

EDUCING INFORMATION

Interrogation: Science and Art

Foundations for the Future

Intelligence Science Board

Phase 1 Report



NATIONAL DEFENSE INTELLIGENCE COLLEGE

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About the Intelligence Science Board

Mission

The Intelligence Science Board was chartered in August 2002 and advises the Office of the Director of National Intelligence and senior Intelligence Community leaders on emerging scientific and technical issues of special importance to the Intelligence Community. The mission of the Board is to provide the Intelligence Community with outside expert advice and unconventional thinking, early notice of advances in science and technology, insight into new applications of existing technology, and special studies that require skills or organizational approaches not resident within the Intelligence Community. The Board also creates linkages between the Intelligence Community and the scientific and technical communities.

Impact

Board members initiate studies and assessments in topic areas where they believe that the Board's interdisciplinary expertise and experience could benefit the Intelligence Community. In addition, the Board responds to tasking from the Associate Director of National Intelligence for Science and Technology and from the heads of elements of the Intelligence Community. All ISB tasks are mutually agreed to by the ISB and by the Associate Director of National Intelligence for Science and Technology. The Board's procedures for developing and communicating its findings and advice will remain as flexible and informal as is possible, consistent with the mission.

Membership

The Board is composed of approximately 25 members whose range of expertise encompasses the physical and biological sciences, information technology and communications, information policy, and the law, among others.

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The views expressed in this book are those of the authors and do not
reflect the official policy or position of the Department
of Defense, the National Foreign Intelligence Community
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The National Defense Intelligence College supports and encourages research on intelligence issues that distills lessons and improves Intelligence Community capabilities for policy-level and operational consumers

Educing Information: Interrogation: Science and Art—Foundations for the Future,
Intelligence Science Board.

The National Defense Intelligence College is pleased to present this work of the Intelligence Science Board on Educing Information. “Educing information” refers to information elicitation and strategic debriefing as well as to interrogation. Essays were prepared with the guidance of Dr. Robert Fein and other Board advisors. Works by authors who were employees of the Department of Defense when the essays were first created were reviewed and cleared for unrestricted public release by the Department of Defense’s Office of Security Review. This book has benefited from reviews by authoritative professionals in government and academia. The College appreciates the editorial contributions made by those reviewers, and especially the detailed comments by Margaret S. McDonald of the Mitre Corporation. The Foreword and Commentaries included in the book were invited by the editor and are not part of the Intelligence Science Board Report itself.

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The staff of the Study on EI, as well as numerous consultants, assisted immensely and immeasurably in its work. Others provided specialized and invaluable knowledge, editorial assistance, and moral and intellectual support throughout.

The authors of the scientific papers responded to requests, tasks, and deadlines with disciplined scholarship and grace. Staff from the NDIC Press worked skillfully, and patiently, to turn the study report into a book.

To each and all I express my thanks.

Robert Fein

Foreword

Robert A. Destro*

Educing Information is a profoundly important book because it offers both professionals and ordinary citizens a primer on the “science and art” of both interrogation and intelligence gathering. Because this is a book written by and for intelligence professionals, it starts exactly where one might expect it to start – with Dr. Robert Coulam’s superb discussion of the costs and benefits of various approaches to interrogation. For those who are (like me) unschooled in the art and science of intelligence gathering, careful study of the table of contents is perhaps the best way to decide which of the papers would provide the most convenient portal through which to enter a realm that is, by the admission of the authors themselves, both largely unexplored and enormously important to our national security. Steven M. Kleinman’s excellent paper on the “KUBARK Counterintelligence Interrogation Review” provided just the historical and theoretical background I needed to feel comfortable with the other papers. This book “works” either way.

Wherever one starts or ends this book, certain conclusions are inescapable. The first is that there is ample room for inter- and multi-disciplinary research and collaboration. Each of the papers included in *Educing Information* provides at least one, if not many, important “Foundations for the Future.” I look forward to participating in that process.

The second conclusion is that it is going to take a lot of hard work to convince other disciplines that the Intelligence Community is not making the case for interdisciplinary clean-up of what Dr. Robert Fein’s “Prologue” calls “traditional police-state methods of extracting information from their prisoners.” Even a cursory reading of the papers in this book points to the enormous opportunities for research and human rights protection that will flow from a systematic, and entirely legitimate, set of inquiries into the realm of information gathering.

I fear, however, that the authors and editors may have compounded the problem when they decided to characterize “interrogation” as “educing information.” Though “educing information” may sound a bit more benign than the far more robust-sounding image created by the concept of “interrogation,” it is not nearly benign enough to overcome the public relations problem that led to the choice of the phrase in the first place.¹ We lawyers call this process “characterization”

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¹ Editor’s Note: As pointed out by Robert Fein in the Introduction to this book, the term “Educing Information,” although not yet in common usage, encompasses information “elicitation” and “strategic debriefing” as well as interrogation. Robert Destro’s comments highlight the swift undercurrents that attend the topic at hand, and that can easily enlist adversarial stratagems. Professor Destro is not associated with the Intelligence Science Board.

in some contexts, and either “categorization” or “classification” in others. The advocate selects the characterization that seems to serve immediate purpose and constructs the argument from there. The problem is that others will be doing precisely the same thing – and, in this case, those “others” are likely to be the lawyers and human rights advocates that advise the legislators who in turn control intelligence research budgets.

Professor Kathleen Sullivan, Dean of Stanford University Law School, has observed that, in constitutional law:

Categorization is the taxonomist’s style – a job of classification and labeling. When categorical formulas operate, all the important work in litigation is done at the outset. Once the relevant right and mode of infringement have been described, the outcome follows, without any explicit judicial balancing of the claimed right against the government’s justification for the infringement. Balancing is more like grocer’s work (or Justice’s) – the judge’s job is to place competing rights and interests on a scale and weigh them against each other. Here the outcome is not determined at the outset, but depends on the relative strength of a multitude of factors. These two styles have competed endlessly in contemporary constitutional law; neither has ever entirely eclipsed the other.²

Thus, it is not enough simply to choose a benign-sounding term like “educing.” Any lawyer or human rights advocate will understand both how and why the re-characterization was selected, and force the original discussion of how one “balances” the “need to know” against human rights concerns. There is no point in hiding the fact that we are talking about “interrogation,” and, to be honest, reasonable minds might differ on whether the term “educing” sounds all that “benign” in the first place.

All who are interested in the work product and ethics of the Intelligence Community should understand that the road ahead is going to be a long one. Like many, if not most, Americans I learned what I “know” about the “interrogation of bad guys” (both male and female) by watching prime-time television. Law school was (and remains) even less informative with respect to such questions. Most lawyers and judges learn the “art” (but not the “science”) of cross-examination of a hostile witness from either a mentor or a supervisor after embarking on the practice of law, and supplement that “training” by watching courtroom dramas recommended by their peers. It is going to take a sustained period of intensive interdisciplinary cooperation to clean up the rather sordid images of “interrogation” that have become the stuff of movies and prime-time television.

There is a real need for “outreach” and professional collaboration here. Lawyers, judges, legislators, and human rights advocates know little to nothing about either the “science or art” of intelligence gathering, but all of them know

² Kathleen M. Sullivan, “Post-Liberal Judging: The Roles of Categorization and Balancing,” 63 *U. Colo. L. Rev.* 293, 293-294 (1992).

that the interrogation of adverse parties in litigation is essential to the litigation or Congressional hearing process. We freely admit (among ourselves) that “discovery” (our term for “educing information”) is often a grueling, time-consuming, and expensive process, but many see absolutely nothing wrong with hiding the costs – and the results – from the general public. We teach our law students quite a lot about the law governing the custodial interrogation of criminal suspects, but not too much about the theory and practice discussed in Ariel Neuman and Daniel Salinas-Serrano’s fine paper on custodial interrogation in the law enforcement context. We pride ourselves on our commitment to both human rights and the preservation of rule of law, but work in a profession that decries the loss of civility brought about by the hard-hitting (and sometimes unethical), adversarial litigators we see every night on television.

These are your critics. They are a tough audience with quite a lot to learn *from you*. Human rights advocates and civil rights litigators view themselves as “private attorneys general” whose role is to litigate in defense of individual rights, and they view the courts as the only branch of government capable of striking what now-retired Justice Sandra Day O’Connor called “sensible balances” between the rights of the individual and the needs of organized society. Courts and legislatures cannot strike those “sensible balances” without first acquiring a thorough grounding in the “science and art” of your profession. *Educing Information* is a welcome “first installment” on that effort.

And what are we to make of “public opinion”? Unfortunately, that is a relatively easy question. Prime-time television increasingly offers up plot lines involving the incineration of metropolitan Los Angeles by an atomic weapon or its depopulation by an aerosol nerve toxin. The characters do not have the time to reflect upon, much less to utilize, what real professionals know to be the “science and art” of “educing information.” They want results. Now. The public thinks the same way. They want, and rightly expect, precisely the kind of “protection” that only a skilled intelligence professional can provide. Unfortunately, they have no idea how such a person is supposed to act “in real life.”

Is there a theme here? Yes, a simple one. Prime time television is not just entertainment. It is “adult education.” We should not be surprised when the public (and many otherwise law-abiding lawyers) applaud when an actor threatens the “hostile *du jour*” with pain or mayhem unless he or she answers a few, pointed questions before the end of the episode. The writers craft the script using “extreme” measures because they assume, as our own government has, that police-state tactics studied for defensive purposes can be “reverse engineered” and morphed into cost-effective, “offensive” measures.

Though eminently understandable, such reactions are incredibly short-sighted and profoundly unethical. We don’t need just any answers, we need good answers. Our health and safety, and our posterity, depend on it.

Don’t expect *Educing Information* to become required reading among the Hollywood screen writer set anytime soon, but it certainly should be. All of us could learn quite a lot.