# EXPLOITATION AND HIGH VALUE INTERROGATION GROUP

Quick quiz:

What was the first count that Umar Farouk Abdulmutallab — the UndieBomber — was found guilty of?

Answer: Conspiracy to commit an act of terrorism transcending national boundaries.

The charge was added in a superseding indictment issued December 15, 2010, just a week after Judge John Bates dismissed the ACLU/CCR suit trying to enjoin the government from killing Anwar al-Awlaki unless he was an imminent threat and three months after Abdulmutallab fired his lawyers, which apparently ended all talks of a plea deal.

As conspiracy indictments often do, Abdulmutallab's describes his co-conspirators as "others whose names are both known and unknown to the grand jury." None of the other conspirators are named, at least not in unsealed form. Not Ibrahim al-Asiri, who, in sentencing documents, the government named as the bomb-maker. And not Anwar al-Awlaki, who, over and over again, the government has claimed was the operational leader of the plot.

I raise this for two reasons. One, because I really am going to write those posts showing why the government's case against Awlaki is much weaker than all the journalists who credulously repeat anonymous claims about his operational role present. One piece of evidence that might suggest the government case is not that strong is that they didn't even name Awlaki as a co-conspirator in their case against Abdulmutallab even while Awlaki is presumably one of the co-conspirators the grand jury heard about.

Perhaps they simply didn't have enough evidence.

Perhaps doing so risked inviting public statements from Awlaki that would create distractions from the slam-dunk case against Adbulmutallab. Perhaps the Obama Administration simply preferred to kill Awlaki without any hint of legal charges against him, to revel in unchecked presidential power.

But you'd think, if the case against Awlaki were strong enough to merit his death, it would be strong enough to name him a co-conspirator in charges already filed.

Apparently not.

The other reason I raise it is to consider what has happened with interrogation under Obama particularly as they rolled out the High Value Interrogation Group, HIG. As this useful summary from last year lays out,

> *The HIG was created as the result of a recommendation made in the summer of 2009 by President Barack Obama's task force on terrorist detentions and interrogations. The group is housed in the FBI and led by an FBI official. There are two deputies — one from the CIA and one from the Department of Defense.*

The first major terrorist attack under Obama came from Najibullah Zazi. Not only was that before the HIG had been constituted, but the FBI had to work up from False Statements charges to charges associated with Zazi's plot to bomb the subways. One key turn in the case came when they charged Zazi's father, which got Zazi to cooperate.

Then there was Nidal Hassan, the US soldier who allegedly shot numerous fellow soldiers at Fort Hood, whose court-martial prosecution under the UCMJ (*not* a military commission) makes his an entirely different kind of case.

With Abdulmutallab, HIG was not formally established yet. Local FBI agents conducted the

initial interview. Abdulmutallab stopped cooperating after being read his Miranda Rights, until a month later when — reportedly after some persuasion from his family — he started cooperating again. The HIG was involved in those later interrogations in some form, and reportedly in them, Abdulmutallab implicated Awlaki.

In summer of 2011 (that is, after the superceding indictment already did not name Awlaki), Abdulmutallab argued the government should not be able use anything from those later interrogations because they took place in the context of a plea deal that was never finalized; while the government disputed Abdulmutallab's claims about whether they could use those interrogations, they agreed not to do so.

In other words, in the first case where HIG was involved (though in some limited fashion), they failed to get what they presumably sought: an admissible confession that might be used to charge Awlaki, which would in turn make everything that came subsequently more legitimate. There's something about that evidence that made it unusable for the government.

I wonder whether the failure to get what it needed from Abdulmutallab has influenced how the government has deployed the HIG since.

Which brings us to Faisal Shahzad and Manssor Arbabsiar, two terrorism cases in which HIG was involved from the start. As I laid out in this post, both naturalized US citizens were held for extended period (two weeks, depending on how you count it) under a purportedly waived — though, I think, potentially coerced — right to a court hearing. There are hints — just hints, mind you — that the HIG may have used things like sleep deprivation and other manipulation of senses as part of the interrogation (the most substantial complaint about the techniques used came from Arbabsiar's lawyer, but it is almost entirely redacted). In both cases, though, the government got just what it wanted from the interrogations.

That's particularly true in the Arbabsiar case, where the plot was largely of the government's making from the start, but he said things that were pitched as implicating Iran (even though the evidence might support another country backing the effort).

As a reminder, John Brennan revealed two things that may implicate HIG at a recent hearing. First, the Administration won't back making the Army Field Manual the standard for interrogation — even though that was originally a guideline for HIG — for fear it would limit what FBI can do.

> HEINRICH: Thank you. Do you believe that all agencies of the United States government should be held to the interrogation standards that are laid out in the Army Field Manual as it — as currently required by Executive Order 13491? And do you support efforts to codify those requirements into law?
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> BRENNAN: The Army Field Manual certainly should govern the U.S. military's detention and interrogation of individuals.
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> The FBI has its own processes and procedures and laws that govern its activities. So what I wanted to do is to make sure that, you know, appropriate sort of attention is paid to FBI as opposed to the military.

And that FBI considers leaving people to "languish forever" an interrogation technique.

> BRENNAN: No. Again, it's tailored to the circumstances. Sometimes an individual will be Mirandized. Sometimes they will not be Mirandized right away. Mirandizing an individual means only that the information that they give before then cannot be used in Article III court.

> But, in fact, the FBI do a great job as far as eliciting information after they're Mirandizing them, and so they can get information as part of that type of negotiation with them, let them know they can in fact languish forever, or we can in fact have a dialogue about it intelligently.

Both of these might suggest use of Appendix M techniques of separation or something similar.

With two weeks of uninterrupted access to the detainee, HIG managed to deliver the intelligence the government wanted. In Shahzad's case, it included real intelligence, including the name the hawala service he used to get money from Pakistan, as well as the necessary implication of Anwar al-Awlaki as an influence. With Arbabsiar, the government got a neat story that fleshes out the one their own informant invented.

When the government was using physical torture, it was fairly explicit that one of the things it wanted from terrorist interrogations was exploitation: not just intelligence, but also various forms of useful outcomes, whether it be implicating other detainees falsely, or false claims of ties between Iraq and Al Qaeda. I increasingly think that when people like Lindsey Graham bleat about the necessity of naming people as military combatants and sending them to Gitmo, he wants to retain that ability — not just intelligence collection, but exploitation, the creation of propaganda. Which brings us to Dzhokhar Tsarnaev, whom the government presumably would have held incommunicado as they had Shahzad and Arbabsiar if Judge Marianne Bowler hadn't intervened. Just in the two days of interrogation, Dzhokhar told the HIG that he and his brother were influenced by Awlaki's sermons, which promptly got leaked to the usual suspects to publicize. I had the same reaction JM Berger had when this news came out, "Here's an interesting Q: Did Dzhokhar volunteer they were fans of Inspire and Awlaki, or was he asked

about them specifically?" (Dzhokhar reportedly said they got their pressure cooker bomb recipe from Inspire, but there are also reports theirs went beyond what appeared in Inspire.)

Again, when we used physical torture, our interrogations were made less valuable because analysts believed they knew what people should know. Which led to more torture, but not usable intelligence.

The parade of former top counterterrorism experts on TV have revealed the same certainty about what might convince young men like the Tsarnaev's to commit a terrorist act, which usually downplays a reaction against US violence against Muslims, and magnifies the possibility of someone — and how much easier if it's the bogey man, Awlaki, than even some Chechen most Americans couldn't read? — "radicalizing" them.

I can't help but wonder whether HIG is designed to retain an exploitation function for the US, rather than just a interrogation function. I can't help but wonder whether HIG wants uninterrupted, unreviewed access to detainees to hide the quality of the intelligence they're getting behind plea deals?

Update: Language on Nidal Hasan adjusted for clarity. H/t to s for suggestion.