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The Waterboarding Trail to bin Laden

Former CIA Director Michael Hayden said that as late as 2006 fully half of the government's knowledge about the structure and activities of al Qaeda came from harsh interrogations.

By [MICHAEL B. MUKASEY](#)



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Khalid Sheikh Mohammed

Osama bin Laden was killed by Americans, based on intelligence developed by Americans. That should bring great satisfaction to our citizens and elicit praise for our intelligence community. Seized along with bin Laden's corpse was a trove of documents and electronic devices that should yield intelligence that could help us capture or kill other terrorists and further degrade the capabilities of those who remain at large.

But policies put in place by the very administration that presided over this splendid success promise fewer such successes in the future. Those policies make it unlikely that we'll be able to get information from those whose identities are disclosed by the material seized from bin Laden. The administration also hounds our intelligence gatherers in ways that can only demoralize them.

Consider how the intelligence that led to bin Laden came to hand. It began with a disclosure from Khalid Sheikh Mohammed (KSM), who broke like a dam under the pressure of harsh interrogation techniques that included waterboarding. He loosed a torrent of information—including eventually the nickname of a trusted courier of bin Laden.

That regimen of harsh interrogation was used on KSM after another detainee, Abu Zubaydeh, was subjected to the same techniques. When he broke, he said that he and other members of al Qaeda were obligated to resist only until they could no longer do so, at which point it became permissible

for them to yield. "Do this for all the brothers," he advised his interrogators.



Editorial Board Member Matt Kaminski on the bin Laden photos.

Abu Zubaydeh was coerced into disclosing information that led to the capture of Ramzi bin al Shibh, another of the planners of 9/11. Bin al Shibh disclosed information that, when combined with what was learned from Abu Zubaydeh, helped lead to the capture of KSM and other senior terrorists and the disruption of follow-on plots aimed at both Europe and the United States.

Another of those gathered up later in this harvest, Abu Faraj al-Libi, also was subjected to certain of these harsh techniques and disclosed further details about bin Laden's couriers that helped in last weekend's achievement.

The harsh techniques themselves were used selectively against only a small number of hard-core prisoners who successfully resisted other forms of interrogation, and then only with the explicit authorization of the director of the CIA. Of the thousands of unlawful combatants captured by the U.S., fewer than 100 were detained and questioned in the CIA program. Of those, fewer than one-third were subjected to any of these techniques.

Former CIA Director Michael Hayden has said that, as late as 2006, even with the growing success of other intelligence tools, fully half of the government's knowledge about the structure and activities of al Qaeda came from those interrogations. The Bush administration put these techniques in place only after rigorous analysis by the Justice Department, which concluded that they were lawful. Regrettably, that same administration gave them a name—"enhanced interrogation techniques"—so absurdly antiseptic as to imply that it must conceal something unlawful.

The current president ran for election on the promise to do away with them even before he became aware, if he ever did, of what they were. Days after taking office he directed that the CIA interrogation program be done away with entirely, and that interrogation be limited to the techniques set forth in the Army Field Manual, a document designed for use by even the least experienced troops. It's available on the Internet and used by terrorists as a training manual for resisting interrogation.

In April 2009, the administration made public the previously classified Justice Department memoranda analyzing the harsh techniques, thereby disclosing them to our enemies and assuring that they could never be used effectively again. Meanwhile, the administration announced its intentions to replace the CIA interrogation program with one administered by the FBI. In December 2009, Omar Faruq Abdulmutallab was caught in an airplane over Detroit trying to detonate a bomb concealed in his underwear. He was warned after apprehension of his Miranda rights, and it was later disclosed that no one had yet gotten around to implementing the new program.

Yet the Justice Department, revealing its priorities, had gotten around to reopening investigations into the conduct of a half-dozen CIA employees alleged to have used undue force against suspected terrorists. I say "reopening" advisedly because those investigations had all been formally closed by the end of 2007, with detailed memoranda prepared by career Justice Department prosecutors explaining why no charges were warranted. Attorney General Eric

Holder conceded that he had ordered the investigations reopened in September 2009 without reading those memoranda. The investigations have now dragged on for years with prosecutors chasing allegations down rabbit holes, with the CIA along with the rest of the intelligence community left demoralized.

Immediately following the killing of bin Laden, the issue of interrogation techniques became in some quarters the "dirty little secret" of the event. But as disclosed in the declassified memos in 2009, the techniques are neither dirty nor, as noted by Director Hayden and others, were their results little. As the memoranda concluded—and as I concluded reading them at the beginning of my tenure as attorney general in 2007—the techniques were entirely lawful as the law stood at the time the memos were written, and the disclosures they elicited were enormously important. That they are no longer secret is deeply regrettable.

It is debatable whether the same techniques would be lawful under statutes passed in 2005 and 2006—phrased in highly abstract terms such as "cruel, inhuman and degrading" treatment—that some claimed were intended to ban waterboarding even though the Senate twice voted down proposals to ban the technique specifically. It is, however, certain that intelligence-gathering rather than prosecution must be the first priority, and that we need a classified interrogation program administered by the agency best equipped to administer it: the CIA.

We also need to put an end to the ongoing investigations of CIA operatives that continue to undermine intelligence community morale.

Acknowledging and meeting the need for an effective and lawful interrogation program, which we once had, and freeing CIA operatives and others to administer it under congressional oversight, would be a fitting way to mark the demise of Osama bin Laden.

Mr. Mukasey was attorney general of the United States from 2007 to 2009.

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