

**REPORT OF THE SPECIAL TASK FORCE
ON INTERROGATION AND TRANSFER POLICIES**

INTRODUCTION AND SUMMARY

Executive Order 13491 directed the Special Task Force on Interrogation and Transfer Policies to undertake two missions: (1) “to study and evaluate whether the interrogation practices and techniques in Army Field Manual 2-22.3, when employed by departments and agencies outside the military, provide an appropriate means of acquiring the intelligence necessary to protect the Nation, and, if warranted, to recommend any additional or different guidance for other departments or agencies”; and (2) “to study and evaluate the practices of transferring individuals to other nations in order to ensure that such practices comply with the domestic laws, international obligations, and policies of the United States and do not result in the transfer of individuals to other nations to face torture or otherwise for the purpose, or with the effect, of undermining or circumventing the commitments or obligations of the United States to ensure the humane treatment of individuals in its custody and control.”¹

The Task Force established an Interrogation Working Group to address the first mission, and a Transfer Working Group to address the second mission. After meeting with agencies of the United States government, foreign officials, and representatives of non-governmental organizations, the Task Force reached a series of conclusions and formulated a set of recommendations relating to interrogation and transfer policy. These recommendations should be coordinated and integrated with those of the Detention Policy Task Force.

Interrogation:

General Conclusions

The Task Force’s mission was to determine whether any agency other than the military should be authorized to use any interrogation practice or technique not listed in Army Field Manual 2-22.3 (the “Army Field Manual” or “Manual”) in order to protect national security. The Task Force could not undertake that task in a vacuum, however, and therefore asked federal law enforcement and Intelligence Community agencies to nominate interrogation practices and techniques for consideration. No federal agency informed the Task Force that it believed that it was necessary or appropriate to national security to use any interrogation practice or technique not listed in the Army Field Manual or currently used by law enforcement. In particular, the Central Intelligence Agency (CIA) informed the Task Force that it did not seek to use the enhanced interrogation techniques it had developed after September 11, 2001, to question high-value detainees. The President has also announced that the United States would no longer use those techniques. Accordingly, although there may be some lawful and effective interrogation practices and techniques that are not listed in the Army Field Manual or currently used by law enforcement agencies, the Task Force did not consider whether it was appropriate or legal for any agency of the federal government to use any specific technique not contained in the Army Field Manual.

¹ Executive Order 13491 is attached as Appendix A.

Nevertheless, the Task Force studied U.S. interrogation practices as extensively as time would allow. Based on that study, it reached the following conclusions:

- The Army Field Manual's description of permissible interrogation practices and techniques provides appropriate guidance to both inexperienced and experienced military interrogators.
- Experienced intelligence and law enforcement interrogators do not rely solely on particular interrogation techniques but instead develop lawful interrogation strategies based on extensive knowledge of the detainee and his organization, guile and deception, the use of incentives, and other factors.
- Experienced interrogators believe that the separation of a high-value detainee from other detainees is often essential to effective interrogation and that the U.S. government should maintain a detention capability that allows control of the detention environment to support intelligence collection. The legal, policy, and oversight questions raised by the establishment of a detention facility in the U.S. or abroad are beyond the Task Force's mandate, however, and are currently under consideration by the Detention Policy Task Force.
- To train effective interrogators, the United States must give its interrogators opportunities and incentives to gain experience in interrogation, not simply train them in interrogation techniques.
- The Army Field Manual imposes appropriate limits on interrogation. Among other things, the Manual bans cruel, inhuman, or degrading treatment, outlaws several specific interrogation practices, and bars interrogators from using any interrogation technique that they would not wish to see used on a United States citizen.
- Additional research is needed on the science of interrogation and the potential to develop new and more effective lawful interrogation practices, approaches, and strategies, particularly interrogation techniques that have the potential to obtain information as efficiently as possible in situations posing the greatest threats to national security.

Recommendations

The Task Force also formulated four specific recommendations:

1. *Create a High-Value Detainee Interrogation Group (HIG):* The Task Force recommends the creation of an interagency group that would deploy interrogation teams composed of interrogators, subject matter experts, analysts, behavioral specialists, and linguists to conduct interrogations of high-value

terrorist detainees. The HIG's primary goal would be the collection of intelligence to protect national security. Where possible and consistent with this objective, it should collect intelligence in a manner that allows it to be used as evidence in a criminal prosecution.

2. *Increase Intelligence Community and Law Enforcement*

Cooperation: Determining whether any given interrogation should seek only the collection of intelligence or a statement that could potentially be used against the detainee in a criminal prosecution should be a pragmatic decision based on the needs of national security, and not the interests or goals of a particular agency. One purpose of the HIG would be to ensure that that decision is made pursuant to settled, consistently applied criteria. Those criteria would make clear that an interrogation of a high-value detainee would be primarily to collect intelligence necessary to protect national security and, where possible and consistent with this objective, to gather information to be used in a criminal prosecution. Of course, those goals are not mutually exclusive and should be pursued in tandem whenever possible.

3. *Establish and Disseminate Best Practices:* If created, a High-Value Detainee Interrogation Group will develop a set of best practices for interrogation. The HIG should identify and disseminate those best practices and use them to conduct training for other agencies engaged in interrogation.

4. *Establish a Scientific Research Program for Interrogation:* Prior to the September 11 attacks, the United States had not engaged in a systematic effort to study and improve interrogation techniques in nearly 50 years. Although some resources have been devoted to studying interrogation since September 11, the United States should engage in a concerted effort to study the effectiveness and propriety of existing interrogation practices, techniques, and strategies and should try to develop new ones that meet the requirements of domestic law and the United States obligations under international law. Resources should be devoted both within the U.S. government and in academic and research institutions to further this goal.

Transfer:

General Conclusions

The Task Force identified and considered seven types of transfers conducted by the U.S. government:² (1) extradition, (2) transfers pursuant to immigration proceedings, (3) transfers pursuant to the Geneva Conventions, (4) transfers from the Guantanamo Bay detention facility, (5) military transfers within or from Afghanistan, (6) military transfers within or from Iraq, and (7) transfers pursuant to intelligence authorities. The Task Force did not consider transfers into U.S. custody or transfers within U.S. custody to be part of its mandate under the Executive Order.

The Task Force began by identifying the legal and policy framework within which the seven categories of transfers take place. As a legal matter, the United States has taken the view that it is barred from transferring an individual from its territory where it is more likely than not that the person will be tortured by the country to which he is transferred. As a policy matter, the United States has applied the same standard to wholly extraterritorial transfers. The Task Force also examined U.S. policies and practices with respect to obtaining and evaluating assurances from other countries that they will not torture a person transferred from the United States.

The Task Force carefully considered the key criticisms of U.S. transfer practices, as well as the operational and policy interests that are served by existing practices. The Task Force concluded that, while the seven identified transfer scenarios present strikingly different considerations, important U.S. national security interests are at stake in all of them. Particularly (but not exclusively) in the area of counterterrorism, transfers are an important tool for the United States in situations where U.S. prosecution or detention is not available, but where an individual may present a real danger or have significant intelligence value. Accordingly, proposed changes to existing practice must be developed in a manner that permits the continued use of transfers consistent with relevant humanitarian considerations. Operating within the framework of this general conclusion, the Task Force considered what steps could be taken to better ensure that U.S. transfer practices comply with all relevant domestic laws and policies and all relevant international obligations.

Recommendations

The Task Force formulated a number of recommendations, some of which apply to all of the transfer scenarios and some of which are specific to particular transfer scenarios:

² In this report, the Task Force has used the term "transfer" to describe a variety of different scenarios in which the United States moves or facilitates the movement of a person from one country to another or from U.S. custody to the custody of another country. The report does not use the term "rendition" because that term has no generally agreed-upon meaning.

1. *Improving Assurances:* The Task Force makes several recommendations aimed at clarifying and strengthening U.S. procedures for obtaining and evaluating assurances and increasing the use of monitoring mechanisms to implement assurances.
2. *Improving partner nation detention facilities and capabilities:* In considering recommendations on correctional assistance, the Detention Policy Task Force should take into account that the potential for transfers is increased by better facilities in partner nations, particularly in the Middle East and South and Southeast Asia.
3. *Amending Department of Homeland Security regulations:* The Task Force recommends changes to the applicable regulations to reflect the shift in responsibility for evaluating diplomatic assurances from the Immigration and Naturalization Service under the Department of Justice to the Department of Homeland Security.
4. *Monitoring ISAF detainees in Afghanistan:* The Task Force recommends that the U.S. Embassy in Kabul should develop a risk mitigation plan to improve monitoring of the treatment of detainees transferred by U.S. members of the International Security Assistance Force to the Islamic Republic of Afghanistan, taking into account resource and other practical concerns.
5. *Providing comprehensive assistance to develop detention facilities in areas where large numbers of detainee transfers are expected:* The Task Force recommends using certain aspects of the U.S. experience with the Afghan National Detention Facility as a model in current and future conflicts where the United States expects to capture a significant number of detainees, and plans eventually to transfer them to the host government.
6. *Negotiating assurances with host governments in future conflicts:* The Task Force recommends that, in the future, where it appears likely that the Department of Defense will hold and ultimately seek to transfer significant numbers of detainees to a host state, the Department of Defense, in cooperation with the Department of State, should negotiate assurances with the host government to govern the treatment of transferred detainees at as early a stage in the process as possible.
7. *Establishing Department of Defense policies or directives:* The Task Force recommends that the Department of Defense should adopt policies or directives governing transfers consistent with the policy statement in section 2242(a) of the Foreign Affairs Reform and Restructuring Act of 1998 (codified at 8 U.S.C. § 1231 note) ("FARRA").
8. *Establishing Intelligence Community policies or directives:* The Task Force recommends that elements of the Intelligence Community that may be called upon to conduct or participate in transfers should adopt policies or

The HIG's priority would be intelligence collection to prevent terrorist attacks on the United States and its allies and otherwise protect national security. Evidence collection for prosecution (which may also protect national security) would remain an important consideration, and steps should be taken to ensure that intelligence collection proceeds in a manner that does not limit future law enforcement options. In cases where the interests of intelligence collection and preservation of evidence diverge, collecting intelligence to prevent a future attack would take precedence. Accordingly, use of the MITs would not carry a presumption that the detainee should be prosecuted in a criminal court in the United States or that *Miranda* warnings should be given during the interrogation.

Organization: The Task Force considered three organizational models for the HIG: (1) a free-standing interrogation capability; (2) a "federated" model in which the HIG would be organized with resources from across the U.S. government on a case-by-case basis; and (3) a "hybrid" model involving a small permanent nucleus of people modeled on the Foreign Emergency Support Team (FEST) and augmented on a case-by-case basis for individual deployments. The Task Force recommends the third, or hybrid, model. This small group would be drawn from agencies in the Intelligence Community and would be responsible for maintaining training and exercise programs, the administrative aspects of deployments, and managing an overall research program. This approach should provide greater stability and clarity of operational authority than the federated model, while maintaining flexibility by keeping resources in individual agencies.

Under the hybrid model, individual agencies would be expected to establish and maintain minimum standards of training for individuals who are serving in the HIG or who are identified to deploy in a MIT. Agencies would also be expected to participate fully in the development and implementation of the HIG concept. The HIG administrative office would be responsible for the following activities with guidance and direction from the National Security Council's Counterterrorism Security Group:

- Managing the MIT interrogation program;
- Establishing interrogation priorities for the MITs;
- Developing policy, doctrine, and procedures for interrogations of high-value detainees;
- Based on information obtained from the Intelligence Community, identifying high-value detainees subject to interrogation if detained by the U.S. government or otherwise available for interrogation;
- Deploying MITs to interrogate high-value detainees who are on the HIG list or meet the HIG's criteria;

of detainees will be evaluated by the Department of Justice, in coordination with attorneys at the relevant agencies and the NSC/White House.

Mobile Interrogation Teams: A key element of the HIG is the establishment of Mobile Interrogation Teams (MITs) that would deploy to conduct interrogations of high-value detainees. A presumption would exist that the MITs would deploy to conduct the interrogation of a high-value detainee previously identified by the HIG, or who met the HIG's criteria, if the U.S. government detained or obtained the ability to interrogate the individual. The MITs would consist of interrogators, subject matter experts, analysts, behavioral specialists, and linguists drawn from existing programs, as needed. MIT interrogators would be U.S. government employees, would have specific expertise in interrogation, and would train to hone these skills and maintain current knowledge of terrorist groups, geographic regions, and relevant intelligence requirements. MIT subject matter experts, including law enforcement case agents and intelligence analysts with the greatest knowledge of a specific detainee or a specific subject matter, and others as needed, would provide detainee-specific and group-specific knowledge to the MIT during interrogation. The HIG would determine MIT membership for individual deployments based on available personnel from Intelligence Community and law enforcement agencies.

Individual agencies participating in high-value detainee interrogation operations would be required to:

- Establish and maintain current capabilities for interrogation;
- Train to standards set by the HIG;
- Maintain readiness to respond to HIG deployments;
- Participate fully in exercises, both operationally and administratively, as necessary;
- Provide onsite command and control where required; and
- Deploy and operate in accordance with guidance and objectives set by the HIG and the CSG consistent with existing laws, executive orders, directives, and interagency agreements that govern deployment and activities of the U.S. government executive branch employees overseas.

The Task Force concluded that the MITs must train and exercise together frequently to be effective. Several experienced interrogators told the Task Force that interrogation is less likely to succeed when an interrogator meets a supporting analyst or the interpreter immediately before an interrogation. Training should facilitate long-term working relationships and allow a MIT to develop interrogators who can work effectively with an interpreter and who know they can rely on the supporting subject-matter experts and analysts. In addition, by training and deploying together, MITs would develop the

most effective approaches to interrogation and be in the best position to provide input to researchers studying ways to improve interrogation.

The Task Force also considered whether the HIG could operate domestically by, for example, deploying an MIT to interrogate a high-value detainee or terrorism suspect captured in the United States. In the end, the Task Force concluded that the question whether the HIG would operate domestically was outside its mission, although it believes the question of domestic deployment warrants further consideration.

Logistical and Administrative Issues: The Task Force discussed several other administrative and logistical issues relating to the creation of the HIG and deployment of MITs. The Task Force determined, however, that these details were more appropriately addressed in an implementation plan.

2. Increase Intelligence Community and Law Enforcement Cooperation and Collaboration Against High-Value Detainees.

Leverage relevant authorities and capabilities to maximize both intelligence collection and potential criminal prosecution.

When the U.S. government detains or obtains access to a high-value detainee, it must often decide whether or not an interrogation of that detainee will have as an objective eliciting a statement that can be used against the detainee in a criminal prosecution in the United States or another country. The objectives of an interrogation may affect the course of the interrogation and the identity of the interrogator. Creating a consolidated team of interrogators with a variety of interrogation styles and experiences under unified leadership would make it possible to employ the most effective interrogation strategy for individual high-value detainees. Ideally, the MITs will know, in advance of deployment, the desired disposition of the detainee developed in the interagency planning process – U.S. or foreign prosecution, release, long-term detention, or deportation – and develop an interrogation plan that is tailored to the particular detainee and the desired disposition. By evaluating the potential for and possible interest in criminal prosecution prior to an interrogation, the HIG, with policy guidance from the CSG, can make appropriate decisions regarding the composition of the team, the strategy and sequence of the interrogation, and other issues that may affect the ability to prosecute the detainee. All planning and training should retain a significant degree of flexibility to account for the possibility of unforeseen developments in any capture and interrogation of a high-value detainee.

3. Establish Best Practices and Disseminate Them to the Interrogation Community

The HIG should continue to develop concepts of best practices and disseminate these to agencies that conduct interrogations.

