

Law Enforcement Interrogation of Terrorism Suspects

Introduction

When terrorism suspects are captured or arrested, it is important for the United States to learn all that it can from these individuals to prevent future attacks and gain knowledge about terrorist groups and others plotting to harm the country. Law enforcement interrogations, rather than military, are the most effective method of eliciting this information.

National security interrogations of terrorism suspects by the FBI and other law enforcement officials have a proven track record of successfully gaining actionable intelligence. Moreover, law enforcement interrogation often provides the best path to long-term incapacitation of such individuals.

Nevertheless, some politicians continue to promote the myth that terrorism suspects should always be detained and interrogated by the military. This myth is based on misinformation about the role and efficacy of law enforcement interrogations, and the impact of informing suspects of their right to remain silent and speak with an attorney.

Proponents of this myth often argue that military custody and interrogation is necessary for intelligence gathering because advising suspects of their rights, known as “*Miranda* warnings,” will prevent suspects from cooperating.¹

¹ See for example: <http://thehill.com/policy/national-security/358242-mccain-graham-put-nyc-terror-suspect-in-military-detention>; <https://www.nytimes.com/2017/11/01/us/politics/trump-guantanamo-saipov-truck-attack.html>).

But the facts show otherwise. The FBI’s top priorities are counterterrorism and counter-intelligence, which means that eliciting intelligence is a major component of law enforcement interrogations.² These interrogations have produced important intelligence about terrorists and terrorist groups and facilitated numerous terrorism convictions in federal court.³

Moreover, law enforcement agents have tools that are not available to military interrogators, including the ability to offer plea deals and involve suspects’ family members, who can sometimes help persuade suspects to cooperate. Fears that *Miranda* warnings hamper such intelligence gathering are unfounded, as suspects routinely waive their *Miranda* rights or cooperate after being advised of those rights and provided an attorney.⁴

This issue brief breaks down the facts on law enforcement interrogations. It provides examples of intelligence that has been elicited by law enforcement interrogations, explains why concerns about *Miranda* warnings are mistaken, and shows how law enforcement interrogation is often the most effective route for handling terrorism suspects.

² Allison D. Redlich, Christopher E. Kelly, and Jeanee C. Miller, “The Who, What, and Why of Human Intelligence Gathering: Self-Reported Measures of Interrogation Methods,” *Applied Cognitive Psychology* (2014) 28: 817-828.

³ U.S. federal courts have convicted more than 660 individuals on terrorism-related charges since 9/11. <https://www.humanrightsfirst.org/resource/federal-courts-continue-take-lead-counterterrorism-prosecutions>.

⁴ See below.

Law Enforcement Interrogations Are an Important and Effective Intelligence Gathering Tool

Law enforcement interrogation of terrorism suspects has produced a large amount of valuable intelligence about terrorist groups and their activities.

According to David Kris, former U.S. Assistant Attorney General for the National Security Division of the Department of Justice, “the criminal justice system has collected valuable intelligence about a host of terrorist activities. In effect, it has worked as what the Intelligence Community would call a HUMINT [human intelligence] collection platform.”⁵

Moreover, as Kris notes, “The Intelligence Community, including the National Counterterrorism Center (NCTC), believes that the criminal justice system provides useful information. For example, NCTC has explained that it ‘regularly receives and regularly uses ... valuable terrorism information obtained through the criminal justice system—and in particular federal criminal proceedings pursued by the FBI and Department of Justice. Increasingly close coordination between the Department of Justice and NCTC has resulted in an increase in both the intelligence value and quality of reporting related to terrorism.’”⁶

For example, law enforcement interrogations routinely yield intelligence regarding terrorist recruitment, finances, and geographic reach. They also glean information on terrorist tradecraft used to avoid detection, information about weapons programs and training, locations of safe houses and training camps, communication methods, and security protocols. Suspects interrogated by law enforcement have also identified operatives involved in past and planned attacks, and provided

information about plots to attack U.S. targets.⁷ This information has been invaluable to intelligence and military operations such as preventing attacks and targeting terrorist groups and their leaders, as well as putting other terrorists behind bars.⁸

Some specific types of the information elicited by law enforcement interrogators: one arrested suspect turned informant provided details on an al Qaeda plot to target the Long Island Rail Road, as well as the terrorist organization’s “structure, communications systems, planning, training, and tactics.”⁹ Another provided critical intelligence about al Qaeda and Al Shabaab leaders, including some of their locations, as well as information which helped prevent an attack in Saudi Arabia.¹⁰

Miranda Warnings Do Not Hinder Intelligence Gathering

Despite fears that reading suspects their rights will prevent interrogators from obtaining information, this has proven not to be the case. Many suspects continue to provide information even after being informed of their rights. Further, law enforcement interrogators can forego providing *Miranda* warnings when necessary, either by invoking the “Public Safety Exception,” or if they do not use the suspect’s un-*Mirandized* statements in court.

⁷ For more details on specific intelligence gathered by law enforcement officials, see: http://jnslp.com/wp-content/uploads/2011/06/01_David-Kris.pdf, <https://www.nytimes.com/2017/05/15/us/politics/service-to-both-al-qaeda-and-us-and-a-fate-hanging-in-the-balance.html>.

⁸ <https://www.nytimes.com/2017/01/27/us/intelligence-gained-from-somali-terrorist-shows-value-of-civilian-prosecutions.html>.

⁹ <https://www.nytimes.com/2017/05/15/us/politics/service-to-both-al-qaeda-and-us-and-a-fate-hanging-in-the-balance.html>

¹⁰ <https://www.nytimes.com/2017/01/27/us/intelligence-gained-from-somali-terrorist-shows-value-of-civilian-prosecutions.html>.

⁵ http://jnslp.com/wp-content/uploads/2011/06/01_David-Kris.pdf.

⁶ <https://www.justice.gov/nsd/justice-news-4>.

☑ Law Enforcement May Interrogate Individuals Without Providing *Miranda* Warnings

Contrary to what some claim, law enforcement officials can interrogate suspects before giving them *Miranda* warnings. As Judge Leonard B. Sands has explained, “*Miranda* only prevents an unwarned or involuntary statement from being used as evidence in a domestic criminal trial; it does not mean that such statements are never to be elicited in the first place.”¹¹ In other words, law enforcement interrogators can question a suspect without *Miranda* warnings but the suspect’s unwarned statements will not usually be admissible in court.

Former Justice Department detention task force member and national security expert Robert Chesney said that in cases like New York City truck attacker Sayfullo Saipov’s, “You don’t have to put someone in military detention at all if you want to do un-Mirandized, no-lawyer interrogation ... they’re not going to need this guy’s confessions or statements to convict him ... So, the idea that you have to shift to military, rather, is really beside the point.”¹²

This undermines critics’ claims that law enforcement interrogators must provide a *Miranda* warning upon taking the suspect into custody. While law enforcement should always promptly provide *Miranda* warnings, the law does allow them to question terrorism suspects for intelligence purposes without doing so.¹³

¹¹ See *United States v. Bin Laden*, 132 F. Supp. 2d 168, 189 (S.D.N.Y. 2001).

¹² <https://lawfareblog.com/national-security-law-podcast-emergency-edition-interrogation-prosecution-and-detention-issues-wake>.

¹³ *United States v. Patane*, 542 U.S. 630 (2004); *Chavez v. Martinez*, 538 U.S. 760, 773 (2003). *Michigan v. Tucker*, 417 U.S. 433, 444 (1974).

☑ The Public Safety Exception to *Miranda*

Law enforcement interrogators can also question a suspect without providing a *Miranda* warning when the questions are reasonably prompted by a concern for public safety. In such cases, the un-Mirandized statements may still be used in court.

The public safety exception comes from the Supreme Court case, *New York v. Quarles*.¹⁴ It permits law enforcement officers to question a suspect to address a threat to public safety.

Major terrorism suspects have been questioned without *Miranda* warnings by law enforcement under the *Quarles* public safety exception. These include Boston marathon bomber Dzhokhar Tsarnaev, who was questioned about immediate threats following his arrest. Interrogators also questioned Tsarnaev more extensively without advising him of his rights, but prosecutors did not plan to use statements given during this period during his trial. Rather, they used the interrogation to gather intelligence, including background on his activities with his brother after the bombing, the process of making the bombs, and his beliefs about Islam and U.S. foreign policy.¹⁵

Similarly, Umar Farouk Abdulmutallab, the so-called “Underwear Bomber” who attempted to set off a bomb on a flight from Amsterdam to Detroit on Christmas Day 2009, spoke to FBI agents for nearly an hour after his arrest without being Mirandized, as

¹⁴ *New York v. Quarles*, 467 U.S. 649 (1984). In this case, police were pursuing a rape suspect whose victim informed them the suspect was armed. When police apprehended the suspect in a grocery store, they questioned him without advising him of his *Miranda* rights about the location of the weapon (which was hidden in the store), and the suspect made incriminating statements in response. In court, the suspect challenged the admissibility of his statements, and the Supreme Court decided that the statements were admissible under a “public safety” exception to *Miranda*, since questioning the suspect about the weapon’s location was done to protect the public.

¹⁵ <https://www.bostonglobe.com/metro/2014/05/07/dzhokhar-tsarnaev-alleged-marathon-bomber-asks-judge-rule-out-statements-made-hospital/uCQd9PETLWJVqeJuQhSdeL/story.html>.

officers sought to determine whether there was another attack underway.¹⁶

While interrogations under the public safety exception must, by definition, be limited to a narrow time period (the time needed to determine if other attackers exist or if other explosives have been set, for example),¹⁷ the exception is another tool available to law enforcement officials.

☑ Terrorism Suspects Routinely Waive *Miranda* Rights

An estimated 81 percent of suspects waive their *Miranda* rights. Within this group, an estimated 68 percent completed their interrogations without invoking their *Miranda* rights, while 13 percent initially waived their rights but later invoked them.¹⁸ Many captured terrorism suspects also fall into this category, waiving their *Miranda* rights and continuing to talk freely to interrogators.

Indeed, in the 2014 federal court trial of Osama bin Laden's son-in-law Sulaiman Abu Ghaith, his interrogator FBI special agent Michael Butsch testified that Abu Ghaith waived his *Miranda* rights almost immediately and stated he "did not need an attorney to speak with us." Butsch and his FBI colleagues spoke with Abu Ghaith for hours while he

¹⁶ <http://www.nytimes.com/2013/04/21/us/a-debate-over-delaying-suspects-miranda-rights.html>. A federal appeals court upheld the in-court use of Abdulmutallab's un-Mirandized statements, under the Quarles public safety exception. *United States v. Abdulmutallab*, 739 F.3d 891 (6th Cir. 2014).

¹⁷ <https://www.newyorker.com/news/amy-davidson/what-happened-to-the-miranda-warning-in-boston>.

¹⁸ Saul M. Kassin, Richard A. Leo, Christian A. Meissner, Kimberly D. Richman, Lori H. Colwell, Amy-May Leach, Dana La Fon, "Police Interviewing and Interrogations: A Self-Report Survey of Police Practices and Beliefs," *Law and Human Behavior* (2007) 31: 381-400. The authors acknowledge that these statistics possibly result from problematic circumstances, including that suspects may be underage, have mental disabilities, or could be otherwise unable to understand their rights. Nevertheless, the figures show that critics' claims that *Miranda* prevents interrogation and intelligence gathering are untrue.

was being transported to the United States from Jordan, during which time he freely told law enforcement interrogators about his connections with Osama bin Laden and explained the work he did for al Qaeda, both before and after 9/11. According to Busch, Abu Ghaith was eager to talk, telling the FBI agents, "You will hear things of al Qaeda that you never imagined."¹⁹

Abu Ghaith is not the only terrorism suspect willing to waive his *Miranda* rights and continue talking. After Faisal Shahzad, the Times Square bomber, was arrested in 2010, he was initially questioned under the "public safety" exception and later advised of his *Miranda* rights, which he waived, and continued talking to law enforcement interrogators. According to the FBI, Shahzad provided "valuable intelligence and evidence,"²⁰ and freely divulged significant information to investigators, including admitting his guilt and providing details about his bomb-making training in Waziristan.²¹

Ahmed Abdulkadir Warsame is another example. Warsame was captured in 2011 by Navy SEALs in international waters off the coast of Yemen and interrogated by the U.S. military aboard a U.S. warship. After an initial interrogation without *Miranda*, Warsame agreed to keep talking after being advised of his rights. He provided intelligence about al Qaeda and its Somali partner Al Shabaab, and according to reports, this information helped thwart a terrorist attack in Saudi Arabia and aided in the targeting of Al Qaeda in the Arabian Peninsula (AQAP) leaders. Information gained from Warsame's

¹⁹ <https://www.humanrightsfirst.org/blog/trial-bin-ladens-son-law-and-why-not-torture-terrorist>.

²⁰ <http://www.nytimes.com/2010/05/05/nyregion/05arrest.html>.

²¹ <https://www.nbcnewyork.com/news/local/Times-Square-Bomb-Suspect-Charged--92815954.html>, <http://abcnews.go.com/Blotter/times-square-bombing-faisal-shahzad-admits-bombing-authorities/story?id=10557039>.

cooperation has also underpinned dozens of terrorism indictments and convictions.²²

The leader of the 2012 Benghazi attack, Ahmed Abu Khattala, also waived his *Miranda* rights after he was apprehended and interrogated without *Miranda*. After continuing to talk to FBI agents, Khattala provided information that would later be used to help secure his conviction in U.S. federal court.²³

☑ Even After Invoking *Miranda* Rights, Suspects Continue to Cooperate and Provide Intelligence

Even when terrorism suspects invoke their *Miranda* rights, many still cooperate with investigators, providing intelligence that informs targeting and capture operations, as well as future prosecutions and convictions.

As former CIA and FBI official Philip Mudd wrote, “*Miranda* can be a tool that aids the acquisition of intelligence. Mirandizing a young detainee might prove to nervous parents—say, from countries with fearsome security services—that the rule of law applies in the United States and that there is incentive for their child to speak. In cultures with tight family structures, those parents could be the deciding factor in whether a young detainee talks.”²⁴

This is precisely what happened in the case of “Underwear Bomber” Abdulmutallab. Though Abdulmutallab initially stopped talking after invoking his *Miranda* rights, law enforcement officials involved his family, who convinced him to cooperate. Abdulmutallab then provided information on every person he could recall from AQAP, as well as

extensive descriptions of AQAP’s training camp and other buildings used by the group.²⁵

Former national security advisor and CIA director John Brennan wrote about Abdulmutallab, “The fact is that his arrest ultimately produced valuable information, and there’s no reason to believe that placing him in military custody would have produced a better result from an intelligence collection perspective, or would have done so more quickly.”²⁶

☑ Plea Deals are Important Bargaining Tools for Gaining Intelligence

Plea deals and other ways of bargaining with suspects are important levers for law enforcement officials to persuade terrorism suspects to cooperate and provide intelligence. According to Eastern District of New York prosecutor Zainab Ahmad, “Cooperators are the unsung heroes of this business ... They’re treasure troves of information about the networks, once they decide to cooperate.”²⁷ Cooperation is most often secured by offering suspects deals like reduced sentences.

Indefinite military detention and interrogation offer fewer mechanisms to incentivize cooperation and facilitate intelligence gathering because the perception—and often reality—is that cooperation will not lead to release or fair treatment by U.S. authorities. Former Attorney General Eric Holder discussed the advantages of providing a lawyer to a terrorism suspect, noting that “the defense attorney

²² <https://www.nytimes.com/2017/01/27/us/intelligence-gained-from-somali-terrorist-shows-value-of-civilian-prosecutions.html>.

²³ http://wapo.st/2jtce44?tid=ss_tw&utm_term=.99ea79b1b6f5.

²⁴ <http://www.washingtonpost.com/wp-dyn/content/article/2010/06/03/AR2010060303937.html>.

²⁵ <https://www.nytimes.com/2017/02/22/us/politics/anwar-awlaki-underwear-bomber-abdulmutallab.html>.

²⁶

<http://www.brennancenter.org/sites/default/files/publications/Domestic%20Intelligence%20FINAL.pdf>.

²⁷ <https://www.newyorker.com/magazine/2017/05/15/taking-down-terrorists-in-court>.

frequently convinces that person to cooperate in the hope that a sentence would be lessened.”²⁸

Even after trial, sentencing can be delayed while a prisoner continues to be interviewed and provide intelligence relevant to other investigations or national security threats. Convicted would-be al Qaeda suicide bomber Bryant Neal Vinas is one example.

Vinas was detained in Pakistan and interrogated by the FBI about his involvement in an al Qaeda plot to bomb the Long Island Rail Road. After being brought back to the United States for trial, Vinas continued for eight years to provide information about al Qaeda to law enforcement as an informant, while his sentencing was delayed. The information he provided, according to Don Borelli, the former FBI supervisor who oversaw Vinas’ case, “allowed the government to gain critical insights into al Qaeda. Having that insight allowed the U.S. government to mount disruption operations.”²⁹ In addition, the intelligence Vinas provided helped prosecutors charge and convict multiple al Qaeda operatives.

Advantages of Law Enforcement Interrogation Over Military Interrogation

In addition to being able to involve family members and provide other incentives to promote cooperation, law enforcement interrogation offers significant flexibility that can aid in intelligence-gathering.

²⁸ https://www.huffingtonpost.com/daphne-eviatar/holder-reiterates-support_b_575591.html.

²⁹ <https://www.nytimes.com/2017/05/15/us/politics/service-to-both-al-qaeda-and-us-and-a-fate-hanging-in-the-balance.html>.

☑ **Uncertainty of Release Makes It More Difficult to Provide Incentives in Military Detention**

If a suspect interrogated by the U.S. military is to be tried in the Guantanamo military commissions, plea deals and reduced sentences in exchange for testimony or intelligence may be an available option. But the Department of Defense has claimed the authority to indefinitely hold any convicted Guantanamo detainees even after they have served their sentences.³⁰ As a result, it remains unclear whether, for example, detainee Ahmed Muhammed Ahmed Haza al-Darbi, convicted and sentenced to 13 years imprisonment, will be released after serving his sentence or whether the U.S. government will continue to hold him indefinitely.³¹ This uncertainty makes any attempt by military interrogators to provide incentives for cooperation more difficult.

Further, U.S. military interrogations are not necessarily designed for complex terrorism cases. According to the Army Field Manual, the U.S. military’s interrogation guidelines, military interrogation is intended largely for battlefield questioning. Conversely, law enforcement interrogation has a broader range of interrogation methods for questioning suspects. While military interrogation is an essential part of counterterrorism intelligence collection, law enforcement is often better poised to elicit and exploit information from terrorism suspects.

☑ **Detainees in Military Custody Are Also Entitled to Legal Representation**

Despite assertions that military interrogation is superior in part because suspects cannot “lawyer up,” suspects in military custody are also entitled to

³⁰ <http://www.washingtonpost.com/wp-dyn/content/story/2008/08/09/ST2008080900876.html>.

³¹ <https://www.nytimes.com/2017/10/13/us/politics/guantanamo-defendant-sentenced-darbi.html>.

legal representation. The Supreme Court held in *Hamdi v. Rumsfeld* that detainees held in U.S. military custody at Guantanamo Bay, Cuba—even those held as enemy combatants—have the right to an attorney.³² This is also true in the Guantanamo military commissions, if any captured terrorism suspects are tried there. As General Colin Powell pointed out, “Even in military commissions, whoever is before that commission has legal rights. They get lawyers.”³³

Federal Courts Are Far More Effective at Prosecuting Terrorism Suspects

U.S. federal courts are not only better positioned to facilitate intelligence elicitation by offering incentives for cooperation (as noted above) but are also the superior venue for trying and convicting terrorism suspects. Since 9/11, the military commissions have convicted only eight individuals, with three of these convictions overturned completely and one overturned partially.³⁴ In the same time, federal courts have convicted more than 660 individuals on terrorism-related charges, including major terrorism figures and complex cases. Seventeen percent of these convictions (113 cases) were individuals captured abroad.³⁵

While military interrogation does not preclude subsequent federal court trial, law enforcement interrogation works in lockstep with the federal court system, making the prosecution and conviction of terrorism-related cases more effective.

Conclusion

Despite the protestations from some, it is erroneous to argue that military interrogation and custody should be the preferred venue for terrorism suspects.

Law enforcement interrogators have a long track record of effectively questioning these individuals and producing essential intelligence that has been used to protect the United States and thwart terrorist attacks around the world. Law enforcement interrogators have conducted successful interrogations and elicited information from suspects before and after reading *Miranda* rights. This flow of information continues even after suspects' initial interrogation has concluded, since the U.S. federal court system provides many incentives for continued cooperation.

Law enforcement interrogation is a highly effective tool for obtaining actionable intelligence and incapacitating terrorism suspects captured both in the United States and abroad. There is no evidence that holding and interrogating suspects in military custody using irregular methods provides any advantages in gathering intelligence; to the contrary, such detentions and interrogations can be ineffective and counterproductive.

³² <https://www.law.cornell.edu/supct/pdf/03-6696P.ZO>.

³³ https://www.cbsnews.com/htdocs/pdf/FTN_022110.pdf.

³⁴ <https://www.humanrightsfirst.org/resource/myth-v-fact-trying-terror-suspects-federal-courts>.

³⁵ <https://www.humanrightsfirst.org/resource/federal-courts-continue-take-lead-counterterrorism-prosecutions>.
