



## **The U.S. Army Field Manual on Interrogation: A Strong Document in Need of Careful Revision**

The U.S. Congress and President Obama<sup>1</sup> have turned to the U.S. Army Field Manual on Interrogation<sup>2</sup> to help clarify U.S. interrogation policy and ensure that the abuses that took place at Abu Ghraib and elsewhere never happen again.

The Army Field Manual, with its explicit guidelines on what methods U.S. interrogators are allowed to use when they question detainees, has clearly prohibited torture since the first version was introduced in 1956.<sup>3</sup>

Human Rights First, like dozens of its sister human rights organizations, supports the continued use of the manual as the single standard guiding U.S. interrogators, interviewers and other personnel who question detainees for intelligence purposes.

The 384-page manual, however, has been marred by a handful of changes that were introduced during a revision of the document in 2006. These changes weaken some of the key rights protections contained within the manual, opening the door to the use of tactics tantamount to torture by U.S. interrogators.

The changes enacted in the new version of the manual also place unnecessary restrictions on an important interrogation approach, according to some interrogation experts, thereby limiting its use, and potentially harming U.S. intelligence gathering efforts.

### **A History of Forbidding Abusive Tactics**

The first version of the U.S. Army Field Manual on Interrogation was intended to clearly and forcefully guide U.S. interrogators away from abusing prisoners. It was published seven years after the adoption of the Geneva Conventions on July 18, 1956.

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<sup>1</sup> In 2005, the U.S. Congress, seeking to re-affirm the United States' commitment to humane interrogation practices, passed the Detainee Treatment Act. Pub. L. No. 109-148, div. A, tit. X, 119 Stat. 2739 (to be codified primarily at 42 U.S.C. §§ 2000dd to 2000dd-1). The Act applied the U.S. Army Field Manual to all military interrogation operations. DEP'T OF THE ARMY, HUMAN INTELLIGENCE COLLECTOR OPERATIONS FM 2-22.3 (FM 34-52), vi (2006) [hereinafter U.S. Army Field Manual on Interrogation]. And on January 22, 2009, in an effort to further clarify U.S. interrogation policy, President Obama signed Executive Order 13491 which extended the regulations spelled out in the manual to all U.S. interrogation operations, including operations conducted by the CIA. Exec. Order No. 13,491, 74 Fed. Reg. 4893 (Jan. 22, 2009). As a result of this order the manual's preface states, "the only interrogation approaches and techniques that are authorized for use against any detainee, regardless of status or characterization, are those listed in this Field Manual." U.S. Army Field Manual on Interrogation, vi.

<sup>2</sup> Known officially as FM 2.22.3 (34-52) HUMAN INTELLIGENCE COLLECTOR OPERATIONS

<sup>3</sup> DEP'T OF THE ARMY, FIELD MANUAL FM 27-10: THE LAW OF LAND WARFARE (1956).

Guidelines prohibiting the physical abuse of prisoners were reiterated—often verbatim—in subsequent versions of the manual released on December 11, 1967; February 27, 1976; May 8, 1987; and September 28, 1992.

When the Department of Defense released a new version of the manual in 2006, much of this protective language was preserved. Echoing previous versions of the manual, the September 6, 2006 version states:

“Use of torture is not only illegal but also it is a poor technique that yields unreliable results, may damage subsequent collection efforts, and can induce the source to say what he thinks the [interrogator] wants to know. Use of torture can also have many possible negative consequences at national and international levels.”<sup>4</sup>

In an effort, perhaps, to address some of the mistakes of the past, the new manual also specifically and explicitly prohibits some of the abusive techniques used on security detainees in Iraq, Afghanistan and Guantánamo Bay including waterboarding, the use of nakedness, sexual humiliation and the use of military dogs.

### **Changes in the 2006 Manual that Open the Door to Abuse**

#### Deleted Language

Some of the protections explicitly articulated in the 1992 version of the manual do not appear in the 2006 version. Language outlawing two abusive tactics—the use of stress positions, and sleep manipulation—has been removed from the new manual.

Indeed, the 1992 manual defines physical torture to include “forcing an individual to stand, sit, or kneel in abnormal positions for prolonged periods of time.”<sup>5</sup> And it lists “abnormal sleep deprivation” as an example of “mental torture.”<sup>6</sup>

The fact that these explicit prohibitions have been stripped from the new manual raises troubling questions about whether the U.S. intends to green-light the use of tactics it once clearly regarded as torture.

The 1992 language that once prohibited the use of stress positions and abnormal sleep deprivations should be added once again to the manual, especially given the prominent role that these abusive techniques played in the “enhanced interrogation” program.

#### Appendix M – A Wolf in Sheep’s Clothing

The new Army Field Manual includes a new appendix which guides the practice of an interrogation technique called “separation.” The purpose of “separation” is to prevent a

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<sup>4</sup> U.S. Army Field Manual on Interrogation, 5-21.

<sup>5</sup> DEP’T OF THE ARMY, FM 34-52 INTELLIGENCE INTERROGATION (1992), 1-8.

<sup>6</sup> Id.

detainee from communicating with other captives by keeping him (or her) physically isolated from the rest of the detainees.

The appendix explains that “separation” is a restricted technique and can only be used with the permission of the combatant (four star) commander. Indeed, the appendix is largely devoted to enumerating safeguards the interrogator must employ while using the separation approach. Hooding, for example, is prohibited. Exposure to loud music and extreme temperatures, are also not allowed.

But all of this does not hide the fact that Appendix M allows U.S. interrogators, in certain “special” circumstances, to use abusive tactics alongside separation for prolonged periods of time, thereby subjecting detainees to mental and physical anguish that can be tantamount to torture.

The abusive techniques authorized by Appendix M include:

- *Extreme isolation* – Appendix M does explicitly prohibit sensory deprivation, however it explicitly permits the use of goggles, blindfolds, and earmuffs to physically cut off detainees from each if it is deemed “expedient.”<sup>7</sup>
- *Sleep manipulation* – for reasons not articulated by the appendix, sleep manipulation is authorized alongside separation. Interrogators are permitted to limit detainees to four hours of sleep over any 24-hour period. This limit, however, is open to manipulation as it could be interpreted to permit interrogators to bookend the detainee’s rest around a 40-hour interrogation period. And there is no prohibition against stringing these 40-hour sessions along indefinitely—for a period of months or even years—as long as it is approved by the combat commander every 30 days.<sup>8</sup>

The guidelines described in Appendix M create conditions where an interrogator could inflict serious physical and mental anguish on a detainee. Appendix M should be deleted from the manual.

### **Restricting the use of a bona fide interrogation technique**

In addition to opening the door to abuse, Appendix M also takes a valuable interrogation approach, “separation,” and puts it out of reach in situations where it could be employed effectively (and humanely), according to some interrogation experts.

Col. Stu Herrington, an intelligence officer who served in the U.S. Army for more than 30 years and has interrogated high level detainees in Iraq, Panama and Vietnam, calls Appendix M a “show-stopper,” meaning that if Appendix M were in place when he directed interrogation centers, he would not have been able to do his job effectively.

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<sup>7</sup> U.S. Army Field Manual on Interrogation, M-8.

<sup>8</sup> *Id.*, M-9.

“In all the interrogation centers that I have worked in or run,” Herrington said, “we separated the prisoners from one another. Most welcomed this. A prisoner might cooperate if decently and cleverly treated, but only if we could provide a discrete environment where he could feel comfortable spending long hours talking with us.”<sup>9</sup>

According to multiple published accounts, the communal detainee housing at Guantánamo, for example, makes it difficult to gather intelligence. Detainees who are led away for questioning are often harangued when they return to their cells by other prisoners who want to know, “what took you so long?” and “what did you tell them?”

“Iraqi general officers housed in our ‘guest center’ did not want to be seen by other Iraqi officers,” Herrington explained. “They were grateful for the comfortable, compartmented environment that we provided. Housing high-value detainees communally is fatal to successful interrogation.”

Finally, Appendix M of the manual may take the use of separation off the table in some interrogation scenarios where it may be useful (and humane). The manual states separation “may **not** be employed on detainees covered by Geneva Convention Relative to the Treatment of Prisoners of War (GPW), primarily enemy prisoners of war (EPWs).”<sup>10</sup>

## Recommendations

- 1) **Eliminate Appendix M.** Appendix M opens the door to the use of abusive tactics and it may prevent interrogators from employing legitimate, humane, and effective interrogation tactics.
- 2) **Do not restrict the legitimate use of non-coercive separation.** Current language restricts the use of a legitimate interrogation approach known as “separation.” The manual states, “Separation cannot be employed on EPWs.”<sup>11</sup> Language in the manual should be altered to allow for the use of this technique. U.S. interrogators have a history stretching back at least 40 years of using this technique humanely. The manual should eliminate language that ties “separation” to coercive tactics like sleep manipulation and extreme isolation and it should open the door once again to using “separation” in a way that is consistent with U.S. law and international law.
- 3) **Restore 1992 field manual language** that explicitly prohibited the use of stress positions and abnormal sleep deprivation.

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<sup>9</sup> Email from Stuart Herrington, U.S. Army Colonel, to Human Rights First (Apr. 20, 2010) (on file with Human Rights First).

<sup>10</sup> U.S. Army Field Manual on Interrogation, 8-6.

<sup>11</sup> Id.