

Briefing Memorandum: The McCain Anti-Torture Amendment

To: Senators, congressional staff, and other interested parties

From: Former interrogators and intelligence professionals (Steven Kleinman, William Quinn, Torin Nelson, Joe Navarro, Frank Anderson, Robert McFadden, and Mark Fallon)

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We, the undersigned, are career intelligence professionals and interrogators with experience in the Department of Defense (DOD), Central Intelligence Agency (CIA), Federal Bureau of Investigations (FBI), Naval Criminal Investigative Service (NCIS), and other federal agencies and departments charged with protecting our national security. Collectively, we have decades of experience in interrogation and have interrogated thousands of individuals held in U.S. custody, including numerous high-value terrorist suspects. We strongly support the McCain Amendment to the FY 2016 National Defense Authorization Act (NDAA), which would prohibit coercive interrogation techniques that we believe are unlawful and counterproductive, while promoting a lawful model of interrogation—one proven to be the most effective both in field operations and through scientific research—that would enable intelligence professionals to secure reliable information to protect our national security. In this short memorandum, we address two potential concerns with the amendment: 1) that the amendment codifies into federal law the interrogation approaches of the Army Field Manual 2-22.3 (AFM) (“Human Intelligence Collector Operations”) that some have said are designed for interrogating low-level soldiers, not high-level terrorists; and 2) that the amendment requires our nation’s interrogation approaches to remain public—pursuant to current policy—thereby allowing our enemies to effectively develop counter-intelligence and resistance strategies. Below, we respond to these thoughtful concerns with arguments supported by the relevant evidence, science, or operational experience.

The AFM as the Single, Government-Wide Standard for Armed Conflict and National Security Interrogations

The McCain amendment would codify into federal law the interrogation approaches in the AFM, and also allow traditional federal law enforcement interrogation approaches to be used. All of these approaches are based on time-tested, research-driven, rapport-based interrogation strategies that are designed to elicit the maximum amount of reliable information from individuals held in custody. Rather than being designed for “low-level foot soldiers,” the strategies and tactics set forth in the AFM are adaptable to an array of operational challenges—from questioning low-level soldiers in a conventional military conflict to interrogating high-value terrorist detainees. Junior military interrogators and experienced intelligence and law enforcement officers can equally leverage the approaches described in the AFM. The difference lies not in the strategies themselves, but in the experience, expertise, and sophistication of the individual who employs them. The one constant is that any individual who follows the definitive guidance set forth in the AFM can be certain they are employing a lawful, non-coercive method of interrogation designed to elicit reliable information from even the most hardened, high-level terrorists. We have successfully used these approaches with hundreds of high-level terrorists,

including for example: Al Qaeda in Iraq's (AQI) top bomb-maker¹, Osama Bin Laden's bodyguard and confidant², and Al Qaeda members who plotted the 9/11 attacks³ and the bombing of the USS *Cole*⁴. Further, the McCain amendment's single-standard approach based on the AFM reflects current policy and practice that is unanimously supported by all relevant agencies and departments⁵, as well as CIA director John Brennan⁶.

Some have suggested that our intelligence professionals may need coercive interrogation techniques beyond what is permitted in the AFM—such as stress positions, sleep deprivation, sensory deprivation, aggressive physical contact, cramped confinement boxes, waterboarding, or other so-called “enhanced interrogation techniques”—to “break” high-level terrorism suspects who may otherwise be resistant to rapport-based approaches. We strongly disagree. Coercive interrogation techniques have only been of value to regimes that have historically sought false confessions and propaganda; in contrast, as a means of gathering information of intelligence value, they are highly unreliable and counterproductive and can compromise an interrogator's ability to consistently secure timely and actionable intelligence. For example, interrogation approaches that induce stress, shock, or pain can severely undermine a detainee's ability to recall or accurately report detailed information. Often detainees subjected to pain will provide false or misleading information, or will “shut down” and become even more resistant to otherwise effective, rapport-based interrogation approaches. The latest science and research on interrogation strongly supports our view—one based on extensive operational experience—that the rapport-based approaches allowed by the AFM and law enforcement policies are substantially more reliable than coercive approaches. Moreover, the AFM would expressly prohibit such coercive interrogation methods, which have produced substantial strategic costs to our national security by undermining international cooperation and bolstering enemy propaganda.

However, we agree that the AFM is in need of an evidence-based revision to ensure that all of its approaches are based on the latest science, research, and best practices. The McCain amendment is a welcome step in this direction as it mandates a review and update of the AFM that would allow existing interrogation approaches to be modified and other lawful and effective approaches to be added. Pursuant to the amendment, the review would be conducted in part by reference to a body of research on interrogation best practices commissioned by the High-Value Detainee Interrogation Group (HIG).

¹ Abu Omar al-Kurdi

² Abu Jandal

³ Walid Bin Attash

⁴ Abdul Rahim al Nashiri, Fahd al-Quso

⁵ “After extensively consulting with representatives of the Armed Forces, the relevant agencies in the Intelligence Community, and some of the nation's most experienced and skilled interrogators, the Task Force concluded that the Army Field Manual provides appropriate guidance on interrogation for military interrogators and that no additional or different guidance was necessary for other agencies. These conclusions rested on the Task Force's unanimous assessment, including that of the Intelligence Community, that the practices and techniques identified by the Army Field Manual or currently used by law enforcement provide adequate and effective means of conducting interrogations.” See Special Task Force on Interrogations and Transfer Policies Issues Its Recommendations to the President, *available at* <http://www.justice.gov/opa/pr/special-task-force-interrogations-and-transfer-policies-issues-its-recommendations-president>

⁶ “I agree with [Executive Order 13491, *Ensuring Lawful Interrogations*], and, while I am the Director of the CIA, this program will not under any circumstances be reinitiated. I personally remain firm in my belief that enhanced interrogation techniques are not an appropriate method to obtain intelligence and that their use impairs our ability to continue to play a leadership role in the world.”

https://www.cia.gov/library/reports/CIAs_June2013_Response_to_the_SSCI_Study_on_the_Former_Detention_and_Interrogation_Program.pdf

Mandating that Interrogation Approaches Remain Public

Some have also suggested that by requiring the AFM interrogation approaches to remain public, as the McCain amendment would do, we are revealing our “playbook,” which could allow the enemy to develop interrogation resistance strategies that may prevent us from eliciting information. While this argument has some intuitive appeal, allowing the interrogation approaches to remain public in fact has the opposite effect: it places interrogators in a stronger position and helps to reduce the costs associated with actual or perceived detainee abuse.

We agree that particularized interrogation plans, strategies, and approaches should not be made public, and that doing so may compromise a human intelligence (HUMINT) operation. However, requiring the AFM to remain public does not reveal our “playbook” any more than the numerous public military and intelligence documents that describe in general terms the tactics and operations of our military. The enemy is generally aware that our military has special operations, precision strike capabilities, and a variety of different force projection and intelligence capabilities, but it does not know—and should not know—our strategy and operational plans regarding the use of these various assets. Interrogation works in the same way: the effectiveness of an interrogation does not depend on whether the detained individual is generally aware of various interrogation approaches. Instead, the effectiveness of the interrogation depends on how the approaches, based on sound behavioral science, are implemented. In the field, an effective interrogation is the product of nuance, timing, adaptation, and perceptions that are all part of a highly-detailed, classified interrogation plan. In short: we believe that an interrogation can be successful even if the detainee is well-versed in the requirements and approaches of the AFM.

Mandating that the interrogation approaches remain public actually provides additional opportunities for intelligence collection. Creating a secret or classified list of interrogation techniques will inevitably play into the false notion that our agents are subjecting detainees to torture or other forms of cruel treatment and will make it more difficult to secure access to, and cooperation from, allies on whom we rely for intelligence cooperation. By contrast, transparency regarding our interrogation approaches helps dispel the myth that the U.S. is engaged in detainee abuse, and increases the likelihood that foreign security services will provide access to detainees for interrogation, or that a detainee will cooperate in an interrogation session. It is also important for the American people to have confidence that our interrogation approaches are consistent with applicable law, human rights norms, and American values. Therefore, we agree with DOD, which, under the Bush Administration, recommended having the interrogation approaches in the AFM remain public despite calls for the approaches to be placed in a classified annex.⁷

For all of the above reasons, the McCain amendment will protect and promote lawful, effective interrogation policy, and prevent unlawful and abusive interrogations that harm our national security. We strongly urge you to support it.

⁷ DoD News Briefing with Deputy Assistant Secretary Stimson and Lt. Gen. Kimmons from the Pentagon, Sept. 6, 2006, available at <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=3712>

Sincerely,

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