

Drawing the fine line between interrogation and torture: towards a Universal Protocol on Investigative Interviewing

Pau Pérez-Sales, MD, PhD, Psych*, Editor in Chief

Interrogation is an essential component of a comprehensive view of torture and deserves special reflection.

In interrogational torture, physical and psychological techniques serve the purpose of creating the physical, cognitive and emotional exhaustion in the detainee considered necessary for the successful questioning of a potential source of information. Interrogation can, at the same time, be conducted in a way that deepens the effect of torturing methods and environments when the interview is carried out in a way that fosters cognitive and emotional exhaustion, leading to breakdown (Pérez-Sales, 2016). Interrogations follow procedures and regulations, but in most countries there is a lack of transparency and information. Academia has only recently begun to do systematic research on interrogation and interviewing techniques (Walsh, Oxburgh, Redlich, & Myklebust, 2017; Intelligence Science Board, 2006; Meissner, 2012; Rassin & Israëls, 2014) to prove effects beyond personal opinions.

Coercive interrogation is often noteworthy by its absence in the debate on torture and perhaps this is because it can be tricky to address; it does not fit squarely in the tradi-

tional perception of what amounts to torture. This is probably linked to the low level of recognition that psychological torture continues to have. Besides, the Istanbul Protocol does not include interrogation as part of torture within a defined category (United Nations High Commissioner for Human Rights, 2004)

What is ethical and admissible in obtaining information from a detainee? The distinction between interviewing (asking the suspect for her version of the offence) and interrogation (accusatorial strategies designed to elicit a confession, which is the only acceptable end of the encounter) is an important one. While interrogations sometimes follow procedures and regulations, there remains a lack of transparency in many countries, and coercive interrogation is still the norm for many detainees that are deemed a menace.

Coercive interrogation

Coercion happens when someone is deprived of his will and forced to act against himself. Coercion is a relational variable subjected to cultural and historical oscillations (Moston & Fisher, 2008). Any interrogation that coerces the detainee and deprives him or her of his freewill potentially enters into the realms of ill-treatment or torture. Police manuals reflect the belief that interrogation and torture are entirely separate spheres. However, an

*) SiR[a] Centre, GAC Community Action Group and Hospital La Paz, Spain.
Correspondence to: pauperez@arrakis.es

interrogation could be considered torture according to the UN Convention against Torture if it induces severe psychological suffering or pain for a stated purpose, namely, giving information or self-incrimination. That being so, states have a duty to ensure that effective measures are taken to prevent interrogation amounting to torture and ill-treatment. This would include, for example, adequate investigation into particularly wrongful convictions and the role ill-treatment or torture has played during the interrogation, eventually making it possible for interrogators to be held accountable.

Coercion is linked to interview strategies which employ manipulative dialogue, deception, false evidence and trickery, maximisation of responsibility or charges, false minimisation of responsibility or false promises of leniency (Table 1). The fact is that in most countries these are seen not only as acceptable, but as complex and valued skills to be acquired in the training process of an investigator (Forrest & Woody, 2010; Inbau, Reid, Buckley, Jayne, & Jayne., 2013; Kostelnik & Reppucci, 2009). As Inbau (2013 p. xii) puts it: “psychological tactics and techniques that may involve trickery and deceit; they are not only helpful but frequently indispensable in order to secure incriminating information from the guilty or to obtain investigative leads from otherwise uncooperative witnesses or informants”.

Research shows that accusatorial methods obtain slightly more confessions than information-gathering methods, but the information is much less reliable and it is associated with an unacceptable increase in false confessions. This leads to erroneous convictions because, once the person has made a self-incriminating statement, it will almost invariably be accepted as unquestionable proof by judges and juries in spite of eventual allegations of torture¹ (Forrest & Woody, 2010).

Table 1: *Main methods used in coercive interrogation*

In coercive interrogation, the interrogator:

- Only accepts the possibility that the detainee is guilty and refuses to accept anything that goes against this hypothesis. This has been decided in the fact-finding and pre-interview phase. The interrogator does not want to listen to what the detainee has to say, only to lead him or her to recognise his or her responsibility.
 - Tells the detainee that there is ‘absolute certainty’ that the detainee committed the alleged offence and that there is sufficient incriminating evidence (or confessions by witnesses or other detainees). If necessary, the interrogator lies.
 - Does not allow the person to make any denial and cuts off interventions that do not go in the desired direction. The detainee is only allowed to say things which are in line with the desired direction.
 - Exhaustion, argumentation, emotional manipulation or any other tactics deemed necessary are employed.
 - Uses different ‘acting’ approaches (friendly/unfriendly, among others), in theatrical strategies to manipulate the detainee’s will.
 - Exploits personal information and detection of potential feelings of shame and guilt related to the detainee’s social network or to personal matters.
 - Presents an alternative question in which both options are incriminating following hours of interrogation and when the person is extremely tired, confused and wants to end interrogation at any price.
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¹ One of the biggest achievements in the fight against ill-treatment of detainees is when the UK following the introduction of the Police and Criminal Evidence Act 1984 (PACE), required the audio-taping of all police interviews with suspects, a measure later adopted in Norway and other countries. In practical terms, this means that courts are able to apply the exclusionary rule and dismiss evidence when they take the view, by considering the tape, that the interrogation was coercive, and thus inadmissible.

State of the art: the evidence against coercive interrogation

Over and above the ethical issues surrounding coercive interrogation, there is an increasing body of evidence supporting the use of Investigative Interviewing. Different experimental paradigms in social psychology using students or volunteers have shown that an information-gathering approach yields more relevant information than an accusatorial approach and leads to more diagnostic impressions by third party observers (see for instance Evans et al., 2013). Positive (praise) and negative (deprecation) emotional approaches to interrogation are more efficient than a direct, accusatorial approach (Evans et al., 2014). Also, a series of complex observational studies using a dynamic-interactive approach and content analysis of video-recorded interactions has shown that suspect cooperation was positively influenced by rapport and relationship building techniques, though it was negatively impacted by direct presentation of alleged evidence and confrontation/competition. Moreover, the dynamic, negative effects of confrontation/competition approaches lasted for up to 15 minutes compromising all of the interview that followed (Kelly, Miller, & Redlich, 2016).

Importantly, in a specific study analysing 418 video interviews with 58 convicted terrorists, Alison, Alison, Noone, Elntib, & Christiansen (2013) with a multidimensional measure of strategies, interactions and outcomes, present a structural equation model revealing that motivational interviewing was positively associated with adaptive interpersonal behaviour from the suspect's side, which, in turn, increased interview results, and exactly the opposite for even minimal expression of maladaptive interpersonal interrogator behaviour. The study provides a unique validated analysis of the benefits of a rapport-based, interpersonally

skilled approach to interviewing terrorists in an operational field setting. This was confirmed for a subsequent analysis of 181 police interrogations with international (Al-Qaeda and Al-Qaeda-inspired) paramilitary, and right-wing terrorists. The study showed that adopting an adaptive rapport-based interrogation style in which suspects are treated with respect, dignity, and integrity is the most effective approach for reducing suspects' use of passive, verbal, and no-comment counter-interrogation tactics (Alison et al., 2014). A retrospective study with 100 convicted offenders showed a strong correlation between cooperation and confessions and a humanitarian interviewing score (Snook, Brooks, & Bull, 2015). Granhag, Kleinman, & Oleszkiewicz (2016) have empirically tested the efficacy of the so-called Scharff method (an empathetic method following the name of a friendly and successful German Luftwaffe interrogator) when compared to a direct accusatorial approach. The results seem to be consistent also in collectivistic societies like Japan (Wachi, Watanabe, Yokota, Otsuka, & Lamb, 2016). In summary, there is a wealth of recent experimental research, some of it naturalistic studies in real field situations that show that empathetic and respectful interviewing is not only more ethically acceptable, but more efficient than coercive interrogation.

From the interrogator's point of view

Goodman-Delahunty, Martschuk, & Dhami (2014) propose classifying interrogation methods in legalistic, physical, cognitive and social strategies that can be either coercive or non-coercive (Table 2).

They performed a retrospective study with 64 interrogators and 30 "high-value" detainees from five countries describing specific interrogator-detainee interactions according to the above categories. The accusatorial approach

Table 2: *Classification of strategies in coercive and non-coercive interrogation*

Strategy	Coercive	Non-coercive practices
Legalistic	Accusatorial, guilt-presumptive, maximization, minimization	Information gathering, open-ended questions, avoid pre-judgment
Physical	Isolation, restraints, extreme temperatures, assault	Refreshments, soft furnishing, breaks
Cognitive	Confront with evidence, deceive about evidence, surprise	Present evidence for confirmation, explanations, transparent process
Social	Intimidation, threats, hostility	Rapport, reciprocity, friendliness, respect, consideration

Source: Goodman-Delahunty, Martschuk, & Dhami (2014)

was positively correlated with physically coercive strategies and negatively with forms of social persuasion. Detainees were more likely to disclose meaningful information in response to social strategies and earlier in the interview when rapport-building techniques were used. They were less likely to cooperate when confronted with evidence. Disclosures were also more reliable and complete in response to non-coercive strategies, especially rapport-building and procedural justice elements of respect and voice. Physical coercion, intimidation and deception were reasons cited for providing false information both by interrogators and detainees. Similar results were obtained in a survey commissioned by the task force that led to the creation of the High-Value Detainee Interrogation Group (HIG) by Obama's administration (Russano, Narchet, Kleinman, & Meissner, 2014) with 42 highly experienced military and intelligence interrogators. The conclusions are quite in line with the well-known qualitative study with a focus group of veteran interrogators by Arrigo and Wagner (2007). In fact, the US Senate Intelligence Committee Report on CIA's detention and interrogation program (CIA, 2014) concluded that "the CIA's use of its enhanced interrogation techniques was not an effective means of acquiring intelligence or gaining cooperation from detainees" (p. 3).

Why, then, if there is such overwhelming evidence that investigative interviewing yields better results at less emotional and political costs, is coercive interrogation in most countries the norm? Damian Corsetti, a former interrogator at Bagram (Afghanistan) and Abu Ghraib (Iraq) in his memoirs (Pardo, 2014) explains that inappropriate and coercive interrogations are the result of lack of training, group pressure and imitation of others in the use of physical and psychological violence, pressure from headquarters for daily reports with fast positive results linked to personal characteristics of the interrogator (a sense of heroism, a sense of omnipotence and power, perception of immunity and full legal coverage if needed, among others) (Pérez-Sales, 2016). While Corsetti's justifications represent an extreme environment for interrogators and not the usual law-enforcement environments, it gives an insight into lower-level practice and can help us to understand why coercive interrogations are still widespread. As veteran interrogators recognise, when the interrogator is under pressure with a detainee considered of high value, investigative interviewing demands more effort and control.

Different naturalistic and experimental research models have shown what can be called the high confidence/low accuracy combination. Interrogators can rely on their perceived

unique capacity to distinguish when a detainee can provide useful information (Costanzo & Gerrity, 2009). If they are confident but wrong in their judgment that a suspect is lying, they are likely to turn to coercion and ill-treatment as a means of forcing a suspect to tell the “truth.” A review of studies has recently shown that police officers trained in the use of coercive interrogation (and thus assuming that a suspect is guilty as a departing point for the interrogation) tend to assume there is more deception and lies where there are none. Stressful and high-working memory conditions exacerbate misattribution errors in interpreting suspects’ non-verbal and verbal behaviour (Kleider-Offutt, Clevinger, & Bond, 2016). In coercive interrogation, the fact is that it is impossible to distinguish true from false information. It is almost impossible to know when to stop interrogation and decide that silence is due to lack of information and not resistance to cooperate and thus, to escalate to ever more coercive tactics ending in torture.

The importance of regulation in this area is also emphasised by the public’s apparent willingness to accept behaviour which is contrary to human rights. There appears to be a widespread assumption that detainees are by virtue of their status guilty and thereby deserve what they get, which is likely to be reinforced by popular culture and media (Flynn & Salek, 2012; Gronke et al., 2010; Homant, Witkowski, & Howell, 2008; Miller, 2011; Thomas, 2011). To cite one particular study, after the Madrid train bombings in March 2004, 66% of US-citizens supported not allowing suspects to sleep, 57% hooding for long periods of time and 38% withholding food and water (Washington Post, 2004). All of these are considered key elements in inducing a false confession (Davis & Leo, 2012). Choosing a hard interrogation style seems more an issue of retribution than efficiency. An experimental study conducted with a broad national sample

of US residents found that the desire for harsh interrogation is largely isomorphic with the desire to punish, and that both effects are mediated by the perceived moral status of the target, but not the perceived effectiveness of the interrogation (Carlsmith & Sood, 2009). So, are we seeking information or revenge?

The stress of interrogation

Interrogation is a stressful experience in itself. The subject usually feels high levels of anxiety and fear because of the conditions of detention (even if they are not harsh conditions), isolation (including being alone with one’s thoughts), lack of control and uncertainty about what will happen next, how long the situation will last and the potential consequences. This can clearly impair the subject’s ability to remember, to think clearly and logically, and to make proper decisions. Thus, the experience of interrogation is not a neutral encounter between two people, even under normal conditions.

Claiming innocence is also not easy. Neurophysiological experimental studies have shown in innocent subjects the significantly higher physiological costs of defending their innocence as compared to groups of guilty and innocent people that choose to “confess” (Guyll et al., 2013). Exhaustion encourages the detainee to believe in promises of leniency and minimisation or maximisation tactics and the false idea that the justice system will in the end recognise innocence and not take into account the false confession. Madon, Yang, Smalarz, Guyll, & Scherr (2013) have shown in a series of experimental studies how the length of the interview (even the expectation of length) results in short-sighted decisions to confess, irrespective of whether the subject is innocent.

Davis and Leo (2012) have developed a model that links basic routine elements of a law-enforcement interrogations to confessions called the IBRD (Interrogation-Related

Regulatory Decline) which proposes that a person's self-regulation capacities must remain intact in order to confront stressful situations. In their experimental model there are three situations in particular (emotional overload, sleep deprivation and glucose deficiency linked to food and water restrictions) that undermine the capacity to self-regulate, making the person more vulnerable to pressure during interrogation. Coercive interrogation (most frequently, hours of exhaustive questioning with interrogators shifting roles, taking turns and using emotional and cognitive manipulation tactics) leads the person to either reveal pieces of information (which may be true but are most likely to be fabricated) in an attempt to stop the situation, or confess to whatever is demanded of him or her. Even if some of the information is true, the weakness causes the detainee's memory to be partial and unreliable, merging what might be true with what has been suggested or fabricated, causing inaccurate information.

O'Mara has, among many contemporary neuroscientists (Elbert et al., 2011; Jacobs, 2008; Putnam, 2013; van Bergen, Jelicic, & Merckelbach, 2008), accurately summarised how stress, pain, sleep deprivation, starving, drowning or manipulating temperature affects the brain and affects memory and executive functions (O'Mara, 2011, 2016).

There are some experimental paradigms linking the use of pain in interrogations to disclosure of information. Houck & Conway (2015) developed a model in which participants played a game that was designed to be a proxy of an interrogation scenario. As part of the game, participants were instructed to keep specific information hidden from an opponent while their hand was submerged in varying temperatures of ice water (a cold pressor test that causes pain). Further, their opponent verbally pressured them to reveal the information. Analyses revealed that participants were

more likely to reveal false information when exposed to the cold pressor test, and this effect became more pronounced as manipulated water temperatures became colder (from 10 degrees to 5 degrees to 1 degree).

John Schieman (2012; 2016) has applied mathematical models linked to game theory to see which combinations of interactions between interrogator and detainee produce more effective results. He showed that what he calls the Bush model of interrogation can hardly be justifiable in terms of efficacy. It necessarily results in increasingly frequent and brutal torture, including innocents, but fails to reliably yield valuable information. In game theory, the interrogator that follows coercive techniques is not the winner. Baliga and Ely (2016) have also recently developed a dynamic model of interrogational torture in which they include the political and credibility costs of torture showing that coercive interrogation is only cost-efficient in very limited and unrealistic circumstances.

Universal Protocol on Investigative Interviewing.

Juan Méndez, during his time as United Nations (UN) Special Rapporteur on Torture called on States to develop a universal protocol on investigative interviewing (UN Doc. A/71/298) to limit the capacity of law enforcement officials to engage in torture, mistreatment, and the use of coercive methods during interviews. According to preliminary data, only 25 countries around the world have regulations that promote investigative interviewing practices (Table 3).

As discussed above, there is overwhelming and increasing evidence from social experimental psychology, reports from experienced interrogators, neurobiology and forensic science and game theory that shows coercive interviewing is ineffective.

Additionally there is an increasing body of knowledge on successful interviewing addressing topics related to linguistics (question types, timing of questions etc), rapport building (especially on types of empathic behaviours to suspects and outcomes), different models of disclosure of evidences and others (Bull, 2014; Oxburgh, Myklebust, Grant, & Milne, 2015)

This is knowledge that lacks diffusion to counter-balance the folk knowledge of media and film surrounding coercive interrogation as a useful tool to save lives (Flynn & Salek, 2012; Van Veen, 2009). National legislation and international law must move one step ahead of the demands of society and act according to ethically sound principles and scientific evidence. A set of standards for

Table 3: *Key elements in Special Rapport proposal on Universal Protocol for Investigative Interviewing (Mendez, 2016)*

Elements of a universal protocol for interviews	
A. Alternative model of investigative interviewing	
1. Legal framework against coercive questioning and techniques	<ul style="list-style-type: none"> • Detailed guidance on the purpose and parameters of a human rights-compliant interviewing model • Prohibition of any form of coercion during the questioning of suspects, to interviews of witnesses, victims and other persons in the criminal justice system • Irrespective of the international or non-international character of the conflict and of the status of the person questioned
2. Guiding principles of investigative interviewing	<ul style="list-style-type: none"> • Interviewing model based on the principle of presumption of innocence • Physical environment and conditions during questioning must be adequate, humane and free from intimidation • Interviewers must seek to obtain accurate and reliable information in the pursuit of truth; gather all available evidence pertinent to a case before beginning interviews; prepare and plan interviews based on that evidence; maintain a professional, fair and respectful attitude during questioning; establish and maintain a rapport with the interviewee; allow the interviewee to give his or her free and uninterrupted account of the events; use open-ended questions and active listening; scrutinize the interviewee's account and analyse the information obtained against previously available information or evidence. • Training and change in culture and mindset
B. Set of standards and procedural safeguards	<ul style="list-style-type: none"> • Information on rights • Right of access to counsel • Right to remain silent • Additional safeguards for vulnerable persons • Recording • Medical examination
C. Accountability and remedies	<ul style="list-style-type: none"> • Complaint mechanisms, investigations and sanctions • Exclusion of evidence

proper interrogation of detainees and witnesses is vital. Recent strategic meetings in Geneva (27 January 2017) and New York (9 June 2017) outlined three different parts: a set of guidelines on investigative interviewing methods, a set of procedural safeguards accompanying interviews (i.e. legal assistance, systematic recording) and a section with guidance for monitoring and implementation (see Table 3).

Key to this debate is the concept of torturing environments (Pérez-Sales, 2016). The line between interrogation and torture should be based on the selection of ethically acceptable techniques, but it would be naïve to think that torture can be avoided by using only certain methods. There is no point in distinguishing between interrogation and torture based on the use of certain allowed techniques without considering the context. Some, if not all, of the techniques used in the Enhanced Interrogation program (which has been found to constitute torture) appear on the most recent taxonomy of interrogation techniques (Kelly et al., 2016; Kelly, Miller, Redlich, & Kleinman, 2013; Kelly, Redlich, & Miller, 2015). As the testimonies of survivors demonstrate, the most benign interrogation procedure can destroy a person when he or she has been subjected to a ‘softening’ period, or when used in a cumulative or sequential way, or in a context of exhaustion and confusion. The presence or absence of torture is defined not by technique, but by the context and the way in which techniques are applied (Pérez-Sales, 2016).

Interrogation techniques can amount to torture and should be integrated into a general schema on how torture works. The fact that this is one of the more neglected aspects in research on psychological torture makes it all the more

important and the beginning of the work to develop a Universal Protocol on Investigative Interviewing is welcomed.

This issue

In this issue, in addition to the usual scientific articles, we have two sections focused on particular topics. In the first, the focus is on the right to rehabilitation of torture survivors who have been or remain at Guantánamo Bay detention centre, a topic that grew out of presentations given at the 10th International Scientific Symposium organised by IRCT that was held in Mexico City in December 2016ⁱⁱ. Polly Rossdale and Katie Taylor present a review of Reprieve’s Life after Guantánamo Project that provided worldwide assistance to ex-detainees. The second paper, by James Connell, Alka Pradhan and Margaux Lander, addresses the complex issues involved in tackling the right to rehabilitation for detainees still at Guantánamo. It explores important legal and medical aspects of the right to rehabilitation in this context. Despite not being technically on US soil, these detainees have been exposed to torture by the US authorities and are thus entitled, according to the UN Convention against Torture and General Comment 3, to rehabilitation. The section is complemented by a third paper concerning ill-treatment actually on US soil by Eric Ordway, Jessica Djilani and Alexandria Swette, which describes the *Ziglar vs Abassi* case, and the Amicus Brief that was submitted in support of it. Filed in 2002, *Abassi* arose out of the mass detentions of immigrants following the September 11 terrorist attacks. Indiscriminately labelled and treated as terrorist suspects and confined for months under extremely harsh conditions and subjected to physical violence, most of them were released months later without any formal charge, and suffering from severe physical and

ⁱⁱ See the online proceedings at <http://events.irct.org/>

mental health consequences. The Amicus Brief filed by a group of prominent medics, scholars and human right defenders is focused on the ill-effects of solitary confinement. This final paper in the section therefore serves as a reminder that, in addition to the higher profile cases of Guantanamo and the so-called Extraordinary Rendition detention centres, there are also incidents of torture and ill-treatment on US soil.

The second focus can be found in the Perspectives Section of the Journal and is devoted to Iran. Two survivors of torture share their experience. Hasti Irani (a pseudonym) explains in a compelling way the impacts of solitary confinement. The second paper, based on information gathered whilst in detention with no small risk to the author, collects information from 16 in-mates to offer experiences on methods, impacts and coping with solitary confinement.

Finally, we are glad to also include two regular scientific articles. Sabrina Friis Jørgensen, Mikkel A. Auning-Hansen and Ask Elklit present data on the lack of relationship between disability and clinical symptoms in torture survivors under rehabilitation. Hans Draminsky Petersen and Benito Morentín analyse ethical elements in the medical documentation of torture through the subjective experience of a sample of Basque torture survivors.

We sincerely hope that readers will find the variety articles in this issue fascinating.

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