May 3, 2009

Shedding light, not heat, on torture

Our nation is struggling to determine the right way to provide accountability for those who developed and executed the Bush Administration's policies for interrogating captured terrorists.

On one side are those who claim that everyone involved -- from the senior leaders to the lawyers to the interrogators themselves -- have committed war crimes by authorizing and then conducting interrogations using methods that constitute torture or cruel, inhumane and degrading treatment under domestic and international law.

These rule of law absolutists argue that crimes have been committed, thus law and morality require that the perpetrators be investigated, prosecuted and punished. At the very least, they claim, a "truth commission" should be empanelled to probe past misdeeds and call government officials to account.

On the other extreme are the "defenders of enhanced interrogation" who continue to support the interrogation program because, in their view, the techniques were appropriately constrained, they were used on only a few high-value targets and information was obtained that prevented subsequent attacks.

Both views are fundamentally flawed. The "absolutists" refuse to acknowledge the substantial damage that criminal prosecutions or a divisive independent investigation of possible war crimes would cause to our intelligence agencies and our ability to tackle the difficult issues confronting the nation. The claim of the "defenders" that brutal interrogations possibly constituting torture should be forgotten and forgiven is equally untenable.

We need to find a middle ground that imposes appropriate accountability without damaging our ability to collect intelligence in the future and paralyzing our politics.

Some accountability has already been imposed by the voters. Both presidential candidates decried the use of the disputed interrogation techniques during the campaign. President Barack Obama has fulfilled his campaign promise by banning the use of these controversial interrogation techniques.

Another step towards accountability would be to declassify and make public as many documents as possible about the interrogation program. Release of some documents has already stimulated public debate and forced those responsible for the policies to answer tough questions. More sunlight, in this case, will continue to be the best disinfectant.

We also need a public discussion on the contentious topic of whether the interrogation techniques in dispute produce useful information. Obama has created a Cabinet-level task force to examine this question and issue a report in July. This is not sufficient. A panel of national experts should be appointed to address this question and hold public hearings. Its scientific conclusions will provide a solid foundation for future policies.

Obama should continue to firmly rule out criminal prosecutions of intelligence officers who conducted interrogations that fell within the bounds of the legal guidance issued by the Justice Department. If these interrogators are prosecuted it will send an unmistakable message to our intelligence officials around the world -- political leaders cannot be trusted, and when the going gets tough the rules will change and the rug will be pulled out from under them.

Commission hearings under the glare of the media lights and without rules of evidence or constitutional protections for the witnesses may be even more damaging. In our dangerous world, we cannot afford to cripple our intelligence-collection abilities in this way.

If allegations arise that interrogators went beyond the approved tactics, they should be treated just like any other claim of government misconduct -- through a confidential, internal investigation by the Justice Department.

The lawyers who gave a legal green light to the disputed techniques bear much of the responsibility for this episode, but criminalizing their conduct goes beyond the pale. Except in rare circumstances when lawyers knowingly abet criminal activity, accountability for lawyers is achieved through the application of ethical standards, which is precisely what is already happening in this case. The ethics investigation being conducted by the Justice Department's Office of Professional Responsibility is a grave matter for the lawyers involved that could result in serious consequences for them.

Ultimately, accountability should rest with former President George W. Bush and Vice President Dick Cheney, along with their senior advisers. Voters chose not to hold Bush and Cheney accountable in the 2004 election, even after a great deal about the interrogation program and the horrible images of Abu Ghraib had been made public. They rendered a more critical verdict on the Bush Administration during the 2006 and 2008 elections. Like it or not, that is the way our system works.

Now, since all of these officials have left office, accountability can only be achieved through the judgment of history. The proposal to create a commission to investigate the interrogation program is, in effect, an effort to influence that historical judgment. With journalists, commentators and scholars combing over every shred of new information that becomes available, this seems an unnecessary exercise and one that may very well cause more harm than good.

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