

Interrogation Effectiveness:

Intelligence Interrogations or Mirandized Law Enforcement Interviews
of Terrorism Suspects?

Literature Review Project

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Professor Joseph Campos II, Ph.D.
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On Christmas Day of 2009, a young Nigerian man named Omar Faruk Abdulmutallab was subdued by passengers on Northwest Airlines flight 253 as he attempted to set off explosives hidden in his clothing (Senate Select Committee on Intelligence 2010). It would be reasonable to assume that there would be clear procedures to follow in order to swiftly detain the suspect and then interrogate him to determine the scope of the planned attack and begin the investigation that would lead to the arrest of the suspect's conspirators and the conviction of all involved. In the days and weeks following the attacks, then Director of National Intelligence Dennis Blair made public statements that "raised new questions about how well prepared the administration is to respond on short notice to domestic terrorist acts" (Associated Press 2010) and sparked criticism about how the administration handled the suspect and fueled debate about whether suspects should be handled as criminals or enemy combatants (Isikoff 2010). The Christmas Day attack proved that this assumption was incorrect and there were no procedures in place for dealing with detained terrorism suspects despite the attack occurring nearly a decade after the 9/11 attacks, a decade that included successful attacks in Madrid and London and planned attacks in the United States that all targeted mass public transportation (Hoffman 2010). Instead of an orderly process of investigation, what followed was a disorganized response that included months of political finger pointing and indecision that highlighted a need to have clear guidelines for responding to terrorist attacks against the United States and a robust process of interrogation and investigation to prevent associated follow-up attacks and to secure arrests and convictions of those involved in perpetrating the attack. The controversial items included whether a suspect should be interrogated by law enforcement, by military intelligence, or by a joint group composed of law enforcement,

military intelligence, and the intelligence agencies, and whether a foreign suspect should be given *Miranda* protections when questioned (MSNBC 2010). There are multiple factors behind the controversy including power politics, policy considerations about whether terrorism suspects should be tried in federal criminal court or in military commissions – with the decision between law enforcement and intelligence interrogation playing a role in determining where the suspect will be tried. Of interest to the immediate needs of national security is determining what interrogation option has the best chance of producing the intelligence necessary to prevent follow-up and future attacks while still allowing for the successful prosecution of the perpetrators.

The aftermath of the Christmas Day attack clearly showed that interrogation of terrorism suspects still has no clear direction and that the intelligence and policy community has learned nothing from the years of turmoil surrounding Guantanamo where the battle between trial by military commission or federal court and the ongoing power struggle between law enforcement and military intelligence interrogation methods has raged for years. The initial collection of intelligence from a detained suspect is paramount for security to identify any additional threats – a main argument for “enhanced interrogation” of 9/11 suspects by the CIA – and yet there are still no clear guidelines, rules, or procedures for extracting intelligence from a terrorism suspect captured outside of a combat zone. The White House, through its national advisor on counter-terrorism John Brennan, took congress to task for not understanding that Abdulmutallab had been given *Miranda* protections when questioned by the FBI (Reddy 2010). Congress claimed that the White House had not been forthcoming with notifying lawmakers of the FBI providing *Miranda* protections (Tapper 2010). Director of National Intelligence Dennis

Blair openly told Congress that the interrogation of Abdulmutallab had been mishandled (Associated Press 2010) and that the High-value Interrogation Group (HIG), the group formed by the White House to handle the exact scenario embodied by Abdulmutallab, should have been used to interrogate the suspect (Ackerman 2010). Blair felt that the decision on how to interrogate a terrorism suspect needed to be made more carefully rather than being made on the scene in an ad-hoc fashion. Blair, Director of the National Counterterrorism Center Michael Leiter, and the Secretary of Homeland Security Janet Napolitano all testified before the Senate that they were not consulted about whether to charge Abdulmutallab in federal court, a set of consultations that should have occurred in the interest of national security (Tapper 2010). The concerns voiced by DNI Blair are sound but are also disconcerting because the DNI, in calling for the use of the HIG, was not aware that the HIG – a group that he was supposed to be working to establish – was not operational over eight months after it was ordered created (Associated Press 2010). Also of concern is that none of the policymakers ever address data to support their positions.

The research question posed by the confusing and contentious response to the Christmas Day attack is one of importance to national security and must be answered if policymakers are to make well-informed decisions on the best forum to gather intelligence from terrorism suspects: what interrogation choice is more effective in terrorism cases, interrogations conducted by military intelligence, the national-level intelligence agencies, or law enforcement?

Literature Review

Gudjonsson (2003), a professor of Forensic Psychology and expert on the psychology of interrogations and false confessions, discussed the “tactics and techniques advocated by practical interrogation manuals” and noted that “nearly all published interrogation manuals originate in the USA” although he includes police training manuals in that count. Gudjonsson notes that “the authors of these manuals argue that most criminal suspects are reluctant to confess” out of shame at their actions and fear of legal consequences, therefore, those authors justify “deception, persuasion and manipulation” and “persuasive interrogation” in order to extract the truth, methods that are often coercive.

Gudjonsson identifies the immense variety of settings and conditions under which interrogations occur and states that despite legal protections surrounding interrogations – including the duration and conditions of the interrogation – that there are very few times where “any custodial interrogation is not potentially ‘coercive’” and cites rulings from the U.S. Supreme Court that agree that custodial interrogations are “‘inherently coercive’ to a certain extent.” The author bases this view on the psychology behind the balance of power between a suspect, detained against his will, and an interrogator who acts as an agent of the system that has power and control over the detained suspect.

This imbalance of power is coercive and appears backed by a Supreme Court ruling that was as critical of psychological coercion as it was of physical coercion and backed by studies that found that the stress from custodial interrogations could rise to the level of affecting the subject’s judgment according to Gudjonsson. The *Miranda v. Arizona* legal decision of 1966 handed down by the Supreme Court resulted in the notification of legal rights for suspects that

became known as the Miranda Warning. The *Miranda* notification is currently used by law enforcement agencies in the United States and was created by the Supreme Court in an attempt to reduce the stress of interrogations in detention by giving the suspect some control in the form of legal protections and the right to remain silent. However, the result of interrogations following *Miranda* was simply a more subtle “confidence game” to use “psychological strategies to get suspects to voluntarily waive their *Miranda* rights” (Gudjonsson 2003). This psychological manipulation is “inherently coercive” since the goal is to “overcome the suspects’ resistance and will-power” and get them to incriminate themselves, they are “manipulated and persuaded to confess when they would otherwise not have done so.” The end result is that “no police interrogation is completely free of coercion, nor will it ever be.” This is an extremely interesting point since current thought in the United States is that information gathered from “coercive” interrogations cannot be used in legal proceedings against suspects and puts in doubt criminal convictions based on evidence from interrogations.

Professor Gudjonsson concludes that the “techniques recommended in police interrogation manuals” can be “immensely effective” but that the psychological pressure placed on the detained suspect can become so great that the “decision-making of suspects” is compromised. Another issue is that despite the extraction of confessions through psychological pressure, the ratio of true to false confessions extracted is unknown. The author notes that some studies claim that an estimated 80% of all crimes are solved due to the suspect confessing during interrogations, and that other researches question the validity of the 80% assessment and give their own assessments, with averages as low as 17%. Additionally, the author notes that confessions can be prejudicial and are often given more weight by jurors than statements

made by others and that convictions based primarily on confessions are more frequently wrongful convictions than cases based primarily on other types of evidence. The lack of empirical data about the effectiveness of confessions – rather than simply basing the value of interrogations on the number of extracted confessions – indicates that there are questions about the validity of the claim that law enforcement interrogations provide more, or more valid, intelligence.

Godjonsson does an excellent job of identifying factors that inhibit suspects providing information to interrogators and then contrasting the theories behind why suspects confess with empirical data showing why suspects confess. However, there are issues with the report beyond the conviction percentages noted previously. One glaring issue is the age of the cited studies and sample groups that may lack diversity. The author notes that most studies into confessions were conducted in England over the past decade and prior to that were conducted in the United States in the 1950s and 1960s and most of those studies were based on police interrogations and did not include interrogations by military or intelligence agency interrogations. The study may also be misleading because the type of crime was not factored into the percentage of extracted confessions; the statistics may be skewed by a higher number of misdemeanor crimes where the suspect is less afraid of confessing to his crimes. Outdated studies, non-diverse sample groups, questionable results, and a focus on police interrogations argue for the completion of a new study into whether military or law enforcement interrogations are more effective.

One controversial aspect of even law enforcement interrogation of terrorism suspects is the use of the Miranda Warning prior to questioning (Tapper 2010). The effects of *Miranda* were analyzed by Paul G. Cassell and Bret S. Hayman of the University Of Utah College Of Law in a 1996 article published in the UCLA Law Review. The article, *Police Interrogation in the 1990s: An Empirical Study of the Effects of Miranda*, attempted to answer questions about the efficacy of *Miranda*, including what percentage of suspects waive their *Miranda* rights and the importance of confessions to prosecution, as part of understanding the “real-world effect” that “should be at the core of the debate about *Miranda*” rather than “claims couched in vague language.” The study was somewhat limited in length and diversity. The study samples more than 200 cases, but only focused on cases over the summer of 1994 and only reviewed cases that occurred in Salt Lake County, Utah. Despite the limitations of their own study, the authors did review “academic research conducted post-*Miranda*” including reviews of the prevalence of confessions in Pittsburgh, Los Angeles, and the District of Columbia and cited surveys in New York, New Orleans, Philadelphia, Kansas City, and Chicago. Cassell and Hayman (1996) also identified prior research that produced results contradictory to their own findings, including a study that found “*Miranda* has made no statistically significant difference in the confession rate,” and addressed the shortcomings they found in the contradictory studies.

From a purely empirical standpoint, the study found that *Miranda* “had an inhibiting effect on suspects” that resulted in a confession rate that was 33% lower than rates reported in studies prior to *Miranda* and a reduction in the clearance rate of violent crimes, possibly because it is “confessions [that] make it significantly more likely that a prosecutor will file charges and that the defendant will be convicted of those charges as filed.” Referring back to

the Godjonsson study's findings that convictions based primarily on confessions are more frequently wrongful convictions than cases based primarily on other types of evidence, it would be of value to determine whether confessions under *Miranda* were more or less likely to result in wrongful convictions than confessions outside of *Miranda* and whether there were more false confessions with or without *Miranda*. Finally, the authors are honest when they note that *Miranda* is more than just about confessions and convictions, it is about protecting citizens because the "costs of reducing the effectiveness of police interrogation are assayed against its benefits in protecting suspects from abuses."

Stone, Shoemaker and Dotti (2008) focused on military interrogations during large-scale U.S. military conflicts in their study *Interrogation in World War II, Vietnam, and Iraq* that was published in order to add "historical and practical context" to "U.S. policy and practice in interrogations." The study's introduction opens with the modern arguments made by President Bush when he vetoed the *Intelligence Authorization Act of 2008* because he felt that the intelligence agencies – specifically the Central Intelligence Agency – should not be constrained to the same interrogation methods as their military counterparts because their disparate missions called for disparate methods of operating and because the element of surprise would be lost because the United States would have informed its enemies of what they would face at the hands of U.S. interrogators. Stone, Shoemaker and Dotti review the arguments from both sides of the debate and review the legal arguments crafted to justify the use of "enhanced interrogation techniques."

The authors cited harsh interrogation tactics employed by the U.S. military going back to the Philippine Insurrection of 1899-1902 and noted the controversy surrounding the allegations of torture at that time. In 1902 the Secretary of War noted that if true, the alleged violations “of law and humanity” will “prove to be few and far between.” The authors noted that the arguments of the Secretary of War were similar to arguments made by Secretary of Defense Donald Rumsfeld when speaking of the abuse at Abu Ghraib in Iraq. The historical review moved through World War II and the interrogation of the Japanese and contrasted the treatment of prisoners by the United States – where interrogators such as Sherwood F. Moran “encouraged interrogators to treat Japanese prisoners with humanity and sincerity since they were no longer active combatants” – to the extremely harsh treatment of prisoners by Japan. The authors note the hypocrisy of the United States by practicing abusive interrogations in its wars while prosecuting members of the Axis powers after World War II for violations of the Law of War, including the use of waterboarding.

There are similarities to the current fight against Al Qaeda and terrorism including difficulties with foreign languages (such as Japanese), interrogating persons engaged in asymmetrical warfare (the Vietnamese), and our cultural inability to comprehend the religious zeal of our adversaries (such as the kamikaze pilots of World War II). Historically, treating enemy prisoners inordinately well resulted in the collection of good intelligence although there was a common belief among “impatient leaders who demand quick solutions to complex problems” that “tougher interrogation invariably equals better intelligence” (Stone, Shoemaker and Dotti 2008). The overall tone of the study is that “the application of superior knowledge in an intelligence interrogation is neither dependent on the coercive interrogation measures the

CIA is so reluctant to give up nor restricted in any way by complying with the approved techniques in the Army Field Manual” and cite earlier studies from the 1950s that found an “overall conclusion that coercive methods primarily produced false confessions.”

Although Stone, Shoemaker and Dotti look to show which interrogation methods produce the best intelligence, and the authors clearly lean towards rapport-based approaches that focus on the use of knowledge to glean information from the unique individuals being interrogated, the study also provides enough contradictory information from successful interrogators who advocated “the occasional use of physical violence” or who “stressed the importance of tense confrontation to generate crippling psychological pressure” to avoid taking a strong stand. The conflicts studied by the authors focused on battlefield interrogations or the interrogation of prisoners captured on the battlefield and interrogated soon after. In many of the cases related to terrorism, the tactical interrogations have shifted to strategic interrogation of long-term detainees and this study does not address the unique challenges of strategic interrogation. One must also consider that the authors of the study are uniformed service members who were taking part in post-graduate education programs under the auspice of the Department of Defense, service members whose careers could suffer negative consequences from taking an unpopular stand. The study does not directly address law enforcement interview methods and does not speak to long-term strategic interrogations, however, understanding what short-term interrogation methods produce the best intelligence is useful in determining how to best interrogate terrorism suspects.

The Office of the Inspector General (OIG) of the U.S. Department of Justice (2009) published a report on the FBI's involvement in, and observations of, interrogation of terrorism suspects at Guantanamo Bay, Cuba, Afghanistan, and Iraq in response to allegations of mistreatment, torture, and abuse during interrogations. The report is not a research study on the efficacy of interrogation methods by law enforcement, but it does provide insight into the methods of interrogation encountered by the Federal Bureau of Investigation (FBI) during military operations. The report provides a view of military interrogations conducted by the Department of Defense (DOD) through the lens of a national-level law enforcement agency. It also clearly states the FBI policies on conducting interrogations (always referred to by the FBI as "interviews") and summarized the DOD interrogation policies following 9/11.

The report was produced by an external agency rather than being an internal review conducted by the FBI. The report also contained a large sample size of "over 1,000 FBI employees who had deployed to one or more of the military zones" and included "more than 230 witness" interviews and "review of over 500,000 pages of documents" (Office of the Inspector General 2009). The data sample also included interrogations conducted in diverse locations and context from multiple locations from two different conflicts that include both tactical interrogations conducted in Iraq and Afghanistan and more strategic interrogations like those conducted at Guantanamo. The report provides details about the abusive military interrogations and the FBI analysis of the military interrogations and the observations of agents, but does not provide detail as to the effectiveness of the methods. Without access to the classified interrogation record it is impossible to fully assess the effectiveness of aggressive interrogations observed by the FBI.

The Inspector General found that FBI agents “were confronted with interrogators from other agencies who used more aggressive interrogation techniques than the techniques that the FBI had successfully employed for many years” and that the differences in techniques meant that the FBI “would not participate in joint interrogations of detainees with other agencies in which techniques not allowed by the FBI were used.” The report does not make clear if the FBI would refuse to use or act on information collected by the more “aggressive” interrogation techniques, but this forced separation had a negative impact on coordination and cooperation against an enemy that calls for increased cooperation between intelligence and law enforcement agencies. The OIG also noted that the FBI shifted “its top priority to counterterrorism and preventing terrorist attacks in the United States” only after the 9/11 attacks, an observation that questions the experience of the FBI in counter-terrorism intelligence collection despite the expertise and “familiarity with al-Qaeda” claimed by the FBI.

The Office of the Inspector General (OIG) of the Central Intelligence Agency (2004) published a report on counterterrorism detention and interrogation activities of the CIA between September 2001 and October 2003. Unlike the FBI report, the CIA report is an internal Inspector General investigation rather than one completed by a more objective organization. Also, the CIA report was once classified and was heavily redacted in order to release the report to the public while the FBI report is completely unclassified. Because of the redactions, large pieces of information are missing.

The CIA report does include a section on the effectiveness of CIA interrogation activities and notes that the interrogation of detained terrorism suspects “has provided intelligence that

has enabled the identification and apprehension of other terrorists, warned of terrorist plots planned for the United States and around the world, and supported articles frequently used in the finished intelligence publications for senior policymakers and war fighters” (Office of the Inspector General 2004). All of the results cited by the report are at the core of the mission of the CIA: to collect, analyze, and disseminate intelligence to better inform policy maker and increase national security. What the CIA does not account for is an element of national security outside of its core mission: to secure convictions of terrorism suspects in a court of law. The CIA also notes that “measuring the effectiveness of EITs [enhanced interrogation techniques], however, is a more subjective process and not without some concern.”

The report cites a significant increase in counterterrorism intelligence reports that include intelligence from detainees, specifically the “high value detainees” that were presumably part of the CIA’s black prison network, and also notes that the information is carefully vetted and compared to other known information to determine detainee veracity. This section is important to note because many critics of enhanced interrogation who cite the danger of false confessions, appear to believe that the intelligence community is populated by dupes who simply accept whatever story a detainee concocts without attempting to verify the intelligence and determine the detainee’s veracity. The CIA report also provides actual cases where intelligence from detainees has “assisted in the identification of terrorists” and the identification of attack plans against U.S. interests.

Finally, the report also reviews the most controversial interrogation method – waterboarding – but cites limited data for assessing the efficacy of the method because

waterboarding was not used frequently and was only used on a very limited number of detainees. The CIA report cites other complications with determining overall effectiveness of interrogations because of inability to “determine with any certainty the totality of the intelligence the detainee actually possesses”, because “each detainee has different fears and tolerances” for interrogation techniques, and because each interrogator applies techniques in different ways and therefore may have different results.

The Intelligence Science Board (2006) initiated a study on educating information in order to review what is known about interrogations and to chart a future course for interrogation methodology. The report produced by the Board is the most recent information on interrogations published by the Department of Defense and was conducted under the guidance of the Intelligence Science Board, an advisory board appointed by the Director of National Intelligence. The Board includes members from the intelligence and law enforcement community and also includes experts on educating information (rather than intelligence) from academia and from the commercial sector. This diverse group “is composed of approximately 25 members whose range of expertise encompasses the physical and biological sciences, information technology and communications, information policy, and the law, among others” (Intelligence Science Board 2006).

Rather than being a comprehensive review on interrogation practices, the report is a collection of scientific papers produced by its members. The topics of the scientific papers cover an extremely broad range including the “costs and benefits of interrogation in the struggle against terrorism”, the “mechanical detection of deception”, “law enforcement experiences”

with “custodial interrogations”, and “negotiation theory.” As such the report does not “chart a future course” as the mission statement of the Board suggests, rather this is a “Phase I” report that simply provides information related to educating information without providing assessments of methods or guidance for future interrogation procedures. Indeed the forward notes that the report is a “primer on the ‘science and art’ of both interrogation and intelligence gathering” that is of benefit to those who are “unschooled in the art and science of intelligence gathering.” Oddly, despite the title noting that the purpose of the study is to “chart a future course” for educating information – that is intelligence collection, specifically human intelligence – the foreword talks about the primary need to educate “human rights advocates and civil rights legislators”, individuals who use the courts to strike a “sensible balance” between the needs of the state and the needs of the individual. The education is necessary because these “critics” cannot strike a sensible balance “without first acquiring a thorough grounding in the ‘science and art’ of the intelligence collector’s profession.

The study is of value to those wishing to better understand the methods of extracting intelligence and to determine which method is more effective than others. There is a common item identified in this study that has also been identified in others: thorough preparation by interrogators and fluency in language. One other item of particular note came from a brief history on the U.S. experience in educating information that highlighted a specialized intelligence program that included careful screening of collection targets, careful selection of interrogators to ensure that the pairing of interrogator/target was a good match to raise the likelihood of successful interrogations, secondary passive collection of target conversations and social interaction with roommates and associates outside of interrogation sessions, and constant

analysis of intelligence as it was captured to continuously update the target's intelligence dossier to further intelligence collection. This type of collection is aimed at strategic interrogations – in the above noted case senior German officials, military officers, and scientists – over long-term detention at specialized facilities that support both active and passive collection with dedicated interrogators and analysts. Tactical interrogation facilities rarely support this type of collection because of the dangerous environment conditions, inability to screen incoming detainees, rotation of detainees, and rotation of interrogators and analysts based on both mission needs and differing lengths of tours in a war zone. The different types of interrogation – tactical and strategic – may call for different policies and procedures for military interrogators versus intelligence agency interrogators as called for by then CIA Director Michael Hayden.

The study itself cites past deficiencies in the area of educating information and notes that “the scholarly and scientific community has not systematically studied education for 45 years” despite the “need to know whether any particular method of obtaining information actually works.” Considered to be a “good beginning towards redressing that oversight” by the Board members, the study clearly states that it focuses only on information collected from sources held in prison rather than “field interrogation” (tactical interrogation).

The Intelligence Science Board issued the “Phase II” report of the *Educating Information* study in 2009 entitled “Intelligence Interviewing: Teaching Papers and Case Studies.” Unlike the Phase I report that was a collection of scientific papers that covered a wide range of topics, the Phase II report was more focused and attempted to educate the reader about information

collection. *Intelligence Interviewing* was the result of two years of work by persons experienced in eliciting information including “skilled interviewers, interrogators, former case officers, psychologists, law enforcement professionals, academic researchers, and negotiation experts,” rather than the unconventional group that was involved in the Board’s Phase I report. The core intelligence collection experience of the report members is reflected in the more cohesive output of the Phase II report.

The Phase II report focused on information collection as a result of the earlier Phase I findings that the U.S. Government had failed to conduct “research programs on interrogation-related topics in the past forty years” and lacked “an objective scientific basis for the techniques commonly used by U.S. interrogators.” Methods and facets of collection – what the authors called “intelligence interviewing” – were identified and explored including the role of stress and the effect of power on interrogations, both important aspects of the psychological pressure of interrogations as described by Gudjonsson in *The Psychology of Interrogations and Confessions*. The context of intelligence collection was explored to include environmental factors such as detainee interaction with guards and other detainees and the careful control of the detention environment from making food and reading materials available to the detainee down to the timing of interactions with the detainee. Following the identification of the pressures faced by the detainee, both psychological and environmental, various “non-coercive intelligence interviewing” methods were reviewed as well as methods of resistance to collection. Each aspect of intelligence interviewing was explored to identify “conventional beliefs” and “behavioral science perspectives” and the authors noted areas of interest for

“further research” and study for each reviewed interviewing method (Intelligence Science Board 2009).

The Phase II report was not without weakness and failed to include a broad enough sample for their case studies. The authors highlighted only two cases: the 1998 interrogations of Mohammed Rasheed Daoud al-'Owhali and the Vietnam-era interrogations of Ngyuen Tai. The case studies were in-depth explorations of the interrogations and included teaching notes and observations, but two cases is an extremely small sample size considering the thousands of interrogations performed by military interrogators in Guantanamo, Afghanistan, and Iraq that are available for review. Rather than study more modern cases that directly involve terrorism suspects or insurgents, the report relied on decades old interrogations and then leaned on the findings of the 2008 report *Interrogation: World War II, Vietnam, and Iraq* by Stone, Shoemaker, and Dotti to justify the effectiveness of non-coercive interrogation techniques, a report that found “considerable success” was achieved in World War II and in Vietnam through non-coercive interrogation methods. Just as the Phase II report relied heavily on the Stone study, the report also relied solely on the Army Field Manual 2.22-3, *Human Intelligence Collector Operations*, to define “conventional belief.” As a result, the conventional beliefs identified by the report are simply current military intelligence doctrine and fail to include alternative viewpoints from national level civilian intelligence and law enforcement agencies.

The most subtle, but perhaps the most egregious oversight, is the failure of the Phase II report to clearly identify the authors, advisors, and experts involved in the study. Unlike the Phase I report, the authors of the Phase II report are anonymous, an oversight that precludes

the identification of author bias. As an example of potential author bias in the studies, the first person listed in the Phase I report as a member of the “Government Experts Committee on Educating Information” is Mr. David Becker of the Defense Intelligence Agency. The inclusion of Mr. Becker as an expert on educating information is questionable considering his former position as the Chief of the Interrogation Control Element at Guantanamo Bay, Cuba where he oversaw controversial interrogations and was directly involved in the assessment and review of questionable – and in some cases illegal – interrogation methods (Senate Committee on Armed Services 2008). Mr. Becker testified that he provided a list of interrogation techniques for review for use at Guantanamo that were not found in the Army Field Manual “including stress positions, isolation, deprivation of light and auditory stimuli, drugs, ... scenarios to convince the detainee that death [is] imminent,” and use of “a wet towel and dripping water” (Senate Committee on Armed Services 2008). Mr. Becker noted that the water technique, similar to a method “called the waterboard” was “very effective” (Senate Committee on Armed Services 2008). Without the author information provided in the Phase I report, the link between Mr. Becker and enhanced interrogation techniques at Guantanamo would not have been identified and the potential author bias would have remained unknown, a link that is required to more accurately judge the report’s findings.

The Phase I and Phase II reports dealt with the success of non-coercive interrogations. The polar opposite of non-coercive interrogation methods are enhanced interrogation techniques, the generic label given to ten interrogation methods referred to in a Department of Justice memorandum to the Central Intelligence Agency, methods that had never before been authorized for use in custodial interviews (Office of the Inspector General 2004). A discussion of

interrogation techniques must include the controversial enhanced interrogation techniques – the same interrogation techniques suggested for review by Mr. Becker at Guantanamo – including stress positions, prolonged isolation and sensory deprivation, threats of harm to person, and waterboarding. *Leave No Marks: Enhanced Interrogation Techniques and the Risk of Criminality* is a 2007 report produced jointly by the non-government organizations Physicians for Human Rights and Human Rights First. The report attempts to cover the moral, ethical, medical, and legal ramifications of the use of enhanced interrogation techniques and is a good start towards fully exploring and defining the limits of interrogation practices. During his Senate confirmation hearings, then Attorney General-designate Eric Holder stated that waterboarding amounts to torture (Johnson 2009), but *Leave No Marks* found that enhanced interrogation techniques, not just waterboarding, were also “torture” or “cruel or inhuman treatment” and therefore illegal under U.S. laws. The 2007 report was researched by “experts on the physical and psychological effects of torture” and legal experts on “relevant case law and legal history” in order to present both medical and legal findings related to the use of enhanced interrogation techniques.

The beginning of the report includes a quote that echoes the title of the report, “the absence of physical evidence should not be construed to suggest that torture did not occur, since such acts of violence against persons frequently leave no marks or permanent scars.” The point is clearly made, that the damage done by enhanced interrogation techniques leaves scars that cannot be seen but do result in damage, the type of damage that puts practitioners of these techniques in “substantial risk of criminal liability” and therefore “these techniques should not be authorized.” Each of the ten enhanced interrogation techniques is described

before the history of the use of the technique and resulting intelligence collection technique is given and the medical issues and legal ramifications discussed. Unfortunately, the evidence on the efficacy of each technique lacks real substance and relies primarily on anecdotal evidence rather than scientific studies and in-depth analysis. The legal evidence, and supporting medical analysis, was better supported by citing established case law and legal precedents and can be given more weight than the anecdotal evidence put forward on efficacy.

Beyond the morality of the use of enhanced interrogation techniques, the legality of their use must be taken into consideration to ensure that intelligence gathered is able to be used in prosecutions and to secure convictions. The use of methods that are “clearly established [to] cause the types of physical and mental anguish that is criminalized under the War Crimes Act” – to include “torture” and “cruel or inhuman treatment” – has proven to be counter-productive based on the rejection of such intelligence (evidence) in federal court as shown in multiple Habeas hearing rulings that went against the United States Government (Center for Constitutional Rights n.d.). Despite the limitations on proving efficacy, the *Leave No Marks* report is of interest when debating the use of different interrogation methods. The legal analysis provided for each interrogation technique is valuable for a simple reason: if the technique is illegal to use there is no point in debating its efficacy.

Professors Laurel E. Fletcher and Eric Stover of the University of California, Berkeley partnered with the Center for Constitutional Rights to produce a qualitative study specifically aimed at identifying the impact of U.S. detention and interrogation practices, including the use of enhanced interrogation techniques. The partnership resulted in the publication of

Guantanamo and Its Aftermath: U.S. Detention and Interrogation Practices and Their Impact on Former Detainees in November 2008. The study's researchers interviewed sixty-two former Guantanamo detainees and fifty other respondents including "former and current U.S. government officials, representatives of nongovernmental organizations, attorneys representing detainees, and former U.S. military and civilian personnel who had been stationed in Guantánamo or at detention facilities in Afghanistan." The collected information was then compared to over 1,200 documents including media reports and U.S. government reports in order to come to a reasonable conclusion that the experiences of the sixty-two interviewed detainees was "representative of a much larger number of former detainees."

Despite the study's title, the actual effects of interrogation practices were only briefly touched upon; much of the study was dedicated to critiquing the process of detention, the human rights aspects of Guantanamo, and even the challenges faced by released detainees as they struggle with reintegration and rehabilitation. Because of this lack of focus on interrogation methods, the study is not an extraordinary resource in the debate between using military interrogations or law enforcement interviews for terrorism suspects. One aspect of the study that was interesting was the exploration of detention procedures as an adjunct to interrogation methods rather than being reviewed as unrelated to interrogations. The authors concluded that "each component of the [detention] camp system – from the use of numbers to identify detainees to solitary confinement – was designed to increase the authority and power of camp interrogators while compounding the detainee's sense of isolation, powerlessness, and uncertainty." Indeed, "the cumulative effect of indefinite detention" and "environmental stressors" after years at Guantanamo "began to exact an increasing psychological toll on many

detainees.” The psychological pressure described by the detainees at Guantanamo is at the center of the debate about giving terrorism suspects the protection of *Miranda*, a court ruling meant to reduce the psychological pressure and power imbalance of custodial interrogations.

The Berkeley *Aftermath* report and the Physicians for Human Rights/Human Rights First *Leave No Mark* report both came to the same conclusion, that the enhanced interrogation techniques used by the CIA and at Guantanamo Bay, Cuba were illegal and “violated international and domestic prohibitions on torture or other cruel, inhuman, or degrading treatment”. The *Aftermath* study has another feature in common with the *Leave No Mark* report: both were completed by non-governmental organizations that are more concerned with protecting and advancing human rights than with advancing the art and science of intelligence collection. As a result, it must be understood that both studies may be advocating for human rights advancement rather than being truly objective, and this potential bias must be taken into consideration when judging the value of the reports. Besides the potential author bias, the study’s sample size is quite small and the study itself notes that “the findings of this study cannot be generalized to the more than 500 people who have been released from Guantanamo.” Finally, the potential bias of detainees must be considered. Former Guantanamo detainees have been through a unique ordeal and they may feel wronged by the U.S. government, they may be ideologically motivated to cast the United States in a poor light, or they may be attempting to profit financially as participants in punitive lawsuits against the government in order to “obtain monetary and non-monetary compensation appropriate to the level of abuse they have faced” (Guantanamo Justice Center: About Us 2009). Indeed, recent events have shown that just the accusation of complicity in alleged torture can financially

benefit the accusers, as in the case of former Guantanamo detainees in the United Kingdom who are set to receive millions of dollars each without having to prove their allegations (UK to pay ex-Guantanamo detainees 2010). Unfortunately, the potential bias of the study cannot be determined because the interviews – of both detainees and other respondents – were “conducted anonymously.”

The United States government has produced various investigations and studies on the interrogation methods practiced at Guantanamo. One of the major Department of Defense investigations is a 2004 “comprehensive review” of military interrogation operations commonly referred to as the Church Report after its principal investigator Vice Admiral Albert Church III, the Naval Inspector General. The actual findings of the Church Report are classified, but an unclassified Executive Summary was released by the Department of Defense. The Executive Summary examined many aspects of interrogation operations, including failures of communication and dissemination and the causes of detainee abuse, but the exploration of the purpose of military interrogations and the development of interrogation policy is of primary interest for this review.

The Church Report Executive Summary gives the impression that the development of interrogation techniques and interrogation policy used by the Department of Defense to question terrorism suspects was created in an ad-hoc manner and was not the result of scientific data on efficacy. The report found that “the DoD officials and senior military commanders responsible for the formulation of interrogation policy evidenced the intent to treat detainees humanely,” a statement that – when paired with the statements of Mr. Becker,

one of the Department of Defense officials tasked with formulating interrogation policy – implies that policy wasn't formulated until after military intervention was considered as a response to the terrorist attacks of September 11, 2001. The authors found it a "missed opportunity that no specific guidance on interrogation techniques was provided to the commanders responsible for Afghanistan and Iraq, although guidance was provided for use at Guantanamo" an obvious indicator that there wasn't a cohesive military interrogation policy across detention facilities. Admiral Church continued in his critique of interrogation policy and noted that there was "no evidence that specific detention or interrogation lessons learned from previous conflicts were incorporated into planning for operations in support of the Global War on Terror." The interrogation policy in place at the start of the invasion of Afghanistan was based on the interrogation methods described in the Army Field Manual 34-52. When those techniques "had proven ineffective against detainees trained to resist interrogation" the policy was revised and for a short time Guantanamo became a testing ground for controversial counter-resistance techniques. The controversy led to the establishment of a "working group" to "assess interrogation techniques in the Global War on Terror" in mid-January 2003. The establishment of a group to assess interrogation techniques nearly a year after the first detainees arrived at Guantanamo, and after "locally developed techniques" had been used in Afghanistan, is additional proof that military interrogation policy was ad-hoc rather than developed based on proven efficacy.

In conclusion, a review of the available literature shows that there are acknowledged gaps in the area of intelligence collection, specifically, a lack of empirical data that shows what approaches work on detained terrorists in both short and long-term detention situations.

Given the deficiencies in research and study of interrogations by the Intelligence Science Board the question must be asked: how did the various intelligence and law enforcement agencies come up with their interrogation policies without research into the most effective methods of interrogation? This information must be captured and studied in order to identify the best policies and procedures to gain intelligence on our adversaries and to secure the nation. One reason this information has not been studied in the past is a lack of data sources on interrogation performance over the long-term. Prior to Guantanamo, the long-term detention of large numbers of terrorist suspects has been a rare occurrence. Past experiences have been with a small number of terrorist suspects being detained as part of criminal investigations following successful terrorist attacks. These suspects were then indicted and moved quickly into the criminal justice system. As the FBI report noted, after 9/11 the focus shifted from prosecution of suspects following successful attacks to be the prevention of future terrorist attacks. Data on long-term interrogations is now available for review from detention facilities like Guantanamo where law enforcement, military intelligence, and intelligence agencies have all conducted interrogations. The number of detainee interrogations conducted since 9/11 is unknown, but there appears to be a massive amount of data available. There were 24,000 interrogations conducted at Guantanamo during the first three years of operations there (Department of Defense 2005), a facility that has now been open for nearly nine years and has held less than 800 persons compared to the thousands of persons detained in Iraq and Afghanistan. A full study of the efficacy of interrogations of detainees in military custody does not appear to have been completed, despite those interrogations being at the center of the debates over coercive versus non-coercive interrogation methods and law enforcement

methods versus military intelligence methods. The facility at Guantanamo is an interesting case since it contains a unique cross section of ethnicities, terrorist actors, and terrorist organizations not found in the more homogenous detainee populations in Afghanistan and Iraq. It has also been the site of a diverse mix of interrogation methods used by interrogators from wide-ranging service backgrounds including members of the Army and Navy, law enforcement agencies like the FBI and military units like the Navy Criminal Investigative Service (NCIS), Air Force Office of Special Investigations (AFOSI), and Army Criminal Investigative Division (CID), and intelligence agencies such as the CIA and DIA, and even foreign intelligence services. A reasonable study would require full access to the classified interrogation records of detainees in order to statistically map the number of interrogations, the approaches used for each interrogation, and the results of the interrogations. The value, quality, and usefulness of the collected intelligence must be objectively assessed using multiple members of the intelligence community to ensure that one view does not dominate the analysis. The length of time that the detainees have been incarcerated at Guantanamo should have allowed for additional intelligence collection tasking, intelligence that could be used to corroborate or contradict the original detainee reporting, thus allowing the truthfulness of the detainee to be determined and the efficacy of the interrogation methods to be evaluated. Without a study of the efficacy of the various interrogation methods employed by the different collection agencies, policymakers do not have the information needed to make informed decisions about the future of interrogations of terrorism suspects. Without clear guidance, the U.S. response to terrorist attacks will be as confused, conflicted, and fractured as the response to the Christmas Day attack by Abdulmutallab.

References

Ackerman, Spencer. "Intel Chief Says New Interrogation Unit Ought To Have Questioned Abdulmutallab." *The Washington Independent*. January 20, 2010. <http://washingtonindependent.com/74299/intel-chief-says-new-interrogation-unit-ought-to-have-questioned-abdulmutallab> (accessed November 21, 2010).

Associated Press. "Intel Chief: Detroit Bomb Case Mishandled." *MSNBC*. January 20, 2010. http://www.msnbc.msn.com/id/34957530/ns/us_news-airliner_security (accessed November 21, 2010).

Cassell, Paul G., and Bret S. Hayman. "Police Interrogation In The 1990s: An Empirical Study Of The Effects Of Miranda." *UCLA Law Review*, 1996: 839-931.

Center for Constituional Rights. *Guantanamo Bay Habeas Decision Scorecard*. n.d. <http://ccrjustice.org/GTMOscorecard> (accessed December 5, 2010).

Department of Defense. *Executive Summary: Church Report on DOD Interrogation Operations*. Executive Summary, Washington, DC: Department of Defense, 2005.

Department of Defense. *Investigation of Aggressive Interrogation Techniques at Guantanamo Bay*. Investigation Findings, Washington, DC: Department of Defense, 2005.

Guantanamo Justice Center: About Us. July 30, 2009. <http://www.guantanamojusticecentre.com/About%20Us/about%20us.html> (accessed December 5, 2010).

Gudjonsson, Gisli H. *The Psychology of Interrogations and Confessions*. Hoboken: Wiley, 2003.

Hoffman, Bruce. "American Jihad." *The National Interest*. April 20, 2010. <http://nationalinterest.org/article/american-jihad-3441> (accessed June 28, 2010).

Intelligence Science Board. *Study on Educing Information: Foundations for the Future*. Washington, DC: National Defense Intelligence College, 2006.

Intelligence Science Board. *Study on Educing Information: Intelligence Interviewing, Teaching Papers and Case Studies*. Washington, DC: National Defense Intelligence College, 2009.

Isikoff, Michael. "Intel Chief's Comments Infuriate Obama Officials." *Newsweek*. January 20, 2010. <http://www.newsweek.com/blogs/declassified/2010/01/20/intel-chief-s-comments-infuriate-obama-officials.html> (accessed 20 2010, November).

Johnson, Carrie. "Waterboarding Is Torture, Holder Tells Senators." *Washington Post*. January 16, 2009. <http://www.washingtonpost.com/wp-dyn/content/article/2009/01/15/AR2009011500267.html> (accessed December 4, 2010).

MSNBC. "Meet The Press: Brennan, Paulson, Greenspan, Roundtable." Washington, DC: MSNBC, February 7, 2010.

Office of the Inspector General. *A Review of the FBI's Involvement in and Observations of Detainee Interrogations in Guantanamo Bay, Afghanistan, and Iraq*. Washington, DC: U.S. Department of Justice, 2009.

Office of the Inspector General. *Special Review: Counterterrorism Detention and Interrogation Activities*. Washington, DC: Central Intelligence Agency, 2004.

Physicians for Human Rights/Human Rights First. "Leave No Marks: Enhanced Interrogation Techniques And The Risk Of Criminality." 2007.

Reddy, Sudeep. "Counterterror Chief Takes Critics to Task." *Wall Street Journal*. February 7, 2010. <http://online.wsj.com/article/SB10001424052748703427704575051540844183082.html> (accessed November 21, 2010).

Senate Committee on Armed Services. *Inquiry Into The Treatment Of Detainees In U.S. Custody*. Inquiry, Washington, DC: United States Congress, 2008.

Senate Select Committee on Intelligence. *Unclassified Executive Summary of the Committee Report on the Attempted Terrorist Attack on Northwest Airlines Flight 253*. Executive Summary, Washington, DC: United States Senate, 2010.

Stone, James A., David P. Shoemaker, and Nicholas R. Dotti. *Interrogation World War II, Vietnam and Iraq*. Washington DC: National Defense Intelligence College Press, 2008.

Stover, Eric, and Laurel Fletcher. *Guantánamo and Its Aftermath: U.S. Detention and Interrogation Practices and Their Impact on Former Detainees*. Report, Berkeley: UC Berkeley: Human Rights Center, 2008.

Tapper, Jake. "White House: Republicans Were Briefed Abdulmutallab Was In FBI Custody." *ABC News*. February 8, 2010. <http://blogs.abcnews.com/politicalpunch/2010/02/white-house-republicans-were-briefed-abdulmutallab-was-in-fbi-custody----did-they-think-that-didnt-mean-he-was-mirandized.html> (accessed November 21, 2010).

"UK to pay ex-Guantanamo detainees." *Al Jazeera*. November 16, 2010.
<http://english.aljazeera.net/news/europe/2010/11/2010111613813702673.html> (accessed
December 5, 2010).