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## THE COMPATIBILITY OF INTELLIGENCE GATHERING, INTERROGATION, AND PREVENTING TORTURE

*Steven M. Kleinman\**

I was honored by the invitation to serve on this panel and to share my observations concerning this vital geo-strategic topic. I must admit, however, that it is also something of a surreal experience for me. In the course of twenty-five years of operational intelligence experience, where my task was to gather actionable intelligence information from individuals who ran the gambit from helpful to hostile, no one outside the profession seemed at all interested in either what I did or, of more importance to our purposes here, how I did it. In recent years, however, I have found myself debating the efficacy of various interrogation strategies with people who have never even observed a real-world interrogation, much less conducted an interrogation. I have also discovered that the positions on interrogation and detainee policy taken by far too many individuals, both inside and outside government, have been informed primarily by fictionalized portrayals found in the media rather than the ground truth of reality.

While the perspectives I offer to you today have been indelibly shaped from my personal experiences, I have been encouraged by the support and agreement I have received by some of the very best interrogators in this nation's law enforcement, military, and intelligence communities. While our professional journeys have followed disparate paths, our experiences have consistently led us to the same operational assessment: cruel, inhuman, and degrading treatment of a prisoner, detainee, or suspect has consistently proven, over time, to be an ineffective means of gathering accurate, comprehensive, and timely information. Conversely, an operational framework employing strategies centered on what might be described as *rapport-building* and *enlightened cultural finesse* has con-

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sistently proven, over time, to be a very effective and useful approach to the interrogation challenge.

I would like to begin by posing three fundamental questions that would seem to be most germane to our discussions here today:

1. Are human rights a vital national interest?
2. Is interrogation a critical means of collecting irreplaceable information in support of a nation's interests?
3. Do human rights and interrogation represent incompatible interests?

I won't spend time in addressing the first question as those of us gathered here for this important symposium would categorically agree: beyond the moral and legal arguments, respect for human rights promotes and enhances the role of a nation in the international domain and materially influences how a nation is viewed by both its allies and potential adversaries.

The answer to the second question is a bit more complex. Given the lingering public controversy over how this nation conducts the interrogation of detainees,<sup>1</sup> one might understandably wonder if the possible outcome (i.e., the intelligence collected) outweighs the dimmed perception of the American character that has resulted from the graphic reports of prisoner abuses.<sup>2</sup> The short answer to that specific question is that it *does not*.

However, given the nature of the asymmetric counterterrorist and counterinsurgent efforts, where linked networks of non-State actors are difficult to identify, much less understand through technical means of intelligence collection (e.g., signals and imagery intelligence), interrogation has become a primary means of gaining insight into the vital centers of gravity such as planning, financing, safe havens, and training.<sup>3</sup> In sum, the most direct and productive path to collecting much-needed intelligence in this context is to *ask the only individuals who might know*: a captured terrorist or insurgent.

If, however, interrogators believe they must employ coercive means to obtain this information, wouldn't those methods (as

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<sup>1</sup> See, e.g., Tom Lasserer, *Abuse Plagued Afghan Camps Too; Guantanamo: Beyond the law—Close Up*, SEATTLE TIMES, Jun. 16, 2008, at A3; Stephanie Nebehay, *Departing Arbour attacks use of torture*, GLOBE & MAIL, Mar. 8, 2008, at A21.

<sup>2</sup> See, e.g., Karen DeYoung & Josh White, *Guantanamo Prison Likely to Stay Open Through Bush Term*, WASH. POST, Mar. 24, 2007, at A02.

<sup>3</sup> See Carlissa R. Carson, *The Military Commissions Act of 2006: How Its Inability to Curb Abusive Interrogations Threatens the Future Treatment of Detainees and the United States' Reputation*, 57 EMORY L.J. 695, 696 (2008) ("Interrogation is necessary because detainees may provide insight into future terrorist attacks, information relating to financiers, and the location of terrorist leaders who direct terrorist activities.").

noted earlier) create the circumstances where damage to the nation's image offsets the value of the information? Wouldn't such activities drive a wedge between the United States and its allies while concurrently inflaming our adversaries? The answer lies in a better understanding of what interrogation truly is and, perhaps more importantly, what it is not.

The popular view of interrogation is unfortunately shaped more by fiction than fact. Most of us have been exposed to some form of interrogation through the entertainment media. As a result, too many people—including some senior government officials—have formed strong opinions about interrogation *solely* based on these fictionalized portrayals written by Hollywood screenwriters (who, it should be emphasized, are unlikely to have any direct experience with real-world interrogations). In an attempt to correct the public misperception of this arcane craft, I offer the following brief overview of its key features.

Interrogation is:

- systematic questioning of an individual (i.e., the *source*) who is believed to possess information of intelligence value.
- In instances where the source resists answering questions, the interrogator may attempt to gain a useful degree of cooperation through subtle efforts of persuasion. The strategies most commonly employed incorporate the same six principles of persuasion we are exposed to almost daily in the form of advertising (i.e., social proof, reciprocity, authority, consistency, liking, and scarcity<sup>4</sup>).
- Interrogation, at its core, involves both a carefully managed exchange of information and a vigilant management of the relationship. In this regard, interrogation shares a considerable degree of structure and process with negotiation and conflict resolution.<sup>5</sup>

Upon reviewing the above, one might ask where harsher methods—those techniques that introduce varying degrees of psychological, emotional, and physical stress or pressure—might fit into this construct. The brief yet critical answer is that *they do not*. The relevant sections of the Geneva Convention are quite clear to this interrogator. These accords contain the following passage, widely known as Common Article 3, which sets forth precise guidance with respect to the type of treatment that is specifically prohibited:

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<sup>4</sup> See Robert Cialdini, et al., *The Science of Influence: Using Six Principles of Persuasion to Negotiate and Mediate more Effectively*, 9 NO. 1 DISP. RESOL. MAG. 20, 21 (2002).

<sup>5</sup> See generally Deborah Davis, et. al., *Psychological Weapons of Influence: Applications in the Interrogation Room*, NEV. LAW., Sept. 2006, at 14.

“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.”<sup>6</sup>

If we lived in a purely amoral world and conducted our affairs with little regard for the law, I would submit that adhering to this standard of conduct would still be in our best interests. I base this assertion on over twenty years of experience conducting and studying interrogations as well as the feedback I consistently receive from the most accomplished interrogators from both the law enforcement and intelligence communities. To emphasize the point once again, this combined experience strongly suggests that *over time* (1) strategies that focus on what is commonly referred to as a rapport-based approach have consistently proven to be highly effective in gathering accurate, comprehensive, and timely intelligence,<sup>7</sup> and (2) strategies that employ coercive themes have consistently proven ineffective in gathering accurate, comprehensive, and timely intelligence.

In making the argument against the use of coercive measures in interrogation, there are two compelling psychophysical and strategic reasons that speak directly to the heart of the difference between a rapport-based approach and one that relies on force. First, it must be clearly understood that, under the right conditions (or, more appropriately, the *wrong* conditions), any given individual can apply force in a way that would cause any other individual to respond in a specific manner. For example, under prolonged duress, dire threats, and/or the application of severe pain, an individ-

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<sup>6</sup> Geneva Convention Relative to the Treatment of Prisoners of War, art. 3, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135.

<sup>7</sup> See TOM WILLIAMSON, INVESTIGATIVE INTERVIEWING: RIGHTS, RESEARCH, REGULATION, 24 (2006) (arguing that the rapport-based approach is superior to an aggressive approach when dealing with Al-Qaeda operatives).

ual can be compelled to answer any question—including questions for which they have no relevant answer.<sup>8</sup> When coercion is employed along with its seemingly inseparable partner, the *leading question*, the individual under duress will soon make an inescapable calculus: answer the question in the manner clearly desired by the overseer (I do not deign to label this individual an interrogator) and the pain will cease. In addition to creating the potential for *forced fabrication*, the overseer of coercion is left without any reasonable means of assessing the prisoner's veracity from the observation of body language or careful attunement to speech and tonality that would be more readily available under more benign conditions.<sup>9</sup>

The individual in focus under such a scenario (i.e., the detainee, prisoner, or suspect) can be forced to say and do practically anything; they are, by definition, forced into a state of *compliance*. Obtaining a prisoner's compliance was, in fact, the primary focus of Chinese and North Vietnamese interrogators during the Korean and Vietnam Wars, respectfully.<sup>10</sup> Under severe duress, a number of Allied prisoners, in accordance with the directions of their interrogators, made oral and written statements about American chemical and biological warfare programs and attacks that were complete fabrications.<sup>11</sup>

Coercion is a horrifically effective means of gaining compliance. Compliance, however, is useful only in generating propaganda (i.e., that which a country or culture considers to be *truth*, but is not necessarily *true*). In contrast, the interrogator seeking to benefit from an individual's memory of what is true must establish the type of relationship that would lead to *cooperation*.

This, then, leads to the second argument against coercion, and one that demonstrates why a rapport-based model of interrogation might be considered *an absolute requirement* in the pursuit of useful information. Just as signals intelligence seeks to gather in-

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<sup>8</sup> See generally Jeremy Newton, *False Confession: Considerations for Modern Interrogation Techniques at Home and War*, 9 J. L. & SOC. CHALLENGES 63 (2008).

<sup>9</sup> See *Hearing Suspended Because of Objection on Senate Floor—Coercive Investigative Coercive Interrogation Techniques: Do They Work, Are They Reliable, and What Did the FBI Know About Them: Hearing Before S. Comm. on Judiciary*, 110th Cong. (2008) (statement of John E. Cloonan, Retired FBI Special Agent, indicating that the “vast majority of detainees questioned under these stressful conditions were of little or no value as sources of useful intelligence.”)

<sup>10</sup> See, e.g., *China Inspired Interrogations At Guantánamo*, N.Y. TIMES, Jul. 2, 2008, at A1 (indicating that the interrogation manual utilized by the Chinese was entitled “Communist Coercive Methods for Eliciting Individual Compliance”).

<sup>11</sup> See *id.*

formation by capturing electronic emanations<sup>12</sup> and imagery intelligence by collecting photographic and digital representations of selected sites,<sup>13</sup> interrogation seeks the accurate, comprehensive, and unbiased information about people, places, and plans stored in the memory of a detained individual. A major challenge in this regard—one an interrogator overlooks to his or her detriment—is the fact that, according to behavioral scientists, the human memory is fragile and can often prove to be unreliable.<sup>14</sup> This is true even under *benign, non-threatening circumstances*.<sup>15</sup>

Research psychologists have consistently demonstrated that personal and environmental stressors may significantly diminish the ability of any individual to accurately recall detailed information.<sup>16</sup> Putting this into an operational context, a detainee who has been subjected to sleep deprivation, overt threats, dietary manipulation, and extended interrogations is *unlikely* to be able to reliably and fully report information he may possess even if they desired to do so.

Similarly, a full exploration of that memory cannot be accomplished through the mechanism of forced compliance; access to an individual's memory cannot be forced. Rather, in a very real sense, the interrogator must be invited in, and this requires the bridge of *cooperation*. Within the context of an interrogation, a constructive measure of cooperation—or operational accord—is the key to crossing the bridge from detachment to engagement. While the reasons why an individual may decide to cooperate with an interrogator are vast, from trust and affiliation to pragmatism and expediency, the ability to take full advantage of a source's *knowledgeability* rests almost entirely on their willingness to open this door.

Thus, a useful framework for effective interrogation *must* incorporate two critical components. First, the interrogator must employ a strategy to win the individual's cooperation (not force

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<sup>12</sup> Michael V. Hayden, *The Challenge of Sharing Foreign Signals Intelligence*, 19 NOTRE DAME J.L. ETHICS & PUB. POL'Y 247, 247 n.3 (2005) ("Signals intelligence is comprised of communications intelligence and electronics intelligence. Communications intelligence consists of foreign communications passed by radio, wire, or other electromagnetic means.").

<sup>13</sup> See Glen Sulmasy, et al, *Counterintuitive: Intelligence Operations and International Law*, 28 MICH. J. INT'L L. 625, 630 (2007) (imagery intelligence includes both photo intelligence and infrared imagery).

<sup>14</sup> See E. Kevin Kelloway, et al., *Eyewitness Testimony in Occupational Accident Investigations: Towards a Research Agenda*, 28 LAW. & HUM. BEHAV. 115, 119 (discussing human memory in the context of eyewitness testimony as "fragile, malleable, and susceptible to forgetting" even under "optimal conditions").

<sup>15</sup> *Id.*

<sup>16</sup> See generally DANIEL REISBERG & PAULA HERTEL, *MEMORY AND EMOTION* 94 (2004).

compliance). Second, the nature of that strategy must *exclude* means that would substantially undermine the individual's physical, emotional, or psychological stability. In other words, the effort to earn the individual's cooperation must not simultaneously diminish their ability to recall fully and accurately the information sought by the interrogator.

From this perspective, a coercive approach has the quality of a *Catch-22* scenario. The stress imposed upon a prisoner to force them to respond may also be expected to compromise their constructive recall ability. Apart from the significant legal and moral elements that would argue against the use of coercive interrogation methods, it is also fundamentally an operationally ineffective approach. In essence, if the intended outcome is the production of propaganda (or at least a recitation of the interrogator's preconceived *truths*), then the overarching theme must be one of coercion to achieve compliance. In contrast, if the intended outcome is the gathering of what is *true* (i.e., accurate information and useful insights that may or may not be what the interrogator expected or desired), then the overarching theme must be one informed by enlightened cultural finesse to elicit an individual's cooperation.

With respect to the third question posed at the beginning—are interrogation and human rights incompatible interests—we are at what the former CEO of Intel Corporation, Andy Grove, would describe as a strategic inflection point.<sup>17</sup> We either continue down a path that has been, at best, problematic or we carefully reexamine our policies and doctrine governing the interrogation and detention of detainees. Sadly, while I can make a strong argument against the employment of forceful interrogation methods, we do not know by any objective measure which paradigm—rapport-based approaches or coercion—is fundamentally more effective. That is to say, neither approach is based on science.

At the same time, we can say with a far greater degree of certainty that the revelations of prisoner abuse, secret prisons, and extraordinary renditions have not only enraged our current and potential adversaries (e.g., images of the abuses at Abu Ghraib continue to be used as a primary recruiting theme targeting young, Muslim males in Europe<sup>18</sup>), but also have driven an ever-deepen-

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<sup>17</sup> See generally ANDY GROVE, *ONLY THE PARANOID SURVIVE* (1996). See also LOUISE KELLY & CHRISTOPHER A. BOOTH, *DICTIONARY OF STRATEGY: STRATEGIC MANAGEMENT A-Z* 153 (2004).

<sup>18</sup> William Dalrymple, *Democracy, not terrorism, is the engine of political Islam*, *CANBERRA TIMES* (Australia), Sept. 24, 2007, at A9.



ing wedge between the United States and even its closest allies.<sup>19</sup> Until the operational question can be reliably answered, the ongoing geo-strategic costs of an ill-conceived approach to interrogation would alone argue for a foundational change.

What then, is the way ahead? Perhaps one of the most useful frameworks for addressing this important policy issue would be one borrowed from the philosopher, Aristotle. Since interrogation is an integral part of the larger strategic communications campaign, Aristotle's three-point approach to the art of rhetoric is a relevant starting point.<sup>20</sup>

The first element is *logos*, or an appeal based on reason and logic. In the art and science of interrogation, the emphasis has long been on the former while the latter has been largely neglected. From what I've learned through extensive archival research, the last significant scientific study of interrogation was completed in the 1950s.<sup>21</sup> Imagine the advances since then just in the broad field of behavioral science and how those new understandings might inform a contemporary model of interrogation. The American way of interrogation must reflect a logical approach that judiciously integrates law and science to generate a new standard. Why argue for exceptions to long-standing international law on the treatment of detainees if an objective assessment of the expected form of treatment demonstrates that it does not consistently produce the desired operational outcome (and would concomitantly prove politically counterproductive)?

The second element is *pathos*, or an intuitive sense for the hopes and fears of others. This suggests that those who conduct interrogations on our behalf need to possess a strong level of empathy and even sympathy (what Major Sherwood Moran, the famed World War II Marine Corps interrogator in the Pacific referred to as "sympathetic common sense"<sup>22</sup>). It is exceptionally difficult to legislate morality. No single individual owns the moral compass by which all others must navigate through life and I certainly do not pretend to serve in that capacity on this or any other issue. None-

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<sup>19</sup> Peter Grier, *White House backs down on wartime powers*, CHRISTIAN SCI. MONITOR, Jan. 19, 2007, at 1.

<sup>20</sup> See Reed Johnson, *The Art of Interrogation; Experts Say Subtle Psychological Ploys May Be Better Than Thumbscrews When it Comes to Getting Terror Suspects to Confess*, L.A. TIMES, Mar. 15, 2003, at 1.

<sup>21</sup> See Robert A. Fein, *Prologue to EDUCING INFORMATION: INTERROGATION: SCIENCE AND ART—FOUNDATIONS FOR THE FUTURE* xi, xi-xii (Robert A. Fein ed., 2006), available at <http://www.fas.org/irp/dni/educing.pdf>.

<sup>22</sup> Sherwood Moran, *Suggestions for Japanese Interpreters Based on Work in the Field* (July 17, 1943) 3, available at <http://www.w-z.com/articles/article023.pdf>.

theless, beyond the realm of laws and practical concerns, the international community will judge whether our actions reflect a humane approach to the difficult challenges before us. Mr. George Frenkel, another World War II-era interrogator, captured this salient point here in an observation offered during a 2007 veteran's reunion: "During the many interrogations, I never laid hands on anyone. We extracted information in a battle of the wits. I'm proud to say I never compromised my humanity."<sup>23</sup>

While addressing the topic of humane treatment, it is important to note that one of the most critical yet often overlooked points in the larger debate over detainee policy is the concept of reciprocity. There is, to be sure, no guarantee that an American citizen held in detention by a foreign power or non-State actor will be humanely treated just because that is standard to which we hold ourselves. At the same time, flagrant violations of international norms have forced us to yield the moral high ground and would leave the nation poorly positioned to seek the support of the world community if Americans were held in indefinite detention and subjected to harsh treatment. While this did not stop the North Vietnamese from torturing U.S. military personnel during the Vietnam War,<sup>24</sup> our steadfast resistance to responding in kind led us to achieve a sense of moral victory within an otherwise difficult and controversial conflict. The final element is *ethos*, or a standard of ethics. As with the professions of law and medicine, interrogation can trace its history back to antiquity; unlike these professions, however, it lacks both an objective knowledge base (the *logos* noted above) and an overarching and inviolate standard of conduct that governs the activities of its practitioners. Had such a standard of ethical conduct been in place, one might expect that the series of abuses that have occurred since the attacks on September 11th could have been prevented. I strongly endorse the concept of creating a small corps of carefully selected, well-educated, and extensively trained individuals to conduct strategic and operational level interrogation on behalf of the U.S. Intelligence Community writ large. Adhering to a truly professional framework, the development of a professional cadre would include mentored professional development, continuing education, a rigorous standard of ethics,

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<sup>23</sup> Petula Dvorak, *Fort Hunt's Quiet Men Break Silence on WWII; Interrogators Fought 'Battle of Wits,'* WASH. POST, Oct. 6, 2007, at A1.

<sup>24</sup> Major William A. Hudson, *The Twenty-Fifth Anniversary of My Lai: A Time to Inculcate the Lessons*, 139 MIL. L. REV. 153, 155 (1993).

and active oversight. Both the potential gains and losses are of such magnitude that anything else is indefensible.

The legendary master of strategy, *Sun Tzu*, emphasized the need for the wise sovereign or esteemed general to know both himself and the enemy. If this proves to be the case, he wrote, victory can be anticipated in every battle.<sup>25</sup> If the sovereign or general knows himself but not the enemy, or knows the enemy but not himself, victory can only be expected in 50 of 100 battles.<sup>26</sup> And if the sovereign or general knows neither himself nor his enemy, victory will at best be elusive.<sup>27</sup>

How well have we followed this sage advice? Many would agree that we know so little about an adversary that speaks a language few in the West understand, emerges from a culture far removed from our own, and has a fundamentally different view of the modern, globalized world. If Sun Tzu's calculus is correct, we can expect to be victorious only half the time.

The more vexing question, however, is how well do we know ourselves? What actions are we willing to take in what is now being referred to as "the long war?" How far are we willing to drift from the standards of conduct we have long claimed to embrace? Until we are prepared to resolutely answer these questions, can we expect victory to be anything but elusive?

In my view, the answer to our current challenge rests in the wisdom of yet another ancient philosophical text, the *Tao Te Ching*. In chapter 33, the author, *Lao Tse*, offers the following insights:

*Knowing others is intelligence;  
knowing ourselves is true wisdom.  
Mastering others is strength;  
mastering ourselves is true power.*<sup>28</sup>

I close, then, by encouraging us to end our obsession with intelligence and strength and instead seek to embrace true wisdom and true power. Anything less is beneath us.

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<sup>25</sup> SUN TZU, *THE ART OF WAR* 13 ¶ 18 (Lionel Giles trans., El Paso Norte Press 2005) (1910).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> LAO TZU, *THE TAO TE CHING OF LAO TZU* 33 (Brian Browne Walker, trans., Macmillan 1996).