



SPECIAL ADVISORY FOLLOW-UP FAQs REGARDING MANAGING KIDNAPPING CASES UNDER NEW U.S. HOSTAGE POLICY

February 28, 2016

BACKGROUND

On January 14, 2016, CCI issued a [Special Advisory](#) with recommendations for managing kidnapping cases under the new U.S. hostage policies enacted in June of 2015. Two major components of this Advisory were that agencies would have to be proactive in their efforts to have a lead (decision-making) role under these new policies and that a power of attorney executed ahead of time by a hostage may be the only tool that will allow agencies to do so in some cases.

Since the publication of the January Advisory, CCI has received a number of follow-up questions regarding management of hostage cases involving U.S. citizens. This document CCI will provide our best answer or response to the most frequent of these questions.

Question: If the sending agency controls the effort (rather than the U.S. government), does that mean we are on our own?

Answer: No. The U.S. government, through the new [Fusion Center](#), will still be available as a resource and to assist the agency throughout the process. In the past two hostage negotiations CCI has handled, in one case the family retained the decision-making authority, and in the other the sending agency did. But in both of these cases, CCI worked alongside the FBI and with the full support of the U.S. government. This is the working model that was promoted during the government hostage policy review.

Question: If the sending agency allows the government to handle this, won't we have less liability if there is a bad outcome?

Answer: This one falls under the prohibition against our giving legal advice. But consider this: If there is litigation, the sending agency's greatest exposure will likely be if it failed to conduct reasonable preparations (training of personnel, risk assessment, policies, crisis management, etc.). Just asking the government to respond after the event occurs is unlikely to provide much protection from litigation.

Question: Isn't the government better prepared and equipped to handle something like this?

Answer: Yes. And, no. The government has resources not available to sending organizations (mostly access to intelligence and intelligence-gathering methods, and the capability to conduct military hostage rescues). But the sending organization has resources not available to the government. These include local knowledge, local contacts and resources, and understanding of culture and context frequently not shared at the government level. This separation of resources is one of the reasons that CCI advocates that the sending agency try to work in partnership with the U.S. government when possible. In our experience, partnerships have resulted in the best outcomes. Modern missionary hostage deaths have occurred most often when governments (host governments and in one case the U.S.) have acted unilaterally.

Question: If we work together with the government, why is it important that the sending agency has the decision-making authority?

Answer: The sending agency should hold the decision-making authority because the U.S. government, like all governments, has a different worldview than a faith-based organization. It has competing priorities, just as the sending agency does. In the case of the government, competing priorities may be foreign policy, relationships with other nations, public pressure, etc. In the case of sending organizations, competing priorities may be the safety of others (including national colleagues and associates), and the continuation of ministry. Experience has demonstrated consistently that the government, even when well-intentioned, does not understand the ethos, culture and priorities of faith-based organizations and thus is inclined to consider options and settlements in hostage cases that are unacceptable to the sending organization¹.

Question: Why is a document needed to give the sending organization authority to be in charge?

Answer: The new hostage policies announced in June of 2015 by the U.S. government specify that the government will work with the family(ies) of the hostage(s) as its primary

¹ Although CCI is not inclined to publish examples with an Advisory such as this, organizations seeking more specific examples may contact us directly.

partner in the response to, and resolution of, all kidnappings. This is a change of practice from the past, when the employer (sending agency), if there was one, generally was recognized as the primary entity responsible for the hostage and for decisions. It is also clear that to a significant degree these new policies are in response to a small but highly publicized number of cases in which families of hostages were treated very badly by the government; and that these new policies may have over-compensated for this. In any event, if a missionary is taken hostage and his or her next of kin claims authority over the sending agency to deal with the government, that relative is who the government will recognize and deal with. The sending agency will be limited to whatever role that relative authorizes.

Most, if not all, sending agencies realize that they have members whose families, including next of kin in some cases, are not supporters of the agency, the work, or perhaps even their faith. It is easy to envision such relatives as taking every opportunity to force the sending agency completely out of the process if a kidnapping occurs. Current U.S. policy would support that action in the absence of some contrary authority. Experience of the past 30 years is full of horror stories of plans, schemes and deals that family members of missionary hostages have attempted or sought to enact because they disagreed with the sending agency's approach.

In today's litigious society, the U.S. government will yield to the desires of the legal next of kin unless there is authority to recognize some other source of decision-making. Since the hostage cannot express his or her desire in this regard post-kidnapping, some advance documentation that the government will recognize is required.

Question: Why a power of attorney?

Answer: This is all new legal ground, both for the U.S. government and for sending agencies and their members. There is no specific document or instrument or process yet identified by the U.S. government that would pre-determine decision-making authority on behalf of a hostage. In the absence of such a designated instrument or process, powers of attorney are the generally recognized legal authority in U.S. law for a person to delegate specific decision-making authority on his or her behalf to another person. During the hostage policy review process, when asked about this, government officials replied that a power of attorney was the only tool they could think of that would suffice.

Question: What about the [State Department's DS 5505 form](#)?

Answer: This form, formally titled "AUTHORIZATION FOR THE RELEASE OF INFORMATION UNDER THE PRIVACY ACT", is a document that the State Department (at Embassies and in Washington) has from time to time required before providing information and in some cases assistance to anyone (including spouses, other family members, employers, etc.) in a kidnapping case. The position of the State Department

in some cases has been that the Privacy Act cited in the form supersedes all other factors, including the physical inability of a hostage to sign the form post-kidnapping. We don't know if this form will continue to be used in the new era of the FBI-led Fusion Center. However, all this form authorizes is the release of information – it has no bearing or impact on who had the authority to make decisions or to interact with the U.S. government.

Question: Don't the logistics of getting a power of attorney completed overseas make this an almost impossible task?

Answer: Obtaining powers of attorney from all of your field personnel is no small task, and CCI certainly recognizes that. But the potential consequences of being cut out of the process if one of your members or staff is kidnapped are substantial. Options such as beginning with newly deployed personnel; having this process completed when personnel are on furlough, home assignment or training; and electronic signatures for remote execution of documents may be possible (check with your organization's attorney).

As always, if you have questions or if you need additional information or a specific consultation, CCI is available to assist you.

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