

A Brief History of Scandals: Special Oversight Challenges in National Security Interrogations

by Erik Jens

Remember in the United States there are no secrets, only delayed disclosures. One day, whether one year away or ten years away, people will be looking at what we did, so make sure you act with the utmost integrity.

— Mark Fallon, FBI counterterrorism official, quoted in Ali H. Soufan's "The Black Banners: The Inside Story of 9/11 and the War Against al-Qaeda"

A history of (at least) American national security operations and initiatives shows, fairly convincingly, the need for external oversight. Time and again, executive branch agencies have, with the best of motives as they perceived them, violated Americans' civil rights, compromised foreign relations, or otherwise behaved in ways irrelevant or counterproductive to national defense. The Church Committee report, the Pentagon Papers, Iran-Contra, and numerous other exposes during and since the Cold War have illustrated the range of abuses committed by executive branch agencies in the name of national defense.

More recently, a partly-declassified, Senate report on the CIA's post-9/11 interrogation and detention program has shown once again that in the intelligence arena, "there are no secrets, only delayed disclosures." History has amply demonstrated that interrogation succeeds best, and with the least amount of excess and abuse, when conducted by trained and certified personnel, pursuant to a formal program of instruction, with provisions for regular oversight by both the local chain of command and outside observers.

Among the myriad potential legal and ethical issues related to intelligence work, interrogation holds a special place. Interrogation, more than any other branch of intelligence, implicates the most dangerous and primal aspects of human behavior: self-righteous anger, urge for revenge, and a desire to dominate. All these emotions can potentially compromise the interrogator's sole legitimate

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mission—to elicit within the limits of domestic and international law actionable intelligence for military or national security purposes. The need for formal screening, training, and certification processes for interrogators and for subsequent close and continuing supervision of interrogation operations have been amply proven by each of the historical and contemporary case studies this article will address.

At various times since 9/11, the U.S. and the United Kingdom’s (UK) military or national leaders have authorized various “enhanced” methods of interrogation for military or civilian agency interrogators. Either during or after the fact, the governments involved have emphasized the purported controlled, selective application of such methods. Experience shows, however, that once authorized, even in limited circumstances, trying to subsequently hold the line at a specific level of “authorized” coercion rarely succeeds. Indeed, the legitimization of such methods, authorized or not, seems to lie at the heart of every interrogation scandal.

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Any initial validation of “enhanced measures” implicitly and instantly demotes all humane (legally supportable) and proven to be effective questioning techniques in favor of physical punishment. Given the psychological factors present in most interrogations—for example, the extreme power imbalance in the questioner’s favor or the questioner’s desire for revenge upon the detainee and all the detainee represents—any authorized exception in favor of physical roughness will tend to grow until it

swallows the rule.

Given the above realities, this article proceeds from an assumption that a strategically and politically viable interrogation doctrine—even for the most sensitive interrogation operations—must remain humane, not physically coercive or otherwise brutal, and in full accord with domestic and international law. (The question of establishing and enforcing a doctrine, of course, is closely bound up with effective supervision and leadership of those who execute that doctrine. Oversight does not end with the passage of a law or promulgation of a policy.) Almost every interrogation practice that has departed from these standards—whether conducted by military interrogators in wartime or by civilian security and intelligence agencies—has failed, despite some temporary tactical successes, to support long-term, strategic victory.

The Interrogation Oversight “Tripod”

Public scandals arising from military and national security-related interrogation operations have invariably resulted from lack of at least one of three essential elements for efficient, humane, and morally defensible interrogation. These essential elements are lack of internal and/or external oversight, lack of a formal training process, and lack of a certification process. This “tripod,” forming a viable regulatory framework for interrogation, is vital to establish and, even more importantly, to maintain a lawful, efficient, and publicly-defensible interrogation apparatus.

Oversight may be internal, i.e., conducted by a closely involved, local chain of command. Alternatively, oversight may be external, i.e., inspectors general, legislative or judicial watchdogs, or even an aggressive media digging into details via either legal or illegal means. Both types of oversight have their weaknesses. Local oversight authorities, e.g., the relatively junior officers who supervise most military or civilian interrogation teams, may be too close to the issue, informing a kind of groupthink; whereby,

interrogators and their superiors agree to wink at the rules and to take the gloves off in dealing with recalcitrant or despised detainees. And external oversight, such as visits by inspectors general, lawyers, or senior officials checking up on operations, tends to be occasional and either seemingly, or in fact, disengaged from the realities of interrogation operations in often difficult conditions. The secrecy inherent in most interrogation operations and especially those conducted by civilian intelligence agencies further complicates the problem of effective oversight and accountability.

Building and maintaining a cadre of competent, disciplined interrogators is a more complex problem. Is it not enough to appoint interrogators; they must be trained. It is not enough to train them; the training must be formalized and culminate in certification. And it is not even sufficient merely to train and certify interrogators to a common standard; they should be assigned in specific billets on the organization's strength to ensure they do not operate under the radar of designated interrogation oversight elements or procedures.

Comparing and assessing interrogation scandals from the early twentieth century through the post-9/11 era highlights the importance of all the above requirements for an efficient, legally-compliant, and ethically-defensible interrogation community. Where any one element is wanting, the potential for public scandal rises sharply—with all the attendant consequences for political leadership, operational effectiveness, and international alliances. Almost every public interrogation scandal in U.S. history has involved a lack of thorough or, in many cases, any formal interrogation training, either in permissible techniques or in the framework of domestic and international law obligations.

Starting with the experience of U.S. interrogators during the Philippine Insurrection, this article passes through some World War II and subsequent episodes en route to the Central

Intelligence Agency's (CIA) long-classified attempts during the Cold War to establish a common skill set for its interrogators, with subsequent reverberations for post-9/11 counterterrorism-related interrogations. A more recent phenomenon, the often-destructive synergy between popular culture's post-9/11 glorification of abusive interrogation and the real-life practice of interrogation by incompletely trained or poorly supervised interrogators whose ethical and legal shortfalls are reinforced by the influence of charismatic, brutal, and entirely fictional heroes of television and screen also merit discussion.

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The Philippine Insurrection and the "Water Cure"

In 1902, revelations in the American press of soldiers' use of the "water cure"—an especially brutal, often fatal variant of waterboarding—on captured Philippine guerillas became the "Abu Ghraib scandal" of its time. The U.S., which since the Civil War had led a global effort to establish an international humanitarian law of war, found itself the target of considerable *schadenfreude* from its European critics, who trumpeted the gap between America's self-asserted role as the font of civilized humanity and its actual practice.

Though reportedly hundreds of Filipinos had been "water cured"—many fatally—by American troops by early 1902, only one court-martial resulted, that of Major Edwin F. Glenn.² He defended his actions by arguing that:

every man, woman, and child in the islands was an enemy, and in my best judgment they

are today, and always will be...[T]hey have made use of every means forbidden to them by the laws of war...I am convinced that my action resulted in hastening the termination of hostilities and directly resulted in saving many human lives, and directly injured no one.³

Major Glenn was court-martialed in the Philippines by a board of his fellow officers, who pitilessly sentenced him to a fifty-dollar fine and a month's suspension from command. In reluctantly confirming the verdict, U.S. Army Judge-Advocate General George Davis

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harshly criticized the apparent camaraderie the court-martial officers had expressed for Major Glenn in the leniency of their judgment. Admitting that American troops deployed to the Philippines faced “difficult and to the last degree exasperating” conditions, General Davis nonetheless warned that the rules of war were not to be set aside merely on the grounds that the enemy was not respecting them.⁴ In any case, Major Glenn's career survived his conviction, and he reached the rank of major general before retiring in 1919.⁵

Those American soldiers who routinely administered the water cure to captured Filipino fighters underwent no formal interrogation training whose records have survived. Their methods and their well-documented indifference to whether their prisoners survived the questioning reflected a high degree not only of brutality, but of racism and xenophobia. It was surely not the first or last time that conventional military forces had found themselves in an

utterly foreign land, facing an enemy that refused to fight or otherwise behave in a “civilized” manner.

The Philippine interrogation scandal took place at a time when the U.S. had only a rudimentary permanent intelligence apparatus, the Secret Service on the civilian side and the Army and Navy's fledgling intelligence offices. Interrogation, then, was purely an ad hoc activity, subject only to whatever rules of humanitarian law the questioners saw fit to obey, more scrupulously, perhaps, in conventional wars with state adversaries; however, much less frequently in undeclared campaigns or those waged against the so-called “inferior” races.

The lasting lesson of the Philippine episode was not merely in the routine brutality shown by American troops. At least two other factors pertained. The letters that American soldiers wrote to their families describing, often in folksy or approving tones, the effect and frequency of deploying the water cure, shocked many of the recipients, some of whom alerted U.S. newspapers and magazines.⁶ The speedy (by nineteenth-century standards) communication to the American public of what “their boys” were doing on the battlefield and the psychological disconnect between the culture of the battlefield and that of the home front presaged the instant communications of Vietnam, and, more recently, of the Abu Ghraib episode. In a way, this “interrogation perception gap” also foreshadowed the findings of the 1972 Stanford prison experiment that found in the absence of structure and oversight people under stress will act out their assigned roles—soldier, interrogator, or both—to the point of almost unlimited brutality.⁷

In fairness, American troops in the Philippines were ill prepared for success in terms of interrogation requirements. Clearly, someone would have to question captured fighters. But who would get the job? And how would they do it? What techniques were rumored

to “work” best? Leaving it all to guesswork and serendipity was an almost certain recipe for escalating brutality. And while this was certainly not the first time an American military operation had involved abuse of prisoners, it was one of the first publicized scandals, since the gradual international recognition throughout the nineteenth century of a common baseline for treatment of captured enemy soldiers.

Ironically, the global groundswell of proclaiming and agreeing on human rights of captured soldiers had begun with the late nineteenth century dissemination across Europe of U.S. General Order 100, issued by President Lincoln to the Union Army in 1864 to provide for humanitarian treatment of all categories of Confederate fighters, whether or not they were regular uniformed troops.⁸

World War Two: Three Interrogators’ Legacies

Interrogators seldom see their names included in the history books. The nature of their work and operational requirements for secrecy consign most military and other national security interrogators to labor unseen, mere packhorses in the great affairs of their military commanders. Yet three interrogators of World War II have achieved fame within the circles of professional interrogators and, more generally, military and intelligence historians. The German Luftwaffe Corporal Hanns Scharff, the American Marine Major Sherwood Moran, and—perhaps most notoriously—the British Lieutenant Colonel Robin “Tin Eye” Stephens all made major contributions to the current ethics and doctrine of military and national security-related interrogation. While none of these three luminaries of humane interrogation had been formally trained in the art—both the era and the exigencies of war precluded it—they independently arrived at a similar philosophy: humane questioning carried out with decency and without allowing personal feelings to

interfere with the job works best. (That one of them, as discussed below, was implicated in a postwar atrocity, proves a larger point that even the best of us cannot be trusted with unchecked, unsupervised power over one’s enemy.)

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Germany: Hanns-Joachim Gottlob Scharff, Luftwaffe

For American interrogators in training, perhaps no individual comes in for more praise and respect than the WW2-era German Lance Corporal Hanns Scharff. A former businessman, Scharff through a series of absurd events found himself assigned to the Luftwaffe’s interrogation facility for captured Allied aircrews. Soon after his arrival, both the facility’s assigned interrogators were killed in a plane crash, and Corporal Scharff found himself the de facto chief interrogator. With no formal training, Scharff fell back on his fluent English and long experience as a salesman to winkle critical military information out of almost every American and British flier who passed through his facility for the remainder of the war.⁹ Scharff convincingly adopted a basic approach combining direct questioning, flattery, and—backed up by a highly efficient analysis shop—apparent omniscience. (Much later, the CIA’s long-classified KUBARK Manual would cite Scharff’s essay on humane interrogation as recommended reading.¹⁰)

Following the war, Scharff immigrated to the U.S. (thanks largely to his many former prisoners who had fervently praised his gentlemanly treatment) and lived out his years as a professional artist.¹¹ He would have faded into obscurity but for his postwar essay for the U.S. Army on interrogation, which drew the attention

of his eventual biographer, the military historian Raymond Tolliver.

Corporal Scharff demonstrated convincingly that a nuanced, psychological approach to eliciting information from wary prisoners is far more productive than relying on mental or physical abuse. Fortunately for the eventual winning side, though terribly unfortunately for most of their captives, the rest of the German intelligence apparatus was not nearly so enlightened. Nor are any other wartime German officials or interrogators known to have publicized, much less replicated, the questioning methods of a lowly lance corporal.

In 1944, the U.S. Army Training Corps

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produced a 65-minute film for its aircrew training programs. *Resisting Enemy Interrogation* was the fictional story of an American bomber crew captured and subjected to a range of interrogation techniques by a courtly, well-educated, yet ruthless Luftwaffe officer.¹² Apart from a few psychologically harsh measures, this interrogator might almost have been demonstrating the permissible, humane approaches approved under current U.S. laws and other governing documents for interrogations.

While this must remain largely speculation, one might almost think that the script for *Resisting Enemy Interrogation* had been based on debriefings of escaped Allied aviators describing their questioning by Lance Corporal Scharff (whom most captured airmen would have assumed to be a more senior officer, since he was in his mid-thirties and, like most interrogators,

wore no rank when questioning prisoners). Indeed, the film's interrogator relies heavily on a "we know all" approach backstopped by an efficient analysis operation, which was how the CIA's KUBARK Manual summarized Scharff's technique.¹³

United States: Sherwood Moran, USMC

Lance-Corporal Scharff, had he known it, had a philosophical counterpart on the other side of the world in the Pacific war. Major Sherwood Moran, U.S. Marine Corps, had spent decades as a missionary in Japan before volunteering for service after Pearl Harbor. An avuncular man already in his fifties when the war began, Major Moran used direct, humane methods, combined with his intimate understanding of Japanese culture, to elicit cooperation from Japanese prisoners.¹⁴ Unlike Corporal Scharff, Major Moran's rank allowed him to promulgate throughout the Marine Corps his memoranda on useful, humane interrogation techniques. His precepts on interrogation psychology, approaches, and the ethical and practical reasons to eschew brutal questioning methods became the foundation of modern U.S. military interrogation doctrine.¹⁵

Major (later Lieutenant Colonel) Moran's example highlights not only the practical virtues of humane interrogation approaches, but the role of serendipity in interrogation (as in most other realms of intelligence work). Had this aging missionary not volunteered for service, it is doubtful any other interrogator in the Marines or the Navy (whose leadership, embittered by Pearl Harbor, refused to trust any Japanese-Americans as linguists) could have developed such an insightful collection of interrogation precepts.¹⁶ And Major Moran's field-grade rank was critical in persuading Marine Corps leaders to disseminate his lessons learned to the rest of the fleet (any interrogation lessons proposed by "Private Moran" would most likely have been lost to history).

Great Britain: Robin “Tin Eye” Stephens, MI5

A third World War II interrogator presents a special case: the British interrogator Lieutenant Colonel Robin “Tin Eye” Stephens (so dubbed for his monocle). Stephens was chief interrogator for Operation Double Cross, a top-secret program that relied on decrypting German Enigma messages to intercept nearly every German agent upon arrival in England, doubling many of them back against Germany for the remainder of the war.¹⁷ Colonel Stephens, while championing a psychologically tough approach to captured German agents, adamantly forbade physical mistreatment. His disdain for roughing up detainees was based not on ethics—he routinely dispatched to the firing squad any captured spies whom he deemed ill-suited to be a double agent—but on operational practice; he argued that physically extracting responses by abusing prisoners compromised the reliability of any resulting intelligence.¹⁸

Long after the war, allegations surfaced that, in fact, Stephens had tolerated if not authorized physical abuse at Camp 020, MI5’s then-secret London detention facility.¹⁹ However, on the available evidence, Stephens—in an operation closely monitored and approved by higher wartime commanders—appears to have run a tight ship, with a minimum of physical abuse and no deliberate torture. By 1940s wartime standards, his was surely one of the more regulated and humane interrogation operations run by any of the belligerent states.

But Colonel Stephens’ story has a sequel. Stephens left Camp 020 in late 1945 to assume command of a secret British detention facility in the German resort town of Bad Nenndorf. The prison was initially established to hold and interrogate captured Nazis and German partisan fighters. However, as the supply of captured Nazis dried up, Bad Nenndorf’s mission soon pivoted to counter Communist infiltration;

Communists, ex-Communists, suspected Communists, and Russian speakers—many such found themselves at Bad Nenndorf, answering to a team of interrogators working for the prison commander, none other than “Tin Eye” Stephens.²⁰

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In early 1947, an ambulance dropped off several starving, frozen prisoners at a German hospital; two of them died that night, of cold and malnourishment as severe as anything suffered at Dachau. British servicemembers working at the hospital alerted the British press, and soon Great Britain had its own “Abu Ghraib-level” scandal to deal with. Hector McNeill, the foreign minister, lamented that “[w]henver we have any allegations to make about the political police methods in Eastern European states it will be enough to call out in the House ‘Bad Nenndorf,’ and no reply is left to us.”²¹ Stephens and several other officers were court-martialed; he pled ignorance of conditions at the facility he had commanded and, with most of his colleagues, was acquitted.

The investigation revealed deployment by Stephen’s interrogators of a range of abusive methods—beatings, freezing cold, starvation, forced exercise, and other brutality leading to serious injuries or death. That many of Bad Nenndorf’s interrogators were German Jews, violent felons, or troublesome soldiers sent to work at Bad Nenndorf to get them off their former commanders’ hands certainly called into question their ability or willingness to set aside personal vengeance or sadistic impulses.²²

Colonel Stephens, in addition to possessing a set of racist attitudes fairly common for upper-

class Britons (among many others) of his era, famously despised Communists. Whether he genuinely had no idea what was going on under his command (unlikely) or allowed his interrogators to creatively improvise in “breaking” the hated Communists in their custody, it is clear that his postwar interrogation operation had no effective internal oversight, and—as far as is known—no external oversight whatever, at least regarding the treatment and welfare of prisoners.

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The Bad Nenndorf episode highlighted the evil—and almost certainly counterproductive from an intelligence point of view—consequences of combining in one office the responsibilities for both prisoner welfare and interrogation results.²³ Decades later, a similar meltdown of basic standards of humanity at Abu Ghraib was likewise attributed, in part, to enlisting detainee’s guards in “creating conditions” for interrogation. Even without the extreme secrecy surrounding the Bad Nenndorf interrogations, this arrangement was a recipe for trouble; as it was, Great Britain was forced to acknowledge abuses as extreme as those dispensed by the Germans at Dachau (albeit of course on a far smaller scale).

The Cold War: CIA’s Interrogation Manuals

In 1963, likely at the instigation of the CIA’s then-counterintelligence chief James Jesus Angleton, the agency issued a classified manual, *KUBARK Counterintelligence Interrogation*.²⁴

At 130 pages, the manual provides enough information to occupy a substantial training course. It includes discussions of legal, policy, and psychological considerations; an interrogation planning checklist; and a list of techniques, both noncoercive (psychological approaches) and coercive (use of threats and fear).

The manual contains an annotated bibliography which includes a 1956 article by a German veteran, one Hanns Scharff. The manual cites Scharff’s memoirs as an example of the value of thoroughly preparing for interrogations, but dismiss much of his technique as requiring conditions (presumably including Geneva Convention restrictions, lack of extreme time pressure, and a formidable level of analytic support for the interrogator) not likely to be present in most secret interrogation scenarios envisioned by the manual’s authors.²⁵

The scandal arising from the manual arose not from any specific interrogation operations, but from its disclosure in 1997, following a Freedom of Information Act request (a marginally less-redacted version of the manual was released in 2014). While most of the manual’s content is uncontroversial, the CIA faced criticism from a wide range of critics for appearing to provide and plan for inflicting “bodily harm” on interrogation subjects or for using “medical, chemical, or electrical methods or materials to induce acquiescence.”²⁶

We need not examine here whether the CIA secretly adopted inhumane questioning methods in the spirit of General Doolittle’s 1954 claim that America must prepare, in the battle against Communism, to adopt the enemy’s “repugnant philosophy.”²⁷ But the disclosure of the *KUBARK Manual* raises an important question: Had the CIA gone beyond merely printing up a set of tips of the trade and established a formal interrogation “schoolhouse,” would the manual’s authors have so readily endorsed its more brutal techniques? Any formal course of instruction run

by a government agency requires funding and permanent supervision, which means oversight, likely including a measure of external oversight, even if limited to the agency's own inspector general.

By making the corporate decision to produce a classified interrogation guide without tying it to any formalized course of instruction or certification process, the agency unwittingly invited negative publicity and other consequences when the manual's existence and eventually most of its contents inevitably became public. In producing the manual as its internal response to the problem, "How should the agency maintain a cadre of qualified interrogators?" the CIA set itself up for the manual's inevitable disclosure, with all the public relations nightmare that followed.

In 1983, the CIA published another secret interrogation guide, the *Human Resource Exploitation Training Manual*.²⁸ This manual, reportedly meant to assist CIA officers in teaching interrogation methods to South American security agencies, appears—at least in its original version—to endorse a considerably more brutal approach, combining very harsh psychological techniques with a range of physically painful measures. The version of the manual that was declassified in 1997 contains many handwritten corrections to the printed text that are, at best, hard to interpret as anything other than a half-baked attempt to backtrack from the least defensible sections. An example follows, with the handwritten corrections indicated in italics: "While we ~~do not stress~~ *deplore* the use of coercive techniques, we do want to make you aware of them ~~and the proper way to use them~~, *so that you may avoid them.*"²⁹

An abundance of academic and popular literature condemns both the CIA's leadership for propagating harsh interrogation techniques through these two manuals and its field officers, who allegedly taught the techniques to other nations' police and military during the Cold War.

Much of this scholarship argues, persuasively, that abusive interrogation not only debases the questioner and his or her nation but is less effective than skillful, humane interrogation as practiced, for example, by the Federal Bureau of Investigation (FBI).³⁰ The point to be made here, however, is that where an interrogation program is run in secrecy and without a formal training and certifying process for its interrogators, abuses and escalating cruelty are almost inevitable.

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CIA and Post-9/11 Interrogation Operations

On December 9, 2014, the Senate Select Committee on Intelligence released its 500-page Executive Summary of a (as of March 2017) still-classified, 6700-page report on the CIA's post-9/11 detention and interrogation programs. The Committee's sixteen findings excoriated (albeit with strong minority dissent) the CIA's alleged shortfalls in planning, executing, and reporting its various programs.³¹

The declassified Senate report is remarkable for its frank discussions of CIA's post-9/11 training program for interrogators. As the report makes clear, and without specific refutation from any of those politicians and officials who have criticized other parts of the report, the CIA was ill-prepared to conduct interrogation operations at the time of the 9/11 attacks. This is not a criticism of the agency: CIA, by the terms of its charter under the National Security Act of 1947, is neither a military nor a law enforcement

agency, and it is therefore no surprise that the agency would not necessarily have had a cadre of trained interrogators on standby in late 2001.

On September 17, 2001, President George W. Bush signed a then-secret authorization for the CIA to conduct a range of counterterrorism activities, including license to secretly capture and detain persons “posing a continuing, serious threat of violence or death to U.S. persons and interests or planning terrorist activities.”³² The President’s memorandum said nothing about interrogations, coercive or otherwise, nor did it address any standard of proof applying to CIA capture or detention of suspected terrorists.

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From fall 2001 through early 2002, the CIA apparently undertook neither to formally train any of its officers in interrogation, nor even to consult with any other government elements with interrogation expertise.³³ These might have included the longstanding ten-to-twelve-week interrogation programs, focusing on a combination of legal and practical instruction and extensive practical exercises, run by the U.S. Army, Marine Corps, and Defense Intelligence Agency.³⁴ In addition, of course, the FBI had long trained its agents in lawful, psychologically-based interrogation techniques for law enforcement purposes.

In any case, not until November 2002 did the CIA run its first interrogation course. Far from modeling the immersive, multi-month courses run by the Departments of Justice and Defense, the CIA program consisted of 65 hours, or less than two weeks, of classroom instruction, much

of it devoted to teaching “enhanced techniques,” which at the time, had still not been evaluated by the Justice Department for legality under domestic or international law.³⁵

Moreover, the first groups of CIA interrogation trainees included a large share of officers with documented “anger management issues,” or who had, presumably in the previous year since 9/11, already “engaged in inappropriate detainee interrogations.”³⁶ Attempts by lawyers in the CIA Counterterrorism Center’s (CTC) legal shop to exercise some oversight over the quality of interrogation students were rebuffed by the CTC chief on the grounds that lawyers “should [not] get into the business of vetting [anyone] involved in this program. It is simply not your job.”³⁷

The CTC official may have been correct on the specific issue of agency lawyers micromanaging candidate selection. But in retrospect, the Senate report shows persuasively that those internal CIA elements with oversight authorities that might have interceded to ensure effective screening of interrogator candidates either did not or could not exercise sufficient, if any, oversight. The result was the training and deployment of an initial group of CIA interrogators who, at best, had received gravely insufficient training to do much more than creatively abuse detainees, and some of whom, at worst, had troubled personal and professional backgrounds that should have disqualified them from being allowed to exert control over prisoners.

U.S. Army Field Manual and Provisions for Training, Certification, and Oversight

Until the 2006 issue of a wholly revised human intelligence (HUMINT) manual (FM 2-22.3, *Human Intelligence Collector Operations*), the primary textbook and regulation for military interrogations was the 1992 FM 34-52, *Intelligence Interrogation*. The earlier field

manual failed to recognize the lessons, discussed earlier, of Tin Eye Stephens' blighted tenure as both commander and chief inquisitor at Bad Nenndorf, nor did not address the respective authorities of detention facility commanders and interrogators (including their direct commanders) working in the facility.

With no clear guidance as to the propriety of military police and other servicemembers helping to "set the stage" for interrogations, predictable problems arose when personnel with no interrogation training or authority either pressed for or were invited to play a role in detainee interrogations. This lack of guidance led to abuses such as military police personnel, with no interrogation training or experience, tasked by intelligence personnel to "set the conditions" for interrogation. These issues and the operational and political nightmare they unleashed with the revelations of Abu Ghraib and a number of other interrogation operations led to the withdrawal of FM 34-52 in favor of the 2006 U.S. Army Field Manual 2-22.3, *Human Intelligence Collector Operations*.³⁸

Abu Ghraib was an extreme example of the negative consequences of a lack of clear lines of authority, although other factors all but guaranteed the disgraceful treatment of detainees there. It was not, strictly speaking, an interrogation operation, so much as an unsupervised exercise by unaccountable "intelligence personnel" in "breaking" detainees with the unofficial support of a group of untrained, badly-led reservists.

Most spectacularly, Abu Ghraib combined lack of meaningful oversight over intelligence operations with the psychological tendency toward escalation of power relationships that Dr. Philip Zimbardo had demonstrated decades earlier in his 1972 "Stanford prison experiment." In fact, Dr. Zimbardo testified for one of the Abu Ghraib defendants in his court-martial, stating that the breakdown of discipline and humanity at Abu Ghraib was a natural consequence of

conditions there.³⁹

Since 2009, all U.S. government interrogators (contractors are no longer authorized to conduct interrogations, although there is a waiver process for them to do so on a case-by-case basis) have been subject to the provisions and restrictions of Field Manual 2-22.3 and of Executive Order 13491, which binds all Executive Branch interrogators to following U.S. domestic law as well as all international agreements and laws to which the U.S. is a party.⁴⁰

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FM 2-22.3 distinguishes tactical questioning and screening of individuals (which any U.S. government employee or servicemember may conduct) from interrogation. The manual requires that all interrogations, beyond direct questioning at the point of capture, be conducted only by "personnel trained and certified in the interrogation methodology. . . in accordance with the Law of War."⁴¹ The manual also holds interrogators (along with all other U.S. HUMINT collectors) responsible for knowing and complying with all applicable U.S. law, the Geneva Conventions, and other relevant international law and all local or military regulations and policies (which may not authorize interrogation operations in violation of either U.S. or international law).⁴² The manual repeatedly adjures interrogators and other HUMINT collectors to know and comply with Department of Defense Directive 3115.09, "DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning." This directive bars "physical or mental torture" under all circumstances.

FM 2-22.3 expressly forbids detention

facility personnel from “direct participat[ion] in the conduct of interrogations,” though they may passively observe detainees’ behavior and statements to interrogators. (The limits run both ways: interrogators’ offers of incentives for detainees, such as reading or writing materials, increased freedom of movement, etc., are all subject to veto by the facility commander on legitimate security grounds.) Having outlined all applicable restrictions on interrogation operations, the directive provides for regular oversight of said operations, by both local commanders and by a number of DoD-level officials and departments.

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FM 2-22.3 provides for separate lines of authority for the care and safeguarding of detainees, and the interrogation of same. Detention facility commanders are “responsible for all actions involving the humane treatment, custody, evacuation, and administration of detainees, and force protection,” whereas local intelligence authorities are responsible for the actual “conduct of interrogation operations.”⁴³ This basic division of authority ensures that those persons who are ultimately responsible for the lives and welfare of captured detainees are not the same persons responsible for “breaking” them as part of interrogation operations. Failure to establish this firewall has been a factor in all too many public interrogation scandals.

A standardized course of instruction followed by certification is necessary but not sufficient to ensure a well-regulated and legally compliant interrogation apparatus. Ultimately, however, any governmental oversight, training, and certification regime will depend on the political will to establish and maintain it.

Former Army interrogator Tony Lagouranis recalls his schoolhouse instructors salting their formal warnings against illegal questioning methods with jokes and historical anecdotes about particularly imaginative or, supposedly, “effective” tortures now banned, alas, by “regulations.”⁴⁴ Here is an example of external oversight being unlikely to detect and deter such internal undermining of the intended instruction. Rather, strong internal oversight—in the form, for example, of these instructors’ direct superiors monitoring instruction in progress, and modeling complete, unironic endorsement of interrogators’ legal and ethical duties toward detainees—can exert far more direct and positive influence on the message received by interrogators in training. Lagouranis approvingly cites an Army sergeant deployed to Iraq who unequivocally banned abuse and whose interrogators followed his strong leadership in refraining from treatment or questioning techniques not in compliance with military doctrine.⁴⁵

In 2006, when the public scandals over “enhanced” interrogations were still in the very recent past and some political and cultural leaders throughout the country still advocated the need for interrogators to “take the gloves off,” a National Defense Intelligence College graduate student conducted an anonymous survey of U.S. Army interrogators. The majority had served at least one deployment as a field interrogator. By a two-to-one margin these servicemembers responded that they would refuse any order to torture a prisoner, regardless of the military necessity presented. Particular scorn was directed at senior officers who presumed to involve themselves in interrogation operations, generally with poor if not illegal results.⁴⁶

This survey of active-duty interrogators highlights the positive effect of professionalizing the interrogation corps. The adage that sunlight is the best disinfectant certainly applies to the realm of interrogation: Winking approvals by “higher” of coercive or otherwise illegal methods are

very unlikely to survive a professional training and certification regimen. A fully trained and professional interrogator, such as those quoted in the 2016 survey, is far more likely to view with contempt any hints from commanders that the written protections need not apply to any given detainee.

Anecdotes are not evidence. Nonetheless, this author’s experience, throughout multiple war-zone deployments, is that many (if not most) intelligence oversight investigations arise from the misdeeds not of trained and certified intelligence personnel, but of mostly senior officers and others with no relevant training or experience who insert themselves into intelligence activities without authorization. Their misplaced confidence in their own abilities and authority, combined with their senior rank, can make it difficult for the competent sergeants and warrant officers who execute most military intelligence activities to prevent them from interfering until the issue has risen to the level of a formal investigation.

Interrogation Oversight Challenge: Command Influence in the Field

A persistent urban myth in the U.S. military is the tale of Lieutenant Colonel Allen West, who in August 2003—according to legend—made the hard choice to brutalize and mock-execute an Iraqi insurgent, thereby obtaining intelligence that saved the lives of his men. West then turned himself in and retired with honor. West’s admirers cite him as a hero who faced a real-world ticking bomb situation and reacted as he had to do to save his soldiers. In fact, as a declassified Army criminal investigation report makes clear, the West case played out very differently and illustrates the dangers of untrained personnel interfering in interrogation and detention operations.

Faced with a series of roadside bombs and an anonymous tip that he was being targeted for assassination, then Colonel West had his men

detain a local Iraqi, whom they suspected had information about the plot. The man denied knowledge and no other evidence linked him to the insurgency. Rather than turn the Iraqi over to local U.S. Army interrogators, West first ordered his enlisted troops to beat a confession out of their detainee, telling them only not to break his bones or draw blood. After an hour of watching his men beat up the detainee, Colonel West interceded, told him he was about to die, put him against a clearing barrel, and fired two live rounds past his head. At that point, the senior sergeant on the scene said, “Sir, I don’t think he knows,” whereupon West returned the detainee to his cell and—to his credit—turned himself in to his commander.⁴⁷

**...no amount of formal
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No intelligence was gained; a senior officer’s career was ended; and, arguably worst of all, the enlisted soldiers of Colonel West’s battalion were invited to beat up a prisoner at length in front of their approving commander, just in case the prisoner might have actionable intelligence. This episode serves as a reminder that no amount of formal interrogation oversight and training can defeat senior officers or civilians injecting themselves into the intelligence process—whether to appear tough or, more charitably, out of a sincere belief that they can obtain lifesaving information by “taking the gloves off.” One reason that external oversight of interrogation is so critical is that a team of low-ranking enlisted interrogators may otherwise be ignored or steamrolled by officers who decide that it is time to do things “the way Jack Bauer would.”

Ticking Bombs, the “24” Effect and the Special Influence of Popular Culture on Interrogations

Any discussion of interrogation as a trope of post-9/11 films and television series must begin with that staple of fictional inquisitions, the “ticking time bomb scenario.” In a typical scene, our heroic interrogator is faced with a smirking, silent prisoner who alone possesses information needed to prevent an imminent, large-scale terrorist attack. Such scenes are almost invariably constructed to rule out the possibility of due process or time-consuming, psychology-based interrogation techniques. Only the infliction of pain on the perpetrator—and lots of it, right now—can save Manhattan from (to use a common MacGuffin) the suitcase nuke.

Mirror imaging is a common occupational hazard for intelligence analysts and policymakers across all countries and cultures.

The first modern use of the ticking bomb scenario was in Jean Larteguy’s 1960 novel *Les Centurions*, in which a French officer in occupied Algeria tortures an Arab woman into revealing the location of a series of bombs.⁴⁸ The novel, an immediate bestseller in France and later translated into English, gained currency among American military leaders and strategists after 9/11. In its absorption into the American popular culture surrounding interrogation and counterterrorism, its status as pure fiction tended to be muddled. The novel’s central ethical dilemma, resolved in favor of torture for the greater good, was frequently cited in support of “enhanced” interrogation as well as outright torture, as though it were relevant to real-world decisions whether a fictional character ought to torture prisoners. (On the other hand, a 1966 French film in the same setting, *The Battle of*

Algiers, focused on the moral decay of French officials attempting to suppress an insurgency with ever more brutal methods. It too enjoyed a minor renaissance among American intelligence and security officials.)

The popularity of *Les Centurions* in France, including much of the country’s liberal intelligentsia, may shed light on American society’s post-9/11 increased acceptance of brutal interrogation methods. The novel constructed a scenario that resonated with French liberals, and, arguably, with a later generation of Americans as well: “their enlightened legal systems had made them vulnerable to security threats.”⁴⁹

The American popular-culture descendant of *Les Centurions* was the television series *24*. The popular espionage and covert action series ran from 2001 to 2010 on American television, and may well be studied by sociologists in future decades for the ways in which it uses ticking bomb scenarios to justify its hero’s willingness to “take off the gloves” and beat, torture, or otherwise coerce life-saving information out of the villain of the week. (As most readers already know, *24*’s protagonist, the elite counterterrorism agent Jack Bauer, spends each season experiencing a 24-hour day in real time, one hour per week, as he battles that season’s terrorist threat to the U.S.)

Mirror imaging is a common occupational hazard for intelligence analysts and policymakers across all countries and cultures. Foreign observers from less democratic nations could therefore be forgiven for perceiving *24*, however wrongly, as a tool of the U.S. government, directly commissioned and designed to create public approval of its interrogation methods. And indeed *24*’s message was publicly endorsed by many American leaders and politicians, at least in the half-decade following 9/11.

Like the ticking-bomb scenario from *Les Centurions*, Jack Bauer and his questioning methods were approvingly cited by a number of U.S. experts and officials, including former

Homeland Security chief Michael Chertoff, Bush-era White House lawyer John Yoo, and Supreme Court Justice Antonin Scalia.⁵⁰ The routine, approving references by these and other influential persons to Jack Bauer's interrogation methods, betray an intellectual laziness—a readiness, even eagerness, in the rush to dehumanize a despised (and, indeed, often despicable) enemy, to abandon basic humanitarian law as well as sound interrogation tradecraft. In the process, effective, useful intelligence as well as international partnerships and the nation's own sense of moral superiority are often early casualties.

Before 9/11, interrogation in film and television was something that happened mostly to the hero, who would stoically withstand all the abuse his irredeemably evil interrogator could inflict, up to the moment of his escape (and, usually, his thrashing of his former inquisitor). 9/11 brought a seismic shift in such fictional interrogation. Firstly, instances of abusive interrogation in film and television, which had numbered about four per year in the late 1990s, rose to over a hundred such instances annually by 2005.⁵¹ Furthermore, the brutal questioner was no longer invariably the villain; he was now more likely to be our hero, beating or otherwise coercing information out of a terrorist who, in this fictional world, was clearly guilty and thus richly deserved whatever the hero chose to do to him.

While many researchers have examined the link between post-9/11 fictional torture and actual U.S. government-approved brutality (including, for argument's sake, the range of controversial practices characterized as “enhanced interrogation” or, more flippantly, “torture lite”), it is difficult to quantify the degree of cause and effect, due largely to the apparent absence of any national polls before 9/11 querying people on their attitude toward torture as a tool of the state.

On one hand, this makes perfect sense.

Such a poll, prior to 9/11, would have seemed bizarre. From the early Cold War through the 1990s, torture was almost invariably attributed to the nation's most wicked or dangerous adversaries: the KGB, the Viet Cong, escaped Nazis, and, of course, assorted terrorists and psychopaths. There was an apparent American cultural consensus (both official, and popular) that torture was a tool of the Other, signifying the wickedness of those who would employ it. It might simply never have occurred to pre-9/11 sociologists that whether the U.S. should or should not endorse torture as policy was a question for serious study.

Before 9/11, interrogation in film and television was something that happened mostly to the hero...

In November 2006, Brigadier General Patrick Finnegan, the dean of the United States Military Academy at West Point, flew to Hollywood with a team of senior military and FBI interrogators to meet with *24*'s production team. His mission was to persuade *24*'s producers to stop promoting “unethical and illegal behavior” that was “adversely affect[ing] the training and performance” of American soldiers, and especially of interrogators, both in training and in the field.⁵²

An experienced Army interrogator, who had accompanied Brigadier General Finnegan to meet the *24* production team, later discussed their meeting. He had cited the disturbing increase in brutal interrogation as an acceptable tactic for fictional “good guys,” and the danger that young military interrogators would find inspiration in Jack Bauer's always-successful questioning methods:

[W]hat's particularly disturbing is that

when you look at who's doing the torturing, the people who are involved in it have changed. It used to be the bad guys were the ones who tortured, the Nazis or aliens or something like that, and torture never worked. But now it's people like Jack Bauer. It's the heroes of these shows...and it always works for these people. So, the message that 18-, 19-, 20-year-old soldiers in Iraq and Afghanistan get is that good guys use this stuff and it works.⁵³

This interrogator told the television producers that DVDs of *24* were popular in the field, and that “people watch the shows, and then walk into the interrogation booth and do the same things they've seen.”⁵⁴

The pervasive influence of fictional heroes who brutalize their prisoners poses an ongoing threat to the professionalism of both military and civilian interrogators.

The program's producers defended their scripts on the grounds that Jack Bauer never enjoys abusing or torturing prisoners, but that he finds himself in impossible situations requiring tough decisions.⁵⁵ (A common ethical criticism of fictional torture scenes is that the script is invariably constructed so as to seemingly require torture—a situation that practically never arises in real life, and that has never yet, unsubstantiated urban myths aside, occurred in the context of preventing a terrorist attack.⁵⁶) In the end, the meeting changed little. While the television producers welcomed the real-life interrogators' ideas for non-abusive interrogation as possible plot devices, they were unwilling to alter their hugely profitable formula of a tough, brutal hero who nonetheless gets results and saves America from terrorists.

The pervasive influence of fictional heroes who brutalize their prisoners poses an ongoing threat to the professionalism of both military and civilian interrogators. As former Army interrogator Tony Lagouranis recalls in his memoir *Fear Up Harsh*, not only young, less educated interrogators, but also more mature college graduates, such as Lagouranis himself, proved susceptible to the temptations of brutality and vengeance. Lagouranis highlights the near-total absence of “adult supervision” over deployed interrogators and the ascendancy of personal vengeance and face-saving—among both interrogators and their combat commanders—over sound interrogation doctrine. Only where the local interrogation sergeant strictly enforced a professional standard of compliance with sound interrogation doctrine and regulations were interrogations conducted professionally and without brutality. As depicted in Lagouranis' book, brutality by trained and certified interrogators was almost wholly due to inconsistent internal oversight and almost nonexistent external oversight by any authorities outside the immediate chain of command.

Conclusion

Interrogation succeeds best, and with the least amount of excess and abuse, when conducted by trained and certified personnel, pursuant to a formal program of instruction, with provisions for regular oversight by both the local chain of command and by outside observers. The ethical and legal pitfalls inherent in interrogations—and especially in interrogations conducted in times of national crisis or military emergencies, actual or perceived—demand unrelenting oversight and self-appraisal at all levels. Individual interrogators, their local leaderships, their national agencies, and even (especially) national leaders, with both their public pronouncements and their administration of the national security community, all have a part to play in resisting pressures to bend or

abandon established, well-tested rules mandating humane questioning.

Every interrogation scandal the U.S. has suffered since 1902 has resulted from a lack of training and oversight standards. This has, again and again, left a vacuum for interrogators and their bosses to fill with rumor, legend, “helpful” interrogation tips from all over, and the ever-present temptation to dehumanize those under interrogation—whether Filipino guerillas, Japanese soldiers, Taliban fighters, or al-Qaeda masterminds. It is past time to develop and maintain—across the entire intelligence community, not merely military and other defense agencies—formal training, certification and oversight measures for all interrogators in the national security realm. **IAJ**

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