlawful Combatants Held Outside the United States," March 14, 2003.

[5] Congressional Research Service, CRS Report for Congress, "Lawfulness of Interrogation Techniques under the Geneva Conventions," RL 32567, September 8, 2004, 1.

[6] Congressional Research Service, CRS Report for Congress, "Interrogation of Detainees: Overview of the McCain Amendment," RL 33655, October 23, 2008, 1.

[7] The Oyez Project, Hamdan v. Rumsfeld, 548 U.S. ___ (2006), available at: http://www.oyez.org/cases/2000-2009/2005/2005_05_184/ (accessed on November 4, 2008).

interrogation.[8] As with many legal matters, there is a differing of interpretation and opinion among learned professionals with regard to the lawfulness of interrogation techniques that may drive further change in how interrogations are conducted.

From a historical perspective, the study of interrogation has been widely publicized. Although the history of interrogation can reach back into the pre-modern world, research applicable to this thesis will be limited in scope from the era of World War II to present.[9] Considering the gravity and complicated nature of conducting intelligence interrogations, U.S. research on the application of intelligence interrogation practices has been somewhat lacking over the last 40 years.[10] The lack of scientific information available on this topic may be due to the obvious ethical considerations of inflicting pain on human subjects and the sensitive nature of intelligence interrogation itself.[11] Nevertheless, a historical look at literature related to interrogation from WWII to present offers insight into the application of controversial interrogation techniques, considering one can draw on U.S., ally, and enemy reporting and experiences.

Over time, one does not see a great deal of change in techniques regarding the application of controversial interrogation.[12] However, in an examination of intelligence interrogation, one is able to identify scientific studies and case studies which offer

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[8] DoD Directive, 3115.09, DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning, November 3, 2005, 1-2.

[9] Pauletta Otis, "Educing Information: The Right Initiative at the Right Time by the Right People," in *Educing Information: Interrogation Science and Art: Foundations for the Future*, ed. Russell Swenson (Washington, DC: National Defense Intelligence College), xvi.

[10] Ibid., xvi.

[11] Paul Lehner, "Options for Scientific Research on Eduction Practices," in *Educing Information: Interrogation Science and Art: Foundations for the Future*, ed. Russell Swenson (Washington, DC: National Defense Intelligence College), 306.

[12] John A. Whalquist, "Educing Information: Interrogation-Science and Art," in *Educing Information: Interrogation Science and Art: Foundations for the Future*, ed. Russell Swenson (Washington, DC: National Defense Intelligence College), xxiii.

valuable insight that should guide decisions on conducting interrogations today.[13] In the following paragraphs concerning the history of interrogation since World War II, this thesis will highlight pertinent examples of lessons and studies in interrogation that are relevant to the subject of controversial interrogation techniques that may elicit pain.

Dr. Robert A. Fein offers an excellent review of the historical background of interrogations in his article, "U.S. Experience and Research in Educing Information: A Brief History," written as a prologue to *Educing Information: Interrogation: Science and Art- Foundations for the Future, 2006*. For the purpose of guiding an examination of the history of interrogation, Fein's article will serve as a roadmap to illuminate interrogation topics relevant to this thesis.[14]

As an example of non-violent interrogation study and application from the World War II era, Fein begins in describing the U.S. MIS-Y (Military Intelligence Service-Y) Program. The MIS-Y Program was initially highly classified and used as an "offensive" interrogation program designed to gather "information from captured senior German officials, officers, and scientists in U.S. custody."[15] MIS-Y prisoners were specifically screened to determine if they likely had "information critical to national security."[16] If found to have such a capacity for yielding information, prisoners were transported to a facility at Fort Hunt in Virginia that was "specifically developed for educing information."[17]

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[13] Paul Lehner, "Options for Scientific Research on Eduction Practices," 303.

[14] Robert a. Fein, "U.S. Experience and Research in Educing Information: A Brief History," in *Educing Information: Interrogation Science and Art: Foundations for the Future*, ed. Russell Swenson (Washington, DC: National Defense Intelligence College), xi-xii..

[15] Ibid., xi.

[16] Ibid., xi.

[17] Ibid., xi.

Interrogations of prisoners at the MIS-Y facility were highly specialized and controlled. Interrogators were hand-picked because of their, "language ability, knowledge of subject matter, and perceived ability to relate to the source."[18] The MIS-Y Program focused on rapport building and structured interrogations vice the application of controversial interrogation techniques. In addition, detainee facilities were all, "wired for sound" as Fein describes it to allow authorities to listen to detainee conversations.[19] In addition, Fein goes on to describe that, "collaborators were placed in the prison population" and information was taken from prisoners during formal interrogation sessions, as well as through other covert means.[20] All in all, the MIS-Y Program serves as a model for applying highly specialized and non-violent interrogation techniques.[21]

Perhaps the most salient information to be explored regarding the interrogations of MIS-Y prisoners for this thesis topic is that the MIS-Y interrogations yielded excellent results using only non-coercive interrogation methods. Details of the success of these interrogation methods can be found in articles on the MIS-Y program, to include an NDIC thesis by S.M. Kleinman, "*The History of MIS-Y: U.S. Strategic Interrogation during World War II.*" In addition, information on the MIS-Y Program results can be found in a bill placed before the House of Representatives, Resolution 753, honoring the work done by MIS-Y program personnel. Other studies of interrogation are also available for this time period that offer similar lessons on interrogation, such as a study that involves interrogations of prisoners in the hands of our allies at "Camp 020" in

[18] Fein, "U.S. Experience and Research in Educing Information," xi.
[19] Ibid., xi.
[20] Ibid., xi.
[21] Ibid., xi.

Britain.[22] This study presents similar lessons and results on the use of non-violent interrogation techniques.

As the historical review of interrogation moves forward, it is appropriate to next examine experiences gained during the period of the Korean conflict. Using Fein's historical review as a model, it is necessary to include the experience of traditional "police-state" type interrogation methods that U.S. servicemen suffered at the hands of the Chinese. The application of these techniques resulted in servicemen who, "confessed" under extreme duress to acts they did not commit, such as dropping "germ-laden" bombs.[23] These incidents reportedly led to scientific studies in the 1950s into the interrogation techniques employed by Russia and China. Fein finds, "The overwhelming conclusions of these studies was that the Soviets and the Chinese were using traditional police-state methods of extracting information from their prisoners."[24] Fein also references the Hinkle and Wolff study, "*The Methods of Interrogation and Indoctrination Used by the Communist State Police,*" in the Bulletin of the NY Academy of Medicine in 1957 which further describes interrogation methods.[25]

The Hinkle and Wolff study describes in detail specific methods of isolation and brutal treatment used by the Chinese and Russians against prisoners that proved very effective in eliciting "confessions." Hinkle and Wolff's study, as well as other such studies of this period help illuminate coercive and physical interrogation methods that were documented and studied during this period in history.[26]

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[22] MI-5 Security Service, "History: Bad Nendorf," http://www.mi5.gov.uk/output/bad-nenndorf.html (accessed on December 22, 2008).

[23] Ibid., xi.

[24] Ibid., xii.

[25] Ibid., xii.

[26] Ibid., xii.

In further describing the historical movement in the field of interrogation in the U.S. experience, it is important to note the CIA's contributions to the study of interrogation. Fein next illustrates the focus on interrogation as an offensive measure and cites the CIA's KUBARK Counterintelligence Interrogation Manual (originally written in 1963 as a classified document and subsequently released in the late 1990's) as an example. KUBARK serves as an often cited piece of literature in interrogation as it offers CIA-sponsored and detailed guidance on the application of interrogation techniques based on scientific study. Opponents of using controversial interrogation techniques may cite the KUBARK manual as it is critical of the use of potentially painful interrogation techniques and the effects it can bring. However, proponents of the use of controversial techniques may also cite KUBARK as a study that highlights the effectiveness of controversial interrogation techniques. The KUBARK manual offers detailed guidance on how to conduct an intelligence interrogation to include psychological aspects at play in the subject as well as the interrogator.[27]

Moving on in this historical review of the development of the body of knowledge on interrogations in the U.S., Fein next describes the 1970s-1990s as a period in which interrogation studies were dampened by concerns raised by the public. Congressional hearings in 1977 scrutinized CIA studies and methods of interrogation. Fein asserts, after these events (Congressional hearings on interrogation), studies on interrogation techniques mainly focused on training service members to resist techniques that could be used against them.[28]

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[27] The National Security Archive, "CIA, KUBARK Counterintelligence Interrogation, July 1963," http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB122/#kubark (accessed on 15 December, 20087) 93-95.

[28] Fein, xiii.

In discussing the period encompassing the first Gulf War and Bosnia, Fein characterizes the period as having "little government supported research" in the area of interrogation.[29] Fein also states, "there was little opportunity for U.S. interrogators to practice and hone their skills, as trained military interrogators might complete their service without ever conducting an interrogation."[30]

After the first Gulf War, the events of September 11, 2001 ushered in a somewhat unique challenge in interrogation application. Fein describes this challenge by stating the intelligence community was "plunged into activities that, of necessity, involved efforts to obtain information from persons in U.S. custody who at least initially appeared uncooperative."[31] Fein further states, "since there had been little or no development of sustained capacity for interrogation practice, training, or research within intelligence or military communities in the post-Soviet period, many interrogators were forced to make it up on the fly."[32] Fein suggests the pressure for operational information combined with the lack of research-based interrogation methods may have contributed greatly to cases of abuse which later surfaced.[33]

The issue of what could and should be done in interrogation quickly rose to the forefront of public opinion with the media frenzy that occurred once suspected detainee abuse was exposed at Abu Ghraib prison in Iraq. The U.S. populace, together with the international community, was confronted with the possibility that alleged atrocities had been committed by U.S. service personnel against detainees. The images of abuse filled television sets and computer screens around the globe and the U.S. government, military,

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[29] Fein, "U.S. Experience and Research in Educing Information," xiii.
[30] Ibid.,, xiii.
[31] Ibid., xiii.
[32] Ibid., xiii.
[33] Ibid.,, xiii.

and intelligence community found itself in the center of an international whirlwind alleging the mistreatment of detainees.[34]

Subsequent to the Abu Ghraib incident, the U.S. government and intelligence community struggled to examine its actions and explain them to the U.S. populace and the international community. The incidents at Abu Ghraib were investigated and personnel accused of criminal behavior were prosecuted.[35] However, the issue of how the U.S. interrogated and would continue to interrogate OEF and OIF detainees remained a matter of heated discussion and scrutiny. This scrutiny continues today as the issue of interrogation is debated, as well as reviewed in legislative channels.

As Fein so aptly points out in his historical review of the U.S. experience with interrogation, research and study in interrogation is lacking in the U.S. in relation to the complicated and national security implications which surround the intelligence interrogation debate.[36] Scholarly and scientific articles and studies do exist relative to the utility of controversial interrogation techniques and the potential use of pain in interrogation. However, given the ethical and legal considerations of employing interrogation techniques on human subjects, the study of interrogation is still missing any conclusive scientific evidence that alone could dispel the debate of employing controversial interrogation techniques.[37] This thesis research will draw upon relevant case studies and scientific evidence on the use of lawful but controversial interrogation techniques involving pain to make a recommendation for their use or non-use to the IC.

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[34] Eric Schmitt and Andrea Elliot, "The Reach of War: Mistreatment," *New York Times*, June 4, 2004, http://query.nytimes.com/gst/fullpage.html?res=9D02E7DF1331F937A35755C0A9629C8B63&scp=24&sq=abu%20ghraib&st=cse (accessed on December 15, 2008).

[35] Ibid, 1.

[36] Fein, "U.S. Experience and Research in Educing Information," xii.

[37] Otis, "Educing Information: The Right Initiative at the Right Time by the Right People," xx.

IV. Hypothesis and Key Questions

Hypothesis

Lawful but controversial interrogation techniques involving physical pain should not be used by the IC based on an assessment of their operational effectiveness.

Key Questions

1. *Is there a legal prohibition currently in place against employing interrogation techniques that may cause pain?* A review of the most relevant legal guidelines pertinent to the interrogation of subjects will be conducted presenting objective arguments of interpretation both for and against the employment of controversial techniques. From an initial review of the legal opinions on this matter, to include DoJ legal opinions, it appears the President, retains the option to authorize the use of controversial techniques involving pain in matters of national security.

2. *Is there sufficient data available on the application of controversial interrogation techniques involving pain to draw a conclusion on their utility in interrogations?* A large volume of case studies and scientific research applicable to controversial interrogation techniques exists from WWII, Korea, Vietnam, and OIF/OEF. A sampling of pertinent case studies and scientific research will be presented illustrating the techniques employed against subjects and the results achieved from their application. This information will be presented to address the potential utility of employment of controversial interrogation techniques involving pain.

V. Research Methodology

Below is a theoretical framework of how the study of this thesis will be conducted briefly describing the order and types of information that will be presented to examine the issue of employing controversial interrogation techniques:

a. Research legal guidance regarding the use of controversial interrogation techniques.

First, with regard to researching the legal aspect of the argument both for and against the use of controversial interrogation techniques, it is appropriate to begin with an examination of the Geneva Conventions and the United Nations Convention Against Torture and Other Forms of Cruel and Inhuman or Degrading Treatment or Punishment. These two documents are often cited by legal scholars in arguments of their applicability regarding the use of controversial interrogation techniques. A close look at the arguments surrounding interpretation of these two documents is critical to determining the legality of using interrogation techniques that may elicit physical pain. These two documents also provide guidance as to the expected treatment of POWs from an international perspective.[38]

Second, the U.S. Congress approved guidelines concerning the treatment of detainees in the Detainee Treatment Act that should also be discussed regarding interrogation rules. This Act was sponsored by Senator John McCain and is fairly specific in its language on what is and isn't permissible in interrogation.[39] In addition, the U.S. Supreme Court has also issued a ruling on detainee due process in Hamdan v. Rumsfeld providing case law pertinent to this topic that should be explored. Furthermore, a brief examination of the War Crimes Act, the Military Commissions Act, Executive Order (EO) 13340, President Obama's EO regarding interrogation, DoD Directive 3115.09, and Departmental Field Manuals applicable to guidance on interrogation of detainees and POWs is also appropriate given the scope of this thesis.

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[38] Congressional Research Service, CRS Report for Congress, "U.N. Convention Against Torture (CAT): Overview and Application to Interrogation Techniques, Update 25 Jan 08, 10.

[39] Congressional Research Service, CRS Report for Congress, "Interrogation of Detainees: Overview of the McCain Amendment," RL 33655, October 23, 2008, 1.

It is important to note that, as is the case with many legal matters, there is a differing of interpretation and opinion among learned professionals with regard to the lawfulness of controversial interrogation techniques that may elicit pain. Of major importance to the United States in the area of legal advice, one must consider the interpretation of the law and advice given to the President of the United States by the DoJ. DoJ personnel have issued numerous legal opinions on the topic of interrogation and detainee treatment. Many of the legal memorandums issued were initially classified. However, especially pertinent and select memorandums have been declassified and released under Freedom of Information Act requests.[40]

All of the above mentioned legal documents will be explored relative to their guidance on the topic of the lawfulness of controversial interrogation techniques. An initial review of the literature on this topic indicates DoJ has issued guidance affording wide latitude to the application of controversial interrogation techniques. In addition, the President has the authority to issue Executive Orders acting in the national security interests of the United States to employ controversial interrogation techniques. The published DoJ opinions and uncertain interpretation of the lawfulness of controversial interrogation techniques leaves the use of controversial interrogation techniques involving physical pain, at least potentially, an option that could be authorized.[41]

b. Explore scientific research pertinent to the use of controversial interrogation techniques and discuss operational training conducted on U.S. personnel relevant to controversial interrogation techniques.

[40] Department of Justice, DoJ Memorandum to General Counsel of the department of Defense, " Military Interrogation of Alien Unlawful Combatants Held Outside the United States," March 14, 2003.

[41] Congressional Research Service, CRS Report for Congress, "Interrogation of Detainees: Overview of the McCain Amendment," RL 33655, Updated December 11, 2007, 12.

In Approaching Truth: Behavioral Science Lessons on Educing Information from Human Sources by Randy Borum, available in *Educing Information: Interrogation: Science and Art- Foundations for the Future*, Borum explains little scientific research is available directly addressing effectiveness of interrogation techniques.[42] Available research for this thesis in scientific studies is limited by ethical considerations with regard to the treatment of human beings as a subject of study. One study that is relevant and often cited in interrogation literature is the study that provided a basis for the KUBARK Counterintelligence Interrogation Manual developed by the CIA. Borum explains the KUBARK manual reflects scientific research conducted by the CIA in its MKULTRA Program. The MKULTRA Program involved the testing of physical discomfort, sleep deprivation, and sensory deprivation to reduce resistance. Although MKULTRA was eventually stopped by the CIA in the face of mounting U.S. government pressure surrounding ethical treatment of human subjects, KUBARK represents an essential glimpse into the science of human interrogation.[43]

In the realm of controversial interrogation techniques, KUBARK is not decisive in its recommended use. Proponents and opponents of the application of such techniques can use its guidance as justification for the application or non-application of controversial techniques in interrogation. KUBARK's recommendations feed nicely into the thesis discussion on this topic and will be explored in pursuit of its pertinence.[44]

In light of examining controversial techniques used in interrogation, another relevant element to this thesis is the topic of Survival, Evasion, Resistance, and Escape (SERE) training. SERE training will be examined beginning with its creation and evolution as a training program in addition to its bearing on controversial interrogation

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[42] Randy Borum, "In Approaching Truth: Behavioral Science Lessons on Educing Information from Human Sources," in *Educing Information: Interrogation Science and Art: Foundations for the Future*, ed. Russell Swenson (Washington, DC: National Defense Intelligence College, 2006), 17.

[43] Ibid., 33.

[44] The National Security Archive, "CIA, KUBARK Counterintelligence Interrogation, July 1963," http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB122/#kubark (accessed on 15 December, 20087) 93-95.

techniques. SERE training is provocative to the discussion on interrogation because it represents a circumstance in which controversial techniques are employed by U.S. personnel on U.S. personnel in a training setting. The roots of the development of SERE are also important to explore since the discussion of its evolution is recognition of the types of techniques that the United States found were being effectively applied to captured U.S. personnel.[45] The SERE discussion transitions the thesis research nicely into the next subsection.

c. Examine wartime interrogation techniques used against POWs relevant to controversial interrogation techniques.

Although scientific research involving the employment of controversial interrogation techniques is limited in availability due to ethical considerations, wartime interrogation case studies and examples are numerous. In order to examine both supporting and non-supporting arguments on the use of pain in interrogation, it is necessary to begin by examining interrogation studies from WWII that illustrate successful wartime interrogations regimens that did not use controversial techniques involving pain.

The first case study is known as the MIS-Y strategic interrogation program. The MIS-Y Program is a declassified program originally conducted by the U.S. Military Intelligence Service (MIS) at Fort Hunt, VA. The program involved non-coercive interrogation techniques of German POWs in tightly controlled settings. Interrogators were specifically paired against their subjects in order to create rapport and based upon the interrogators' language abilities. A particularly good source of information on the

[45] Senate Armed Services Connnittee Hearing, *The Origins of Aggressive Interrogation Techniques: Part 1 of the Committee's Inquiry into the Treatment of Detainees in U.S. Custody*, Connnittee Statement, June 17, 2008, http://levin.senate.gov/senate/statement.cfm?id=299242 (accessed on December 31, 2008).

MIS-Y Program is available in a 2002 Joint Military Intelligence College thesis by S.M. Kleinman, *The History of MIS-Y: U.S. Strategic Interrogation during World War II*. The MIS-Y Program was effective in eliciting highly valuable strategic intelligence from German POWs using its methods.[46]

Moving forward in time to a more recent study of controversial interrogation techniques, A.D. Biderman's 1957 study entitled *Communist Attempts to Elicit False Confessions from Air Force Prisoner's of War* particularly addresses the use and non-use of controversial techniques in interrogations. Biderman studied 235 Air Force personnel who were interrogated by the Chinese and subsequently returned to the United States after signing of the Armistice. Biderman outlines the techniques used by the Chinese and the subsequent utility of the techniques, to include specifically addressing the use of controversial techniques involving pain in interrogation.[47]

Next, the war in Vietnam is unfortunately replete with stories of U.S. POWs who were tortured at the hands of the enemy. In exploring cases of interrogation in Vietnam, it is relevant to explore the interrogation of Nguyen Tai, the most senior North Vietnamese officer captured during the Vietnam War. In M.L. Pribbenow's 2004, "*The Man in the Snow White Cell*," Pribbenow illustrates the harsh interrogation of Tai and his impressive ability to resist interrogation. This study is provocative as controversial interrogation techniques were used on Tai resulting in only his partial compliance, lending to the discussion on arguments for and against controversial interrogation techniques.[48]

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[46] S.M. Kleinman (2002), "The History of MIS-Y: U.S. Strategic Interrogation during World War II. Unpublished master's thesis, DTIC Document ADA447589, Washington, DC: Joint Military Intelligence College.

[47] Albert D. Biderman, "Communist Attempts to Elicit False Confessions from Air Force Prisoners of War," http://www.pubmedcentral.nih.gov/picrender.fcgi?artid=1806204&blobtype=pdf (accessed on December 22, 2008).

[48] Merle L. Pribbenow, "The Man in the Snow White Cell," CIA Center for Study of Intelligence Online, https://www.cia.gov/library/center-for-the-study-of-intelligence/kent-csi/pdf/v48i1a06p.pdf (accessed on December 22, 2008).

In an even more recent interrogation study, a brief overview will also be offered of the interrogation of Mohammed al-Qahtani, the alleged would-be 20th hijacker of 9/11. Logs of his interrogation have been released and Adam Zagorin and Michael Duffy wrote a detailed article for Time Magazine on al-Qahtani's interrogation entitled, "*Inside the Interrogation of Detainee 063*." The interrogation of al-Qahtani is pertinent to this thesis as it depicts the level of resistance posed by an ideological subject of interrogation and the effectiveness of both controversial and non-controversial interrogation techniques.[49]

d. Conduct an analysis of the use of controversial interrogation techniques involving pain in order to formulate an operational recommendation for their use/non-use.

In order to bring together an overall collection of lessons learned through the case study data and arguments for and against the use of controversial interrogation techniques, the author will compile the relevant lessons learned from each of the case studies detailed above. Lessons learned from each of the studies will be discussed, to include presentation of a narrative summary that could benefit a decision on whether or not to authorize an interrogation program that employs controversial interrogation techniques. In addition, Robert Coulam's, "*Approaches to Interrogation in the Struggle against Terrorism: Considerations of Cost and Benefit,*" will also be referenced in that it provides valuable insight into the decision making process surrounding choosing how to interrogate.[50]

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[49] Adam Zagorin and Michael Duffy, "Inside the Interrogation of Detainee 063," *New York Times*, June 12, 2005, http://www.time.com/time/magazine/article/0,9171,1071284,00.html (accessed on Decemebr 22, 2008).

[50] Robert Coulam, "Approaches to Interrogation in the Struggle against Terrorism: Considerations of Cost and Benefit," *In Educing Information: Interrogation: Science and Art- Foundations for the Future*, Intelligence Science Board, Edited by Russell Swenson, 1-7. National Defense Intelligence College, Washington DC, December 2006.

e. Make a recommendation on the use/non-use of controversial interrogation techniques pertinent to intelligence interrogation in the IC.

Finally, in consideration of all information presented in the thesis, the author will proffer a recommendation to the IC on the use/non-use of controversial interrogation techniques involving pain. In addition, limits of this thesis study will be discussed and suggestions for future research will be offered.

Data Collection Strategy:

Data collection was conducted via archival research of the most relevant case studies, scientific studies (medical, sociological and psychological), professional journal articles, government and departmental law and policy, media discourse, and publicly available scholarly accounts germane to the topic.

Archival Research:

Research was conducted using the Joint Military Intelligence College, National Defense University's library, the Library of Congress online database, the Central Intelligence Agency's online Scientific Studies database, Journals of Science and Medicine, as well as many other databases housing information via search engines such as ProQuest and Lexis/Nexis.

VI. Definitions and Limitations

Definitions:

Torture: 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. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.[51]

Pain: a state of physical, emotional, or mental lack of well-being or physical, emotional, or mental uneasiness that ranges from mild discomfort or dull distress to acute often unbearable agony, may be generalized or localized, and is the consequence of being injured or hurt physically or mentally or of some derangement of or lack of equilibrium in the physical or mental functions (as through disease), and that usually produces a reaction of wanting to avoid, escape, or destroy the causative factor and its effects **:** a basic bodily sensation that is induced by a noxious stimulus, is received by naked nerve endings, is characterized by physical discomfort (as pricking, throbbing, or aching), and typically leads to evasive action.[52]

Coerce: **:** to restrain or dominate by force; to compel to an act or choice; to achieve by force or threat.[53]

Coercive: serving or intended to coerce.[54]

Interrogation: Interrogation is the systematic process of using approved interrogation approaches to question a captured or detained person to obtain reliable information to satisfy intelligence requirements, consistent with applicable law and policy.[55]

Technique: a method of accomplishing a desired aim.[56]

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[51] Office of the High Commissioner for Human Rights, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, http://www.unhchr.ch/html/menu3/b/h_cat39.htm (accessed on December 20, 2008).

[52] Merriam-Webster Medical Dictionary, Paine Defined, http://medical.merriam-webster.com/medical/pain (accessed on December 20, 2008).

[53] Merriam-Webster Dictionary, Coerce Defined, http://medical.merriam-webster.com/dictionary/coerce (accessed on December 20, 2008).

[54] Merriam-Webster Dictionary, Coercive Defined, http://medical.merriam-webster.com/dictionary/coercive (accessed on December 20, 2008).

[55] Headquarters Department of the Army, Human Intelligence Collector Operations, FM 2-22.3 (FM 34-52), http://www.fcnl.org/pdfs/civ_liberties/Field_Manual_Sept06.pdf (accessed on December 20, 2008), 5-13.

[56] Merriam-Webster Dictionary, Coercive Defined, http://medical.merriam-webster.com/dictionary/coercive (accessed on December 20, 2008).

Thesis Limitations:

This thesis research is limited to the study of interrogation techniques from an operational perspective. This research is in no way to be construed as advocating the use of unlawful techniques of interrogation. It is understood there are many more aspects relevant to interrogation that are not considered as part of this thesis study. The inclusion or non-inclusion of other factors that may be relevant to the topic of controversial interrogation in this thesis is not an endorsement nor condemnation of those factors.

In addition, the legal guidance illustrated in this thesis is limited to the scope of this thesis in concert with a masters-level curriculum of study. The legal guidance highlighted is intended to illustrate pertinent legal guidance available relative to the discourse on interrogation. The legal guidance listed is not complete with regard to interrogation guidance available. The purpose of this thesis is not to present an in-depth legal review of controversial interrogation factors but rather to highlight the legal debate surrounding controversial interrogation and present the possibility that some controversial interrogation techniques may be legally employed.

Finally, due to the limitations of a graduate curriculum, the focus of this thesis will concentrate primarily on controversial interrogation techniques that may elicit pain in the subject of interrogation. To further limit the techniques to a manageable level of discussion, publicly disclosed SERE techniques will be used as examples of controversial techniques that may be employed.

CHAPTER 2

Legal Guidance Pertinent to Controversial Interrogation Techniques

Legal guidelines on the topic of interrogation exist in many forms and are extensive relative to interrogation techniques. In order to explore the most pertinent legal guidance available on the topic of interrogation relative to the U.S. IC, one must examine both U.S. and international legal guidance. As evidenced by popular critiques of the legal profession, legal guidance is subject to much interpretation in the form of case law decisions and argumentation based on those decisions, as well as interpretation of the meaning and intent of the legal guidance itself. As one can imagine, an incendiary and complicated issue such as interrogation is hotly debated by both opponents and proponents of employing controversial interrogation techniques.[57]

In order to highlight the most pertinent legal guidance regarding employing controversial interrogation techniques, one need only turn to the information requested by Congress as a result of the surfacing of allegations of detainee abuse at Abu Ghraib in Iraq and Guantanamo Bay, Cuba. When one examines the discourse raised by these two issues, the most pertinent legal guidance relative to interrogation has a U.S. and international flavor.[58] Commonly cited legal documents used in the debate on interrogation, pertinent to a discussion of the employment of controversial interrogation techniques relative to this thesis, are as follows: The 1949 Geneva Conventions; United

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[57] Pamela Hess and Lara Jakes Jordan, "CIA Torture Memo: Harsh Interrogation Legal If It Is in Good Faith," *The Huffington Post*, July 25, 2008, http://www.huffingtonpost.com/2008/07/25/cia-torture-oked-in-2002_n_114928.html (accessed on December 22, 2008).

[58] Congressional Research Service, CRS Report for Congress, "Lawfulness of Interrogation Techniques Under the Geneva Conventions," RL32567, September 8, 2004, 1.

Nations Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading, Treatment or Punishment; The Detainee Treatment Act; Supreme Court decision in Hamdan v. Rumsfeld; The War Crimes Act; The Military Commissions Act, Executive Order (EO) 13340; U.S. Army Departmental Policy and Regulations; Department of Justice (DoJ) Legal Memorandums; and President Obama's EO pertaining to interrogation.

Each of the above mentioned legal guidelines will be discussed in the following paragraphs. However, for the purpose of this paper, it is important to note discussion of legal guidance is only meant to illustrate pertinent legal guidance available on interrogations and to highlight the ambiguity and eventual possibility that varying degrees of controversial interrogation techniques could be lawfully employed by the IC. This is not a complete list of legal guidance available on the topic of interrogation. Such a list and corresponding discussion could evoke a thesis in itself on each individual legal decision and its corresponding debate.

1949 Geneva Conventions, Common Article 3

A bedrock document often cited in legal discourse on the topic of employment of painful interrogation techniques is each of the 1949 Geneva Conventions, particularly Common Article 3 which states:

> In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the following provisions:
>
> 1. 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.
>
> 2. The wounded and sick shall be collected and cared for.
>
> An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.
>
> The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.
>
> The application of the preceding provisions shall not affect the legal status of the Parties to the conflict. [59]

According to a 2008 Report to Congress by the Congressional Research Service, Common Article 3 of the 1949 Geneva Conventions has been interpreted to establish,

> base protections for all persons taking no active part in hostilities, including those who have laid down their arms or been incapacitated by capture or injury. Such persons are to be treated humanely and protected from certain treatment, including "violence to life and person," "cruel treatment and torture," and "outrages upon personal dignity, in particular, humiliating and degrading treatment. [60]

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[59] United Nations, Office of the High Commissioner for Human Rights, 1949 Geneva Convention, Article 3, http://www.unhchr.ch/html/menu3/b/91.htm (accessed on 4 Nov 08).

[60] Congressional Research Service, CRS Report for Congress, "U.N. Convention Against Torture (CAT): Overview and Application to Interrogation Techniques, Update 25 Jan 08, 10.

It should be noted that although the language in Common Article 3 of the 1949 Geneva Conventions appears straightforward with regard to treatment of prisoners of war, legal interpretations of the applicability of the language used in Common Article 3 are subject to wide variance.[61] This variance is illustrated in a legal review conducted by the Congressional Research Service regarding the lawfulness of interrogation techniques. The legal review conducted regarding interpretation of the Geneva Conventions noted the following:

> Despite the absolute-sounding provisions described above, whether certain techniques employed by interrogators are per se violations of the Geneva Convention remains subject to debate. Presumably, all aspects of prisoner treatment fall into place along a continuum that ranges from pampering to abject torture. The line between what is permissible and what is not remains elusive. To complicate matters, interrogators may employ more than one technique simultaneously, and the courts and tribunals that have evaluated claims of prisoner abuse have generally ruled on the totality of treatment without specifying whether certain conduct alone would also be impermissible. Not surprisingly, governments may view conduct differently depending on whether their soldiers are the prisoners or the interrogators, and may be unwilling to characterize any conduct on the part of the adversary as lawful. Human rights advocates may tend to interpret the treaty language in a strictly textual fashion, while governments who may have a need to seek information from prisoners appear to rely on more flexible interpretations that take into account military operational requirements. Nonetheless, it may be possible to identify some threshold definitions."[62]

Hamdan vs. Rumsfeld

Following the discussion of Common Article 3 of the 1949 Geneva Conventions, it is appropriate to provide an overview of the U.S. Supreme Court decision in Hamdan v. Rumsfeld. The case deals with the applicability of Common Article 3 to U.S. detainees in the war on terror.

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[61] Ibid., 5.

[62] Congressional Research Service, CRS Report for Congress, "Lawfulness of Interrogation Techniques under the Geneva Conventions," RL 32567, September 8, 2004, 8.

In providing a brief overview of the facts of the case, Salim Ahmed Hamdan, a Yemeni was captured in Afghanistan in November 2001 by Afghani forces and was brought to Guantanamo Bay, Cuba in June 2002. According to the U.S. government, Hamdan was a driver and bodyguard for Osama Bin Laden. In July 2003, Hamdan and five other detainees were scheduled to face trial by a military commission. Hamdan filed a petition in federal court to challenge his detention. Prior to a district court ruling on Hamdan's petition, he received a hearing from a military tribunal that designated him an enemy combatant. Subsequent to Hamdan's hearing before a military tribunal, a district court ruling granted Hamdan's petition finding Hamdan must first be provided a hearing to determine if he was a prisoner of war under the Geneva Conventions before he could be tried by a military commission. The Circuit Court of Appeals for the District of Columbia reversed the district court's ruling and found that the Geneva Conventions could not be enforced in federal court and held that the military tribunals were appropriately established and authorized by Congress.[63]

On June 29, 2006, the U.S. Supreme Court issued its decision in a 73-page opinion finding five to three that the military commission established for Hamdan was unauthorized. In his written opinion expressing the majority view, Justice Stevens opined the historical origins of establishing military commissions were birthed under wartime conditions as "tribunal(s) of necessity." Justice Stevens further wrote, "Exigency lent the commission its legitimacy but did not further justify the wholesale jettisoning of procedural protections."[64]

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[63]The Oyez Project, Hamdan v. Rumsfeld, 548 U.S. ___ (2006), available at: http://www.oyez.org/cases/2000-2009/2005/2005_05_184/ (accessed on November 4, 2008).

[64]Linda Greenhouse, New York Times, 29 Jun 06, http://www.nytimes.com/2006/06/29/washington/29cnd-scotus.html?_r=1&oref=slogin (accessed on 4 Nov 08).

In addition to the military commission being unauthorized, the U.S. Supreme Court also found the commission had to comply with the laws of the United States and the laws of war, to include Common Article 3 of the Geneva Conventions and the Uniform Code of Military Justice. The Supreme Court held that Hamdan's exclusion from parts of his trial due to information being deemed classified by U.S. authorities, was illegal. However, the Supreme Court decision made it clear that although Common Article 3 applied to Hamdan, protections afforded to him by Common Article 3 did not necessarily require the full range of protections of a civilian or military court.[65]

Supreme Court Justices Clarence Thomas, Antonin Scalia, and Samuel A. Altino Jr. offered dissenting opinions on the ruling in Hamdan v. Rumsfeld. Justice Scalia argued Congress denied the Supreme Court jurisdiction to hear the case in its passing of the Detainee Treatment Act of 2005. In the Detainee Treatment Act, verbiage exists stating no court, justice, or judge has jurisdiction to hear habeas corpus petitions filed by detainees. Although the Detainee Treatment Act clearly stated habeas corpus pleas would not be heard from detainees, the question was whether withdrawal of court jurisdiction to hear the petitions applied to pending cases (Hamdan v. Rumsfeld). The Supreme Court majority ruled the withdrawal of jurisdiction was not applicable in the Hamdan case. In addition, Justice Thomas expressed his dissenting opinion as well calling the Supreme Court's decision "untenable" and "dangerous" to "disregard the commander-in-chief's wartime decisions." [66]

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[65] Linda Greenhouse, New York Times, 29 Jun 06, http://www.nytimes.com/2006/06/29/washington/29cnd-scotus.html?_r=1&oref=slogin (accessed on 4 Nov 08), 4.

[66] Ibid., 4.

United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT)

The United States signed CAT on April 18, 1988 and later ratified CAT on October 21, 1994. The Convention Against Torture requires signatory parties to take effective measures to end torture and criminalize all acts of torture. In addition, CAT specifically states no circumstances or emergencies exist in which torture could be permitted.[67]

Although there are many international agreements that condemn or prohibit torture, CAT is the first to attempt to define torture. CAT Article 1 attempts to define torture by stating, torture refers to the following:

> …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. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.[68]

Although CAT's definition of torture is notable, CAT's definition does not specify particular acts which would constitute torture. This lack of specificity regarding acts that constitute torture under CAT lends itself to considerable legal debate, as do other forms of legal guidance on the topic of interrogation. To illustrate the level of confusion surrounding how torture is defined in general terms, as provided by CAT, the Congressional Research Service produced a legal review of CAT in 2008. In its review of CAT, CRS commented on CAT's vagueness in describing torture as follows:

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[67] Congressional Research Service, CRS Report for Congress, "United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT)," RL 32438, Updated January 25, 2008, 2.

[68] Ibid., 2.

> The Convention's definition of "torture" does not include all acts of mistreatment causing mental or physical suffering, but only those of a severe nature. According to the State Department's section-by-section analysis of CAT included in President Reagan's transmittal of the Convention to the Senate for its advice and consent, the Convention's definition of torture was intended to be interpreted in a "relatively limited fashion, corresponding to the common understanding of torture as an *extreme* practice which is universally condemned." For example, the State Department suggested that rough treatment falling into the category of police brutality, "while deplorable, does not amount to 'torture'" for purposes of the Convention, which is "usually reserved for extreme, deliberate, and unusually cruel practices ... [such as] sustained systematic beating, application of electric currents to sensitive parts of the body, and tying up or hanging in positions that cause extreme pain." This understanding of torture as a severe form of mistreatment is further made clear by CAT Article 16, which obligates Convention parties to "prevent in any territory under [their] jurisdiction other acts of cruel, inhuman, or degrading treatment or punishment which do not amount to acts of torture," thereby indicating that not all forms of inhumane treatment constitute torture.[69]

The Detainee Treatment Act

Due in part to controversy and ambiguity surrounding the U.S. treatment of detainees, enemy combatants, and terrorist suspects, Congress approved additional guidance regarding treatment of detainees via the Detainee Treatment Act (DTA) in 2006. The DTA contains the following two provisions:

> (1) Require Department of Defense personnel to employ U.S. Army Field Manual guidelines while interrogating detainees, and (2) prohibit the "cruel, inhuman and degrading treatment or punishment of persons under the detention, custody, or control of the United States Government.[70]

Since the provisions of the DTA were first introduced by Senator John McCain, the DTA received public notoriety as the "McCain Amendment."[71]

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[69] Congressional Research Service, "United Nations Convention Against Torture," 2.

[70] Congressional Research Service, CRS Report for Congress, "Interrogation of Detainees: Overview of the McCain Amendment," RL 33655, October 23, 2008, 1.

[71] Ibid., 1.

In addition to the two DTA provisions listed above, the McCain Amendment also includes provisions for the legal protection of U.S. personnel engaged in authorized interrogations. The amendment specifies, "that a legal defense exists to civil action or criminal prosecution when the U.S. agent did not know the (interrogation) practices were unlawful and a person of ordinary sense and understanding would not know the practices were unlawful."[72]

With regard to the use of the Army Field Manual, it should be noted however, the McCain Amendment generally requires the interrogation of persons in DoD custody to be consistent with U.S. Army Field Manual requirements. The McCain Amendment does not require non-military intelligence and law enforcement agencies to employ U.S. Army Field Manual sanctioned techniques. In addition, the McCain Amendment does not preclude DoD from subsequently amending the Field Manual.[73]

With regard to the second provision of the McCain Amendment, the prohibition of cruel, inhuman, or degrading treatment or punishment, the McCain amendment specifies this restriction is without geographic boundaries. The McCain Amendment also states the provision covers not only DoD entities but also intelligence and law enforcement activities inside and outside of the United States. In interpreting what constitutes prohibited acts under this provision, the McCain Amendment defines cruel and inhuman treatment as those acts prohibited by the Fifth, Eighth, and Fourteenth Amendments to the U.S. Constitution. It should be noted, case law regarding Constitutional protections indicates the Constitution applies to U.S. citizens abroad. However, according to legal interpretation, non-U.S. citizens only receive constitutional

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[72] Ibid., 8.

[73] Congressional Research Service, CRS Report for Congress, "Interrogation of Detainees: Overview of the McCain Amendment," RL 33655, Updated December 11, 2007, 3.

protections after they have entered the United States. As the McCain Amendment prohibits persons under U.S. custody, regardless of their geographic location or nationality, from being subjected to cruel and inhuman treatment, it appears the McCain Amendment intends to extend constitutional protections to non-U.S. persons overseas.[74]

As with other legal guidance on interrogation, the types of interrogation techniques or acts that would be considered cruel, inhuman, or degrading treatment or punishment are a subject of debate. The scope of the Fifth, Eighth, and Fourteenth Amendments are subject to evolving case law and continuous legal discourse. In addition, using the Fifth, Eighth, and Fourteenth Amendments as standards for actions also brings into question a problem of comparing situations that occur in wartime to a stateside criminal justice system. Case law exists in which courts have determined circumstances often dictate whether an action "shocks the conscience and violates a person's due process rights."[75] It is uncertain how courts might interpret actions on the battlefield in a war zone from those applied against a criminal suspect in the homeland.[76] Finally, according to a 2007 Congressional Research Service (CRS) report on the McCain Amendment, John Garcia, Legislative Attorney in the American Law Division of the CRS, noted the following:

> The McCain Amendment arguably imposes less stringent requirements concerning the treatment of detainees than the plain text of Common Article 3, and may permit U.S. personnel to engage in more aggressive means of interrogation than Common Article 3 might otherwise allow.[77]

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[74] Congressional Research Service, "Interrogation of Detainees: Overview of the McCain Amendment,"3-5.

[75] Ibid., 5.

[76] Ibid., 5.

[77] "Interrogation of Detainees: Overview of the McCain Amendment," 10.

The War Crimes Act

The 1949 Geneva Conventions require High Contracting Parties to provide criminal sanctions against any person who commits a "grave breach" of one of the Conventions.[78] A "grave breach" is defined to include, "the willful killing, torture or inhuman treatment, and the causing of great suffering or serious injury to body or health of protected persons."[79] Congress approved the War Crimes Act of 1996 specifically to implement penal requirements responsive to the requirement of the 1949 Geneva Conventions.[80]

The War Crimes Act imposes criminal penalties against persons who commit offenses under the laws of war. The War Crimes Act covers offenses committed by or against a U.S. national or member of the U.S. armed forces whether committed inside or outside the United States. Punishment for offenses includes life imprisonment or any other term of years to include the possibility of inclusion of the death penalty, provided an offense resulted in the death of the victim.[81]

According to a 2007 Congressional Research Service Report on the War Crimes Act, at the time of enactment,

> …the War Crimes Act only covered grave breaches of the 1949 Geneva Conventions. During congressional deliberations, the Departments of State and Defense suggested the act be crafted to cover additional war crimes, but these recommendations were not immediately followed. However, Congress amended the War Crimes Act the following year to cover additional war crimes that had been suggested by the State and Defense Departments, including violations under Article 3 of any of the 1949 Geneva Conventions (Common Article 3). Common Article 3 is applicable to armed conflicts "not of an international character" and covers persons taking no active part in hostilities, including those who have laid

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[78] Congressional Research Service, CRS Report for Congress, "The War Crimes Act: Current Issues," RL 33662, Updated July 23, 2007, 1.

[79] Ibid., 1.

[80] Ibid., 1.

[81] Ibid., 1.

> down their arms or been incapacitated by capture or injury. Such persons are to be treated humanely and protected from certain treatment, including "violence to life and person," "cruel treatment and torture," and "outrages upon personal dignity, in particular, humiliating and degrading treatment.[82]

In spite of the stated attempts to clarify the War Crimes Act relative to providing guidance on specific acts that would constitute torture, interpretations of the scope of actions covered by the War Crimes Act remain ambiguous. To illustrate this point, a 2007 Congressional Research Service report noted the following:

> The United States has apparently never prosecuted a person under the War Crimes Act. Perhaps as a result, there is some question concerning the act's scope. In the aftermath of the Court's ruling in *Hamdan*, some suggested that the War Crimes Act be amended to specify that certain forms of treatment or interrogation violate the act. They argued that the scope of the War Crimes Act was ambiguous, particularly as it related to offenses concerning violations of Common Article 3. In a September 2006 address, President Bush suggested that some provisions of Common Article 3 provided U.S. personnel with inadequate notice as to what interrogation methods could permissibly be used against detained Al Qaeda suspects, and requested legislation listing "specific, recognizable offenses that would be considered crimes under the War Crimes Act." On the other hand, some argued that amending the War Crimes Act to cover specific acts would overly restrict the act's scope, making certain unspecified conduct legally permissible even though it was as severe as conduct expressly prohibited by the act. Although some types of conduct prohibited by Common Article 3 are easily recognizable (e.g., murder, mutilation, the taking of hostages), it might not always be obvious whether conduct constitutes impermissible "torture," "cruel treatment," or "outrages upon personal dignity, in particular humiliating and degrading treatment.[83]

Military Commissions Act

After the enactment of the DTA (McCain Amendment) and the Supreme Court decision in Hamdan v. Rumsfeld, questions continued regarding permissible interrogation

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[83] Congressional Research Service, CRS Report for Congress, "The War Crimes Act: Current Issues," RL 33662, Updated July 23, 2007, 3.

tactics that could be employed. In addition, the issue of whether U.S. interrogators could be held criminally liable for their actions during interrogations was also in question.[84]

The Military Commissions Act (MCA) was signed into law on October 17, 2006. The MCA amended War Crimes Act provisions concerning criminal conduct outlined in Common Article 3. According to a 2007 Congressional Research Service Report, the MCA dictates only,

> …specified violations would be punishable (as opposed to *any* Common Article 3 violation, as was previously the case).While the MCA expressly criminalized torture and certain less severe forms of cruel treatment against persons protected by Common Article 3, it did *not* criminalize all conduct that violates the standards of the McCain Amendment (i.e., cruel, inhuman, or degrading treatment of the kind prohibited under the Fifth, Eighth, and Fourteenth Amendments).[85]
>
> The MCA amended the War Crimes Act provisions concerning Common Article 3 so that only *specified* violations would be punishable (as opposed to *any* Common Article 3 violation, as was previously the case), including committing, or attempting or conspiring to commit: [86]
>
> - torture (defined in a manner similar to that used by the Federal Torture Statute, 18 U.S.C. §§ 2340-2340A, in criminalizing torture);
> - cruel treatment;
> - the performing of biological experiments;
> - murder;
> - mutilation or maiming;
> - intentionally causing serious bodily injury;
> - rape;
> - sexual assault or abuse; and
> - the taking of hostages.[87]

In addressing the level of specificity regarding authorized conduct involving interrogations under the MCA, the 2007 CRS report goes on to note the following:

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[84] Ibid., 1-3.

[85] Congressional Research Service, CRS Report for Congress, "Interrogation of Detainees: Overview of the McCain Amendment," RL 33655, Updated December 11, 2007, 9-10.

[86] Congressional Research Service, CRS Report for Congress, "The War Crimes Act: Current Issues," RL 33662, Updated July 23, 2007, 6.

[87] Ibid., 6.

> The MCA also included provisions concerning authorized conduct under Common Article 3 more generally. Under U.S. treaty obligations, U.S. personnel cannot commit *any* violation of Common Article 3, even though the MCA amended the War Crimes Act so that U.S. personnel would only be subject to criminal penalty for *severe* violations of Common Article 3. The MCA provided that it is generally a violation of Common Article 3 to engage in conduct (1) inconsistent with the McCain Amendment or (2) enumerated in the War Crimes Act, as amended by the MCA, as constituting a "grave breach" of Common Article 3. It should be noted that most, if not all, activities specified by the War Crimes Act, as amended, as "grave breaches" of Common Article 3 (e.g., rape, murder, torture, cruel treatment) are probably already impermissible under McCain Amendment standards. Additionally, the McCain Amendment arguably imposes less stringent requirements concerning the treatment of detainees than the plain text of Common Article 3, and may permit U.S. personnel to engage in more aggressive means of interrogation than Common Article 3 might otherwise allow.[88]

In addition to commenting on the specificity of authorized conduct applicable to interrogations, the MCA also authorized the President of the United States, using his authority to issue Executive Orders, to restrictively interpret the meaning and application of Convention requirements. It should be noted however, that although the MCA permitted the President to interpret the Geneva Conventions so as to enlarge the scope of conduct considered to violate the Conventions, it did not allow the President to expand the scope of the Act to permit "grave breaches." Presidential interpretations of Conventions are deemed authoritative as a matter of U.S. law, although subject to judicial review.[89]

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[88] Congressional Research Service, CRS Report for Congress, "Interrogation of Detainees: Overview of the McCain Amendment," RL 33655, Updated December 11, 2007, 10.

[89] Ibid., 11.

Executive Order 13340, Interpretation of the Geneva Conventions Common Article 3 as Applied to a Program of Detention and Interrogation Operated by the Central Intelligence Agency

Following the authorities provided in the MCA and inherent with his executive authority, on July 20, 2007, President Bush signed Executive Order 13340 interpreting Common Article 3. In a legal review of the Executive Order, a 2007 Congressional Research Service report from the American Law Division described the Order as follows:

> President Bush signed an Executive Order interpreting Common Article 3, as applied to the detention and interrogation of certain alien detainees by the CIA, when those aliens (1) are determined to be members or supporters of Al Qaeda, the Taliban, or associated organizations; and (2) likely possess information that could assist in detecting or deterring a terrorist attack against the United States and its allies, or could provide help in locating senior leadership within Al Qaeda or the Taliban. The Executive Order does not specifically authorize the use of any particular interrogation techniques with respect to detainees, but instead bars any CIA detention and interrogation program from employing certain practices. Specifically, the Order prohibits the use of:
>
> - torture, as defined under the Federal Torture Statute (18 U.S.C. §2340); cruel, inhuman, and degrading treatment, as defined under the McCain Amendment and the MCA;
> - any activities subject to criminal penalties under the War Crimes Act (e.g., murder, rape, mutilation);
> - other acts of violence serious enough to be considered comparable to the kind expressly prohibited under the War Crimes Act;
> - willful and outrageous acts of personal abuse done for the purpose of humiliating or degrading the individual in a manner so serious that any reasonable person, considering the circumstances, would deem the acts to be beyond the bounds of human decency, such as sexual or sexually indecent acts undertaken for the purpose of humiliation, forcing the individual to perform sexual acts or to pose sexually, threatening the individual with sexual mutilation, or using
> - the individual as a human shield; or
> - acts intended to denigrate the religion, religious practices, or religious objects of the individual. [90]

[90] Congressional Research Service, CRS Report for Congress, "Interrogation of Detainees: Overview of the McCain Amendment," RL 33655, Updated December 11, 2007, 12.

The scope of the Executive Order and what types of specific conduct are prohibited by the Order are ambiguous. While it may be apparent that certain conduct such as, murder, rape, and the performance of sexual acts are barred, it is not clear as to what would constitute, "cruel inhuman or degrading" treatment or acts "beyond the bounds of human decency."[91] In addition, a 2007 CRS report notes, "Controversial interrogation methods are not specifically addressed by the Order. Whether or not such conduct is deemed by the Executive to be barred under the more general restrictive language of the Order remains unclear."[92]

Subsequent to the issuance of EO 13340, legislation was introduced by Congressional members that appeared intended to further limit interrogation procedures. However, former White House personnel indicated President Bush would veto any such legislation that would limit the CIA in conductance of interrogations. In a public statement in November 2007, White House personnel claimed such "legislation would jeopardize the safety of the American people by undermining the CIA's enhanced interrogation program, which has helped the United States capture senior al Qaeda leaders and disrupt multiple attacks against the homeland."[93]

Department of Defense (DoD) Directive 3115.09, DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning

DoD published guidance on interrogation complies with legal guidance on the topic of intelligence interrogation. The DoD level guidance states the following:

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[91] Congressional Research Service, CRS Report for Congress, "Interrogation of Detainees: Overview of the McCain Amendment," RL 33655, Updated December 11, 2007, 12.

[92] Ibid., 13.

[93] Ibid., 14.

This Directive:
2.1. Applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense (DoD IG), the Defense Agencies, the DoD Field Activities, and all other Change 1, 5/10/06 1 *DoDD 3115.09, November 3, 2005* organizational entities in the Department of Defense (hereafter referred to collectively as the "DoD Components").

2.2. Applies to all intelligence interrogations, detainee debriefings and tactical questioning conducted by DoD personnel (military and civilian), contractor employees under DoD cognizance, and DoD contractors supporting such interrogations, to the extent incorporated into such contracts.

2.3. Applies to DoD contractors assigned to or supporting DoD Components, to the extent incorporated into such contracts.

2.4. Applies to non-DoD civilians as a condition of permitting access to conduct intelligence interrogations, debriefings, or other questioning of persons detained by the Department of Defense.

2.5. Does not apply to interrogations or interviews conducted by DoD law enforcement or counterintelligence personnel primarily for law enforcement purposes. Law enforcement and counterintelligence personnel conducting interrogations or other forms of questioning primarily for intelligence collection are bound by the requirements of this Directive.

It is DoD policy that:

3.1. All captured or detained personnel shall be treated humanely, and all intelligence interrogations, debriefings, or tactical questioning to gain intelligence from captured or detained personnel shall be conducted humanely, in accordance with applicable law and policy. Applicable law and policy may include the law of war, relevant international law, U.S. law, and applicable directives, including Army Field Manual (FM) 2-23.3 (Reference (k)), the Detainee Treatment Act of 2005 (Reference (l)), instructions or other issuances. Acts of physical or mental torture are prohibited.[94]

This DoD guidance is implemented further by the Department of the Army Field Manual governing intelligence interrogations.

[94] DoD Directive, 3115.09, DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning, November 3, 2005, 1-2.

Department of the Army Field Manual 34-52, Human Intelligence Collector Operations

Subsequent to the controversy surrounding Abu Ghraib, the U.S. Army took measures to implement the requirements of the McCain Amendment by amending its interrogation field manual. The U.S. Army Field Manual prohibits the cruel, inhuman, or degrading treatment of any person in the custody or control of the U.S. military. The Army Field Manual outlines eight techniques that are prohibited in conductance of intelligence interrogations. The "eight techniques" are:

- 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."[95]

In addition, the Field Manual restricts the use of three other techniques. The manual requires these additional techniques may only be applied with higher echelon approval. The techniques are as follows:

> "(1) "Mutt and Jeff", a good-cop, bad-cop interrogation tactic where a detainee is made to identify with the more friendly interrogator; (2) "false flag," where a detainee is made to believe he is being held by another country known to subject prisoners to harsh interrogation; and (3) separation, by which detainees are separated so that they cannot coordinate their stories."[96]

The Army Field Manual does offer specific guidance to DoD personnel regarding interrogation practices. However, it should be noted the Field Manual did not apply

[95] Congressional Research Service, CRS Report for Congress, "United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT)," RL 32438, Updated January 25, 2008, 16.

[96] Ibid., 16.

to non-DoD personnel (prior to President Obama's EO on interrogation) and can be amended as required in accordance with changes in policy or legal requirements.[97]

Department of Justice Legal Memorandums

Perhaps most revealing of the ambiguity and debate resident in legal guidance surrounding interrogations practices, DoJ guidance on this issue varies broadly as well. In August 2002, John C. Yoo authored a legal memorandum for Alberto Gonzales that provided a controversial opinion on the standards of conduct for interrogation under 18 USC 2340-2340A. The memorandum concluded the following:

> We examine the criminal statute's text and history. We conclude that for an act to constitute torture as defined in Section 2340, it must inflict pain that is difficult to endure. Physical pain amounting to torture must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death.[98]

In addition, Mr. Yoo also authored a document initially classified SECRET/NOFORN (subsequently declassified) that provided a legal opinion on the topic of interrogation techniques that also became highly publicized after its release. The legal memorandum was written to the General Counsel of the Department of Defense. The 81 page 2003 memorandum by Mr. Yoo received great notoriety due to its aggressive interpretation of legal guidance on the topic of interrogation and its apparent endorsement of the wide variance of activities that could be conducted after interpretation of the law on the topic.[99]

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[97] Congressional Research Service, CRS Report for Congress, "United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT)," RL 32438, Updated January 25, 2008, 16.

[98] Department of Justice, DoJ Memorandum for Alberto R. Gonzales Counsel to President, "*Standards of Conduct for Interrogation under 18 U.S.C 2340-2340A*," August 1, 2002, 1.

[99] Department of Justice, DoJ Memorandum to General Counsel of the Department of Defense, "*Military Interrogation of Alien Unlawful Combatants Held Outside the United States," March 14, 2003.*

The 2003 DoJ memorandum concluded the following:

> You have asked our Office to' examine the legal standards governing military interrogations of alien unlawful combatants held outside the United States. You have requested that we examine both· domestic and international law that might be applicable to the conduct of those interrogations.
>
> In Part I, we conclude that the Fifth and Eighth Amendments, as interpreted by the Supreme Court, do not extend to·alien enemy combatants held abroad.
>
> In Part II, we examine federal criminal law. We explain that several canons of construction apply here. Those canons .of construction indicate that federal criminal laws of general applicability do not apply to properly-authorized interrogations of enemy combatants, undertaken by military personnel in the course of an armed conflict. Such criminal statutes, if they were misconstrued to apply to the interrogation of enemy combatants, would conflict with the Constitution's grant of the Commander in Chief power solely to the President.
>
> Although we do not believe that these laws would apply· to authorized military interrogations, we outline the various federal crimes that apply in the special maritime and territorial jurisdiction of the United States: assault, 18 U.S.C. § 113 (2000); maiming, 18 U.S.C. § 114 (2000); and interstate' stalking, 18 U.S.C. § 2261A(2000). In Part IT.C., we address relevant criminal prohibitions that apply to conduct outside the jurisdiction of the United States: war crimes, 18 U.S.C. § 2441 (2000); and torture, 18' U.S.C. § 2340A (2000 & West Supp. 2002).
>
> In Part III, we examine the international law applicable to the conduct of interrogations. First, we examine the U.N. Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Apr. 18, 1988,1465 D.N.T.S. 113 ("CAT") and conclude that U.S. reservations, understandings, and declarations ensure that our international obligations mirror the standards of 18 U.S.C. § 2340A.
>
> Second, we address the U.S. obligation under CAT to undertake to prevent the commission of "cruel, inhuman, or degrading treatment or punishment." We conclude that based on its reservation, the United States' obligation extends only to conduct that is "cruel and unusual" within the meaning of the Eighth Amendment or otherwise "shocks the conscience" under the Due Process Clauses of the Fifth and Fourteenth Amendments.
>
> Third, we examine the applicability of customary international law. We conclude that as an expression of state practice, customary international law cannot impose a standard that differs from U.S. obligations under CAT, a recent multilateral treaty on the same subject.

> In any event, our previous opinions make clear that customary international law is not federal law and that the President is free to override it at his discretion.
>
> In Part IV, we discuss defenses to an allegation that an interrogation method might violate any of the various criminal prohibitions discussed in Part ll. We believe that necessity or self-defense could provide defenses to a prosecution.[100]

The 2004 memorandum from Mr. Yoo is perhaps most famous for its interpretation of acts constituting torture under 18 USC 2340-2340A as follows:

> Section 2340's definition of torture must be read as a sum of these component parts…Each component of the definition emphasizes that torture is not the mere infliction of pain or suffering on another, but is instead a step well removed. The victim must experience intense pain or suffering of the kind that is equivalent to the pain that would be associated with serious physical injury' so severe that death, organ failure, or permanent damage resulting in a loss of significant body function will likely result.[101]

Of course, both the 2002 and 2003 opinions of Mr. Yoo garnered quite a bit of media attention after their release. In particular, the 2002 memorandum was the subject of great scrutiny. As a result, DoJ rescinded this legal opinion and published additional guidance in a December 2004 memorandum for the Deputy Attorney General as follows:

> Torture is abhorrent both to American law and values and to international norms. This universal repudiation of torture is reflected in our criminal law, for example, 18 U.S.C. §§ 2340-2340A; international agreements, exemplified by the United Nations Convention Against Torture (the "CAT"); customary international law; centuries of Anglo-American law; and the longstanding policy of the United States, repeatedly and recently reaffirmed by the President. This Office interpreted the federal criminal prohibition against torture—codified at 18 U.S.C. §§ 2340-2340A--in Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340-2340A (Aug. 1, 2002) ("August 2002 Memorandum"). The August 2002 Memorandum also addressed a number of issues beyond interpretation of those statutory provisions, including the President's Commander-in-Chief power, and various defenses that might be asserted to avoid potential liability under sections 2340-2340A. See id. at 31-46.
>
> Questions have since been raised, both by this Office and by others, about the appropriateness and relevance of the non-statutory discussion in the August 2002

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[100] "Military Interrogation of Alien Unlawful Combatants Held Outside the United States," 1-2.
[101] Ibid., 45.

> Memorandum, and also about various aspects of the statutory analysis, in particular the statement that "severe" pain under the statute was limited to pain "equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death." Id. at 1. We decided to withdraw the August 2002 Memorandum, a decision you announced in June 2004. At that time, you directed this Office to prepare a replacement memorandum. Because of the importance of--and public interest in--these issues, you asked that this memorandum be prepared in a form that could be released to the public so that interested parties could understand our analysis of the statute.
>
> This memorandum supersedes the August 2002 Memorandum in its entirety…
>
> We have also modified in some important respects our analysis of the legal standards applicable under 18 U.S.C. §§ 2340-2340A. For example, we disagree with statements in the August 2002 Memorandum limiting "severe" pain under the statute to "excruciating and agonizing" pain, id. at 19, or to pain "equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death," id. at 1. There are additional areas where we disagree with or modify the analysis in the August 2002 Memorandum, as identified in the discussion below.[102]

The 2003 DoJ memorandum further comments on conduct that might constitute torture by citing commonly used legal documents surrounding the interrogation debate and also stating the following:

> Although Congress defined "torture" under sections 2340-2340A to require conduct specifically intended to cause "severe" pain or suffering, we do not believe Congress intended to reach only conduct involving "excruciating and agonizing" pain or suffering. Although there is some support for this formulation in the ratification history of the CAT, a proposed express understanding to that effect was "criticized for setting too high a threshold of pain," S. Exec. Rep. No. 101-30, at 9, and was not adopted. We are not aware of any evidence suggesting that the standard was raised in the statute and we do not believe that it was. Drawing distinctions among gradations of pain (for example, severe, mild, moderate, substantial, extreme, intense, excruciating, or agonizing) is obviously not an easy task, especially given the lack of any precise, objective scientific criteria for measuring pain.[103]

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[102] Department of Justice, DoJ Memorandum for James B. Comey Deputy Attorney General, "Re: Legal Standards Applicable Under 18 U.S.C 2340-2340a," December 30, 2004, 1-2.

[103] Ibid., 8.

Executive Order 13492

Finally, and most recently, a change in Executive authority as of January 22, 2009, has yielded a new EO on interrogation from President Obama, EO 13492. President Obama's Order has not yet been through the rigor of intensive partisan legal or operational debate. However, it may be safe to say it revokes EO 13440 and requires any U.S. interrogation of any "individuals detained in any armed conflict" to be interrogated using Army Field Manual 2 22.3.[104]

President Obama's EO also announces the creation of a Special Task Force on Interrogation and Transfer Policies. Among other duties, this task force is required to "study and evaluate whether the interrogation practices and techniques in Army Field manual 2 22.3…provide an appropriate means of acquiring the intelligence necessary to protect the Nation…"[105]

Critiques of President Obama's Order already question why the Order was enacted limiting interrogation practices without knowledge of how those limitations may impact U.S. ability to acquire valuable intelligence affecting national security. In addition, even this apparently restrictive policy on interrogation has a healthy chance to change based upon future results of the Special Task Force, the potential capture of a high profile terror subject necessitating more aggressive techniques, and concerns already raised by the intelligence community.[106]

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[104] Fox News Politics Online, "Obama Issues Directives on Detainees, Interrogation, Guantanamo," January 22, 2009, http://www.foxnews.com/politics/first100days/2009/01/22/obama-issues-directives-detainees-interrogation-guantanamo/ (accessed on January 22, 2009), 1.

[105] Ibid., 3.

[106] Mark Mazzetti and William Glaberson, "Obama Issues Directive to Shut Down Guantanamo," *New York Times*, January 21, 2009, http://www.nytimes.com/2009/01/22/us/politics/22gitmo.html?hp (accessed on January 22, 2009), 1.

CHAPTER 3

Interrogation Techniques

Although controversial interrogation techniques may be as varied as the interrogator's imagination in developing and applying a technique, for purposes of framing a discussion, specific techniques will be enumerated using the CIA's KUBARK manual followed by a discussion of Survival, Evasion, Resistance, and Escape (SERE) interrogation techniques. The CIA's KUBARK Counterintelligence (CI) Interrogation Manual, published in 1963 as an originally classified SECRET document (subsequently declassified), offers detailed guidance to the interrogator on both non-coercive and coercive interrogation techniques.

For the purposes of this thesis discussion, the focus of the KUBARK review will be limited to KUBARK guidance presented relative to controversial interrogation techniques. After a discussion of KUBARK advice, a look at SERE interrogation techniques offers valuable insight into specific techniques that are used in training U.S. service personnel in resistance. In addition, although SERE training is used as a defensive tool to help prepare service members for what they may encounter if captured, SERE leadership personnel have also offered their evaluation of the effectiveness of the techniques used in SERE.

CIA KUBARK Manual

The term "KUBARK" is a cryptonym used to refer to a CIA counterintelligence collection operation undertaken in the 1960s.[107] Research in the KUBARK operation

[107] Steven M. Kleinman, "KUBARK Counterintelligence Interrogation Review: Observations of an Interrogator: Lessons Learned and Avenues for Further Research," in *Educing Information:*

involved government study intended to specifically identify methods to effectively counter interrogation techniques used against captured U.S. service personnel. A main source of information used in the KUBARK operation was research conducted by Albert J. Biderman. Biderman was a sociologist for the U.S. Air Force who is known for his published research on Chinese Communist interrogation techniques used against American POWs.[108]

The KUBARK manual begins simply by broadcasting the intent of the manual. The manual states its purpose is to aid interrogators, and others involved in the process, in conducting "counterintelligence interrogation of resistant sources."[109] The KUBARK manual then goes on to state that its conclusions and guidance are based on published research and scientific studies on topics germane to the study of interrogation.[110] The manual is quick to acknowledge that success in interrogation is largely dependent on the skill of an interrogator. However, the manual also points out that knowledge of basic principals of interrogation, "chiefly psychological," and the application of these principals to interrogation, is essential to interrogation success.[111]

The KUBARK manual clearly establishes the unique challenge of conducting an interrogation on a "resistant source who is a staff or agent member of an Orbit intelligence or security service or of a clandestine Communist organization." KUBARK advises that although the likelihood of successfully interrogating such a resistant source

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Interrogation Science and Art: Foundations for the Future, ed. Russell Swenson (Washington, DC: National Defense Intelligence College), 96.

[108] Kleinman, "KUBARK Counterintelligence Interrogation Review," 98.

[109] Central Intelligence Agency, KUBARK Counterintelligence Interrogation, Washington, DC, 1963, http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB122/#kubark (accessed on February 5, 2009), 1.

[110] Ibid., 1.

[111] Ibid., 1.

favors the interrogator, "the training, experience, patience and toughness of the interrogatee" can level the playing field significantly.[112]

In order to help retain the interrogator's advantage, KUBARK suggests the basis for conducting interrogations should be rooted in scientific research vice an "eighteenth century" approach.[113] The manual also makes a point in that it suggests any examination of interrogation must include an earnest emphasis on the psychological aspects of interrogation.[114] KUBARK offers a sobering warning that the "imposition of external techniques of manipulating people carries with it the grave risk of later lawsuits, adverse publicity, or other attempts to strike back."[115] KUBARK's warning underscores the complexity and controversial nature of interrogation of human sources. In many ways, KUBARK's cautionary note was a harbinger of events that have unfolded today with regard to the intense debate on U.S. interrogation policy and practices.

The KUBARK manual is clear on advice offered on coercive techniques of interrogation. KUBARK states, "Coercive procedures are designed to not only exploit the resistant source's internal conflicts and induce him to wrestle with himself but also to bring a superior outside force to bear upon the subject's resistance."[116] KUBARK advises that although the same coercive methods can be used successfully against all types of individuals, it is more effective to tailor specific techniques to a subject's personality. KUBARK asserts every individual reacts differently to stimuli and therefore techniques used should be matched to each individual's particular personality.[117]

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[112] KUBARK, 2.
[113] Ibid., 2.
[114] Ibid. 3.
[115] Ibid., 2.
[116] Ibid. 83.
[117] Ibid., 83.

KUBARK also comments on the increased utility of using non-coercive techniques in lieu of non-directed coercive measures. KUBARK states, "it is a waste of time and energy to apply strong measures on a hit-or-miss basis if a tap on the psychological jugular will produce compliance."[118]

Demonstrating the critical linkage between coercive techniques and the psychological state elicited from the subject, KUBARK asserts "all coercive techniques are designed to induce regression."[119] In support of the use of coercive techniques, KUBARK references a study by Dr. Lawrence E. Hinkle Jr., "The Psychological State of the Interrogation Subject as it Affects Brain Function." KUBARK finds that through the application of coercive techniques, "relatively small degrees of homeostatic derangement, fatigue, pain, sleep loss, or anxiety" may significantly impair an individual's ability to resist interrogation.[120] In an endorsement of coercive techniques and conclusions drawn by Hinkle's study, KUBARK notes, "most people who are exposed to coercive procedures will talk and usually reveal some information that they might not have revealed otherwise."[121]

On the topic of applying coercive techniques in interrogation, KUBARK directly addresses a common objection that the use of coercive techniques leads to false confessions and impairment of a subject's judgment to such a degree that information derived is useless. KUBARK advises a subject's confession is a "necessary prelude to the CI interrogation of a hitherto unresponsive or concealing source."[122] KUBARK concludes, "the use of coercive techniques will rarely or never confuse an interrogatee so

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[118] KUBARK, 83.
[119] Ibid., 83.
[120] Ibid., 83.
[121] Ibid., 83.
[122] Ibid., 84.

completely that he does not know whether his own confession was true or false."[123] In further justifying its position on coercive techniques in producing confessions, KUBARK finds an individual doesn't need to have "full mastery of all his powers of resistance and discrimination to know whether he is a spy or not."[124] KUBARK asserts that only subjects who experience "delusions are likely to make false confessions they do not believe."[125] KUBARK advises that once a confession is achieved, coercive pressures should be lifted to the extent needed to elicit information.[126]

In reference to recommendations on coercive techniques used in interrogation, KUBARK describes a specific regimen to follow to achieve an effective interrogation. KUBARK lists the following items as principal coercive techniques in interrogation: "arrest, detention, deprivation of sensory stimuli through solitary confinement or similar methods, threats and fear, debility, pain, heightened suggestibility and hypnosis, narcosis, and induced regression."[127] KUBARK discusses the foundations and application of each of these techniques as a part of an overall approach to interrogation. However, for the purposes of this thesis discussion, KUBARK's conclusions on threats/fear, debility, and pain are most pertinent.

First, with regard to threats and fear, KUBARK plainly states that the "threat of coercion usually weakens or destroys resistance more effectively than coercion itself."[128] KUBARK illustrates this point by commenting on threats to inflict pain. KUBARK holds that the "immediate sensation of pain" is often less "damaging" than the fear

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123 KUBARK., 84.
124 Ibid., 84.
125 Ibid., 84.
126 Ibid., 84.
127 Ibid., 85.
128 Ibid., 90.

caused by the threat of pain.[129] This condition is due in part to the argument that "most people underestimate their capacity to withstand pain."[130] KUBARK extends this same principal to fear. "Sustained long enough, a strong fear of anything vague or unknown induces regression, whereas the materialization of the fear, the infliction of some form of punishment, is likely to come as a relief."[131] This instance is perhaps simply described by the fear experienced by many children as a result of a parent's often uttered threat of waiting until their father comes home and hears what the child has done. KUBARK notes, "direct physical brutality creates only resentment, hostility, and further defiance."[132] KUBARK finds that using threats is consistent with using other types of coercive techniques. Threats are "most effective when used to foster regression and when joined with a suggested way out of the dilemma, a rationalization acceptable to the interrogate."[133]

Illustrative of KUBARK's advice on the use of threats, is discussion of death as a threat in interrogation. KUBARK notes the threat of death "has been found to be worse than useless."[134] The circumstances and psychology behind such a conclusion is fairly straightforward. KUBARK notes that many prisoners who have resisted threats of death were subsequently "broken" through other means.[135] The main reason why death threats are not effective is that if a prisoner believes the threat to be real, it can lead to "hopelessness" and a belief that he will likely be killed if he cooperates or not.[136] In addition, death threats are also found to be counterproductive against highly resistant

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[129] KUBARK, 90.
[130] Ibid., 90.
[131] Ibid., 91.
[132] Ibid., 91.
[133] Ibid., 91.
[134] Ibid., 92.
[135] Ibid., 92.
[136] Ibid., 92.

subjects who discern that by killing them, an interrogator would not be able to get any information from them. In addition, if a death threat is thought to be a "bluff," it will undermine the effectiveness of future "coercive ruses" that may be used in interrogation.[137]

On debility, KUBARK's assessment is clear that there is no scientific evidence to suggest that debility is productive as a coercive technique. KUBARK notes, "for centuries interrogators have employed various methods of inducing physical weakness: prolonged constraint; prolonged exertion; extremes of heat, cold, moisture; and deprivation or drastic reduction of food or sleep."[138] These techniques were utilized in an apparent attempt to sap the source's physiological strength and thereby decrease his psychological ability to resist. On the contrary however, KUBARK notes that the science of interrogation shows that "resistance is sapped principally by psychological rather than physical pressures."[139] KUBARK asserts there is no evidence to suggest that subjects who enter interrogation physically weakened are any more apt to cooperate than those who are physically healthy.[140]

With regard to pain, KUBARK is consistent in noting that pain as a stimulus in interrogation is most effective when examined in terms of how the individual psychologically experiences the pain. KUBARK finds that each person reacts differently to pain and cites work done by Hinkle as evidence of this assertion. KUBARK notes Hinkle found, "the sensation of pain seems to be roughly equal in all men, that is to say all people have approximately the same threshold at which they begin to feel pain, and

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137 KUBARK, 92.
138 Ibid., 92.
139 Ibid., 92.
140 Ibid., 92.

when carefully graded stimuli are applied to them, their estimates of severity are approximately the same."[141] To address why some individuals may be able to endure pain better than other individuals, KUBARK notes Hinkle found that the "attitude of the man" experiencing the pain is an essential "determinant" in understanding a person's reaction to pain.[142]

KUBARK finds a key variable in understanding an individual's reaction to pain may be the person's "early conditioning" to pain.[143] KUBARK asserts that an individual whose past experiences with pain were "frightening and intense may be more violently affected by its later infliction than those whose original experiences were mild."[144] Conversely, KUBARK also recognizes that an individual who was familiar with pain in childhood may fear and react to pain less than a person who is less familiar with pain. KUBARK notes that focus on the individual is the "determinant" in understanding a person's reaction to pain.[145]

KUBARK also claims that in keeping with the concept of a person's individual perception of pain, pain "inflicted on a person from outside himself may actually focus or intensify his will to resist."[146] KUBARK finds that a person's will to resist interrogation may be weakened more effectively by pain which he "seems to inflict upon himself."[147] In a "torture situation," KUBARK notes the conflict between the interrogatee and his "tormentor" results in pain inflicted externally upon the interrogatee which he can

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141 KUBARK., 93.
142 Ibid., 93.
143 Ibid., 93.
144 Ibid., 93.
145 Ibid., 93.
146 Ibid., 94.
147 Ibid., 94.

"frequently endure."[148] KUBARK suggests a more effective method of interrogation is to introduce an "intervening factor" in the infliction of pain in interrogation so that pain is experienced internally by the interrogatee.[149] As an example, KUBARK offers the situation in which an individual is ordered "to stand at attention for long periods."[150] KUBARK asserts, in this case, the "immediate source of pain is not the interrogator but the victim himself."[151] KUBARK suggests the will of the interrogatee is likely to be sapped more effectively in the case of ordered standing at attention because pain is perceived internally by the interrogatee. KUBARK notes, "as long as the subject remains standing, he is attributing to his captor the power to do something worse to him, but there is actually no showdown of the ability of his interrogator to do so."[152]

KUBARK finds that in the case of individuals who are holding back information and "who feel qualms of guilt and a secret desire to yield," the infliction of pain externally upon them is likely to make them more "intractable."[153] KUBARK notes the reason for a person's likely intractability is that the person may "interpret the pain as punishment and hence as expiation."[154] KUBARK also recognizes that there are "people who enjoy pain and its anticipation" and who withhold information "they would otherwise divulge" if they believe pain will be inflicted upon them for withholding.[155] In addition, KUBARK states that "persons of considerable moral or intellectual stature"

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148 KUBARK, 94.
149 Ibid., 94.
150 Ibid., 94.
151 Ibid., 94.
152 Ibid., 94.
153 Ibid., 94.
154 Ibid., 94.
155 Ibid., 94.

may interpret pain inflicted externally upon them as a sign of the "inferiority" of their captors, further strengthening their will to resist.[156]

On the topic of intense pain in interrogation, KUBARK is clear in its recommendation that "intense pain is quite likely to produce false confessions."[157] KUBARK asserts false confessions will likely result from the use of intense pain in interrogation because the interrogatee will develop a false confession to escape from the pain. The false confession is likely to be counterproductive to interrogation since the person is afforded an opportunity to regroup and time is wasted while the false confession is investigated.[158]

Finally, on the timing of applying pain in an interrogation, KUBARK suggests that applying pain late in an interrogation, after other techniques have failed, is often counterproductive. KUBARK notes that a person is likely to perceive the late application of pain in interrogation as a sign that the interrogator is becoming "desperate."[159] This perception may result in the individual attempting to "hold out" against what the individual perceives as a "final assault."[160] KUBARK asserts interrogatees who have previously "withstood pain" were "more difficult to handle by other methods."[161]

SERE Training and Interrogation Techniques

Although KUBARK provides valuable insight into understanding the science and psychology behind the effective application of interrogation techniques, SERE training

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156 KUBARK, 94.
157 Ibid., 94.
158 Ibid., 94.
159 Ibid., 95
160 Ibid., 95.
161 Ibid., 95.

interrogation techniques offer specific examples of coercive techniques. In addition, an examination of SERE training is also valuable in that SERE leadership personnel have commented on the impact and effectiveness of the application of interrogation techniques used in training.[162]

The Joint Personnel Recovery Agency (JPRA) is the principal DoD agency that provides oversight of SERE training. JPRA falls under combatant command authority of the Commander in Chief, U.S. Joint Forces Command. Under its Code of Conduct mission area, JPRA provides oversight of joint SERE training programs and SERE training to special mission units and personnel requiring such specialized training.[163]

Resistance training in SERE schools exposes students to psychological and physical pressures that simulate conditions which they may experience if captured by an enemy force. The JPRA instructor guide for resistance training states the purpose of using physical pressures in training is "stress inoculation," building soldiers' immunities so that if they are captured and subjected to harsh treatment, they will be better prepared to resist.[164] SERE resistance training techniques have been in use since 1961 and were originally derived from Chinese Communist interrogation techniques used during the Korean War. Within its core resistance training area, JPRA "has arguably developed into

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[162] Senate Armed Services Committee, "Senate Armed Services Committee Hearing: The Origins of Aggressive Interrogation Techniques," Part I of the Committee's Inquiry into the Treatment of Detainees in U.S. Custody, under Documents Referenced in Senator Levin's Opening Statement, June 17, 2008, http://levin.senate.gov/newsroom/supporting/2008/Documents.SASC.061708.pdf (accessed on February 16, 2009), 3.

[163] Ibid., 3.

[164] Statement of Senator Carl Levin, Senate Armed Services Committee, "Senate Armed Services Committee Hearing: The Origins of Aggressive Interrogation Techniques," Part I of the Committee's Inquiry into the Treatment of Detainees in U.S. Custody, under Background on Survival Evasion Resistance and Escape (SERE) Training, June 17, 2008, http://levin.senate.gov/senate/statement.cfm?id=299242 (accessed on February 16, 2009).

the DoD's experts on exploitation" due to their lengthy history of providing training in this area.[165]

In order to adequately explore the value of SERE training relative to controversial interrogation techniques, it is pertinent to describe some of the physical, coercive techniques used in SERE resistance training. SERE resistance training techniques are purportedly not designed to "produce enduring or damaging consequences, or to render the student so incapacitated by physical or emotional duress that learning does not take place."[166] According to JPRA officials, the purpose of resistance training is to "project the students' focus into the resistance scenario and realistically simulate conditions associated with captivity and resistance efforts."[167] The "pressures" used in resistance training are patterned after tactics historically used against American POWs and are also "minor in comparison to those experienced by American prisoners in the past."[168]

JPRA officials assert there is a fine line they must walk in applying physical pressures during resistance training. "The application of physical pressures in training is necessary to produce the correct emotion and psychological projection a student requires for stress inoculation and stress resolution to be accomplished."[169] The application of physical pressures allows training to achieve a condition of "Controlled Realism" so that

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165 Senate Armed Services Committee Hearing: The Origins of Aggressive Interrogation Techniques," Part I of the Committee's Inquiry into the Treatment of Detainees in U.S. Custody,3.

166 Senate Armed Services Committee, "Senate Armed Services Committee Hearing: The Origins of Aggressive Interrogation Techniques," Part I of the Committee's Inquiry into the Treatment of Detainees in U.S. Custody, under Documents Referenced in Senator Levin's Opening Statement, June 17, 2008, (Tab 3-EXTRAXTS) July 25, 2002 Document, entitled Physical Pressures Used in Resistance Training and Against American Prisoners and Detainees, Attached to JPRA Memorandum of July 26, 2002, http://levin.senate.gov/newsroom/supporting/2008/Documents.SASC.061708.pdf (accessed on February 16, 2009), 6.

167 Ibid., 6.

168 Ibid., 6.

169 Ibid., 6.

learning can be accomplished.[170] JPRA officials suggest that if "too little physical pressure is applied, the student will fail to acquire the necessary inoculation affect and run the risk of underestimating the demands real captivity can produce."[171] JPRA also recognizes a contrary condition could exist if too much physical pressure is applied. The student could be "made vulnerable to the effects of learned helplessness" that could result in the student being less able to deal with captivity than prior to training.[172]

JPRA cautions that the application of physical pressures in resistance training is strictly controlled. JPRA training instructors must tailor physical pressures to students based on each student's "physical size and resilience."[173] Somewhat reminiscent of KUBARK advice, physical pressures used in resistance training are determined by each individual's ability to resist.

As part of documents publicly released during a Senate Armed Services Committee Hearing on the Origins of Aggressive Interrogation Techniques in 2008, the following SERE techniques and guidance were listed as approved physical pressures used in JPRA resistance training:

> 1. FACIAL SLAP: Slap the subject's face midway between the chin and the bottom of the ear lobe. The arm swing follows an ark no greater than approximately 18 inches. "Pull" the full force of the slap to generate effect. Use no more than 2 slaps with any singular application-typically, the training effectiveness of slapping has become negligible after 3 to 4 applications. (Typical conditions for application: to instill fear and despair, to punish selective behavior, to instill humiliation or cause insult).[174]
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> 2. WALLING: With a hood, towel or similar aid, roll or fold the hood the long way, place it around the student's neck. Grasp each side firmly and roll your

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[170] Senate Armed Services Committee Hearing: The Origins of Aggressive Interrogation Techniques," Part I of the Committee's Inquiry into the Treatment of Detainees in U.S. Custody, 6.

[171] Physical Pressures Used in Resistance Training and Against American Prisoners and Detainees, Attached to JPRA Memorandum of July 26, 2002, 6.

[172] Ibid., 6.

[173] Ibid., 6.

[174] Ibid., 7.

wrist inwardly till a relatively flat surface is created by the first joint of your fingers or the back of your hand. Quickly and firmly push, numerous times, the student into the wall in a manner, which eliminates a "whip lash' effect of the head – push with your arms only. Do not use "leg force" to push the student – ensure the wall you are using will accommodate the student without injury and adjust your "push" accordingly. (Typical conditions for application: to instill fear and despair, to punish selective behavior, to instill humiliation or cause insult.)[175]

3. SILENCING FACIAL HOLD: This tactic is used when the subject is talking too much or about inappropriate subjects. The interrogator attempts to physically intimidate the subject into silence by placing their hand over the subject's mouth and violating their personal space. (Typical conditions for application: to threaten or intimidate via invasion of personal space, to instill fear and apprehension without using direct physical force, to punish illogical, defiant, or repetitive responses.)[176]

4. FACIAL HOLD: This tactic is used when the subject fails to maintain eye contact with the interrogator. The interrogator grasps the subject's head with both hands holding head immobile. Again, the interrogator moves into and violates the subject's personal space Typical conditions for application: to threaten or intimidate via invasion of personal space, to instill fear and apprehension without using direct physical force, to punish illogical, defiant, or repetitive responses.)[177]

5. ABDOMEN SLAP: This tactic is used when the subject is illogical, defiant, arrogant and generally uncooperative. It is designed to gain the subject's attention (Typical conditions for application: to instill fear and despair, to punish selective behavior, to instill humiliation or cause insult.)[178]

6. FINGER PRESS: This tactic is using the forefinger to forcefully, repeatedly jab the chest of the subject. The motion should be firm but not forceful enough to cause injury. (Typical conditions for application: to instill apprehension and insult.)[179]

7. WATER: When using this tactic, water is poured, flicked, or tossed on the subject. The water is used as a distracter, to disturb the subject's focus on the line of interrogation. When pouring, the subject is usually on their knees and the water is poured slowly over their head. Flicking water is generally directed to the face and again used to distract the subject's attention and focus. Tossing water is more forceful and should come as a surprise. The water is usually directed to the

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[175] Physical Pressures Used in Resistance Training and Against American Prisoners and Detainees, Attached to JPRA Memorandum of July 26, 2002, 7.

[176] Ibid., 7.

[177] Ibid., 7.

[178] Ibid., 7.

[179] Ibid., 7.

mouth and chin area of the face and care is used to avoid the subject's eyes. (Typical conditions for application: to create a distracting pressure, to startle, to instill humiliation or cause insult).[180]

8. BLOCK HOLD: The subject can be sitting, kneeling or standing with their arms extended out straight with the palms up. The interrogator puts a weighted block, 10-15 lbs., on their hands. The subject is required to keep their arms straight, told not to drop the block at risk of additional punishment (Typical conditions for application: to create a distracting pressure, to demonstrate self-imposed pressure, to instill apprehension, humiliation or cause insult).

9. BLOCK SIT: Using a block with a pointed end that is pointed toward the floor, the subject is told to sit on the flat top with feet and knees together. The knees are bent 90 degrees, and the subject is not allowed to spread their legs to form a tripod. The process of trying to balance on this very unstable seat and concentrate on the interrogator's questions at the same time is very difficult (Typical conditions for application: to create a distracting pressure, to demonstrate self-imposed pressure, to instill apprehension, humiliation or cause insult).[181]

10. ATTENTION GRASP: In a controlled, quick motion the subject is grabbed with two hands, one on each side of the collar. In the same motion, the interrogator draws the subject into his or her own space. (Typical conditions for application: to create a distracting pressure, to demonstrate self-imposed pressure, to instill apprehension, humiliation or cause insult).[182]

11. STRESS POSITION: The subject is placed on their knees, told to extend their arms either straight up or straight out to the front. The subject is not allowed to lean back on their heels, arch their back or relieve the pressure off the point of the knee. Note: there are any number of uncomfortable physical positions that can be used and considered in this category (Typical conditions for application: to create a distracting pressure, to demonstrate self-imposed pressure, to instill apprehension, humiliation or cause insult).[183]

In addition to JPRA approved resistance training physical pressures, other service school resistance training courses include other JPRA approved techniques. The

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[180] Physical Pressures Used in Resistance Training and Against American Prisoners and Detainees, Attached to JPRA Memorandum of July 26, 2002, 7.

[181] Ibid., 7.

[182] Ibid., 7.

[183] Ibid., 7.

following items represent a list of approved physical pressures used in other service schools resistance training programs:

> 1. SMOKE: Pipe tobacco is blown into the subject's face while standing, sitting or kneeling position. This is used during interrogation to produce discomfort. A smoking pipe is filled with dry tobacco, the pipe is lit and the bit of the pipe has a hose attached. The interrogator blows back through the pipe bowl creating an extraordinary amount of thick, sickening smoke. Maximum duration is five minutes (Typical conditions for application: to instill fear and despair, to punish selective behavior, to instill humiliation or cause insult.)[184]
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> 2. WATERBOARD: Subject is interrogated while strapped to a wooden board, approximately 4'X7". Often the subject's feet are elevated after being strapped down and having their torso stripped. Up to 1.5 gallons of water is slowly poured directly onto the subject's face from a height of 12-24 inches. In some cases, a wet cloth is placed over the subject's face. It will remain in place for a short period of time. Trained supervisory and medical staff monitors the subject's physical condition. Student may be threatened or strapped back on the board at a later time. However, no student will have water applied a second time. This tactic instills a feeling of drowning and quickly compels cooperation (Typical conditions for application: to instill fear and despair, to punish selective behavior).[185]
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> 3. SHAKING and MANHANDLING: Subject is grasped with a rolled cloth hood or towel around the their neck (provides stability to the head and neck). The subject's clothing is grasped firmly and then a side-to-side motion is used to shake the subject. Care is used to not create a whipping effect to the neck. (Typical conditions for application: to instill fear and despair, to punish selective behavior, to instill humiliation or cause insult.)[186]
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> 4. GROUNDING: This tactic is using the mishandling pressure and forcefully guiding the subject to the ground, never letting go (Typical conditions for application: to instill fear and despair, to punish selective behavior).[187]
>
> 5. CRAMPED CONFINEMENT ("the little box"): This is administered by placing a subject into a small box in a kneeling position with legs crossed at the ankle and having him lean [sic] forward to allow the door to be closed without exerting pressure on the back. Time and temperature is closely monitored

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[184] Physical Pressures Used in Resistance Training and Against American Prisoners and Detainees, Attached to JPRA Memorandum of July 26, 2002, 8.

[185] Ibid., 8.

[186] Ibid., 8.

[187] Ibid., 8.

(Typical conditions for application: to instill fear and despair, to punish selective behavior, to instill humiliation or cause insult).[188]

6. IMMERSION IN WATER/WETTING DOWN: Wetting the subject consists of spraying with a hose, hand pressure water cans, or immersing in a shallow pool of water. Depending on wind and temperature, the subject may be either fully clothed or stripped. Immersing of the head and back of head is prohibited for safety reasons (Typical conditions for application: to instill fear and despair, to punish selective behavior, to instill humiliation or cause insult).[189]

JPRA has also disclosed other tactics that are used in resistance training. The tactics are reportedly designed to induce "control, dependency, compliance, and cooperation."[190] The tactics are as follows: Isolation/Solitary Confinement; Induced Physical Weakness and Exhaustion; Degradation; Conditioning; Sensory Deprivation; Sensory Overload Using Lights and Sounds; Distortion of Sleep Biorhythms; and Manipulation of Diet.[191]

After describing such a regimen of resistance techniques used in training, a logical question that needs to be answered is what effect did the application of such techniques have on their subjects? To provide insight into an answer to this question, the Chief of Psychology Services at the Air Force Survival School at Fairchild AFB, WA, wrote a memorandum to JPRA in July 2002. The memorandum was included as part of documents released by the Senate Armed Services Committee Hearing on the Origins of Aggressive Interrogation Techniques.[192]

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[188] Physical Pressures Used in Resistance Training and Against American Prisoners and Detainees, Attached to JPRA Memorandum of July 26, 2002, 8.

[189] Ibid., 8.

[190] Ibid., 9.

[191] Ibid., 9.

[192] Senate Armed Services Committee, "Senate Armed Services Committee Hearing: The Origins of Aggressive Interrogation Techniques," Part I of the Committee's Inquiry into the Treatment of Detainees in U.S. Custody, under Documents Referenced in Senator Levin's Opening Statement, June 17, 2008, (Tab 3-EXTRAXTS) July 24, 2002 Memorandum, entitled Psychological Effects of Resistance Training,

In the memorandum, the Chief of Psychology Services advised only a "small minority" of students at USAF resistance training experienced "temporary adverse psychological reactions during training."[193] Of the 26,829 students who participated in resistance training at the USAF school from 1992 through 2001, only 4.3 percent of the students had contact with psychological services. Of the students who had contact with psychological services, 96.8 percent of students were "remotivated" to complete training.[194] Only 37 students (3.2 percent) were pulled from training for psychological reasons. Of the entire student population over the period, only .14 percent of students were removed from training for psychological purposes.[195] The Chief of Psychology Services did note that students are not surveyed after training for long-term psychological effects of the training. However, the Chief of Psychology Services did opine that he was "reasonably certain that USAF RT training does not cause long-term psychological harm…"[196]

To justify his position on the training not causing long-term psychological harm to students, the Chief of Psychology Services offered two items of supporting evidence. First, "extensive debriefings" were conducted during training that afforded students "opportunities to discuss their training experience" to "mitigate the risk of turning a dramatic experience into a traumatic experience."[197] Second, although the training must be "extremely stressful in order to be effective," the school has not received complaints

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Attached to JPRA Memorandum of July 26, 2002, http://levin.senate.gov/newsroom/supporting/2008/Documents.SASC.061708.pdf (accessed on February 16, 2009), 10-11.

[193] Ibid., 10.
[194] Ibid., 10.
[195] Ibid., 10.
[196] Ibid., 10.
[197] Ibid., 10.

about the training.[198] After training almost 10,000 students, the school has had no congressional complaints about resistance training.[199]

In addition to talking about the psychological effects of resistance training, the Chief of Psychology Services also commented on water boarding. After observing water boarding "approximately 10-12 times," the Chief of Psychology stated he "did not believe the water board posed a real and serious physical danger to the students…"[200] As far as commenting on its effectiveness, the Chief of Psychology Services noted the "use of the water board resulted in student capitulation and compliance 100% of the time." The Chief of Psychology Services added that from a psychological perspective, "the water board broke the students' will to resist providing information and induced helplessness."[201]

In summary, a review of the CIA's KUBARK manual on interrogation and a review of SERE resistance training techniques provide valuable insight into the effectiveness of controversial interrogation techniques involving pain. KUBARK offers direct advice on the manner in which coercive interrogation should be conducted. In addition, a review of SERE training presents information on techniques that were used successfully against U.S. POWs by the Chinese and provides a glimpse into the psychological impacts of those techniques on U.S. personnel today (albeit in a training environment).

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[198] Senate Armed Services Committee, "Senate Armed Services Committee Hearing: The Origins of Aggressive Interrogation Techniques," Part I of the Committee's Inquiry into the Treatment of Detainees in U.S. Custody, under Documents Referenced in Senator Levin's Opening Statement, June 17, 2008, (Tab 3-EXTRAXTS) July 24, 2002 Memorandum, entitled Psychological Effects of Resistance Training, Attached to JPRA Memorandum of July 26, 2002, http://levin.senate.gov/newsroom/supporting/2008/Documents.SASC.061708.pdf (accessed on February 16, 2009), 11.

[199] Ibid., 11.

[200] Ibid., 11.

[201] Ibid., 11.

The KUBARK manual plainly suggests that "direct physical brutality" of an interrogatee tends to breed increased resistance.[202] KUBARK recommends that the fear developed as a result of the threat of coercion may be more powerful in weakening a subject's resistance than "the infliction of some form of punishment" itself.[203] In addition, KUBARK also comments on the use of coercive techniques to attempt to physically weaken a subject to elicit a confession. KUBARK finds that using coercive techniques to try to physically weaken a subject's resistance through "debility" has not been proven effective.[204] KUBARK claims that century old attempts to break down resistance through "prolonged constraint; prolonged exertion; extremes of heat, cold, moisture; and deprivation or drastic reduction of food or sleep" is not scientifically supported to be productive.[205] In addition, KUBARK suggests resistance "is sapped principally by psychological rather than physical pressures."[206]

On the topic of interrogation techniques involving pain, KUBARK recommends against using intense pain in interrogations as it will likely result in false confessions. However, KUBARK does recommend that if using pain in interrogations, pain must be perceived internally by the subject versus applied externally by the interrogator to be effective.[207] Although KUBARK recommends coercive techniques should be focused on breaking down a subject's resistance from a psychological perspective, it does not discourage the use of bringing "a superior outside force to bear upon the subject's resistance."[208]

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[202] KUBARK, 91.
[203] Ibid., 91.
[204] Ibid., 92.
[205] Ibid., 92.
[206] Ibid., 92.
[207] Ibid., 92.
[208] Ibid., 83.

Finally, a review of SERE techniques provides valuable insight into approved coercive interrogation techniques applied by U.S. personnel on U.S. personnel in an intense training environment. The techniques used in training were derived from Chinese Communist techniques employed successfully against U.S. POWs. Compared against the framework of recommendations of the KUBARK manual, one can see similarities in how techniques are applied in SERE training and KUBARK advice on effectively sapping resistance.[209] In addition, information provided by the Chief of Psychology at the USAF SERE school indicates the application of coercive techniques, as prescribed and controlled in a training setting, was not psychologically harmful to the students. Furthermore, the use of water boarding was found to be effective in breaking a student's "will to resist providing information and induced helplessness" in 100 percent of the 10-12 cases observed by the Chief of Psychology Services of USAF SERE.[210] The Chief of Psychology Services also found that water boarding, as he observed it in training, did not pose a "real and serious physical danger to the students."[211]

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[209] Physical Pressures Used in Resistance Training and Against American Prisoners and Detainees, Attached to JPRA Memorandum of July 26, 2002, 6.

[210] Psychological Effects of Resistance Training, Attached to JPRA Memorandum of July 26, 2002,10-11.

[211] Ibid., 11.

CHAPTER 4

Interrogation Case Studies

History is replete with examples of personal accounts of interrogations however; very few scientific studies have been accomplished on the effectiveness of specific interrogation techniques.[212] In an essay written for *Educing Information: Interrogation Science and Art: Foundations for the Future*, Dr. Randy Borum commented on the lack of scientific research available on the effectiveness of interrogation techniques. Dr. Borum stated the following:

> The need to understand what approaches, techniques, and strategies are likely to produce accurate, useful information from an uncooperative human source seems self-evident. Surprisingly, however, these questions have received scant scientific attention in the last 50 years. Almost no empirical studies in the social and behavioral sciences directly address the effectiveness of interrogation in general practice, or of specific techniques in generating accurate and useful information from otherwise uncooperative persons…[213]

> Most of the scientific articles dealing with interrogation-related topics apply to, and are derived from a law enforcement (LE) context. However, the nature and objectives of police interrogations differ significantly from those in military or intelligence contexts. In essence, most LE interrogations seek to obtain a confession from a suspect, rather than to gather accurate, useful information from a possibly-but not necessarily- cognizant source. These are very different tasks. Moreover, there are remarkably few studies of actual interrogations in either criminal or intelligence contexts. Training manuals, materials, and anecdotes contain information about common and recommended practices and the behavioral assumptions on which they are based, but virtually none of these documents cites or relies upon any original research. [214]

> Without a scientific literature or systematic analysis - at least one available in open-source information – practitioners (i.e. "boots on the ground" assets) and policymakers must make decisions on the basis of other sources and considerations. Primary among them are the iconic 17 techniques described

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[212] Randy Borum, "In Approaching Truth: Behavioral Science Lessons on Educing Information from Human Sources," in *Educing Information: Interrogation Science and Art: Foundations for the Future*, ed. Russell Swenson (Washington, DC: National Defense Intelligence College, 2006), 18.

[213] Ibid., 18.

[214] Ibid., 18

> in U.S. Army Field Manual 34-52, Intelligence Interrogation, which serves as the model or guide to intelligence interrogations for all the armed forces. These exact techniques have been included in successive editions for more than 50 years, yet even people intimately familiar with 34-52 are unaware of any studies or systematic analyses that support their effectiveness, or of any clear historical record about how the techniques were initially selected for inclusion.[215]

In an attempt to initially explore the void in research on the effectiveness of controversial interrogation techniques, albeit not in a purely scientific fashion, this thesis will briefly examine four interrogation situations. Although admittedly chosen to illustrate a broad application of controversial techniques, the four situations will highlight varying degrees of intelligence interrogations applied over the last 50 years. The situations chosen for examination are the Military Intelligence Service-Y (MIS-Y) project codenamed Post Office Box 1142; Communist Attempts to Elicit False Confessions from Air Force Prisoners of War; the interrogation of Nguyen Tai, the most senior North Vietnamese officer ever captured during the Vietnam War; and the interrogation of Mohammed Al-Qahtani.

MIS-Y Program

On May 15, 1942, Harry L. Stimson, President Franklin Delano Roosevelt's Secretary of War, received permission from the Department of the Interior to establish an interrogation center on the site occupied by Fort Hunt in Fairfax County, Virginia. On July 30, 1942, construction was completed on the interrogation center. The MIS-Y staff consisted of approximately 41 officers and 68 enlisted personnel.[216] About 4,000

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[215] Borum, "In Approaching Truth," 18-19.

[216] Kleinman, S. M. (2002). *The History of MIS-Y: U.S. Strategic Interrogation During World War II.* Unpublished master's thesis, DTIC Document ADA447589. Washington DC: Joint Military Intelligence College, 41.

German Prisoners of War (POWs) were processed through the MIS-Y program until it closed in November of 1946. Initially, the POWs were mostly submarine officers and were held, on average, for approximately three months during interrogation. Some prisoners stayed for "as little as two or three weeks" while others were held "as long as nine months."[217] As the MIS-Y program matured, POWs were mainly Nazi scientists who were relocated after Germany's defeat.[218]

The MIS-Y interrogation center serves as a model for the application of highly specialized and non-violent interrogation techniques.[219] Interrogations of prisoners at the MIS-Y facility were highly specialized and controlled. Interrogators were handpicked because of their, "language ability, knowledge of subject matter, and perceived ability to relate to the source."[220] The MIS-Y program focused on rapport building and structured interrogations vice the application of controversial interrogation techniques. In addition, detainee facilities were all, "wired for sound" to allow authorities to listen to detainee conversations.[221] Furthermore, "collaborators were placed in the prison population" and information was taken from prisoners during formal interrogation sessions, as well as through other covert means.[222]

The successes of the MIS-Y interrogation model were recognized by the 1st Session of the 110th Congress in House Resolution 753, "Honoring and thanking the

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[217] Petula Dvorak, "A Covert Chapter Opens for Fort Hunt Veterans," *Washington Post*, August 20, 2006 http://www.washingtonpost.com/wp-dyn/content/article/2006/08/19/AR2006081900856.html (accessed on March 3, 2009).

[218] Christian Wernicke, "That's Torture," *The Atlantic Times*, December 2007, http://www.atlantic-times.com/archive_detail.php?recordID=1103 (accessed on March 3, 2009), 1.

[219] Robert a. Fein, "U.S. Experience and Research in Educing Information: A Brief History," in *Educing Information: Interrogation Science and Art: Foundations for the Future*, ed. Russell Swenson (Washington, DC: National Defense Intelligence College), xi-xii.

[220] Ibid., xi.

[221] Ibid., xi.

[222] Ibid., xi.

soldiers that served the top secret units for the United States Military Intelligence Service under the project name `Post Office Box 1142'."[223] The House lauded the accomplishments of MIS-Y interrogators stating the following:

> Whereas the Army hand-selected intelligence officers for their ability to speak fluent German, many of whom had friends and family perishing under the tyranny of Nazi Germany;
>
> Whereas the intelligence officers conducted interrogations of nearly 4,000 enemy prisoners of war and scientists;
>
> Whereas these interrogations resulted in the discovery of many of Germany's secret programs, including research to develop the atomic bomb, plans for the jet engine, blueprints of V-2 rockets, and secrets originally destined for Japan before the end of global hostilities;
>
> Whereas the work at Fort Hunt not only contributed to the Allied victory during World War II, but also led to advances in military intelligence and scientific technology that directly influenced the Cold War and Space Race;
>
> Whereas the detainment and interrogation of high-ranking German officials, such as Reinhard Gehlen, a prisoner who ran the German intelligence operations in the Soviet Union, proved instrumental at aiding the development of U.S. intelligence operations on the Soviets during the onset of the Cold War;
>
> Whereas the more effective interrogation techniques included entering into discussions with the captives, building up trust and not threatening violence or torture;
>
> Whereas the current intelligence community is interviewing former Post Office Box 1142 interrogators to learn which humane practices facilitated the best intelligence;[224]

Although the accomplishments of MIS-Y personnel in generating valuable intelligence is without question, to present a balanced review of the legality and the

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[223] *Honoring and thanking the soldiers that served the top secret units for the United States Military Intelligence Service under the project name `Post Office Box 1142'*, HR 753 IH, 110th Cong., 1st sess., October 17, 2007, http://thomas.loc.gov/cgi-bin/query/z?c110:H.RES.753: (accessed on March 3, 2009).

[224] Ibid., 1.

effectiveness of the MIS-Y program, one must recognize the program is not immune to criticism. According to a National Park Service article regarding the MIS-Y program, the program was described as follows:

> The operations at Fort Hunt were not exactly legal according to the Geneva Code of Convention. Prisoners from whom the allies felt they might obtain valuable information, particularly submarine crews, were transferred to Fort Hunt immediately after their capture. There they were held incommunicado and questioned incessantly until they either volunteered what they knew or convinced the Americans that they were not going to talk. Only then were they transferred to a regular POW camp and the International Red Cross notified of their capture.[225]

In addition to a critique of violating the Geneva Conventions, the National Park Service also commented on MIS-Y's method of eavesdropping electronically on prisoner conversations. The National Park Service article stated as follows:

> The average stay for a prisoner at Fort Hunt was three months, during which time he was questioned several times a day. The interrogating officers soon found, however, that they learned more from their prisoners by listening to their private conversations over microphones hidden in the cells than they did the formal interrogation sessions…Of course some of the prisoners quickly suspected the presence of hidden microphones and spent the long tedious hours in their cells entertaining the GI's listening in at the other end with animal imitations, obscene stories, and songs. Less discerning prisoners spoke freely with each other, providing the Allies with much valuable information on war crimes, the technical workings of U-boats, and the state of enemy morale.[226]

In addition to criticism of MIS-Y practices, there is also doubt as to whether MIS-Y results can be extrapolated to successful interrogations of other types of prisoners. In an article on MIS-Y by Petula Dvorak of the Washington Post, Dvorak writes, "In the beginning, the prisoners were mostly U-boat crew members who had survived the sinking of their submarines in the Atlantic Ocean. As the war progressed, P.O. Box 1142 shifted

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[225] National Park Service, "Fort Hunt-The Forgotten Story," http://www.nps.gov/gwmp/upload/From%20In-Depth%20-%20FH%20-%20The%20Forgotten%20Story.pdf (accessed on March 7, 2009).

[226] Ibid., 4-5.

its attention to some of the most prominent scientists in Germany, many of whom surrendered and gave up information willingly, hoping to stay in the United States."[227] Furthermore, in a National Park Service report discussing preliminary research into records uncovered from the MIS-Y program, the National Park Service commented as follows:

> Preliminary research into these records is providing some interesting information which significantly alters currently accepted ideas regarding the German Kriegsmarine. It is commonly believed, for instance, that the German U-boat service was composed entirely of volunteers. These records, however, indicate that a sizeable proportion of the submariners, at least in the latter years of the war, were definitely not in the Navy by choice. Many were Czechs or Poles who could not even speak fluent German.[228]

The news media has also been helpful in uncovering information on the inner workings of the MIS-Y program. In a National Public Radio article, Pam Fessler had the opportunity to examine the MIS-Y program and interview surviving interrogators from MIS-Y. Fessler noted, "Transcripts show that interrogations at Fort Hunt were usually straightforward, almost cordial affairs. Veterans say they often got their best information just by being friendly. Some prisoners were even wined and dined to soften them up."[229]

In an interview with a former interrogator at MIS-Y, John Gunther Dean, advised MIS-Y interrogation methods were very effective. Commenting on how he would handle prisoners, Dean noted, "I was a pretty good athlete…I would do sports with them in order to make them more cooperative. I would take some of the people out for dinner at a restaurant in town in civilian clothes."[230] In addition, another MIS-Y interrogator advised

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[227] Dvorak, "A Covert Chapter Opens for Fort Hunt Veterans," 2.

[228] National Park Service, "Fort Hunt-The Forgotten Story," 5.

[229] Pam Fessler, "Former GIs Spill Secrets of WWII POW Camp," *National Public Radio*, August 19, 2008 http://www.npr.org/templates/story/story.php?storyId=93649575 (accessed on March 7, 2009), 3.

[230] Fessler, "Former GIs Spill Secrets of WWII POW Camp," 4.

his, "orders at Fort Hunt were to keep the German scientists happy, so he supplied them with magazines and liquor. In one bizarre incident, he took a prisoner and three other German POWs Christmas shopping at a Jewish-owned department store in Washington, D.C.[231] The same interrogator goes on to say, "yes, we threatened them with being sent back to Russia, but there was no other personal harm of any kind."[232] In addition, a former MIS-Y interrogator also admitted that many of the German prisoners of the MIS-Y facility "wanted to cooperate, especially at the end of the war."[233]

In a statement before the Senate Select Committee on Intelligence on September 25, 2007, S.M. Kleinman, author of a master's-level thesis on the MIS-Y program, commented on the MIS-Y approach to interrogation. Kleinman noted, "The prisoners they faced were often well-educated, conversant in several languages, and moved easily across cultures. This accurately describes many of the high-value detainees we have encountered."[234] Whether interrogations of terrorists such as al Qaeda members or leaders can be adequately compared to that of prisoners of the MIS-Y facility at Fort Hunt is debatable. It should suffice to say however, that there are many lessons that can be garnered from the MIS-Y operation. Those lessons should be studied further to help fill the void of scientific research on the effectiveness of interrogation techniques.

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231 Fessler, "Former GIs Spill Secrets of WWII POW Camp," 4.
232 Ibid., 5.
233 Ibid., 5.
234 Senate Select Committee on Intelligence, Interrogation Policy and Executive Order 13440: Statement of Steven M. Kleinman, 110th Cong, September 25, 2007, http://intelligence.senate.gov/070925/kleinman.pdf (accessed on March 3, 2009).

Communist Attempts to Elicit False Confessions from Air Force Prisoners of War

During the Korean War, approximately 75,000 United Nations and South Korean soldiers were captured by Communist forces. More than 60,000 soldiers were unaccounted for and 12,000 were allowed to return home. Investigations into Communist activities found that several thousand American POWs died or were executed in POW camps. According to U.S. Congressional reporting, over the three-year long Korean War, North Korean and Chinese Communists were found guilty of war crimes in their treatment of prisoners. The war crimes included the following acts: murder; assaults; torture-perforation of the flesh of POWs with heated bamboo spears; burning; starvation; coerced indoctrination; and other unlawful practices.[235]

Public confessions of U.S. POWs spawned concerns that Communists were using some secret form of "brainwashing" to shape the behaviors of POWs.[236] Investigations into techniques used by the Communists revealed fears of brainwashing were misplaced. The Communists were found to have developed "considerable skill in the extraction of information from prisoners" but the investigation showed "the Communists did not possess new and remarkable techniques of psychological manipulation."[237]

Investigations into Communist techniques served as catalysts for research on interrogation techniques. A widely recognized study in the field of interrogation techniques for the Korean War era is Albert D. Biderman's work entitled, "Communist Attempts to Elicit False Confessions From Air Force Prisoners of War." Biderman's study focused on 235 Air Force members who were returned by the Chinese after the

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[235] Senate Subcommittee to Investigate the Administration of the Internal Security Act and Other Internal Security Laws of the Committee on the Judiciary, *Communist Treatment of Prisoners of War*, 92 nd Cong, 2d sess., 1972, 81-6960, 13.

[236] Ibid., 13.

[237] Ibid., 13.

Korean Armistice. Half of the men studied had some form of direct personal experience with Communist attempts to elicit false confessions.[238] One airman reportedly died during Communist attempts to elicit information.[239] Biderman advises almost all of the stories related to the U.S. POWs involved "individual heroism and perseverance."[240] In addition, Biderman notes, "There is an almost unmatched drama in these airmen's efforts to protect principles, dignity and self-respect with only their own inner resources to sustain them."[241] Not to diminish efforts of the airmen, Biderman is careful to limit his reporting of Communist activities to that of a scientific study of events vice a focus on the dramatic impact the events must have had on "those who lived through them."[242]

In studying the techniques employed by the Communists, Biderman was able to categorize the coercive methods used for eliciting individual compliance. Biderman was also able to make a "meaningful distinction between those measures the Communists took to render the prisoner compliant, on the one hand, and, on the other, those which sought to shape his compliance into the very pattern of confessor behavior with which the world has become familiar."[243] Biderman found the Chinese Communists used almost identical methods to elicit factual intelligence information and elicitation of false

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[238] Albert D. Biderman, "Communist Attempts to Elicit False Confessions from Air Force Prisoners of War," Office for Social Science programs, Air Force Personnel and Training research Center, Air research and Development Command, Maxwell AFB, Alabama, presented at a combined meeting of the Section on Neurology and Psychiatry with the New York Neurological Society at The New York Academy of Medicine, November 13, 1956, as part of a Panel Discussion on Communist Methods of Interrogation and Indoctrinationhttp://www.pubmedcentral.nih.gov/picrender.fcgi?artid =1806204&blobtype=pdf (accessed on December 22, 2008), 616.

[239] Ibid., 616.

[240] Ibid., 616.

[241] Ibid., 616.

[242] Ibid., 616.

[243] Ibid., 617.

confessions for propaganda purposes.[244] The below listed chart depicts Biderman's findings on Communist Coercive Methods for Eliciting Individual Compliance:

General Method	Effects (Purposes?)	Variants
1. Isolation	Deprives Victim of all Social Support of his Ability to Resist Develops an Intense Concern with Self Makes Victim Dependent on Interrogator	Complete Solitary Confinement Complete Isolation Semi-Isolation Group Isolation
2. Monopolization of Perception	Fixes Attention upon Immediate Predicament; Fosters Introspection Eliminates Stimuli Competing with those Controlled by Captor Frustrates all Actions not Consistent with Compliance	Physical Isolation Darkness or Bright Light Barren Environment Restricted Movement Monotonous Food
3. Induced Debilitation; Exhaustion	Weakens Mental and Physical Ability to Resist	Semi-Starvation Exposure Exploitation of Wounds; Induced Illness Sleep deprivation Prolonged Constraint Prolonged Interrogation or Forced Writing Over Exertion
4. Threats	Cultivates Anxiety and Despair	Threats of Death Threats of Non-repatriation Threats of Endless Isolation and Interrogation Vague Threats Threats Against Family Mysterious Changes of Treatment
5. Occasional Indulgences	Provides Positive Motivation for Compliance Hinders Adjustment to Deprivation	Occasional Favors Fluctuations of Interrogators' Attitudes Promises Rewards for partial Compliance

[244] Biderman, "Communist Attempts to Elicit False Confessions," 617.

		Tantalizing
6. Demonstrating "Omnipotence" and "Omniscience"	Suggests Futility of Resistance	Confrontations Pretending Cooperation Taken for Granted Demonstrating Complete Control Over Victim's Fate
7. Degradation	Makes Costs of Resistance Appear More Damaging to Self-esteem than Capitulation Reduces Prisoner to "Animal Level" Concerns	Personal Hygiene Prevented Filthy, Infested Surroundings Demeaning Punishments Insults and Taunts Denial of Privacy
8. Enforcing Trivial Demands	Develops Habit of Compliance	Forced Writing Enforcement of Minute Rules[245]

Biderman notes that in the above listing of measures used by Communists, he specifically did not include physical torture as a category. Biderman asserts that although "many of our prisoners of war did encounter physical torture" and a "few of the specific measures" outlined above may involve physical pain, "inflicting physical pain is not a necessary nor effective method of inducing compliance."[246] Biderman also explains that while "many of our people did encounter physical violence, this rarely occurred as part of a systematic effort to elicit a false confession. Where physical violence *was* inflicted during the course of such an attempt, the attempt was particularly likely to fail completely."[247]

For the purposes of qualifying his remarks on physical violence, Biderman acknowledges that the "ever-present fear of violence in the mind of the prisoner appears to have played an important role in inducing compliance."[248] In addition, Biderman also elaborates on a specific form of "torture…experienced by a considerable number of Air

[245] Biderman, "Communist Attempts to Elicit False Confessions," 619.
[246] Ibid., 619.
[247] Ibid., 619-620.
[248] Ibid., 620.

Force prisoners of war."[249] This technique was used to coerce confessions and involved requiring POWs to sit or stand at attention for "exceeding long periods of time."[250] Biderman advises, in an extreme case, the prisoner was required to sit or stand at attention "day and night for a week at a time with only brief respites."[251] Biderman notes, "this form of torture had several distinct advantages for extorting confessions."[252]

Forced sitting or standing introduces "an intervening factor" relative to the infliction of pain.[253] Biderman advises, in a "simple torture situation-the 'bamboo splinters technique' of popular imagination- the contest is clearly one between the individual and his tormentor. Can he endure pain beyond the point to which the interrogator will go to inflict pain? The answer for the interrogator is all too frequently yes."[254] In the case of forced sitting or standing at attention, the "source of pain is not the interrogator but the victim himself." [255] Biderman finds the victim is put in the position of engaging in a "contest" against himself, thereby sapping the "motivational strength of the individual…in this internal encounter."[256]

Biderman also points out that frequently, "although not invariably, the extent to which the interrogators in North Korea and China were willing or permitted to inflict physical punishment was very limited."[257] Physical punishment "appears to have been limited to cuffs, slaps and kicks, and sometimes merely to threats and insults."[258]

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[249] Biderman, "Communist Attempts to Elicit False Confessions," 620.
[250] Ibid., 620.
[251] Ibid., 620.
[252] Ibid., 620.
[253] Ibid., 620.
[254] Ibid., 620.
[255] Ibid., 620.
[256] Ibid., 620.
[257] Ibid., 620.
[258] Ibid., 620.

However, POWs who experienced lengthy periods of standing or sitting at attention reported "no other experience could be more excruciating."[259]

In conclusion, Biderman plainly states the findings of his study revealed no shocking secrets of how the Communists were able to extort confessions from our POWs. Biderman notes the principal finding of the study, "which should be greeted as most new and spectacular is the finding that essentially there was nothing new or spectacular about the events we studied."[260] Biderman's findings were consistent with "those of Hinkle and Wolff, that human behavior could be manipulated within a certain range by controlled environments."[261] Biderman explains, "the Chinese Communists used methods of coercing behavior…which Communists of other countries had employed for decades and which police and inquisitors had employed for centuries."[262] Biderman found the success or failure of Chinese interrogators to "influence the behavior of their victims" was dependent on the interrogator's "skill and persistence."[263] Biderman also notes, that although initial attempts of interrogators were "generally inept and unsuccessful, their success tripled with experience."[264]

The Case of Nguyen Tai

In Merle L. Pribbenow's article, "The Man in the Snow White Cell," Pribbenow offers a detailed account of the incarceration and interrogation of Nguyen Tai, "the most

[259] Biderman, "Communist Attempts to Elicit False Confessions," 620.
[260] Ibid., 617.
[261] Ibid., 617.
[262] Ibid., 617.
[263] Ibid., 617.
[264] Ibid., 617.

senior North Vietnamese officer ever captured during the Vietnam War."[265] Tai was interrogated by U.S. and South Vietnamese intelligence officers for more than two years, "employing every interrogation technique in both countries' arsenals, in an effort to obtain his secrets."[266] Pribbenow retired from the Central Intelligence Agency (CIA) in 1995 after 27 years of service. Pribbenow served as a Vietnamese language and operations officer during his entire career with the CIA.[267]

Upon his capture, Nguyen Tai ran intelligence and terrorist operations in Saigon for five years that "killed or wounded hundreds of South Vietnamese and Americans."[268] Tai was the son of one of "Vietnam's most famous authors" and Tai's uncle was a "Member of the Communist Party Central Committee and the Second in Command of the Communist Ministry of Public Security…"[269] Tai became a member of "the revolution" in 1944 and served as Chief of Public Security in French-occupied Hanoi.[270] Tai led collection activities and efforts to combat French operations to dispel communist resistance efforts. Tai's operations involved "assassination and terror as its stock in trade."[271] Tai was reportedly "ruthless in the conduct of his duties" and "his office formed special assassination teams" designed "to eliminate French and Vietnamese"

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[265] Merle L. Pribbenow, "Limits to Interrogation: The Man in the Snow White Cell," *Studies in Intelligence*, 48 (1) (2004) http://www.cia.gov/csi/studies/vol48no1/article06.html (accessed on March 3, 2009), 1.

[266] Ibid., 1.

[267] Merle L. Pribbenow, "The –Ology of War: Technology and Ideology in the Vietnamese Defense of Hanoi, 1967," *The Journal of Military History*, 67.1(2003) http://muse.jhu.edu/journals/journal_of_military_ history /v067/67.1pribbenow.html#authbio (accessed on March 9, 2009).

[268] Pribbenow, "Limits to Interrogation: The Man in the Snow White Cell," 1.

[269] Ibid., 2.

[270] Ibid., 2.

[271] Ibid., 2.

forces.[272] Tai "rose quickly" through the ranks and was reportedly aided by his "assistance in the prosecution of his own father for anti-regime statements."[273]

In 1961, Tai became Director of Public Security's counterespionage enterprise and led double-agent operations against U.S. and South Vietnamese forces.[274] In addition, Tai organized a "ruthless crackdown on internal dissidents" and directed operations that resulted in a "purge of senior communist party revisionists."[275] In 1964, Tai was sent to South Vietnam behind enemy lines and subsequently launched a "program of bombings and assassinations against South Vietnamese police and security services and leadership figures."[276]

In 1970, Tai was arrested by South Vietnamese forces while in transit to a political meeting.[277] Identity documents carried by Tai and his colleagues were found to be false and after a period of interrogation, Tai erroneously claimed to be a new captain from North Vietnam.[278] As the interrogations became more "intense," Tai changed his story to confess to being a "military intelligence agent sent to South Vietnam to establish a legal identity" before traveling to France to accomplish an unknown mission.[279] Each time Tai was severely pressured under interrogation, he pretended to concede and allowed his interrogator to think the interrogator had won. Tai's interests were to conceal his true identity and the plethora of information he had that could expose his real identity, headquarters, and extensive network.[280] Although Tai bought valuable time for his

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[272] Pribbenow, "Limits to Interrogation: The Man in the Snow White Cell," 2.
[273] Ibid., 2.
[274] Ibid., 2.
[275] Ibid., 3.
[276] Ibid., 3.
[277] Ibid., 3.
[278] Ibid., 3.
[279] Ibid., 3.
[280] Ibid., 3.

compatriots to relocate and change operations, Tai's concocted admission of being a covert military intelligence agent earned him special interrogation attention. Tai was "sent to Saigon for detailed questioning by South Vietnamese and American professionals at the South Vietnamese Central Intelligence Organization's (CIO) National Interrogation Center (NIC)."[281]

As the interrogators at the NIC did not know Tai's true identity, Tai was able to devise a cover personality and only provided information to interrogators he knew they already had or false information that could not be verified. He claimed he did not have information regarding the local communist organization because he had only recently arrived on a boat that the South Vietnamese had successfully attacked and destroyed. Tai further provided information about military intelligence training that had already been disclosed by previously captured personnel. Using a technique of perceived resistance to interrogation beatings followed by apparent cooperation, Tai was able to provide his captors information that would not hurt his cause and protect the valuable intelligence he knew he possessed.[282]

In Tai's memoirs, Tai describes his first account with CIA interrogators. Tai claimed the CIA agents believed his story and administered polygraph and psychological tests on him. Tai asserts his cover story given to interrogators began to unravel when one of his subordinates tried to inquire about Tai's whereabouts, using Tai's former alias and when and where he was arrested. When the individual from Tai's organization who inquired about Tai was arrested, South Vietnamese officials questioned why an agent from Public Security was trying to locate someone from a completely separate

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[281] Pribbenow, "Limits to Interrogation: The Man in the Snow White Cell," 3.
[282] Ibid., 4.

organization.[283] In actuality however, Tai was not as successful at "deceiving the Americans as he thought."[284] The polygraph conducted on Tai by the CIA revealed problems with Tai's biographic information. After being confronted on his background information by the CIA officers, Tai was turned back over to South Vietnamese interrogators.[285]

South Vietnamese interrogators administered brutal tactics in an attempt to break Tai's story. Tai was subjected to electric shock, beatings with clubs, Chinese water torture, and being tied to a stool for days without food or water during "around the clock" questioning.[286] In spite of the interrogation, Tai held to his story. After showing his photograph to a large number of prisoners and defectors, South Vietnamese personnel learned Tai's true identity. Interrogators confronted Tai with his accusers, documents he had written, and photographs of Tai when he served as an escort for Ho Chi Minh. Physically and psychologically spent and understanding his captors already knew his true identity, Tai admitted his true name and that he was a colonel in the National Liberation Front of South Vietnam.[287]

After giving him a brief rest, the interrogations of Tai continued. Tai was "kept sitting on a chair for weeks at a time with no rest; he was beaten; he was starved; he was given no water for days; and he was hung from the rafters for hours by his arms, almost ripping them from their sockets."[288] After six months of this ordeal, Tai attempted suicide by cutting his wrists to avoid breaking and divulging his information. Tai's

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[283] Pribbenow, "Limits to Interrogation: The Man in the Snow White Cell," 4.
[284] Ibid., 4.
[285] Ibid., 4.
[286] Ibid., 4.
[287] Ibid., 5.
[288] Ibid., 5.

suicide attempt was thwarted by his captors and Tai was allowed to recuperate. Although it is unclear what kept Tai going during interrogation, Tai said he did not want to "do anything to harm his Party or his (my) family's honor."[289]

In 1971, Tai's North Vietnamese superiors offered a prisoner exchange for Tai and another communist prisoner. Although the negotiations on the exchange fell apart, Tai was now seen as politically "too valuable for his life to be placed in jeopardy."[290] Tai was taken to another location and kept in a "completely sealed cell that was painted all white, lit by bright lights 24 hours a day, and cooled by a powerful air conditioner…"[291]. Tai lived in his cell for three years in total isolation.[292] During this time, Tai was interrogated by CIA officers who did not mistreat him. The CIA officers tried to win Tai's trust by "giving him medical care, extra rations, and new clothing."[293] The CIA officers "also played on his human weaknesses-his aversion to cold, his need for companionship, and his love for his family."[294] Acknowledging in his memoirs, Tai decided "to answer questions and try to stretch out the questioning to wait for the war to end. I will answer questions but I won't volunteer anything. The answers I give may be totally incorrect, but I will stubbornly insist that I am right" wrote Tai.[295] However, Tai admitted his strategy of dialogue with interrogators "led him into some sensitive areas."[296]

In 1973, CIA interrogations of Tai ended with the signing of the Paris Peace Agreement and Tai was able to resist "further efforts by the South Vietnamese to

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[289] Pribbenow, "Limits to Interrogation: The Man in the Snow White Cell," 5.
[290] Ibid., 6.
[291] Ibid., 6.
[292] Ibid., 6.
[293] Ibid., 6.
[294] Ibid., 6.
[295] Ibid., 6.
[296] Ibid., 6.

interrogate him."[297] Tai remained in isolation for the next two years until the fall of Saigon in 1975. He returned to his family in Hanoi in 1975.[298]

Pribbenow concludes that although the "South Vietnamese use of torture did result (eventually) in Tai's admission of his true identity, it did not provide any other useable information."[299] Rather than torture, it was the South Vietnamese investigation into Tai's identity that provided the impetus for Tai's admission.[300] Pribbenow goes on to conclude, "Without a doubt, the South Vietnamese torture gave Tai the incentive for limited cooperation he gave to his American interrogators, but it was the skillful questions and psychological ploys of the Americans, and not any physical infliction of pain, that produced the only useful (albeit limited) information Tai ever provided."[301] Pribbenow further states, "There is nothing wrong with a little psychological intimidation, verbal threats, bright lights and tight handcuffs, and not giving a prisoner a soft drink and a Big Mac every time he asks for them. There are limits, however, beyond which we cannot and should not go if we are to continue to call ourselves Americans."[302]

Interrogation of Mohammed al-Qahtani

In August 2001, Mohammed al-Qahtani flew into the United States at Orlando International Airport, FL. He arrived on a one-way ticket with only $2,800 on his person. Unbeknownst to airport authorities at the time, Mohammed Atta (the leader of the 9/11 terrorist attacks,) was waiting outside the airport in a parking lot. An astute immigration

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297 Pribbenow, "Limits to Interrogation: The Man in the Snow White Cell," 7.
298 Ibid., 8.
299 Ibid., 8.
300 Ibid., 8.
301 Ibid., 8.
302 Ibid., 8.

agent questioned al-Qahtani regarding details of his trip. Al-Qhatani became reportedly "hostile and evasive."[303] Al-Qahtani was questioned for approximately 90 minutes and then denied entry into the United States. Upon leaving, al-Qahtani was reported to have said, "I'll be back."[304]

After leaving the United States, al-Qahtani traveled to the United Arab Emirates and finally Afghanistan to make war against the United States. Al-Qahtani was eventually captured in December 2001 while attempting to flee Tora Bora.[305] In February 2001, al-Qahtani was sent to Guantanamo Bay, Cuba (GITMO). Although, at the time of his being sent to GITMO, GITMO authorities did not yet know al-Qahtani's connection to the 9/11 attacks. In July 2002, authorities matched al-Qahtani's fingerprints to the man who had been deported from Orlando International Airport. Due to al-Qahtani's suspected value in being able to provide information on the 9/11 attacks and possible other terrorist planning and activity, he would be subjected to increased interrogation pressures.[306] Pentagon spokesman, Larry DiRita, advised reporters al-Qahtani was "a particularly well-placed, well-connected terrorist who was believed capable of unlocking an enormous amount of specific and general insights into 9/11, al-Qaeda operations and ongoing planning for future attacks."[307]

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[303] Adam Zagorin and Michael Duffy, "Inside the Interrogation of Detainee 063," *Time*, June 12, 2005 http://www.time.com/time/magazine/article/0,9171,1071284,00.html (accessed on March 14, 2009), 1-3.

[304] Ibid., 3.

[305] Ibid., 3.

[306] Ibid., 1-3.

[307] Ibid., 3.

Time Magazine reporters were able to obtain a log of al-Qahtani's interrogation detailing events of his interrogation for 50 days in the winter of 2002 to 2003.[308] Larry DiRita, chief Pentagon spokesman, told reporters "the log was compiled by various uniformed interrogators and observers on the Pentagon's Joint Task Force at GITMO as the interrogation proceeded."[309] Time Magazine reporters further advised that a "Pentagon official" who saw the interrogation log described it as the "kind of document that was never meant to leave GITMO."[310] The log contained a detailed accounting of the interrogation of al-Qahtani. Although, the log does contain gaps in what is said and does not explain entirely all actions taken during interrogation. It does however, offer valuable insight into how al-Qahtani was interrogated over a 50 day period and a snapshot of what intelligence information those interrogation methods may have gleaned from him during that timeframe. Of particular interest, is the application of enhanced interrogation techniques used on al-Qahtani after the December 2, 2002 approval of their use by Secretary of Defense Donald Rumsfeld.[311]

According to Time Magazine reporting, a senior Pentagon official stated the initial questioning of al-Qahtani by the FBI was not productive. The official stated, "We were getting nothing from him. He had been trained to resist direct questioning. And what works in a Chicago police precinct doesn't work in war."[312] Al-Qahtani's initial cover story was that he traveled to Afghanistan to study falconry. In addition, al-Qahtani claimed he had traveled to the United States to try to start a used-car sales business. The

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[308] "Time Exclusive: Inside the Wire at GITMO," *Time*, June 12, 2005 http://www.time.com/time/press_releases/article/0,8599,1071230,00.html (accessed on March 14, 2009), 1-2.

[309] Zagorin and Duffy, "Inside the Interrogation of Detainee 063," 2.

[310] Ibid., 2.

[311] Ibid., 3-5.

[312] Ibid., 3.

interrogation log reveals his cover stories weaken over the course of interrogation and he eventually admits his affiliation to al Qaeda.[313]

A review of the interrogation log of al-Qahtani depicts an aggressive interrogation regimen. Al-Qahtani undergoes daily interrogation from approximately 0400 hours until midnight. His health appears to be closely watched by interrogators and medical personnel alike. Over the course of interrogation, it becomes apparent al-Qahtani's interrogation "is shaped around standard Army interrogation techniques, with code names like Fear Up/Harsh, Pride/Ego Down, the Futility Approach and the Circumstantial Evidence Theme" being used almost daily.[314] Interrogators show Al-Qahtani "pictures of 9/11 attack victims, particularly children and the elderly. They talk about God's will and al-Qahtani's guilt. They tell him that he failed on his mission and hint that other comrades are captured and are talking about his role and plot."[315] In addition, interrogators use techniques to "play on his emotions, saying he should talk if he ever wants to see his family or friends or homeland again."[316] Al-Qahtani is also exposed to an invasion of his private space by females that appeared to severely distress him.[317]

Clear movement occurs in al-Qahtani's interrogation when al-Qahtani's requests to use the bathroom to urinate are not immediately granted. After failed attempts to launch a hunger strike, al-Qahtani refuses water and becomes dehydrated. Due to his dehydration and refusal to drink water, al-Qahtani is administered intravenous (IV) fluids. After trying to fight off medical personnel with IVs and biting through his IV lines with his teeth, the fluids are administered. Al-Qahtani advises his guards that he

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313 Zagorin and Duffy, "Inside the Interrogation of Detainee 063," 3-5.
314 Ibid., 3.
315 Ibid., 3.
316 Ibid., 4.
317 Ibid., 6.

will talk if given the opportunity to go to the bathroom to urinate. The interrogators agree but require he answers questions first. Al-Qahtani is asked who he works for and he replies, al-Qaeda. He also is asked who was his leader and he replies, Osama bin Laden. When asked why al-Qahtani traveled to Florida, he replies, he wasn't aware of the mission. Al-Qahtani is also asked who accompanied him on the plane and al-Qahtani states he was alone. His answers did not satisfy his interrogators so al-Qahtani is told to urinate in his pants; he later does.[318]

On December 2, 2002, al-Qahtani's resistance to interrogation prompts GITMO officials to request permission to apply more aggressive interrogation techniques on al-Qahtani. Secretary Rumsfeld gives his approval for 16 of 19 techniques to be applied to al-Qahtani.[319] Of the techniques approved, interrogators could now apply "stress strategies like standing for prolonged periods, isolation for as long as 30 days, removal of clothing, forced shaving of facial hair, playing on individual phobias (such as dogs) and mild non-injurious physical contact such as grabbing, poking in the chest with finger and light pushing."[320] According to the interrogation log, al-Qahtani experienced "several" of the above-mentioned techniques over the proceeding five weeks of his interrogation.[321] On January 15, 2003, the techniques previously approved by Secretary Rumsfeld were withdrawn due to legal concerns.[322]

After the approval of more aggressive interrogation techniques takes place, al-Qahtani's interrogation sessions lengthen and appear to become more intense.[323] A

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318 Zagorin and Duffy, "Inside the Interrogation of Detainee 063," 4-5.
319 Ibid., 5.
320 Ibid., 5.
321 Ibid., 5.
322 Ibid., 7.
323 Ibid., 6.

second case of progress then appears to be made when a female subjects al-Qahtani to invasion of his personal space on December 6, 2002. Al-Qahtani reportedly became highly upset by the female's presence and al-Qahtani eventually says that he "will tell the truth…to get out of here."[324] Al-Qahtani then explains how he "got to Afghanistan in the first place and how he met with bin Laden."[325]

Considering the time that al-Qahtani was in custody at GITMO, the lack of specifics and relatively short time period covered by the interrogation log, it is difficult to discern if the techniques used on al-Qahtani were effective. According to Time reporters, the "Pentagon contends that al-Qahtani has been a valuable source of information: providing details of meetings with bin Laden, naming people and financial contacts in several Arab countries, describing terrorist training camps where bin Laden lives and explaining how he may have escaped from Tora Bora in December 2001."[326] Pentagon officials also reportedly claimed most intelligence gathered from al-Qahtani sessions was recorded in other documents.[327] What is clear from the interrogation log is that a mixture of interrogation techniques was used and al-Qahtani did provide information regarding his affiliation to al-Qaeda both before and after the aggressive techniques were implemented.[328]

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[324] Zagorin and Duffy, "Inside the Interrogation of Detainee 063," 6.
[325] Ibid., 6.
[326] Ibid., 2.
[327] Ibid., 2.
[328] Ibid., 1-8.

CHAPTER 5

Conclusions

Legal Landscape

Legal guidance on the use of controversial interrogation techniques is hotly debated. This thesis attempted to capture some of the most widely discussed and pertinent legal guidance on the application of controversial interrogation techniques. In doing so, legalities governing the use of controversial interrogation methods were examined using legal reviews conducted largely by the Congressional Research Service (CRS). The CRS is an organization that professes its adherence to supply the U.S. legislature with analysis that is "authoritative, confidential, objective and nonpartisan."[329] As a research arm of the Library of Congress, CRS reports and analysis are recognized for their objective and timely coverage of topics.[330]

Reviews conducted by the CRS reflect the expressed needs of the U.S. legislature in addressing issues of controversial interrogation from a national perspective.[331] Commonly cited legal documents used in the debate on interrogation, pertinent to a discussion of the employment of controversial interrogation techniques included the following documents: the 1949 Geneva Conventions; United Nations Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading, Treatment or Punishment; the Detainee Treatment Act; Supreme Court decision in Hamdan v. Rumsfeld; the War

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[329] Congressional Research Service, "About CRS," Under History and Mission, http://www.loc.gov/crsinfo/whatscrs.html (accessed on March 31, 2009).

[330] U.S. Congress, Website of Representative Jim Moran, "What Are CRS Reports," http://moran.house.gov/what_are_crs_reports.shtml (accessed on April 1, 2009).

[331] Congressional Research Service, CRS Report for Congress, "Lawfulness of Interrogation Techniques Under the Geneva Conventions," RL32567, September 8, 2004, 1.

Crimes Act; the Military Commissions Act, Executive Order 13340; U.S. Army Departmental Policy and Regulations; and Department of Justice (DoJ) Legal Memorandums; and President Obama's EO on interrogation.

After examining the guidance illustrated above relative to controversial interrogations, it appears legal prohibitions on the specific use of controversial interrogation techniques remain ambiguous. Although ample legal guidance does exist on what is and is not permissible conduct regarding how detainees and/or POWs should be generally treated, the language is insufficient to dispel controversy over the application of specific interrogation techniques. This legal quagmire is perhaps best described in a 2004 CRS report regarding the lawfulness of interrogation techniques. The legal review conducted regarding interpretation of the Geneva Conventions noted the following:

> Despite the absolute-sounding provisions described above, whether certain techniques employed by interrogators are per se violations of the Geneva Conventions remains subject to debate. Presumably, all aspects of prisoner treatment fall into place along a continuum that ranges from pampering to abject torture. The line between what is permissible and what is not remains elusive. To complicate matters, interrogators may employ more than one technique simultaneously, and the courts and tribunals that have evaluated claims of prisoner abuse have generally ruled on the totality of treatment without specifying whether certain conduct alone would also be impermissible. Not surprisingly, governments may view conduct differently depending on whether their soldiers are the prisoners or the interrogators, and may be unwilling to characterize any conduct on the part of the adversary as lawful. Human rights advocates may tend to interpret the treaty language in a strictly textual fashion, while governments who may have a need to seek information from prisoners appear to rely on more flexible interpretations that take into account military operational requirements. Nonetheless, it may be possible to identify some threshold definitions.[332]

[332] Congressional Research Service, CRS Report for Congress, "Lawfulness of Interrogation Techniques under the Geneva Conventions," RL 32567, September 8, 2004, 8.

Of course, it is important to note a change in Executive authority as of January 22, 2009, yielded an EO on interrogation from President Obama. President Obama's Order has generated partisan legal and operational debate. However, it is safe to say it revokes EO 13440 from former President Bush and requires any U.S. interrogation of "individuals detained in any armed conflict" to be interrogated using Army Field Manual 2 22.3.[333] The EO also announces the creation of a Special Task Force on Interrogation and Transfer Policies. Among other duties, this task force is required to "study and evaluate whether the interrogation practices and techniques in Army Field Manual 2 22.3…provide an appropriate means of acquiring the intelligence necessary to protect the Nation…"[334]

In spite of the youth of President Obama's EO, critiques of the Order exist questioning why the Order was enacted limiting interrogation practices without knowledge of how those limitations may affect U.S. ability to acquire valuable intelligence. In addition, even this apparently restrictive policy has a chance to change based upon future results of the Special Task Force, the potential capture of a high profile terror subject necessitating more aggressive interrogation techniques, and concerns already raised by the intelligence community.[335]

Nonetheless, although President Obama's EO regarding interrogation is not a law itself, EOs have "the force of law unless they contravene existing law" and must be

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[333] Fox News Politics Online, "Obama Issues Directives on Detainees, Interrogation, Guantanamo," January 22, 2009, http://www.foxnews.com/politics/first100days/2009/01/22/obama-issues-directives-detainees-interrogation-guantanamo/ (accessed on January 22, 2009), 1.

[334] Ibid., 3.

[335] Mark Mazzetti and William Glaberson, "Obama Issues Directive to Shut Down Guantanamo," *New York Times*, January 21, 2009, http://www.nytimes.com/2009/01/22/us/politics/22gitmo.html?hp (accessed on January 22, 2009), 1.

followed.[336] Of course, EOs can also appear or disappear with a change in law or via a change in presidential leadership.[337] Although President Obama's EO restricts the use of interrogation techniques to those authorized under Army manual, the restriction may be temporary based on the manner in which the EO is currently written and by virtue of the inevitable change in leadership inherent in the U.S. electoral process.

What Can Science Tell Us?

Although it is not clear why President Obama's EO affecting interrogation policy allows for the appointment of a Special Task Force to study the effectiveness of Army interrogation techniques, it may be due to the lack of scientific study available on interrogation. In an article written for *Educing Information: Interrogation Science and Art: Foundations for the Future*, Dr Randy Borum highlighted the surprising lack of scientific studies regarding interrogation. Dr. Borum noted, "Few empirical studies in the social and behavioral sciences directly address the effectiveness of interrogation in general, or of specific techniques, in producing accurate and useful information."[338] Dr. Borum additionally noted the following:

> Without a scientific literature or systematic analysis - at least one available in open-source information – practitioners (i.e. "boots on the ground" assets) and policymakers must make decisions on the basis of other sources and considerations. Primary among them are the iconic 17 techniques described in U.S. Army Field Manual 34-52, Intelligence Interrogation, which serves as the model or guide to intelligence interrogations for all the armed forces. These exact techniques have been included in successive editions for more than 50 years, yet even people intimately familiar with 34-52 are unaware of any studies or

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336 University of Virginia, Miller Center of Public Affairs, "American President: Online Reference Resource," http://millercenter.org/academic/americanpresident/policy/governmnent (accessed on March 1, 2009).

337 Ibid., 1.

338 Randy Borum, "In Approaching Truth: Behavioral Science Lessons on Educing Information from Human Sources," in *Educing Information: Interrogation Science and Art: Foundations for the Future*, ed. Russell Swenson (Washington, DC: National Defense Intelligence College, 2006), 17.

> systematic analyses that support their effectiveness, or of any clear historical record about how the techniques were initially selected for inclusion.[339]

Dr. Borum is not alone in his conclusions on the lack of scientific study of interrogation techniques. Dr. Paul Lehner of the MITRE Corporation also concluded the following:

> Eduction practices are methods, techniques, procedures, strategies, etc., employed as part of interviews and interrogations to draw out information from subjects, some of whom may initially be unwilling to provide information. Obviously educed information can provide an important source of HUMINT. Surprisingly, the last forty years have seen almost no scientific research examining eduction practices. Rather, our current knowledge is based on feedback and lessons learned from field experience. The "interrogation approaches" taught in standard interrogation training (e.g., Army Field Manual 34-52) have remained largely unchanged since World War II.[340]

KUBARK

In spite of the apparent scarcity in scientific study on interrogation techniques, some scientific study has been published relative to the topic of interrogation. Among such publicly available information on interrogation is that found in the CIA's KUBARK manual.

Through Freedom of Information Act requests by reporters for the *Baltimore Sun*, the CIA's KUBARK manual became public information in 1997.[341] For some, the KUBARK manual "remains the most comprehensive and detailed explanation in print of coercive methods of questioning-given the official reluctance to discuss these matters or put them in writing, because such things tend to be both politically embarrassing and

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[339] Borum, "In Approaching Truth," 18-19.

[340] Paul Lehner, "Options for Scientific research on Eduction Practices," in *Educing Information: Interrogation Science and Art: Foundations for the Future*, ed. Russell Swenson (Washington, DC: National Defense Intelligence College, 2006), 303.

[341] Mark Bowden, "The Dark Art of Interrogation," *The Atlantic Monthly*, October 2003, http://www.theatlantic.com/doc/200310/bowden (Accessed on April 1, 2009), 8.

secret."[342] In an article written for the *Atlantic Monthly*, Mark Bowden noted the "KUBARK Manual reveals the CIA's insights into the tougher methods employed by the military and intelligence agencies…the more summary discussions of techniques in later U.S. Army manuals on interrogation, including the most recent, also clearly echo KUBARK."[343]

In addition, a review of the KUBARK manual's descriptive bibliography section indicates the framers of the manual performed an extensive review of literature and scientific studies of the time in developing the manual. The research conducted in KUBARK is illustrated by the following excerpt from its descriptive bibliography:

> This bibliography is selective; most of the books and articles consulted during the preparation of this study have not been included here. Those that have no real bearing on the counterintelligence interrogation of resistant sources have been left out. Also omitted are some sources considered elementary, inferior, or unsound. It is not claimed that what remains is comprehensive as well as selective, for the number of published works having some relevance even to the restricted subject is over a thousand. But it is believed that all items listed here merit reading by KUBARK personnel concerned with interrogation.[344]

A review of the KUBARK manual reveals the producers of the manual relied heavily upon science as a reference upon which conclusions were drawn. KUBARK suggests the basis for conducting interrogations should be rooted in scientific research vice an "eighteenth century" approach.[345] The manual also makes a point in that it suggests any examination of interrogation must include an earnest emphasis on the psychological aspects of interrogation.[346]

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[342] Bowden, "The Dark Art of Interrogation," 8.
[343] Ibid., 8.
[344] KUBARK, 110.
[345] Ibid., 2.
[346] Ibid., 3.

The KUBARK manual is clear on advice offered on coercive techniques of interrogation. KUBARK states, "Coercive procedures are designed to not only exploit the resistant source's internal conflicts and induce him to wrestle with himself but also to bring a superior outside force to bear upon the subject's resistance."[347] KUBARK does however emphasize the need to primarily consider the psychological aspect of interrogation. KUBARK states, "it is a waste of time and energy to apply strong measures on a hit-or-miss basis if a tap on the psychological jugular will produce compliance."[348]

In support of the use of coercive techniques, KUBARK references a study by Dr. Lawrence E. Hinkle Jr., "The Psychological State of the Interrogation Subject as It Affects Brain Function." KUBARK finds that through the application of coercive techniques, "relatively small degrees of homeostatic derangement, fatigue, pain, sleep loss, or anxiety" may significantly impair an individual's ability to resist interrogation.[349] In an endorsement of coercive techniques and conclusions drawn by Hinkle's study, KUBARK notes, "most people who are exposed to coercive procedures will talk and usually reveal some information that they might not have revealed otherwise."[350]

On the topic of coercion eliciting false confessions, KUBARK concludes, "the use of coercive techniques will rarely or never confuse an interrogatee so completely that he does not know whether his own confession was true or false."[351] In addition, KUBARK plainly states that the "threat of coercion usually weakens or destroys resistance more effectively than coercion itself."[352] KUBARK illustrates this point by

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347 Ibid. 83.
348 Ibid., 83.
349 Ibid., 83.
350 Ibid., 83.
351 KUBARK., 84.

commenting on threats to inflict pain. KUBARK holds that the "immediate sensation of pain" is often less "damaging" than the fear caused by the threat of pain.[353] This condition is due in part to the argument that "most people underestimate their capacity to withstand pain."[354] Furthermore, KUBARK extends this same principal to fear. "Sustained long enough, a strong fear of anything vague or unknown induces regression, whereas the materialization of the fear, the infliction of some form of punishment, is likely to come as a relief."[355]

In addition, KUBARK notes, "direct physical brutality creates only resentment, hostility, and further defiance."[356] On the topic of intense pain in interrogation, KUBARK is clear in its recommendation that "intense pain is quite likely to produce false confessions."[357] KUBARK asserts false confessions will likely result from the use of intense pain in interrogation because the interrogatee will develop a false confession to escape from the pain.[358]

On debility, KUBARK's assessment is clear that there is no scientific evidence to suggest that debility is productive as a coercive technique. KUBARK notes, "for centuries interrogators have employed various methods of inducing physical weakness: prolonged constraint; prolonged exertion; extremes of heat, cold, moisture; and deprivation or drastic reduction of food or sleep."[359] These techniques were utilized in an apparent attempt to sap the source's physiological strength and thereby decrease his psychological ability to resist. On the contrary however, KUBARK notes that the science

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352 Ibid., 90.
353 KUBARK, 90.
354 Ibid., 90.
355 Ibid., 91.
356 Ibid., 91.
357 Ibid., 94.
358 Ibid., 94.
359 Ibid., 92.

of interrogation shows that "resistance is sapped principally by psychological rather than physical pressures."[360]

On pain, KUBARK is consistent in noting that pain as a stimulus in interrogation is most effective when examined in terms of how the individual psychologically experiences the pain. KUBARK finds that a person's will to resist interrogation may be weakened more effectively by pain which he "seems to inflict upon himself."[361] In a "torture situation," KUBARK notes the conflict between the interrogatee and his "tormentor" results in pain inflicted externally upon the interrogatee which he can "frequently endure."[362] KUBARK suggests a more effective method of interrogation is to introduce an "intervening factor" in the infliction of pain in interrogation so that pain is experienced internally by the interrogatee.[363]

Case Study Insights

In an article published in 2005, Dr. Paul Lehner proposed that in spite of the surprising lack of scientific research on interrogation, ample information exists on interrogation that could be objectively studied to augment lessons learned from field experience. Dr. Lehner proposed that "scientific investigation of eduction practices is needed to supplement lessons learned from field experience, and second, that various research venues are available to examine these practices."[364] Dr. Lehner notes, "researchers cannot ethically investigate claims" of "breaking" the will of a subject or whether "torture is a poor interrogation technique" by conducting experiments on

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[360] KUBARK, 92.
[361] Ibid., 94.
[362] Ibid., 94.
[363] Ibid., 94.
[364] Paul Lehner, "Options for Scientific Research on Eduction Practices," in *Educing Information: Interrogation Science and Art: Foundations for the Future*, ed. Russell Swenson (Washington, DC: National Defense Intelligence College, 2006), 303.

students or detainees. However, Dr. Lehner recommends these claims can be evaluated "by drawing on the considerable historical data available" using "POW records and post-detainment debriefings" as a "principal data source."[365]

Dr. Lehner cautions against relying solely on interrogators' personal assessments of lessons learned from interrogations due to "very strong" "natural human judgment biases" that "often prevail even when experts are fully aware of them and explicitly endeavor to mitigate their effect."[366] To avoid introduction of such bias, Dr. Lehner advises, "Only objective scientific research can help distinguish between" valid and invalid lessons learned from field experience.[367] In conducting research on the effectiveness of interrogation techniques, Dr. Lehner proposes the following venues exist for analysis of interrogation methods:

Venue 1: Objective Analysis of Contemporary Interrogations
Venue 2: Objective Analysis of Historical Interrogations
Venue 3: Experiments with SERE Students
Venue 4: Experiments with Other Military Personnel
Venue 5: University Research
Venue 6: Research with Foreign Personnel [368]

In the spirit of attempting to objectively explore the operational effectiveness of controversial interrogation techniques, four case studies in interrogation were examined as part of this thesis. Although the reviews conducted of these case studies do not meet the rigor of a purely scientific review, the case studies yielded pertinent and revealing conclusions in the study of controversial interrogation techniques.

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[365] Lehner, "Options for Scientific Research on Eduction Practices," 306.
[366] Ibid., 304-305.
[367] Ibid., 305.
[368] Ibid., 305-309.

MIS-Y Program

First, with regard to the MIS-Y program applied during World War II, the MIS-Y interrogation center served as a model for the application of highly specialized and non-violent interrogation techniques.[369] Interrogations of prisoners at the MIS-Y facility were strictly controlled. Interrogators were handpicked because of their, "language ability, knowledge of subject matter, and perceived ability to relate to the source."[370] The MIS-Y program focused on rapport building and structured interrogations vice the application of controversial interrogation techniques. In addition, detainee facilities were all, "wired for sound" to allow authorities to listen to detainee conversations and "collaborators were placed in the prison population" to gather information.[371] Information was also taken from prisoners during formal interrogation sessions, as well as through other covert means.[372]

The successes of the MIS-Y program were numerous and were recognized in House Resolution 753. To mention but a few successes, the MIS-Y program interrogated approximately 4,000 POWs and scientists. As a result of MIS-Y program methods, information was gathered on "research to develop the atomic bomb, plans for the jet engine, blueprints of V-2 rockets, and secrets originally destined for Japan before the end of global hostilities."[373] In addition, efforts of MIS-Y also "led to advances in military intelligence and scientific technology that directly influenced the Cold War and Space

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[369] Robert a. Fein, "U.S. Experience and Research in Educing Information: A Brief History," in *Educing Information: Interrogation Science and Art: Foundations for the Future*, ed. Russell Swenson (Washington, DC: National Defense Intelligence College), xi-xii.

[370] Ibid., xi.

[371] Ibid., xi.

[372] Ibid., xi.

[373] *Honoring and thanking the soldiers that served the top secret units for the United States Military Intelligence Service under the project name `Post Office Box 1142'*, HR 753 IH, 110th Cong., 1st sess., October 17, 2007, http://thomas.loc.gov/cgi-bin/query/z?c110:H.RES.753: (accessed on March 3, 2009).

Race" as well as "aiding the development of U.S. intelligence operations on the Soviets during the onset of the Cold War."[374]

Of course, an objective review of the MIS-Y program does reveal the methods of interrogation practiced were not always successful. A National Park Service publication from examining MIS-Y records noted the following:

> The interrogating officers soon found, however, that they learned more from their prisoners by listening to their private conversations over microphones hidden in the cells than they did the formal interrogation sessions…Of course some of the prisoners quickly suspected the presence of hidden microphones and spent the long tedious hours in their cells entertaining the GI's listening in at the other end with animal imitations, obscene stories, and songs. Less discerning prisoners spoke freely with each other, providing the Allies with much valuable information on war crimes, the technical workings of U-boats, and the state of enemy morale.[375]

In addition, interviews of MIS-Y interrogators and records of the limited variety of MIS-Y POWs (mainly scientists and submariners) indicates MIS-Y program results may not be easily extrapolated to interrogations of other POW populations. MIS-Y interrogators advised they wined and dined German scientists in attempts to win them over. Furthermore, a former MIS-Y interrogator also admitted that many of the German prisoners of the MIS-Y facility "wanted to cooperate, especially at the end of the war."[376] Whether interrogations of people of different cultures, such as hardened, transnational terrorist members or leaders, can be adequately compared to that of prisoners of the MIS-Y facility at Fort Hunt is debatable.[377]

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[374] HR 753, 1.

[375] National Park Service, "Fort Hunt-The Forgotten Story," http://www.nps.gov/gwmp/upload/From%20In-Depth%20-%20FH%20-%20The%20Forgotten%20Story.pdf (accessed on March 7, 2009), 4-5.

[376] Fessler, "Former GIs Spill Secrets of WWII POW Camp," 4..

[377] Lehner, "Options for Scientific Research on Eduction Practices," 308.

Biderman's Work on Air Force POWs

As a test of KUBARK's principles and conclusions, one can compare advice tendered in the KUBARK manual to conclusions reached in Biderman's study of Air Force POWs at the hands of the Chinese. Biderman's work on the interrogation of Air Force POWs was openly cited in the KUBARK descriptive bibliography section five times.[378] Biderman's study focused on 235 Air Force members who were returned by the Chinese after the Korean Armistice. Half of the men studied had some form of direct personal experience with Communist attempts to elicit false confessions.[379]

Due to the effectiveness of the methods of the Communist Chinese in eliciting public confessions by Air Force POWs involved in the Biderman study, claims of "brainwashing" were investigated by the U.S. Senate.[380] The Communists were found to have developed "considerable skill in the extraction of information from prisoners" but the investigation showed "the Communists did not possess new and remarkable techniques of psychological manipulation."[381] Biderman's study reached the same conclusion.[382]

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[378] KUBARK, 110-112.

[379] Albert D. Biderman, "Communist Attempts to Elicit False Confessions from Air Force Prisoners of War," Office for Social Science programs, Air Force Personnel and Training research Center, Air research and Development Command, Maxwell AFB, Alabama, presented at a combined meeting of the Section on Neurology and Psychiatry with the New York Neurological Society at The New York Academy of Medicine, November 13, 1956, as part of a Panel Discussion on Communist Methods of Interrogation and Indoctrinationhttp://www.pubmedcentral.nih.gov/picrender.fcgi?artid =1806204&blobtype=pdf (accessed on December 22, 2008), 616.

[380] Senate Subcommittee to Investigate the Administration of the Internal Security Act and Other Internal Security Laws of the Committee on the Judiciary, *Communist Treatment of Prisoners of War*, 92 nd Cong, 2d sess., 1972, 81-6960, 13.

[381] Ibid., 13.

[382] Biderman, "Communist Attempts to Elicit False Confessions," 617.

Biderman was also able to make a "meaningful distinction between those measures the Communists took to render the prisoner compliant, on the one hand, and, on the other, those which sought to shape his compliance into the very pattern of confessor behavior with which the world has become familiar."[383] Biderman found the Chinese Communists used almost identical methods to elicit factual intelligence information and elicitation of false confessions for propaganda purposes.[384]

On the topic of how the Chinese used physical pain as an interrogation and or compliance technique, Biderman's findings are clear. Biderman asserts that although "many of our prisoners of war did encounter physical torture…inflicting physical pain is not a necessary nor effective method of inducing compliance."[385] Biderman also explained that while "many of our people did encounter physical violence, this rarely occurred as part of a systematic effort to elicit a false confession. Where physical violence *was* inflicted during the course of such an attempt, the attempt was particularly likely to fail completely."[386] However, for the purposes of qualifying his remarks on physical violence, Biderman acknowledges that the "ever-present fear of violence in the mind of the prisoner appears to have played an important role in inducing compliance."[387]

Biderman elaborated on the use of violence in shaping interrogatee behavior. Biderman found physical punishment was "limited to cuffs, slaps and kicks, and sometimes merely to threats and insults."[388] Biderman also noted that the Chinese used forced sitting or standing for long periods in an apparent attempt to introduce "an

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[383] Biderman, "Communist Attempts to Elicit False Confessions," 617.
[384] Ibid., 617.
[385] Ibid., 619.
[386] Ibid., 619-620.
[387] Ibid., 620.
[388] Ibid., 620.

intervening factor" relative to the infliction of pain.[389] Biderman advises, in a "simple torture situation-the 'bamboo splinters technique' of popular imagination- the contest is clearly one between the individual and his tormentor. Can he endure pain beyond the point to which the interrogator will go to inflict pain? The answer for the interrogator is all too frequently yes."[390] In the case of forced sitting or standing at attention, the "source of pain is not the interrogator but the victim himself."[391] Biderman finds the victim is put in the position of engaging in a "contest" against himself, thereby sapping the "motivational strength of the individual…in this internal encounter."[392] POWs who experienced lengthy periods of standing or sitting at attention, reported "no other experience could be more excruciating."[393]

In conclusion, Biderman found "that human behavior could be manipulated within a certain range by controlled environments."[394] Biderman noted, "Chinese Communists used methods of coercing behavior…which Communists of other countries had employed for decades and which police and inquisitors had employed for centuries."[395]

Case of Nguyen Tai

In 1970, Tai was arrested by South Vietnamese forces while in transit to a political meeting.[396] Identity documents carried by Tai and his colleagues were found to be false and after a period of interrogation, Tai erroneously claimed to be a new captain

[389] Biderman, "Communist Attempts to Elicit False Confessions," 620.
[390] Ibid., 620.
[391] Ibid., 620.
[392] Ibid., 620.
[393] Ibid., 620.
[394] Ibid., 617.
[395] Ibid., 617.
[396] Pribbenow, "Limits to Interrogation: The Man in the Snow White Cell," 3.

from North Vietnam.[397] South Vietnamese interrogators administered brutal tactics in an attempt to break Tai's story. Tai was subjected to electric shock, beatings with clubs, Chinese water torture, and being tied to a stool for days without food or water during "around the clock" questioning.[398] As interrogations became more "intense," Tai employed a strategy of pretending to break under interrogation and only divulging information that he knew his captors already possessed.[399] As predicted in KUBARK and Biderman's works, the use of ***intense*** pain on Tai was largely ineffective in yielding valuable intelligence information.

After showing his photograph to a large number of prisoners and defectors, South Vietnamese personnel eventually learned Tai's true identity. Only after Tai was confronted with documents he (Tai) had written, and photographs of Tai when he served as an escort for Ho Chi Minh, did Tai admit to his true identity.[400]

After Tai's admission and giving him a brief rest, the interrogations of Tai continued. Tai was "kept sitting on a chair for weeks at a time with no rest; he was beaten; he was starved; he was given no water for days; and he was hung from the rafters for hours by his arms, almost ripping them from their sockets."[401] After six months of this ordeal, Tai attempted suicide by cutting his wrists to avoid breaking and divulging his information.[402]

Tai's suicide attempt was stopped by his captors and Tai's brutal treatment was eventually precluded by a failed prisoner exchange attempt that made Tai appear "too

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[397] Pribbenow, "Limits to Interrogation: The Man in the Snow White Cell," 3.
[398] Ibid., 4.
[399] Ibid., 3.
[400] Ibid., 5.
[401] Ibid., 5.
[402] Pribbenow, "Limits to Interrogation: The Man in the Snow White Cell," 5.

valuable" to his captors to risk his possible death.[403] Tai was then subjected to apparent sensory deprivation techniques, as he was taken to another location and kept in a "completely sealed cell that was painted all white, lit by bright lights 24 hours a day, and cooled by a powerful air conditioner…."[404] Tai lived in his cell for three years in isolation.[405]

During this time, Tai was interrogated by CIA officers who did not mistreat him. The CIA officers tried to win Tai's trust by "giving him medical care, extra rations, and new clothing."[406] The CIA officers "also played on his human weaknesses-his aversion to cold, his need for companionship, and his love for his family."[407] Only after being exposed to the reported non-aggressive interrogation tactics of the CIA, did Tai change his tactics of resisting interrogation. Tai decided "to answer questions and try to stretch out the questioning to wait for the war to end. I will answer questions but I won't volunteer anything. The answers I give may be totally incorrect, but I will stubbornly insist that I am right," wrote Tai in his memoires.[408] However, Tai admitted his strategy of dialogue with interrogators "led him into some sensitive areas."[409]

After examination of Tai's interrogation as told by Pribbenow, it is difficult to definitively separate the brutal treatment of Tai by the South Vietnamese from his eventual desire to engage in a dialogue with CIA interrogators. Pribbenow aptly concludes, "Without a doubt, the South Vietnamese torture gave Tai the incentive for limited cooperation he gave to his American interrogators, but it was the skillful

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[403] Pribbenow, "Limits to Interrogation: The Man in the Snow White Cell," 6.
[404] Ibid., 6.
[405] Ibid., 6.
[406] Ibid., 6.
[407] Ibid., 6.
[408] Ibid., 6.
[409] Ibid., 6.

questions and psychological ploys of the Americans, and not any physical infliction of pain, that produced the only useful (albeit limited) information Tai ever provided."[410]

Interrogation of Mohammed al-Qahtani

The case study of al-Qahtani is provocative because it represents the most current example within this thesis discussion of an interrogation of a suspected terrorist for intelligence purposes. Al-Qahtani's interrogation is also interesting because it is reported to have consisted of a combination of efforts by Federal Bureau of Investigation agents, standard Army interrogation techniques, and approval of more controversial interrogation techniques.[411]

It should be noted however that although the interrogation log presented by Time Magazine reporters depicts a fairly detailed accounting of the interrogation of al-Qahtani, the log does contain gaps in what is said and does not explain entirely all actions taken during interrogation. If accurate, the log does however, offer valuable insight into how al-Qahtani was interrogated over a 50 day period and provides a snapshot of what intelligence information those interrogation methods may have gleaned from him during that timeframe.[412]

According to Time Magazine reporting, a senior Pentagon official stated the initial questioning of al-Qahtani by the FBI was not productive. The official stated, "We were getting nothing from him. He had been trained to resist direct questioning. And what works in a Chicago police precinct doesn't work in war."[413] Although, reporting on

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[410] Pribbenow, "Limits to Interrogation: The Man in the Snow White Cell," 8.
[411] Zagorin and Duffy, "Inside the Interrogation of Detainee 063," 1-8.
[412] Ibid., 3-5.
[413] Ibid., 3.

al-Qahtani's interrogation by Army personnel before the approval of more aggressive interrogation techniques indicates the Army techniques were somewhat successful in yielding information connecting al-Qahtani to Osama Bin Laden and al-Qaeda.[414]

In spite of this apparent progress, it was determined al-Qahtani's resistance to interrogation required more assertive measures. GITMO officials requested permission to apply more aggressive interrogation techniques on al-Qahtani. Secretary Rumsfeld subsequently gave his approval for 16 of 19 techniques to be applied to al-Qahtani.[415] Of the techniques approved, interrogators could now apply "stress strategies like standing for prolonged periods, isolation for as long as 30 days, removal of clothing, forced shaving of facial hair, playing on individual phobias (such as dogs) and mild non-injurious physical contact such as grabbing, poking in the chest with finger and light pushing."[416] According to the interrogation log, al-Qahtani experienced "several" of the above-mentioned techniques over the proceeding five weeks of his interrogation.[417]

After these aggressive techniques were applied, al-Qahtani's interrogation sessions lengthened and appeared to become more intense.[418] A second case of progress then appears to be made when a female subjects al-Qahtani to invasion of his personal space on December 6, 2002. Al-Qahtani reportedly became highly upset by the female's presence and al-Qahtani eventually says that he "will tell the truth…to get out of here."[419] Al-Qahtani then explains how he "got to Afghanistan in the first place and how he met with bin Laden."[420]

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414 Zagorin and Duffy, "Inside the Interrogation of Detainee 063," 4-5.
415 Ibid., 5.
416 Ibid., 5.
417 Ibid., 5.
418 Ibid., 6.
419 Ibid., 6.
420 Ibid., 6.

Considering the time that al-Qahtani was in custody at GITMO, the lack of specifics contained in the interrogation log, and the relatively short time period covered by the interrogation log, it is difficult to discern if the controversial techniques used on al-Qahtani were effective. What is clear from the interrogation log is that a mixture of standard Army interrogation techniques and more aggressive techniques were used on al-Qahtani. Al-Qahtani did provide information regarding his affiliation to al-Qaeda both before and after the more aggressive techniques were implemented.[421]

Answer to the Research Question

From an operational effectiveness perspective, should the United States employ lawful but controversial intelligence interrogation techniques that may cause physical pain in the subject of interrogation?

Insufficient information exists to definitively recommend the absolute use or non-use of lawful but controversial interrogation techniques that may cause physical pain in the subject of interrogation. Scientific studies that might offer an empirical answer to whether controversial interrogation techniques should be employed are sufficiently lacking. Dr. Borum illustrates this point when he writes, "Few empirical studies in the social and behavioral sciences directly address the effectiveness of interrogation in general, or of specific techniques, in producing accurate and useful information."[422] Absent a solid scientific conclusion on whether controversial interrogation techniques are

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[421] Zagorin and Duffy, "Inside the Interrogation of Detainee 063," 1-8.

[422] Randy Borum, "In Approaching Truth: Behavioral Science Lessons on Educing Information from Human Sources," in *Educing Information: Interrogation Science and Art: Foundations for the Future*, ed. Russell Swenson (Washington, DC: National Defense Intelligence College, 2006), 17.

effective, one is left with turning to an objective review of individual situations in which controversial techniques were applied and the corresponding results that were achieved.

If one is to accept early research conducted by the CIA in the KUBARK manual, some degree of controversial techniques, short of techniques that cause intense pain in the subject, will likely yield effective results when properly applied. KUBARK recommends ensuring techniques that may involve pain in the subject are administered in such a manner as to be internally experienced by the subject of interrogation. KUBARK states, "Coercive procedures are designed to not only exploit the resistant source's internal conflicts and induce him to wrestle with himself but also to bring a superior outside force to bear upon the subject's resistance."[423] KUBARK does however emphasize the need to primarily consider the psychological aspect of interrogation. KUBARK further states, "it is a waste of time and energy to apply strong measures on a hit-or-miss basis if a tap on the psychological jugular will produce compliance."[424]

According to KUBARK, the question of the degree to which controversial techniques may cause pain in the interrogatee is also an important factor. KUBARK notes, "direct physical brutality creates only resentment, hostility, and further defiance."[425] On the topic of intense pain in interrogation, KUBARK is clear in its recommendation that "intense pain is quite likely to produce false confessions."[426]

The topic of controversial interrogation techniques creating an environment that is conducive to eliciting information is also addressed by KUBARK. KUBARK plainly states that the "threat of coercion usually weakens or destroys resistance more effectively

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[423] KUBARK, 83.
[424] Ibid., 83.
[425] Ibid., 91.
[426] Ibid., 94.

than coercion itself."[427] KUBARK illustrates this point by commenting on threats to inflict pain. KUBARK holds that the "immediate sensation of pain" is often less "damaging" than the fear caused by the threat of pain.[428] This condition is due in part to the argument that "most people underestimate their capacity to withstand pain."[429] KUBARK extends this same principal to fear. "Sustained long enough, a strong fear of anything vague or unknown induces regression, whereas the materialization of the fear, the infliction of some form of punishment, is likely to come as a relief."[430]

Of the four case studies chosen as part of this thesis, none of the case studies offer information that definitively proves, one way or the other, whether specific controversial interrogation techniques should be employed for purposes of operational effectiveness. Each of the case studies however, is consistent with advice offered by the CIA's KUBARK manual which endorses the controlled use of controversial techniques.

If historical scientific information such as KUBARK and Biderman's work is to be heavily weighted, it would appear that some degree of controversial interrogation techniques can be effective if applied within legal and reasonable limits. What those legal and reasonable limits are will likely be a continued source of feverish debate. However, before making the leap to a potentially biased conclusion or of letting emotional debate cloud a decision regarding operational effectiveness, more objective study can and should be done in an attempt to reach a more definitive conclusion. By applying objective scientific methods to case study research, such as those highlighted by

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[427] KUBARK, 90.
[428] Ibid., 90.
[429] Ibid., 90.
[430] Ibid., 91.

Dr. Lehner, an examination of the past and present may be able to shed more light on such an important decision affecting U.S. national security and human rights.

Suggestions for Further Research

In order to more adequately explore the issue of judging the operational effectiveness of controversial interrogation techniques, more research needs to be accomplished. Offering an approach to accomplishing this research, Dr. Lehner's suggested methods and venues of study could be objectively applied to as many interrogation situations as practical to hopefully achieve some scientific consensus on this topic.[431]

As a matter of exploring sociological aspects pertinent to intelligence interrogation, in the MIS-Y case study, the case of Nguyen Tai, and the case of Mohammed al Qahtani, sociological factors applicable to the subjects and interrogators appeared to play prominent roles in the interrogation situation. MIS-Y interrogators were chosen because of their language ability and specifically matched against their subjects of interrogation.[432] Tai's familial relationships and loyalty to his cause also appear to be salient factors.[433] Finally, the intensity of al Qahtani's situation and subsequent admission of intelligence information appears to have been exacerbated by the presence of a female in his sense of his personal space.[434] Using the same techniques of invasion of personal space against another type of interrogation subject may well not have achieved the desired effect. More focused research into boundaries of people of various

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[431] Lehner, "Options for Scientific Research on Eduction Practices," 305-309.
[432] Fein, "U.S. Experience and Research in Educing Information: A Brief History," xi.
[433] Pribbenow, "Limits to Interrogation: The Man in the Snow White Cell," 6.
[434] Zagorin and Duffy, "Inside the Interrogation of Detainee 063," 6.

cultural backgrounds pertinent to intelligence interrogation environments should be conducted to determine cultural impact on controversial interrogation techniques.[435]

In addition, during the course of research on the topic of controversial interrogation, information regarding the effectiveness of water boarding provided by the Chief of Psychology Services at the Air Force Survival School at Fairchild AFB, WA, may be of particular interest.[436] In addition to commenting on the psychological effects of resistance training, the Chief of Psychology Services noted he had observed water boarding as part of SERE training "approximately 10-12 times."[437] The Chief of Psychology further stated he "did not believe the water board posed a real and serious physical danger to the students…"[438] As far as commenting on its effectiveness, the Chief of Psychology Services also noted the "use of the water board resulted in student capitulation and compliance 100% of the time." The Chief of Psychology Services added that from a psychological perspective, "the water board broke the students' will to resist providing information and induced helplessness."[439]

Although water boarding became a lightning rod for controversy and claims of it being torture abound, information that it was used successfully against Khalid Sheik Mohammed and that it is successfully used in U.S. SERE training is provocative.[440] Examining the use of water boarding from a purely operational effectiveness perspective

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[435] Lehner, "Options for Scientific Research on Eduction Practices," 305-309.

[436] Senate Armed Services Committee, "Senate Armed Services Committee Hearing: The Origins of Aggressive Interrogation Techniques," Part I of the Committee's Inquiry into the Treatment of Detainees in U.S. Custody, under Documents Referenced in Senator Levin's Opening Statement, June 17, 2008, (Tab 3-EXTRAXTS) July 24, 2002 Memorandum, entitled Psychological Effects of Resistance Training, Attached to JPRA Memorandum of July 26, 2002, http://levin.senate.gov/newsroom/supporting/2008/Documents.SASC.061708.pdf (accessed on February 16, 2009), 10-11.

[437] Ibid., 11.

[438] Ibid., 11.

[439] Ibid., 11.

[440] Walter Pincus, "Waterboarding Historically Controversial," *Washington Post*, October 5, 2006, http://www.washingtonpost.com/wp-dyn/content/article/2006/10/04/AR2006100402005.html (accessed on April 3, 2009).

may be possible given its use in SERE training. For that matter, examining a regime of controversial techniques and their relative effects on eliciting information could be further examined through SERE training as well.[441]

[441] Lehner, "Options for Scientific Research on Eduction Practices," 305-309.

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