A Review of the FBI's Involvement in and Observations of Detainee Interrogations in Guantanamo Bay, Afghanistan, and Iraq

Oversight and Review Division
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UNCLASSIFIED

NOTE REGARDING REVISED VERSION

The OIG originally issued this report in May 2008. This revised version, dated October 2009, contains previously classified material that was redacted in the original version but that was subsequently declassified by the Department of Defense and the Central Intelligence Agency. The following pages in this revised edition contain the declassified material, which is highlighted on those pages, that was previously redacted:

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APPENDICES

EXECUTIVE SUMMARY[1]

I. Introduction

This Executive Summary summarizes the results of the review conducted by the Department of Justice (DOJ) Office of the Inspector General (OIG) regarding the Federal Bureau of Investigation's (FBI) involvement in and observations of detainee interrogations in Guantanamo Bay (GTMO), Afghanistan, and Iraq. The focus of our review was whether FBI agents witnessed incidents of detainee abuse in the military zones, whether FBI employees reported any such abuse to their superiors or others, and how those reports were handled. The OIG also examined whether FBI employees participated in any detainee abuse. In addition, we examined the development and adequacy of the policies, guidance, and training that the FBI provided to the agents it deployed to the military zones.

As part of our review, the OIG developed and distributed a detailed survey to over 1,000 FBI employees who had deployed to one or more of the military zones. Among other things, the OIG survey sought information regarding observations or knowledge of specifically listed interview or interrogation techniques and other types of detainee treatment, and whether the FBI employees reported such incidents to their FBI supervisors or others.[2]

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[1] The OIG has redacted (blacked out) from the public version of this report information that the FBI, the Central Intelligence Agency (CIA), or the Department of Defense (DOD) considered classified. We have provided full versions of the classified reports to the Department of Justice, the CIA, the DOD, and Congressional committees. The effort to identify classified information in this report has been a significant factor delaying release of this report. To obtain the agencies' classification comments, we provided a draft report to the FBI, the CIA, and the DOD for classification review on October 25, 2007. The FBI and the CIA provided timely responses. The DOD's response was not timely. Eventually, the DOD provided initial classification comments to us on March 28, 2008. However, we believed those classification markings were over-inclusive. After several additional weeks of discussion with the DOD about these issues, the DOD provided revised classification comments. The DOD's delay in providing comments, and its over-inclusive initial comments, delayed release of this report.

[2] Although a major focus of our investigation was to collect information about the observations by FBI agents of DOD interrogation practices in the military zones, the OIG did not attempt to make an ultimate factual determination regarding the alleged misconduct by non-FBI personnel. Such a determination would have exceeded the DOJ OIG's jurisdiction. Moreover, the OIG did not have access to all of the witnesses, such

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The OIG also interviewed more than 230 witnesses and reviewed over 500,000 pages of documents provided by the FBI, other components of the Department of Justice (DOJ), and the Department of Defense (DOD). OIG employees made two trips to GTMO to tour the detention facilities, review documents, and interview witnesses, including five detainees held there. We also interviewed one released detainee by telephone.[3]

Our review focused primarily on the activities and observations of FBI agents deployed to military facilities under the control of the Department of Defense between 2001 and 2004. With limited exceptions, we were unable to and did not investigate the conduct or observations of FBI agents regarding detainees held at CIA facilities for several reasons. First, we were unable to obtain highly classified information about CIA-controlled facilities, what occurred there, and what legal authorities governed their operations. Second, during the course of our review we learned that in January 2003 the CIA Inspector General had initiated a review of the CIA terrorist detention and interrogation program. Therefore, our review focused mainly on the conduct and observations of the approximately 1,000 FBI employees related to detainee interviews in military zones.

A. Organization of Report

The OIG's complete report, which contains the full results of our review, has been classified by the relevant government agencies at the Top Secret/SCI level. The full report contains 12 chapters. The first three chapters provide introductory and background information, including a description of the role of the FBI in the military zones and the various FBI interrogation policies in place at the time of the September 11 attacks. Chapter Four discusses the FBI's involvement in the joint interrogation of a "high value detainee," Zayn Abidin Muhammed Hussein Abu Zubaydah, shortly after his capture, and the subsequent deliberations within the FBI regarding the participation of its agents in joint interrogations with agencies that did not follow FBI interview policies.[4] Chapter Five examines the dispute between the FBI and the

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as DOD or CIA personnel, who would have been necessary to make such a determination.

[3] In addition, the OIG examined prior reports addressing the issue of detainee treatment in the military zones. Among the most significant of those reports were the *Church Report*, a review of DOD interrogation operations conducted in 2004 and 2005 by the DOD, and the *Schmidt-Furlow Report*, a DOD investigation in 2005 into allegations of detainee abuse at GTMO.

[4] When the OIG investigative team was preparing for its trip to GTMO in early 2007, we asked the DOD for permission to interview several detainees, including

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DOD regarding the treatment of another detainee held at GTMO, Muhammad Al-Qahtani. The dispute regarding Al-Qahtani arose from the tension between the differing interrogation techniques employed by the FBI and the military. This dispute was elevated to higher-level officials and eventually resolved in favor of the DOD's approach.

Chapter Six examines the FBI's response to the public disclosure of detainee mistreatment at Abu Ghraib prison in Iraq and related concerns expressed by FBI agents in the military zones. These responses included issuance of the FBI's May 2004 Detainee Policy, which reminded FBI agents not to use force, threats, or abuse in detainee interviews and instructed FBI agents not to participate in joint interviews in which other agencies were using techniques that were not in compliance with FBI rules. The FBI also conducted an internal review to determine the extent of the FBI's knowledge regarding detainee mistreatment. The seventh chapter discusses the communication of FBI policies to FBI employees who were deployed in military zones, including the FBI's efforts to provide training and guidance to its agents on appropriate interrogation techniques.

Chapters Eight, Nine, and Ten detail the results of the OIG's survey and investigation into what FBI agents saw, heard about, and reported with respect to detainee interrogations in GTMO, Afghanistan, and Iraq.

Zubaydah. The DOD agreed, stating that our interviews would not interfere with their attempts to obtain any intelligence from the detainees, including Zubaydah. However, the CIA Acting General Counsel objected to our interviewing Zubaydah. [redacted] In addition, the CIA Acting General Counsel asserted that the OIG had not persuaded him that the OIG had a "demonstrable and immediate need to interview Zubaydah at that time" given what the Acting General Counsel understood to be the OIG's "investigative mandate." In addition, the CIA Acting General Counsel asserted that Zubaydah could make false allegations against CIA employees. We believe that none of these reasons were persuasive or warranted denying us access to Zubaydah. First, neither the FBI nor the DOD objected to our access to Zubaydah at that time. In addition, neither the FBI nor the DOD stated that an OIG interview would interfere with their interviews of him. Second, at GTMO we were given access to other high value detainees. Third, we did have a demonstrable and immediate need to interview Zubaydah at that time, as well as the other detainees who we were given access to, notwithstanding the CIA Acting General Counsel's position that we had not persuaded him. Finally, the fact that Zubaydah could make false allegations against CIA employees – as could other detainees – was not in our view a legitimate reason to object to our access to him. In sum, we believe that the CIA's reasons for objecting to OIG access to Zubaydah were unwarranted, and its lack of cooperation hampered our investigation.

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Chapter Eleven discusses our investigation of eight separate allegations that FBI agents in the military zones were involved in detainee abuse or mistreatment.

Chapter Twelve presents the OIG's conclusions and recommendations.

B. Summary of OIG Conclusions

Our report found that after FBI agents in GTMO and other military zones were confronted with interrogators from other agencies who used more aggressive interrogation techniques than the techniques that the FBI had successfully employed for many years, the FBI decided that it would not participate in joint interrogations of detainees with other agencies in which techniques not allowed by the FBI were used.

Our review determined that the vast majority of FBI agents complied with FBI interview policies and separated themselves from interrogators who used non-FBI techniques. In a few instances, FBI agents used or participated in interrogations during which techniques were used that would not normally be permitted in the United States. These incidents were infrequent and were sometimes related to the unfamiliar circumstances agents encountered in the military zones. They in no way resembled the incidents of detainee mistreatment that occurred at Abu Ghraib.

However, FBI agents continued to witness interrogation techniques by other agencies that caused them concern. Some of these concerns were reported to their supervisors, which sometimes resulted in friction between FBI and the military over the use of these interrogation techniques on detainees. Some FBI agents' concerns were resolved directly by the agents working with their military counterparts, while other concerns were never reported. Ultimately, however, the DOD made the decisions regarding which interrogation techniques could be used on the detainees in military zones. In our report, we describe the types of techniques that FBI employees reported to their supervisors.

We also concluded that the FBI had not provided sufficient guidance to its agents on how to respond when confronted with military interrogators who used interrogation techniques that were not permitted by FBI policies.

In sum, while our report concluded that the FBI could have provided clearer guidance earlier, and while the FBI and DOJ could have pressed harder for resolution of FBI concerns about detainee treatment, we believe the FBI should be credited for its conduct and professionalism

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in detainee interrogations in the military zones and in generally avoiding participation in detainee abuse.

The remainder of this unclassified Executive Summary summarizes in more detail the factual background and findings contained in our full report.

II. Factual Background

As a result of the September 11 attacks, the FBI changed its top priority to counterterrorism and preventing terrorist attacks in the United States. As a consequence of this shift in its priorities, and in recognition of the FBI's investigative expertise and familiarity with al-Qaeda, the FBI became more involved in collecting intelligence and evidence overseas, particularly in military zones in Afghanistan, at GTMO, and in Iraq.

Beginning in December 2001, the FBI sent a small number of agents and other employees to Afghanistan to obtain actionable intelligence for its counterterrorism efforts, primarily by interviewing detainees at various facilities. In January 2002, the military began transferring "illegal enemy combatants" from Afghanistan to GTMO, and the FBI began deploying personnel to GTMO to obtain further intelligence and evidence from detainees in cooperation with military interrogators. Following the invasion of Iraq in March 2003, the FBI also sent agents and other employees to Iraq for the primary objective of collecting and analyzing information to prevent terrorist attacks in the United States and to protect U.S. personnel or interests overseas.

FBI deployments in the military zones peaked at approximately 25 employees in Afghanistan, 30 at GTMO, and 60 in Iraq at any one time between 2001 and the end of 2004, the period covered by our review. In total, more than 200 FBI employees served in Afghanistan between late 2001 and the end of 2004, more than 500 employees served at GTMO during this period, and more than 260 served in Iraq. In each military zone, FBI agents were supervised by an FBI On-Scene Commander.

III. FBI and DOD Interrogation Policies

A. FBI Policies Prior to the September 11 Attacks

Most of the FBI's written policies regarding permissible interrogation techniques for its agents and for its agents' conduct in collaborative or foreign interviews were developed prior to the September 11 attacks. When these policies were drafted, they reflected

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the FBI's primary focus on domestic law enforcement, which emphasized obtaining information for use in investigating and prosecuting crimes. These policies are designed to ensure that witness statements met legal and constitutional requirements of voluntariness so that they would be admissible in U.S. courts. In addition, the FBI has consistently stated its belief that the most effective way to obtain accurate information is to use rapport-building techniques in interviews.

Conducting Interviews The FBI's Legal Handbook for Special Agents states, among other things, that "[i]t is the policy of the FBI that no attempt be made to obtain a statement by force, threats, or promises." The FBI's Manual of Administrative and Operational Procedures (MAOP) describes the importance of FBI agents not engaging in certain activities when conducting investigative activities, including foreign counterintelligence, and specifically states that "[n]o brutality, physical violence, duress or intimidation of individuals by our employees will be countenanced . . . ."

Joint Interviews Prior to the September 11 attacks, the FBI had policies for working with other government agencies, both domestic and foreign, in joint or cooperative investigations. However, the FBI's work with the military in GTMO, Afghanistan, and Iraq raised new issues regarding which agency's interrogation policies would apply and how the FBI would work with personnel from other agencies who operated under different interrogation rules. FBI agents told us that they have always been trained to adhere to FBI protocols, not to other agencies' rules with respect to interview policies or evidence collection.

However, the FBI's expanded mission after the September 11 attacks gave rise to circumstances in which (1) entities other than the FBI were the lead agencies and had custody of the witnesses, (2) prosecution of crimes was not necessarily the primary goal of the interrogations, and (3) the evidentiary rules of U.S. Article III courts did not necessarily apply. As a consequence and as detailed below, existing FBI policies were not always sufficient to address these circumstances.

Reporting Misconduct FBI policies prior to the September 11 attacks required FBI agents to report to FBI Headquarters any incidents of misconduct or improper performance by other FBI employees. However, the duty of an FBI employee to report on the activities of non-FBI government personnel was limited to criminal behavior by other personnel. We did not find any FBI policy prior to May 2004 imposing an obligation on FBI employees to report abuse or mistreatment of detainees by non-FBI government employees falling short of a crime.

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B. DOD Interrogation Policies

In our report, we summarize the detainee interrogation policies adopted by the DOD after the September 11 attacks for prisoners and detainees. These policies were generally developed for use in war zones rather than in the law-enforcement context. The range of permissible DOD techniques was expanded after the September 11 attacks and was modified over time. These military policies permitted techniques that were inconsistent with the FBI's longstanding approach towards witness interrogations.

Although DOD policies were not applicable to FBI agents, they were relevant to our report for several reasons. First, as detailed below, the tensions between DOD policies and the FBI's interview policies created concerns for some FBI agents in the military zones which sometimes led to conflicts between FBI and DOD employees.

Second, FBI agents in the military zones had a unique opportunity to observe the conduct of other agencies' interrogators, including conduct related to alleged detainee abuse in GTMO, Iraq, and other detention facilities. A significant portion of our review involved the FBI's observations regarding the treatment of detainees by military interrogators. Because military interrogators were governed by the DOD's interrogation policies, these policies are relevant to the OIG's report.

Third, in May 2004 the FBI instructed its agents to report to their superiors any incidents of known or suspected abuse or mistreatment of detainees by other agencies' interrogators. Some FBI agents were told that they should report any abusive interrogation technique that the agent believed was outside the legal authority of the interrogator. This instruction required FBI agents to have some familiarity with other agencies' policies, which we briefly summarize below.

DOD Policies for GTMO When interrogations began at GTMO in January 2002, military interrogators relied on Army Field Manual 34-52, *Intelligence Interrogation,* for guidance as to permissible interrogation techniques. In additional to conventional direct questioning techniques, Field Manual 34-52 permitted military interrogators to utilize methods that, depending on the manner of their use, might not be permitted under FBI policies, such as "Fear Up (Harsh)," defined as exploiting a detainee's pre-existing fears including behaving in an overpowering manner with a loud and threatening voice. On December 2, 2002, the Secretary of Defense approved additional techniques for use on detainees at GTMO, including stress positions for a maximum of 4 hours, isolation, deprivation of light and auditory stimuli, hooding, 20-hour

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interrogations, removal of clothing, and exploiting a detainee's individual phobias (such as fear of dogs).

On January 15, 2003, the Secretary of Defense rescinded his approval of these techniques. On April 16, 2003, the Secretary of Defense promulgated revised guidance approving 24 techniques for use at GTMO, most of which were taken from or closely resembled those in Field Manual 34-52. The April 2003 GTMO Policy also approved the use of dietary manipulation, environmental manipulation, sleep adjustment, and isolation. This policy continued in effect for GTMO until September 2006 when the U.S. Army issued Field Manual 2-22.3, discussed below.

DOD Policies for Afghanistan Prior to 2003, the only official guidance regarding military detainee interrogation techniques in effect in Afghanistan was that contained in Field Manual 34-52. In early 2003, the military followed a policy that permitted techniques similar to those approved under the December 2002 GTMO Policy, including isolation, sleep adjustment, hooding, stress positions, sensory deprivation, and mild physical contact. In February 2003, after a military investigation into two detainee deaths at the Bagram Collection Point in December 2002, the military revised its approved interrogation tactics and prohibited handcuffing as a means to enforce sleep deprivation and physical contact for interrogation purposes.

In March 2004 the military issued a new policy for Afghanistan interrogations that was based on the prior Afghanistan policies and the April 2003 GTMO Policy. This policy added dietary manipulation and environmental manipulation to the list of approved techniques and relaxed the prior prohibitions on using stress positions as an incentive for cooperation. In June 2004, in the aftermath of the Abu Ghraib disclosures, the military in Afghanistan adopted the same policy that was issued for Iraq on May 13, 2004 (discussed below).

DOD Policies for Iraq For the first few months of the war in Iraq, military interrogators were governed by Field Manual 34-52. In September 2003, the DOD adopted a policy describing 29 permissible interrogation techniques. Most were adopted nearly verbatim from the April 2003 GTMO Policy approved by the Secretary of Defense, but additional approved techniques included muzzled military working dogs, sleep management, yelling, loud music, light control, and stress positions for up to 1 hour per use.

On October 12, 2003, the Commander in Iraq rescinded approval for several of these techniques. On May 13, 2004, in the wake of the Abu Ghraib abuse revelations, the military further revised its policies to specify that "under no circumstances" would requests for certain

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techniques be approved, including "sleep management, stress positions, change of scenery, diet manipulation, environment manipulation, or sensory deprivation." In January 2005, the military adopted an interrogation policy for Iraq that approved only those techniques listed in Field Manual 34-52, with additional safeguards, prohibitions, and clarifications, including explicit prohibitions against the removal of clothing and the use or presence of military working dogs during interrogations.

Field Manual 2-22.3 In September 2006, the U.S. Army issued Field Manual 2-22.3 in fulfillment of a mandate of the Detainee Treatment Act, enacted in December 2005, requiring a uniform standard for treatment of detainees under DOD custody. Field Manual 2-22.3 reiterated and elaborated on many of the techniques listed in its predecessor, Field Manual 34-52, but placed much greater emphasis on rapport-based interrogation techniques similar to those endorsed by the FBI. It also identified several prohibited actions, including nudity, sexual acts or poses, beatings, waterboarding, use of military dogs, and deprivation of food or water. Field Manual 2-22.3 also placed specific controls on the use of the technique of isolating detainees from other detainees. However, Field Manual 2-22.3 was not in effect during any part of the period that was the focus of the OIG's review.

IV. The Interrogation of Zubaydah and the Development of Early FBI Policies Regarding Detainee Interviews in the Military Zones

In the spring of 2002, the FBI began addressing the need for specific policies governing the conduct of its agents during detainee interrogations overseas. This need came to light in connection with the interrogation of Abu Zubaydah, a "high value detainee" then being held by the CIA. Zubaydah had been severely wounded when he was captured, and two FBI agents were assigned to assist the CIA in obtaining intelligence from him while he was recovering from his injuries. The FBI agents conducted the initial interviews of Zubaydah, assisting in his care and developing rapport with him. However, when the CIA interrogators arrived at the site they assumed control of the interrogation. After observing the CIA use interrogation techniques that undoubtedly would not be permitted under FBI interview policies, one of the FBI agents expressed strong concerns about these techniques to senior officials in the Counterterrorism Division at FBI Headquarters.

This agent's reports led to discussions at FBI Headquarters and with the DOJ and the CIA about the FBI's role in joint interrogations with other agencies. Ultimately, these discussions resulted in a determination

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by FBI Director Robert Mueller in approximately August 2002 that the FBI would not participate in joint interrogations of detainees with other agencies in which harsh or extreme techniques not allowed by the FBI would be employed.

However, the issue arose again in late 2002 and early 2003 in connection with the FBI's efforts to gain access to another high value detainee held in a foreign location. FBI agents assisted another agency in developing questions for this detainee during a period when he was being subjected to interrogation techniques that FBI agents would not be allowed to use in the United States.[5]

V. FBI Concerns about Military Interrogations at GTMO

Late in 2002, FBI agents assigned to GTMO also began raising questions to FBI Headquarters regarding harsh interrogation techniques being used by the military. These concerns were focused particularly on the treatment of Muhammad Al-Qahtani, who had unsuccessfully attempted to enter the United States in August 2001 shortly before the September 11 attacks, allegedly for the purpose of being an additional highjacker. After his capture and transfer to GTMO, Al-Qahtani resisted initial FBI attempts to interview him. In September 2002, the military assumed control over his interrogation, although behavioral specialists from the FBI continued to observe and provide advice.

The FBI agents became concerned when the military announced a plan to keep Al-Qahtani awake during continuous 20-hour interviews every day for an indefinite period and when the FBI agents observed military interrogators use increasingly harsh and demeaning techniques, such as menacing Al-Qahtani with a snarling dog during his interrogation.

The friction between FBI officials and the military over the interrogation plans for Al-Qahtani increased during October and November 2002. The FBI continued to advocate a long-term rapport-based strategy, while the military insisted on a different, more aggressive approach. Between late November 2002 and mid-January 2003, the military used numerous aggressive techniques on Al-Qahtani, including attaching a leash to him and making him perform dog tricks, placing him

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[5] The FBI agents' accounts of the techniques they witnessed during the interrogations of Zubaydah and the other high value detainee are described in our classified full report. Although the CIA has publicly acknowledged using waterboarding with three detainees, none of the FBI agents we interviewed reported witnessing this technique.

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in stress positions, forcing him to be nude in front of a female, accusing him of homosexuality, placing women's underwear on his head and over his clothing, and instructing him to pray to an idol shrine. FBI and DOJ officials did not learn about the techniques used between late November 2002 and mid-January 2003 until much later. However, in early December 2002, an agent learned that Al-Qahtani was hospitalized briefly for what the military told the FBI was low blood pressure and low core body temperature.

As a result of the interrogations of Al-Qahtani and other detainees at GTMO, several FBI agents raised concerns with the DOD and FBI Headquarters about: (1) the legality and effectiveness of DOD techniques; (2) the impact of these techniques on the future prosecution of detainees in court or before military commissions; and (3) the potential problems that public exposure of these techniques would create for the FBI as an agency and FBI agents individually. Some of these concerns were expressed to FBI Headquarters in e-mails from agents at GTMO. The informal response that some of these agents received from FBI Headquarters was that agents could continue to witness DOD interrogations involving non-FBI authorized techniques so long as they did not participate.

During this period, however, FBI agents continued to raise objections directly with DOD officials at GTMO and to seek guidance from senior officials in the FBI's Counterterrorism Division. No formal responses were ever received by the agents who wrote these communications.

We determined, however, that some of the FBI agents' concerns regarding the DOD's interrogation approach at GTMO were communicated by officials in the FBI's Counterterrorism Division to senior officials in the Criminal Division of DOJ and ultimately to the Attorney General. FBI Headquarters officials said they discussed the issue in meetings with senior officials in the DOJ Criminal Division. Two witnesses told us that they recalled conversations with Alice Fisher (at the time the Deputy Assistant Attorney General for the Criminal Division) regarding the ineffectiveness of military interrogations at GTMO, but they did not recall discussing specific techniques with Fisher. Fisher told us that she could not recall discussing detainee treatment or particular interrogation techniques with the FBI, but that she was aware that the FBI did not consider DOD interrogations at GTMO to be effective.

Concerns about the efficacy of DOD interrogation techniques also reached then Assistant Attorney General for the Criminal Division

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Michael Chertoff, Deputy Attorney General Larry Thompson, and Attorney General John Ashcroft.[6] The senior-level witnesses we interviewed generally said they recalled that the primary concern expressed about the GTMO interrogations was that DOD techniques and interrogators were ineffective at developing actionable intelligence. These senior DOJ officials did not identify FBI agents' concerns about the legality of the techniques or their impact on future prosecutions as a focus of these discussions.

In addition, we were unable to determine definitively whether the concerns of the FBI and DOJ about DOD interrogation techniques were ever addressed by any of the federal government's inter-agency structures created for resolving disputes about anti-terrorism issues. These structures included the Policy Coordinating Committee, the "Principals" Committee, and the "Deputies" Committee, all chaired by the National Security Council (NSC).

Several senior DOJ Criminal Division officials told us that they raised concerns about particular DOD detainee practices in 2003 with the National Security Council, but they did not recall that any changes were made at GTMO as a result. Several witnesses also told us that they believed that Attorney General Ashcroft spoke with the NSC or the DOD about these concerns, but we could not confirm this because former Attorney General Ashcroft declined to be interviewed for this review.

We found no evidence that the FBI's concerns influenced DOD interrogation policies. Ultimately, the DOD made the decisions regarding what interrogation techniques would be used by military interrogators at GTMO, because GTMO was a DOD facility and the FBI was there in a support capacity. Similarly, the DOD controlled what techniques were used in Afghanistan and Iraq. As a result, once it was clearly established within each zone that military interrogators were permitted to use interrogation techniques that were not available to FBI agents, the FBI On-Scene Commanders said they often did not elevate additional reports of harsh detainee interrogations to their superiors at FBI Headquarters.

Eventually, the DOD modified its own policies as a result of its internal deliberations. As noted above, on January 15, 2003, Defense Secretary Rumsfeld rescinded his prior authorization of some of the more aggressive DOD interrogation techniques. In April 2003, Al-Qahtani became cooperative with military interrogators. Based on the information we obtained in the OIG survey and our follow-up interviews, we believe that around this time the military also reduced the frequency

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[6] Former Attorney General Ashcroft declined to be interviewed for this review.

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and severity of its use of many of the techniques that concerned the FBI agents deployed at GTMO.

FBI witnesses almost uniformly told us that they strongly favored non-coercive rapport-based interview techniques to the harsher techniques used on Al-Qahtani and others due to the FBI's extensive history of success with such techniques in the law enforcement context. However, we also learned about a proposal advanced by certain officials from the FBI and DOJ in late 2002 to change the circumstances of Al-Qahtani's interrogation. A draft letter prepared for the purpose of presenting this proposal to the National Security Council indicated that this proposal involved subjecting Al-Qahtani to interrogation techniques of the sort that had previously been used by the CIA on Zubaydah and another detainee. DOJ and FBI officials involved with this proposal stated to us that the rationale for this proposal was to bring more effective interrogation techniques to bear on Al-Qahtani than the ineffective interrogation techniques that the military had been using on him up to that time. The techniques that had been previously used by the CIA on Zubaydah included methods that did not remotely resemble the rapport-based techniques that are permitted under FBI policy. However, the DOJ and FBI officials involved in the proposal stated to the OIG that they did not learn what specific techniques had been used by the CIA until much later, and that they based their recommendation on the fact that the CIA had been effective at obtaining useful information from Zubaydah. Senior officials in DOJ and the FBI such as FBI Director Mueller, former Assistant Attorney General Chertoff, current Assistant Attorney General Fisher, and others, told us the draft letter never reached them, that they were not aware of a proposal to subject Al-Qahtani to methods of the sort that had been used on Zubaydah, and did not take part in any specific discussion of such a proposal.

We also determined that the DOD opposed the proposal for Al-Qahtani, and the proposal was never adopted. Moreover, Al-Qahtani began cooperating with military interrogators in April 2003, obviating the underlying rationale for the proposal.

We concluded that the proposal to subject Al-Qahtani to the type of techniques that the CIA had used on Zubaydah was inconsistent with Director Mueller's directive that the FBI should not be involved with interrogations in which non-FBI techniques would be utilized, and with the frequently stated position of DOJ and FBI officials that the FBI's rapport-based techniques were superior to other techniques. We were also troubled that FBI and DOJ officials would suggest this proposal without knowing what interrogation techniques the proposal entailed.

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VI. The FBI's Response to the Disclosure of Detainee Mistreatment at Abu Ghraib

In January 2004, senior managers in the FBI learned about allegations of prisoner mistreatment at Abu Ghraib prison in Iraq. Managers in the FBI's Counterterrorism Division agreed with the recommendation of the FBI's On-Scene Commander that the military should conduct the investigation into the alleged abuses at Abu Ghraib without the assistance of the FBI, because the matter was outside of the FBI's mission and the FBI's participation might harm its relationship with the military.

However, as described below, public disclosure of explicit photographs and accounts of detainee mistreatment at the Abu Ghraib prison in late April 2004 triggered a significant effort within the FBI to assess the adequacy of its own policies regarding detainee treatment in the military zones and to determine what, if anything, its agents knew about detainee mistreatment at Abu Ghraib, GTMO, and Afghanistan.

A. The FBI's May 2004 Detainee Policy

Following the Abu Ghraib disclosures, the FBI quickly determined that although existing FBI policies prohibited FBI agents from utilizing coercive interview techniques, no policy had ever been issued to address the question of what FBI agents should do if they saw non-FBI interrogators using coercive or abusive techniques. On May 19, 2004, the FBI General Counsel issued an official FBI policy regarding "Treatment of Prisoners and Detainees."[7] This policy included the following instructions for FBI agents in dealing with detainees:

- Agents were reminded that existing FBI policy prohibited agents from obtaining statements during interrogations by the use of force, threats, physical abuse, threats of such abuse, or severe physical conditions.
- Agents were told that FBI personnel may not participate in any treatment or use any interrogation technique that is in violation of these guidelines, regardless of whether the co-interrogator is in compliance with his or her own guidelines. If a co-interrogator is complying with the rules of his or her agency, but is not in compliance with FBI rules, FBI personnel may not participate in the interrogation and must remove themselves from the situation.

[7] We refer to the policy as the "FBI's May 2004 Detainee Policy."

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- Agents were told that if an FBI employee knows or suspects non-FBI personnel has abused or is abusing or mistreating a detainee, the FBI employee must report the incident to the FBI On-Scene Commander, who shall report the situation to the appropriate official at FBI Headquarters. FBI Headquarters is responsible for further follow up with the other party.

B. Concerns Expressed by FBI Agents in the Field

Shortly after the public disclosure of the Abu Ghraib abuses, several FBI agents in the military zones expressed significant concerns about how the military's use of certain interrogation techniques could affect the FBI. For example, in May 2004 an FBI supervisor stationed in Afghanistan sent a series of e-mails to senior Counterterrorism Division officials in FBI Headquarters stating that although the military had temporarily restricted the use of aggressive interrogation techniques such as stress positions, dogs, and sleep deprivation, military interrogators were likely to resume such methods soon. The FBI supervisor stated that even if the FBI was not present during such interrogations, FBI agents would inherently be participating in the process because they would be interviewing detainees who had either recently been subjected to such techniques by the military or who would be subjected to them after the FBI interviews were completed. He questioned whether it would be ethical for FBI agents to be involved in such a process and whether they would be held culpable for detainee abuse. He recommended that the FBI move quickly to issue definitive guidance to its agents in Afghanistan. By this time, the FBI Office of General Counsel was in the process of drafting the FBI's May 2004 Detainee Policy (described above).

However, almost immediately after the FBI's May 2004 Detainee Policy was issued, several FBI employees raised additional questions and concerns. In late May 2004, the FBI's On-Scene Commander in Iraq transmitted an e-mail to senior managers in the FBI's Counterterrorism Division stating that the instruction in the FBI's May 2004 Detainee Policy that agents report any known or suspected abuse or mistreatment did not draw an adequate line between conduct that is "abusive" and techniques such as stress positions, sleep management, stripping, or loud music that, while seemingly harsh, may have been permissible under orders or policies applicable to non-FBI interrogators.

In late May 2004, the FBI General Counsel stated in an e-mail to the FBI Director that agents who asked about the meaning of "abuse" in the FBI's May 2004 Detainee Policy were being told that the intent of the Policy was for agents to report conduct that they "know or suspect is

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beyond the authorization of the person doing the harsh interrogation," and that there was no reason to report on "routine" harsh interrogation techniques that the DOD had authorized its interrogators to use. Consistent with this interpretation, senior FBI officials in the Counterterrorism Division drafted a "clarification" of the May 2004 Detainee Policy instructing FBI agents to report any techniques that exceed "lawfully authorized practices." This clarification was never formally issued, although the interpretation contained in it was communicated to some FBI agents in the military zones.

In addition, in response to concerns expressed by agents and attorneys in the FBI after the May 2004 Policy was issued, the FBI General Counsel directed lawyers in the Office of General Counsel to prepare legal advice that addressed, among other things, how long FBI agents needed to wait after another agency interrogated a detainee so as not to be considered a participant in the harsh interrogation. Several drafts of supplemental policy to address this issue were prepared by the Office of General Counsel, but none was ever finalized. However, as detailed in Section VII below, this issue was addressed in training provided to agents prior to their deployment in the military zones.

C. OIG Assessment of FBI Policies

As described below, our report concluded that while the FBI provided some guidance to its agents about conduct in the military zones, FBI Headquarters did not fully or timely respond to repeated requests from its agents in the military zones for additional guidance regarding their participation in detainee interrogations.

FBI Interview Techniques Although FBI agents were aware that FBI policies regarding interviews prohibited the use of threats or coercion, we believe that the agents had several reasons to be uncertain about whether the rules were different in the military zones. Following the September 11 attacks, the FBI announced a change in priorities from evidence collection for prosecution to intelligence collection for terrorism prevention. In addition, conditions at detention facilities in the military zones were vastly different from conditions in U.S. jails or prisons. We believe that under these circumstances FBI agents in the military zones could reasonably have concluded that traditional law enforcement constraints on interview techniques were not strictly applicable in the military zones, particularly with respect to "high value" detainees.

Ultimately, senior FBI management determined that pre-existing FBI standards should remain in effect for all FBI interrogations in military zones even where future prosecution was not contemplated. However, we determined that this message did not reach all FBI agents

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in the military zones. We also found that a few FBI interrogators used interrogation strategies that might not be appropriate in the United States, such as extreme isolation from other detainees or other strategies to undermine detainee solidarity. We concluded that FBI management should have realized sooner than May 2004 that it needed to issue written guidance addressing the question of whether its pre-September 11 policies and standards for custodial interviews should continue to be strictly applied in the military zones.

Joint Interrogations The FBI's May 2004 Detainee Policy stated: "If a co-interrogator is in compliance with the rules of his or her agency, but is not in compliance with FBI rules, FBI personnel may not participate in the interrogation and must remove themselves from the situation." Yet, the question of whether the FBI should participate in, assist, or observe interrogations conducted by others using non-FBI techniques was raised to FBI Headquarters well before the Abu Ghraib scandal broke, and we believe that the FBI should have clarified its guidance before May 2004.

FBI Interrogations Following Other Agencies' Interrogations The FBI's May 2004 Detainee Policy also does not address the issue of whether FBI agents may interview a detainee who had previously been subjected to non-FBI interrogation techniques by other agencies. Although the problem was diminished somewhat when the military promulgated a new, uniform interrogation policy in 2006 for all military theaters that stresses non-coercive interrogation approaches (Field Manual 2-22.3), we believe this has not fully eliminated the need for clearer FBI guidance with regard to this question. The revised military policy still permits DOD interrogators to use some techniques that FBI agents probably cannot employ. Moreover, to the extent that the FBI is involved with interrogating detainees who have been interrogated by the CIA, the issue remains significant.

We therefore recommend in our report that the FBI consider completing the project that its Office of General Counsel began shortly after the issuance of its May 2004 Detainee Policy and address the issue of when FBI agents may interview detainees previously interrogated by other agencies using non-FBI techniques. We also recommend that the FBI address the circumstances under which FBI agents may use information obtained in interrogations by other agencies that employed non-FBI techniques.

Reporting Prior to issuance of the FBI's May 2004 Detainee Policy, the FBI did not provide specific or consistent guidance to its agents regarding when or how the conduct of other agencies toward detainees should be reported. Some agents told us they were instructed

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to report problematic interrogation techniques, but the definition of what to report was left unclear. Leaving this matter to the discretion of individual FBI agents put them in a difficult position because FBI agents were trying to establish a cooperative working relationship with the DOD while fulfilling their intelligence-gathering responsibilities. Under these circumstances, FBI agents had reasons to avoid making reports regarding potential mistreatment of detainees. In addition, the agents lacked information regarding what techniques were permissible for non-FBI interrogators. It was therefore not surprising that some agents who later told us that they observed or heard about potentially coercive interrogation techniques did not report such incidents to anyone at the time.

It is important to note, however, that despite the absence of clear guidance, several FBI agents brought concerns about other agencies' interrogation techniques to the attention of their On-Scene Commanders or senior officials at the FBI. We believe these agents should be commended for their actions.

In addition, in light of the recurring instances beginning in 2002 in which FBI agents in the military zones raised questions about the appropriateness of other agencies' interrogation techniques, we believe that FBI management should have recognized sooner the need for clearer and more consistent standards and procedures for FBI agents to make these reports. If this issue had been more fully addressed by FBI and DOD Headquarters officials, it would have reduced friction between FBI agents in the military zones and their military counterparts. Such an approach should have clarified: (1) what DOD policies were, (2) how the DOD was dealing with deviations from these policies, and (3) what FBI agents should do in the event they observed such deviations.

The FBI's May 2004 Detainee Policy, while providing some guidance, did not fully resolve these issues. The Policy requires FBI employees to report any instance when the employee "knows or suspects non-FBI personnel has abused or is abusing or mistreating a detainee," but it contains no definition of abuse or mistreatment. According to an e-mail from the FBI General Counsel to the Director dated May 28, 2004, agents with questions about the definitions of abuse or mistreatment were instructed to report conduct that they know or suspect is "beyond the authorization of the person doing the harsh interrogation." Agents told us, however, that they often did not know what techniques were permitted under military policies.

Going forward, the military's adoption of a single interrogation policy for all military zones (Field Manual 2-22.3) may reduce the difficulties for FBI agents seeking to comply with the reporting

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requirement in the FBI's May 2004 Detainee Policy. Nevertheless, military interrogators are still permitted to use some techniques not available to FBI agents, and it is therefore important for agents to receive training on the approved military interrogation policies and for the FBI to clarify what conduct should or should not be reported.

As a result, in our report we recommend that the FBI consider supplementing its May 2004 Detainee Policy or expanding pre-deployment training to clarify the circumstances under which FBI agents should report potential mistreatment by other agencies' interrogators. If the FBI requires its employees to report any conduct beyond the interrogator's authority, then the FBI should provide guidance to its agents on what interrogation techniques are permitted under military policy. If the FBI requires agents to report "abuse or mistreatment," it should define these terms and explain them with examples, either in the policy itself or in agent training.

VII. FBI Training Regarding Detainee Treatment

We also examined the training that FBI agents received regarding issues of detainee interrogation and detainee abuse or mistreatment in connection with their deployments to the military zones during the periods before and after issuance of the FBI's May 2004 Detainee Policy.

A large majority of agents who completed their deployments prior to May 19, 2004, reported in the OIG survey that they did not receive any training, instruction, or guidance concerning FBI or other agency standards of conduct relating to detainees prior to or during their deployment. Most of the FBI agents who reported receiving training regarding detainee mistreatment issues said they received it orally from their On-Scene Commander or other FBI agents after they arrived at the military zone.

By January 2004, the FBI had implemented a 5-day pre-deployment training program for agents detailed to Iraq. The agenda provided to the OIG included approximately 1 hour of training regarding "Interviewing Techniques," but it did not specifically identify any issues relating to detainee mistreatment.

Almost all the FBI agents who received training during this period told us that they were instructed to continue to adhere to the same FBI standards of conduct that applied to custodial interviews in the United States. Most agents told us they did not receive any specific information regarding which interrogation techniques were permissible for military interrogators. Several agents told us the FBI did not provide specific training about how to conduct joint interviews with the DOD, including

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whether agents could observe or assist in interviews led by other agencies who were using techniques not permitted in the FBI. Several agents told us they were instructed to leave the interview if they saw anything "extreme" or "inappropriate." A few FBI agents also said they were told to report detainee mistreatment by other agencies, but they received little guidance on what conduct was sufficiently improper to trigger the reporting requirement.

We determined that in the months following the issuance of the FBI's May 2004 Detainee Policy, the FBI's Military Liaison and Detainee Unit (MLDU) substantially increased the scope of pre-deployment training provided to FBI agents who were being sent to the military zones, particularly Iraq and Afghanistan. After May 2004, the FBI began addressing the issue of detainee treatment in a more systematic way than it had prior to the Abu Ghraib disclosures. Agents received a legal briefing that included training regarding the contents of the May 2004 Detainee Policy. Agents were also told to "attenuate" their interviews of potential criminal defendants in cases where the detainee had previously been questioned by a foreign government or other intelligence community agency so as to enhance the likelihood that any resulting statement would be admissible in a judicial proceeding, such as by allowing a lapse of time and choosing a different location for the FBI interview.

We found no indication that the FBI devised a comparable pre-deployment program for agents assigned to GTMO. However, in August 2004 the FBI Office of General Counsel attorney stationed at GTMO began giving training to FBI personnel deployed there, advising them to rely on the guidance provided in the Legal Handbook for Special Agents. He told the newly arrived FBI employees that if they saw anything "untoward" beyond what the FBI was authorized to do or outside the scope of the military's authority, the agent was to remove himself from the room and report the incident to the Office of General Counsel attorney or to the FBI's On-Scene Commander at GTMO. The Office of General Counsel attorney told us that he and the On-Scene Commander instructed the newly arrived employees on the scope of the military's approved techniques.

Although the quantity and quality of FBI training clearly increased after issuance of the FBI's May 2004 Detainee Policy, numerous agents told us in survey responses and interviews that it would have been useful to them to receive a more detailed explanation of what constituted "abuse" and what techniques were permissible to military or other government agency interrogators under their agencies' policies.

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VIII. FBI Observations Regarding Detainee Treatment at GTMO

In this section we summarize our report's findings regarding what more than 450 FBI agents who served at GTMO told us they observed or heard about regarding detainee interrogations, any reports by these agents concerning detainee mistreatment, and what the FBI did with such reports. These findings, as well as our corresponding findings relating to Afghanistan and Iraq that are also summarized below, were based on our survey of FBI employees and numerous follow-up interviews.

Our survey sought information about whether FBI agents observed or heard about approximately 40 separate aggressive interrogation techniques, including such techniques as using water to create the sense of drowning ("waterboarding"), using military dogs to frighten detainees, and mistreating the Koran.

A majority of FBI employees who served at GTMO reported in response to our survey that they never saw or heard about any of the specific aggressive interrogation techniques listed in our survey. However, over 200 FBI agents said they had observed or heard about military interrogators using a variety of harsh interrogation techniques on detainees. These techniques generally were not comparable to the most egregious abuses that were observed at Abu Ghraib prison in Iraq. Moreover, it appears that some but not all of these harsh interrogation techniques were authorized under military policies in effect at GTMO.

The most commonly reported technique used by non-FBI interrogators on detainees at GTMO was sleep deprivation or disruption. Over 70 FBI employees had information regarding this technique. "Sleep adjustment" was explicitly approved for use by the military at GTMO under the policy approved by the Secretary of Defense on April 16, 2003. Numerous FBI agents told the OIG that they witnessed the military's use of a regimen known as the "frequent flyer program" to disrupt detainees' sleep in an effort to lessen their resistance to questioning and to undermine cell block relationships among detainees. Only a few FBI agents participated in this program by requesting military officials to subject particular detainees to frequent cell relocations.

Other FBI agents described observing military interrogators use a variety of techniques to keep detainees awake or otherwise wear down their resistance. Many FBI agents told the OIG that they witnessed or heard about the military's use of bright flashing strobe lights on detainees, sometimes in conjunction with loud rock music. Other agents described the use of extreme temperatures on detainees.

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Prolonged short-shackling, in which a detainee's hands were shackled close to his feet to prevent him from standing or sitting comfortably, was another of the most frequently reported techniques observed by FBI agents at GTMO. This technique was sometimes used in conjunction with holding detainees in rooms where the temperature was very cold or very hot in order to break the detainees' resolve. A DOD investigation, discussed in the *Church Report*, classified the practice of short-shackling prisoners as a "stress position." Stress positions were prohibited at GTMO under DOD policy beginning in January 2003. However, these FBI agents' observations confirm that prolonged short-shackling continued at GTMO for at least a year after the revised DOD policy took effect.

Many FBI agents reported the use of isolation at GTMO, sometimes for periods of 30 days or more. In some cases, isolation was used to prevent detainees from coordinating their responses to interrogators. It was also used to deprive detainees of human contact as a means of reducing their resistance to interrogation.

In addition, a few FBI agents reported other harsh or unusual interrogation techniques used by the military at GTMO. These incidents tended to be small in number, but they became notorious at GTMO because of their nature. They included using a growling military dog to intimidate a detainee during an interrogation; twisting a detainee's thumbs back; using a female interrogator to touch or provoke a detainee in a sexual manner; wrapping a detainee's head in duct tape; and exposing a detainee to pornography.

We also examined how the reports from FBI agents regarding detainee treatment at GTMO were handled by the FBI. In addition to the reports relating to Al-Qahtani described above in Part V of this Executive Summary, we found that early FBI concerns about detainee short-shackling were raised with the military command at GTMO in June 2002. However, FBI agents continued to observe the use of short-shackling as a military interrogation technique as late as February 2004. Reports to FBI Headquarters about these techniques led to the instructions that FBI agents should stand clear of non-FBI techniques. As time passed, other reports from FBI agents to their On-Scene Commanders regarding military conduct were not elevated within the FBI chain of command because the On-Scene Commanders understood that the conduct in question was permitted under DOD policy.

FBI agents also reported to us that detainees sometimes told FBI agents they had previously been abused or mistreated. FBI practices in dealing with such allegations varied over time. Some agents were told to record such allegations for inclusion in a "war crimes" file; others were

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told to include the allegations in their regular FD-302 interview summaries. As noted above, other FBI agents told us they were instructed not to record such allegations at all. No formal FBI procedure for reporting incidents or allegations of mistreatment to the military was established until after the Abu Ghraib prison abuses became public in 2004.

IX. FBI Observations Regarding Detainee Treatment in Afghanistan

In this section we summarize our report's findings regarding what more than 170 FBI agents who served in Afghanistan told us they observed or heard about with respect to detainee interrogations, any reports by these agents concerning detainee mistreatment, and what the FBI did with such reports.

FBI employees in Afghanistan conducted detainee interviews at the major military collection points in Bagram and Kandahar and at other smaller facilities. A majority of FBI employees who served in Afghanistan reported in response to our survey that they never saw or heard about any of the specific aggressive interrogation techniques listed in our survey. However, some FBI employees reported witnessing or hearing about certain techniques.

Like at GTMO, the most frequently reported technique used by military interrogators in Afghanistan was sleep deprivation or disruption. According to the *Church Report*, sleep deprivation was a prohibited technique under military policy, but sleep disruption (in which the detainee was permitted to sleep a total of at least 4 hours per 24-hour period) was permitted prior to June 2004. FBI agents observed sleep deprivation or disruption at the major detainee facilities in both Kandahar and Bagram. Many FBI agents also described the use of loud music or bright or flashing lights to interfere with detainees' sleep.

FBI agents in Afghanistan also told us about observing the use of shackles or other restraints in a harsh, painful, or prolonged manner in Afghanistan. However, most of the agents stated that these restraints were used primarily as a military security measure rather than an interrogation technique. In addition, several agents told us that they observed or heard about the use of stressful or painful positions by the military in Afghanistan.

Several FBI agents also described the use of prolonged isolation by the military in Afghanistan, but not as a punishment for a detainee's refusal to cooperate with questioners. Instead, the agents described the

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use of isolation to prevent the coordination of stories among detainees and as punishment for disruptive behavior.

Several FBI employees told us they had heard about two detainee deaths at the military facility in Bagram, but none of the FBI employees said they had personal knowledge of these deaths. According to the *Church Report,* two detainees died at the Bagram facility following interrogations in which they were shackled in standing positions and kicked and beaten by military interrogators and military police.[8]

We found few contemporaneous reports by FBI agents to their supervisors in Afghanistan regarding concerns about the potential mistreatment of detainees. In several cases the agents believed, sometimes incorrectly, that the conduct they saw or heard about was authorized for use by military interrogators and therefore did not need to be reported. Moreover, the need for FBI agents to establish their role in Afghanistan and their dependence on the military for their protection and material support may have contributed to their reluctance to elevate their concerns about the military's treatment of detainees. In addition, several agents told the OIG that they were able to resolve concerns about the mistreatment of individual detainees by speaking directly to military supervisors in Afghanistan.

X. FBI Observations Regarding Detainee Treatment in Iraq

In this section we summarize our report's findings regarding what more than 260 FBI agents who served in Iraq told us they observed or heard about regarding detainee interrogations, any reports by these agents concerning detainee mistreatment, and what the FBI did with such reports.

We received varied reports from FBI agents who were detailed to Iraq. For example, several FBI agents said they observed detainees deprived of clothing. Other frequently reported techniques identified by FBI agents as used by military personnel in Iraq included sleep deprivation or interruption, loud music and bright lights, isolation of detainees, and hooding or blindfolding during interrogations. FBI employees also reported the use of stress positions, prolonged shackling, and forced exercise in Iraq. In addition, several FBI agents told the OIG

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[8] The Army's Criminal Investigative Division recommended charges against 28 soldiers in connection with these deaths. At least 15 of these soldiers have been prosecuted by the Army, and at least 6 have pleaded guilty or been convicted of assault and other crimes. Several have been acquitted.

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that they became aware of unregistered "ghost detainees" at Abu Ghraib whose presence was not reflected in official DOD records.

Although several FBI agents had been deployed to the Abu Ghraib prison in Iraq, they told us that they did not witness the extreme conduct that occurred at that facility in late 2003 and that was publicly reported in April 2004. The FBI agents explained that they typically worked outside of the main prison building where the abuses occurred, and they did not have access to the facility at night when much of the abuse took place.

Few of the FBI agents who served in Iraq made contemporaneous reports to anyone in the FBI or the military regarding mistreatment of detainees in Iraq. Almost all of the FBI On-Scene Commanders who served in Iraq in 2003 and 2004 told the OIG that they never received any reports from FBI agents regarding detainee mistreatment. We believe this occurred at least in part because there was no formal FBI reporting requirement prior to May 19, 2004, and some agents assumed that the conduct that they observed was permitted under military interrogation policies in Iraq. As in the other military zones, FBI agents in Iraq generally did not consider their role to include policing the conduct of the military personnel with whom they were working. Some agents also told us that they were able to get their concerns resolved by taking them directly to military officials.

XI. Specific Allegations of Misconduct by FBI Agents

We also investigated several specific allegations that FBI agents participated in abuse of detainees in connection with interrogations in the military zones. Some of these allegations were referred to us by the FBI, and others came to our attention during the course of our review.

In general, we did not find support for these allegations. We found that the vast majority of FBI agents in the military zones understood that existing FBI policies prohibiting coercive interrogation tactics continued to apply in the military zones and that they should not engage in conduct overseas that would not be permitted under FBI policy in the United States. To the FBI's credit, as noted above, it decided in 2002 to continue to apply FBI interrogation policies to the detainees in the military zones. As a result, most FBI agents adhered to the FBI's traditional rapport-based interview strategies in the military zones and avoided participating in the aggressive or questionable interrogation techniques that the military employed. We found no instances in which an FBI agent participated in clear detainee abuse of the kind that some military interrogators used at Abu Ghraib prison. For this, we credit the

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good judgment of the agents deployed to the military zones as well as the guidance that some FBI supervisors provided.

The following paragraphs discuss the most significant allegations against FBI agents that we reviewed.

Begg We investigated allegations made against the FBI by Moazzam Begg, a British national who was arrested in Pakistan in late January 2002 and detained in Afghanistan and at GTMO until his release in January 2005. Begg alleged that an FBI agent and a New York Police Department (NYPD) officer working with the agent participated in interrogations at Bagram Air Force Base during which Begg was threatened with rendition to Egypt and implied threats were made against Begg's family. Begg stated he was also subjected to a ploy to make him believe his wife was being tortured in a nearby room in the facility. Begg also alleged that on one occasion he was hooded and "hog-tied" by military personnel as punishment for failing to tell the interrogators what they wanted to hear, struck or kicked in the back and head, and left in this position overnight. He stated that the FBI agent and the NYPD officer directed or were aware of this treatment. Begg also alleged that the same FBI agent and NYPD officer later coerced him into signing a written statement at GTMO by threats of imprisonment and execution.

We did not find sufficient evidence to support Begg's allegations with respect to the FBI agent. Specifically, Begg stated that the CIA and the DOD were in charge of his interrogations in Afghanistan. Begg's own version of events did not establish that an FBI employee participated in threatening Begg with rendition, threatening his family, or staging a harsh interrogation of a female. There was also no evidence that the FBI participated in, observed, or knew about the alleged "hog-tying" incident.

Saleh We investigated allegations that the FBI participated in abusive interrogations of detainee Saleh Mukleif Saleh in Iraq in early 2004. Saleh claimed that interrogators tortured him, cuffed him in a "scorpion" position, punched him, forced him to drink water until he vomited, dragged him across barbed wire, and subjected him to loud music. We did not find evidence of FBI involvement in most of these activities. However, we found that four FBI agents were present during an interview of Saleh and another detainee in March 2004 in which a DOD interrogator poured water down the detainees' throat while the detainees were in a cuffed, kneeling position, and in a rough manner that

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would be considered coercive and would not be permissible conduct for FBI agents conducting interviews in the United States.[9]

The FBI agents did not join actively in this conduct. In addition, the FBI's May 2004 Detainee Policy requiring agents to remove themselves from such situations and report them to their superiors had not yet been issued. However, the FBI was the lead agency during this interrogation and we believe that agents could have influenced the techniques used by other interrogators during this interview, or at least reported this incident to their On-Scene Commander. We also found that the FBI participated in using duct tape to blindfold one of the detainees in a potentially painful matter, but we were unable to determine which FBI agent participated in this activity.

Slahi We investigated several allegations by detainee Mohammed Ould Slahi relating to FBI agents at GTMO. Slahi alleged that an FBI agent was involved in subjecting him to a harrowing boat ride as a ruse for making him believe he was being transferred to a different location, that another FBI agent implied that Slahi would be tortured by the military if Slahi did not cooperate with the FBI, that another FBI agent said Slahi would be sent to Iraq or Afghanistan if the charges against him were proved, and that an interrogator told Slahi he would be sent to a "very bad place" if Slahi did not provide certain information.

However, we determined that the FBI was not involved in the boat ride ruse that the military used with Slahi. We concluded that an Army Sergeant impersonated an FBI agent, without the consent of the FBI, in connection with this incident.

We also concluded that although an FBI agent who was leaving GTMO may have told Slahi that the military would treat him differently than the FBI, he did not intend to threaten Slahi. The military implemented a plan to use much harsher techniques on Slahi, but this plan was not agreed to or condoned by the FBI. We also found insufficient evidence to conclude that another FBI agent threatened Slahi by telling him he would be transferred to Iraq or Afghanistan if convicted.

Al-Sharabi We investigated several allegations relating to FBI agents who were involved in questioning GTMO detainee Zuhail Abdo Al-Sharabi. We found that the military kept Al-Sharabi in an isolation cell for at least 2 months in 2003 in order to break his resistance to cooperating with interrogators. FBI agents participated in this tactic by

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[9] This activity was not equivalent to "waterboarding" as that technique has been described in media reports.

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repeatedly telling Al-Sharabi that he would only be removed from isolation if he began to provide information. The FBI agents also suggested to Al-Sharabi that he could win his freedom by speaking openly. We found that although these tactics were fairly widespread at GTMO, and several agents told us they understood that the FBI could use these tactics at GTMO, these tactics would not be permissible for FBI agents to use in the United States.

As discussed previously, the FBI policy reiterating that existing FBI policies applied in the military zones was not issued until May 19, 2004. We believe that the Al-Sharabi matter illustrated the inadequacy and lack of clarity in the guidance provided to FBI agents regarding permissible interrogation techniques in the military zones.

Al Qarani We investigated allegations regarding the FBI's treatment of detainee Yousef Abkir Salih Al Qarani at GTMO. We determined that in September 2003 FBI agents participated in a joint interview with the military in which a military interrogator directed that Al Qarani be short-chained to the floor. This technique would not be permissible to FBI agents under existing interview policies. Al Qarani was left alone in this position for several hours, during which time he urinated on himself. There was no evidence that the FBI agents knew in advance that the military interrogator would put Al Qarani in this position. We found this incident to be a further illustration of the inadequacy of FBI guidance. At the time, FBI policy was not clear about what an FBI agent should do if another agency's interrogator utilized such a technique.

We also found that at least one FBI agent participated in subjecting Al Qarani to a program of disorientation and sleep disruption, and that the On-Scene Commander at GTMO was aware that other FBI agents participated in this technique.

Al Qarani told the OIG that he was abused by two FBI agents. We investigated Al Qarani's allegations and found that the evidence did not support the conclusion that the allegations related to any FBI employees.

Al Harbi We investigated an allegation in a written FBI interview summary that detainee Muhammad A. A. Al Harbi claimed he was beaten by unidentified FBI agents in Afghanistan. However, during his interview with the OIG, Al Harbi told us that he had no complaints about his treatment by the FBI and that he believed that the individuals who struck him in Afghanistan were from another agency.

Zubaydah We investigated an allegation that an FBI agent who was assigned to assist in the CIA's interrogation of Zubaydah at a secret

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location participated in the use of "brutal" interrogation techniques.[10] The FBI agent was present when the CIA used techniques on Zubaydah that clearly and obviously would not be available to FBI agents for use in the United States. However, these interrogations took place in early 2002, before the FBI had determined whether its traditional policies regarding interviews would apply to overseas interrogations of terrorism suspects. The agent described these interrogations to his superiors at the FBI. At the time of the interrogation, the FBI agent was told that the other agency was in charge of the interrogation and that normal FBI procedures should not be followed. The FBI's formal policy addressing participation in joint interrogations with other agencies in overseas locations was not issued until 2 years later, in May 2004.

We also examined the FBI's internal investigation regarding an allegation that the same FBI agent disclosed classified information about this interrogation and other subjects to persons not authorized to receive such information. The FBI agent's ex-fiancé and a friend of hers alleged that the agent told them numerous specific details about his participation in the interrogation of a terrorism subject at an overseas location. The FBI's Inspection Division investigated the matter, and the FBI's Office of Professional Responsibility concluded that it was unable to determine whether information alleged to have been improperly disclosed was in fact classified or sensitive because of the vague descriptions provided by the ex-fiancé and her friend.

However, we found that the information the ex-fiancé attributed to the FBI agent was detailed, specific, and accurate, and appeared to contain classified information about the Zubaydah interrogation. Further, we found no indication that the FBI made any attempt to determine whether the ex-fiancé's detailed account of the FBI agent's activities was accurate and if so whether the information was classified or sensitive. Consequently, we believe that the FBI's investigation of this allegation was deficient.

Facility in or near Baghdad We addressed allegations relating to FBI conduct during the spring and summer of 2004 at a DOD facility in or near Baghdad. An FBI agent serving in his capacity as an active duty officer in the U.S. Army was the officer in charge of the facility. Several other FBI agents were detailed to the facility to serve as interrogators during this period. The allegations included claims that detainees were kept in inhumane conditions at the facility, were denied showers and medical attention, were deprived of food and water, and were subjected

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[10] As noted above in footnote 4, because the CIA objected to our access to Zubaydah we were unable to fully investigate these allegations.

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to harsh interrogation techniques such as nudity and dripping cold water, prolonged in-cell restraints, and threats.

In evaluating the conduct of the officer in charge, we recognized that the officer was acting in his capacity as a military commander while he was stationed at the detention facility, not as an FBI employee. In this capacity, he was expected to comply with military regulations relating to the treatment of detainees, not FBI policies. The other FBI agents deployed to the facility were not military, however, and were subject to FBI rules.

We found that conditions inside the cells in the facility were primitive and likely extremely hot and uncomfortable during the summer. However, we did not find that the officer in charge of the facility was responsible for these conditions, which existed before he arrived, or that he could control them. We also found insufficient evidence to conclude that the officer was responsible for any inadequacies in medical treatment at the facility.

We found evidence that the military used the following interrogation techniques at the facility, which may have been prohibited under military policies in effect at the time:

- Depriving detainees of food and water for the first 24 hours after their arrival
- Sleep deprivation
- "Harsh up" interrogation techniques such as nudity, stress positions, dripping cold water on the detainee, and forced exercise
- A categorization system in which detainees who did not cooperate with interrogators were kept with hands cuffed behind their backs while in their cells, while more cooperative detainees were not restrained in the cells
- Use of blindfolds or blacked-in goggles during interrogations
- Threatening detainees with the arrest and prosecution of family members

We recommend that the military make its own findings regarding whether these practices at the facility violated military policies, and whether the officer in charge was responsible for any violation.

We did not find evidence to substantiate that the other FBI agents who served as interrogators at the facility from May to June 2004 engaged in most of the conduct described above, such as deprivation of

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food and sleep and inhumane treatment. However, two FBI agents knowingly participated in the categorization system for restraining detainees in the cells who were not cooperative during interrogations. We believe that this activity probably would not have been permitted in the United States under FBI policies. The FBI's May 2004 Detainee Policy, which reiterated the applicability of existing FBI interrogation policies in the military zones, was issued near or during the time that this conduct took place. We also believe that these incidents demonstrate that the applicability of existing FBI policies in the military zones was not made clear to all FBI agents prior to the issuance of the May 2004 Detainee Policy.

XII. Conclusion

The FBI deployed agents to military zones after the September 11 attacks in large part because of its expertise in conducting custodial interviews and in furtherance of its expanded counterterrorism mission. The FBI has had a long history of success in custodial interrogations using non-coercive, rapport-based interview techniques developed for the law enforcement context. Some FBI agents deployed to GTMO experienced disputes with the DOD, which used more aggressive interrogation techniques. These disputes placed some FBI agents in difficult situations at GTMO and in the military zones. However, apart from raising concerns with their immediate supervisors or military officials, the FBI had little leverage to change DOD policy.

Our review found that the vast majority of the FBI agents deployed in the military zones dealt with these issues by separating themselves from other interrogators who used non-FBI techniques and by continuing to adhere to FBI policies. In only a few instances did FBI agents use or participate in interrogations using techniques that would not be permitted under FBI policy in the United States.

The FBI decided in the summer of 2002 that it would not participate in joint interrogations of detainees with other agencies in which techniques not allowed by the FBI were used. However, the FBI did not issue formal written guidance about detainee treatment to its agents until May 2004, shortly after the Abu Ghraib abuses became public. We believe that the FBI should have recognized earlier the issues raised by the FBI's participating with the military in detainee interrogations in the military zones and should have moved more quickly to provide clearer guidance to its agents on these issues.

In sum, we believe that while the FBI could have provided clearer guidance earlier, and while the FBI could have pressed harder for

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resolution of concerns about detainee interrogations by other agencies, the FBI should be credited for its conduct and professionalism in detainee interrogations in the military zones in Guantanamo Bay, Afghanistan, and Iraq and in generally avoiding participation in detainee abuse.

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CHAPTER ONE
INTRODUCTION

I. Introduction

On April 28, 2004, the television news program *60 Minutes II* broadcast photographs of detainee abuses at the Abu Ghraib prison in Iraq. In the days and weeks that followed, many more details of detainee abuses at the prison were made public. Published photographs included images of soldiers taunting naked Iraqi prisoners in humiliating poses, a hooded detainee mounted on a box and attached to electrical wires, and military dogs threatening or attacking Iraq prisoners. In addition, excerpts from a secret U.S. Army Report were published, which detailed some of the abuse as follows:

> Breaking chemical lights and pouring the phosphoric acid on detainees; beating detainees with a broom handle and a chair; threatening male detainees with rape; allowing a military police guard to stitch the wound of a detainee who was injured after being slammed against the wall in his cell; sodomizing a detainee with a chemical light and perhaps a broom stick; using military working dogs to frighten and intimidate detainees with threats of attack; and in one instance actually biting a detainee.[11]

Federal Bureau of Investigation (FBI) agents had been deployed in Iraq during October through December 2003, the period when many of these abuses occurred. Some FBI agents spent time at the Abu Ghraib prison during this time period. Within days of the Abu Ghraib disclosures becoming public, the FBI began an internal inquiry to determine whether any of its agents had "first hand knowledge of any abuses" at Abu Ghraib and if so, how the FBI had responded. Within a short time the FBI also initiated internal inquiries into whether agents had observed aggressive treatment of detainees at the detention facility in Guantanamo Bay, Cuba (GTMO) and in Afghanistan.

The Department of Justice Office of the Inspector General (OIG) became aware of these FBI investigations, and the OIG made a document request to the FBI for the purpose of determining whether the OIG should

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[11] "Torture at Abu Ghraib," *The New Yorker*, May 10, 2004, quoting from *Article 15-6 Investigation of the 800th Military Police Brigade ("Taguba Report")* at 17.

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initiate an independent review of FBI activities in the military zones. The FBI provided approximately 2,500 pages of documents in response to this request. In addition, the FBI released a large quantity of documents relating to detainee issues to the American Civil Liberties Union (ACLU) pursuant to a request under the Freedom of Information Act (FOIA). Many of the documents released to the ACLU were heavily redacted; unredacted versions were supplied to the OIG. Taken together, the documents made available to the OIG revealed that FBI agents deployed to GTMO had raised concerns to their superiors about the military's interrogation practices as early as October 2002.

The OIG decided to initiate a review relating to the conduct and observations of FBI agents in the military zones with respect to the treatment of detainees. Subsequent to the initiation of this review, the OIG received several communications from members of Congress seeking information about the OIG's investigation and urging the OIG to address various issues and documents relating to the FBI's role in detainee matters.

II. The OIG Investigation

The focus of the OIG investigation was whether FBI agents witnessed incidents of detainee abuse in the military zones, whether FBI employees reported any such abuse to their superiors or others, and how those reports were handled by the FBI. We also examined the development and adequacy of the policies, guidance, and training that the FBI provided to the agents that it deployed to the military zones. In addition, the OIG examined whether FBI employees participated in any incident of detainee abuse. The FBI referred several specific allegations of wrongdoing by FBI agents for investigation by the OIG. In other cases, the OIG initiated an investigation of particular FBI employees on the basis of information that the OIG developed during the course of our review.

The OIG team investigating these issues included OIG attorneys, special agents, and a paralegal specialist. The OIG developed and distributed a detailed survey to over 1,000 FBI employees who had deployed overseas to one of the military zones. Among other things, the OIG survey sought information regarding observations or knowledge of specifically listed interview or interrogation techniques and other types of detainee treatment, and whether the FBI employees reported such incidents to their FBI supervisors or others.

The OIG team also interviewed over 230 witnesses. We selected many of these witnesses on the basis of survey responses indicating that the respondent had information relevant to our review. Other witnesses were selected on the basis of their positions or responsibilities within the FBI.

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We reviewed over 500,000 pages of documents provided by the FBI, other components of the Department of Justice (DOJ), and the Department of Defense (DOD). We made two trips to GTMO to tour the detention facilities, review documents, and interview witnesses, including five detainees. We also interviewed one released detainee by telephone.

Our review focused on the activities and observations of FBI agents deployed to facilities under the control of the DOD. [redacted] With limited exceptions, we did not investigate the conduct or observations of FBI agents regarding detainees held at CIA facilities. We were unable, with limited exceptions, to obtain highly classified information about these facilities, what occurred there, and what legal authorities governed their operations. Second, during the course of our review we learned that in January 2003 the CIA Inspector General initiated a special review of the CIA terrorist detention and interrogation program. We understand that the CIA Inspector General is currently conducting additional investigations relating to CIA detention and interrogation of detainees. Therefore, our review focused mainly on the conduct and observations of the approximately 1,000 FBI employees related to detainee interviews in military facilities.[12]

III. Prior Reports Regarding Detainee Mistreatment

Several prior reports have addressed the issue of detainee treatment in the military zones. Among the most significant of these are the following:

Taguba Report. In response to reports of detainee abuse at Abu Ghraib prison, in January 2004 the Chief of Staff of the U.S. Central Command directed an investigation into the 800th Military Police (MP) Brigade detention and internment operations from November 2003 to present. The report of this investigation (*Article 15-6 Investigation of the 800th Military Police Brigade*, also known as the "*Taguba Report*") was completed in March 2004; as noted above, it found intentional abuse of detainees by military police personnel. The forms of abuse included punching and kicking detainees, photographing naked detainees in sexually explicit and humiliating circumstances, and using unmuzzled military dogs to intimidate detainees.

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[12] We did review the activities and observations of the FBI in connection with the interrogation of Zubaydah and a few other detainees at CIA facilities overseas. As detailed in Chapter Four, these activities and the FBI's reaction to them were important influence on the development of FBI policies with respect to subsequent detainee interviews. The conduct of one of the agents in connection with Zubaydah was also the subject of allegations of agent misconduct that we address in Chapter Eleven.

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Fay and Jones Reports. Following the completion of the *Taguba Report,* the Combined Joint Task Force Commander ordered an investigation into the conduct of the 205th Military Intelligence Brigade at Abu Ghraib. Two reports were issued as a result of this request: the "*Fay Report*" and the "*Jones Report.*" These two reports found numerous instances in which detainee abuse was "requested, encouraged, condoned, or solicited" by military intelligence personnel and that in some cases, military intelligence personnel were directly involved. The reports identified the primary cause of the abuse as "misconduct (ranging from inhumane to sadistic) by a small group of morally corrupt soldiers and civilians." The reports also identified systemic failures that contributed to the abuse, such as inadequate interrogation policies and training, the intense pressure to produce actionable intelligence, lack of clear lines of responsibility between Military Intelligence and Military Police personnel, and inadequate leadership oversight. The *Fay Report* and *Jones Report* also identified interactions with non-DOD agencies (the CIA) that were perceived to operate under different rules as a contributing factor that led to abuse.

Schlesinger Report. In May 2004, Secretary of Defense Donald Rumsfeld chartered an independent panel chaired by James R. Schlesinger to review ongoing or completed DOD investigations on detention operations and to identify the causes and contributing factors to problems in detainee operations. The Final Report of the Independent Panel to Review Detention Operations (the "*Schlesinger Report*") was issued in August 2004. It identified 66 confirmed incidents of detainee abuse in GTMO, Afghanistan, and Iraq including five deaths. With respect to the Abu Ghraib prison, which was the location of the vast majority of confirmed abuses, the *Schlesinger Report* found that contributing causes included deficient and frequently changing interrogation policies and inadequate resources, training, leadership, and oversight.

Church Report. On May 25, 2004, Defense Secretary Rumsfeld directed the Naval Inspector General to conduct a comprehensive review of DOD interrogation operations. The resulting report (the "*Church Report*") was submitted on March 7, 2005. The *Church Report* detailed the history of DOD interrogation policies issued in each of the military zones. It reviewed the interrogation techniques employed by military interrogators in GTMO, Afghanistan, and Iraq. The *Church Report* was complimentary of military operations at GTMO, but it found that dissemination of interrogation policies in Afghanistan and Iraq was generally poor, and that unit-level compliance with the policy was poor in Iraq even when the policies were known. The *Church Report* found no evidence that the environment at Abu Ghraib in the fall of 2003 related to detainee mistreatment was repeated elsewhere. The *Church Report* found 71 instances of substantiated detainee abuse, including 6 detainee deaths. The *Church Report* determined that DOD interrogation policies did not cause detainee abuse. Instead, the

Church investigators attributed instances of detainee abuse to episodic breakdowns in discipline and oversight, particularly at the point of capture in Afghanistan or Iraq.

Schmidt-Furlow Report. Following the FBI's release of documents to the ACLU in December 2004, the U.S. Army Southern Command ordered an investigation into several allegations about the conduct of military interrogators contained in FBI communications released to the public. The investigation was led by Lieutenant General Randall M. Schmidt and Brigadier General John T. Furlow. The results of this investigation are set forth in the *AR-15-6 Report FBI Allegations of Abuse (9 June 2005)* (the *"Schmidt-Furlow Report"*). This report found that out of the 24,000 interrogations conducted at GTMO, there were a total of 3 violations of DOD interrogation policies: (1) detainees were "short-shackled" to the eye-bolt in the floor of an interrogation room; (2) duct tape was used to "quiet" a detainee; and (3) military interrogators improperly threatened a detainee and his family. The investigators also found that the interrogation of one high value detainee resulted in degrading and abusive treatment, but did not rise to the level of inhumane treatment.

IV. Methodology of OIG Review of Knowledge of FBI Agents Regarding Detainee Treatment

In this section we describe the methodology of the OIG's investigation relating to what FBI employees deployed to Afghanistan, GTMO, and Iraq saw or heard about the treatment of detainees in those military zones. FBI employees were deployed in significant numbers to assist with interviewing detainees at many of the locations where abuses allegedly occurred. Although the FBI generally had limited authority to control the conditions of detainees in the military zones, FBI employees deployed to these locations participated in interviewing detainees and were also potential witnesses to incidents of detainee abuse.

The focus of this part of the OIG's review was to obtain information from FBI employees who were detailed to the military zones during the period our survey covered (from late 2001 until December 2004) regarding the treatment of detainees in those zones. Our review relied primarily on the results of a comprehensive survey sent to more than 1,000 FBI employees in June 2005, and our follow-up interviews of FBI employees.

A. The OIG June 2005 Survey

On June 2, 2005, the OIG distributed a detailed survey to FBI personnel who had deployed overseas. This survey was distributed to a total of 1,031 FBI personnel who had been deployed at some time to one or more of the military zones. The distribution list was compiled from FBI

records and responses to an internal FBI e-mail instructing all employees who were deployed to the military zones to identify themselves. The OIG received a total of 913 responses, for a response rate of approximately 90 percent.[13]

The survey consisted of 76 questions, some with subparts, and some with additional questions which were asked depending on the agent's response. A copy of the survey is provided as Appendix A to this report. The survey was divided into six parts: (1) basic contact information and basic information concerning where and when the respondents were deployed; (2) the nature and extent of training for agents prior to and during their deployments; (3) respondent observations or knowledge of specific interview or interrogation techniques and other types of detainee treatment; (4) knowledge of incidents involving impersonation of FBI agents, sham interviews, or denial of access to detainees; (5) information concerning whether agents reported interview or interrogation techniques and other types of detainee treatment, and any actions taken in response to such reports; and (6) the extent and nature of any post-deployment FBI debriefings.

The 37 questions we asked about particular interview or interrogation techniques and other types of detainee treatment (Questions 27 through 63) were based upon information indicating that such forms of coercive or otherwise questionable treatment of detainees had occurred in one or more of the overseas locations to which FBI personnel had been deployed. The sources of such information included documents produced to us by the FBI, interviews conducted prior to the survey, reports of military and other investigations, and press reports. For each form of conduct, we asked respondents to state whether they personally observed the conduct or observed detainees in a condition that led them to believe the conduct had occurred, whether detainees told them that this conduct had occurred, whether others who observed the conduct described it to them, whether they otherwise obtained information about such conduct other than from media accounts, or if they never observed such conduct or heard about it from someone who did. We also asked respondents to indicate whether they had relevant information as to each form of conduct that was classified above "Secret." Finally, we included several questions soliciting information

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[13] We did not or could not obtain responses from 118 individuals who were originally identified as survey recipients for a variety of reasons. These recipients fell primarily into the following categories: (1) agents who were posted to overseas locations without the necessary software to complete the survey; (2) persons who had been identified erroneously as FBI personnel but who were not; (3) persons who had been erroneously identified as having served in the military zones when they never did; and (4) persons who were no longer FBI employees by the time of the survey.

concerning other interrogation practices about which the respondents had knowledge, but which were not specified in our other questions.[14]

B. OIG Selection of FBI Personnel for Interviews

Using the survey responses as a screening tool, we interviewed selected respondents who indicated they had information pertaining to several interrogation techniques, or pertaining to the most serious forms of alleged abuse. We also attempted to interview all of the On-Scene Commanders (OSC) and Deputy OSCs who served in each military zone because these agents had supervisory responsibility for FBI personnel and were positioned to observe or receive reports regarding detainee mistreatment.[15] We interviewed almost all of the former OSCs and all of the 6 Deputy OSCs who served in Afghanistan between late December 2001 and the end of 2004. We also interviewed all eight of the FBI OSCs in Iraq and five of the seven Deputy OSCs who served during that period. We interviewed 15 of the 16 OSCs who served in GTMO. (There were no Deputy OSCs in GTMO.) We also interviewed several employees who did not respond to the survey but who we otherwise determined had significant relevant information.

Because OIG resources did not enable us to interview all of the FBI personnel who served in the military zones, we generally did not interview survey respondents who only described conduct clearly justified by concerns for safety and security of U.S. personnel, or by the need for proper prison order and discipline. We often chose not to interview those who said that they had merely heard about conduct observed by others. We also excluded some respondents who indicated in their survey responses that they had information only about techniques such as sleep disruption, about which we had substantial other information from other respondents and witnesses. Finally, we excluded those respondents who provided information that we concluded was in fact not within the scope of the question or our investigation.

C. OIG Treatment of Military Conduct

We report the results of our investigation regarding what the FBI agents observed in the military zones in Chapters Eight through Ten. Some of the interrogation techniques reported by FBI agents in the military zones are addressed in policies applicable to military interrogators. The question

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[14] The FBI Inspection Division provided valuable assistance to the OIG in identifying appropriate respondents and designing and administering the questionnaire.

[15] As detailed in Chapter Six, the FBI's May 2004 Detainee Policy required agents serving in military zones to report known or suspected abuse of detainees to their OSCs.

of whether military interrogators violated their own agencies' policies is outside the jurisdiction and expertise of the DOJ OIG. Moreover, we did not attempt to determine whether military witnesses would dispute the accuracy of reports made to the OIG by FBI employees. An investigation of this scope would have been beyond our jurisdiction and our available resources.

However, in this report, we identify potentially applicable DOD policies in each discussion of a particular technique reported by FBI agents based on the description of those policies supplied in the *Church Report* or the *Schmidt-Furlow Report*. For comparative purposes, we also indicate whether prior investigations found instances of conduct similar to that reported by the FBI agents.

V. Organization of the OIG Report

This OIG report is organized into 12 chapters. Chapter One contains this Introduction. Chapter Two provides background information relevant to the issues addressed later in this report. It describes how the FBI became involved in the military zones as a result of its changing emphasis on preventing terrorism in the wake of the September 11 terrorist attacks. Chapter Two also describes the organizational structure of FBI Headquarters with respect to international terrorism and detainee operations. It also discusses other DOJ entities involved in overseas detainee issues, as well as inter-agency entities and agreements relevant to this OIG investigation. In the last part of Chapter Two, we discuss each of the three zones (GTMO, Afghanistan, and Iraq), including a brief review of military detainee operations, a discussion of the FBI's missions and deployments within the zone, a discussion of the FBI's organizational structure as it related to the zone, and a detailed description of FBI interview activities in cooperation with the military within the zone.

Chapter Three provides background information regarding the pre-existing interrogation policies of the FBI prior to the September 11 attacks. These policies, which prohibit the use of coercive interrogation techniques, are based on constitutional considerations regarding the voluntariness of custodial confessions and the FBI's position, from years of law enforcement experience, that rapport-based interview techniques are the most effective and yield the most reliable information. In Chapter Three, we also address the various interrogation policies that the DOD adopted for use in the military zones, and we explain reasons for the dramatic differences between the FBI's interrogation policies and those issued by the military for use in military zones overseas.

Chapter Four examines the FBI's initial deliberations regarding how its agents should conduct themselves in the context of the FBI's new

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terrorism prevention function overseas, and its unfamiliar role of being subordinate to other agencies that controlled most detainees in the military zones. These deliberations began in 2002 when the FBI sought to assist in the interrogation of certain high value detainees in the custody of other agencies. FBI Director Robert S. Mueller III decided that the FBI would not participate in interrogations involving aggressive techniques that were approved for other agencies in the military zones.

Chapter Five examines the dispute between the FBI and the DOD relating to Muhammad Al-Qahtani, a detainee held at GTMO who is widely believed to have been an additional hijacker in the September 11 conspiracy but who was prevented from entering the United States by immigration officials at the airport in Orlando, Florida. We examine the treatment of this detainee in detail because his interrogation became a focal point for tension between the divergent interrogation models followed by the FBI and the military. The dispute regarding the interrogation strategy for Al-Qahtani, which was elevated to senior officials in the FBI and DOJ, was ultimately resolved in favor of DOD's interrogation approach.

In Chapter Six, we examine the FBI's response to the Abu Ghraib disclosures in the spring of 2004. We discuss the development of the FBI's formal written policy addressing agent conduct with respect to detainees in GTMO, Afghanistan, and Iraq: an Electronic Communication (EC) issued by the FBI Office of General Counsel on May 19, 2004 (the "FBI's May 2004 Detainee Policy"). Chapter Six also examines how the FBI addressed the concerns raised by agents in the field after the policy was promulgated. These concerns related to whether the FBI agents would be deemed to have "participated" in coercive interrogation techniques used by other agencies by their presence alone, and the circumstances under which FBI agents would be required to report interrogation tactics used by other agencies. We also describe the internal investigations that the FBI conducted following the Abu Ghraib disclosures.

In Chapter Seven we examine the communication of FBI policies to agents who were deployed to the military zones. First, we describe the FBI's early efforts to provide training or guidance to its agents regarding how they should address detainee issues, including the question of what action they should take in response to witnessing the use of aggressive interrogation techniques by other agencies. Second, we describe the expanded training programs that the FBI developed for agents deployed to the military zones after the Abu Ghraib disclosures and the issuance of the FBI's May 2004 Detainee Policy.

Chapters Eight, Nine, and Ten detail the results of the OIG's investigation into what FBI agents saw, heard about, and reported with respect to detainee mistreatment in GTMO, Afghanistan, and Iraq. Each of

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these chapters follows the same organization. The responses to the OIG's survey are summarized in tabular form. We then describe the FBI agents' observations regarding specific techniques, with particular attention to the harshest techniques and those techniques most commonly observed in the particular military zone. In the last part of each of these chapters, we examine the disposition of reports by FBI agents to their superiors or to military personnel regarding their concerns about detainee treatment.

In Chapter Eleven we discuss our investigation of eight separate allegations that FBI agents in the military zones were involved in detainee abuse or mistreatment. While some of the allegations we investigated were made by detainees, others allegations came from other FBI agents, in most instances in response to the OIG's survey.

Chapter Twelve presents the OIG's conclusions and recommendations regarding the FBI's involvement in detainee interrogations in the military zones.

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CHAPTER TWO
FACTUAL BACKGROUND

In this chapter we provide background information regarding the FBI's activities in overseas military zones. In Part I we explain how the FBI became involved in the military zones as a result of its changing emphasis on preventing terrorism in the wake of the September 11 attacks. In Part II we describe the FBI Headquarters organizational structure with respect to international terrorism and detainee operations. In Part III we describe other DOJ entities involved in overseas detainee issues, and in Part IV we describe inter-agency entities and agreements relevant to this OIG investigation. In Part V we describe each of the three zones (GTMO, Afghanistan, and Iraq), including a brief review of military detainee operations, a discussion of the FBI's missions and deployments within the zone, a discussion of the FBI's organizational structure as it related to the zone, and a detailed description of FBI interview activities in cooperation with the military within the zone.

I. The Changing Role of the FBI After September 11

The FBI is the nation's lead domestic agency for the collection of foreign counterintelligence information, which includes information relating to international terrorist activities.[16] Since September 11, the Attorney General and the FBI Director have elevated counterterrorism and the prevention of future terrorist attacks against United States interests as the top priority of the DOJ and the FBI. In response to the attacks, Attorney General Ashcroft directed all DOJ components to focus their efforts on disrupting any additional terrorist threats. The Attorney General summarized the Department's new mandate in a speech he gave on October 25, 2001, in which he said: "Our single objective is to prevent terrorist attacks by taking suspected terrorists off the street." This caused a dramatic shift in the focus of the Department of Justice, including the FBI. Former Deputy Attorney General Larry Thompson described this change to the OIG as a huge paradigm shift within DOJ from prosecution to prevention. Similarly, other high-level DOJ and FBI officials told us that after September 11, they worked to transform the FBI into an organization that would prevent attacks as opposed to react to attacks.

[16] The authority for the FBI's broad mission to act at the nation's lead domestic intelligence agency is set forth most clearly in Presidential Executive Order 12333, implemented on December 4, 1981.

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Part of the transformation of DOJ and the FBI focused on increasing information sharing within DOJ and the FBI and among all the entities involved in the collection of intelligence relating to terrorist activities.[17] Previously, the FBI's overseas presence was primarily carried out by its legal attaches (LEGAT), who were assigned to U.S. Embassies around the world and who facilitated and supported the FBI's investigative interests in the overseas arena that pertained to threats against the United States. While the LEGAT system remains in place, after September 11 the FBI sought to place significant numbers of agents directly in zones outside the United States where first-hand intelligence relating to potential domestic terrorism threats could be gathered.[18] In particular, the FBI began sending agents to Afghanistan, Guantanamo, and Iraq. While the activities of the agents assigned to GTMO were directed for a short time by FBI field offices, the responsibility for these overseas assignments quickly shifted to officials at FBI Headquarters. In the next section, we describe the FBI Headquarters entities relevant to international terrorism generally, and FBI agent assignments to overseas military zones in particular.

II. FBI Headquarters Organizational Structure for Military Zones

To assess FBI observations of detainee treatment and how concerns regarding detainee treatment made their way from line FBI agents up the FBI chain of command, it is important to understand the various FBI

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[17] One effect of September 11 and the FBI's change in emphasis was the dissolution of divisions between the "intelligence" and "criminal investigative" functions. Prior to the September 11 attacks, procedural restrictions – known informally as the "wall" – were created to separate intelligence and criminal investigations. These restrictions were created in response to concerns that if intelligence investigators consulted with prosecutors about intelligence information or provided intelligence information to criminal investigators, this interaction could affect the prosecution of a case by allowing defense counsel to argue that the government had misused its authority to conduct surveillance under the Foreign Intelligence Surveillance Act (FISA). Although information could be "passed over the wall" – shared with criminal investigators – this occurred subject to defined procedures. In late 2001 and 2002, the passage of the USA PATRIOT Act, the issuance of new guidelines on intelligence sharing by the Attorney General, and a ruling by the Foreign Intelligence Surveillance Court of Review combined to dismantle the "wall." In its ruling, the FISA Court of Review wrote, "[E]ffective counterintelligence, we have learned, requires the wholehearted cooperation of all the government's personnel who can be brought to the task." In Re Sealed Case, 310 F.3d 717, 743 (2002).

[18] The FBI's merging of the intelligence and criminal investigative functions stands in contrast to the military, which continues to have separate entities for its law enforcement functions and its intelligence function, as we describe in Section IV.B.1 of this chapter.

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Headquarters entities responsible for counterterrorism, intelligence collection, and detainee issues.[19]

A. Counterterrorism Division

In 1999, the FBI created a separate Counterterrorism Division (CTD). At FBI Headquarters, CTD has been responsible for the deployments of personnel and the management of information to and from Afghanistan, Iraq and GTMO.[20] In addition, the number of agents assigned to counterterrorism nearly tripled between 1995 and 2002. Within CTD, various entities had jurisdiction over, or management responsibility for, the collection of terrorism-related counterintelligence information and the agents collecting such information in Afghanistan, and Iraq. The primary components within CTD with such responsibilities were the International Terrorism Operations Sections (ITOS-1 and ITOS-2), and the Counterterrorism Operational Response Section (CTORS). The Assistant Director for CTD reports to the Executive Assistant Director for Counterintelligence and Counterterrorism, who reports to the FBI Director.

1. International Terrorism Operations Sections

One of the four major components of the FBI's CTD is the International Terrorism Operations Section (ITOS), which is responsible for overseeing the FBI's international terrorism investigation, including both criminal and intelligence investigations. The mission of the ITOS is to prevent terrorist acts before they occur, and to mount an effective investigative response to any terrorist attacks with the goal of prosecuting those responsible. ITOS responsibilities are divided between ITOS-1 and ITOS-2. With respect to the matters covered in this report, ITOS-1 played an important role. In this regard, the focus of ITOS-1 has been operational matters relating to Afghanistan and al-Qaeda within the United States. ITOS-1 distributed information being sent back from FBI agents in Afghanistan to the relevant FBI field offices, and similarly forwarded requests by field offices to agents deployed overseas for further investigation. ITOS-2, on the other hand, had "oversight responsibility for all FBI counterterrorism operations in Iraq" including the handling of intelligence gathered there, as well as for all other terrorism matters elsewhere. The Section Chief for ITOS-1 reports to a Deputy Assistant Director (Deputy AD) in CTD, who in turn reports to the AD for CTD.

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[19] Appendix B contains organizational charts for DOJ, the FBI, and the Counterterrorism Division of the FBI.

[20] Six different Assistant Directors were in charge of CTD in the slightly greater than three-year period covered by this report – from late 2001 to the end of 2004.

2. Counterterrorism Operations Response Section

The Counterterrorism Operations Response Section (CTORS) was created in January 2003 as part of the FBI's reorganization and expansion in counterterrorism efforts. CTORS now includes the Military and Liaison Detainee Unit (MLDU), the Fly Team, and the FBI Headquarters portion of the Joint Terrorism Task Force (JTTF). The Section Chief of CTORS reports to the Deputy AD for Operational Support, who reports to the AD for CTD.

a. Military Liaison and Detainee Unit

The agents who are sent on these overseas assignments are overseen, for the duration of the assignment, by the Military Liaison and Detainee Unit (MLDU) (initially called the GTMO Task Force). Since its inception, the MLDU has focused largely on logistics and training.[21] It was originally formed as an ad hoc task force within the FBI's CTD in late 2002 or early 2003 "to oversee the newly created FBI mission in Afghanistan." MLDU's duties were been expanded to support agents deployed to Iraq, and it has been responsible for the FBI's operations in GTMO as well. MLDU now has liaison personnel with all of the major military combatant commands – Northern Command, Central Command, and Southern Command. The Unit Chief for MLDU reports to the CTORS Section Chief.

b. Fly Team

The "Fly Team" was originally established as part of the FBI's counterterrorism effort on June 1, 2002. This unit's functions include serving as the FBI's first rapid responders with investigative capabilities whenever there is an incident overseas, such as the London terrorist bombings in July 2005. The Fly Team's duties include assessing what the FBI can contribute to such situations and recommending to FBI management what resources should be directed to these incidents. The Fly Team has roughly 30 investigators, many of whom have been deployed for detainee interviews and other duties in Afghanistan and Iraq several times. Many Fly Team members were formerly in the military and therefore operated more easily in the battlefield environment. For these reasons, they are often paired up for deployments in military zones with agents from field offices. The Unit Chief for the Fly Team reports to the CTORS Section Chief.

c. Joint Terrorism Task Forces

The Joint Terrorism Task Forces (JTTF) are squads within FBI field offices that focus primarily on addressing and preventing terrorism threats.

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[21] At the end of 2002 or beginning of 2003, the GTMO Task Force became the MLDU.

JTTFs include members from other federal, state, and local law enforcement agencies, including local police departments. Before the September 11 attacks there were 35 JTTFs nationwide. As of March 2005 there were 103. The National Joint Terrorism Task Force (NJTTF) is a unit within CTORS that was created to support JTTFs and to enhance communication and cooperation among federal, state, and local government agencies by providing for coordination of terrorism intelligence collection activities. Later in this report, we discuss a limited number of instances involving the participation of non-FBI JTTF members in detainee interrogations. The Unit Chief for the NJTTF reports to the CTORS Section Chief.

B. Critical Incident Response Group

The Critical Incident Response Group (CIRG) facilitates the FBI's rapid response to, and management of, crisis incidents. The CIRG includes a Crisis Negotiation Unit, an Aviation and Surveillance Operations Section, and a Hostage Rescue Team (HRT). Throughout the period covered by our review, HRT has contributed a number of agents for FBI force protection purposes in both Afghanistan and Iraq.

The National Center for the Analysis of Violent Crime (NCAVC) is another branch of the CIRG that has played a significant role in the military zones. The mission of the NCAVC is to combine investigative, operational support functions, research, and training in order to provide assistance to federal, state, local and foreign law enforcement agencies investigating unusual or repetitive violent crimes. The NCAVC is composed of three Behavioral Analysis Units and a Violent Crime Apprehension Program Unit. Agents from Behavioral Analysis Unit number 1 (BAU-1), which focuses on terrorism threats, were sent to GTMO to provide behavioral based investigative and operational support. The CIRG also has a Chief Division Counsel who provides legal guidance to the group, and who reports to the CIRG SAC. The CIRG SAC reports to the Executive Assistant Director for Law Enforcement Services, who reports to the FBI Director's Office.

C. Office of General Counsel

The FBI Office of the General Counsel provided staff to GTMO and responded to detainee related inquiries from other FBI divisions, including inquiries coming from agents assigned to GTMO, Afghanistan, and Iraq. The Office of the General Counsel also assisted in developing policy and preparing FBI Officials for congressional hearings. At GTMO an Associate General Counsel provided legal advice. The General Counsel reports to the Director of the FBI.

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III. Other DOJ Entities Involved in Overseas Detainee Matters

In addition to the FBI, other offices within DOJ were involved with overseas detainee issues discussed in this report. The Deputy Attorney General and his staff advised and assisted the Attorney General in providing overall supervision and direction to all organizational units of DOJ, including the FBI. As part of those duties, the Deputy Attorney General and members of his office participated in intra and inter agency meetings at which detainee-related issues were discussed. The FBI reports to the Deputy Attorney General and the Attorney General.

In addition, DOJ's Criminal Division exercises general supervision over the Department's enforcement of all federal criminal laws not specifically assigned to other divisions. Included within the jurisdiction of the Criminal Division are all criminal terrorism cases. The Criminal Division is led by an Assistant Attorney General. Members of the Assistant Attorney General's staff helped supervise and coordinate international terrorism investigations. In that role, they collected information from the FBI and U.S. Attorneys' offices and shared it with the DOD, the CIA, and the White House. Other members of the Assistant Attorney General's staff oversee the Criminal Division office that handles all criminal foreign policy of the United States, including liaison with the Department of State and the National Security Council (NSC). The Criminal Division receives criminal referrals from the FBI. The Criminal Division was the entity responsible for oversight of federal criminal matters relating to terrorism and acted as the primary liaison to the FBI's Military Liaison and Detainee Unit (MLDU).[22]

The DOJ Office of Legal Counsel (OLC) assists the Attorney General in his function as legal advisor to the President and all executive branch agencies. The Office drafts the legal opinions of the Attorney General and provides its own written opinions and oral advice in response to requests from the Counsel to the President, various agencies of the executive branch, and offices within DOJ. During the years covered by this report, OLC generated written opinions and advice relating to certain detainee issues.

IV. Inter-Agency Entities and Agreements Relating to Detainee Matters

A. The Policy Coordinating Committee

Officials from DOJ and the NSC told the OIG that many inter agency discussions on a variety of overseas detainee matters, such as developing

[22] The National Security Division of DOJ is now the entity responsible for oversight of criminal matters relating to terrorism.

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processes for sorting detainees and later for the repatriation or release of detainees, took place in a Policy Coordinating Committee. The Policy Coordinating Committee for detainee issues was led by a National Security Council (NSC) staff member, and was composed of representatives from DOJ, the Department of State (DOS) (including members of the DOS Office of the Legal Advisor), the DOD (General Counsel's Office and sometimes others from the Joint Chiefs), and Central Intelligence Agency (CIA). A Deputy Assistant Attorney General in the Criminal Division was the official DOJ point of contact for the PCC, and others from the Criminal Division, the Deputy Attorney General's Office, and the FBI attended at various times.

By late 2001 or early 2002, there were regular (sometimes weekly) PCC video conferences or meetings on detainee issues that were chaired by the NSC legal advisor. Issues that could not be resolved at the PCC could be "bumped up" to the "Deputies" meeting, which was attended by the Deputy Attorney General or his designee (such as Patrick Philbin, the Associate Deputy Attorney General for Intelligence/National Security). If a resolution still could not be reached, an issue could be raised to the "Principals" meeting, which included the Attorney General or his designee.

Counsel to the Assistant Attorney General for the Criminal Division, David Nahmias, said that separate from the PCC meetings, a group of individuals reviewed enemy combatant or potential enemy combatant cases to evaluate the government's options on how to proceed. Nahmias and Deputy Assistant Attorney General for the Criminal Division Alice Fisher both described an informal working group, formed after the Jose Padilla case arose, which included representatives from DOJ's Criminal Division and OLC, as well as representatives of the CIA and the DOD.[23] The group was intended to promote inter agency coordination on certain detainee matters. The role of DOJ at these meetings, according to Nahmias, was to share information about people domestically who, in theory, could be enemy combatants, and to see who were being held as enemy combatants who potentially might be prosecuted. He told the OIG that the CIA representative considered intelligence aspects of these cases, and the DOD considered military aspects.

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[23] Jose Padilla was arrested by the FBI when he entered the United States on May 8, 2002, based on a federal material witness warrant. The President declared Padilla an enemy combatant, and Padilla was transferred to military custody in June 2002. He was subsequently transferred to DOJ custody and was convicted of conspiracy to murder, kidnap and maim individuals in a foreign country, conspiracy to provide material support to terrorists, and providing material support to terrorists on August 16, 2007.

B. Inter-Agency Memorandums of Understanding

There are several Memoranda of Understanding (MOU) between the FBI or DOJ and other government agencies that are relevant to detainee abuse issues or otherwise relevant to this review.

In 1984 DOJ and the DOD entered into an MOU relating to the investigation and prosecution of criminal matters over which the two Departments have jurisdiction. The 1984 MOU provides that most crimes taking place on a "military installation" will be investigated by the DOD. When such a crime is committed by a person subject to the Uniform Code of Military Justice, the DOD will also prosecute the matter. With respect to "significant cases in which an individual subject/victim is other than a military member or dependent thereof," the DOD must provide notice of the matter to DOJ. Witnesses and documents indicate that pursuant to this 1984 MOU, the DOD has assumed jurisdiction over the investigation of potential crimes relating to detainee abuse at DOD facilities in the military zones.

In 1995, DOJ entered into an MOU with several intelligence agencies, including the DOD and the CIA. This MOU requires each employee of an intelligence agency to report to the agency's General Counsel or Inspector General any facts or circumstances that reasonably indicate that an employee of an intelligence agency has committed a crime. If the subject of the allegation is an employee of a different intelligence agency than the person making the report, the General Counsel of the accusing person's agency must notify the General Counsel of the accused employee's agency. The General Counsel of the accused employee's agency must then conduct a preliminary investigation of the matter. If the inquiry reveals a reasonable basis for the allegations, and the crime falls within certain specified violations of federal criminal law (including crimes involving intentional infliction or threat of serious physical harm and crimes likely to affect the national security, defense, or foreign relations of the United States), the General Counsel must report the matter to DOJ. The MOU also requires employees of intelligence agencies to report to their General Counsel any violations of specified crimes by persons who are not employees of any intelligence agency (such as civilian contractors), and these crimes must also be reported to the DOJ.

In 2003, the FBI and the CIA entered into an MOU concerning the detailing of FBI agents to the CIA to assist in debriefing certain high value detainees at "sensitive CIA debriefing sites." The MOU primarily addresses how information obtained by FBI agents detailed to such sites will be used and protected. The FBI agreed to observe strict need-to-know principles and limit knowledge of the existence of the MOU. This MOU did not address

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standards for detainee interrogations or how detainee abuse allegations would be handled.

In late 2004, the FBI entered into an MOU with the DOD Criminal Investigative Task Force (CITF). As detailed below, CITF is the military's law enforcement arm with responsibility for gathering evidence for the military commission process and possible war crimes prosecutions. The FBI's MOU with CITF primarily addresses information sharing between the agencies in the performance of law enforcement functions (not intelligence). It does not address detainee treatment standards or reporting of detainee abuse allegations.

We are not aware of the existence of any MOU between the FBI or DOJ and the DOD or the CIA relating to standards for interrogation of detainees in DOD or CIA custody.

V. Background Regarding the FBI's Role in the Military Zones

In this section we provide background regarding the FBI's activities in each of the three military zones discussed in this report. FBI operations began in Afghanistan in late 2001, shortly before the FBI began sending agents to GTMO. The FBI sent its first deployment of agents to Iraq in March 2003.

A. Afghanistan

The United States invaded Afghanistan in October 2001 in order to remove the Taliban government from power, capture or kill al-Qaeda personnel responsible for the September 11 attacks, and destroy or diminish al-Qaeda's ability to mount further terrorist attacks.

1. Military Operations and Detention Facilities

The DOD conducted U.S. military operations in Afghanistan under the DOD's Central Command (CENTCOM). Beginning in May 2002, senior command in the military theater was vested in Combined Joint Task Force 180 (CJTF-180), later redesignated CJTF-76. *Church Report* at 6-7, 180-183. The military's primary bases were located near the cities of Bagram in the north and Kandahar in the south. *Church Report* at 181-83. As operations in Afghanistan progressed, the military established several forward operating bases, sometimes called firebases, in remote areas around the country to support units operating in the field. These bases were operated by DOD Special Operations Forces or conventional forces. *Church Report* at 184. Several firebases were operated jointly by the military and the CIA.

According to the *Church Report*, over 30,000 U.S. military personnel were serving in Afghanistan as of August 2004, and U.S. forces had detained, beyond individuals questioned in an initial screening process, roughly 2,000 persons since late 2001. *Church Report* at 233.

We briefly summarize here the evolution of military detention facilities in Afghanistan, a topic described in detail at pages 180-186 of the *Church Report*. Beginning in May 2002, a U.S. military facility in Bagram [redacted].

[redacted].

[redacted]

[redacted]

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[redacted]

One of the firebases in Afghanistan – Firebase Salerno – was of particular interest to our review because, beginning in late May 2004, [redacted] at that location. The military detention facilities at Salerno included a makeshift holding area built using cubic eight-foot wire-mesh containers filled with sandbags that could not be penetrated by rocket propelled grenades, and which were stacked like building blocks in order to create rows of about ten individual cells with wire mesh doors across the front of each. *Church Report* at 190-1. [redacted]

The military had custody and control over the detainees throughout Afghanistan, and FBI agents were required to arrange access to the detainees through military police and military intelligence personnel.

2. The FBI's Mission

In September or October 2001, prior to the invasion of Afghanistan, FBI agents met with CENTCOM to discuss the military's and the FBI's knowledge about al-Qaeda. Shortly thereafter, the military requested the assistance of the FBI in Afghanistan. In December 2001, the FBI sent the first group of eight agents to Kandahar, Afghanistan. According to the Team Leader for this group, this deployment of FBI agents into a theater of war working side by side with the military was unprecedented.[24] In addition, as a result of the Afghanistan deployment and the deployment to GTMO in January 2002, the FBI had personnel at "both ends of the pipeline" for counterterrorism information.[25]

The FBI mission in Afghanistan evolved over time. Initially, the primary focus was interviews of al-Qaeda and Taliban detainees captured by coalition forces and review of captured documents. FBI agents understood from the outset that they would likely be interviewing detainees together with U.S. military or CIA personnel. In addition, FBI agents assisted the military with "sensitive site exploitation" missions, which involved the collection of time-sensitive information at selected priority targets, such as

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[24] Similarly, an FBI Supervisory Special Agent deployed in Iraq told us that FBI agents had not been deployed to a combat zone since World War II.

[25] The *Church Report* stated that CENTCOM forces in Afghanistan first transferred detainees to GTMO on January 7, 2002. *Church Report* at 182-183.

caves and homes that had been vacated by al-Qaeda personnel during coalition attacks.

In February 2004, based on a DOD request, the FBI expanded its contingent in Afghanistan and positioned investigators with more forward deployed military units to assist in the collection of intelligence. In June 2004, the FBI Counterterrorism Division (CTD) sent a team to Afghanistan to assess the role of FBI personnel in that country.[26] As a result of that assessment, the FBI CTD issued an Electronic Communication (EC) that clarified the FBI's primary mission in Afghanistan as "the collection of actionable threat intelligence which may have a possible nexus to the United States, its citizens and interests." The EC identified the following priorities within this mission, including:

> Interviewing detainees or Persons Under Custody (PUC) and other individuals of interest at the detainee collection points and other smaller facilities, using rapport-based strategies, to obtain actionable intelligence in the war on terrorism.
>
> Participating in "Sensitive Site Exploitations" and "forward staged interrogations" [redacted], with an emphasis on collecting strategic intelligence with a nexus to the United States. Establishing a liaison with all coalition forces to ensure the collection and appropriate communication of information with a nexus to the United States. Supporting the [redacted] in Afghanistan with FBI technical and forensic assets. Supporting specialized joint FBI-CIA operations at [redacted]. Providing training to the Government of Afghanistan.

3. FBI Deployments

Based on the results of the OIG survey and other information, we estimated that between 200 and 250 FBI agents served in Afghanistan between late 2001 and the end of 2004. An FBI Deputy OSC stated that the FBI personnel in Afghanistan "were there as a force multiplier, but it was the [military's] show." Between late 2001 and the end of 2004, the number of FBI personnel deployed in Afghanistan at any one time ranged between 10 and 25. These totals included agents who conducted interviews as well as other FBI personnel who did not have detainee interview responsibilities,

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[26] This assessment followed several incidents in which FBI agents were involved in ambushes or other violent actions. Because of these incidents, FBI participation in sensitive site exploitations was temporarily suspended.

such as Hostage Rescue Team (HRT) personnel, bomb technicians, and technically trained agents.

FBI agents who served in Afghanistan volunteered from FBI field offices. FBI Headquarters personnel said they tried to recruit agents who had previously served in the military or had special weapons and tactics (SWAT) team experience. Sometime in 2004, the FBI increased the length of these assignments from 60 days to 90 days for agents. Between December 2001 and April 2002, the tenure for OSCs in Afghanistan varied between one and two months. Thereafter, most of the OSCs served in Afghanistan for 90-day rotations.

FBI agents were deployed to [redacted].

FBI personnel in Afghanistan depended upon the military for transportation, translators, supplies, housing, and protection.

4. Organizational Structure of the FBI in Afghanistan

During much of the period covered by our review, the rotations of FBI agents deployed to Afghanistan were supervised by an experienced agent serving as the On-Scene Commander (OSC). Thirteen agents served as the FBI's OSC in Afghanistan at various times during the period covered by this review. CTD established the position of Deputy OSC in Afghanistan in early 2004, and six agents served in that position through the end of 2004. However, for most of 2002 and all of 2003, the FBI did not have any OSC present in Afghanistan, and the FBI's Afghanistan operations were managed from the New York Field Office or, beginning in June 2002, from FBI Headquarters in Washington. In mid-2003, a senior agent was present in Afghanistan.

OSCs and Deputy OSCs in Afghanistan and elsewhere served as the direct representatives of FBI Headquarters. They assigned and supervised the deployed personnel, served as points of contact and liaison with military and intelligence personnel, kept FBI Headquarters informed about the agents' work, the logistics issues, and the military personnel with whom they were working, and arranged for the transfer of information, leads, and requests to and from U.S. FBI offices and the military. To varying degrees, OSCs and Deputy OSCs also participated in detainee interviews as time and other duties permitted.

The FBI OSCs in Afghanistan supervised the preparation of Daily Situation Reports that were transmitted to FBI Headquarters. The OSCs

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and Deputy OSCs also maintained daily contact with FBI Headquarters by satellite telephone.

5. FBI Activities in Afghanistan

FBI agents' activities in Afghanistan consisted primarily of detainee interviews, participation in military sensitive site exploitations (comparable to domestic execution of search warrants and crime scene processing), collection of detainee biometric information, and traditional FBI criminal investigation work as a result of bombings against U.S. citizens or facilities.[27] Because the primary focus of this report is detainee interrogations, we describe the FBI's interview/interrogation activities in more detail below. The FBI's other activities in Afghanistan are summarized in the second part of this subsection.

a. Detainee Interviews by FBI Agents

Most of the detainee interviews conducted by the FBI in Afghanistan took place at military facilities, such as the detainee collection facilities at Bagram and Kandahar. Due to the small number of FBI personnel in Afghanistan, it was not possible for them to interview all of the detainees that came through U.S. military facilities. Several agents told us that FBI personnel focused their efforts primarily on Arabic-speakers and al-Qaeda personnel, rather than the Afghan locals such as the Taliban. As a result, FBI agents had contact with only a small percentage of the detainees who were interrogated in Afghanistan by military personnel.

The number of detainees each FBI agent interviewed while in Afghanistan also appears to have been small, often fewer than 20 detainees during an agent's deployment. Agents frequently interviewed the same detainee several times. In addition, many FBI agents also briefly interviewed "Persons Under Control" (PUC). (According to the *Church Report*, all captured persons were initially considered PUCs. If they satisfied screening criteria set by the Secretary of Defense, they became "detainees." *Church Report* at 191-192.)

The FBI Daily Situation Reports from May through December 2004 (which were the only Situation Reports produced to the OIG) indicated that during that 8 month period the total number of FBI custodial detainee interviews was 681 and the total number of field interviews of PUCs was 303.

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[27] The written work product from those deployed generally consisted of interview FD-302s or ECs, After-Action Reports for sensitive site exploitations, and Daily Situation Reports.

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The FBI determined who it wanted to interview by various methods, such [redacted].

FBI interviews of detainees, at least at Kandahar from late 2001 into early 2002, were conducted in the same tents and rooms used by the military interrogators. We were told that before the FBI could conduct its lengthier detainee interviews, military interrogators completed their priority interrogations to obtain time-sensitive tactical battlefield intelligence. For the FBI interviews, detainees were brought in by the Military Police, and sat down with the FBI agents at a table with folding chairs. Some detainees were brought in hooded or blindfolded, depending on their level of compliance or security risk, and most detainees were restrained with hand shackles. According to an after-action memorandum from a former OSC to FBI Headquarters dated March 5, 2002, during the early months of FBI deployments in Afghanistan, agents in Kandahar "were limited" in their ability to conduct "in depth interviews due to limitations with translators, lack of available intelligence, space restrictions, and prioritization of interviews to the military."

[redacted] As explained in Chapter One, we are not addressing FBI activities at these sites.

b. Joint Interviews with Military Investigators

FBI agents often worked jointly with military personnel in Afghanistan in planning, preparing for, and conducting detainee interviews, particularly until mid-2004. Of the roughly 200 agents who served in Afghanistan and responded to the OIG survey, 86 stated that they jointly interviewed detainees with military or intelligence agency personnel.

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Other agents told us that FBI agents only conducted interviews with other FBI agents. Some agents told us they avoided joint interviews because they knew the military was operating under different rules. The FBI OSC in Afghanistan in the spring of 2004 told us that as of approximately April 2004, the military would not invite FBI personnel in to interviews in which they thought there would be a conflict between FBI rules and military rules. He stated that if there was a joint interview, it was understood from the start what the FBI could and could not do. However, the evidence indicates that the FBI's practice of conducting joint interviews with other agencies continued at least occasionally after April 2004. Other information indicates that military observers were often present during FBI interviews in Afghanistan.

c. Other FBI Activities in Afghanistan

Substantial FBI resources were also devoted to other aspects of its counterterrorism mission, such as participation in military "sensitive site exploitations" and the collection of detainee biometric data.

[redacted].

FBI participation in sensitive site exploitations began during the first rotation of agents at the request of a [redacted].

The FBI also collected and disseminated to other agencies detainee biometric information such as fingerprints, DNA samples, and standard

identification photographs. As groups of detainees were captured on battlefields throughout Afghanistan and brought to detention facilities, FBI agents worked with military personnel in the initial fingerprinting, DNA sample collection, and photographing of the detainees. This work was done largely by FBI Criminal Justice Information Services Division (CJIS) personnel at various locations in Afghanistan. [redacted]

The FBI also conducted traditional criminal investigations of bombings and other crimes against American citizens, companies, and facilities in Afghanistan. For example, an FBI agent told us that in September 2004 he interviewed several detainees in Kabul who were in the custody of the Afghan National Directorate of Security, in connection with the bombing of the Dyncorp building in which three Americans were killed.

B. Guantanamo Bay, Cuba

1. Military Operations and Detention Facilities

In October 2001, soon after the start of the United States' military operations in Afghanistan following the September 11 attacks, the United States began detaining suspected al-Qaeda operatives and Taliban fighters. The President declared these detainees "illegal enemy combatants" and the United Stated decided to detain them at the U.S. Naval base at Guantanamo Bay, Cuba. *Church Report* at 99. After receiving the order to establish detention operations at GTMO, the military was directed to have detention facilities up and running within 96 hours.

The first planeload of 20 detainees arrived at GTMO on January 11, 2002, less than 5 days after the order was given to build a detention facility to house 100 captured enemy combatants. *Church Report* at 99. According to FBI documents, agents from the FBI and the DOD Criminal Investigative Task Force (CITF) began formally interviewing detainees on February 4, 2002.

a. GTMO Camps

(1) Camp X-Ray

The first camp to house detainees was called Camp X-Ray. Camp X-Ray was the site of an old detention facility that had housed Haitian refugees. Cells at Camp X-Ray were temporary 8 foot by 8 foot by 10 foot units constructed of chain-link fencing. The cells did not have solid walls; the military used tarps to keep out the sun and rain. Detainees slept on 4-inch thick mattresses on cement slabs. The roof of each cell was

constructed of metal and wood. Portable toilets and showers were available for the detainees outside of their individual cells. The interrogation rooms were also very primitive, although the walls were plywood rather than chain link. Camp X-Ray was used to house detainees for 3 months until more permanent detention facilities could be built.

(2) Camp Delta

Construction on Camp Delta began almost immediately after Camp X-Ray was completed. Detainees were moved to Camp Delta starting on April 28-29, 2002. Camp X-Ray was closed when the last detainees moved out.

Camp Delta consists of multiple detainee cell blocks or "camps" numbered consecutively in the order in which they were built. Detainees are assigned to the camps based on an assessment of their cooperation or potential for violence.

Camps I through III house detainees considered to be less compliant than the most cooperative detainees at GTMO. The living conditions at these three camps are almost identical. The individual cells or detention units are 8 feet long, 6 feet 8 inches wide, and 8 feet tall and are constructed of metal mesh material on a solid steel frame and a metal roof. Each unit has its own floor-style flush toilet, a metal bed frame raised off the floor, and a sink and faucet with running water. There are two recreation yards and four showers per block. Exhaust fans mounted in the ceiling ventilate the cell blocks.

Camp IV houses the more compliant and cooperative detainees at GTMO. Camp IV received its first detainees in February 2003. The detainees live in communal living areas that resemble dormitories. The camp has a common recreational area to which the detainees have access 7 to 9 hours a day.

Camps V and VI house detainees who are considered to be the most dangerous detainees at GTMO and those that have the most valuable intelligence. Camp V is a 2-story maximum security complex made of concrete and steel designed to hold 100 detainees. Completed in May 2004, it was modeled after the Miami Correctional Facility in Bunker Hill, Indiana. The camp is composed of five wings. Each cell is 7 feet six inches long and 12 feet 10 inches wide and is made of cast cement containing a cement formed bed, stainless steel sink, toilet, and window. The cells have cement floors. Camp V has its own interrogation facilities, which are two rooms per floor with video and audio capability that can be monitored from a central control room. *Church Report* at 103. Camp VI, the most recent addition to Camp Delta, is another concrete and steel structure modeled after a jail in

Lenawee County, Michigan, designed to hold approximately 200 detainees. It was initially planned as a medium security facility for GTMO, but was later modified to be a maximum security facility.

Camp Delta also includes a 20-bed hospital dedicated to providing medical care to the detainees. It has an outpatient clinic, two operating tables, a dental clinic, a physical rehabilitation area, and quarantine chambers for contagious arrivals.

[redacted]

(3) Other GTMO Facilities

Camps Echo and Iguana are located just outside Camp Delta. *Church Report* at 103. Camp Echo is a small camp that houses detainees who have been segregated from the general detainee population for a variety of reasons, such as disciplinary issues, meetings with counsel, or preparation for departure from GTMO. Each wooden building in the camp has two cells. A cinder block wall separates the cells. Each cell has a toilet, a sink, and a bed. A shower is adjacent to each cell. Outside each cell is an area for a guard to sit or for use during an interrogation.

Camp Iguana was originally designed as a lower security detention facility to hold a small number of juvenile detainees believed to be under the age of 16. Camp Iguana is now generally used to house detainees who are no longer deemed to be enemy combatants, or who are awaiting transfer to their home country.

The Navy Brig, a small detention facility at GTMO outside the camps described above, that has been used to house detainees for various purposes, such as disciplinary reasons or for special interrogations. A control center located at the end of the communal living area operates all doors and cells within the facility and two rows of metal segregation cells. A cell is approximately 6 feet long, 8 feet wide and 8 feet tall. Each cell has a window located on the cell door facing the communal living area. The control center has a view of all cell doors and all detention areas.

b. GTMO Organizational Structure

The United States Southern Command (SOUTHCOM), located in Miami, Florida, is one of nine unified Combatant Commands in the

Department of Defense. It is responsible for providing contingency planning, operations, and security cooperation for Central and South America, the Caribbean, Cuba and the Bahamas, and their territorial waters, as well as the force protection of U.S. military resources at these locations. SOUTHCOM is also responsible for ensuring the defense of the Panama Canal and the canal region. GTMO falls within the jurisdiction of the SOUTHCOM.

According to the *Church Report*, the command organization at GTMO "evolved significantly over time." *Church Report* at 103. The original organization had separate chains of command for intelligence operations (JTF-170) and detention operations (JTF-160). *Id.* at 104. These two separate joint task forces created a bifurcated chain of command that, according to the *Church Report*, impeded cooperation between the military intelligence and military police units responsible for GTMO. *Id.* These separate chains of command were combined on November 4, 2002, and were re-designated JTF-GTMO. *Id.* at 104-05. JTF-GTMO is responsible both for operating the detainee detention facility at GTMO and for conducting interrogations to collect intelligence in support of the United States' efforts to combat terrorism. Major General Geoffrey Miller was appointed on November 4, 2002, to lead this new joint task force. *Id.* at 105. He was succeeded by Brigadier General Jay Hood.[28]

JTF-GTMO is composed of three groups, each of which reports to the JTF-GTMO commander and deputy commander, who in turn report to the commander of SOUTHCOM. The Joint Detention Operations Group (JDOG) includes six military police companies and is responsible for security at the various camps. The Joint Interrogation Group (JIG), discussed in more detail below, is responsible for the collection and dissemination of intelligence from all the detainees in the custody of the DOD at GTMO. The Joint Medical Group (JMG) is responsible for the detainee hospital.

The JIG combines military intelligence elements to pursue its interrogation mission. According to the *Church Report*, the centerpiece of the JIG is the Interrogation Control Element, which coordinates and supervises the efforts of the military intelligence interrogators, analysts, linguists, and civilian contract personnel who work on interrogations. *Church Report* at 105. The collection of intelligence at GTMO is pursued primarily through detainee interrogations, but also through [redacted]. The Interrogation Control Element at GTMO includes members of the Defense Intelligence Agency (DIA). Throughout this report, members of the DIA, Defense

[28] As of October 2007 the current Commander of JTF-GTMO is Rear Admiral Mark H. Buzby.

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HUMINT Service, and other military intelligence gathering entities will be referred to as "military intelligence." The JIG at GTMO also included a "Special Projects" team that focused on detainees believed to be of high value.

The interrogation operations at GTMO included some entities that did not fall within the Interrogation Control Element, including the FBI and the DOD Criminal Investigative Task Force (CITF). Unlike the FBI, in which intelligence gathering and criminal investigative functions are now merged, the military has kept its law enforcement groups separate from its intelligence collection groups. The law enforcement groups that make up the CITF are the Naval Criminal Investigative Service (NCIS), the Army Criminal Investigation Command (CID), and the Air Force Office of Special Investigations (OSI). CITF conducts interrogations in order to gather evidence for the military commission process and possible war crimes prosecutions. *Church Report* at 107.

2. The FBI's Mission

In a December 2001 Electronic Communication (EC), FBI Headquarters directed the Miami Field Office to coordinate with the U.S. military and establish an FBI presence on the U.S. Naval base at GTMO. According to the EC, the Miami Field Office was to [redacted].

On January 7, 2002, the first FBI agents arrived at GTMO. This first group of agents consisted of one Supervisory Special Agent (SSA), one Assistant Special Agent in Charge (ASAC), and two Special Agents (SA) from the Miami Field Office. These agents were assigned to [redacted]. When they arrived there were only cells at Camp X-Ray that were left over from the Haitian refugee operation of many years past. Navy personnel were building more chain link cells to house the incoming detainees whose arrival was imminent. [redacted][29] On January 11, 2002, the first plane load of 20 detainees arrived at GTMO. *Church Report* at 99.

FBI Director Mueller told the OIG that he visited GTMO in early 2002. He said he then decided to reorganize how the FBI managed its operations at GTMO because it appeared that a much larger FBI component would be

[29] As it turns out, [redacted]. The failure to obtain useable intelligence was primarily due to [redacted].

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participating in the FBI's mission there than previously anticipated. He also stated that to better manage GTMO staffing and oversight, the FBI's activities should be handled from FBI Headquarters. The entity established to do that, as described above, was first called the GTMO Task Force and was later named the Military Liaison and Detainee Unit (MLDU). Director Mueller said he was told at that time that the FBI was working closely with the military.

3. FBI Deployments

Between January 2002 and December 2004 over 400 FBI agents were deployed to GTMO. Approximately half of these agents were assigned to conduct detainee interviews. Others were sent to GTMO to fulfill roles relating to detainee interviews, such as behavioral analysis of detainees, that could be used to develop interview strategies, translation of detainee interviews, and photographing or fingerprinting of detainees for identification purposes. The remainder were sent to GTMO in more general support roles such as administrative support, computer support, [redacted].

FBI personnel in GTMO primarily used FBI-supplied equipment and transportation, but sometimes relied on military equipment when FBI equipment was unavailable. The housing used by the FBI was supplied by the military and was at first very limited, which in turn limited the number of FBI personnel who could be on the island at any given time.

4. FBI Organizational Structure at GTMO

As noted above, the first group of FBI agents sent to GTMO consisted of one SSA, one ASAC, and at least two technically trained agents from the Miami Field Office. Shortly thereafter, the SSA and his replacements began to act as the FBI's "On-Scene Commanders" (OSC). From January 2002 to August 2003, the FBI assigned 16 different temporary OSCs, some of whom served multiple deployments. These OSCs were deployed to GTMO on temporary duty assignments for terms ranging from 2 to 6 weeks. By August 19, 2003, the FBI created a longer-term position at GTMO for the OSC, and from that point on the OSCs have served for terms of up to 2 years.

The FBI generally assigns a "case agent" to each of its major investigations. The Miami Field Office assigned a case agent to coordinate all GTMO-related investigative activities. Although, as noted above, responsibility was subsequently transferred to FBI Headquarters, this case agent initially assigned by the Miami Field Office remained assigned to GTMO for over a year in that position. This case agent told the OIG that the FBI's chain of command was not as clear cut on GTMO as it would be back

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in the United States. He said there was a high turnover of agents and temporary supervisors at GTMO, and that personnel worked long days on many different tasks. He said that this atmosphere did not lend itself to a regimented system in which everything was done in "lockstep" with SAC authority.

In March 2002, the FBI contingent at GTMO had grown to approximately 25-30 people on the island at any given time , and the number of FBI personnel remained relatively constant until approximately September 2003, when it dropped to approximately a dozen people.

By August 2004, the FBI had sent a representative from its General Counsel's office to work at GTMO and provide legal assistance to FBI personnel at GTMO. The first legal advisor served at GTMO for nearly 3 years.

5. FBI Activities at GTMO

a. Detainee Interviews by FBI Agents

FBI documents reflect that FBI agents, along with agents from the CITF (in some cases) and military intelligence (in other cases), began formally interviewing detainees on February 4, 2002. The FBI's first GTMO case agent told the OIG that early on the interview process at GTMO was not very systematic or organized. He said the process was driven by the limited space available for interviews and that each agency assigned to GTMO vigorously competed for that space. He said FBI agents generally were given very short notice of when they would get a 4-hour block for interview time. It was up to each agent to determine which detainee was most important to interview when space became available. In addition, due to the high turnover in OSCs noted above, FBI interviewing practices varied widely. Some OSCs permitted agents to conduct joint interviews with the military and others instructed agents only to conduct interviews with other FBI agents.

Initially, the FBI separated the detainees at GTMO by "activities" or "themes." This system soon became cumbersome and inefficient because the military was categorizing the detainees geographically. Accordingly, the FBI's initial system was eventually abandoned and the FBI adopted the military's system of separating the detainees by geographic region. Later, the FBI agents who were sent to GTMO to conduct detainee interviews were divided into two groups, one for detainees from Saudi Arabia and the Gulf States, the other for detainees from North Africa, Europe, and Central Asia. Each of these two groups was led by an SSA and was staffed by FBI special agents and intelligence analysts.

Early on, the military and intelligence components at GTMO were, according to FBI officials, unclear as to what the FBI's role at GTMO would be. Art Cummings, Section Chief of CTORS and later ITOS-1, was sent to GTMO by FBI headquarters to address some of the initial start-up issues, and he served as GTMO's fifth OSC. He told the OIG that when he first arrived, the Commander of JTF-170, Major General Dunlavey, and the military's intelligence task force thought the FBI was there "to put handcuffs on people." Cummings said he explained to Dunlavey and his Executive Officer that the FBI were experts in conducting adversarial interviews and getting people to talk to them when it is not in their interest to do so. According to Cummings, Dunlavey seemed surprised when Cummings explained that the FBI could offer this service at GTMO. The original FBI case agent for GTMO also said that early on the military and CIA at GTMO were worried that the FBI was going to "gum up the works" by "collecting evidence" instead of just collecting intelligence in order to stop the next terrorist attack. Cummings said that initially there was no disagreement with the military about interview techniques. He also said that during this period most interviews were done separately. However, if a detainee was very important for both groups then the interview would be conducted jointly.

In May 2002, the military and the FBI adopted the "Tiger Team" concept for interrogating detainees. According to the first GTMO case agent, these teams consisted of an FBI agent, an analyst, a contract linguist, two CITF investigators, and a military intelligence interrogator.[30] He said that the Tiger Teams continued for about the next 4 or 5 months. Each Tiger Team conducted two detainee debriefings a day. There were several reports from each debriefing because each agency participating in an interview produced a report. The first GTMO case agent said that in his opinion the Tiger Teams were successful, from the FBI's perspective, mainly because the FBI agents were usually the most experienced members of the team. Therefore, he said, most Tiger Teams were essentially being run by the FBI agent on the team. However, the FBI withdrew from participation in the Tiger Teams in the fall of 2002 after disagreements arose between the FBI and military intelligence over interrogation tactics. Several FBI agents told the OIG that while they continued to have a good relationship with CITF, their relationship with the military intelligence entities greatly deteriorated over the course of time, primarily due to the FBI's opposition to the military intelligence approach to interrogating detainees. This conflict is addressed in detail later in this report.

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[30] An FBI On-Scene Commander said that the CIA was invited but rarely came because they were upset with how the detainees were assigned to the teams. According to the OSC, there were detainees of interest to the CIA that were off limits to the Tiger Teams.

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b. Other FBI Activities in GTMO

As noted above, the first FBI agents sent to GTMO in January 2002 were assigned to [redacted]. It was only after February 4, 2002, that FBI agents began to participate in interviews. In addition, from 2002 - 2004, the FBI sent agents to GTMO to take fingerprints and photographs of detainees.

C. Iraq

In late March 2003, the United States and other coalition military forces invaded Iraq. Within a few weeks, these coalition forces defeated the Iraqi military, deposed Saddam Hussein and his government, and established the Coalition Provisional Authority (CPA) in Baghdad. On June 28, 2004, responsibility and authority for governing Iraq was formally transferred to the Iraqi interim government, while coalition forces continued to support Iraqi security and reconstruction.

1. Military and CIA Operations and Detention Facilities

As in Afghanistan, the U.S. Central Command (CENTCOM) was responsible for military operations in Iraq. Beginning in May 2003, Combined Joint Task Force Seven (CJTF-7) assumed responsibility for coalition military operations. In June 2003, CENTCOM transferred the title and authority of CJTF-7 to the U.S. Army V Corps. *Church Report* at 243, 249-250.

Operations in Iraq resulted in the capture of large numbers of "enemy prisoners of war" (EPW) and civilian detainees. One of CJTF-7's missions was to interrogate detainees for intelligence relevant to the Iraqi insurgency and other matters. *Church Report* at 250. The *Church Report* described the evolution of military detention facilities in Iraq at length.

We determined that FBI agents conducted interviews at the following facilities in Iraq, which are described in greater detail in Section 5.a. below:

- The Abu Ghraib prison, which was the primary civilian detention facility in Iraq.
- [redacted]
- Camp Cropper, a small military facility located within the Baghdad International Airport complex, [redacted]

- Camp Bucca, [redacted] in the southeastern Iraqi desert, used for the long-term internment [redacted]
- Camp Ashraf, a facility operated by the [redacted] near the Iranian border to house captured members of the Mujahedin-E-Khalq (MEK), an anti-Iranian paramilitary group.
- Other locations.

2. The FBI's Mission in Iraq

On February 10, 2003, FBI Director Mueller signed Operations Order 1015, which stated that the FBI's mission in Iraq was to "deploy a task-organized exploitation unit to fully exploit all Iraqi Intelligence Service (IIS) sites and personnel for information regarding planned terrorist attacks in the United States, or against U.S. personnel or interests outside the Iraq theater of operations (ITO), and to gather intelligence related to other matters of U.S. national security." In furtherance of this mission, the order authorized the FBI to conduct operations in Iraq with the military and other U.S. government intelligence agencies. Operations Order 1015 described CTD's "plan for integration of FBI assets with" the military and the CIA in Iraq once U.S. ground combat forces had secured areas and facilities in Iraq, and to collect and interview or analyze Iraqi Intelligence Service personnel, documents, and electronic media.

The FBI's primary objective in Iraq was collection and analysis of information to help protect against terrorist threats in the United States and protect U.S. personnel or interests overseas, rather than waiting for the military and other agencies to pass on such information to the FBI. The FBI was particularly concerned about terrorist sleeper cells within the United States, and believed that information from Iraq could be relevant to uncovering those cells. More specifically, CTD stated in a January 2004 briefing packet for agents that the mission of the FBI's Baghdad Operations Center was to "take deliberate and carefully planned actions to protect the United States against terrorist attack and espionage activity by engaging in intelligence gathering activities, including high value detainee interviews, document exploitation, biometric processing and other activities as directed."

The FBI also supported Coalition Provisional Authority (CPA) efforts to address terrorist acts within Iraq, including the processing of bombing and other crime scenes, and to share intelligence information with other U.S. agencies and military units. The FBI's objectives in Iraq also included the investigation of Saddam Hussein and his personnel for crimes against the Iraqi people.

3. FBI Deployments to Iraq

FBI agents who served in Iraq volunteered from FBI field offices. In 2004, the FBI increased the length of the assignments for agents deployed to Iraq from 60 days to 90 days. The FBI also increased the tenure for On-Scene Commanders (OSC) in Iraq from 3 to 6 months as of January 2004, and their Deputies served for at least 90 days.

The number of FBI personnel deployed to Iraq increased significantly during 2003 and throughout 2004. The FBI Daily Situation Reports indicate that between 13 and 24 FBI personnel, including technical personnel and analysts, worked in Iraq at any given time between June and August 2003, and that between 23 and 44 FBI personnel worked there at any given time from September through December 2003. From January through December 2004, the number of FBI personnel in Iraq usually ranged between 50 and 60.

Most FBI personnel deployed to Iraq worked in the FBI's Baghdad Operations Center (BOC), which was located first within the Baghdad International Airport complex, and starting in mid-2004 within the Green Zone downtown.

FBI agents and interpreters conducted detainee interviews and gathered detainee biometric information primarily at the Abu Ghraib prison, [redacted].

4. Organizational Structure of the FBI in Iraq

The FBI agents deployed to Iraq were supervised by an FBI On-Scene Commander (OSC). Between March 2003 and the end of 2004; eight FBI OSCs and five Deputy OSCs served in Iraq. We interviewed most of the OSCs and Deputy OSCs who served in Iraq during 2003 and 2004.

As in Afghanistan and GTMO, the FBI in Iraq had a subordinate and dependent role to the military. Several agents told us that FBI personnel considered themselves guests of the military, who established the rules to be followed there by other U.S. agencies. The FBI also depended upon the military in Iraq for critical services and materials, such as protection, transportation, housing, and food. All detainees in Iraq were in the custody and control of the U.S. military. The FBI was not designated as the lead agency for any purpose in Iraq, and the scope of the FBI's activities in those

zones, including its access to detainees, was at the discretion of the military or the CIA.

5. FBI Activities in Iraq

During the early stages of the Iraq conflict, from March through July 2003, FBI agents were deployed to Kuwait and Iraq to focus on the collection, analysis, and exploitation of documents collected from many former Iraqi Intelligence Service sites in Iraq. We found no evidence that, during this early period, any of these FBI personnel interacted with detainees or worked at military sites where they were held.

After this early period in 2003, the other primary FBI counterterrorism activities in Iraq included: (1) detainee interviews; (2) the collection of biometric information from detainees; and (3) participation in a limited number of military sensitive site exploitation missions. FBI agents have also devoted significant time and resources to conventional criminal investigations of bombings, murders, and kidnappings involving American citizens in Iraq.

a. Detainee Interviews by FBI Agents.

FBI agents in Iraq generally focused their interview efforts on al-Qaeda personnel, foreign fighters, and detainees who had also been in Afghanistan. These groups together constituted only a small part of the detainee population. As a result, FBI agents interviewed only a small percentage of the detainees in the custody of the military at its various detention facilities. The *Church Report* stated that between March 2003 and March 2005, over 50,000 detainees were held in Iraq. *Church Report* at 292-302.

Many of the FBI agents told us they interviewed only a small number of detainees – sometimes 10 or fewer – during their deployment to Iraq. FBI agents at [redacted]. FBI documents give a sense of the volume of interviews that the agents conducted in Iraq. In July 2004, the FBI reported in a classified statement for the record to a congressional committee that between January and March 2004 FBI agents in Iraq [redacted]. The FBI Situation Reports in late 2004 indicate that FBI agents conducted [redacted] interviews in October and [redacted] interviews in November 2004 at the various military facilities in Iraq.

The nature of FBI agent activities and interactions with military personnel varied with the different military detention and interrogation

facilities in Iraq. These are described below for each of the major Iraq facilities.

Abu Ghraib Prison. The Abu Ghraib prison was selected by the Coalition Provisional Authority as the primary civilian detention facility in Iraq, despite its Saddam-era history and poor condition, when the CJTF-7 commander concluded there were no other suitable facilities available. *Church Report* at 248. Detention operations began at Abu Ghraib in approximately September 2003, and the prisoner population there, including criminals, insurgents, and detainees with potential intelligence value, soon grew to an estimated 4,000 to 5,000. *Id.* at 248, 250. As of January 2004, over 7,000 detainees were held there in September 2004, Abu Ghraib held approximately 3,000 detainees, a number which held steady as of February 2005. *Id.*; *The Washington Post* 2/21/05 at A1, A22.

Abu Ghraib consisted of three sections: the main compound and prison building from the Saddam Hussein era; a make-shift concertina-wire detention area in the interior courtyard; and facilities within the courtyard walls for interviews by FBI and other non-military personnel, comprising two or three tents and at other times two trailers. One former OSC described Abu Ghraib as dismal, run down, medieval, and "grossly understaffed." Another agent who conducted interviews there stated that the situation was "borderline chaotic," and that the prison was understaffed and frequently attacked by insurgents.

FBI interviews of detainees at Abu Ghraib began in September 2003. Our review found that FBI agents seldom interviewed detainees within the main stone prison building at Abu Ghraib, and seldom went into that building for other reasons. Instead, FBI personnel conducted most of their detainee interviews in the military tents or trailers within the larger prison compound.

FBI Agents made arrangements with military personnel for access to detainees for interviews. Military guards delivered handcuffed detainees to the FBI and returned them to their cells after the interview. Typically, two FBI agents conducted the interview with an interpreter. One FBI agent who served at Abu Ghraib in 2003 stated that the military officer assigned to the particular prisoner was always required to be present and observe the FBI interview.

According to an FBI agent who served at Abu Ghraib in November 2003, FBI agents who wanted to conduct interviews were instructed by Military Police (MP) personnel regarding detainee interview procedures, and were given a form to read and sign in which the agents acknowledged that certain interrogation techniques were permissible, others were not, and still others required command level approval before they could be used.

However, the FBI agent said that this form "was of no importance to me because I had no intention of using any of [the listed techniques]." He stated that the only interrogation techniques that he recalled being described on the form were leaving lights on and sleep deprivation.

Another FBI agent stated that in 2004 the military described permissible interrogation practices in a standard printed form of not more than one or two pages that military intelligence personnel at Abu Ghraib gave agents to review and sign. She stated that there was nothing on the form that surprised her as being allowed for use by the military, but there were a number of techniques that the FBI does not use. The form identified the techniques with labels such as "Fear Up" or "Ego Down," and the practices on the form related to sleep deprivation, diet manipulation, and intimidation tactics[31].

Several FBI agents told us that, for the security and safety of FBI personnel, they did not work or stay at Abu Ghraib at night, but left at the end of each day to go back to the FBI's Baghdad Operations Center. An FBI OSC said that he established this policy because Abu Ghraib was being mortared every night by insurgents, and Improvised Explosive Devices (IED) were found nearby every morning. As a result, FBI personnel did not go to Abu Ghraib until mid-morning, and left well before dark.

The abuse of prisoners by military personnel at the Abu Ghraib prison has been the subject of several investigations, including the Taguba and Jones investigations, the Church Commission, and the Schlesinger Panel.[32] Press reports and prior investigations have indicated that many of the detainee abuses at Abu Ghraib occurred inside the main stone prison at night. As detailed in Chapter Ten, FBI agents told us they observed some aggressive or abusive conduct at Abu Ghraib, but with a few exceptions they said they generally did not observe or otherwise learn about conduct as extreme or abusive as that described in the published reports. The fact that FBI agents worked at the prison in the daytime and conducted interviews outside of the detention areas in the prison is the likely reason that the agents did not observe this more extreme conduct.

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[31] A third agent told us about the use of such a form at the [redacted] (discussed in the next section) in early 2004.

[32] VADM A.T. Church, III, *Review of Department of Defense Detention Operations and Detainee Interrogation Techniques* (March 2005); 2004 US Army, LTG Anthony R. Jones, *Investigation of Intelligence Activities at Abu Ghraib*, AR 15-6; Honorable James R. Schlesinger, *Final Report of the Independent Panel to Review DoD Detention Operations* (August 2004); MG Antonio M. Taguba, *Article 15-6 Investigation of the 800th Military Police Brigade* (2004).

FBI agents began interviewing detainees, assisting military interrogators, and receiving assistance from military personnel at in the fall of 2003, and by mid-2004 FBI agents were working in . The decision to send FBI personnel to work with later in 2004 stemmed from the conclusion that interviewing agents would be best positioned there to obtain information that was fresher and more useful than what they were obtaining at Abu Ghraib. According to a former Deputy OSC, however, he met with the TSF commander in the spring of 2004 in connection with the decision to involve FBI agents, and told him that the FBI could not and would not participate in interviews in which techniques or tactics beyond those permitted for FBI agents were used. According to the Deputy OSC, the commander told him this would not be a problem.

Another FBI agent told us that the military used a form at the detainee interrogation facility that was similar to the form used at Abu Ghraib. The agent told us that before he was allowed to enter the in the first half of 2004, the military required him to sign a pre-printed form indicating that this was a classified facility and that the types of methods used to gather information from detainees included the use of .

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From the time the military moved [redacted] in mid-2004 through the end of the year, the FBI deployed between 8 and 14 FBI personnel at [redacted] at any one time. The FBI contingent working at [redacted] included agents, language specialists, a Computer Analysis and Response Team (CART) examiner, a reports officer, a Criminal Justice Information Systems Division (CJIS) biometric processing technician, and a supervisor.

[redacted], agents would sometimes wait until the detainees were sent to [redacted] or Abu Ghraib, before interviewing the detainees at those facilities. As elsewhere in Iraq, FBI agents who worked at [redacted] considered themselves as visitors or "guests" on [redacted] "turf." They said they were instructed by the FBI to conduct themselves as FBI agents in detainee interviews and otherwise.

FBI agents also told us that the military commanders were always present at [redacted], were actively engaged to ensure that control was maintained over the detainees, guards, and interrogators, and participated in the twice-daily shift-change staff meetings. FBI personnel participated in the 24-hour per day operations at the facility, which were divided into two 12-hour shifts seven days per week.

[redacted] After the [redacted], the detainees were made available to FBI personnel. The FBI focused on selected detainees believed to have some U.S. connection or information regarding potential terrorism threats to the United States, such as friends or family living in the [redacted]. Beginning in 2004, the FBI agents' work expanded to include assistance to the military in debriefing detainees for locally useful military information [redacted].

[redacted] *Church Report* at 249. Between July and September 2003, for example, FBI agents conducted one or two interviews of such detainees per week at [redacted]. An OSC told us that the military brought in and set up air-conditioned trailers, which were used for various purposes at [redacted], such as housing, offices, mess

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hall, and detainee interview rooms. The FBI primarily sought to interview detainees who had been members of the Iraqi intelligence services, particularly those who may have traveled to the United States. The military also asked for FBI assistance in questioning former Iraqi political leaders held there. In general, the military personnel escorted the detainees to the trailers and back to their cells after the interviews were completed.

Camp Bucca. Published reports and FBI documents indicate that Camp Bucca was a [redacted] in the southeastern Iraqi desert near the Kuwaiti border. [redacted]

The *Church Report* stated that the U.S. military assumed responsibility for the detention facility at Camp Bucca in April 2003. *Church Report* at 249. The March 2004 *Taguba Report* of the military's investigation of the 800th Military Police Brigade mentioned allegations of detainee abuses, including abuses by four soldiers at Camp Bucca in May 2003, but did not describe the alleged incidents. *Taguba Report* at 6, 7.

The bulk of the FBI's work at Camp Bucca related to collecting detainee biometric data. However, FBI agents also conducted a significant number of detainee interviews at the camp. A team of FBI agents was first deployed there during the first half of 2004 and conducted approximately 120 detainee interviews during that period. During the second half of 2004, other FBI personnel traveled to Camp Bucca for short periods to interview specific detainees.

Camp Ashraf. Camp Ashraf, which is located in eastern Iraq near the Iranian border, was operated by [redacted]. As of early 2005, the camp housed approximately 3,800 members of the Mujahedin-E-Khalq (MEK), an anti-Iranian paramilitary group designated as a terrorist organization by the State Department in 1997. *Church Report* at 249. The MEK members held there were Iraqi defectors who had been allied with Saddam Hussein in an effort to overthrow the current Iranian government.

FBI personnel told us that the FBI started interviewing MEK personnel at this camp sometime during the fall of 2003. In 2004, FBI agents continued to interview detainees there to support potential criminal cases in the US. During 2004, between 10 and 17 FBI personnel worked at Camp Ashraf at any one time. In addition, between November 2003 to January 2004, FBI personnel biometrically processed some 3,600 MEK detainees there.

Mosul and Other Iraqi Cities. The FBI's counterterrorism operations in Iraq included detainee interviews during the period of September 2003 through March 2004 in and around the northern Iraqi city of Mosul. The FBI contingent in Mosul varied from seven to nine people. Their work included assistance to military intelligence and Iraqi personnel with detainee interrogations. FBI agents also went to Fallujah and Ramadi during this period to gather information and documents from high value targets after they were captured by the military and the Iraqi police.

b. Joint Interviews with Military Investigators

Many FBI agents who served in Iraq told the OIG that they worked jointly with military personnel in planning, preparing for, and conducting detainee interviews, particularly in 2003. Of the approximately 275 FBI personnel who served in Iraq and responded to the OIG survey, 125 stated that they jointly interviewed detainees with military or intelligence agency personnel. In some of these cases, however, the non-FBI participant was a contract interpreter or was merely observing the interview rather than participating in it.

The practice of conducting joint interviews with other agencies appears to have been more common in the early part of the Iraq conflict than in later years. A former Deputy OSC told us that in late 2003 and early 2004 it was not unusual for both FBI and military personnel to question a detainee together, and several other agents described conducting joint interviews during this period at various detention facilities.

As 2004 progressed, however, it appears that FBI agents teamed up with each other as much as possible for detainee interviews.[34] A former OSC told us that in the first half of 2004, his agents generally did not jointly interview detainees with military personnel, and that to the extent that they did the FBI agent controlled the interview and FBI rules were followed. Some agents stated that they never jointly interviewed detainees with military interrogators in the second half of 2004. Moreover, another former OSC told the OIG that during his work in Iraq between July 2004 and January 2005, the general rule for FBI personnel was that all FBI interviews were to be done with a team of two FBI agents in the room at all times.

An FBI supervisor at [redacted] told us that he established guidelines for detainee interviews at the facility with guidance from the OSC and FBI Headquarters, including the rule that the interviews were to be conducted

[34] This evolution in practice may have been related to the Abu Ghraib disclosures in April 2004 and the issuance of the FBI's May 2004 Detainee Policy, which reiterated that agents should not participate in interrogations involving techniques not approved under FBI policies (see Chapter Six).

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by teams of two FBI agents only, ending a practice of joint interviews with the military at the facility. However, one of the Deputy OSCs during the second half of 2004 told us that at [redacted] it was not unusual for FBI agents to be teamed up with military interrogators for particular interviews of detainees, and that he was not aware of any policy that FBI agents had to work only with other agents.

[redacted]

Other FBI agents said they worked in close coordination with the military. For example, one FBI agent told us that he conducted joint interviews with a military analyst who sat in and took notes, and that the military analyst would make suggestions to the FBI agent for further questioning based on his experience in Afghanistan and his understanding of the information needed. The FBI agent also stated that there was a military interrogator who was assigned to interview the same detainee. The military interrogator would interview this detainee during the day while the FBI agent interviewed the detainee at night. In between shifts, the two would share the information they had received and develop strategies for further questioning of the detainee.

Another FBI agent noted that in Mosul there was no established prison, and FBI agents deployed there conducted more joint interviews of detainees with military interrogators than elsewhere in Iraq.

c. Other FBI Activities in Iraq

The FBI also devoted significant resources in Iraq to collecting biometric data from large numbers of detainees, and conducting a small number of military sensitive site exploitations.

The FBI's CJIS agents collected biometric information from more than 8,000 detainees in Iraq during the latter part of 2003 through the end of 2004.[35] For example, in September through December 2003, CJIS agents fingerprinted, photographed, and collected DNA from approximately 2,000 detainees at Abu Ghraib, [redacted], Mosul, and other

[35] At Abu Ghraib Prison, CJIS personnel did not process the detainees inside any of the interior brick and mortar structures, but instead worked in tents within the walled prison compound.

locations. The FBI also participated in military sensitive site exploitations in Iraq, but to a much lesser extent than in Afghanistan.

In addition to counterterrorism work, the FBI allocated substantial resources during 2003 and 2004 to criminal field investigations of bombings and murders in Baghdad and other locations. FBI resources were also focused in large measure on the recovery and analysis of Improvised Explosive Devices (IED) and vehicle borne IEDs. This FBI activity included extensive work on the bombings of the Jordanian and Turkish Embassies, the Red Cross and United Nations buildings, and the mosque in an Najaf, as well as several high-profile murder investigations of U.S. or CPA personnel.

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CHAPTER THREE
BACKGROUND REGARDING INTERROGATION POLICIES

In this chapter we describe the interview policies of the FBI and the interrogation policies adopted by the military for questioning detainees. These policies, and the tensions between them, provide essential context for the rest of this report. First, we describe the FBI's policies for conducting custodial interviews that were in place when the FBI began participating in the questioning of detainees in military zones. These policies were based in large part on constitutional requirements of voluntariness and legal admissibility of witness statements in subsequent prosecutions, together with the FBI's belief that rapport-based interview techniques are the most reliable and effective means of obtaining accurate information. Second, we summarize the vastly different interrogation policies adopted by the Department of Defense (DOD) for use in the military zones. The DOD policies approved many methods that were prohibited for use by FBI agents under FBI policies.

I. Pre-existing FBI Policies and Practices

Most of the FBI's written policies regarding permissible interview techniques for agents and for agent conduct in collaborative or foreign interviews were developed prior to the September 11 attacks. When these policies were drafted, they reflected the FBI's primary focus on domestic law enforcement, which emphasized obtaining information for use in investigating and prosecuting crimes. These policies are designed to assure that witness statements meet legal and constitutional requirements of voluntariness so that they are admissible in court and do not undermine the admissibility of any other evidence developed in the investigation as a result of the witness interview.

However, constitutional and evidentiary considerations were not the only rationales for the FBI's prohibition on the use of coercive interview techniques. On various occasions, the FBI has asserted its belief that the most effective way to obtain accurate information is to use rapport-building techniques in interviews.

A. FBI Interview/Interrogation Techniques

The FBI's interrogation policies are set forth in the FBI's Legal Handbook for Special Agents ("the LHBSA" or "the Handbook"), the Manual of Investigative Operations and Guidelines (MIOG), and the Manual of

Administrative and Operational Procedures (MAOP).[36] Section 7 of the Handbook relates to "Confessions and Interrogations." Section 7-1 of the Handbook states: "The most important limitations on the admissibility of an accused's incriminating statements are the requirements that they be voluntary; that they be obtained without the government resorting to outrageous behavior; and that they be obtained without violating the accused's right to remain silent or to have a lawyer present." Section 7-2 states: "A conviction based on an involuntary statement, without regard to its truth or falsity, is a denial of the accused's right to due process of law. A coerced confession will undermine the legitimacy of a conviction." Section 7-2.1 of the Handbook states, among other things, that "[i]t is the policy of the FBI that no attempt be made to obtain a statement by force, threats, or promises."

The Handbook discusses the factors affecting judicial assessments of voluntariness, including: (a) notification of charges; (b) age, intelligence, and experience of the accused; (c) physical condition of the accused; (d) physical abuse, threats of abuse, use of weapons, number of officers present; (e) threats and psychological pressure; (f) privation: food, sleep, medication; g) isolation, incommunicado interrogation; (h) duration of questioning; (i) trickery, ruse, deception; (j) advice of rights; and (k) promises of leniency or other inducements. The Handbook notes that courts use a "totality of circumstances" test when determining the voluntariness of a witness's statement, and that the presence of any one or more of the factors mentioned above will not necessarily render a statement involuntary. LHBSA at 7-2.2. FBI training materials also focus on the "totality of the circumstances" standard and give examples of circumstances under which courts have held that confessions are coercive and

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[36] Although some FBI agents told us that they conduct "interviews" rather than "interrogations," several FBI policies use the latter term. An FBI Unit Chief described the distinction: "An interview is the process of obtaining information from an individual willing to provide information about themselves or others. An interview is also usually the first step prior to moving to an interrogation phase with someone believed to be unwilling to provide accurate or truthful details about information they have. When the interview is done immediately prior to an interrogation it is used to obtain the information the person is readily willing to provide, biographical info and 'their version of events,' and is used to build rapport and identify themes that can be used during the interrogation. The interrogation phase is the process used to obtain the information that the person does not want to provide for any number of reasons. . . . The interrogation phase will typically involve the interrogator accusing, directly or indirectly, the interrogee of something, such as withholding information or having provided false information." FBI training materials make a similar distinction. E.g. FBI Law Enforcement Communication Unit, "Interviewing and Interrogation" (10/14/04) at 72. However, the FBI and DOD policies discussed in this section regarding the use of potentially coercive techniques do not distinguish between the interview and interrogation phases with respect to preserving the voluntariness of a statement. In this report, we generally do not distinguish between interviews and interrogations for purposes of discussing compliance with FBI or DOD policies.

inadmissible, including: a confession made to avoid a credible threat of physical violence; a confession induced by an explicit promise of leniency; and a confession induced by misleading the subject to believe that failure to confess will result in adverse consequences for others.[37]

In general, prior to a custodial interrogation in a criminal investigation, an accused individual is entitled to be warned of his constitutional rights, typically by receiving a *Miranda* warning. LHBSA 7-3.1. If, after being advised of his rights, a suspect in custody indicates that he wishes to remain silent or that he wants an attorney, all interrogation must cease at that time. LHBSA 7-2.1(1). Section 7-15 of the Handbook states: "Persons interviewed by Agents while in police custody in a foreign country must be given the usual warning of rights under American Federal law as fully as possible."

The FBI's MAOP also describes the importance of FBI agents not engaging in certain activities when conducting investigative activities, including foreign counterintelligence. MAOP Part 1, Section 1-4. The MAOP states that "[n]o brutality, physical violence, duress or intimidation of individuals by our employees will be countenanced...." MAOP, Part 1, Section 1-4(4). The MAOP also stresses that "[a]s member of a federal investigative agency, FBI employees must at all times zealously guard and defend the rights and liberties guaranteed to all individuals by the constitution." MAOP, Part 1, Section 1-4(2). According to the MAOP, violations of these policies must be reported to FBI Headquarters. MAOP, Part 1, Section 1-4(5); see also MAOP, Part 1, Section 13-1(2) ("It is imperative that any information pertaining to allegations of misconduct or improper performance of duty coming to the attention of any Bureau employee be promptly and fully reported to FBIHQ.")

Although the FBI's involvement in intelligence gathering functions expanded significantly after the September 11 attacks, the FBI often participated in intelligence-gathering activities before that date. Before the September 11 terrorist attacks and the change in FBI priorities, the FBI had not established a different set of procedures for interviews or interrogations for situations where no prosecution in U.S. courts was contemplated.

B. Working with Other Agencies

Prior to the September 11 attacks, the FBI had policies in place for working with other government agencies, both domestic and foreign, in joint

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[37] A. Louis DiPietro, "Lies, Promises, or Threats – The Voluntariness of Confessions," reprinted in FBI Academy training manual "Interviewing and Interrogation" (10/14/2004) at 92-96.

or cooperative investigations. However, the FBI's work with the military in GTMO, Afghanistan, and Iraq raised issues regarding which agency's interrogation policies would apply, and how the FBI would work with personnel from other agencies operating under different interrogation rules.

1. FBI Interaction with Other Domestic Law Enforcement Agencies

The FBI has extensive experience working jointly with other federal, state, and local law enforcement agencies. FBI agents often conduct joint interviews in the normal course of their duties. FBI agents told us that they are trained to always adhere to FBI protocols, not to other agencies' rules with respect to interview policies or evidence collection.

Yet, the FBI's experience working with other domestic agencies provided limited precedent for the FBI's work with the military overseas on detainee interviews. In past cases, the other agencies were usually other law enforcement organizations (such as state or local police) that were also focused on prosecuting crimes in domestic courts and were subject to similar concerns about voluntariness that drive the FBI's established interrogation policies. Typically, there was not a major conflict between the policies and practices of these agencies and those of the FBI. Moreover, in most cases prior to September 11 the FBI was the lead agency and therefore positioned to direct which interrogation policies would apply.

After the September 11 attacks, the FBI's mission expanded to include working jointly with the military frequently. This mission gave rise to circumstances in which (1) entities other than the FBI were the lead agencies and had custody of the witnesses, (2) prosecution of crimes was not necessarily the primary goal of the interrogations, and (3) the evidentiary rules of U.S. Article III courts did not necessarily apply.

2. FBI Interaction with Agencies of Foreign Governments

Even prior to the September 11 attacks, FBI investigations required agents to work abroad. For example, the FBI regularly investigated terrorist attacks that occurred abroad but that involved U.S. targets. These activities required the FBI to cooperate with or assist the law enforcement agencies of foreign governments. The FBI has an extensive system of Legal Attachés (LEGAT) stationed in U.S. embassies to coordinate FBI work in foreign countries.

FBI policy states: "Agents have no jurisdiction in foreign countries, hence, cannot exercise the power of arrest, search or seizure in such places." LHBSA 3-11; see also MIOG, Part 2, Sections 1-2.3.3 and 23-8.2(3)(a). The FBI's Legal Handbook further states that agents cannot

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participate in interviews with prisoners except in places of incarceration and in the presence of foreign authorities. It also states, "Agents are not to participate in any unauthorized or unlawful actions even though invited to do so by a cooperating foreign officer." *Id.*

In some cases, the FBI worked with agencies of foreign governments that were governed by a different set of rules for interrogations. In such cases, for example, an FBI agent might observe a foreign agent using a technique in a foreign interrogation that was lawful for the foreign agent but that would be prohibited for an FBI agent. This scenario provides a potential analogy for the issue of FBI cooperation with U.S. military investigators conducting interrogations using techniques permitted by the military but not by the FBI.

As detailed in Chapter Six of this Report, on May 19, 2004, the FBI issued a policy specifically relating to the treatment of prisoners and detainees (the "FBI's May 2004 Detainee Policy"). The Policy includes the following statement, which the FBI's Office of General Counsel characterized not as a new policy but rather as "reaffirm[ing] prior FBI policy":

> FBI personnel who participate in interrogations with non-FBI personnel . . . shall at all times comply with FBI policy for the treatment of persons detained. <u>FBI personnel shall not participate in any treatment or use any interrogation technique that is in violation of these guidelines regardless of whether the co-interrogator is in compliance with his or her own guidelines.</u> If a co-interrogator is complying with the rules of his or her agency, but is not in compliance with FBI rules, FBI personnel may not participate in the interrogation and must remove themselves from the situation. (Emphasis in original.)

However, we did not find any pre-September 11 FBI written policies specifically addressing the scenario of FBI agents working with agencies of foreign governments who were governed by a different set of rules for interrogations, or that defined what constitutes "participation" in an interrogation controlled by another entity.

C. FBI Duty to Report

Another set of FBI policies in place prior to the September 11 attacks that are potentially applicable to the FBI's activities in GTMO, Afghanistan, and Iraq related to the duty of FBI personnel to report allegations of misconduct by FBI employees and other government employees. The FBI's MAOP requires FBI agents to report allegations of misconduct by FBI employees to FBI Headquarters:

> As the government's primary investigative service . . . [i]t is imperative that any information pertaining to allegations of misconduct or improper performance of duty coming to the attention of any Bureau employee be promptly and fully reported to FBIHQ, and it is the continuing responsibility of Bureau officials to see to it that the employees under their supervision are properly indoctrinated regarding this requirement so that they not only will fully understand it, but will comply with it.

MAOP Part 1, Section 13-1 (1) and 13-1(2). Part 1, Section 263-2 of the MIOG provides similar guidance, stating that all allegations of "criminality or serious misconduct" on the part of FBI employees must be reported to FBI Headquarters.

The Legal Handbook for Special Agents specifically addresses the obligation of agents to report misconduct during witness interviews. The Handbook's Policy for Confessions and Interrogations states:

> If, during an interview with a witness, suspect, or subject, questions are raised by such persons or if anything transpires which gives reasonable grounds to believe that subsequently such questions or incident may be used by someone in an effort to place an Agent or the FBI in an unfavorable light, an electronic communication regarding such questions or incident should be immediately prepared for the SAC. The SAC is responsible for promptly advising FBIHQ and the USA of such questions or incident and FBIHQ must be promptly informed of all developments. LHBSA 7-2.1(2).

Thus, the duty of an FBI employee to report on activities of other FBI employees goes beyond reports of criminal conduct. This duty includes an obligation to report on misconduct, improper performance, and events that may reasonably be used to place an agent or the FBI in an "unfavorable light."

In contrast, prior to the issuance of the FBI's May 2004 Detainee Policy, the duty of an FBI employee to report on the activities of non-FBI government personnel was limited to criminal behavior. This limited duty arose not from any FBI policy, but from federal law, which requires all government employees, including those of the FBI, to report criminal behavior by any government employees, including employees of the DOD, to the Department of Justice. See 28 U.S.C. § 535. We did not find any FBI policy prior to May 2004 imposing an obligation on FBI employees to report misconduct by non-FBI government employees falling short of a crime, such as conduct that might violate other agencies' own interrogation policies.

II. Department of Defense Interrogation Policies

In this Section we provide a brief summary of the detainee interrogation policies adopted by the Department of Defense (DOD) after the September 11 attacks for prisoners and detainees.[38] These policies are relevant to the OIG's review for several reasons. First, the tension between DOD policies and the FBI's interview policies was an important factor in the FBI's efforts to provide workable guidance for its agents in the military zones. FBI agents in the military zones faced difficulties as a result of the stark differences between the FBI's conventional law enforcement techniques and the more aggressive interrogation techniques of military and intelligence agencies.

Second, a significant portion of our review was directed at determining what information FBI agents acquired during their deployments in the military zones regarding the treatment of detainees by *any* U.S. government personnel, not just by FBI agents themselves. The vast majority of the incidents that the FBI agents reported to us involved the conduct of interrogators from the DOD and the CIA. However, interrogators from other agencies were governed by their own agencies' interrogation policies, not the policies of the FBI.

It is generally beyond the jurisdiction of the OIG and the scope of this investigation to make determinations regarding whether particular conduct by non-FBI interrogators violated their agencies' policies. However, as detailed in Chapter Six, beginning in May 2004 FBI policy required FBI agents to report to their superiors any incidents of known or suspected abuse or mistreatment of detainees by other agencies' interrogators. As explained in Chapter Six, some FBI agents were told that, under this policy, they should report any interrogation technique that the agent believed was outside the legal authority of the interrogator. Under this interpretation, FBI agents would need to have some familiarity with other agencies' policies in order to comply with the FBI's policy.

Third, FBI agents in the military zones had a unique opportunity to observe the conduct of other agencies' interrogators. The public allegations of detainee abuse at the Abu Ghraib prison, GTMO, and other detention facilities mainly related to the conduct of non-FBI personnel. Therefore, while we do not make determinations regarding whether the conduct of other agency personnel reported to us by FBI agents violated their agencies'

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[38] As detailed in subsequent chapters, some of the interrogation techniques that caused the most concern to the FBI were used by the CIA, not the military. However, as stated in Chapter One, our review generally did not cover activities at facilities used by the CIA. Moreover, the vast majority of FBI agent observations discussed in this report relate to DOD interrogations.

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policies, we refer in this report to potentially applicable policies of other agencies.

However, it is important to note that we did not review all DOD policies regarding interrogation of detainees. Our summary of the interrogation policies of DOD is based primarily on information contained in the *Church Report.*

A. Legal Background: the Geneva Conventions, the Convention Against Torture, and Related Statutes

The legal background for DOD policies regarding the interrogation of detainees includes the United States' obligations under the Geneva Convention (III) Relative to the Treatment of Prisoners of War, 6 U.S.T. 3316, and the Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 6 U.S.T. 3516 (collectively "the Geneva Conventions").[39] Additional relevant authorities include the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, 23 I.L.M. 1027, and the Torture Statute, 18 U.S.C. § 2340. The applicability of these authorities to various categories of detainees, as well as the meaning of "torture" as the word is used in these authorities, have been the subject of extensive debate and controversy. It is beyond the scope of this report to address these legal issues. Rather, we briefly summarize these authorities to provide context for the more specific DOD interrogation policies that are relevant to our review.

In general, the Geneva Conventions require that enemy prisoners of war and certain captured civilians be treated humanely at all times. The Geneva Conventions also prohibit the use of physical or mental torture, or other forms of coercion, to obtain information from prisoners of war, and prohibit the use of physical or moral coercion to obtain information from protected civilians. The provision known as "Common Article 3" protects detainees from cruel treatment, torture, and outrages upon personal dignity, "in particular, humiliating and degrading treatment." The War Crimes Act, 18 U.S.C. § 2441, criminalizes under U.S. law certain breaches of the Geneva Conventions, including breaches of Common Article 3.

On February 7, 2002, President Bush issued a memorandum declaring that none of the provisions of the Geneva Conventions apply to members of al Qaeda in Afghanistan or elsewhere. The memorandum also stated that members of the Taliban are "unlawful combatants" and do not qualify as prisoners of war entitled to the stronger protections of the Geneva

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[39] The Geneva Conventions also include Geneva I and II, which relate to treatment of the wounded and sick in armed forces in the field or at sea.

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Conventions. However, the President stated that al Qaeda and Taliban detainees were to be treated "humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva." *Church Report* at 187.

The United States also has obligations under the Convention Against Torture. The Convention Against Torture defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person" for certain purposes. The United States conditioned its ratification of the treaty on an understanding that in order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain or suffering, and that mental pain or suffering refers to prolonged mental harm from:

> (1) the intentional infliction or threatened infliction of severe physical pain or suffering;
>
> (2) the administration or threatened administration of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality;
>
> (3) the threat of imminent death; or
>
> (4) the threat that another person will be imminently subjected to death, severe physical pain or suffering, or the administration of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality.

The Convention Against Torture also prohibits cruel, inhuman, or degrading treatment or punishment. However, the Bush Administration has taken the position that the Convention Against Torture does not apply to alien detainees held outside of the United States.

The Torture Statute, 18 U.S.C. § 2340, prohibits torture outside the United States. Its definition of torture tracks the language of the U.S. understanding on which the Convention Against Torture was ratified, summarized above. Citing a DOJ Office of Legal Counsel Opinion (6 Op. OLC 236 (1982)), the DOD has stated that GTMO is within the special maritime and territorial jurisdiction of the United States, and, as such, is not "outside of the United States" for purposes of the Torture Statute. Therefore, according to this interpretation, the Torture Statute applies in Afghanistan and Iraq but does not apply in GTMO.

On December 30, 2005, the President signed into law the Detainee Treatment Act, Pub L. No. 109-148. Section 1002 of the Detainee Treatment Act established the U.S. Army Field Manual as a uniform standard for detainee treatment and interrogation techniques available for use on detainees in DOD custody. Section 1003 provided for a global

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prohibition on the use of cruel, inhuman, or degrading treatment on all persons in the custody or effective control of the U.S. government. This provision responded to the Administration's argument that the Convention Against Torture did not apply to alien detainees held outside U.S. territory.

In July 2006, the Administration announced that, pursuant to the Supreme Court's decision in *Hamdan v. Rumsfeld*, 126 S.Ct. 2749 (2006), the U.S. government would henceforth apply Common Article 3 of the Geneva Conventions to all detainees.

B. DOD Interrogation Policies Relating to GTMO

When interrogations began at GTMO in January 2002, military interrogators relied on Army Field Manual 34-52, *Intelligence Interrogation,* for guidance as to permissible interrogation techniques. Field Manual 34-52 listed the following techniques as permissible:

- Direct questioning.
- Incentive – use of luxury items to reward cooperation, with the implication that the items will be withheld for failure to cooperate. No withholding of any basic human need such as food or medicine.
- Emotional Love – playing on detainee's emotional attachments to create a psychological burden that might be relieved through cooperation.
- Emotional Hate – playing on detainee's emotional hate, such as desire for revenge.
- Fear Up (Harsh) – exploiting a detainee's pre-existing fears, including behaving in an overpowering manner with a loud and threatening voice.
- Fear Up (Mild) – using a calm, rational approach to exploit the detainee's pre-existing fears.
- Fear Down – the detainee is soothed and calmed to build rapport.
- Pride and Ego-Up – use of flattery to prompt cooperation.
- Pride and Ego-Down – goading the detainee by challenging his loyalty, intelligence, etc., to induce the detainee to provide information disproving the interrogator.
- Futility – rationally persuading the detainee that it is futile to resist questioning.

- We Know All – convince the detainee that the interrogator is all-knowing and resistance to questioning is pointless.
- File and Dossier – preparing a decoy dossier that convinces the detainee that everything is already known, so resistance is pointless.
- Establish Your Identity – insist that the detainee is someone else to induce him to reveal information to clear himself.
- Repetition – induce the detainee to break the monotony by answering.
- Rapid Fire – questioning in rapid succession, without permitting detainee to answer.
- Silent – staring at detainee for extended period to induce nervousness.
- Change of Scene – engaging the detainee in a different environment to ease his apprehension or catch him with his guard down.

Church Report at 35-37, 107.

On December 2, 2002, in response to a request from the Commander of the intelligence task force at GTMO for approval of additional counter-resistance techniques not specifically listed in Field Manual 34-52, the Secretary of Defense approved the following techniques for use at GTMO:

- Yelling
- Use of multiple interrogators
- Deceiving the detainee by having the interrogator present a false identity
- Stress positions ("like standing") for a maximum of four hours
- The use of falsified documents or reports
- Isolation for up to 30 days, with any extensions beyond the 30 days requiring approval from the JTF-GTMO Commander
- Interrogation of the detainee in an environment other than the standard interrogation booth
- Deprivation of light and auditory stimuli
- The use of a hood placed over the detainee's head during transportation and questioning
- The use of 20-hour interrogations

- The removal of all comfort items (including religious items)
- Switching the detainee's diet from hot meals to Meals, Ready-to-Eat (MRE) (American military field rations)
- Removal of clothing
- Forced grooming (shaving of facial hair, etc.)
- The use of a detainee's individual phobias (such as fear of dogs) to induce stress
- The use of mild, non-injurious physical contact such as grabbing, poking in the chest with the finger, and light pushing.

Church Report at 4-5, 116-7.

On January 15, 2003, however, the Secretary of Defense rescinded his approval of all of the techniques he had approved in December 2002; except the first three (yelling, multiple interrogators, and false identity). *Church Report* at 5, 118-121. According to the *Church Report*, this decision was made in response to concerns raised by the General Counsel of the Department of the Navy and others. *Id.* at 120. The Secretary of Defense then obtained recommendations from a working group he established to assess interrogation techniques for use in the war on terror. On April 16, 2003, he promulgated guidance (the April 2003 GTMO Policy) approving 24 techniques for use at GTMO, most of which were taken from or closely resembled those in Field Manual 34-52. The April 2003 GTMO Policy also approved the following additional techniques:

- Mutt and Jeff – using a team consisting of a friendly and a harsh interrogator (i.e. "good cop/bad cop").
- Change of Scenery Down – placing detainee in a less comfortable setting (not a substantial change in environmental quality).
- Dietary Manipulation – changing detainee's diet (no deprivation of food or water).
- Environmental Manipulation – creating moderate discomfort such as by adjusting temperature or introducing unpleasant smell (avoid injury to detainee; detainee accompanied at all times).
- Sleep Adjustment – adjusting the sleeping times of the detainee (not "sleep deprivation").
- False Flag – convincing detainee that the interrogator is from a country other than the U.S.

- Isolation – isolating the detainee from other detainees while complying with basic standard of treatment.

Church Report at 137-39.

The April 2003 GTMO Policy specified conditions for the use of these techniques, including the requirement that the techniques be used as part of a specific interrogation plan with appropriate supervision, limits on duration, and the availability of medical personnel. *Church Report* at 140. It also required an advance determination of military necessity from the SOUTHCOM Commander and notice to the Secretary of Defense for the use of techniques called Incentive/Removal of Incentive, Pride and Ego-Down, Mutt and Jeff, and Isolation. *Id.*

The April 2003 GTMO Policy continued in effect for GTMO until September 2006, when the U.S. Army issued Field Manual 2-22.3, discussed below in part E of this Section.

C. DOD Policies Relating to Afghanistan

According to the *Church Report*, from October 2001 until January 2003 the only official guidance regarding military detainee interrogation techniques in effect in Afghanistan was that contained in Field Manual 34-52, which is described above. *Church Report* at 186.

On January 24, 2003, an Assistant Staff Judge Advocate sent a memorandum to CENTCOM that described the interrogation techniques being used in Afghanistan and recommended that that these techniques be approved as official policy. The memorandum listed many techniques similar to those approved under the December 2002 GTMO Policy. The memorandum divided the techniques into "battlefield" techniques and techniques being used at the Bagram Collection Point. The listed techniques included:

Battlefield Techniques

[redacted]

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Bagram Collection Point Techniques

Church Report at 196-99.

In addition, the January 2003 memorandum requested approval for several additional battlefield techniques:

Church Report at 198-99, 202.

According to the *Church Report*, neither CENTCOM nor the Joint Staff responded to the January 2003 memorandum, and the Combined Joint Task Force legal staff concluded that the techniques then in use were unobjectionable to military superiors and could be considered an approved policy for Afghanistan. *Church Report* at 201.

In February 2003, after a military investigation into two detainee deaths at the Bagram Collection Point in December 2002, [redacted] issued several changes to approved interrogation tactics:

[redacted]

Church Report at 203-04.

In March 2004, the military issued a new policy for Afghanistan interrogations (the "March 2004 Afghanistan Policy"), which was based on the prior Afghanistan policies and the April 2003 GTMO Policy. The March 2004 Afghanistan Policy added dietary manipulation, environmental manipulation, and "false flag" to the list of approved techniques, and relaxed the prior prohibitions on hooding and using "safety positions" as an incentive for cooperation. *Church Report* at 205-09.

In June 2004, in the aftermath of the Abu Ghraib disclosures, the military in Afghanistan adopted the same policy that was issued for Iraq on May 13, 2004 (discussed in the next section). *Church Report* at 209-11.

D. DOD Policies Relating to Iraq

For the first few months of the war in Iraq, beginning in March 2003, military interrogators were governed by Field Manual 34-52, described in Section B above. Lieutenant General Ricardo Sanchez issued the first CJTF-7 Interrogation and Counter-Resistance Policy on September 14, 2003, describing 29 specific permissible interrogation techniques (the "September 2003 Iraq Policy"). *Church Report* at 257, 263-264. The first 24 techniques were adopted nearly verbatim from the April 2003 GTMO Policy approved by the Secretary of Defense. *Id.* at 265. The additional five techniques were:

- The presence of muzzled and controlled military working dogs to exploit Arab fear of dogs.
- Sleep management (limiting detainee sleep to as little as 4 hours per 24 hour period for up to 3 days).

- Yelling, loud music, and light control.
- Deception through false representations, documents, and reports.
- Stress positions for up to 1 hour per use.

Church Report at 265.

The September 2003 Iraq Policy also required that military interrogators obtain approval from the Commander of CJTF-7 for the use of certain techniques on enemy prisoners of war. *Church Report* at 265.

On October 12, 2003, the Commander of CJTF-7 issued a revised Interrogation and Counter-Resistance Policy (the "October 2003 Iraq Policy"). *Church Report* at 268. This policy superseded the September 2003 Iraq Policy and removed 12 of the techniques that had been approved in it, including "Sleep Adjustment," "Sleep Management," "Presence of Military Working Dogs," and "Stress Positions." Nevertheless, the October 2003 Iraq Policy included a "General Safeguard" that "should military working dogs be present during interrogations, they will be muzzled and under the control of the handler at all times . . . ." *Church Report* at 257, 267-269. Like its predecessor, the October 2003 Iraq Policy required Commander approval for techniques not specifically listed. The policy was limited in application to interrogations of "security detainees," thereby excluding enemy prisoners of war and criminal detainees. According to the *Church Report*, however, the policy contained no specific guidance to assist soldiers in making the practical determination as to how standards of treatment varied for each category of detainee. *Church Report* at 268.

On May 13, 2004, CJTF-7 adopted a new Interrogation and Counter Resistance Policy for Iraq, which was issued in the wake of the Abu Ghraib abuse revelations. The list of approved techniques did not change from the October 2003 Iraq Policy, but the revision further specified that "under no circumstances" would requests for the use of "sleep management, stress positions, change of scenery, diet manipulation, environment manipulation, or sensory deprivation . . . be approved." *Church Report* at 270. In January 2005, the military adopted an interrogation policy for Iraq which, according to the *Church Report*, approved only those techniques listed in Field Manual 34-52 and which provided additional safeguards, prohibitions, and clarifications. It added explicit prohibitions against the removal of clothing and the use or presence of military working dogs during interrogations. *Id.* at 271.

E. Recent Changes to DOD Policy

In September 2006, the U.S. Army issued Field Manual 2-22.3 regarding Human Intelligence Collector Operations. This manual responded to the mandate of the Detainee Treatment Act, which was enacted in December 2005, for a uniform standard for treatment of detainees under DOD custody. *Id.* at 5-74. Field Manual 2-22.3 reiterated and elaborated on many of the techniques listed in its predecessor, Field Manual 34-52, but placed much greater emphasis on rapport-based interrogation techniques similar to those endorsed by the FBI. It also identified several prohibited actions, including:

- Nudity, or sexual acts or poses
- Hooding or duct-tape over the detainee's eyes
- Beatings, shock, burns, or other pain
- Waterboarding
- Using military working dogs in interrogations
- Inducing hypothermia or heat injury
- Mock executions
- Deprivation of food, water, or medical care

Id. at 5-75. Field Manual 2-22.3 also placed detailed controls on the use of the technique of "separation," which is the isolation of detainees from other detainees. *Id.* at 8-71.

However, Field Manual 2-22.3 was not in effect during any part of the period that was the focus of the OIG's review.

III. Reasons for the Differences Between the FBI and Military Approaches to Interviews

Several witnesses explained the reasons for the differences between the interview philosophies of the FBI and the military, which resulted in the dramatically different interview policies adopted by each organization during the period of this review and eventually led to a dispute between the FBI and the DOD over the interrogation of a high value detainee.

FBI witnesses and documents described the rationale for the non-coercive rapport-based techniques traditionally used by the FBI in combination with purposeful and incremental manipulation of a detainee's environment and perceptions. As explained by FBI agents and described in FBI documents, these techniques are designed to obtain reliable cooperation

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on a long-term basis, even from individuals who have been repeatedly interviewed and may have become cynical of any offers of early release or special consideration. FBI agents told us that the FBI's approach, coupled with a strong substantive knowledge of al Qaeda, had produced extensive useful information in pre-September 11 terrorism investigations and were also successful in the post-September 11 context. Many FBI witnesses also stated that they believed that FBI agents had skills and expertise that would enable them to make a significant contribution to the government's overseas intelligence gathering mission.

FBI agents and documents indicated that the FBI understood that the more aggressive or coercive techniques used by military intelligence were originally designed for short-term use in a combat environment with recently captured individuals, where the immediate retrieval of tactical intelligence is critical for force protection. Some military techniques were based on methods used in military training known as SERE (Survival, Evasion, Resistance, and Escape), which prepares U.S. soldiers and airmen on methods to resist interrogation. For example, a former FBI Section Chief in CTD asserted that the military's view was: "You have your way and we have our way. You have the luxury of time; we have force protection and need info fast."

Department of Justice officials also told the OIG that they agreed with the FBI's viewpoint regarding the best approach to take with the detainees. For example, David Nahmias, Counsel to the Assistant Attorney General for the Criminal Division, stated that this view, which was "shared strongly by those of us in the Criminal Division and . . . in the Department generally," was that the FBI's approach to detainees had been very successful with terrorism subjects in criminal cases. This approach, according to Nahmias, is to establish a rapport, treat the people with respect, and try to make them into long-term strategic sources of information "in the way we flip bad guys all the time." Nahmias told the OIG the he understood that the military's aggressive approach was rooted in military intelligence training designed to obtain time-sensitive battlefield information, but that these techniques do not work in the long run. Similarly, David Ayres, Chief of Staff to Attorney General Ashcroft, told the OIG that DOJ's view was that long-term cooperation leads to better cooperation and leads to better protection of the country.[40]

DOJ witnesses told us that from the outset, there was an operating viewpoint dictated at a very high level that this was a military situation and

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[40] Several witnesses told us that the dispute over the best approach was exacerbated by the fact that the DOD interrogators were often inexperienced and not particularly well trained about al-Qaeda.

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the military approach should prevail, in part because the military controlled the detainees and locations. As detailed in Chapter Five, this dispute came to a head during the interrogation of a particular high value detainee at GTMO.

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CHAPTER FOUR
THE EARLY DEVELOPMENT OF FBI POLICIES REGARDING DETAINEE INTERVIEWS AND INTERROGATIONS

In this chapter we describe the early development of the FBI's policies governing the conduct of its agents who participated in interviews or interrogations in foreign military zones. This process began in 2002, when FBI Director Mueller decided that the FBI would not participate in interrogations involving aggressive techniques that were approved for other agencies in military zones. The issue came to a head when the FBI sought to participate in the interrogation of a high value detainee, Abu Zubaydah, who was under the control of the CIA.

I. The Interrogation of Abu Zubaydah

The first major incident involving the use of aggressive interrogation techniques on a detainee that was reported to senior executives at FBI Headquarters was the case of a detainee known as Abu Zubaydah. Zubaydah was suspected of being a principal al Qaeda operational commander. In late March 2002, he was captured in Faisalabad, Pakistan. There was a gunfight during the arrest operation and Zubaydah was severely wounded. He was then taken to a secret CIA facility for medical treatment and interrogation.

Initially, the FBI and the CIA planned a joint effort to obtain intelligence from Zubaydah regarding potential future terrorist attacks. The FBI selected SSAs Gibson and Thomas to travel to the CIA facility to interview Zubaydah.[41] Gibson and Thomas were selected for the assignment because they were familiar with al-Qaeda and the Zubaydah investigation, were skilled interviewers, and spoke Arabic.

A. FBI Agents Interview Zubaydah and Report to FBI Headquarters on CIA Techniques

Gibson and Thomas were instructed by their FBI supervisor, Charles Frahm (Acting Deputy Assistant Director for the section that later became the Counterterrorism Division), that the CIA was in charge of the Zubaydah matter and that the FBI agents were there to provide assistance. Frahm told the agents that Zubaydah was not to be given any *Miranda* warnings. Frahm told the OIG that he instructed Thomas and Gibson to leave the

[41] Thomas and Gibson are pseudonyms.

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facility and call Headquarters if the CIA began using techniques that gave the agents discomfort.

Gibson said that he and Thomas initially took the lead in interviewing Zubaydah at the CIA facility because the CIA interrogators were not at the scene when Zubaydah arrived. Gibson said he used relationship-building techniques with Zubaydah and succeeded in getting Zubaydah to admit his identity. When Zubaydah's medical condition became grave, he was taken to a hospital and Gibson assisted in giving him care, even to the point of cleaning him up after bowel movements. Gibson told us he continued interviewing Zubaydah in the hospital, and Zubaydah identified a photograph of Khalid Sheik Muhammad as "Muktar," the mastermind of the September 11 attacks.

Within a few days, CIA personnel assumed control over the interviews, although they asked Gibson and Thomas to observe and assist. Gibson told the OIG that the CIA interrogators said Zubaydah was only providing "throw-away information" and that they needed to diminish his capacity to resist.

Thomas described for the OIG the techniques that he saw the CIA interrogators use on Zubaydah after they took control of the interrogation. [redacted] Thomas said he raised objections to these techniques to the CIA and told the CIA it was "borderline torture."[42] He stated that Zubaydah was responding to the FBI's rapport-based approach before the CIA assumed control over the interrogation, but became uncooperative after being subjected to the CIA's techniques.

During his interview with the OIG, Gibson did not express as much concern about the techniques used by the CIA as Thomas did. Gibson stated, however, that during the period he was working with the CIA, the CIA shaved Zubaydah's head, sometimes deprived Zubaydah of clothing, and kept the temperatures in his cell cold. [redacted]

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[42] Zubaydah's capture and initial detention are also described in a report by the CIA Inspector General dated May 7, 2004 (the CIA OIG report). The CIA OIG report made no mention of the FBI's role in the initial interview of Zubaydah and stated that the CIA deferred questioning for "several weeks" after Zubaydah was captured on March 27, 2002, pending Zubaydah's recovery from his severe wounds. According to the CIA OIG report, the CIA initially interrogated Zubaydah using "non-aggressive, non-physical elicitation techniques." [redacted], although several of the techniques (loud music and sleep deprivation for up to 72 hours) are described in the report as "standard interrogation techniques."

[redacted] Gibson said that the CIA personnel assured him that the procedures being used on Zubaydah had been approved "at the highest levels" and that Gibson would not get in any trouble. Gibson stated that during the CIA interrogations Zubaydah "gave up" Jose Padilla and identified several targets for future al-Qaeda attacks, including the Brooklyn Bridge and the Statue of Liberty.

Thomas communicated his concerns about the CIA's methods to FBI Counterterrorism Assistant Director Pasquale D'Amuro by telephone. D'Amuro and Thomas told the OIG that D'Amuro ultimately gave the instruction that Thomas and Gibson should come home and not participate in the CIA interrogation. However, Gibson and Thomas provided the OIG differing accounts of the circumstances of their departure from the CIA facility where Zubaydah was being interrogated. Thomas stated that D'Amuro instructed the agents to leave the facility immediately and that he complied.

However, Gibson said he was not immediately ordered to leave the facility. Gibson said that he remained at the CIA facility until some time in early June 2002, several weeks after Thomas left, and that he continued to work with the CIA and participate in interviewing Zubaydah. Gibson stated that he kept Frahm informed of his activities with the CIA by means of several telephone calls, which Frahm confirmed. Gibson stated the final decision regarding whether the FBI would continue to participate in the Zubaydah interrogations was not made until after Gibson returned to the United States for a meeting about Zubaydah.

Gibson stated that after he returned to the United States he told D'Amuro that he did not have a "moral objection" to being present for the CIA techniques because the CIA was acting professionally and Gibson himself had undergone comparable harsh interrogation techniques as part of U.S. Army Survival, Evasion, Resistance, and Escape (SERE) training. Gibson said that after a meeting with the CIA, D'Amuro told him that he would not be returning to the Zubaydah interview.

B. FBI Assistant Director D'Amuro Meets with DOJ Officials Regarding the Zubaydah Interrogation

D'Amuro said he discussed the Zubaydah matter with Director Mueller and later met with Michael Chertoff (then the Assistant Attorney General for the Criminal Division), Alice Fisher (at the time the Deputy Assistant Attorney General for the Criminal Division), and possibly David Kelley (who was then the First Assistant U.S. Attorney for the Southern

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District of New York), in Chertoff's office in the Justice Department. D'Amuro said his purpose was to discuss how the FBI could "add value" by participating in the interviews of "highvalue detainees" because the FBI already knew the subjects so well. D'Amuro told the OIG that during the meeting he learned that the CIA had obtained a legal opinion from DOJ that certain techniques could legally be used, including sleep deprivation, noise, and constant light, and that the CIA also had sought approval for a technique involving placing a cloth over a detainee's face and dripping water so the detainee could not breathe. D'Amuro stated that Chertoff and Fisher made it clear that the CIA had requested the legal opinion from Attorney General Ashcroft.

Based on DOJ and CIA documents, we believe that the meeting that D'Amuro described took place in approximately late July or August 2002. DOJ documents indicated that the CIA requested an opinion from the DOJ Office of Legal Counsel (OLC) regarding the proposed use of 10 "Enhanced Interrogation Techniques" on Zubaydah, including stress positions, sleep deprivation for up to 11 days, and waterboarding. On July 24 and 26, 2002, the OLC provided oral advice that use of these techniques would not violate the prohibition against torture in 18 U.S.C. § 2340A. The OLC memorialized this advice in a memorandum dated August 1, 2002. According to a CIA OIG report, pursuant to this advice the CIA interrogated Zubaydah using "Enhanced Interrogation Techniques" in August 2002. [redacted]

Fisher told the OIG that it is possible that she attended a meeting in Chertoff's office with Kelley, D'Amuro, and Chertoff, which concerned who would take the lead (FBI versus another agency) on the interviews of a high value detainee. However, she said she had no specific recollection of such a meeting. Fisher also stated that she did not recall discussing with the FBI specific techniques for use with detainees. Fisher said she vaguely remembered a meeting with then FBI General Counsel Kenneth Wainstein in which they discussed the FBI not being present at CIA interrogations, and she stated that the meeting would have related to interrogation tactics, but she said she did not recall any specific techniques being discussed.[43] Wainstein, who joined the FBI in July 2002, told us he recalled a number of discussions relating to the issue of FBI participation in CIA interrogations,

[43] Fisher stated that at some point she became aware that the CIA requested advice regarding specific interrogation techniques, and that OLC had conducted a legal analysis. She also said she was aware of two OLC memoranda on that topic, but they did not relate to the FBI. Fisher also told the OIG that Chertoff was very clear that the Criminal Division was not giving advice on which interrogation techniques were permissible and was not "signing off" in advance on any techniques.

but he did not recall this issue arising in connection with a particular detainee.

Kelley told the OIG that he had numerous conversations with Fisher, Nahmias, and other DOJ attorneys about topics relating to the September 11 investigation, but that he could not recall any specific meetings or conversations regarding the interrogation methods to be used on high value detainees. Kelley stated that D'Amuro was present during one or more of these discussions.

Chertoff told us that he could not recall specific conversations about Zubaydah, but that he did generally recall discussions about whether the FBI could preserve the admissibility of detainee statements by interviewing detainees some period after other agencies had completed their interrogations using non-FBI techniques. Chertoff also told us that he did not think this approach would successfully prevent the statement from being "tainted" by any prior enhanced interview techniques.

C. D'Amuro Meets with the FBI Director, Who Decides that the FBI Will Not Participate

D'Amuro told the OIG that after his meeting at Chertoff's office he met with Director Mueller and recommended that the FBI not get involved in interviews in which aggressive interrogation techniques were being used. He stated that his exact words to Mueller were "we don't do that," and that someday the FBI would be called to testify and he wanted to be able to say that the FBI did not participate in this type of activity. D'Amuro said that the Director agreed with his recommendation that the FBI should not participate in interviews in which these techniques were used. Based on D'Amuro's description of events and the dates of contemporaneous documents relating to the CIA's request for a legal opinion from the OLC, we believe that D'Amuro's meeting with Mueller took place in approximately August 2002. This time frame is also consistent with Gibson's recollection that the final decision regarding whether the FBI would participate in the Zubaydah interrogations occurred some time after Gibson left the location where Zubaydah was being held and returned to the United States in June 2002.

D'Amuro gave several reasons to the OIG for his recommendation that the FBI refrain from participating in the use of these techniques. First, he said he felt that these techniques were not as effective for developing accurate information as the FBI's rapport-based approach, which he stated had previously been used successfully to get cooperation from al-Qaeda members. He explained that the FBI did not believe these techniques would provide the intelligence it needed and the FBI's proven techniques would. He said the individuals being interrogated came from parts of the world

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where much worse interview techniques were used, and they expected the United States to use these harsh techniques. As a result, D'Amuro did not think the techniques would be effective in obtaining accurate information. He said what the detainees did not expect was to be treated as human beings. He said the FBI had successfully obtained information through cooperation without the use of "aggressive" techniques. D'Amuro said that when the interrogator knows the subject matter, vets the information, and catches an interviewee when he lies, the interrogator can eventually get him to tell the truth. In contrast, if "aggressive" techniques are used long enough, detainees will start saying things they think the interrogator wants to hear just to get them to stop.

Second, D'Amuro told the OIG that the use of the aggressive techniques failed to take into account an "end game." D'Amuro stated that even a military tribunal would require some standard for admissibility of evidence. Obtaining information by way of "aggressive" techniques would not only jeopardize the government's ability to use the information against the detainees, but also might have a negative impact on the agents' ability to testify in future proceedings. D'Amuro also stated that using the techniques complicated the FBI's ability to develop sources.

Third, D'Amuro stated that in addition to being ineffective and short-sighted, using these techniques was wrong and helped al-Qaeda in spreading negative views of the United States. In contrast, D'Amuro noted, the East Africa bombing trials were public for all the world to see. He said they were conducted legally and above board and the world saw that the defendants killed not only Americans but also innocent Muslims. D'Amuro said he took some criticism from FBI agents who wanted to participate in interviews involving "aggressive" techniques, but he felt strongly that they should not participate, and the Director agreed.

Andrew Arena, the Section Chief of the FBI's International Terrorism Operations Section 1 (ITOS-1), confirmed that D'Amuro argued against the use of aggressive procedures. Arena told the OIG that he attended a meeting involving Mueller, D'Amuro, and other FBI employees in 2002 regarding the FBI's participation in aggressive interrogation techniques. Arena stated that the issue arose when FBI agents became aware that another government agency was using specific techniques on high value detainees. Arena stated that there were discussions within the FBI regarding "should we also go down that track?" Arena told the OIG that during the meeting D'Amuro predicted that the FBI would have to testify before Congress some day and that the FBI should be able to say that it did not participate. Arena said he was present when Director Mueller stated

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that the FBI was not going to get involved with other agencies in using these techniques at any location.[44]

We interviewed Director Mueller, who recalled that the FBI wanted to interrogate someone held by the CIA because the FBI's agents were knowledgeable about the detainee from prior investigations. Director Mueller told us he did not know what techniques the CIA would be using but that he understood they would go beyond techniques that FBI agents were authorized to use. He stated that he and D'Amuro discussed the fact that the FBI could not control the interrogation, and they decided that the FBI would not participate under these circumstances. Director Mueller told the OIG that although his decision initially did not contemplate other detainee interrogations, it was carried forward as a bright-line rule when the issue arose again.

Director Mueller's former Chief of Staff, Daniel Levin, told the OIG that in the context of the Zubaydah interrogation, he attended a meeting at the National Security Council (NSC) at which CIA techniques were discussed. Levin stated that a DOJ Office of Legal Counsel (OLC) attorney gave advice at the meeting about the legality of CIA interrogation techniques. Levin stated that in connection with this meeting, or immediately after it, FBI Director Mueller decided that FBI agents would not participate in interrogations involving techniques the FBI did not normally use in the United States, even though OLC had determined such techniques were legal. Levin stated he agreed with this decision because FBI agents were not trained to use such techniques, using such techniques might create problems for FBI agents who needed to testify in court, and other agencies were available to do it.

D'Amuro also described another meeting after the Zubaydah incident among himself, Director Mueller, a CIA agent, and CIA Director George Tenet. D'Amuro said that during this meeting, an effort was made to find a solution that would permit the FBI to interview detainees in CIA custody. D'Amuro proposed that the FBI be permitted to interview the detainees first, before the CIA would use its "special techniques." D'Amuro said that the FBI recognized that it would have a "taint problem" if the FBI conducted its interviews after the CIA had used the more aggressive techniques. However, no agreement was reached with the CIA at that time. Director Mueller told us that he did not specifically recall such a meeting, but that such a

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[44] Arena stated that FBI Deputy Director Bruce Gebhardt also attended this meeting. Gebhardt told us he did not recall specific discussions regarding the use of non-FBI interview methods but stated that neither he nor the Director would have ever allowed agents to use such techniques.

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discussion may have happened in connection with some lower-level detainees.

II. Subsequent Decisions Regarding FBI Involvement with High Value Detainees

The issue of whether the FBI would participate in interviews in which other agencies used non-FBI interrogation techniques arose again repeatedly, as new high value detainees were captured. For example, D'Amuro said that the FBI wanted to participate in the interrogations of these detainees because its agents had been investigating them for a long time and had a lot of knowledge and experience that would be useful in gaining information from the detainees. Each time, however, the result was the same: the FBI decided that it would not participate.

We determined that the issue arose again in late 2002 and early 2003, in connection with efforts to gain access to Ramzi Binalshibh. Binalshibh was captured in September 2002. According to the, Assistant Chief for the FBI's Counterterrorism Operational Response Section (CTORS), he and several agents, including Thomas, traveled to a CIA-controlled facility to conduct a joint interview of Binalshibh [redacted] with the CIA. The Assistant Chief said that the detainees were manacled to the ceiling and subjected to blaring music around the clock. He said the FBI agents worked with the CIA in developing questions for Binalshibh, but were denied direct access to him for 4 or 5 days, until Thomas was given 45 minutes with him. Thomas stated that Binalshibh was naked and chained to the floor when Thomas was given access to him. Thomas told the OIG that he obtained valuable actionable intelligence in a short time but that the CIA quickly shut down the interview. According to the notes of FBI General Counsel Valerie Caproni, Deputy Assistant Director T.J. Harrington told her that the FBI agents who went to the CIA site saw Binalshibh [redacted]

The Binalshibh matter indicates that a "bright line rule" against FBI participation in or assistance to interrogations in which other investigators used non-FBI techniques was not fully established or followed as of September 2002. FBI agents assisted others to question Binalshibh during a period when he was being subjected to interrogation techniques that the FBI agents would not be allowed to use. According to former FBI General

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Counsel Wainstein, the FBI ultimately decided that its agents could not interview detainees without a "clean break" from other agencies' use of non-FBI techniques. Wainstein told us he thought this conclusion was reached in 2003.

[redacted].

As discussed in subsequent chapters of this report, the FBI continued to wrestle with interpreting the mandate not to "participate" in interrogations involving non-FBI techniques, particularly with respect to the circumstances under which FBI agents wanted to interview detainees who had previously been subjected to coercive interrogations by other agencies. The disagreements between the FBI and the military focused in particular on the treatment of another high value detainee, Muhammad Ma'ana Al-Qahtani, which we describe in the next chapter.

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CHAPTER FIVE
FBI CONCERNS ABOUT MILITARY INTERROGATION AT GUANTANAMO BAY

In this chapter we describe the response of the FBI and DOJ to the military's interrogation of Muhammad Ma'ana Al-Qahtani at GTMO in 2002 and 2003. Al-Qahtani is a Saudi Arabian national who was allegedly sent to the United States to be one of the September 11, 2001, hijackers.[45] The Al-Qahtani interrogation became the focus of a major disagreement between FBI agents and the military regarding interrogation techniques. As detailed below, FBI agents at GTMO became concerned that the DOD's approach was ineffective and possibly illegal, that they would complicate or preclude any effort to prosecute Al-Qahtani, and that the agents' exposure to these techniques would create problems for the agents and the FBI in the future. We determined that some of these concerns reached senior officials at the FBI and DOJ. However, these officials focused primarily on the issue of whether the DOD's techniques were effective at obtaining intelligence from Al-Qahtani and other detainees. Ultimately, the military prevailed in the inter agency dispute resolution process and the military's methods were pursued over DOJ's objections. We also determined that at one point officials from the FBI and DOJ participated in developing a proposal to [redacted] for interrogation using techniques of the sort that had been used on Abu Zubaydah and [redacted]. This proposal was never finalized or acted upon.

In this chapter we also describe how the FBI handled reports regarding the alleged mistreatment of another high value detainee, Mohamedou Ould Slahi (#760). Some of the FBI agents' concerns about treatment of this detainee were communicated to senior officials at DOJ.

I. Background on Al-Qahtani

Al-Qahtani was captured by Pakistani forces on December 15, 2001, while trying to enter Pakistan from Afghanistan. He was turned over to U.S. custody, and on February 13, 2002, was transferred to GTMO. When Camp Delta was set up at GTMO in April 2002, Al-Qahtani was moved there along with the rest of the detainee population, as described in more detail in Chapter Two.

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[45] *Church Report* at 115. Al-Qahtani has also been known as: Mohammed Ma'ana Ahmed Al-Qatani, Muhammad Mani' Ahmed Al-Shal-lan Al-Qahtani, and Mohammad Al-Kahtani.

Records provided to the OIG indicate that Al-Qahtani was interviewed by the FBI and the DOD four or five times between February and June of 2002. In these interviews, he provided basic biographical information and a "cover story" that he had traveled to Afghanistan to buy and sell falcons. One military interrogator described him as "obtuse and confrontational" and another noted that he "refuses to give any traceable detail for any part of his story." During this time the military and the FBI did not suspect that Al-Qahtani was directly linked to the September 11 plot.

II. Discovery of Al-Qahtani's Links to September 11

During the investigation after the September 11 plot, the Immigration and Naturalization Service (INS) determined that a person who fit the pattern of some of the September 11 hijackers had been denied entry at the Orlando, Florida, airport as he attempted to enter the United States in August 2001. In July 2002, the FBI identified Al-Qahtani from fingerprint records as the person who had been turned away by the INS.[46] The FBI also determined that hijacker Mohammed Atta's calling card was used at a pay phone in the Orlando airport to call a September 11 financier at precisely the time Al-Qahtani was being detained by the INS.[47]

On July 15, 2002, FBI Headquarters provided this information to FBI agents in GTMO, who in turn provided it to the military. The MLDU Unit Chief told us the information about Al-Qahtani's connection to September 11 was briefed to Attorney General Ashcroft and President Bush.

The MLDU Unit Chief told the OIG that after Al-Qahtani's link to the September 11 attacks was discovered, he learned from David Nahmias, Counsel to the Assistant Attorney General for the Criminal Division, that someone had made a determination that "not one single [detainee] will see the inside of a courtroom in the United States." The Unit Chief stated that Nahmias told him that after information about the potential intelligence

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[46] Al-Qahtani was denied entry to the United States by a U.S. Customs and Border Protection officer who was suspicious because Al-Qahtani spoke no English and when questioned by Customs officials became defensive and evasive in his responses. In addition, Al-Qahtani had no return ticket, no credit cards, and less than $3,000 in cash. Al-Qahtani was "excluded" from the U.S. and put on a return flight to the United Kingdom and eventually back to his original departure city of Dubai. Before Al-Qahtani was excluded from the U.S., he was photographed and electronically fingerprinted by an INS Inspector who entered this data into an INS database.

[47] The link between Al-Qahtani and the September 11 attacks was confirmed after Khalid Shaikh Mohammed, who has been described as the mastermind of the September 11 attacks, was captured on March 1, 2003, and started providing intelligence. Khalid Shaikh Mohammed was transferred from CIA custody to the U.S. military base at Guantanamo Bay in 2006.

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value of Al-Qahtani had been briefed to the White House and possibly the National Security Counsel, the answer came back that there was no interest in prosecuting Al-Qahtani in a U.S. court at that time.

Nahmias told the OIG he could not specifically recall telling the FBI Unit Chief that a decision had been made that Al-Qahtani would not be prosecuted in an Article III court, but he noted that, at that time, DOJ was in the midst of difficulties in the Zacarias Moussaoui case and DOJ thought that the military commissions would be an effective way to handle these detainees. Nahmias added that he did not think he advocated for Al-Qahtani to be brought to the United States to be tried. He said that it would have been difficult to prosecute Al-Qahtani in the United States because the decision had been made much earlier not to give Miranda warnings to detainees, which would have precluded the admissibility of any detainee statements in an Article III court.

Bruce Swartz, Deputy Attorney General for the Criminal Division, told the OIG that he consistently took the position that detainees should be tried in Article III courts, but that he was not aware of how Al-Qahtani had been interrogated until publication of a TIME magazine article about it in June 2005. Swartz said he understood that the Criminal Division initially thought there was a possibility of prosecuting Al-Qahtani in an Article III court for his role in the September 11 attacks, and that Nahmias argued in favor of that, but Swartz later heard Nahmias make comments to the effect that "we won't be able to use him [in an Article III proceeding]."

Former Assistant Attorney General Michael Chertoff told the OIG that there was discussion of bringing Al-Qahtani to the United States to be tried in an Article III court. He said the ultimate decision on that question would not have been made by the Attorney General alone. According to Chertoff, it would have been decided at a higher level. As a general matter, he said those kinds of issues would be resolved at the National Security Council (NSC) level, though he said that he does not have any specific recollection of discussion of this issue at the NSC.

Former Deputy Assistant Attorney General Alice Fisher, FBI Director Robert Mueller, and Deputy Attorney General Larry Thompson all said they could not recall any specific discussion as to whether Al-Qahtani would be prosecuted in an Article III court. Former Attorney General Ashcroft declined to be interviewed by the OIG for this review.

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III. FBI Interviews of Al-Qahtani: August 2002

Special Agent Demeter was the case agent for GTMO from February 2002 until April 2003.[48] Demeter told the OIG that once the FBI learned of the connection between Al-Qahtani and the September 11 attacks, the FBI sought to take the lead in interviewing him. The FBI's argument for seeking the lead was that the FBI had discovered and initially investigated the connection between Al-Qahtani and the September 11 attacks, and the FBI was leading the investigation into the attacks. Demeter said the person in charge of the DOD's Criminal Investigative Task Force (CITF) gave the FBI access to Al-Qahtani.

After learning in mid-July 2002 of Al-Qahtani's connection to the September 11 attacks, the military moved Al-Qahtani to a cell in Camp Delta [redacted] Over the course of the next week, Al-Qahtani was interviewed daily by FBI and military personnel. He first denied ever traveling to the United States, but when confronted with evidence of his trip to Florida he claimed he came to the United States to sell used cars. He continued to maintain the same cover story in subsequent interviews. On July 27, he was transferred to the Maximum Security Facility at Camp Delta to minimize influence and social support from other detainees.

Demeter told the OIG that, at this point, he requested that FBI Special Agent Thomas interview Al-Qahtani, because Thomas was in Demeter's view the FBI's "strongest interviewer."[49] According to one of the first FBI On-Scene Commanders (OSC) at GTMO, Thomas had already obtained confessions from several detainees at GTMO and Major General Dunlavey, the Commander of Joint Task Force 170, called him "a national treasure."

After his initial interviews of Al-Qahtani, Thomas recommended that Al-Qahtani be moved to a more remote location at GTMO so that he would not get social support from the other detainees in resisting the interviewers' questions. Demeter said that sending someone to isolation is not normally employed by law enforcement agencies because of concerns about the voluntariness of any subsequent statements. However, Demeter stated that isolation can be a very effective technique, and that in this instance the government's interest in getting the information outweighed any potential concerns of voluntariness. Demeter said the FBI agents reported the recommendation up their chain of command, through the MLDU Unit Chief,

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[48] Demeter is a pseudonym.

[49] Thomas is a pseudonym. Thomas was one of the agents who also interviewed Zubaydah, as described in Chapters Four and Eleven.

and that he obtained the necessary approvals from senior officials above the Unit Chief. Demeter told us that the military had to approve the transfer because the military controlled GTMO.

On August 8, 2002, Al-Qahtani was transported via military ambulance from his cell in Camp Delta to the Navy Brig in GTMO.[50] Thomas continued to interview Al-Qahtani after he was moved to the Brig. Demeter said that Thomas urged the guards at the Brig to refrain from speaking with Al-Qahtani to increase his isolation. He stated that the guards covered their faces or ordered Al-Qahtani to face away when they were present to further isolate Al-Qahtani from human contact.[51]

The OIG interviewed Al-Qahtani at GTMO on February 27, 2007. Al-Qahtani told the OIG that the Brig was "the worst place I was taken to." He said he did not know when to pray because the window was covered up and he could not tell what time of day it was. In addition, he said that he did not know the direction of Mecca. Al-Qahtani told the OIG that the entire time he was at the Brig the guards covered their faces when they dealt with him. He also said he was not allowed any recreation, and while he was allowed into the hallway outside his cell, he never saw the sun. Al-Qahtani said the lights in his cell were left on continuously for the entire time he was there, which he said was half a year. Al-Qahtani also described the Brig as very, very cold. He said he sometimes had a mattress, but if the interrogators did not like his answers, they would take things like that away.

Al-Qahtani described an FBI agent who spoke Arabic. This was Thomas. Al-Qahtani said Thomas had "some sense of humanity." According to Al-Qahtani, Thomas never used aggression or physical violence on him. According to Al-Qahtani, Thomas said things such as "you will find yourself in a difficult situation if you don't talk to me" and "if you're not going to talk now, you will talk in the future." When asked if he took this as a "warning or a threat," Al-Qahtani replied that it was "a little bit of both."

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[50] As described in Chapter Two, the Navy Brig is located on the grounds of the U.S. Naval base at GTMO, separate from the detainee camps. Before Al-Qahtani was moved to the Navy Brig, the FBI set up a closed-circuit television so that the FBI could monitor him.

[51] We note that severe isolation of the type used on Al-Qahtani for interrogation purposes rather than as a disciplinary or security measure would likely be considered to be coercive and contrary to FBI policies for custodial interviews in the United States. The same may be true of the actual or implied threats that Thomas made, as described later in this chapter. However, these incidents took place very close to the time concerns about the Zubaydah interrogation were being raised within the FBI, as described in Chapter Four. It is clear that the Director's instruction had not yet been communicated to Thomas or those in his chain of command that approved Al-Qahtani's isolation.

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Al-Qahtani told the OIG that he had been removed from his cell by force, prior to being taken to the Brig. He said the day after the move to the Brig, Thomas came and sat next to him and said something like "this is your place until you change your story." Al-Qahtani said he did not recall meeting with anyone from the FBI at the Brig other than Thomas and one civilian who took his picture and fingerprints. However, FBI records and witnesses indicate that Al-Qahtani was interviewed by several different FBI agents during the period when he was confined in the Brig, including Thomas, Demeter and members of the FBI's Behavioral Analysis Unit.

As additional intelligence entities learned about the connection between Al-Qahtani and the September 11 attacks, interest in the information he might provide increased. Demeter said that within 2 weeks of confirmation of Al-Qahtani's role, the military decided they "wanted a piece of Al-Qahtani" but the FBI had "beat them to the punch" and was taking the lead on the interviews. According to Demeter, the military began pressing the FBI for results. Demeter said that Thomas's view at this point was that the FBI's interview approach would take a long time to work, given Al-Qahtani's mindset.

After the FBI had been interviewing Al-Qahtani at the Brig for approximately 30 days, Demeter said, the military told the FBI to "step aside" and took over. According to Demeter, the military's decision to pursue a more aggressive approach was the "beginning of a real schism" between the FBI and the military regarding detainee interrogation techniques.

IV. FBI Supervisory Special Agents Foy and Lyle Observe Military Interrogations of Al-Qahtani: Early October 2002

After the military determined that it would take the lead on the Al-Qahtani interrogations, a military intelligence "special projects" team put together a proposed interrogation plan. During this time, the FBI continued to attempt to influence his interrogation. From September 13, 2002, until October 29, 2002, FBI SSAs Foy and Lyle from the Behavioral Analysis Unit (BAU) were deployed to GTMO to provide behavioral analysis of detainees to help develop interview strategies.[52] On September 30, 2002, Foy e-mailed his superiors at the BAU about the latest military intelligence plan for Al-Qahtani, which included moving him from the Brig to Camp Delta for a short stay to see if he would cooperate, followed by transferring him to Camp X-Ray for an indefinite period of 20-hour interviews. Foy's e-mail stated that when he asked for guidance from the MLDU Unit Chief, the Unit

[52] Lyle and Foy are pseudonyms.

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Chief told him that as long as there was no "torture" involved, he could participate in the interrogations. The Unit Chief told the OIG that he did not recall this exchange, but that it could have occurred.

The next day Foy e-mailed the MLDU Unit Chief that he and Lyle would only "observe" the Camp Delta portion and the first 6 hours at Camp X-Ray. In addition, Foy recommended that if FBI Headquarters were to send FBI employees to GTMO to question Al-Qahtani, the FBI interviewers should wait at least a week after military intelligence had completed their interrogation.

On October 3, 2002, Foy and Lyle observed the Al-Qahtani interrogations. After interviewing Qahtani for a few hours at Camp Delta – where he continued to refuse to cooperate – the military moved him to a plywood hut in Camp X-Ray. Al-Qahtani was interrogated by another military interrogation team from October 3 until the early morning hours of October 4. Lyle said Al-Qahtani was "aggressively" interrogated and that the military interrogators yelled and screamed at him. Foy told the OIG that the plan was to "keep him up until he broke."[53] Foy said he did not know if that ultimately is what happened, because he and Lyle stopped observing the process. Foy stated in an e-mail to The FBI Unit Chief and the OSC at GTMO the next morning that an FBI approach to Al-Qahtani the following week would not be worthwhile "due to the current mental/physical status of the detainee."

Foy and Lyle returned to Camp X-Ray in the late afternoon of October 4 to continue their observations. Lyle told the OIG that one of the interrogators, a Marine Captain, had been interrogating Al-Qahtani by yelling at him and calling him names. Lyle stated that the Captain got up on the table in the room to yell at Al-Qahtani in a more intimidating fashion, at which point he squatted over a Koran that had been provided to Al-Qahtani. This action incensed Al-Qahtani, who lunged toward the Captain and the Koran. Al-Qahtani was quickly subdued by the military guards in the room. Foy gave a similar account of this incident. He stated that he and Lyle heard a commotion coming from the interview room where the Marine Captain and another military interrogator were interviewing Al-Qahtani. Foy said that it appeared that the Captain and the other interrogator were playing "good cop, bad cop."[54]

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[53] Foy told the OIG that the technique being used was sleep deprivation, not sleep disruption, because the military interrogators were keeping him awake rather than letting him fall asleep and then waking him up. Foy said they used bright lights and music to keep him awake.

[54] Foy and Lyle gave consistent accounts of this incident to the FBI Inspection Division in September 2004. Foy stated that the Koran incident took place on October 4,

(Cont'd.)

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Lyle and Foy also described an incident the next day in which a guard received a signal to bring a working dog into the interrogation room where Al-Qahtani was being interrogated. Lyle said that the use of dogs as an interrogation tool was exclusively the military's idea, based on their belief that Arabs feared dogs because they viewed dogs as unclean. Lyle said that the guard handling the dog first agitated the dog outside the interrogation room, and then brought the dog into the room close to Al-Qahtani. Lyle said that the dog barked, growled, and snarled at Al-Qahtani in very close proximity to him, but was never allowed to have contact with him.[55] Foy gave a similar account of the incident, and told the OIG that he and Lyle were not comfortable with the situation with the dog so they left the interrogation.[56]

On October 8, 2002, Foy e-mailed the GTMO On-Scene Commander and the MLDU Unit Chief to describe other "techniques" used on Al-Qahtani, including sleep deprivation, loud music, bright lights, and "body placement discomfort." Foy reported that the technique had "negative" results and that Al-Qahtani remained "as fervent as ever" in not cooperating. Foy stated in the e-mail that Al-Qahtani was "down to 100 pounds" and that military intelligence personnel planned to initiate another phase in the interrogation in the coming weekend.[57]

Although "aggressive" techniques had already been used on Al-Qahtani, it was not until October 11, 2002, that Major General Dunlavey, the Commander of Joint Task Force 170, requested that the Commander of SOUTHCOM approve 19 counter-resistance techniques that were not specifically listed in Field Manual 34-52. *Schmidt-Furlow Report* at 5. Those counter-resistance techniques were listed in three categories. Category I

2002. Also, the *Schmidt-Furlow Report* described an incident in December 2002 similar to the incident described by Lyle and Foy, in which an interrogator "squatted down in front of [Al-Qahtani] in an aggressive manner and unintentionally squatted over the detainee's Koran."

[55] Lyle and Foy provided consistent accounts of this incident to FBI Inspection Division interviewers in September 2004. The *Schmidt-Furlow Report* also found that a military working dog was used in connection with the interrogation of Al-Qahtani on one or two occasions in October to November 2002.

[56] Al-Qahtani told the OIG that during one interrogation at Camp X-Ray, a dog with a soldier was in the room with him. He said the soldier did not order the dog to attack Al-Qahtani. Rather, he said the dog was used as a tool to intimidate him during interrogation. Al-Qahtani said that the dog tried to bite him but it was restrained by its handler. Al-Qahtani added that the dog was walked around the interrogation room and the handler let the dog get very close to him and it was barking and growling the whole time.

[57] In commenting on a draft of this report, the DOD stated that Foy's comment regarding Al-Qahtani's weight was irrelevant because it did not provide his beginning weight. However, the OIG did not receive information about Al-Qahtani's initial weight.

included strategies such as yelling and deception. Category II included stress positions (maximum of 4 hours), deprivation of light, removal of clothing, and using individual phobias (such as fear of dogs) to induce stress. Category III included "use of scenarios designed to convince the detainee that death or severely painful consequences are imminent for him and/or his family" and "use of a wet towel and dripping water to induce the misperception of suffocation." *Church Report* at 111. Along with the list of techniques, Dunlavey provided SOUTHCOM two memoranda he received from the Staff Judge Advocate stating that the proposed strategies "do not violate applicable federal law."[58]

V. The FBI's MLDU Unit Chief and DOJ Counsel Nahmias Visit GTMO: October 15 to 18, 2002

Friction between the FBI and the military intelligence entities over the best way to handle the Al-Qahtani interrogations increased during October and November 2002. During that time, the FBI's MLDU Unit Chief and Counsel to the Assistant Attorney General for the Criminal Division David Nahmias traveled together to GTMO for a visit during October 15 to 18, 2002.

According to Nahmias, at some point prior to his trip to GTMO, the DOD claimed to have "broken" Al-Qahtani and gotten him to cooperate. Nahmias told the OIG that he learned that Al-Qahtani had been interrogated for many hours and blurted out the name Mohammed Atta, which the DOD interrogators considered a breakthrough. The reaction of the FBI's Behavioral Science people, according to Nahmias, was that Al-Qahtani was just giving the interrogators what they wanted so that they would let him eat or go to the bathroom.

Nahmias stated that when he was at GTMO, Al-Qahtani was being held in isolation and the interrogators were getting no information whatsoever from him. Nahmias stated that the DOD was using "aggressive" techniques and there was a "heated debate" with the FBI and CITF on one side and military intelligence on the other about what to do with Al-

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[58] *Schmidt-Furlow Report,* Exhibit 14. According to the *Church Report*, on October 25, 2002, the SOUTHCOM Commander, General Hill, sought Secretary of Defense approval for the use of "additional techniques beyond those specifically listed in FM 34-52." In the SOUTHCOM Commander's request, he stated that he believed the Category I and II techniques are "legal and humane," but that he was unsure regarding Category III. As noted below, Secretary Rumsfeld gave formal approval for some of the techniques on December 2, 2002.

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Qahtani.[59] Nahmias said the FBI wanted to talk to Al-Qahtani during this period but the DOD refused.

The MLDU Unit Chief told the OIG that during this visit to GTMO he participated in a video-teleconference discussing Al-Qahtani's interrogation plan. The other participants in the teleconference included Nahmias, Major General Geoffrey Miller (the new Commander of JTF-GTMO), the Lieutenant Colonel who was in charge of the GTMO interrogations at that time, the Chief CITF Psychologist, and a representative of the CIA. The Unit Chief stated that DOD personnel at the Pentagon were also on the call. During the teleconference, the Unit Chief said, the Lieutenant Colonel presented the DOD's plan to use aggressive interrogation techniques. According to the FBI Unit Chief, the Lieutenant Colonel gave an explanation of all the information the DOD had obtained from Al-Qahtani using aggressive interrogation practices. At that point the FBI Unit Chief said he spoke up and said "look, everything you've gotten thus far is what the FBI gave you on Al-Qahtani from its paper investigation." The Unit Chief said the conversation became heated. According to the Unit Chief, the Chief CITF Psychologist and Nahmias agreed that the information the Lieutenant Colonel presented had been provided by the FBI and that the Lieutenant Colonel's suggested interrogation methods were not effective and were not providing positive intelligence. The Unit Chief stated that the meeting ended because of the controversy. The Unit Chief said he did not believe the legality of the DOD techniques was discussed during the teleconference.

Although he did not describe the specific conference call mentioned above, Nahmias told the OIG that plans for the Al-Qahtani interrogation were discussed at meetings which included the FBI, the military at GTMO, military officials at the Pentagon, and others. He told the OIG that it was the general view of the FBI, DOJ and CITF that the proposed plan would not work and that the military were "completely ineffective in getting any kind of intelligence out of [Al-Qahtani]."

VI. FBI Continues Objecting to the Al-Qahtani Interrogation Plans: November 2002

From late October to mid-December 2002, a new set of FBI BAU agents, SSA Brett and SSA McMahon, were stationed at GTMO.[60] During

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[59] As noted in Chapter Two, CITF conducts interrogations in order to gather evidence for the military commission process and possible war crimes prosecutions. The law enforcement groups that make up the CITF are the Naval Criminal Investigative Service (NCIS), the Army Criminal Investigation Command (CID) and the Air Force Office of Special Investigations (OSI).

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this period, the FBI and CITF continued to object to the approach military intelligence officials sought to take with Al-Qahtani.

On November 12, 2002, General Hill orally approved the use of Category I and II techniques on Al-Qahtani. The next day, he approved an interrogation plan for Al-Qahtani against the FBI's objections.[61] The plan described 20-hour interrogation sessions, followed by 4-hour rest periods. It stated that Al-Qahtani had been "segregated with minimal human contact" for several months, and that this appeared to be having an effect on his mental state. The plan stated that "[i]t is believed that with an intense interrogation cycle where he is not allowed to speak and is then suddenly allowed to speak, he may tell all." The plan called for Al-Qahtani's head and beard to be shaved, "for psychological and hygiene purposes." In addition, the plan stated that if he was uncooperative, he would be placed in stress positions and blindfolded. The plan further stated that the blindfolding and the presence of dogs had been approved by the Commanding General.

Another portion of the plan called for telling Al-Qahtani about how the "rules have changed" since September 11. The plan contained a description of four different "phases" for the interrogation, which would begin on November 15, 2002. If a phase was unsuccessful within the time allotted, then the interrogation would move to the next phase. The phases were described in the military's interrogation plan as follows:

- Phase I: the military would permit the FBI access to Al-Qahtani until November 22. The FBI would present him with a "window of opportunity" to cooperate, and the FBI would explain that this was his "last chance" before he was returned to the military. After that, interrogators would increase the pressure on Al-Qahtani while preventing him from speaking for one week, so that when he was presented with the opportunity to talk, he would "provide his whole story."
- Phase II: the military would place a government translator with Al-Qahtani. The translator would act and be treated as like a detainee, and he would engage Al-Qahtani in conversation and ask targeted specific questions to extract the sought-after information.

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[60] Brett and McMahon are pseudonyms.

[61] We reviewed several versions of the Al-Qahtani interrogation plan and we have been unable to determine which one was actually approved. The elements described above appear in all versions, however, including the version attached as an exhibit to the *Schmidt-Furlow Report*.

- Phase III: The plan referred to "Level III techniques." (This appears to be a reference to the techniques listed in the October 11, 2002, memorandum in which Major General Dunlavey requested that the Commander of SOUTHCOM approve 19 counter-resistance techniques that were not specifically listed in Field Manual 34-52). SERE and other counter interrogation resistance training techniques would be employed.[62]
- Phase IV: Al-Qahtani would be sent "off Island" either temporarily or permanently to "either Jordan, Egypt or another third country to allow those countries to employ interrogation techniques that will enable them to obtain the requisite information."

FBI agents McMahon and Brett examined the military intelligence interrogation plan and concluded that it was deeply flawed. For example, in connection with the strategy of preventing Al-Qahtani from speaking for a week in the hope that he would then "tell all," the agents noted that they were aware of no such recognized interrogation technique. In a report to FBI Headquarters, they stated: "It is our information that this interrogation technique was recommended by . . . an ARMY Linguist, who claims to have a number of years of 'Agency' experience. Other than the word of this linguist there has been no data proffered which justifies the use of this technique." With respect to Phase IV, the agents stated simply, "Unless this plan is modified to exclude aspects that have not been approved for FBI personnel, we cannot be a signatory on this plan."[63]

The CITF officials at GTMO raised similar objections to the military intelligence plan. A memorandum from the CITF legal advisor to the Commander of JTF-GTMO, dated November 15, 2002, stated that CITF had raised "formal legal objections" to the plan, and asserted that the SOUTHCOM Command's approval could not be considered authoritative given that the matter was "currently under legal review" by the DOD General Counsel's Office. With respect to Phase IV, this memorandum stated that the plan "implies that third country nationals . . . could be used

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[62] As noted in Chapter Three, SERE (Survival, Evasion, Resistance, and Escape) is a training program which prepares U.S. soldiers and airmen on methods to resist interrogation. SERE techniques include dietary manipulation, use of nudity, sleep deprivation, and waterboarding.

[63] However, as detailed in Section VII of this chapter, some FBI and DOJ officials did advocate [redacted] during this period. As detailed in footnote 71, there were significant differences between this proposal and the military's plan.

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to convey threats to person or family or inflict harm" contrary to the Convention Against Torture.

Similarly, in a November 14, 2002, e-mail from the Commander of CITF to Major General Miller, the Commander expressed his strong objections to the use of Category III and some Category II techniques and stated his opinion that they would be largely ineffective, would have "serious negative material and legal effects" on the investigation, and that the use of such techniques could "open any military members up for potential criminal charges." The Commander also stated that the DOD General Counsel's office has "instructed DOJ that any plan with #63 will be a DOD plan, since DOD [law enforcement] and Intell have the lead." The Commander then proposed the creation of a "joint working group" through which CITF, JTF-GTMO, FBI and CIA would all participate in the development of a detailed interrogation plan for Al-Qahtani.

Brett and McMahon also attended an "interrogation strategy session" in mid-November at which military intelligence officials discussed aspects of the interview of Al-Qahtani in great detail, including the "questionable" techniques which were of concern to Brett and McMahon. According to the FBI, Brett and McMahon had concerns not only about the proposed techniques, but also about the "glee" with which the would-be participants discussed their respective roles in carrying out these techniques and the "utter lack of sophistication" and "circus-like atmosphere" within this interrogation strategy session.

An FBI/CITF plan prepared in consultation with Brett and McMahon, in contrast, emphasized a long-term rapport-building interrogation approach.[64] Under this plan, Al-Qahtani would have contact with only one interviewer. The plan proposed "periodic stressors" such as removing comfort items, with the expectation that Al-Qahtani would look to the

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[64] FBI e-mails also discussed a "hybrid" plan that apparently combined elements of the military intelligence's plan with elements of the FBI/CITF plan, and was created to fulfill a request by General Miller for the FBI and military intelligence to "determine if there is any middle ground" between their two approaches. McMahon opposed the idea of blessing the hybrid plan, because, according to the OSC, it essentially contained "rapport building" for 5-7 days (in "phase I"), then reverted to the military intelligence plan for "phase II." Brett suggested that the FBI give its "blessing" to the hybrid plan because it was the "lesser of two evils." Brett thought that military intelligence would likely immediately institute their original plan for Al-Qahtani if the FBI did not give its "blessing" to the hybrid plan. Brett hoped that instituting the hybrid plan would put off the harsh treatment of Al-Qahtani for a least a week during which time the FBI and CITF could work toward changing the future plans for this detainee. Both Brett and McMahon adamantly objected to the remaining phases of the hybrid plan after phase I. The OIG was not able to obtain a copy of the hybrid plan.

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interviewer for help, thereby increasing the interviewer's status. The FBI also recommended the introduction of "visual stimuli" designed to invoke sympathy and weaken his sense of loyalty to al-Qaeda associates.

Major General Miller met with Brett, McMahon, Demeter, and the FBI OSC to discuss the plans for interrogating Al-Qahtani.[65] McMahon told the OIG that although Miller acknowledged positive aspects of the rapport-based approach, Miller favored military intelligence's interrogation methods. According to McMahon, the FBI's arguments against the coercive techniques were met with "considerable skepticism and resistance by senior [military intelligence] officials in GTMO."

According to Demeter, Major General Miller wanted to take a much more aggressive approach with Al-Qahtani than advocated by the FBI. Demeter said that Miller used military phrases such as "relentless" and "sustained attack" to describe the military's proposed approach. Demeter told the OIG that he argued with Miller that by using proven law enforcement interview tactics such as rationalizing the conduct along with the subject, joining the subject in projecting blame for the conduct on others, or minimizing the severity of the conduct with the subject, the barriers to confession are reduced and cooperation becomes more likely. Demeter told the OIG that these tactics may sound "touchy-feely" or "counterintuitive," but they had been very successful with hard core criminals in the past. Demeter said he explained to Miller that, when dealing with a person who believes that his suffering will be rewarded by God, causing more suffering is not effective in the long term. Demeter said he told Miller that the aggressive approach would simply create an additional obstacle, because the interrogator would still have to get the subject to confess to something that may not be in his best interest, and the interrogator would also have to overcome the detainee's personal animosity. Despite Demeter's arguments, however, the military decided that its aggressive approach had a greater chance of success, and DOD interrogators began using harsher techniques on Al-Qahtani.

In mid-November, 2002, FBI agents at GTMO continued their efforts to influence the military's Al-Qahtani interrogation plan, without success. On November 20, at Miller's instruction, the FBI met with JTF-GTMO staff in an effort to find some "common ground." Military intelligence presented its plan and the FBI objected based on concerns regarding efficacy, coercion, and possible illegality. Brett told the OIG that it became apparent to him that the military could not agree to a plan that did not include the application of SERE techniques and a phase which involved sending Al-

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[65] We are not certain of the date of this meeting but we believe it took place in late November or early December 2002.

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Qahtani to a third country where he could be tortured to get information, two things the FBI would not agree to do.

The FBI offered its alternative plan which used rapport-based techniques and military intelligence and JTF-GTMO staff members agreed to revise their plan by incorporating some of the FBI's techniques. The FBI personnel present said the revised plan would have to be reviewed and approved by FBI Headquarters and BAU before the FBI could agree to pursue the plan. Military intelligence officials at GTMO did not advise the FBI that a revised plan would be presented to the General the next day. Nonetheless, according to McMahon, the FBI's MLDU Unit Chief, and the OSC, during a video teleconference the next day at which the interrogation of Al-Qahtani was discussed, the same Lieutenant Colonel who had falsely claimed in the October 2002 teleconference that the DOD had obtained information from Al-Qahtani using aggressive methods (as described above) "blatantly misled the Pentagon into believing that the BAU endorsed [military intelligence]'s aggressive and controversial Interrogation Plan." The OSC stated that one of the FBI agents in attendance wanted the OSC to interrupt the Lieutenant Colonel to correct the record during the teleconference, but the OSC said he chose not to do so because he did not want to embarrass General Miller and he wanted to address the matter with the Lieutenant Colonel privately. The next day, the OSC sent a letter to Major General Miller to correct the Lieutenant Colonel's misrepresentation.[66]

In addition to raising concerns to military officials, Brett and McMahon sought assistance and guidance from FBI Headquarters. FBI Assistant General Counsel Spike Bowman told the OIG that in late 2002 he requested that the concerns about interrogation techniques raised by McMahon and Brett be documented in a written report for him to use in raising concerns to the DOD. Six months later, on May 30, 2003, McMahon received the necessary approvals for this EC and transmitted it to Bowman, the FBI's MLDU Chief, and the Acting CTORS Section Chief.[67] Bowman's actions in connection with this EC are discussed later in this chapter.

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[66] Sometime in early December, the FBI's MLDU Unit Chief traveled to GTMO and participated in a teleconference with Pentagon officials in which he challenged military intelligence's assertion that the FBI had endorsed military intelligence's interrogation techniques.

[67] Brett told the OIG the delay was due, in part, to the controversial nature of the EC. Brett said that he believed the controversy centered around the fact that the FBI were guests of the military at GTMO and that this EC was actually telling the military that they should not be doing what they were doing because their tactics were both ineffective and possibly illegal.

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VII. Proposal To [redacted] Al-Qahtani To Be Interrogated Using an Alternative Debriefing Model of the Sort Used on Zubaydah

We also determined that at one point during the controversy regarding the interrogation of Al-Qahtani, U.S. government officials, including officials from the FBI and DOJ, advanced a proposal to [redacted]. At least some DOJ and FBI officials understood that this proposal involved subjecting Al-Qahtani to interrogation using the same [redacted] used on Zubaydah, although these officials told the OIG that they did not know specifically what interrogation techniques would be involved.

The OIG obtained a draft document describing such a proposal during this investigation. The only two officials we interviewed who told us they were familiar with the document were David Nahmias (then Counsel to the Assistant Attorney General for the Criminal Division at DOJ) and an FBI agent who was the Unit Chief for the Military Liaison and Detainee Unit (MLDU) at the time the document was drafted. The Unit Chief said it was written to solicit assistance [redacted] in dealing with Al-Qahtani. Nahmias told the OIG that the document was a draft of a letter to be sent by the Attorney General to the National Security Council.

Nahmias stated that he is certain that the document was drafted by the FBI – either by the FBI Unit Chief or someone in MLDU. The "header" information on the document reflects that it was printed from Nahmias' FBI computer. The FBI Unit Chief said the FBI provided the facts in the document, but that someone at DOJ may have reformatted them into a draft. None of the other witnesses the OIG interviewed about this issue could identify the author.

The document described the connection between Al-Qahtani and the September 11 attacks, and stated that preliminary interrogations had led to "some success" with Al-Qahtani. The draft further stated:

> There has been significant discussion regarding the relative safety and comfort of the detainee facilities at GTMO. Among the issues discussed is the lack of a multi-tiered system of physical holding areas which could employ varying degrees of privilege and interaction with others. It is the collective opinion of FBI investigators, FBI Behavioral Analysis Unit (BAU), [redacted] and the Department of Defense (DOD) Criminal Investigative Task Force (CITF) that this environment has created complacency in [AL-QAHTANI].
>
> It is firmly believed that AL-QATANI traveled to the U.S. in 2001 for the purposes of committing or supporting a terrorist act. It

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is further believed that AL-QATANI possesses critical intelligence regarding the identification of individuals also involved in planning, supporting, or committing terrorist acts against U.S. interests. Although some progress has been made with AL-QATANI at GTMO, [redacted] being used with subjects including ABU ZABAIDA [redacted] could greatly enhance his productivity.

The FBIHQ GTMO Task Force has discussed the following proposed strategy with representatives of the Department of Justice (DOJ), FBI investigators, FBI-BAU, [redacted] and with DOD-OASD (SOLIC). Further debriefings of AL-QATANI at GTMO are unlikely to result in actionable intelligence. As long as AL-QATANI remains in law enforcement or military custody, he does not at this time pose a continued threat to U.S. interests.

To improve the productivity of further intelligence exploitation, AL-QATANI should be [redacted].

AL-QATANI would be debriefed by highly knowledgeable personnel, and disseminations regarding the results of these debriefings would be released to the appropriate U.S. intelligence entities expeditiously. [redacted]

The document is undated, and neither Nahmias nor the FBI Unit Chief could recall exactly when it was drafted, although both agreed that it was probably created in the fall of 2002 or early in 2003.[68]

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[68] The document refers to the interrogations of Binalshibh, who was not captured until September 11, 2002. The document makes no mention of Khalid Sheikh Mohammed's interrogation, which began after his capture on March 1, 2003. Therefore, the OIG believes this document was created between October 2002 and March 2003. The MLDU Unit Chief estimated that the document was written in mid-November 2002. In addition, a November 14, 2002, e-mail from the Commander of the Criminal Investigative Task Force (CITF) to Major General Miller (discussed below) appears to make a reference to this proposal.

Nahmias provided to the OIG contemporaneous notes and other documents from this period that contain several general references to a plan being actively pursued to change the circumstances of Al-Qahtani's interrogation. Although these documents describe a plan for Al-Qahtani that involved [redacted], they do not specifically discuss what techniques would be used to interrogate Al-Qahtani and there is no specific reference in the notes to [redacted] or to methods used with any other detainee, including Zubaydah. Nahmias' notes from a meeting with the FBI Unit Chief on September 27, 2002, state that the FBI Unit Chief met with a Principal Deputy Assistant Secretary of Defense and with [redacted] regarding the proposal to [redacted]. The notes also indicate that the DOD's Criminal Investigation Task Force (CITF) (Fort Belvoir) was "on board" with the proposal. In an October 2002 e-mail to DOD officials with a copy to Alice Fisher, Nahmias stated that the FBI Unit Chief had recently met with an official from CITF in Fort Belvoir regarding the proposal for Al-Qahtani. The e-mail stated: "I also advised [the FBI Unit Chief] that the write-up of the proposal should be discussed by us first...." We believe that the reference to a "write-up of the proposal" concerns some version of the draft letter quoted above.

An e-mail dated November 14, 2002, sent by the Commander of CITF to Major General Miller, makes an apparent reference to the proposed strategy [redacted]. In the e-mail the Commander stated: "There has been repeated discussion by several agencies that they wanted to take [Al-Qahtani] to another location to try other techniques to get him to talk . . . FBI in particular has made several requests thru DOJ to allow them to execute a plan whereby #63 would be taken to alternate locations . . .. So far, DOD had refused approval until both JTF-GTMO and CITF both agree. What you need to know is that apparently, several times it has been represented that we at CITF HAVE agreed to this plan, but in fact we have not done so . . . ." Although the e-mail refers to the use of "other techniques" with Al-Qahtani, the e-mail does not specify the techniques or directly connect them to the techniques that had previously been used on Zubaydah.

It appears that in early 2003 DOJ formally raised the issue of the Al-Qahtani interrogations at the NSC. Nahmias provided the OIG with an agenda for a January 8, 2003, NSC meeting, including an attachment entitled "Detainee Issues (1/8/03)" which stated:

> Interrogations of Al Qatani in Afghanistan and at GTMO have produced little information. Since September, his interrogations have been conducted by [Defense Intelligence Agency]. Since late September, FBI, DOJ, [redacted], and some elements of DOD have been proposing [redacted]

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[redacted].
Very recent and unevaluated reports suggest that he may now be providing intelligence; if so, [redacted] may not be appropriate.

Other than the draft letter itself, the contemporaneous documents provided to the OIG do not make reference to [redacted] or to Zubaydah and therefore do not reveal which if any of the participants was aware of the specific interrogation methods that were involved. They do, however, establish that a proposal [redacted] was actively pursued by certain officials from DOJ and the FBI in late 2002 and early 2003.

As detailed in Chapter Four, the interrogations of Zubaydah [redacted] included interrogation techniques that cannot be characterized as "rapport-based" and that clearly would never have been permitted for FBI agents in the United States under any FBI policy. Indeed, when the FBI originally learned about some of the techniques that had been used or approved for use on Zubaydah, Director Mueller gave instructions that FBI agents should not participate in any interrogations in which such techniques would be used. In addition, the CIA has acknowledged that Zubaydah was waterboarded, although there is no evidence that FBI agents observed or were aware of this conduct at the time. Although the proposal as described in the draft letter did not include direct FBI participation in the implementation of alternative debriefing models of the sort that were used with Zubaydah, advocating that others use such an approach with Al-Qahtani appears to conflict with the spirit if not the letter of Director Mueller's instructions.

However, both the FBI Unit Chief and Nahmias told the OIG that although they advocated for the plan described in the draft letter, they did not know specifically what techniques had been used on Zubaydah. Nahmias's contemporaneous notes relating to the proposal to [redacted] do not reflect any discussion of particular techniques to be used with Al-Qahtani. Both the FBI Unit Chief and Nahmias told the OIG that their belief that [redacted] approach would greatly enhance Al-Qahtani's productivity was based not on any familiarity with the specific interrogation techniques that had been used on Zubaydah, but instead on the quality of the intelligence the CIA was providing to the FBI and DOJ from high value detainees in CIA custody.

Given the statements by the FBI Unit Chief and Nahmias that they did not know what the [redacted] entailed, the OIG sought to determine what they thought would happen to Al-Qahtani under the proposal [redacted]. The FBI Unit Chief said he wanted Al-Qahtani to be in an environment [redacted] with native Arabic speakers, where he would be "drinking tea" instead of eating "MREs,"

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and where he would let his guard down. The Unit Chief said he believed only [redacted].[69] He said he thought the techniques the military wanted to use on Al-Qahtani at GTMO might preclude trying Al-Qahtani in court or in a tribunal and would produce statements that would be "suspect, at best."

Similarly, Nahmias said that he presumed [redacted] was legal, but said he did not know the details of the program and did not see the authorizing memoranda (which are discussed in Chapter Four of this report). Nahmias told the OIG that he did not think that the proposal in the draft letter involved waterboarding Al-Qahtani. Nahmias said he believed [redacted] interrogation practices than the FBI, but he had never even heard of the term "waterboarding" at that time. [redacted] He stated that he believed the [redacted] He said the military's interrogation model was largely to scream at the detainees, [redacted]

Nahmias also told the OIG that conditions at GTMO were not promoting successful interrogations of Al-Qahtani. He said that at GTMO there was no way to "separate" someone, so people who had been cooperative prior to their arrival became uncooperative when mixed in with the general detainee population. He said there was no system of rewards or protection for those who cooperated or penalties for those who did not. Nahmias told the OIG that Al-Qahtani had "shut down" after the DOD took over the interrogations, and the DOD's tactics were "completely ineffective." He also stated that at the time the letter was drafted the military had stopped interrogating Al-Qahtani due to legal issues over whether military

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[69] The evidence regarding what the FBI Unit Chief knew about CIA techniques at the time is limited. The Unit Chief stated he did not know what techniques the CIA used on Zubaydah [redacted] at the time of the proposal for Al-Qahtani. One FBI agent told us that in late 2001 or early 2002 he told the Unit Chief about visiting a [redacted]. The FBI agent said he did not witness any torture at the facility, but that he heard loud music and saw wall restraints in the facility. [redacted]. The FBI agent said [redacted] told him to avoid the facility in the future unless he wanted to be subpoenaed by a congressional committee to testify. The agent said he described this experience to the FBI Unit Chief. However, the Unit Chief told us he did not recall hearing about this incident from the FBI agent. We also note that the FBI Unit Chief reported to Arena and D'Amuro, who were aware of at least some of the techniques the CIA employed on Zubaydah. However, Arena told us he could not recall if the Unit Chief was involved in the discussions he had about the CIA's use of SERE-type techniques on Zubaydah.

orders were being accurately followed. Nahmias also stated that he had "significant concerns" that the DOD was not "accurately reporting what they were getting." [redacted]

We also attempted to determine the extent to which the proposal for Al-Qahtani described in the draft letter was known to other officials in the FBI and DOJ. The FBI MLDU Unit Chief told the OIG that the proposal in the draft letter was briefed and discussed with his chain of command, and that approval of the FBI Director and the Attorney General ultimately would have been required to put this proposal into effect. However, the other FBI officials we interviewed told us they had not seen the draft letter and had not heard of the proposal described in it.

The OIG asked ITOS-1 Section Chief Andrew Arena about the draft letter because his section of the Counterterrorism Division had responsibility for intelligence issues relating to GTMO. Arena told the OIG that he had never seen the document before the OIG provided it to him and he was unaware of any proposal for Al-Qahtani along the lines described in the draft letter. In addition, Arena said he was "shocked" to learn that any officials from the FBI and DOJ ever advocated for such a measure. Arena said he believes the [redacted] referred to in the draft proposal refers to the SERE-type techniques the CIA was using on Zubaydah [redacted]. He said that in discussions with the FBI the DOD would often cite a DOJ legal opinion, which Arena had not seen, that said the use of SERE-type techniques on detainees was not torture. However, Arena could not recall if the FBI MLDU Unit Chief was ever involved in discussions about the CIA's use of such techniques.

Pasquale D'Amuro was the Assistant Director for CTD and was promoted to Executive Assistant Director in November 2002, near the time this draft proposal was prepared. D'Amuro told us that he never saw the document before his OIG interview and never heard of a proposal to [redacted] for employment of an alternative debriefing model of the sort that had been approved for use by the CIA on Zubaydah. D'Amuro stated that he would have opposed such a strategy because he believed that FBI interview techniques were superior at developing reliable information. D'Amuro told us he could not recall having any discussions with the FBI Unit Chief regarding strategies for obtaining information from Al-Qahtani.[70]

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[70] The OIG also attempted to interview former Counterterrorism Division Assistant Director Larry Mefford regarding this proposal. Mefford was in the FBI Unit Chief's chain of (Cont'd.)

FBI Director Mueller told the OIG that the proposal regarding Al-Qahtani described in the draft letter was never discussed with him and never reached him. He said he did not know the circumstances under which the document was written. Similarly, Mueller's Chief of Staff at the time, Daniel Levin, told us that he did not recall seeing the draft letter, although he vaguely recalled discussion of [redacted].

We also sought to determine whether the proposal was discussed within DOJ. Nahmias stated that a proposal to [redacted] was discussed in the informal working group (described in Chapter Two) which included Nahmias or Fisher from the DOJ Criminal Division, a member of the DOJ Office of Legal Counsel, someone from the DOD Office of the General Counsel, and [redacted]. However, Nahmias told the OIG that these discussions did not address the idea that the techniques that had been used on Zubaydah would be used on Al-Qahtani. Fisher confirmed that the case of Al-Qahtani was discussed at these informal meetings, but she and Nahmias said that the topics of mistreatment, abuse, and voluntariness were not discussed in connection with Al-Qahtani. Fisher told the OIG that she does not recall ever seeing the draft letter and she does not recall discussing the strategy described in it. Fisher said she had a vague recollection that there might have been a discussion with the CIA about whether [redacted]. However, Fisher said she does not believe it was within the Criminal Division's jurisdiction to "sign off" on something like that. Fisher said she does not believe anyone thought it was a good idea and that she does not believe that it was done.[71]

Nahmias told the OIG that the draft letter was created as a means for the Attorney General or the Assistant Attorney General to suggest that if the

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command, but had left the FBI by the time the OIG became aware of the draft letter. We were not able to obtain an interview with Mefford.

[71] We also note that Phase IV of the military's plan for Al-Qahtani, described in detail earlier in this chapter, proposed sending him "off Island" either temporarily of permanently to "either Jordan, Egypt or another third country to allow those countries to employ interrogation techniques that will enable them to obtain the requisite information." [redacted] Some witnesses, however, were only able to recall a proposal to send Al-Qahtani [redacted] and were not able to recall further details, so it was not possible for the OIG to determine in those instances whether the witnesses' recollection related to the military's plan or to the draft letter described here.

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FBI could not interrogate Al-Qahtani that he should be [redacted]. Nahmias said he thought the DOJ officials involved in the development of the general strategy to [redacted] may have included Assistant Attorney General Chertoff, Deputy Attorney General Thompson, Attorney General Ashcroft, and his Chief of Staff David Ayres.[72] Nahmias told the OIG, however, that his discussions with these people related to a general strategy for Al-Qahtani, did not include sharing the draft letter, and did not address the specific concept that interrogation techniques of the type used on Zubaydah would be used on Al-Qahtani.

Assistant Attorney General Chertoff told the OIG that he does not recall any specific discussion of [redacted]. Chertoff said he did not recall whether he had specific knowledge at that point of the specific techniques used on Zubaydah [redacted]. However, he said it would not surprise him if, given Al-Qahtani's perceived value, there was some discussion as to whether [redacted]. In contrast, he said, the information obtained by the DOD was not very good. He also said he understood that while a detainee was at GTMO, the DOD controlled who would have access to that detainee and the FBI might be allowed to participate, but only as a guest. Thompson and Ayres both told the OIG that they did not recall the draft letter or any proposal to [redacted] for interrogation using [redacted]

Nahmias stated that he is not aware that a final version of the letter ever reached Attorney General Ashcroft, but that he believed that the Attorney General was aware of the concerns about Al-Qahtani and was aware that the general strategy to change the circumstances of Al-Qahtani's interrogation was being considered. As previously noted, former Attorney General Ashcroft declined to be interviewed for this review.

The OIG also interviewed the Chief of the BAU unit primarily responsible for sending FBI agents to GTMO regarding the draft letter,

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[72] Deputy Assistant Attorney General Swartz told the OIG that neither the draft letter nor the proposal outlined in it were discussed with him at the time, and that he was unaware of such a proposal prior to being questioned by the OIG.

because the draft letter states specifically that the proposed strategy had been discussed with representatives of the FBI-BAU. The BAU Chief told the OIG that he had never seen the proposal contained in the draft letter and would not have supported such a proposal had he been consulted about it. He said the BAU advocated exclusively for a long-term rapport-building approach by a qualified interviewer, and he believed such an approach could be effective in gathering intelligence from detainees at GTMO. He said he suspects the methods used with Zubaydah as referred to in the draft consisted of techniques that the BAU would not support.

As noted above, the FBI Unit Chief and Nahmias said they did not know what techniques the CIA had used on Zubaydah. We attempted to determine the extent to which other officials in the FBI and DOJ had information about such techniques at the time of the draft letter, even if they were not aware of the specific proposal to use such techniques with Al-Qahtani. We found that by the time the draft letter proposing transfer of Al-Qahtani was written, some other counterterrorism officials at the FBI were aware that the CIA's interrogation methods included aggressive SERE-type interrogation techniques. Agents with whom the FBI Unit Chief worked as head of the GTMO Task Force and officials in his chain of command at the FBI were aware that techniques had been used on Zubaydah [redacted] that involved treatment that did not remotely resemble the rapport-based approach embodied in FBI policy. At the time of this proposal, Special Agents Thomas and Gibson, ITOS-1 Section Chief Andrew Arena, FBI Counterterrorism Assistant Director D'Amuro, and others at the FBI had learned about some of the types of techniques that had been used or proposed for use by the CIA on Zubaydah, as described in Chapter Four. In addition, the Assistant Chief of the FBI's Counterterrorism Operational Response Section (CTORS) (of which MLDU was a unit) and Special Agent Thomas told us that they observed the CIA's interrogation of Binalshibh in late 2002. However, none of these FBI officials told the OIG that they were aware of any proposal to use the same techniques with Al-Qahtani.

There is also some evidence that some officials in the DOJ Criminal Division were aware of some of the techniques involved in the CIA's [redacted] in the fall of 2002. As noted in Chapter Four, in July 2002 the DOJ Office of Legal Counsel (OLC) gave oral advice that the use of certain specific CIA techniques would not violate statutory prohibitions on torture. D'Amuro stated that he had attended a meeting with Chertoff, Fisher, and others in which he learned that the CIA had obtained a legal opinion from the DOJ that certain techniques could legally be used, including sleep deprivation, noise, and constant light. Chertoff and Fisher told us they did not recall this meeting. Chertoff told the OIG that he was aware that the CIA had requested DOJ approval for certain interrogation techniques and that the CIA had obtained a general opinion from the OLC relating to its interrogations. Chertoff said that the Criminal

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Division was asked to provide an "advance declination" in connection with the CIA's use of some techniques, but that he had refused to provide it. In testimony before the U.S. Senate on February 2, 2005, Chertoff stated that he was asked to review a draft of an OLC memorandum that eventually became the August 1, 2002, OLC memorandum regarding "Standards of Conduct for Interrogation," which is sometimes referred to as the "Yoo memorandum."[73] Chertoff stated in his Senate testimony and his OIG interview that at least some of the CIA "techniques" were described to him at the time.

Nahmias said that Al-Qahtani [redacted] because the strategy was "overtaken by events." As detailed below, in the spring of 2003 Al-Qahtani began to provide significant amounts of intelligence and he has subsequently remained at GTMO. Although Al-Qahtani [redacted], we are not aware of any CIA [redacted] being used with him. In addition, by mid-December 2003 the FBI was provided sporadic access to Al-Qahtani and the FBI has interrogated him on multiple occasions since then.

It is important to note that the plan to [redacted] for interrogation using an [redacted] did not come to fruition. We also note, however, that advocacy of a plan that included the use of an approach such as the one used on Zubaydah was not consistent with the Director's determination that the FBI should not participate in interrogations in which non-FBI techniques would be used.

We did not find sufficient evidence to conclude that the FBI Unit Chief or Nahmias knew specifically what techniques had been used on Zubaydah [redacted] at the time they advanced this proposal. We found it troubling, however, that officials in the FBI and DOJ would advocate for using the interrogation approach that was employed with Zubaydah [redacted] without knowing what techniques that approach included. We do not believe that this proposal would have been approved by the other FBI officials in the FBI Unit Chief's chain of command who were aware of the nature of these techniques during the time frame the proposal was drafted and who also were aware of Director Mueller's determination that the FBI should have no part in such techniques.

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[73] This general opinion did not describe any specific interrogation techniques, but did include an examination of "possible defenses that would negate any claim that certain interrogation methods violate the statute" prohibiting torture. A separate DOJ opinion issued the same day stated that the specific techniques approved for use on Zubaydah included waterboarding, "walling," (pushing the detainee into a specially constructed wall to shock or surprise him), facial slaps, and stress positions.

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VIII. The Military Proceeds with the Interrogation of Al-Qahtani, Over FBI Objections

Despite the FBI objections, the military proceeded with its interrogation plan for Al-Qahtani. Between November 23, 2002, and January 15, 2003, Al-Qahtani was interrogated by a "special projects" team of military intelligence personnel. We believe that during this period Phase II and Phase III of the interrogation plan were executed without the involvement of the FBI or DOJ.

Special Agent Demeter told the OIG that the military employed Phase II of the plan (placing a government translator with Al-Qahtani who would act like a detainee and would engage Al-Qahtani in conversation) briefly, but it was unsuccessful. It appears that the military then moved on to Phase III (use of the 19 counter-resistance techniques listed in Major General Dunlavey's October 11, 2002, memorandum).

According to the *Schmidt-Furlow* and *Church Reports*, as well as other military records, the techniques used on Al-Qahtani during this time period included

- Tying a dog leash to detainee's chain, walking him around the room and leading him through a series of dog tricks
- Repeatedly pouring water on his head
- Stress positions
- 20-hour interrogations
- Forced shaving for hygienic and psychological purposes
- Stripping him naked in the presence of a female
- Holding him down while a female interrogator straddled the detainee without placing weight on him
- Women's underwear placed over his head and bra placed over his clothing
- Female interrogator massaging his back and neck region over his clothing
- Describing his mother and sister to him as whores
- Showing him pictures of scantily clothed women
- Discussing his repressed homosexual tendencies in his presence
- Male interrogator dancing with him

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- Telling him that people would tell other detainees that he got aroused when male guards searched him
- Forced physical training
- Instructing him to pray to idol shrine
- Adjusting the air conditioner to make him uncomfortable

The *Schmidt-Furlow Report* concluded that many of these techniques were authorized under the military's Field Manual 34-52, *Intelligence Interrogation*, which we describe in Chapter Three of this report. *Schmidt/Furlow Report* at 20. For example, according to the *Schmidt-Furlow Report*, holding Al-Qahtani down while a female interrogator straddled the detainee was determined to be within the scope of the "Futility" technique (an act used to highlight the futility of the detainee's situation). *Id.* at 16-17. Other techniques used on Al-Qahtani by the military during this time period, such as use of cold temperature to make the detainee uncomfortable, were deemed by the *Schmidt-Furlow Report* to be "unauthorized" at the time they were employed. *Id.* at 18.

As noted in Chapter Three, on December 2, 2002, Defense Secretary Rumsfeld formally approved a new policy for GTMO (the "December 2002 Policy") listing additional counter resistance techniques that were not specifically listed in Field Manual 34-52. The new policy specifically approved several of the techniques that had been or were being employed on Al-Qahtani, including stress positions, 20-hour interrogations, forced nudity, and military working dogs. *Church Report* at 4-5, 116-7.

In early December 2002, Al-Qahtani was hospitalized as a result of the DOD interrogations. Demeter told the OIG that a U.S. Navy nurse informed him that Al-Qahtani had been admitted to the base hospital for hypothermia. During a daily staff meeting, Demeter inquired about this incident, and the Lieutenant Colonel who was in charge of GTMO interrogations at that time stated that Al-Qahtani had not been diagnosed with hypothermia, but rather low blood pressure along with low body core temperature.[74] Apart from FBI's knowledge of this incident, we have no evidence that members of the FBI or DOJ were aware that the specific techniques described above were used on Al-Qahtani during this time frame.

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[74] In commenting on a draft of this report, the DOD stated that "[a] footnote from review of the medical records . . . would lend credibility to either the agent's or the lieutenant colonel's comments." However, the DOD did not provide a copy of the referenced records.

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IX. Concerns about the Interrogation of Al-Qahtani and Other Detainees Are Elevated at FBI Headquarters

During late 2002, several FBI agents attempted to raise their concerns about the interrogation techniques the DOD was using on Al-Qahtani with FBI Headquarters and requested guidance for agents exposed to such interrogation activities.

On November 22, 2002, after having returned from GTMO, FBI BAU SSA Lyle sent an e-mail to the Chief Division Counsel in the front office of the Critical Incident Response Group (of which the BAU is one unit) requesting documentation of the military's authority to engage in "extraordinary" interrogation techniques and inquiring whether there were any orders providing authority or guidance to FBI agents exposed to such techniques. The Chief Division Counsel responded that, absent human rights violations "such as physical torture, rape, starvation and murder," the authority of the military to engage in such techniques was not the FBI's concern, but that FBI agents should not be "involved in" such interrogations. Lyle raised the issue of agents being "exposed" to such techniques utilized by others and suggested the development of written guidelines from the FBI's General Counsel. The Chief Division Counsel responded that he was not concerned about FBI agents witnessing such techniques as long as they did not participate, because the techniques were "apparently lawful" for the military. The Chief Division Counsel also emphasized during his interview with the OIG that Judge Advocate General Corps officers were present at GTMO. He told the OIG that the fact that the techniques continued to be employed led him to conclude that they were lawful. However, he said he advised the FBI agents that if they were uncomfortable in such a situation, then they should leave.

Also on November 22, 2002, Foy wrote an EC to senior officials at the FBI, including CTD Deputy Assistant Director John Pistole, ITOS-1 Section Chief Andrew Arena, and the MLDU Unit Chief, providing his observations and recommendations regarding the FBI mission in GTMO. Foy told the OIG that the Unit Chief had instructed him to draft the EC during the MLDU Unit Chiefs visit to GTMO in October 2002. Among other things, the EC stated:

> [Military Intelligence] interrogators are routinely utilizing non-law enforcement tactics in their interview tactics. NCAVC personnel witnessed sleep deprivation, duct tape on an individual's mouth, loud music, bright lights, and growling dogs in the [Military Intelligence] detainee interview process.
>
> The use of these tactics put FBI personnel in a tenuous situation that will perhaps necessitate FBI representatives being utilized as defense witnesses in future judicial proceedings

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against a Detainee. Additionally, the aforementioned tactics may preclude law enforcement from successfully obtaining valuable intelligence from these Detainees in future interview scenarios.[75]

Foy's EC was reviewed by the BAU Chief before it was finalized. Foy told the OIG that there was no response from anyone who received the EC, and that he had no other discussions with the MLDU Unit Chief about the EC. The BAU Chief said he did not recall ever seeing any response to Foy's EC.

The MLDU Unit Chief told the OIG that he raised the issues described in Foy's November 22, 2002, EC with ITOS-1 Section Chief Arena, and Arena said the FBI should stay away from the kinds of techniques Foy described. Arena told the OIG he did not recall receiving the EC. However, he said the general issues raised in the EC were brought to the attention of the FBI Office of the General Counsel (OGC). He also said that he spoke with his superiors about the fact that the military intended to use SERE techniques on Al-Qahtani. Arena said he assumed his superiors raised these issues up to Director Mueller.

CTD Deputy Assistant Director Pistole told the OIG that although he did not specifically recall Foy's EC, at some point he became aware of the DOD techniques described in the EC, such as the use of growling dogs. Pistole told the OIG that he recognized that the FBI needed to provide clear guidance so that agents did not become a party to or a beneficiary of these techniques. However, he said he did not recall asking for an assessment or requesting any recommendations to address the matters raised in the EC.

We determined that reports regarding the treatment of other detainees at GTMO were also elevated to MLDU in 2002 and 2003. An SSA who was temporarily detailed to this unit during 2002 told us that the MLDU Unit Chief or another agent in the unit received reports of military interrogation techniques such as yelling at the detainees and throwing objects in the interrogation rooms such as chairs or other small pieces of furniture. An agent who served two rotations as OSC at GTMO in 2002 and 2003 stated that he was aware that techniques such as sleep deprivation, shackling, stress positions, and cold temperatures were being used at GTMO and that he sent e-mails to the MLDU Unit Chief to let him know what was going on. The Unit Chief confirmed to the OIG that he received reports from agents at GTMO regarding their concerns about various techniques the military was

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[75] The EC, which does not mention Al-Qahtani by name, covers a broader range of mistreatment allegations and GTMO-related management issues than those presented by the dispute over the Al-Qahtani interrogations.

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using. The Unit Chief said he recalled hearing about sleep deprivation, a female interrogator exposing her breast to a detainee, and an interrogator rubbing vegetable oil on a detainee while telling him it was "pig's oil." The Unit Chief stated that he relayed any such reports to his superiors (CTORS Section Chief Frankie Battle and CTD DAD T.J. Harrington).

Some of the agents' concerns reached the FBI's OGC. In late November 2002, Special Agent Brett wrote a legal analysis of the interrogation techniques being proposed for use by the military, and forwarded it to Spike Bowman, head of the National Security Law Branch in the OGC. In his analysis, Brett stated that hooding, use of phobias (such as fear of dogs) to induce stress, use of "scenarios designed to convince the detainee that death or severely painful consequences are imminent," exposure to cold weather or water, and waterboarding may violate the Torture Statute, 18 U.S.C. § 2340. Brett also stated that the technique of sending a detainee to "Jordan or Egypt or another third country to allow those countries to employ interrogation techniques that will enable them to obtain the requisite information" was a "per se" violation of the Torture Statute if done with the intent that the third country would use techniques that violate the Torture Statute. Brett's memorandum stated that even "discussing any plan which includes this category could be seen as a conspiracy to violate [the Torture Statute]." Brett included an urgent request for guidance regarding these issues.

In early December 2002, the Chief Division Counsel of the CIRG forwarded several documents to Bowman, including Brett's legal analysis. Bowman responded:

> I do not feel that the FBI should be perceived to approve this and continue to believe that a [Behavioral Analysis Program] evaluation is needed – both to aid in documenting an FBI position and to help FBI policy-makers in evaluating this situation.
>
> I concur that we can't control what the military is doing, but we need to stand well clear of it and get as much information as possible to [CTD Assistant Director] D'Amuro, [Deputy Director] Gebhardt and [Director] Mueller as soon as possible. . . .

The Chief Division Counsel for CIRG stated that he forwarded Bowman's advice to members of the CIRG.

Bowman told the OIG he may have talked to CTD Assistant Director D'Amuro, FBI Deputy Director Gebhardt, and FBI General Counsel

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Wainstein about these concerns.[76] However, none of these officials could specifically recall being told any details regarding DOD techniques during this period. Wainstein told the OIG that he did not recall any specific discussions about the effectiveness of military interviews at GTMO until after the Abu Ghraib prison scandal broke in May 2004. D'Amuro said he did not recall BAU agents communicating concerns about DOD techniques or any discussion with Bowman about this subject. However, he told the OIG that he learned at some point that the military was using aggressive techniques at GTMO, and that the FBI had reiterated its instruction to agents that they should not participate in such techniques. Gebhardt said he recalled Bowman or CTD Deputy Assistant Director Harrington bringing these issues to his attention, though he was not sure when this occurred. He said he did not recall the specific techniques in question or any specific instructions being given to FBI agents as a result.

Director Mueller told the OIG that, in general, he did not recall being aware of a dispute between the military and the FBI over interrogation techniques at GTMO prior to the spring of 2004, after the Abu Ghraib disclosures.[77] He said he did not recall seeing either the November 2002 EC written by Foy or the May 2003 EC written by McMahon (described below in Section XIV). He also said he had no discussions with military officials about these issues, and he was unaware of any FBI input on DOD interrogation protocols apart from input that might have been given at GTMO by FBI personnel working there. With respect to Al-Qahtani specifically, Director Mueller said he had no recollection of weighing in on how he should be handled.

X. Concerns Regarding Interrogations of Al-Qahtani and Others Are Elevated by the FBI to the DOJ Criminal Division

We determined that the FBI's concerns about the DOD's approach reached high levels in the DOJ Criminal Division during 2002 and 2003. The issue was initially reported by the MLDU Unit Chief to Criminal Division

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[76] Bowman also told the OIG that he thought he could influence the military by bringing these issues directly to his counterparts in the DOD Office of General Counsel. His efforts in that regard came several months later, however, and are described in Section XIV of this chapter.

[77] We also interviewed Daniel Levin, Director Mueller's former Chief of Staff. Levin left the FBI in September 2002, before many of the agents' concerns about the Al-Qahtani interrogations had been raised with Headquarters. However, he said he was aware of general concerns regarding the effectiveness of the techniques the DOD and others were using at GTMO. He stated that the FBI's assessment was that the detainee interviews at GTMO were not eliciting much useful information, and this led to a debate about whether there was a better way to handle these detainees.

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officials during weekly meetings that the Unit Chief later described in an e-mail to CTD DAD T.J. Harrington dated May 10, 2004, as follows:

> In my weekly meetings with DOJ we often discussed DoD techniques and how they were not effective or producing Intel that was reliable. Bruce Swartz (SES), Dave Nahmias (SES), Laura Parsky (now SES, GS15 at the time) and Alice Fisher (SES Appointee) all from DOJ Criminal Division attended meetings with FBI. We all agreed DoD tactics were going to be an issue in the military commission cases. I know Mr. Swartz brought this to the attention of DoD OGC.[78]

The MLDU Unit Chief told the OIG that in the course of weekly meetings with David Nahmias, the counsel to the Assistant Attorney General for the Criminal Division, he made Nahmias aware that the military was using aggressive techniques on Al-Qahtani and others at GTMO.[79] The Unit

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[78] The MLDU Unit Chief later indicated that the he did not intend to imply that Fisher was present during discussions of specific DOD interrogation tactics. In a letter dated July 26, 2005, which was sent in response to a request from the United States Senate Committee on the Judiciary for clarification of this e-mail, Assistant Attorney General William Moschella stated that the "author of the e-mail" (the MLDU Unit Chief) stated that:

> He did not have conversations with Ms. Fisher nor does he recall discussions in Ms. Fisher's presence about the treatment of detainees at Guantanamo Bay. He did participate in conversations with Ms. Fisher and other Department and FBI representatives about a specific detainee and that detainee's links to law enforcement efforts. These discussions focused on the information gathered regarding the individual and his associations, but not on his treatment or interrogation.

In the July 26 letter, Moschella stated that:

> As set forth in the email, the author [of the e-mail] attended meeting with Department representatives about detainees generally; there was no discussion of DOD techniques at the couple of those meetings that Ms. Fisher attended. Ms. Fisher was not part of the group referenced in the portion of the e-mail regarding DOD tactics as an issue in the military commission cases. He does not recall any conversation with or in the presence of Ms. Fisher regarding interrogation techniques or the treatment of detainees. His conversations with her focused on the particular detainee described above and pre-dated the broader conversations about DOD techniques with other Department representatives.

The MLDU Unit Chief told the OIG that although there may have been some meetings about Al-Qahtani at which Fisher was present, those meetings were focused on discussions about investigative information relating to Al-Qahtani, not interrogation tactics. He said he does not think Fisher knew about particular interrogation tactics used against Al-Qahtani.

[79] The MLDU Unit Chief said these meetings were primarily for the purpose of keeping DOJ officials informed on intelligence gathered at GTMO, not to discuss detainee treatment.

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Chief said he was confident Nahmias was also aware of the details of the observations set out in Foy's EC of November 22, 2002. He told the OIG that he recalled telling Nahmias in October or November 2002 that one of the planned or actual techniques used on Al-Qahtani was simulated drowning.[80] Nahmias denied that the Unit Chief ever mentioned this technique. In addition, the Unit Chief said he provided Foy's November 22 EC along with Foy's e-mails (described earlier) to Nahmias, and that he may have also given Nahmias a copy of the interrogation plan for Al-Qahtani. Nahmias stated he did not receive this EC from the Unit Chief.

The MLDU Unit Chief told the OIG that Nahmias said the FBI should stay away from this approach, and that he or others at DOJ would raise the issue with their DOD counterparts. He told us he expected Secretary Rumsfeld would have the final say because Al-Qahtani was the DOD's detainee. The Unit Chief said he later asked Nahmias what the DOD's response was, but he told the OIG he could not recall Nahmias' response.

Andrew Arena, the Section Chief of the FBI's International Terrorism Operations Section 1 (ITOS-1) and beginning in March of 2003, the Special Assistant to the Executive Assistant Director for Counterterrorism and Counterintelligence, told the OIG that he also brought FBI concerns about military interrogation approach to the attention of DOJ Criminal Division officials. Arena said that every other week Nahmias, Fisher, and other Criminal Division attorneys attended a meeting Arena held with his FBI unit chiefs. Arena said that he did not recall particular techniques being discussed at these meetings, but that the FBI's general concern that the military's techniques at GTMO would not be effective was discussed. Later in his interview, Arena stated that there were numerous occasions when he had discussions with his chain of command and with attorneys at DOJ regarding allegations or rumors of aggressive techniques being used at GTMO or by the CIA at other locations. He recalled, as an example, discussing the use of humiliation by having a naked detainee being interrogated by a female. Nahmias and Fisher told the OIG they did not receive a report of this nature.

In his OIG interview, Nahmias confirmed that he participated in meetings with the FBI and others about the military's Al-Qahtani interrogation plan. Nahmias said the military had a graduated plan that got more "severe," but he did not think the actual interrogation ever got that far. He said that parts of the plan were "clearly over the top," but he was told that the interrogators would not implement the more severe techniques

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[80] Although Major General Dunlavey requested permission to use the technique of "a wet towel and dripping water to induce the misperception of suffocation" on October 11, 2002, we found no other evidence showing that technique was actually used on Al-Qahtani.

unless everyone "regrouped" for further discussion. He said he could not recall anyone raising concerns about the legality of the military's techniques.[81] Nahmias also told the OIG that he raised concerns about the DOD's interrogations approach with the the DOD Office of the General Counsel and with the head of the DOD group that dealt with issues of whether detainees were enemy combatants.

It appears that the MLDU Unit Chief sent Nahmias a copy of a CITF legal advisor's memorandum dated November 15, 2002, that objected to the Al-Qahtani interrogation plan. Among other things, the memorandum stated that CITF has raised "formal legal objections" to the plan, including that the plan potentially violated the Convention Against Torture. The CITF memorandum also stated that the focus of the questioning of Al-Qahtani related to a "historical event" (his participation in the September 11 attacks) and that the interrogation methods used should be designed to preserve the statements for use in a military commission proceeding. The MLDU Unit Chief told the OIG that he also discussed this memorandum with Nahmias. Nahmias said he had no recollection of this memorandum.[82]

The FBI's MLDU Unit Chief also described other incidents at GTMO to officials in the DOJ Criminal Division. For example, Nahmias said that during the summer of 2003 the MLDU Unit Chief told him anecdotal stories about incidents at GTMO such as a female interrogator baring her chest to a detainee, someone using an Israeli flag during an interrogation, and dropping a Koran on the floor. Nahmias told us that he never heard reports of actual physical mistreatment, but that he and the FBI were concerned that the techniques the military was using were stupid, demeaning, and ineffective.

Bruce Swartz the Deputy Assistant Attorney General for the Criminal Division who was responsible for international matters, stated that he and Laura Parsky (then Counsel to Assistant Attorney General Chertoff) were assigned to attend the NSC-led Policy Coordinating Committee (PCC) to deal with international requests regarding detainees. Swartz told the OIG that

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[81] Nahmias told the OIG that he did not recall having seen Brett's Legal Analysis document at the time, but that it was possible he had seen it after the Criminal Division started investigating other alleged detainee abuses.

[82] Upon reviewing the CITF memo during his OIG interview, Nahmias said the legality concerns are "buried" in the memo, and that he did not recall seeing the discussion of the Convention Against Torture in the memo at the time. Nahmias added that he disagreed with the statement in the memorandum that the focus of the questioning of Al-Qahtani was an "historical event." Nahmias said that the focus was on gathering intelligence regarding others who posed an ongoing threat and on preventing future planned attacks.

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he was never part of any formal meetings with the MLDU Unit Chief or others at the FBI regarding interrogation techniques or plans at GTMO or elsewhere. However, Swartz said he had conversations with the MLDU Unit Chief about the ineffectiveness of DOD interrogations on the way to or from PCC meetings. Swartz recalled the Unit Chief expressing concerns about the military posing as FBI agents and interrogating people in a room with the flag of Israel. According to Swartz, the MLDU Unit Chief was particularly concerned that the military was inefficient at getting valuable intelligence, because the DOD was using inexperienced interrogators.

Parsky also told the OIG that she did not participate in formal meetings with the FBI regarding interrogation techniques.[83] Parsky said that the MLDU Unit Chief told her some "offhand anecdotes" about DOD interrogation methods at GTMO, such as a female interrogator who removed her top and rubbed her breasts in the detainee's face, an interrogator who wrapped himself in an Israeli flag in an interrogation, and an interrogator who rubbed himself with oil that he told the detainee was "pig's oil." She said the Unit Chief did not identify any particular detainees in connection with these anecdotes. Parsky stated that these techniques were not criminal but were "disgusting and highly inappropriate" for a U.S. official, and that she described the Unit Chief's anecdotes to Swartz.

Nahmias told the OIG that he usually briefed Fisher on his meetings about GTMO, and that Fisher certainly knew about the issue of the effectiveness of the military's interrogation techniques at GTMO. Nahmias said he recalled that Fisher was present during conversations in which the interrogation methods were described in a general way, but that he did not recall discussing specific techniques with Fisher.

Fisher told the OIG that she did not recall discussing detainee treatment or interrogation techniques with the FBI during this time period. Fisher told the OIG that she became aware "at some time" about an issue relating to the FBI's concerns about the effectiveness of the DOD's interrogations at GTMO, but she could not recall how or when she learned about these concerns. She said she heard that the FBI was concerned that GTMO was not set up as an effective place to get intelligence information from detainees because there were no incentives available ("carrots") to induce better cooperation. She also stated that the FBI believed it got cooperation and good intelligence in the 1993 World Trade Center bombing

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[83] Parsky told the OIG that the May 10 e-mail was incorrect in that she did not participate in weekly meetings in which particular detainees and interrogation techniques were discussed.

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case through rapport building, an interview technique that was "tried and true."[84]

Fisher also told the OIG that she did not learn about allegations of detainee abuse by the military until information about mistreatment at Abu Ghraib became public. Fisher stated that she did not recall discussion of DOD interrogating detainees with techniques of the type that are used in training U.S. Special Forces. She said she recalled learning about the use of such techniques on detainees in a context that had nothing to do with the FBI.[85]

Fisher said she did not recall the FBI MLDU Unit Chief raising these issues nor does she recall being aware of any other interrogation methods or plans for Al-Qahtani.[86] However, Fisher told the OIG that someone told her (she did not recall who) that there was a strategy to stop interrogating a detainee for 20 or 30 days, and that theoretically once the interrogators went back in the detainee would reveal all the desired information. She said the FBI said such a technique would not work. Fisher did recall, however, hearing that the FBI did not consider DOD interrogations at GTMO to be effective at obtaining useful information because GTMO was not set up to provide incentives for cooperation.

Nahmias said that he and Fisher raised the FBI's concerns about the ineffectiveness of the military's interrogations with Chertoff, who was then the Assistant Attorney General for the Criminal Division. Chertoff told the

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[84] We sought to interview former Attorney General Ashcroft about this and other matters, but he declined our request. Larry Thompson, who was Ashcroft's Deputy Attorney General during 2001-2003, told the OIG that the FBI's position was that the other agencies do not really know how to conduct interviews, but that FBI agents were trained in it and that this is what they did for a living. Thompson said he recalled getting reports of "clumsy" interrogation by CIA or the military.

[85] Fisher stated she became aware at some point, she could not say when, that the CIA requested advice regarding the legality of specific interrogation techniques, and that the Office of Legal Counsel worked on that issue. She said she was aware of the "Jay Bybee" memo and another memo on that topic, but they did not relate to the FBI. Fisher also told the OIG that Assistant Attorney General Chertoff was very clear that the Criminal Division was not giving advice on which interrogation techniques were permissible and was not "signing off" on techniques. She said she recalled there was an investigation based on a CIA referral that may have related to detainee treatment or interrogation techniques, and that she became aware of some facts relating to CIA interrogations. She did not say when DOJ received the CIA referral, though she noted that it was sometime "later." Documents reflect a total of five referrals by the CIA OIG to DOJ. These referrals were made between February 6, 2003 and March 30, 2004.

[86] As described earlier in this chapter, Fisher told the OIG she had a "vague" recollection that there might have been a discussion [redacted] about whether [redacted] for this purpose.

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OIG that the Criminal Division had an interest in the efficacy of DOD interrogations at GTMO because its prosecutors were looking for "actionable" information. Chertoff said he understood generally that the FBI did not have a high opinion of the skills of the DOD interrogators, though he said he did not have any recollection of the FBI's view of the military's Al-Qahtani interrogations. Chertoff said he shared the FBI's concerns, and that he had a very high opinion of the FBI's interrogation skills. In contrast, Chertoff said he did not get the sense that the DOD interrogators had significant experience with interrogations outside a battlefield context. However, he said he does not recall anyone suggesting that the DOD was doing something illegal.

XI. Concerns Regarding Efficacy of DOD Interrogations at GTMO Are Raised to the Attorney General

Chertoff and Nahmias told the OIG that general concerns about the efficacy of the DOD's GTMO interrogations were brought to the attention of Attorney General Ashcroft. Chertoff said these concerns were brought to the attention of Deputy Attorney General Larry Thompson as well. Chertoff said that Thompson and Ashcroft both shared his concern about whether the DOD was doing the best possible job in questioning the GTMO detainees.

Nahmias said that concerns specific to the DOD's interrogations of Al-Qahtani were brought to the Attorney General's attention. Nahmias told the OIG that after being briefed, Ashcroft had questions about whether Al-Qahtani was being effectively interrogated. Former Deputy Assistant Attorney General Alice Fisher told the OIG that she does not recall ever seeking Attorney General Ashcroft's input on what strategy to use with Al-Qahtani. Fisher said she does not know if anyone discussed the Al-Qahtani interrogations with the Attorney General's office or the Deputy Attorney General's office.

Nahmias also told the OIG that "pretty much everyone" involved in counterterrorism issues at DOJ, including the senior leadership of the Department, was aware of concerns about the effectiveness of DOD interrogations. He said that concern about ineffectiveness generally, as well as concerns about ineffectiveness of interrogations of specific detainees, were "a repeated issue during my entire time at Justice."

Former Deputy Attorney General Thompson told the OIG that while there was some friction between the FBI and the DOD, he thought it related mostly to a different detainee, Jose Padilla. While Thompson described the DOD's techniques as "clumsy," he said he did not recall specific concerns about Al-Qahtani. He said he had a general recollection of one instance in which the CIA or the military had a plan to leave a detainee alone for a long

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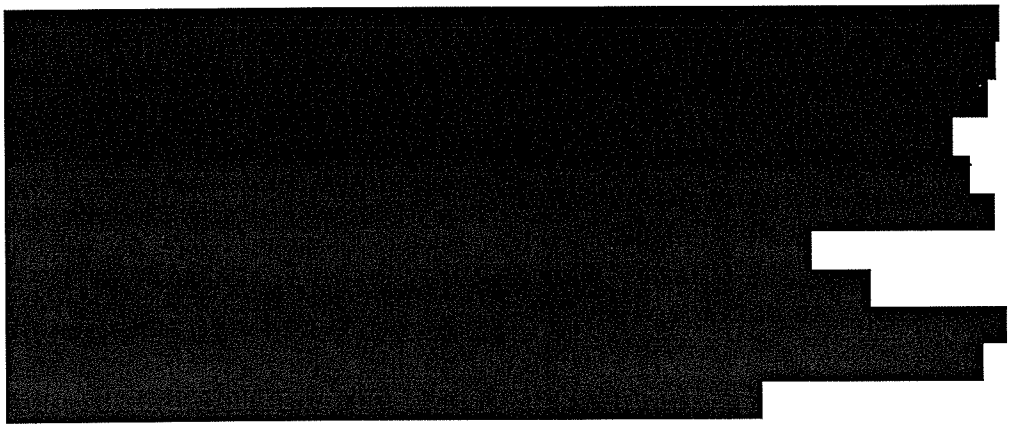
period of time with the expectation that the detainee would then open up and begin providing intelligence.

We also interviewed David Ayres, the former Chief of Staff to Attorney General Ashcroft, who stated that as a general matter DOJ did not feel that the quality of the intelligence being collected by the DOD at GTMO was high. Ayres told us that the dispute between DOJ and FBI on one side and elements of the military on the other was the subject of "ongoing, long-standing, trench warfare in the inter agency discussions" between the FBI and the military, including at the Principals Committee, the Deputies Committee, and the line-level. However, Ayres said he did not recall any discussion of what interrogation approach to take with Al-Qahtani.[87]

The OIG received a copy of a memorandum dated November 6, 2002, from Michael Chertoff (then Assistant Attorney General for the Criminal Division) through the Deputy Attorney General to the Attorney General, with a copy to the FBI Director. In the memorandum, Chertoff provided a detailed summary of the Al-Qahtani investigation and efforts to elicit information from Al-Qahtani. With respect to Al-Qahtani's "Current Status," he stated:



This memorandum indicates that concerns about the effectiveness of DOD interrogation tactics at GTMO were raised to the Attorney General as early as November 2002.

As noted above, former Attorney General Ashcroft declined our request for an interview.

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[87] Ayres said he did recall inquiring repeatedly about what intelligence Al-Qahtani was providing, and being told that Al-Qahtani was "not talking."

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XII. DOJ Efforts to Address Guantanamo Interrogation Issues in the Inter-Agency Process

The OIG sought to determine what efforts, if any, DOJ officials made to raise concerns about DOD interrogation techniques with officials outside DOJ through the inter-agency process.[88] Nahmias said that he did not know "in detail" what former Attorney General Ashcroft did with the concerns brought to him about the Al-Qahtani interrogations, but said he was "fairly confident that the military's handling of Al-Qahtani" was raised by DOJ officials at the Principals or Deputies committee meetings about GTMO. Nahmias also told the OIG that Attorney General Ashcroft spoke with someone at the NSC, most likely National Security Advisor Condoleezza Rice, about DOJ's concerns about the approach the DOD was taking in the Al-Qahtani interrogations.[89] Nahmias also said he believed there were meetings, though he was not certain with whom, in which Ashcroft and Chertoff expressed two concerns: first, that Al-Qahtani was a very valuable detainee and DOJ did not think it was getting the intelligence this detainee had; and second, that reported intelligence from Al-Qahtani was not always accurate, either because he may have been lying or because the DOD may not have accurately reported what he said. When asked if anything ever happened as a result of these meetings, Nahmias said that DOJ officials were continually frustrated by their inability to get any changes or make progress with regard to the Al-Qahtani matter.[90]

Parsky, Nahmias, and Swartz all told the OIG that they recalled discussions of DOJ's concerns about detainee interrogations at GTMO with the legal advisor to the National Security Council. Parsky stated that it was not uncommon for DOJ to raise various issues of concern to the NSC legal advisor, as he had the lead at the PCC. Parsky recalled a conference call with the NSC legal advisor in November 2003 that included herself, Swartz, and Nahmias. Parsky stated that Swartz decided to make the call after Parsky relayed the offhand anecdotes the FBI MLDU Unit Chief had told her about DOD interrogations at GTMO (described in the previous section). She

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[88] As described in Chapter Two, there are structures in place for resolving inter agency issues, including the Policy Coordinating Committee, the "Principals" Committee and the "Deputies" Committee, all chaired by the NSC.

[89] Nahmias told the OIG that the issue of treatment of people was rarely, if ever, discussed at the Policy Coordinating Committee itself, and he noted that he would not expect to discuss issues such as detainee treatment in such a large group. Nahmias said that DOJ would "weigh in on the FBI's behalf" on the "margins" of the PCC meetings, when talking to the NSC legal advisor or in talking directly to CIA OGC or DOD OGC representatives.

[90] Nahmias stated that he also raised these matters with a counterpart at the DOD who headed a group that dealt with detainee issues, though he did not see any changes or progress as a result of his raising these matters.

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said that another concern behind the call was the concern that the DOD's interrogation methods were making GTMO detainees unusable in U.S. cases. She said that during the call they discussed the difference between the FBI approach (rapport building) and the confrontational DOD approach (SERE method). In the call, the DOJ participants suggested that the FBI either be in on the interrogations from the beginning with the DOD, or that the FBI start the interrogation process so that if the detainee cooperated the information could be used in a legal proceeding. Parsky said she does not believe the details of the MLDU Unit Chief's anecdotes regarding particular detainee incidents were described to the NSC legal advisor during the call, but that they told the legal advisor that DOD interrogators were doing a terrible job and were doing things that the FBI agents would never do.

Nahmias said that in the latter part of 2003 he told the NSC legal advisor about techniques the MLDU Unit Chief had brought to his attention over time, such as female personnel exposing their breasts and use of "pig oil" on detainees. Nahmias told the NSC legal advisor that they did not know for a fact that these things happened. Nahmias told the OIG that he was not referring these matters as specific incidents or allegations of misconduct, but rather attempting to relate the kinds of stories that were going around about the military's tactics. Nahmias told the OIG that DOJ raised the matter as an "effectiveness" issue, and that he believed the NSC legal advisor shared their concerns regarding effectiveness.

Swartz also told us that he recalled discussing interrogation issues in meetings at the NSC-chaired PCC meetings regarding the return of GTMO detainees. He said that he raised the ineffective and wrongheaded practice of the military interrogations at GTMO as a continuing theme of these PCC meetings. Swartz said that from GTMO's inception he took the position within DOJ and in inter-agency meetings that GTMO was doing grave damage to the United States' position internationally and in particular with regard to law enforcement and the rule of law.[91] However, Swartz stated that he did not raise any reports of abuse of a particular GTMO detainee, because he did not become aware of any such reports until he heard about an alleged helicopter incident (discussed below in Section XV of this chapter).

The DOJ officials who discussed the issue of GTMO interrogations with the NSC legal advisor told us that they generally did not recall learning of any follow-up or change in policy as a result of these discussions. For example, Nahmias told the OIG that he did not hear more about these kinds

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[91] Documents provided by Swartz indicate that as a result of media reports, he became concerned about detainees were being subjected to abusive treatment, and that in March 2003 he raised this issue during a PCC meeting.

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of concerns until the materials that the FBI released to the ACLU were published in the press. Nahmias described the issue of detainee interrogation approaches as "an ongoing fight." He said "DOD always won the fight because they controlled the locations and they had ultimate control, which we acknowledged, of the [detainees]."

The OIG also sought to determine whether high-level DOJ officials were aware of efforts to raise concerns about the Al-Qahtani interrogations at inter agency meetings. Fisher said she does not recall if high-level DOJ officials raised the issue outside the DOJ. Assistant Attorney General Chertoff said he believes that, over time, Deputy Attorney General Thompson and Attorney General Ashcroft had discussions with DOD officials about the efficacy of its interrogations, but he said he does not recall the specifics of those discussions and is not aware of the specific outcome. He noted that DOJ also urged the DOD to move forward with the Military Commission process to provide the possibility of plea bargaining as a method of obtaining cooperation, but DOJ had little success.

Director Mueller told the OIG that he had no recollection of a dispute over Al-Qahtani and how he would be interrogated, and he had no recollection of the matter ever being raised at inter agency meetings. Deputy Attorney General Thompson told the OIG he is not aware of discussions of the Al-Qahtani interrogations except discussions internal to DOJ. David Ayres, the former Chief of Staff to the Attorney General, told the OIG he did not recall the Attorney General raising any issue at the Policy Coordinating Committee regarding the interrogation techniques planned for Al-Qahtani. As noted above, former Attorney General Ashcroft declined the OIG's request for an interview in this matter.

XIII. Al-Qahtani Becomes Fully Cooperative

We determined that some point in early 2003, Al-Qahtani became cooperative with DOD interrogators, although the available evidence does not make clear exactly when or why this happened. According to the *Church Report*, Al-Qahtani's resistance "began to crumble" after the DOD began the application of "Category II" techniques in the DOD interrogation plan.[92] *Church Report* at 121. The *Church Report* stated that these interrogations took place between November 23, 2002, and January 15, 2003, and produced "tangible results." *Id.* In addition, a January 21, 2003, memorandum sent by Major General Miller to the Commander of

[92] A comparison of the Al-Qahtani interrogation plan with the list of techniques included in "Category II" reflects that the use "Category II" techniques corresponds with Phase III of the plan.

SOUTHCOM stated that the use of the techniques had allowed the military to obtain "significant intelligence of enormous long term operations and strategic value." *Schmidt/Furlow Report,* Exhibit 66. The memorandum contained examples of "high value" intelligence obtained from Al-Qahtani: he admitted being al-Qaeda and said Bin Laden sent him to the United States in August 2001 for a mission; he described where he obtained a visa to enter the United States; he gave the location of the passport office; and he provided the names of associates and three possible terrorists who could be in the United States. *Id.*

On January 15, 2003, after the General Counsel of the Department of the Navy, Alberto Mora, and others raised concerns about the authorization of aggressive techniques in the DOD's December 2002 Policy; Secretary Rumsfeld officially rescinded his approval of the Category II techniques and one Category III technique. *Church Report* at 118-121. According to a subsequent memorandum from General Hill to the Chairman of the Joint Chiefs of Staff, when the interrogators suspended use of the Category II techniques, Al-Qahtani reverted to his cover story and the interrogations "became noticeably less effective." *Church Report* at 121-22.

On January 21, 2003, Major General Miller wrote to the Director of the Joint Chiefs of Staff that the Category II techniques were "essential to mission success" and should be approved for future use (except stress positions, removal of clothing, and use of detainee's individual phobias to induce stress). *Church Report* at 122. He also stated that "none of the Category III techniques are necessary to accomplish this mission and are not requested." *Id.* On March 21, 2003, General Hill noted in a memorandum to General Myers, Chairman of the Joint Chiefs, that without the use of the recently rescinded Category II and Category III techniques, "it is likely that these high-value detainees will be capable of holding out indefinitely, depriving the US of valuable intelligence." *Id.* at 121-22. However, as described below, other evidence indicates that Al-Qahtani did not become fully cooperative until April 2003.

After the approval of Category II and III techniques was rescinded, the military reverted to a less aggressive approach with Al-Qahtani. This included the administration of a polygraph examination on March 31, 2003, which Al-Qahtani had been requesting for over 4 months. After failing to pass the polygraph, according to the military's "memorandum for record" (MFR), Al-Qahtani's attitude began to shift dramatically, and he began to inquire about whether he would be able to return to Saudi Arabia if he told the truth.[93] The MFR for April 7, 2003, stated that Al-Qahtani "is concerned

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[93] An MFR (Memorandum For Record) is a military intelligence document that generally summarizes interaction with a detainee. MFRs usually include what types of interrogation methods were used on the detainee and how the detainee reacted to those

(Cont'd.)

with cutting the best deal possible for him, evading US prosecution for his crimes, and avoiding incarceration in Saudi Arabia once he is returned home." The next day, Al-Qahtani began to describe his knowledge of al-Qaeda in great detail, and the subsequent MFRs reflect that from that point on he provided a significant amount of detailed information about al-Qaeda and its pre-September 11 operations.

An analysis of the Al-Qahtani case written by military interrogators and analysts pointed to a number of factors that contributed to his decision to finally cooperate. According to this analysis, the major factors were:

- **Polygraph.** Al-Qahtani was "shocked" to learn that he had failed the polygraph, and he became very flustered and nervous when confronted with the fact that the examiners detected him employing techniques to counter the polygraph's accuracy.
- **Perception of betrayal by other al-Qaeda members.** Following the polygraph, he was confronted with the fact that other al-Qaeda members were being apprehended and were providing valuable intelligence. He was both surprised and upset when interrogators used a "kunai" [nickname] with him that he had not told them he had.
- **Segregation and lack of contact with others.** Al-Qahtani was described as a "narcissist" who thrived on being the center of attention. Interrogators ceased seeing him daily and explained they had less and less interest in him because they were getting what they needed from other sources.
- **Incentive of being returned to Saudi Arabia.** Interrogators told him he had no hope of being released or transferred back to Saudi Arabia unless he cooperated and told them all he knew. The analysis stated that Al-Qahtani was hopeful that he would eventually be returned to Saudi Arabia and believed the interrogators would make recommendations in his favor if he was truthful.

The analysis did not cite the application of harsh interrogation techniques prior to January 15, 2003, as a factor in Al-Qahtani's changed behavior.

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methods. MFRs may also include details about the physical treatment of the detainee, such as whether he was offered food or water, bathroom breaks, exercise periods, and sleep. Also, MFRs report any information that the detainee provides pursuant to the interrogator's questions and the interrogation team's analysis of the information provided by the detainee, as well as an assessment of the detainee's truthfulness and level of cooperation.

Al-Qahtani told the OIG that he changed his story because the military tortured him. He said the military engaged in physical torture, but the FBI used psychological torture. However, as noted above, during other parts of Al-Qahtani's interview he described the FBI agent who interviewed him as having "humanity."

On April 16, 2003, more than a week after Al-Qahtani became cooperative, the Secretary of Defense approved 24 "Counter-Resistance Techniques" for use in interrogations of unlawful combatants. *Church Report* at 137. In May 2003, Lieutenant Colonel Moss, the Commander of the JIG/Interrogation Control Element, wrote to Major General Miller that Al-Qahtani had been "fully exploited" and his continued presence at GTMO for questioning was "no longer necessary." However, as of May 2008, Al-Qahtani remains at GTMO and a variety of law enforcement and military intelligence officials have interviewed him during the past few years.

XIV. The May 30, 2003 Electronic Communication

A separate FBI effort to raise the issue of detainee mistreatment with the military took place in June 2003. By that time, the DOD had ceased using its more severe techniques on Al-Qahtani and he had become cooperative, but the individuals who elevated their concerns apparently were not aware of these developments.

As previously noted, in late 2002 FBI Assistant General Counsel Spike Bowman requested that concerns raised by Special Agents McMahon and Brett about interrogation techniques be documented in a written report for him to use in raising concerns to the DOD.[94] Six months later, on May 30, 2003, McMahon completed this report in the form of an Electronic Communication (EC) and transmitted it to Bowman, the MLDU Unit Chief, and the Acting CTORS Section Chief.

McMahon's EC described in detail the history of the dispute at GTMO between the FBI and military intelligence regarding the comparative merits of rapport-based interview techniques and the aggressive SERE techniques advocated by military intelligence, particularly with respect to Al-Qahtani. The EC referenced 12 attachments relating to the dispute, including SA Brett's legal analysis of the military's interrogation techniques and the BAU's critique of the military interrogation plan for Al-Qahtani. The EC concluded that "it is essential that FBIHQ, DOJ and the DOD provide

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[94] Before joining the FBI, Bowman had a long career with the military. He was an instructor at the Naval War college teaching rules of armed conflict and rules of engagement.

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specific guidance to protect agents and to avoid tainting cases which may be referred for prosecution."

On July 1, 2003, after reviewing McMahon's EC and interviewing one of the military's Judge Advocates General (JAG) who had worked with the FBI interrogators in GTMO, Bowman sent an e-mail to CTD Deputy Assistant Director Pistole, Executive Assistant Director D'Amuro, and others, alerting them that the military had been using techniques of "aggressive interrogation," including "physically striking the detainees, stripping them and pouring cold water on them and leaving them exposed (one got hypothermia), and similar measures." Bowman opined that: "Beyond any doubt, what they are doing (and I don't know the extent of it) would be unlawful were these Enemy Prisoners of War (EPW). That they are not so designated cannot be license to do something that you cannot do to an EPW or a criminal prisoner." Bowman expressed concern that the FBI would be "tarred by the same brush" and sought input on whether the FBI should refer the matter to the DOD Inspector General, stating that "[w]ere I still on active duty, there is no question in my mind that it would be a duty to do so." He also offered to prepare guidance for FBI agents who are exposed to these aggressive techniques as requested in the McMahon EC.

Neither D'Amuro nor Pistole said they could recall McMahon's EC or Bowman's e-mail. Bowman told the OIG that he did not recall any response being sent to McMahon regarding his EC of May 30, 2003.

In addition, Bowman said that once he received the EC, he discussed it with the DOD. Bowman told the OIG that he also contacted the DOD Deputy General Counsel responsible for intelligence issues. Bowman said that the DOD Deputy General Counsel assured him that they knew about the FBI's concerns and the matter was being handled. A member of the DOD General's Counsel's office came to FBI Headquarters approximately one week later to review the EC and its attachments. According to Bowman, the person who reviewed the documents seemed "disturbed" by what he read. Bowman said that when he called to follow up, however, he was unable to obtain any information about what actions the DOD planned to take, if any, in response to the information in the EC. Bowman said he even called the DOD General Counsel to inquire, and the response he received was that the Deputy General Counsel was handling it.

Documents reflect that McMahon's EC and its attachments were provided to officials at DOJ Headquarters in May 2004, after the Abu Ghraib prison scandal became public. One reason that we believe this EC did not receive much attention in the FBI was that many of the concerns expressed in it had been mooted by events during the months between McMahon's deployment to GTMO and May 30, 2003. As detailed above, by May 30, 2003, Secretary Rumsfeld had rescinded his approval for the harshest

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interrogation techniques, the DOD had ceased using such techniques on Al-Qahtani, and Al-Qahtani had become fully cooperative. However, Bowman apparently was not aware of these developments when he contacted the DOD about the allegations in McMahon's EC.

XV. Concerns Raised Regarding Slahi's Interrogation

The case of Mohamedou Ould Slahi (#760) presents another example in which FBI agents raised concerns through their chain of command about rumors of detainee mistreatment at GTMO. In this case, some of these concerns were communicated to senior officials at DOJ.

Slahi was an al-Qaeda operative who is believed to have recruited several of the September 11 hijackers in Germany. *Church Report* at 159. According to FBI records, Slahi was arrested in Mauritania at the request of the United States, held in Jordan for several months, and then transferred to U.S. custody in Afghanistan (Bagram). He was taken to GTMO in August 2002.

The FBI sought to interview Slahi immediately after he arrived at GTMO. FBI and task force agents interviewed Slahi over the next few months, utilizing rapport-building techniques.[95] An FBI agent who was assigned to Slahi told us that the military disagreed with the FBI's approach and wanted to use interrogation techniques similar to those employed on Al-Qahtani. One of the FBI's OSCs at GTMO told us that a military contract interrogator was extremely critical of the friendly tenor of the FBI's interview strategy. In late May 2003 the FBI agents who were involved with Slahi left GTMO, and the military assumed control over Slahi's interrogation. One of the FBI agents told us that before he left GTMO he saw a draft of special interrogation plan that the military was preparing for Slahi, and that it was similar to Al-Qahtani's interrogation plan.

According to FBI documents, on July 1, 2003, General Miller signed a request from the Defense Intelligence Agency (DIA) seeking "Special Projects Status" for Slahi and approval of a 90-day special interrogation plan that included "techniques not specified the Secretary of Defense guidance document, 'Counter-Resistance Techniques in the War on Terrorism' dated 16 April 2003." The plan stated that Slahi would be hooded and flown around Guantanamo Bay for one or two hours in a helicopter to persuade him he had been moved out of GTMO to a location where "the rules have changed." According to the *Church Report*, the interrogation plan for Slahi

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[95] Allegations of misconduct by two of these agents are addressed in Section III of Chapter Eleven.

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also included isolation, interrogations for up to 20 hours, sensory deprivation, and "sleep adjustment." *Church Report* at 159. The version of the plan provided to the OIG called for 15-hour interrogations (during which Slahi would be prevented from sleeping) followed by 4 hours of rest, as well as using continuous sound to hinder Slahi's concentration and establish fear. We did not find any evidence of FBI involvement in the development of this interrogation plan or in the interrogations of Slahi during the summer of 2003.

According to the *Schmidt-Furlow Report*, the military used a masked interrogator called "Mr. X" to interrogate Slahi. *Schmidt-Furlow Report* at 25-26. On August 2, 2003, a different military interrogator posing as a Navy Captain from the White House gave Slahi a fake memorandum from the "Joint Staff, U.S. Army Director for Intelligence," indicating that because of Slahi's lack of cooperation, his mother would be apprehended for interrogation by U.S. and Mauritanian authorities, and that if she was uncooperative she might be transferred to GTMO. The letter referred to "the administrative and logistical difficulties her presence would present in this previously all-male prison environment." The interrogator told Slahi that his family was "in danger if he (760) didn't cooperate." *Schmidt-Furlow Report* at 26 and Ex. 72. On August 3, military interrogators told Slahi to "use his imagination to think up the worst possible scenario he could end up in," that "beatings and physical pain are not the worst thing in the world," and that unless he began to cooperate, he would "disappear down a dark hole." *Id.* at 26 and Ex. 75.

Secretary Rumsfeld approved the interrogation plan for Slahi on August 13, 2003. The movement plan for Slahi was amended, however, to utilize a several-hour boat ride rather than a helicopter to deceive Slahi. According to the *Church Report*, on August 25, 2003, Slahi was removed from his cell in Camp Delta, fitted with blackout goggles, and taken on a disorienting boat ride during which he was permitted to hear pre-planned deceptive conversations among other passengers. He was then placed in isolation in Camp Echo. *Church Report* at 160.

The extent to which the harsher elements of the interrogation plan approved by Secretary Rumsfeld for Slahi were ever implemented is not clear to us. The *Church Report* states that the special interrogation plan was implemented in early September 2003 and Slahi soon began providing useful information. *Church Report* at 160. The Special Projects Team Chief stated that "once the [interrogation plan] for 760 was approved in August 2003, we started the [interrogation plan] in earnest." However, he also stated: "Most of the [plan] was not executed. The only thing we ever did

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was the direct approach."[96] *Schmidt-Furlow Report* Ex. 20. The *Schmidt-Furlow Report* concluded that the "techniques" in the plan were never implemented because Slahi began to cooperate prior to the approval. *Schmidt-Furlow Report* at 23.

According to military documents, Slahi began cooperating with military interrogators on September 8, 2003, and immediately began providing intelligence. A military report on that date stated that the interrogator told Slahi: "After interrogators are finished with all our questions, only then would his family be returned and Detainee's overall situation would improve."

Over a year later, Slahi made allegations to military interrogators that he had been mistreated during the summer of 2003. He made similar allegations in interviews with the OIG.[97] He alleged that:

- He was left alone in a cold room known as "the freezer," where guards would prevent him from sleeping by putting ice or cold water on him or making noise;
- He was subjected to sleep deprivation for a period of 70 days by means of prolonged interrogations, strobe lights, threatening music, forced intake of water, and forced standing;
- He was deprived of clothing by a female interrogator;
- Two female interrogators touched him sexually and made sexual statements to him;
- Prior to and during the boat ride incident he was severely beaten; and
- During the boat ride incident he overheard an Egyptian and Jordanian arguing over who would get him.[98]

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[96] Military documents indicate that techniques other than direct questioning were used on Slahi during this period. For example, a memorandum dated July 17, 2003, stated that on July 8, Slahi had been exposed to "variable lighting patterns and rock music, to the tune of Drowning Pool's 'Let the Bodies Hit the Floor,'" which kept Slahi "awake and in a state of agitation." It further stated that on July 17, the interrogators employed a "Fear Up" approach on Slahi in which he was deprived of some clothes and yelled at. *Schmidt-Furlow Report,* Ex. 73.

[97] The OIG provided a list of questions to Slahi's U.S. Army assigned interrogator, which she then posed to Slahi. This unusual step was taken at the behest of JTF-GTMO Commander General Hood in an effort to avoid compromising in any way the significant progress that the interrogator had made in obtaining information from Slahi. The OIG was later given permission to interview Slahi directly.

[98] The only allegation of improper conduct with respect to Slahi that the *Schmidt-Furlow Report* found to be corroborated was the use of threats against Slahi and his family. (Cont'd.)

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Schmidt-Furlow Report, Exs. 5 and 6. During Slahi's OIG interview, he stated that he had never been in a helicopter since he has been at GTMO.

We determined that FBI agents became concerned about the potential mistreatment of Slahi in the fall of 2003. In October or November of 2003, a special agent from the Naval Criminal Investigative Service (NCIS) who was assigned to CITF contacted two FBI agents who were on temporary duty assignment to CITF at Fort Belvoir, Virginia. The NCIS agent told the FBI agents that he was concerned that tactics being utilized by the military on Slahi at GTMO would jeopardize the military commission's prosecution of Slahi. He showed the FBI a copy of an e-mail containing a second-hand report that Slahi was pulled off a helicopter at GTMO, was led to believe he was going to be executed, and urinated on himself. The NCIS agent also told the FBI that he had received reports that a military interrogator had displayed a letter to Slahi on State Department letterhead threatening to have Slahi's family taken to Morocco for possible torture, which caused Slahi to "crack."

The FBI agents who received this report then reviewed numerous Memoranda for Record (MFR) regarding Slahi maintained in CITF files, and determined, among other things, that on several occasions in early June 2003 an Army Sergeant on the DIA Special Projects Team at GTMO identified herself to Slahi as FBI SSA "Samantha Martin" in an effort to persuade Slahi to cooperate with interrogators. The FBI agents prepared a draft EC dated November 25, 2003, that summarized the MFRs, with particular emphasis on the threats against Slahi's family. It also described the alleged helicopter incident and the impersonation of an FBI agent by a military interrogator. The draft EC indicated that the military was repeating its techniques on other detainees.

On December 5, 2003, an SSA assigned to the FBI's Military Liaison and Detainee Unit (MLDU) sent an e-mail forwarding the draft EC up the chain of command in the FBI Counterterrorism Division (CTD). His e-mail was addressed to CTD Deputy Assistant Director Gary Bald, CTORS Section Chief Frankie Battle, and ITOS-1 Section Chief Arthur Cummings. The e-mail stated:

The *Schmidt-Furlow Report* concluded that placing Slahi in cold temperatures was an approved technique under DOD's April 2003 GTMO Policy. It found Slahi's claims of having been subjected to sexual behavior could not be corroborated, and that although he was treated for "edema of the lower lip" and a small head laceration, his allegation of having been beaten "very hard all over" during his transfer from Camp Delta to Camp Echo was "not substantiated." *Schmidt-Furlow Report* at 23-27.

> MLDU requested this information be documented to protect the FBI. MLDU has had a long standing and documented position against use of some of DOD's interrogation practices, however, we were not aware of these latest techniques until recently.
>
> Of concern, DOD interrogators impersonating Supervisory Special Agents of the FBI told a detainee that the "FBI" could protect him from prosecution. These same interrogation teams then took the detainee on a helicopter ride and threatened to execute him. The detainee was also told by this interrogation team that the detainee's family was detained in Mauritania by the USG and that things would get worse for his family until he cooperated.
>
> These tactics have produced no intelligence of a threat neutralization nature to date and CITF believes that techniques have destroyed any chance of prosecuting this detainee.
>
> If this detainee is ever released or his story made public in any way, DOD interrogators will not be held accountable because these torture techniques were done [by] the "FBI" interrogators. The FBI will [be] left holding the bag before the public.

The draft EC was not immediately finalized and disseminated because there was concern within the FBI regarding whether it was appropriate to document this information and whether it was adequately supported. Special Agent Scott, one of the FBI agents who drafted the EC, told us that the contents of the EC were briefed to Battle, Deputy Assistant Director T.J. Harrington, the MLDU Unit Chief, and an attorney in FBI-OGC.[99] Scott also discussed the matter with the FBI's OSC at GTMO.

Battle told the OIG that he could not recall how the FBI followed up on the issues in the draft EC. He said he did not recall any communications with Scott or with the MLDU Unit Chief. Harrington told the OIG that he instructed the OSC at GTMO to raise the issues in the EC with the military. He also said he discussed the EC with Bald. Bald and Cummings told the OIG they recalled hearing about an incident in which a detainee was taken up in a helicopter and was threatened to be dropped out. Bald said he thought the matter was referred to the military.

The FBI's OSC at GTMO told us that he did not think the FBI impersonation issue was as serious as Scott and the MLDU Unit Chief were making it out to be. He said they were concerned that if military interrogators tortured Slahi and were impersonating the FBI, then if Slahi were later released he could say that the FBI tortured him. The OSC said

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[99] Scott is a pseudonym.

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he did not consider this scenario realistic, and he declined Scott's recommendation that he see General Miller about it immediately. Instead, the OSC discussed the matter with the GTMO Interrogation Control Element Chief, who told the OSC he was not aware that the FBI had not been consulted about the impersonation ruse, and agreed that in the future this type of approach would be strictly coordinated with the FBI.

The OSC also discussed the alleged helicopter incident with military personnel at GTMO. He said he was told that a helicopter was never used in conjunction with the movement of Slahi or in the implementation of the special interrogation plan for him. The Interrogation Control Element Chief told the OSC that they did not use a helicopter because General Miller decided that it was too difficult logistically to pull off, and that too many people on the base would have to know about it to get this done. The MLDU Unit Chief told us that he thought the OSC reported to him that the alleged helicopter incident did not happen.

The FBI's MLDU Unit Chief communicated his concerns about the rumored helicopter incident to Bruce Swartz, Deputy Assistant Attorney General in the DOJ Criminal Division. Swartz said that based on the Unit Chief's description, Swartz did not believe that any FBI agents had witnessed the incident, and he did not ask the Unit Chief to get any more details about it. However, Swartz stated that in his opinion the alleged conduct amounted to torture, and he discussed the incident with Deputy Attorney General Larry Thompson, someone in the FBI General Counsel's office, and a legal advisor to the National Security Council (NSC). Swartz told us that he later learned from the NSC legal advisor that Navy Criminal Investigative Service (NCIS) looked into it and had concluded that no such incident took place. Swartz said it was "unfortunate" that he had chosen to elevate an allegation that had proved to be false, since it suggested that Swartz was "crying wolf" when he continued to raise questions about whether detainees were being treated humanely.

Other senior officials at DOJ told us that they could not recall the allegation about a helicopter incident. Former Deputy Attorney General Larry Thompson told us he did not recall anyone raising an allegation of this nature to him, and he did not recall DOJ raising these types of concerns with the NSC. He said the only thing he remembers along those lines was a proposal to give a detainee the illusion that he was going to be buried alive, but he said a decision was made that DOJ would not permit that. Former Deputy Assistant Attorney General David Nahmias told us he heard about a detainee being taken up in a helicopter by FBI, but was confident that no one ever presented it to him as a fact, because otherwise he would have taken it up the "chain." Former Deputy Assistant Attorney General Alice Fisher said she did not recall an allegation about a detainee being taken on a helicopter ride. Similarly, former Assistant Attorney General Michael

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Chertoff told us that he did not remember hearing about such an incident. As detailed above, the concerns about Slahi's treatment were first elevated within the FBI in December 2003, which was after Fisher and Chertoff had left DOJ.

The draft EC prepared by Special Agent Scott identified three concerns about military interrogation tactics: the impersonation of an FBI agent, the helicopter incident, and the use of threats against Slahi's family to induce him to cooperate. The first two issues were addressed relatively easily when the OSC obtained a promise that the impersonation tactic would be coordinated with the FBI, and when it was determined that the helicopter incident never took place. It does not appear that the question of the use of threats against Slahi's family created any significant concerns among senior officials in the FBI, or that the issue ever reached DOJ. We believe that the FBI likely considered this tactic to be within the scope of permissible techniques under military policy. Furthermore, the FBI was generally reluctant to become involved in issues relating to the scope of military policies with respect to tactics (like threats) that did not clearly constitute torture or physical abuse.

XVI. Conclusion

The Al-Qahtani interrogation was the focal point of the dispute between the FBI and the DOD regarding interrogation techniques at GTMO. Several agents who observed the interrogation of Al-Qahtani at GTMO became deeply concerned not only about the efficacy of these techniques, but also about their legality and the complications it would create for FBI agents in the future to be involved in or even witness interrogations where such techniques were used. The agents requested guidance from FBI Headquarters regarding these issues.

We found that as concerns regarding the Al-Qahtani interrogations filtered upward within the FBI and in DOJ, the focus shifted almost exclusively to the question of whether the DOD techniques were effective at obtaining information from the detainee. Officials at all levels of the FBI and DOJ recognized, however, that the DOD ultimately had the final call on the interrogation of Al-Qahtani, who was in military custody at a military facility. Nevertheless, as result of their concerns about the efficacy of DOD interrogations, certain officials in the FBI and DOJ developed a proposal to [redacted]. At least some officials understood that under this proposal Al-Qahtani would be subjected to an alternative debriefing model of the sort used on Zubaydah and [redacted]. This proposal was never adopted, possibly because other factors led the military to change its interrogation policies in January 2003 and Al-Qahtani began cooperating within weeks thereafter.

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Agents also expressed concerns about the military's treatment of Slahi, including rumors that military personnel threatened to throw him out of a helicopter. When senior officials learned that Slahi was never taken up in a helicopter they largely dropped the issue, although questions remained about a boat ride that the military took Slahi on as a ruse.

FBI Headquarters officials responded to the requests from agents for guidance by orally advising agents at GTMO not to be involved in coercive techniques used by the DOD. We found, however, that these instructions did not address several important issues raised by the reported incidents involving Al-Qahtani, Slahi, and other detainees, including: (1) what agents should do if confronted with DOD techniques that would not be permitted under FBI policy; (2) the circumstances under which agents could interview detainees who had previously been interrogated with coercive techniques; or (3) whether and how to report incidents of detainee mistreatment. As explained in Chapter Six, the FBI began confronting these issues more directly after the Abu Ghraib detainee abuse incidents became publicly known in 2004.

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CHAPTER SIX
THE FBI'S RESPONSE TO THE DISCLOSURE OF DETAINEE MISTREATMENT AT ABU GHRAIB PRISON

The public disclosure of explicit photographs and accounts of detainee mistreatment at the Abu Ghraib prison triggered a significant effort within the FBI to assess the adequacy of its policies regarding detainee treatment in the military zones and to determine what, if anything, its agents knew about detainee mistreatment at Abu Ghraib, in GTMO, and in Afghanistan. In this chapter we discuss this effort, which included an expedited undertaking to codify FBI interview procedures in a written policy to address ambiguities and other problems identified by agents in the field, and an effort to quickly assess the knowledge of FBI agents regarding detainee mistreatment by other agencies.

Section I of this chapter describes the development of the FBI's formal written policy addressing agent conduct with respect to detainees in GTMO, Afghanistan, and Iraq: an Electronic Communication (EC) issued by the FBI Office of General Counsel (OGC) on May 19, 2004 (the "FBI's May 2004 Detainee Policy"). Section II describes how the FBI addressed one agent's urgent concerns, raised at the time that the policy was being developed, that the FBI would be deemed to have participated in coercive interrogation techniques used by other agencies in Afghanistan. Section III describes additional concerns raised by FBI employees about the practicality of the FBI's May 2004 Detainee Policy, and describes the FBI's efforts to address these concerns. Section IV discusses the internal investigations that the FBI conducted following the Abu Ghraib disclosures. Section V describes the expanded training programs that the FBI developed for agents deployed to the military zones following issuance of the FBI's May 2004 Detainee Policy.

I. Abu Ghraib Prison and the Development of the FBI's May 2004 Detainee Policy

In April 2004, public disclosure of detainee abuses at the Abu Ghraib prison in Iraq prompted an expedited effort by the FBI to develop a written policy regarding detainee interviews.

FBI Headquarters received notice of the mistreatment of prisoners at Abu Ghraib several months before this information became public. On January 21, 2004, a U.S. Army Captain informed the FBI Team Leader for high value detainee interviews at Abu Ghraib that "the recent allegations of prisoner mistreatment at [Abu Ghraib] Prison are founded . . . . [T]here is video taped evidence of the mistreatment, which includes beating and rape."

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The Captain told the FBI Team Leader that the incident was being investigated by the Army Criminal Investigation Command (CID) and that the FBI was being advised for informational purposes. On January 22, 2004, the FBI Team Leader communicated this information to the FBI's On-Scene Commander (OSC) and Deputy OSC in Iraq by e-mail.[100]

On January 24, 2004, the OSC forwarded the e-mail to FBI Deputy Assistant Director Gary Bald and other senior managers in the Counterterrorism Division at FBI Headquarters. The OSC told Bald:

> Abu G is a Saddam-era prison being utilized by the Coalition to house detainees. It is over-crowded and my recent force protection memorandum spoke of the dangers there. Nonetheless, our access to detainees at the prison is a central part of our mission and very important to our ability to get the job done. Therefore, the allegations contained in the attached e-mail, if true, or even if not true but heavily publicized, could make life difficult for us. I met yesterday on another subject with [two Assistant U.S. Attorneys]. . . . I told [one of the AUSAs] that the FBI will not enter into an investigation of the alleged abuse, that it would be outside the scope of our mission, and that I believed CID should handle it without our assistance. I will maintain this position unless instructed otherwise by FBIHQ. First, the matter truly is outside our mission and would squander resources. Second, we need to maintain good will and relations with those operating the prison. Our involvement in the investigation of the alleged abuse might harm our liaison.

On January 25, 2004, Bald responded: "Agreed. Lets let [Army] CID handle it."

The Abu Ghraib abuses began receiving intense media coverage on April 28, 2004.[101] On May 9, 2004, FBI General Counsel Valerie Caproni

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[100] During their interviews with the OIG, the Team Leader, the OSC, and the Deputy OSC did not recall specifically what "recent allegations" of prisoner mistreatment were being referred to in the Team Leader's e-mail in January 2002. The OSC told us that he thought that he had heard allegations about beatings at the prison, but nothing like the prisoner abuse that was eventually revealed.

[101] The Abu Ghraib disclosures also triggered a temporary suspension of FBI interviews in Afghanistan. A message to FBI Headquarters from an FBI agent in Afghanistan dated May 13, 2004, stated that "due to the issues at Abu G prison in Iraq, all interrogations have been suspended at [a particular facility] until further notice." Two former FBI OSCs told us that the military stopped detainee interviews by all non-military agencies in Afghanistan in order to develop controls and procedures to ensure that the problems in Iraq did not occur in Afghanistan. Several agents also said that in July 2004,

(Cont'd.)

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made an e-mail inquiry within the FBI regarding the existence of relevant written guidances:

> Has there been any written guidance given to FBI agents in either GTMO or Iraq about when they should "stand clear" b/c of the interrogation techniques being used by DOD or [Defense HUMINT Service] or the Agency?
>
> Has there been any written guidance given to FBI agents along the lines of: DOD/DHS/CIA is authorized to use a, b and c techniques when interrogating detainees. To the extent you become aware (either personally or through subsequent interrogation of a detainee) of anyone using techniques other than a, b and c, you should notify Mr. X?

Caproni said she determined that no such written guidance had ever been prepared. On May 12, Caproni and CTD Deputy Assistant Director T.J. Harrington agreed that CTD and OGC would work together in preparing such written guidance.

Caproni assigned the task of drafting the policy to an FBI OGC attorney. That attorney told the OIG that he reviewed the MIOG, the MAOP, and the Legal Handbook, and concluded that existing policy already addressed how FBI agents should conduct interrogations. He stated that Caproni instructed him to add an explicit requirement addressing when agents should report incidents of prisoner abuse.

Caproni told the OIG that she believed there was always an "expectation" that an agent would report incidents of torture or other egregious conduct by another agency's interrogator, but that no written requirement existed at that time.

Within CTD, an Assistant Unit Chief was assigned to help develop the guidance. On May 14, 2004, the Assistant Unit Chief transmitted a draft "temporary guidance" to the OGC attorney, stating that Deputy Assistant Director Harrington had approved it in order "to allow our people some ability to continue working over the weekend. They had been ordered to 'stand down'."[102] The "temporary guidance" provided:

FBI agents were again stopped from conducting detainee interviews in Afghanistan for a week to 10 days because a military officer insisted that the FBI agents provide their FBI Academy interview training syllabus in order to demonstrate their interviewing qualifications. We did not receive any evidence of similar moratoriums on FBI interviews in GTMO or Iraq.

[102] We believe that the "stand down" reference related to the temporary suspension of interviews discussed in footnote 101 above.

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> Re: Interviews/Interrogations
>
> Our people will continue to conduct interviews of detainees (PUC's) at secure locations only.
>
> If, during the conduct of any interview, events occur that, in the opinion of the FBI agent(s) present, exceed acceptable FBI interview practices, the agent(s) will immediately remove themselves from the scene and will report their concerns to the Afghanistan On-Scene Commander.

The OGC attorney forwarded the e-mail to Caproni, stating that he thought it looked "ok." FBI documents indicate that temporary guidance containing the Assistant Unit Chief's language or language like it was disseminated to the field on approximately May 16, 2004.

The official policy, "Treatment of Prisoners and Detainees," was issued by the FBI General Counsel on May 19, 2004, to all FBI Divisions. (We refer to the policy as the "FBI's May 2004 Detainee Policy.") The synopsis in the beginning of the policy explained why the policy was being issued:

> In light of the widely publicized abuses at the Abu Ghraib Prison, Iraq, this EC reiterates and memorializes existing FBI policy with regard to the interrogation of prisoners, detainees, or persons under United States control (collectively "detainees"). These guidelines serve as a reminder that FBI personnel may not obtain statements during interrogations by the use of force, threats, physical abuse, threats of such abuse or severe physical conditions. In addition, this EC sets forth the reporting requirements for known or suspected abuse or mistreatment of detainees.

FBI's May 2004 Detainee Policy at 1.

The second paragraph, labeled "Details," stated that FBI personnel posted abroad can come into contact with detainees in a variety of situations, and that persons who are detained or otherwise in the custody of the U.S. are:

> entitled to varying levels of procedural rights depending upon their situation or category of detention (e.g. unlawful combatant, prisoner of war.) Although procedural rights, such as Miranda rights, do not apply in all situations overseas, certain minimum standards of treatment apply in all cases.[103]

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[103] As support for the basic guidelines, the FBI's May 2004 Detainee Policy quoted the policy set forth in the Legal Handbook, Section 7-2.2.

Id. at 1. The Policy also stated:

> FBI personnel shall not participate in any treatment or use any interrogation technique that is in violation of these guidelines regardless of whether the co-interrogator is in compliance with his or her own guidelines. If a co-interrogator is complying with the rules of his or her agency, but is not in compliance with FBI rules, FBI personnel may not participate in the interrogation and must remove themselves from the situation.

Id. at 2 (emphasis in original). We believe that the instruction to agents to "remove themselves" from interrogations involving non-FBI techniques was not previously articulated in any formal FBI guidance or policy.

The final paragraph of the policy discussed a new reporting requirement:

> If an FBI employee knows or suspects non-FBI personnel has abused or is abusing or mistreating a detainee, the FBI employee must report the incident to the FBI on-scene commander, who shall report the situation to the appropriate FBI Headquarters chain of command. FBI Headquarters is responsible for further follow up with the other party.

Id. at 2.

II. The Horton Matter

During the same period that the FBI's May 2004 Detainee Policy was being developed, urgent requests for guidance were being communicated to FBI Headquarters by SSA Horton, who was the supervisor of a team of four FBI agents assigned to a [redacted].

Horton told us that he became concerned during the initial military briefing his team received immediately after arriving at the facility [redacted]

[104] Horton is a pseudonym.

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[redacted].

Horton sent a series of e-mails to senior CTD officials, including Executive Assistant Director Gary Bald and the MLDU Unit Chief , on May 13, 16, 18, and 20, 2004. Horton's e-mails predicted that although the military had temporarily restricted the use of aggressive interrogation techniques such as [redacted], military interrogators were likely to resume such methods soon. Horton stated that even if the FBI was not present during such interrogations, FBI agents would inherently be participating in the process because they would be interviewing detainees who had either recently been subjected to such techniques by the military or who would be subjected to them after the FBI interviews were completed. He questioned whether it would be ethical for FBI agents to be involved in such a process and whether they would be held culpable for detainee abuse. He stated that the FBI's only existing guidance was for agents to use their "best judgment" in interviews, which he found to be inadequate. Horton recommended that the FBI move quickly to issue definitive guidance to its agents in Afghanistan. He proposed that FBI agents be given exclusive access to the detainees they would be interviewing quickly after capture, and that the detainees be turned over to military interrogators only if FBI methods proved unsuccessful.

In late May 2004, Horton was recalled by FBI Headquarters from Afghanistan.[105] ITOS-1 Section Chief Arthur Cummings sent an e-mail to several Headquarters officials in the CTD instructing them to meet with Horton. Horton told us that at the meeting he emphasized the need for a policy in the unique environment of a war zone, but he said he received the impression "these guys did not want rules, because they might have to follow" them, and that they preferred a looser, less restrictive situation.

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[105] Accounts differ as to the underlying circumstances of Horton's recall. Horton told us that the MLDU Unit Chief called and told him he was coming home to brief senior management because "they valued his opinion." However, several senior CTD officials told us that Horton was recalled at least in part because of concerns about whether he was emotionally suited to the Afghanistan assignment.

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Horton said he spent most of the meeting on the defensive, and left feeling that he had been treated very poorly.

Several CTD Headquarters agents who attended the Horton meeting told us that they believed Horton was overreacting because he had not actually observed any instances of detainee abuse and that other FBI agents in Afghanistan did not share Horton's concerns.

Cummings instructed CTD officials to work with the National Security Law Branch in FBI OGC to develop written guidelines "which we can defend legally regarding our presence either directly or indirectly during interrogations conducted by the DOD." In fact, OGC was already in the process of drafting the document that was ultimately issued as the FBI's May 2004 Detainee Policy. However, we did not find any evidence that the issues raised by Horton beginning on May 13 had any impact on the development or final wording of the FBI's May 2004 Detainee Policy.

III. FBI Employees Raise Concerns About the FBI's May 2004 Detainee Policy

Almost immediately after the FBI's May 2004 Detainee Policy was issued, several FBI employees raised questions and concerns with it. As discussed below, the primary issues of concern were what constituted "abuse" within the meaning of the policy, how the agents would know what techniques had been approved for use by the military or the CIA, and whether the FBI would be considered to be "participating" in unauthorized techniques if it interviewed a detainee who had previously been subjected to aggressive interrogation by another agency.

A. The Iraq On-Scene Commander and the Meaning of "Abuse"

On May 22, 2004, the FBI OSC in Iraq transmitted an e-mail to senior managers in CTD raising questions as to how the FBI's new policy could be applied and asking for further guidance. The OSC wrote that while none of the FBI employees he worked with during his three rotations at Abu Ghraib witnessed the abuses recently publicized, he was fairly certain that FBI employees were in the general vicinity of interrogations where tactics were being used that were outside FBI policy but allowed by "applicable Executive Order," such as loud music, yelling, and hooding. The OSC's questions related to the instruction in the FBI's May 2004 Detainee Policy to report known or suspected "abuse":

> This instruction begs the question of what constitutes "abuse." We assume this does not include lawful interrogation techniques authorized by Executive Order. We are aware that prior to a revision in policy last week, an executive order signed

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by President Bush authorized the following techniques among others: sleep "management," use of MWDs (military working dogs), "stress positions" such as half squats, "environmental manipulation" such as the use of loud music, sensory deprivation through the use of hoods, etc. We assume the OGC instruction does not include the reporting of these authorized interrogation techniques, and that the use of these techniques does not constitute "abuse."

As stated, there was a revision last week in the military's standard operating procedures based on the Executive Order. I have been told that all interrogation techniques previously authorized by the Executive Order are still on the table but that certain techniques can only be used if very high-level authority is granted. [redacted]

[Unless advised to the contrary by the FBI], we will still not report the use of these techniques as "abuse" since we will not be in a position to know whether, or not, the authorization for these tactics was received from the aforementioned high-level officials.

We will consider as abuse any physical beatings, sexual humiliation or touching, and other conduct clearly constituting abuse. Yet, there may be a problem if OGC does not clearly define "abuse," and if OGC does not draw a clear line between conduct that is clearly abusive and conduct that, while seemingly harsh, is permissible under applicable Executive Orders and other laws. In other words, we know what's permissible for FBI agents but are less sure what is permissible for military interrogators.

These are issues that must be addressed and resolved, with specific guidance being crafted and communicated to our personnel. We cannot have our personnel [working] with military units abroad which regularly use these interrogation techniques without more explicit and specific guidance.

On May 25, Bald forwarded the OSC's email to FBI General Counsel Caproni, asking for her thoughts. On the same day, Caproni responded:

Does it answer his question to say that conduct that is known to be authorized need not be reported. However, most agents may be unaware of the parameters of the rules that govern

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> someone else. In that situation, they should rely on their judgment as FBI agents/employees to determine whether a detainee is being abused or mistreated to an extent that someone should be notified....

Bald's e-mail reply stated, among other things:

> Although I don't know the best way to characterize the types of techniques we want reported, I do understand [the OSC's] concern. We hold our employees to a high standard. We expect them to follow through on what they are instructed to do. I suspect that if we are not clear on the types of techniques we want reported, we will have all techniques beyond our own reported, out of an abundance of caution. In addition, we may be setting our employees up (and ultimately the FBI) if someone fails to report what others think they should. Can we have someone draw up clear language that will further guide our troops?

No further written guidance was ever issued in response to Bald's request.

In late May 2004, Caproni sent an e-mail to Director Mueller that raised the issue of the definition of "abuse":

> So you know, some agents have asked what it means that a prisoner is being "abused or mistreated". We have said our intent is for them to report conduct that they know or suspect is beyond the authorization of the person doing the harsh interrogation. While the agent may not know exactly what is permitted, an agent would suspect that pulling out fingernails or sodomizing the detainee is beyond the level of authorization. On the other hand, there is no reason to report on "routine" harsh interrogation techniques that DOD has authorized their employees/contractors to use.

Director Mueller told the OIG that the general purpose of the reporting requirement was for agents to err on the side of caution and to ensure that incidents such as those that occurred at Abu Ghraib came to the attention of FBI management. He stated, however, that he did not want agents to be put into the position of having to determine whether particular techniques used by other agencies were lawful under their policies.

B. The FBI Counterterrorism Division's Draft "Clarification" of the FBI's May 2004 Detainee Policy

A draft EC dated May 26, 2004, attempted to "further clarify" the FBI's May 2004 Detainee Policy, which had been issued a week earlier.

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According to the May 26 draft EC, this clarification was drafted for approval by FBI Executive Assistant Director Gary Bald. Thus, the May 26 draft EC appears to be the CTD's attempt to further clarify the guidance provided in the FBI's May 2004 Detainee Policy.

The primary difference between the May 26 draft EC and the FBI's May 2004 Detainee Policy is the guidance regarding when FBI personnel should report the interrogation practices of another agency's employees. The FBI's May 2004 Detainee Policy stated that "[i]f an FBI employee knows or suspects non-FBI personnel has *abused or is abusing or mistreating* a detainee, the FBI must report the incident to the FBI on-scene commander...." (Italics added.) The May 26 draft EC states that "[i]f, in the opinion of FBI personnel present, interview techniques being applied *exceed lawfully authorized practices*, it is his/her responsibility to report this fact to the [OSC]." (Italics added.)

Thus, the "clarification" in the May 26 draft EC is consistent with Caproni's e-mail to the Director equating "abuse" under the FBI's May 2004 Detainee Policy with "beyond the authorization of the person doing the harsh interrogation." However, in order to make the determination required under this clarification, the agents would be expected to know what techniques were "lawfully authorized" for use by employees of other agencies. As detailed in Chapter Seven below, we found that few if any agents received specific guidance on what techniques were authorized for use by other agencies, and many agents told the OIG that this omission was a significant problem. We found no evidence that the May 26 "clarification" was ever finalized or disseminated. The Assistant Unit Chief told the OIG that he participated in drafting the May 26 draft EC and that although he did not know why it was never issued, it was consistent with the instructions he later gave to FBI agents in Afghanistan.

Caproni told the OIG that her office continued working on another advice memorandum long after the OSC raised the question of what constituted reportable conduct, but that none has ever been issued. She said her problem as a lawyer was that she could not list every interrogation technique or scenario that the agents might face, so the FBI must rely on the agents' judgment.

C. FBI OGC Concerns Regarding the Meaning of "Participation"

Within a short time after issuance of the FBI's May 2004 Detainee Policy, attorneys within the FBI Office of General Counsel began discussing a different problem from the issue of what conduct would trigger the reporting requirement of the FBI's May 2004 Detainee Policy. FBI agents and attorneys began asking whether an FBI agent who questioned a

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detainee after another agency had used aggressive techniques on the detainee would be deemed to have "participated" in the techniques. On May 27, Caproni e-mailed Deputy Director John Pistole regarding this issue:

> A detainee who is bounced back and forth between DOD where he is subjected to harsh techniques and FBI where he is given a cup of tea and nice treatment is essentially being subjected to "mutt and jeff" with us being Jeff. When does that amount to FBI participating in techniques that are not authorized?

Later on May 27, Caproni solicited the thoughts of others within OGC regarding the practicality of the GTMO "stand clear" advice in theaters like Afghanistan and Iraq. This stimulated further discussion of the "mutt and jeff" issue, including the observation by one OGC attorney that:

> 1-So long as the DOD interrogation techniques used were lawful, I do not believe it is unlawful for FBI agents, consistent with FBI guidelines, to question detainees after DOD techniques are used.
>
> 2-FBI is participating (or certainly will be viewed as participating) in aggressive but lawful DOD techniques where FBI agents are [working] with the military interrogators and merely as a policy absent themselves from the rough stuff and then come back in (minutes, hours or days later) to question the detainee;
>
> 3-If there is a decision that the FBI's continued involvement in the interrogation of detainees is in the best interests of the Nation, that decision must be confirmed at the highest levels of the Department in order to give the men and women of the FBI the comfort that down the road they will not be hung out to dry.
>
> 4-Without a clear statement of benefits versus the risks, I believe that extreme forward deployment of FBI must be reconsidered.

Other attorneys in OGC similarly stressed the need to obtain senior management assurance that agents were authorized to question detainees who had previously been subjected to other agencies' techniques.

On May 28, 2004, OGC received an inquiry from CTD regarding whether the FBI should interview a detainee who had previously been interrogated by the DOD using techniques believed to be consistent with DOD guidelines but not FBI guidelines. After consulting with General Counsel Caproni, an OGC attorney advised CTD that "so long as the DOD offers the detainee to us and FBI is following FBI guidelines in [its] interviews and is unaware of violations of law in DOD's questioning, we

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should proceed to interview the detainee." The OGC advice did not address the issue of how an FBI agent in the field would know what was a violation of "law" (by which OGC apparently meant "military policy").

Caproni eventually requested that an OGC lawyer prepare legal advice for FBI agents in Iraq and Afghanistan. In October 2004 she sent an e-mail explaining that the advice should address the issue of:

> what does it mean to "not participate" in aggressive interrogation (outside our guidelines) when you are in forward positions. What happens if the Army beats the stuffing out of a detainee, gives him to the FBI, he starts talking to the FBI and then the Army wants him back. Have we just "participated" in good cop – bad cop with the Army? How long after Army does its thing do we need to wait to not be viewed as a "participant" in the harsh interrogation.

An OGC attorney began work on the requested legal advice and in October 2004 he interviewed several agents with overseas experience, including Horton. From November 2004 through April 2005, the attorney drafted several proposals to address the "participation" issue. Ultimately, he proposed a "totality of the circumstances" test, suggesting that an FBI interrogation of a subject that was "distinctly apart in time from an interrogation by non-FBI personnel where methods which could be reasonably interpreted as abusive or inherently coercive were employed" could be found as having occurred in accordance with FBI policy. Although this draft was extensively edited and was the subject of subsequent communications within OGC, no final version of it or of any other formal clarification of the FBI's May 2004 Detainee Policy was issued.

D. FBI OGC and CTD Respond to Agent Concerns Regarding a Facility in Iraq

In November 2005 FBI agents deployed to [redacted] transmitted written questions regarding their mission in Iraq and requested responses from the Counterterrorism Division (CTD) and Office of General Counsel (OGC). The issues posed by the FBI's activities at this facility once again raised the question of what constituted FBI "participation" in interrogation practices used by other agencies. The FBI agents in Iraq pointed out that the detainees at this facility were [redacted] The agents added: "With the current issues involving secret detention facilities, we as FBI agents . . . want to ensure that the full scope of our duties here are known by upper management." They posed several questions about the legal status of

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detainees at this facility, the knowledge of FBI management and the FBI Office of General Counsel (OGC) of operations at the facility, and whether FBI employees or the FBI as an institution might be liable for actions at the facility.

The FBI CTD issued an electronic communication (EC) in response to the issues raised by the agents within days, on November 29, 2005. This EC emphasized the importance of the FBI's involvement at this facility and stated that FBI executives, including the Director and the Deputy Director, had been "fully briefed on the CTD mission" at this facility. It added a "reiteration and clarification of the standing FBI policy regarding the interrogations in Iraq," which included the following points:

- Detainees at the facility are not "enemy prisoners of war" and therefore the provisions of the Geneva Conventions do not apply to them. However, "certain minimum standards apply" and the military "raises its level of treatment of the detainees to levels outlined in the Geneva Conventions."
- Because the provisions of the Geneva Conventions do not apply, there is no requirement that detainees at the facility [redacted].
- The requirements of the FBI's May 2004 Detainee Policy continue to apply to all FBI personnel in Iraq.

On May 25, 2006, the FBI's OGC issued an EC providing "Legal Advice and Opinion" that also addressed the issues that FBI agents had raised the prior November. This EC was issued following a tour of the facility by the OGC Assistant General Counsel. This EC summarized the DOD's positions regarding [redacted]. The EC emphasized that OGC was not offering an independent legal position on the DOD's position.

The OGC's EC of May 25, 2006, also addressed whether FBI agents should interview detainees who had been [redacted].[106] The FBI OGC observed that although the DOD sets the conditions of confinement,

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[106] We address the issue of FBI participation in the [redacted] at this facility in Section VIII of Chapter Eleven.

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> the FBI's role in interrogation is inextricably intertwined with the treatment of detainees outside of the actual interrogation room. There is no time gap between the time the detainee is held in certain conditions and the period of time the detainee is being questioned by the FBI, and there is no time after questioning by the FBI before the detainee is returned to those conditions. In short, any reasonable person would view the interview as inseparable from the harsh conditions of confinement for detainees being held [redacted].

The OGC concluded that "the FBI cannot, consistent with our [May 2004] policy on interrogation, interrogate detainees who have been [redacted] because such detainees are being subjected to 'severe physical conditions.'" (Footnote omitted.) The OGC therefore recommended that CTD prohibit its employees from interrogating detainees who had been [redacted] until completion of a "cooling off" period (typically at least 12 hours) following removal of these conditions.[107]

IV. OIG Assessment of the FBI Policies Regarding Detainee Treatment

We found that the FBI did not respond to repeated requests from its agents in the military zones for guidance regarding detainee treatment. No formal policy was issued until a crisis arose as a result of the Abu Ghraib disclosures in late April 2004. At that point, the FBI's Detainee Policy was quickly prepared and released on May 19, 2004.

We found it understandable that the FBI did not revise or supplement its interrogation policies immediately after the September 11 attacks. The FBI was conducting a world-wide investigation into the terrorist attacks and was taking on its new counterterrorism responsibilities, as described in Chapter Two. But during the 2½ years between the attacks and the Abu Ghraib disclosures, FBI Headquarters received multiple expressions of concern from its agents about detainee treatment issues and should have recognized that a review of difficult policy questions was needed.

As described in our report, FBI agents sought guidance on at least four separate issues: (1) what interrogation techniques should FBI agents be allowed to use in the military zones; (2) what should FBI agents do at the

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[107] OGC also recommended that a formal Memorandum of Understanding between the DOD and the FBI be drafted and that a legal review and modification of the non-disclosure agreement signed by FBI personnel assigned to this facility be instituted.

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moment that other agencies begin using non-FBI approved interrogation techniques during joint interviews; (3) when should FBI agents be allowed to interview detainees who have previously been subjected to non-FBI techniques; and (4) when and how should FBI agents report harsh interrogation techniques used by other agencies. We assess the FBI's response to each of these issues separately below.

A. FBI-Approved Interrogation Techniques

As detailed in Chapter Four, as a result of the Zubaydah incident in the summer of 2002 senior FBI officials confronted the issue of whether the FBI would be involved in the use of "enhanced" interrogation tactics. Andrew Arena, the ITOS-1 Section Chief in CTD at the time, stated that there were discussions within the FBI regarding "should we also go down that track?" According to several witnesses, this incident ultimately led to a decision by Director Mueller that the FBI would not be involved in such interrogations.

As explained in Chapter Two, following the September 11 attacks the FBI shifted its emphasis with respect to terrorism from prosecution of completed acts to prevention of future attacks. One result of this shift has been to give primacy to the collection of intelligence for terrorism prevention over the collection of admissible evidence for terrorism prosecution. Consequently, the message within the FBI, as in many other agencies of government, was that "September 11 changed everything."

However, existing policies were based on the law enforcement and prosecution model that emphasized constitutional considerations and evidentiary admissibility. A reasonable inference from the FBI's announced change in priorities was that these considerations might not drive FBI policy in detainee interrogations to the extent that they had in the past driven law enforcement interviews. We believe that in this changing environment it would not be unreasonable for agents and their supervisors to conclude that traditional law enforcement constraints on interview techniques were not strictly applicable in the military zones, particularly with respect to "high value" detainees.

In addition, conditions at detention facilities in the military zones were vastly different from conditions in U.S. jails or prisons. In Afghanistan and Iraq, the available detention facilities were sometimes in or near battle zones, and security considerations might trump or at least influence the conditions under which interviews were conducted, including concerns about the voluntariness of custodial interviews. In addition, U.S. officials were dealing with detainees who had sworn allegiance to groups dedicated to the violent overthrow of the United States and who worked cooperatively with other detainees in preparing cover stories and resistance strategies.

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This dynamic is not present to the same extent in more diverse populations of criminals and criminal defendants in U.S. jails and prisons. Consequently, as described in Chapters Eight through Eleven, some FBI interviewers used strategies that might not be necessary or appropriate in the United States, such as extreme isolation from other detainees or other strategies to undermine detainee solidarity.

The FBI's position as guest of the military and, in the battle zones, the agents' dependence on the military for protection placed FBI agents in an awkward position to refuse to participate or assist in joint interviews in which non-FBI techniques were employed. FBI agents in the military zones knew the FBI was attempting to carve out a major new role in the war on terror. Refusing to assist the military in a particular interview because of disagreements about techniques potentially undercut that goal.

We believe that factors such as these at least raised a legitimate question of whether conventional FBI law enforcement interview policies and standards continued to apply to FBI interviews of detainees in the military zones. Ultimately, senior FBI management determined that pre-existing FBI standards should remain in effect for all FBI interrogations in military zones, even where future prosecution is not contemplated. The FBI affirmed this position because its extensive interrogation experience showed that rapport-based techniques are simply more effective at obtaining reliable information than more coercive interrogation techniques.

Yet we believe that FBI management should have realized much sooner than May 2004 that it needed to issue a written policy addressing the question of whether its pre-September 11 policies and standards for custodial interviews should continue to be strictly applied in the military zones.

B. FBI Policy When Another Agency's Interrogator Uses Non-FBI Techniques

The FBI's May 2004 Detainee Policy states: "If a co-interrogator is in compliance with the rules of his or her agency, but is not in compliance with FBI rules, FBI personnel may not participate in the interrogation and must remove themselves from the situation." As detailed in Chapter Three, the issue addressed by this requirement was not addressed in pre-September 11 FBI policies, primarily because in most scenarios encountered by FBI agents the FBI was in charge of the interrogation or the other agency was subject to rules similar to the FBI. In the military zones, however, where the FBI was not in charge and had no law enforcement jurisdiction over other agencies, FBI agents were not in a position to prevent other agencies from using harsh interrogation techniques.

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In light of this dynamic, we believe that the FBI should have clarified this issue before May 2004.[108] The issue was raised to FBI Headquarters well before the Abu Ghraib scandal became public. For example, as discussed in Chapter Four, FBI agents were exposed to severe interrogation techniques at the CIA facilities where Zubaydah [redacted] were detained. Although the FBI did not directly participate in interrogations where these techniques were used, its agents did not "remove themselves" but rather assisted in the interrogations. Similarly, in October 2002 an FBI agent e-mailed his superiors for guidance regarding his continued participation in a program of 20-hour interrogations of Al-Qahtani that were scheduled to continue for an indefinite period. The agent was told that as long as there was no "torture" involved, he could participate. In November 2002 another FBI agent raised the issue of agents being "exposed" to harsh techniques utilized by other agencies; his FBI Chief Division Counsel responded that he was not concerned about FBI agents witnessing such techniques as long as they did not participate, because the techniques were "apparently lawful" for the military.[109]

C. FBI Interrogation of Detainees After Other Agencies Use Non-FBI Techniques

Even if an FBI agent "stands clear" from another agency's interview in which potentially coercive non-FBI techniques are used, the question remains: under what conditions may an FBI agent conduct a subsequent interview of a detainee who has previously been subjected to techniques that the FBI cannot itself use? A related issue is whether an FBI agent may use information derived from another agency's interrogation in which non-FBI-approved techniques have been used.

The FBI's May 2004 Detainee Policy does not address these issues. As detailed in Chapter Six, agents and attorneys in the FBI raised these problems before and after the FBI's policy was issued. The FBI General

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[108] As detailed in Chapter Seven, some agents said they were told to leave interrogations if they saw anything "extreme," "inappropriate," or that made them "uncomfortable." However, many FBI agents who were deployed to the military zones before the FBI's May 2004 Detainee Policy was issued told us they received no training or guidance on conducting joint interviews with military or other agency officials.

[109] As detailed above, SSA Horton pointed out in May 2004 that even if the FBI agents avoided being present during coercive interrogations conducted by other agencies, the agents might inherently be participating in the process and later be held culpable for their involvement at facilities in which such coercive techniques were used. We found that CTD supervisors at FBI Headquarters did not address the substantive issues raised by Horton, in part because they became distracted from the substance of his legitimate concerns by his circumvention of the chain of command, and because they suspected him of overreaction.

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Counsel directed her subordinates in OGC to prepare legal advice that addressed, among other things, "[h]ow long after [the] Army does its thing do we need to wait to not be viewed as a 'participant' in the harsh interrogation." Several drafts of supplemental policy to address this issue were prepared by OGC, but nothing was ever finalized.

As noted in Section III.D. of this chapter, in May 2006 the FBI OGC issued legal advice that addressed the "participation" issue, recommending that FBI agents at a particular facility in Iraq abstain from interrogating detainees until a "cooling off" period had elapsed after the detainees had been subjected to certain DOD activities. This advice was limited to a particular facility and a particular DOD activity, but it recognized and squarely addressed the issue of when FBI agents should interrogate detainees who had been subjected to non-FBI techniques by other agencies.

As described in Chapter Seven, after the May 2004 Detainee Policy was issued the FBI expanded its pre-deployment training for agents being deployed overseas to address some of these issues. Training materials provided to the OIG indicate that agents who were being deployed to Iraq were given a "legal briefing" that addressed how to "attenuate" their interviews of potential criminal defendants in cases where the detainee had previously been questioned by a foreign government or other intelligence community agency. According to the FBI, the purpose of attenuation is both to enhance the likelihood that any resulting statement would be admissible in a judicial proceeding and to assure the credibility and accuracy of statements obtained from detainees who have previously been subjected to non-FBI techniques, regardless of whether the goal is to use the statement in a judicial proceeding. The training instructed the agents to consider multiple means of "attenuation," including changing the interview location, allowing a lapse of time, and avoiding the use of information derived from previous interrogations.

This attenuation training focused on balancing factors identified by judges when ruling on the admissibility of evidence in domestic criminal prosecutions. We note, however, that after the September 11 terrorist attacks, FBI agents in the military zones conducted many detainee interviews solely or substantially for intelligence purposes and not for criminal prosecution. In these cases, an approach based on U.S. case law that walls an FBI agent off from relevant intelligence previously derived by other agencies may not be appropriate or productive.[110]

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[110] The materials provided by the FBI do not indicate whether training addressing these particular issues was prepared for agents deployed to Afghanistan or GTMO.

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The FBI has described its current training regarding FBI interviews that occur after aggressive interviews by other agencies as follows:

> First, we train that this is a facts and circumstances determination, and we recommend seeking advice from supervisors when in doubt. We continue to train agents on intelligence versus criminal interviews and on the need to attenuate and to establish so-called "clean teams." We extensively cover FBI participation in environments in which the detainees are under the control of other agencies, since these detainees are never in the custody of the FBI. We cover FBI policies, including reporting requirements and the requirement of FBI personnel to remove themselves from situations in which they know or suspect that detainees may be subjected to severe conditions or abusive treatment as provided in the May 2004 policy EC on treatment of detainees. And we give them a generalized discussion about severe conditions and abusive treatment, referencing guidance provided by the General Counsel in May 2006.

We recognize that there are several factors complicating any effort to devise policies addressing these issues. For example, in cases in which a detainee interview is being conducted for purposes of a future prosecution (as opposed to pure intelligence collection), it may be appropriate for the FBI to keep its agents walled off from any intelligence previously derived by other agencies who used non-FBI techniques. But at the time of some FBI interviews it is not yet known whether the U.S. government would ever seek to prosecute a particular detainee. In addition, it is still not clear how the military commissions will rule on the admissibility of statements obtained by non-FBI interrogation techniques. The FBI has no control over these and other related matters.

The FBI has wrestled with this problem from the beginning of the time that it sought a major role in detainee interrogations. As discussed in Chapter Four, several witnesses told the OIG about an unsuccessful FBI proposal that its agents be permitted first access to newly captured detainees to allow the FBI to use a rapport-based approach before the detainees became "tainted" by other agencies' interrogation techniques. More recently, the FBI OGC's May 2006 EC provided useful guidance with respect to a particular facility and a particular DOD practice, as described above.

The problem has been diminished somewhat by the fact that the military has promulgated a new, uniform interrogation policy (Field Manual 2-22.3) for all military theaters that stresses non-coercive interrogation approaches. However, this development has not obviated the need for

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improved FBI guidance with regard to these questions. The revised military policy still permits DOD interrogators to use some approaches that FBI agents probably cannot employ, such as the methods known as "fear up" or "pride and ego down."

To the extent that the FBI is or becomes involved with interrogating detainees who previously have been interrogated by the CIA, the problems remain significant and unresolved. This issue is particularly acute with respect to the CIA, because CIA interrogation rules apparently diverge from FBI rules much more dramatically than does current military policy.

Despite these difficulties, we recommend that the FBI consider completing the project that OGC began shortly after the issuance of its May 2004 Detainee Policy to address not only participation by FBI agents in subsequent detainee interrogations, but also the FBI's use of information obtained by the use of non-FBI techniques.

D. Reporting Abuse or Mistreatment

Prior to issuance of the FBI's May 2004 Detainee Policy, the FBI did not provide specific or consistent guidance to its agents regarding when or how the conduct of other agencies toward detainees should be reported.[111]

Leaving this matter to the judgment and discretion of individual FBI agents put them in a difficult position. Neither the FBI as an institution nor individual agents wanted to police the military. The FBI was trying to establish a cooperative working relationship with the DOD while fulfilling its important intelligence-gathering responsibilities. Agents in the military zones were sensitive to the need to maintain day-to-day relationships with their military counterparts and were highly dependent on the military for access to the detainees. In Iraq and Afghanistan, the agents were also dependent on the military for their personal safety in a war zone. Under these circumstances FBI agents had many reasons to avoid making reports regarding potential mistreatment of detainees. We were therefore not surprised that some agents who said they observed or heard about potentially coercive interrogation techniques told us that they did not report such incidents to anyone.

The difficulty in deciding whether to report such concerns was exacerbated by FBI agents' lack of information regarding what techniques were permissible for non-FBI interrogators. For example, as discussed in Chapter Eight, one agent at GTMO told us that she understood that

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[111] As detailed in Chapter Seven, some FBI agents told us they were instructed to report problematic interrogation techniques, but no specific definition of what to report was provided.

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prolonged short-shackling was allowed under DOD policies and therefore she did not report it at a time when, according to the *Church Report*, permission to use "stress positions" had been rescinded. (The *Church Report* found that short-shackling constituted a "stress position.") Furthermore, the *Church Report* found that in some theaters permissible DOD interrogation policies were inadequately communicated to military personnel. FBI agents cannot be criticized for failing to know DOD policies that were not fully or clearly disseminated to their military counterparts.

In light of the recurring instances beginning in 2002 in which FBI agents in the military zones raised questions about the appropriateness of other agencies' interrogation techniques, we think that the FBI should have recognized sooner the need for clear and consistent standards and procedures for FBI agents to make these reports. When agents began expressing concerns to senior officials at the FBI, CTD should have clarified the standards for reporting detainee mistreatment. We believe that the matter could have been best addressed by FBI Headquarters and DOD officials to minimize tensions between FBI agents in the military zones and their counterparts. A cooperative approach could have clarified: (1) what DOD policies were, (2) how the DOD was dealing with deviations from these policies, and (3) what FBI agents should do in the event they observed deviations.

Instead, the FBI issued its Detainee Policy in May 2004 after less than two weeks preparation. We found that the Policy did not give clear guidance on when agents can resume interviewing detainees who have previously been interrogated with non-FBI techniques and when agents should report abusive interrogation techniques used by other agencies. The policy requires FBI employees to report any instance when the employee "knows or suspects non-FBI personnel has abused or is abusing or mistreating a detainee." It contains no definition of abuse or mistreatment.[112]

As noted above, FBI General Counsel Caproni sent an e-mail to the FBI Director dated May 28, 2004, nine days after the Detainee Policy was issued, which stated that "our intent is for [FBI agents] to report conduct that they know or suspect is beyond the authorization of the person doing the harsh interrogation." We found that this approach did not resolve difficulties for agents who did not know what the DOD had authorized its interrogators to do.

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[112] As detailed above, the shortcomings in the policy were identified almost immediately by the FBI's OSC in Iraq, who composed a lengthy e-mail explaining the practical difficulties with this standard and requesting "more explicit and specific guidance."

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Going forward, we believe the military's adoption of a single interrogation policy for all military zones that focuses more on rapport-based techniques (Field Manual 2-22.3) will likely reduce the difficulties for FBI agents seeking to comply with the reporting requirement in the FBI's May 2004 Detainee Policy. Nevertheless, as noted above, military interrogators are still permitted to use some techniques unlikely to be available to FBI agents, and it will therefore be useful for agents to receive training on military policies or to otherwise clarify what conduct should be reported.

We recommend that the FBI consider supplementing its May 2004 Detainee Policy or expanding its pre-deployment training to clarify the circumstances under which FBI agents should report potential mistreatment by other agencies' interrogators. If the triggering event continues to hinge on conduct that exceeds the interrogator's authority, then the FBI should train agents deployed to military zones on available military techniques. Training of OSCs regarding these military techniques should be even more detailed, so that they can answer FBI agent inquiries in the military zones and determine whether a report should be elevated to FBI Headquarters or to the other agency.

If the triggering event for reporting is something more than merely exceeding the interrogator's own agency policies, the FBI needs to give more meaning to terms such as "abuse or mistreatment" either in the policy itself or in agent training. We do not agree with the suggestion made by some senior FBI officials that a more detailed list of reportable techniques would result in agents underreporting other abusive techniques that do not appear on the list. We believe FBI agents are capable of understanding that such a list is illustrative and not exclusive. Consequently, any policy or training should use words such as "including but not limited to the following techniques" before providing examples.

E. Comparison: December 2002 CITF Guidance

The DOD Criminal Investigation Task Force (CITF) generated a policy for its agents in December 2002 that addressed several of the issues raised by FBI agents in the military zone in a timely and specific manner. We believe that the CITF policy demonstrates that it would have been feasible for the FBI to produce such a policy in response to its agents' repeated requests for guidance significantly earlier than May 2004.

As discussed in Chapter Two, CITF is the military's law enforcement arm with responsibility for gathering evidence for the military commission process and possible war crimes prosecutions. CITF was involved in many of the disputes regarding detainee treatment at GTMO, often siding with the FBI regarding the superiority of rapport-based techniques and the problems

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created by harsh interrogations of detainees. (See e.g. Parts V and VI of Chapter Five.)

On December 16, 2002, within a few weeks of the time that the dispute regarding the treatment of Al-Qahtani (#63) had come to a head, CITF issued ALCITF Memorandum 004-02 (the "CITF December 2002 Guidance"), the purpose of which was "to provide guidance to [CITF] personnel on the conduct of interrogations of detainees or persons under custody." A copy of the CITF December 2002 Guidance is provided in Appendix C. This guidance addresses for CTIF agents many of the same issues on which FBI personnel repeatedly and unsuccessfully sought guidance from FBI Headquarters. The CITF December 2002 Guidance provides that:

- Physical torture, corporal punishment, mental torture, and the withholding of basic human needs such as food and water as a means to obtain information are prohibited.
- CITF will not arbitrarily limit the duration of interrogations, but "excessively lengthy interrogations are discouraged."
- CITF personnel must immediately disengage from any joint interrogation in which another agency uses tactics that are "inhumane," report the incident to the CITF chain of command, and document the incident.
- The "Maximum Confinement Facility" (isolation) will not be employed as an interrogation tactic. (An exception is made for using isolation as a positive incentive for detainees who desire to be isolated from other detainees.)
- Deceptions and ruses may be employed as an interrogation tactic.
- CITF agents will not participate, provide support for, or advise on interviews utilizing any non-law enforcement techniques, and will not observe any such interviews where it is known such techniques will be used.
- In the event of a dispute with JTF-GTMO or another agency regarding interrogation approaches, CITF agents should make their objections in a professional manner and report the matter to CITF-Headquarters, but should also continue participating in discussions.
- Promises to detainees (such as promises of release or transfer) may not be made without authority and pre-approval.

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In October 2003 a virtually identical version of this guidance was issued by the CITF that reiterated that the same requirements applied to CITF personnel deployed in Iraq and Afghanistan.[113]

The CITF guidance did not resolve every issue discussed in this section. For example, the guidance requires CITF agents to report tactics that are "inhumane," with no explanation of that term or examples given. However, it did provide specific guidance regarding CITF agents' use of particular techniques such as deception (allowed) and isolation (prohibited). The CITF guidance compares favorably with the FBI's Detainee Policy in terms of its timing (December 2002 rather than May 2004) and specificity. The CITF effort demonstrates that the FBI could have done a better job, far sooner, at providing guidance to respond to its agents' repeated requests.

V. FBI Internal Investigations

In addition to issuing the 2004 Detainee Policy, the FBI responded to the Abu Ghraib prison disclosures by conducting its own internal investigations to determine what its agents witnessed in the three military zones.

A. The Iraq Inquiry

Shortly after the Abu Ghraib abuses became public, FBI Director Mueller ordered an internal review of what the FBI had known about abuses at Abu Ghraib. He assigned FBI General Counsel Caproni to collect the information. The inquiry was conducted in anticipation of a previously scheduled appearance by the Director before the Senate Judiciary Committee in May 2004. The inquiry was initiated by an e-mail dated April 30, 2004, from the ITOS-2 Section Chief to most of the OSCs and Deputy OSCs who had served in Iraq up to that time. The e-mail stated:

> The Director wanted to know (by the end of the day) if anyone from the FBI had first hand knowledge of any abuses at Abu G prison. If so, how did we handle it. I know that we have been made aware of allegations in the past, but I do not know of any

[113] Documents made available to the OIG do not make it clear whether the December 2002 CITF Guidance was formally issued or merely circulated for comment or reference at that time. The October 2003 version of the guidance was signed by the CITF Commander and therefore appears to have been formally issued.

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instance where we had to make a referral.[114] Please advise as soon as possible.

The OSCs and Deputy OSCs who responded to the e-mail indicated that they had never observed or heard of any such abuses at Abu Ghraib. The Deputy OSC in Iraq at the time of this e-mail reported that he had spoken to two agents who had spent much of their time overseeing FBI interviews at Abu Ghraib, and that none of the agents on their teams had observed any abuses. The Deputy OSC also noted that in January 2004 the military had advised the FBI that an investigation of alleged abuses of detainees at Abu Ghraib was underway, and that "we advised all agents working at the prison to watch for any activity they considered abusive." The results of this survey were relayed up the chain of command in CTD and reached the Director on May 3, 2004.

The FBI also conducted a document review, including detainee interview summaries (FD-302), managed by ITOS-2 personnel in May 2004, seeking any document in CTD files indicating any questionable detainee treatment. The ITOS-2 Section Chief told us that this "complete scrub" of files was as comprehensive as possible, and that while they had an impossibly short deadline, he nevertheless considered the review to be thorough. Several agents told us that the file review produced no evidence of detainee mistreatment by U.S. personnel.

The FBI also attempted to identify and interview its own agents who had conducted interviews at the Abu Ghraib prison during October through December 2003, which was the period of the abuses described in the *Taguba Report*. On May 17 and 18, 2004, the FBI Inspection Division interviewed 14 FBI employees who had conducted interviews or otherwise had been present at Abu Ghraib from October through December 2003.

The results of these inquiries were summarized in an Inspection Division report to CTD, the Director's Office, and the FBI Office of General Counsel, dated May 19, 2004 (the same day the Detainee Policy was issued). The Inspection report stated that none of the 14 FBI personnel interviewed said they had seen misconduct or mistreatment of prisoners at Abu Ghraib similar to that which had been reported in recent media accounts. However, the report stated that several of the FBI employees had observed other actions concerning detainees, such as: (1) detainees hooded with a sand bag and draped in a shower curtain while handcuffed to a waist-high railing and kept awake by light slapping on the back; (2) the "spread eagle"

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[114] "Allegations in the past" may have been a reference to the Zubaydah incident discussed above or to issues that had been raised inside the FBI with respect to the treatment of Al-Qahtani or other detainees at GTMO, which are detailed in Chapter Five.

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restraint on a mattress on the floor of a detainee who was yelling and flailing, and who appeared to be mentally ill; (3) a detainee, either naked or only in boxer shorts, lying on a wet floor; (4) stripping of detainees who were then placed in isolation without clothes; (5) shouting by an MP at a detainee who did not understand the MP's directions; and (6) hooding of detainees while being escorted on prison grounds. The Inspection Division report also concluded that all FBI interviews at Abu Ghraib comported with DOJ/FBI protocols and that none of the 14 FBI personnel "possessed or were aware of any photographs, videotapes or notes depicting misconduct or inappropriate behavior by U.S. personnel."

As detailed in Chapter Ten, the OIG found a significantly larger number of incidents in which FBI agents observed or saw evidence of the use of harsh interrogation techniques in Iraq than was described in the Inspection Division report. We believe that this difference is due to the fact that the Inspection Division inquiry was not intended or designed to be a comprehensive investigation of what FBI agents observed throughout in Iraq. It was limited in scope to observations at a single location – the Abu Ghraib prison - during a 3-month period at the end of 2003. The OIG's review of what FBI agents saw and reported regarding the treatment of detainees in Iraq was significantly broader in scope, addressing all locations in Iraq and the period from the spring of 2003 when FBI agents were first deployed to Iraq through the end of 2004.

B. The GTMO Special Inquiry

On May 6, 2004, during the time that information was being collected about Abu Ghraib, the FBI OGC Senior Counsel for National Security Affairs, Spike Bowman, sent an e-mail to FBI General Counsel Caproni alerting her to a potential problem relating to the prior allegations of abuse at GTMO. Bowman's e-mail referenced an EC dated May 30, 2003, written by an SSA who had been deployed to GTMO, which detailed concerns about aggressive interrogation tactics employed by the military at GTMO in late 2002. (This EC and the incidents described in it are addressed in more detail in Chapter Five.) Bowman's e-mail also stated "I guess I am a little concerned that we [are] sitting here with records of misconduct, not knowing if the military ever did anything to correct matters in GTMO."

In early May 2004, in response to Caproni's inquiries, CTD conducted an informal poll of OSCs who had served at GTMO up to that point. On May 10, 2004, CTD Deputy Assistant Director Harrington sent an e-mail to Caproni stating that "[e]ach of the OSC[s] has been polled re: abuse allegations and each has been negative."

At Caproni's request, the Inspection Division conducted a "Special Inquiry" into whether FBI personnel had observed any mistreatment of or

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aggressive behavior toward detainees at GTMO. According to an Inspection Division report describing the Special Inquiry, FBI-CTD generated a list of 493 FBI employees who had served at GTMO in some capacity since September 11, 2001. On July 9, 2004, the Inspection Division transmitted an e-mail to those individuals still employed by the FBI, requesting that the employees state whether they "observed aggressive treatment, interrogations, or interview techniques on GTMO detainees which was not consistent with Bureau interview policy/guidelines."

According to the Inspection Division report, 434 employees responded to the e-mail request.[115] Twenty-six FBI employees responded that they had witnessed "aggressive treatment, interrogations, or interview techniques on GTMO detainees which was not consistent with Bureau interview policy/guidelines"; the rest gave negative responses. An Inspection Division e-mail states that FBI General Counsel Caproni and an agent from the Inspection Division reviewed the 26 responses and "were able to determine that most were not violations of DOD rules and regs pertaining to interrogation procedures." For example, Caproni determined that some reported practices did not violate DOD policy, such as loud music, strobe lights, cold temperatures, prolonged shackling, and draping a detainee in an Israeli flag.

However, OGC determined that 9 of the 26 respondents should be interviewed. These interviews were conducted during the first 2 weeks of September 2004. The agents who were interviewed reported a variety of observations regarding detainee mistreatment, including:

- A detainee was shackled in a stress position.
- Detainee #63 (Al-Qahtani) was subjected to "special interrogative techniques" and later admitted to the base hospital for hypothermia or "low body core temperature." He was also subjected to a growling military working dog and disrespectful treatment of the Koran.
- Female interrogators were rumored to have wet their hands and touch a detainee's face to make him feel "unclean."
- A detainee was observed "crumpled over" and crying, with an apparent bloody nose, during an interrogation.

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[115] An Inspection Division e-mail dated August 17, 2004, stated that the July 9 e-mail was sent to 530 employees and that 478 responded. We do not know the source of the discrepancy between these numbers and the numbers in the final INSD Special Inquiry report.

- A detainee claimed he sustained injuries, including facial cuts and injured fingers, from military police.
- A detainee's entire head was duct-taped to stop him from chanting the Koran.
- Detainees were subjected to sleep deprivation by means of 16-hour sessions of strobe lights and loud music.
- A DOD interrogator was rumored to have subjected a detainee to "satanic black metal music," then dressed as a priest and baptized the detainee.
- A female military interrogator was rumored to have put female clothes on a detainee and performed a lap dance on him.
- Detainees were shackled "hand and foot" to the floor for prolonged periods in uncomfortable temperatures and defecated or urinated on themselves.

As detailed in Chapter Eight, the OIG survey and follow-up interviews uncovered a much larger number and wider variety of aggressive techniques used at GTMO. We believe that the difference was primarily attributable to the OIG's use of a detailed survey instrument that sought information about numerous specifically identified techniques rather than an e-mail seeking general reports of "aggressive treatment, interrogations, or interview techniques . . . which [were] not consistent with Bureau interview policy/guidelines."

C. The Afghanistan Poll

In early May 2004, at the same time that CTD was surveying the OSCs who had served at GTMO, CTD conducted an informal survey of the four OSCs who had served in Afghanistan to that point. One of these OSCs described the survey as a conversation of less than five minutes, in which he was asked whether there was anything he did not report before and was told that if there was any doubt, the information was needed immediately. The OSC said he was asked whether he knew about anything inappropriate or in violation of rules or policy by FBI, military, or intelligence personnel, not just what had been disclosed in the media. The OSC told us that this was the only occasion he could recall having been questioned by the FBI regarding this subject.

Another OSC told the OIG that he thought the poll arose out of concerns raised by Special Agent Horton when he was assigned to a [redacted] in Afghanistan, as described above in this chapter. The OSC said he was probably contacted by telephone, and he reported that he was aware of nothing.

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On May 10, 2004, CTD Deputy Assistant Director Harrington e-mailed Caproni and reported that the poll of the Afghanistan OSCs had been completed and "each has been negative." We found no evidence that the FBI conducted any additional or more formal inquiry into what its agents saw in Afghanistan with respect to detainee mistreatment or abuse.

As detailed in Chapter Nine, however, the OIG found that FBI agents in Afghanistan observed interrogation techniques that were not consistent with FBI policy.

D. The GTMO Review of FD-302 Forms and Development of a Reporting Process for Detainee Abuse Allegations

In October 2004, in the course of collecting documents responsive to a Freedom of Information Act request from the American Civil Liberties Union, the FBI Office of General Counsel noticed that an FBI document stated that detainee Mohamed A.A. Al Harbi (#333) had alleged he was assaulted by FBI agents in Afghanistan.[116] FBI General Counsel Caproni sent an e-mail to the MLDU Unit Chief and to the Assistant General Counsel stationed at GTMO stating: "I know that once these are released the question is going to be what did we do upon learning of such allegation against FBI agents. So, what did we do?" The MLDU Unit Chief told Caproni that no investigation had been conducted. Caproni sent an e-mail to the Assistant General Counsel at GTMO stating: "Seems to me there needs to be a system so that when we learn of allegations against our agents, even if we believe them to be untrue, someone needs to run it down so we have a record that we did so. If the military is investigating allegations against the FBI, I would want to know that as well."

The Assistant General Counsel at GTMO was tasked with reviewing all FBI interview summaries produced at GTMO for use in DOD-initiated administrative proceedings for detainees. He found several documents containing allegations by detainees of mistreatment by U.S. officials. The FBI at GTMO reported these allegations to FBI Headquarters and to the military's legal and command elements at JTF-GTMO.

In light of these developments, the FBI developed a memorandum setting forth a "Reporting Process for Detainee Abuse Allegations – Guantanamo Bay, Cuba," dated February 28, 2005 (the "GTMO Reporting Process Memo"). The memorandum instructed FBI personnel who identified abuse allegations by detainees in FBI documents such as Situation Reports, FD-302 summaries, or ECs to provide notification and a copy of the

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[116] As detained in Section VI of Chapter Eleven, Al Harbi subsequently recanted his allegation regarding the FBI.

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documents to the Assistant General Counsel and to the OSC at GTMO. If the Assistant General Counsel and the OSC determined that the allegation had not previously been reported, a summary of the allegation and a copy of the document were to be provided to:

- The FBI Inspection Division
- With respect to allegations incriminating FBI/DOJ personnel, the FBI Office of Professional Responsibility and the DOJ Office of the Inspector General
- The Staff Judge Advocate at JTF-GTMO
- The CTD-CTORS chain of command
- The Commander and Chief of Staff at JTF-GTMO

The GTMO Reporting Process Memo also stated:

> All incoming personnel to FBI GTMO are briefed to report any and all incidents of Detainee mistreatment to the FBI GTMO management team. Any incident related to the Guards mishandling/mistreating Detainees or aggressive interrogation techniques employed by any agency, witnessed by FBI personnel should be reported. FBI personnel witnessing incidents should make every effort to note the time, place and personnel involved.

We are not aware of any corresponding memorandum having been issued for FBI agents in Afghanistan or Iraq.

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CHAPTER SEVEN
TRAINING REGARDING DETAINEE TREATMENT PROVIDED TO FBI AGENTS IN THE MILITARY ZONES

In this chapter we describe the training that FBI agents received regarding issues of detainee interrogation and detainee abuse or mistreatment in connection with their deployments to the military zones. Our information is derived from the agents' responses to the OIG survey, our interviews of agents and their supervisors, and documents from FBI files. In Part I we focus on the agents who completed their deployments before May 19, 2004, when the FBI issued its first written policy specifically addressing agent conduct toward detainees in military zones. In Part II we discuss the issue of training in the period after May 19, 2004.

I. Training During the Period Before the FBI's May 2004 Detainee Policy

A. FBI Training for Overseas Deployments

A large majority of agents who completed their deployments prior to May 19, 2004, reported in the OIG survey that they did not receive any training, instruction, or guidance concerning FBI or other agency standards of conduct relating to detainees prior to or during their deployment. Of the 419 agents whose deployments to GTMO, Afghanistan, or Iraq were completed before May 19, 2004, when the FBI issued a formal policy, 267 (64 percent) told the OIG that they received no training on the standards of conduct to be applied to their interactions with detainees.[117] The lack of training during the early period was similar across military theaters. Of the survey respondents who were deployed to GTMO, 63 percent said they received no training. The corresponding percentages for Afghanistan and Iraq were 75 percent and 59 percent, respectively. Many of the agents we interviewed confirmed they received no training at all on these standards of conduct.

Of the FBI agents who reported receiving training on these issues, 20 percent stated that written training materials were provided; the remainder said written materials were not provided (44 percent) or that they could not recall whether written materials were provided (36 percent). One of the first FBI agents deployed to GTMO told the OIG that "the question of how to

[117] It is important to note that some agents who deployed to the military zones did not have responsibilities relating to detainee interviews, and therefore logically might not have been expected to receive training on these issues.

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handle working at GTMO as an FBI Agent while possibly being exposed to or drawn into non-law enforcement techniques was primarily answered by the Agents on the ground." This agent also said that the FBI stayed out of trouble on these issues by relying on the good judgment of its agents rather than any edict from FBI Headquarters.

Most of the FBI agents who reported receiving training regarding detainee mistreatment issues said they received it orally after they arrived at the military zone. They said this training was part of a briefing that the FBI On-Scene Commander (OSC) or other senior FBI agent provided either shortly after the agent arrived in the zone, or in the case of GTMO during weekly meetings among FBI agents. Several agents deployed to GTMO reported being briefed by DOD Criminal Investigation Task Force (CITF) personnel or a combination of FBI and DOD CITF personnel. According to the agent who served as OSC during October and November 2002, by the time he arrived at GTMO a weekly training program was already in place, put on by CITF personnel, the OSC, and agents from the FBI's Behavioral Analysis Unit (BAU).

Several FBI OSCs told us they devised their own training or briefing for new agents coming to the military zone.[118] Two of the early OSCs at GTMO said they received no clear guidance from their superiors regarding detainee issues, such as what circumstances would trigger the obligation to report conduct by a non-FBI interrogator. Both said that they did not think they needed such guidance because they already knew how agents should conduct themselves at GTMO based on their training, experience, and judgment as FBI agents.

The early OSCs in Afghanistan described varying amounts of pre-deployment training. Two of the OSCs said they received no training at all regarding the standards of conduct for interrogating detainees. Another said he received general instructions from the New York Field Office to the effect that FBI agents should continue to comply with FBI standards in Afghanistan so as to preserve the admissibility of evidence that they collected. A third OSC said he received 2 or 3 days of briefing at FBI Headquarters prior to his deployment, where he was told to follow FBI policy concerning interviews of detainees, to use common sense and good judgment, and that if other agencies used non-FBI techniques he was to take "forward motion toward the door." The OSC in Iraq during the fall of

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[118] We received a document from the FBI titled "Proposed GTMO Training Package," which outlined topics for preparing agents to conduct detainee interviews at GTMO. The outline, which we believe was prepared by the FBI's BAU, includes topics relating to rapport-based interview techniques and themes. It does not specifically address the issue of non-FBI interview techniques. We could not determine whether this outline was actually used in training agents at GTMO.

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2003 told us that he did not receive specific training about the military's standards of conduct for detainee treatment issues as part of his pre-deployment briefing.

During 2002 and early 2003, agents from the FBI's Behavioral Analysis Unit (BAU) within the Critical Incident Response Group (CIRG) provided training on interviewing techniques to the FBI interviewing agents, CITF investigators, and Defense HUMINT Service personnel at GTMO. The first BAU agent deployed to GTMO told us that she prepared a PowerPoint presentation that she used at GTMO beginning in September 2002. The FBI provided the OIG with several PowerPoint presentations that appear to be detainee interview/interrogation training materials, but we were unable to determine precisely when each of these presentations was used. Most of these materials focused primarily on rapport-based interview techniques and background material regarding detainee culture and training. The materials did not address the use of coercive techniques, other than general statements that they are not effective. No similar presentations for Iraq or Afghanistan were provided to the OIG.

The amount of time devoted to training of new agents sent to GTMO apparently declined over time. As of early 2003, the training provided to newly-arrived agents regarding interview techniques at GTMO was limited to approximately 30 minutes.

Several of the BAU agents told us that before they went to GTMO they attended training provided by the military at Fort Belvoir. These BAU agents stated that the training they received provided orientation to operations at GTMO and instruction on Islam and the mindset of terrorists, but the agents said there was no discussion of what interrogation techniques were permissible.

The FBI considered requiring all FBI interviewing agents to attend the training at Fort Belvoir prior to deploying to GTMO. On October 1, 2002, one of the first BAU agents who served at GTMO made the following recommendation to the Military Liaison and Detainee Unit (MLDU):

> Include the FBI interviewing agents in the pre-GTMO training that is currently being provided for the CITF interviewing agents at Ft. Belvoir. This training includes instruction in Islam, appropriate legal issues and interview strategies. Having this training before departing for GTMO would save valuable time for the agents, who now have to undergo this training on-site before they begin the interview process.

However, it does not appear that this recommendation was ever implemented. As noted above, most agents who reported getting any

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training for their military zone assignments told us they received it after arriving in the military zone.

By January 2004, the FBI had created a 5-day pre-deployment training program for agents detailed to Iraq. The agenda included approximately 1 hour of training regarding "Interviewing Techniques." However, the agenda does not specifically identify any issues relating to detainee mistreatment for training.

FBI documents suggest that the pre-deployment training for agents detailed to Afghanistan was brief. An EC dated April 18, 2004, prepared by the FBI OSC described the current training as "a 30-minute CD-ROM photo collage by CTD, which serves as the totality of the briefing provided by FBIHQ/CTD." The EC recommended that personnel deploying to Afghanistan go through a 2-week pre-deployment course of instruction at Quantico, although it did not identify detainee treatment issues as a proposed topic for more in-depth training.

B. Training Topics Relating to Detainees

We also attempted to determine the content of FBI training with respect to detainee treatment in military zones prior to May 2004. In our survey of agents deployed to the military zones, we focused on four aspects of potential training or guidance: (1) the standards of conduct regarding detainee interviews applicable to FBI agents in military zones; (2) standards of conduct applicable to personnel from other agencies, such as military interrogators; (3) what agents should do if an agent from another agency used a non-FBI technique during a joint interview with the FBI; and (4) under what circumstances an agent should report the conduct of personnel from another agency.

Standards of Conduct for FBI Agents. FBI agents told the OIG that they understood that they were required to continue to adhere to the same standards of conduct for detainee interviews that applied to custodial interviews in the United States. Those agents who received training almost unanimously reported that this instruction was included in the training. Moreover, those agents who told us that they did not receive specific training regarding detainee treatment overwhelmingly stated that they nevertheless understood that the same standards applicable in the United States continued to apply to their conduct at GTMO. Several agents stated that they were attempting to gather information that would be admissible in later prosecutions, so they had to comply with ordinary standards of conduct for interviews. These agents' accounts are consistent with the statement by the MLDU Unit Chief in an e-mail dated May 10, 2004, that the GTMO supervisors were told that, except with respect to Miranda

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warnings, "follow FBI/DOJ policy just as you would in your field office. Use common sense...."

Some agents told us that they received specific instructions not to use certain techniques that might have been employed by the military. For example, one agent whose deployment began in February 2002 told the OIG that early in his deployment his OSC emphasized that if he had "any doubt" about a particular technique being used by the military, "we are not in that business." Other agents told us that they were specifically instructed not to use particular techniques, such as cold temperatures (air conditioners set high), leaving a detainee alone in the interrogation room for a long time, or forcing a detainee to stand or sit in an uncomfortable position. One OSC cited "forcing a detainee to watch gay pornography" as an example of a non-law enforcement technique that he instructed FBI agents to avoid. An agent who deployed to GTMO in March 2003 said that FBI personnel were told during a closed-door briefing that the FBI did not condone or participate in certain interrogation techniques utilized by military intelligence personnel.

Standards Applicable to Non-FBI Investigators. Most agents told us that they did not receive any specific information regarding which interrogation techniques were permissible for military interrogators. An OSC at GTMO told the OIG that he was never briefed on what interrogation techniques were available to the military, and he was not interested to know this information. The OSC stated that there was no way for the FBI to determine whether a military interrogator had obtained the necessary authorization to use a particular military technique.

When asked how the FBI could improve training for future deployments, several agents responded that information should be provided regarding the parameters applicable to non-FBI interrogators.

Only a few agents reported that they received detailed information regarding which interrogation techniques were approved for the military. Some reported that this information was provided in writing. It appears that they were usually referring to information provided by the military, not the FBI. For example, several agents who served in Iraq told us the military required them to sign a form acknowledging the types of methods used to gather information from detainees, such as using working dogs and sleep deprivation.

Joint Interviews. As discussed in Chapter Two, at various times and locations the FBI worked jointly with the military in planning and conducting detainee interrogations. This practice raised the potential for FBI agents to be involved in interrogations in which methods might be planned or used that the FBI did not permit for its own agents. The mandate that FBI agents continue to adhere to FBI policy did not

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necessarily resolve the issue of what agents should do if another agency's investigator planned or used non-FBI techniques in an interview at which an FBI agent was present, or in which he was otherwise involved, such as by assisting the interrogator with questions for the detainee or using information derived from the interrogation in subsequent interviews.

T.J. Harrington, the FBI's Deputy Assistant Director for Operational Support in the Counterterrorism Division beginning in December 2002, confirmed for the OIG that the FBI did not provide specific training about how to conduct joint interviews with the DOD. He stated that existing FBI policies remained in effect and pointed out that the FBI had no jurisdiction over the military investigators. However, as noted in Chapter Three, existing policies did not clearly address joint interrogations in which other U.S. agencies with different rules were in charge.

Several agents also noted that the FBI did not provide guidance addressing joint interviews with the DOD. For example, an FBI SSA who served as OSC in GTMO for 2 months in 2002 and from August 2003 to August 2005 told the OIG that he knew that his agents were not allowed to engage in some conduct that was permissible for military interrogators, but that it was unclear whether the agents could observe interviews in which such techniques were used by other agencies or utilize information derived from interviews in which such techniques were used. This question was not merely hypothetical, because FBI agents sometimes relied on military interrogators to obtain information for them from particular detainees. The OSC told the OIG that the guidance he provided to agents at GTMO was to conduct themselves like FBI agents, but that the guidance never went further than that.

Some FBI agents told the OIG that they received training or instruction to the effect that they should leave any interview in which non-FBI techniques were being utilized. For example, one agent who served at GTMO during the summer of 2003 told us that he was instructed to leave any joint interview in which the other interviewer was using any non-FBI approved technique. Another agent who served at GTMO in early 2003 stated in his survey response that he was told to leave the interview if Army personnel used any "extreme interrogation techniques." Another said he was instructed to leave if he saw anything "inappropriate" or that made him "uncomfortable." One of the first agents deployed to GTMO said that the "stand clear" policy "devolved from leadership on [the] ground."

Reporting Mistreatment. We also sought information regarding training about the circumstances under which an FBI agent should report on the abuse or mistreatment of a detainee by another interrogator. Again, most agents reported receiving no guidance on this issue prior to May 2004. A few agents told us they were instructed to report detainee mistreatment by

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other interrogators, but they gave varying descriptions of the triggering criteria for making such a report. The OSC at GTMO in October and November 2002 told us he instructed his new agents to let him know if they heard or saw abuse. Some agents said they were instructed to make a report if they saw any interrogation technique that would violate FBI guidelines if used by an FBI agent, even though the agents were aware that military interrogators were governed by more permissive standards. Other agents used a variety of adjectives to describe this criterion, ranging from "abusive" to "inappropriate," "questionable," or "unprofessional." However, as one agent who was deployed to Iraq stated:

> The Asst. On Scene Commander . . . merely said if you see anything inappropriate you should report it. However, no one ever defined what was inappropriate. For example, we had been informed that [a particular Task Force] had legitimately received special permission to conduct interviews using techniques that were not available to the FBI. There was never any indication at the time whether those techniques used by [the Task Force] were appropriate. In fact, the [FBI's] on scene senior command staff in Baghdad as well as AD Bald who visited the [Baghdad Operations Center] were aware of the techniques available to [the Task Force] and condoned their use.

An agent who served as OSC in Afghanistan during February and March 2002 stated that prior to deployment, DOD personnel indicated that if FBI agents saw "inappropriate" conduct by DOD personnel, they should report it to appropriate officials in the DOD.

Several agents recommended to the OIG that the FBI provide more specific training regarding standards of conduct applicable to military interrogators. We believe these recommendations reflected the difficulty the agents encountered in knowing when to report the conduct of military interrogators. In addition, several agents told the OIG that the issue of whether non-FBI interrogators were violating their own agencies' rules created tensions for the FBI, because the FBI was the guest of the military and the FBI's purpose in being in the military zones was not to police other agencies. Other agents suggested that training be provided to clarify the FBI's "policing" role with respect to other agencies' interrogators.

Some agents who served at GTMO told the OIG that they were told that they should write up any potential "war crimes" allegations in an FD-302 for inclusion in the "war crimes" case files in the FBI office at GTMO. At some point in 2003, however, the OSC at GTMO received instructions not to maintain a separate "war crimes" file. The OSC stated that the MLDU Unit Chief told him that investigating detainee allegations of abuse was not the FBI's mission. The OSC stated that he was told that the agents could

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continue to memorialize such allegations in their FD-302 interview summaries, but that the FBI would not segregate such allegations into a separate file.

In sum, prior to May 2004 the FBI provided only limited training, instruction, or guidance to FBI agents concerning standards of conduct relating to detainees. Most FBI employees understood that they should not participate in abusive treatment of detainees, consistent with FBI policies in the United States. However, there was considerable uncertainty about how FBI personnel should interact with military interrogators using non-FBI techniques and whether to report suspected abuse.

II. Expanded Training Provided to FBI Agents After Issuance of the FBI's May 2004 Detainee Policy

In the months following the issuance of the FBI's May 2004 Detainee Policy, the FBI's Military Liaison and Detainee Unit (MLDU) substantially increased the scope of pre-deployment training provided to FBI agents who were being sent to the military zones, particularly Iraq and Afghanistan. Much of this enhanced training related to the unique conditions encountered by FBI agents in foreign military zones and addressed issues such as logistics, weapons, force protection, and convoy procedures. The FBI began addressing the issue of detainee treatment in a more systematic way than it had prior to the Abu Ghraib disclosures.

For example, beginning in approximately October 2004, the FBI began periodically conducting a formal pre-deployment training program at Quantico for agents being deployed to Iraq that lasted approximately 5 to 7 days. An attorney from the FBI's Office of General Counsel (OGC) prepared a "Legal Briefing" as part of this training. The briefing addressed several of the issues discussed in the FBI's May 2004 Detainee Policy, including: (1) reiterating that the long-standing FBI prohibitions on coercion and abuse of persons in custody also applied to detainees in the military zones; (2) instructing FBI employees not to participate in any interrogation technique in violation of FBI guidelines regardless of whether the co-interrogator was in compliance with his or her own guidelines; and (3) telling each agent to report any instance in which he or she "knows or suspects non-FBI personnel has abused or is abusing or mistreating a detainee."

The training also instructed agents to "attenuate" their interviews of potential criminal defendants in cases where the detainee had previously been questioned by a foreign government or other intelligence community agency so as to enhance the likelihood that any resulting statement would be admissible in a judicial proceeding. The training instructed the agents to consider:

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- Allowing a lapse of time from the prior interview and the FBI interview
- Choosing a different location for the FBI interview than the prior interviews
- Assuring that previous interrogators are absent from the FBI interview
- Avoiding the use of material obtained from previous interrogations
- Concentrating on the criminal facts versus intelligence facts gathered by intelligence community or military
- Using a new investigative team who have been isolated from previous interview material, but not necessarily from pre-interrogation intelligence on the subject
- Getting the detainee on record as to his current status (as potential defendant) versus previous status

The OGC attorney who prepared the training told us that in order to address the issue of what constituted FBI "participation" in an interview conducted by a non-FBI employee, he discussed five to seven hypothetical scenarios.

Beginning in December 2004, the FBI also periodically conducted expanded multi-day pre-deployment training for FBI employees who were being sent to Afghanistan. In developing this training, MLDU and CTD staff noted the differences between training for Iraq and for Afghanistan, since in Afghanistan FBI personnel "often operate as part of military units widely dispersed throughout the theater." Detainee interview and treatment issues were not covered in the original syllabus, but this issue was later added into the training program.

We found no indication that the FBI devised a comparable pre-deployment program for agents assigned to GTMO, most likely because GTMO was not a battle zone. However, in August 2004 the FBI OGC attorney stationed at GTMO began giving training to FBI personnel deployed there, advising them to rely on the guidance provided in the Legal Handbook for Special Agents. He told the newly-arrived FBI employees that if they saw anything "untoward," beyond what the FBI was authorized to do or outside the scope of the military's authority, the agent was to remove himself from the room and report the incident to the OGC attorney or to the FBI's OSC at GTMO. The OGC attorney told us that he and the OSC instructed the newly-arrived employees on the scope of the military's approved techniques as they were set forth in the April 2003 Policy approved by the Secretary of Defense.

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As previously noted, the OIG survey sought information regarding the content and adequacy of training for FBI employees deployed to Iraq, Afghanistan and GTMO. Most FBI agents whose foreign deployments began after the issuance of the FBI's May 2004 Detainee Policy told us that they received specific instruction as to the major elements of the Policy. Most of them told us they were instructed to comply with FBI policies applicable to custodial interviews in the United States, and to report any abuse or mistreatment of detainees by non-FBI employees.

However, numerous agents told us in survey responses and interviews that it would have been useful to them to receive a more detailed explanation of what constituted "abuse" and what techniques were permissible to military or other government agency interrogators under their agencies' policies. For example, one agent who served in Iraq in early 2005 stated: "A clear explanation of definitions of [permissible non-FBI] interrogation techniques, [e.g.] 'pride and ego up,' fear up, etc. would have been helpful." Another agent who served in Iraq during May through July of 2005 stated:

> I believe better guidance could be provided as to what the FBI defines as "mistreatment" of detainees. In addition, the manner in which such mistreatment should be reported can be better articulated and disseminated to predeployment FBI employees.... [T]he lack of specific definitions as to what is or is not detainee mistreatment, made any determination of perceived mistreatment--outside the obvious, rather subjective and ambiguous and therefore argumentative.

Because the OIG survey was conducted in 2005, most of the responses we received regarding training issues did not reflect the expanded training programs described above.

The policies and training that the FBI provided to its agents both governed the agents' conduct toward detainees and informed their decisions regarding what action to take when they observed personnel from other agencies using interrogation techniques not available to the FBI. In the next three chapters, we address in detail what nearly 1,000 agents who served in the military zones told us they observed or heard about with respect to detainee mistreatment, what if anything they did to report such conduct, and what the FBI did with such reports.

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CHAPTER EIGHT
FBI OBSERVATIONS REGARDING DETAINEE TREATMENT IN GUANTANAMO BAY

I. Introduction

During the course of our review, we contacted over 450 FBI employees who were detailed at various times to GTMO. More than half of these witnesses – approximately 240 – reported that they never observed nor heard about potentially abusive treatment of detainees at GTMO.

Nevertheless, over 200 FBI agents who served at GTMO reported that they observed or heard about various rough or aggressive treatment of detainees, primarily by military interrogators. The most frequently reported techniques included sleep deprivation or disruption, prolonged shackling, stress positions, isolation, and the use of bright lights and loud music. Table 8.1 summarizes the survey responses to our questions regarding the use of particular interrogation techniques at GTMO.

In presenting these results in summary form, we emphasize the limits to the interpretation of this data. The numbers in the Table indicate how many survey recipients gave positive responses to particular questions. We determined during the interviews, however, that some respondents gave overly inclusive responses, sometimes describing conduct that they observed or heard about that did not meet the definitions within the survey.[119] We believe that some agents may have responded this way out of an abundance of caution, to be sure that they had responded fully and were not excluding any information of potential relevance. In addition, we believe that in some cases multiple agents were reporting on the same incident. Merely counting the number of positive responses therefore would overstate the number of incidents that may have actually taken place.

On the other hand, we also cannot exclude the possibility that some respondents did not report all incidents of detainee mistreatment of which they had knowledge. Moreover, the FBI agents were only present at a small percentage of detainee interrogations in the military zones, most of which were conducted by personnel from other agencies. For all of these reasons,

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[119] For example, Question 49 sought information regarding the use of military working dogs other than during detainee transportation, such as for purposes of intimidation of detainees during interrogations. We determined that several agents who responded positively to this question were in fact describing the use of dogs as a security measure during detainee movement and not during interrogations.

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the survey results should not be interpreted as an estimate of how often a particular technique was employed within a particular military zone.

TABLE 8.1
Survey Results Concerning
Interrogation Techniques Observed in Guantanamo

	Interrogation Technique	Personally Observed	Observations Led Me to Believe	Detainee Told Me	Others Described To Me	None of the Above
1	Depriving a detainee of food or water	1	1	4	3	433
2	Depriving a detainee of clothing	3	1	4	5	433
3	Depriving a detainee of sleep, or interrupting sleep by frequent cell relocations or other methods	13	10	17	54	354
4	Beating a detainee			11	1	430
5	Using water to prevent breathing by a detainee or to create the sensation of drowning				1	441
6	Using hands, rope, or anything else to choke or strangle a detainee				1	444
7	Threatening other action to cause physical pain, injury, disfigurement, or death	2		1	4	435
8	Other treatment or action causing significant physical pain or injury, or causing disfigurement or death		2	1	3	437
9	Placing a detainee on a hot surface or burning a detainee					445
10	Using shackles or other restraints in a prolonged manner	15	2	1	8	420
11	Requiring a detainee to maintain, or restraining a detainee in, a stressful or painful position	9	1	3	12	421
12	Forcing a detainee to perform demanding physical exercise					444
13	Using electrical shock on a detainee					444
14	Threatening to use electrical shock on a detainee					441
15	Intentionally delaying or denying detainee medical care			3	1	442
16	Hooding or blindfolding a detainee other than during transportation	9		1	2	431
17	Subjecting a detainee to extremely cold or hot room temperatures for extended periods	3	2	6	15	420
18	Subjecting a detainee to loud music	27		6	27	384

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	Interrogation Technique	Personally Observed	Observations Led Me to Believe	Detainee Told Me	Others Described To Me	None of the Above
19	Subjecting a detainee to bright flashing lights or darkness	19		2	19	403
20	Isolating a detainee for an extended period	30	5	1	22	384
21	Using duct tape to restrain, gag, or punish a detainee	2			4	438
22	Using rapid response teams and/or forced cell extractions	11	8	9	43	376
23	Using a military working dog on or near a detainee other than during detainee transportation	3			6	434
24	Threatening to use military working dogs on or near a detainee	2			1	440
25	Using spiders, scorpions, snakes, or other animals on or near a detainee			1		441
26	Threatening to use spiders, scorpions, snakes, or other animals on a detainee					444
27	Disrespectful statements, handling, or actions involving the Koran	2		19	10	414
28	Shaving a detainee's facial or other hair to embarrass or humiliate a detainee	3	4	6	6	427
29	Placing a woman's clothing on a detainee			2	4	441
30	Touching a detainee or acting toward a detainee in a sexual manner	2	2	2	11	426
31	Holding detainee(s) who were not officially acknowledged or registered as such by the agency detaining the person.	2	1		1	438
32	Sending a detainee to another country for more aggressive interrogation	1		2	2	434
33	Threatening to send a detainee to another country for detention or more aggressive interrogation	6		1	5	433
34	Threatening to take action against a detainee's family	2			2	439
35	Other treatment or action causing severe emotional or psychological trauma to a detainee	2				443
36	Other religious or sexual harassment or humiliation of a detainee			2	5	437
37	Other treatment of a detainee that in your opinion was unprofessional, unduly harsh or aggressive, coercive, abusive, or unlawful	4		3	4	433
	Observation Totals	173	39	108	282	15,824

In Part II of this chapter, we describe the FBI agents' specific observations regarding particular interrogation techniques.[120] In Part III, we examine the handling of reports by FBI agents to their superiors or to military personnel regarding their concerns about detainee treatment at GTMO.

II. Observations Regarding Specific Techniques

A. Beating or Physically Abusing a Detainee

Several FBI agents told the OIG about incidents involving the alleged beating or other physical abuse of detainees at GTMO.[121] However, in only one case did any agent report having directly witnessed such conduct. The other reports involved allegations from detainees regarding incidents that the FBI agents did not themselves witness. Beating and physical violence were never approved interrogation techniques at GTMO. The Church investigators reported that a small number of "minor" cases of assault of detainees at GTMO were substantiated, and noted that other, more serious allegations were under investigation by the military. *Church Report* at 175-178.

Brett/McMahon. The only report by an FBI agent regarding the direct observation of physical abuse at GTMO was an incident in November or December 2002 reported by SSAs Brett and McMahon.[122] As noted in Chapter Five, Brett and McMahon were agents from the Behavioral Analysis Unit (BAU) of the FBI's Criminal Incident Response Group (CIRG) who were assigned to observe and assist with interviews of detainees at GTMO.

Brett provided the following details to the OIG. On one occasion while Brett and McMahon were in an observation booth at GTMO observing an FBI interview, they saw a female military interrogator and her partner bring a detainee into a vacant interrogation room. After a few minutes the female interrogator ordered a Marine guard to duct tape the curtain in front of the two-way mirror, blocking the view into the interrogation room. The second military interrogator then came into the observation booth and sat in front

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[120] Many of the incidents described below have previously been discussed in press accounts of FBI documents that were released to the American Civil Liberties Union pursuant to a Freedom of Information Act request.

[121] The OIG's survey asked separate questions regarding beatings and other treatment causing significant physical pain, but the responses were sufficiently similar that we have combined these categories for purposes of describing agent responses.

[122] Brett and McMahon are pseudonyms.

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of the monitor, and the Marine guard went into the interrogation room. However, Brett said he could see most of the interrogation by looking at the monitor. The female interrogator sat close to the detainee with her back to the camera. Her left knee was in the detainee's crotch area, and she was rubbing the detainee's arms from his shoulders down past his elbows into his crotch area.

Brett told us that several times he could see the detainee turn his head away, grimace in pain, rear back and make noise consistent with a response to pain. The female interrogator leaned in and apparently whispered in the detainee's ear from time to time. After the military interrogators were finished with this detainee, Brett asked the Marine guard what the female interrogator had done to the detainee. The guard told Brett she was bending his thumbs back and grabbing his genitals. Brett asked why she was doing that, and the guard replied, "to cause him pain." The guard added: "If you think that is bad, I have seen her having guys on the floor crying tears in the fetal position." Brett said that the Marine guard's name tag had been taped over, and so he did not see his name. Brett also said that the guard seemed uncomfortable about his questions, and Brett did not want to press the issue by asking his name.

Brett also stated that the female applied some sort of lotion on the arms of the detainee prior to bending his thumbs back and grabbing his genitals. Brett stated that this interrogation occurred during Ramadan and that he understood that if a Muslim male is touched by a woman who is not his wife he would be considered unclean and could not pray. Brett also said he had heard that Army interrogators would use perfumed lotion to make it obvious to the other detainees that the particular detainee had been touched by a woman.

McMahon stated during his OIG interview that both he and Brett observed the female interrogator bend back the thumbs of a detainee. McMahon said that he could not really see what was happening in the interrogation room, but that another military interrogator confirmed what the female interrogator was doing to the detainee.

Brett and McMahon reported this incident to the FBI On-Scene Commander (OSC) at GTMO, and to the CITF-DOD Supervisor. Brett stated that at some point he, McMahon, and the OSC called the Critical Incident Response Group (CIRG) to report this incident. Brett told the OIG that he and McMahon were instructed to report any similar incidents to BAU management at Quantico. Brett said he got the impression that his superiors definitely did not want him to raise this kind of issue with General Miller, the military commander of JTF-GTMO at the time. However, Brett told us that he, McMahon, and the OSC did bring up this issue during a meeting with General Miller a few days before Brett left the island, in

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connection with their attempt to persuade General Miller that the FBI's rapport-based approach was superior to the military's interrogation techniques. Brett said that General Miller responded with words to the effect of, "thank you gentlemen, but my boys know what they're doing."

We determined that Brett's concerns regarding this incident and other incidents were elevated within FBI Headquarters, and from there the matter was eventually referred back to the DOD. This incident was described in general terms in one of the attachments to SSA McMahon's EC to the Counterterrorism Division and the FBI Office of General Counsel dated May 30, 2003, which was described in Chapter Five.

Brett told the OIG that he believed that the U.S. Army interrogators were being encouraged by their superior officers to engage in aggressive interrogation techniques. He gave as an example a "pep rally" meeting he attended, conducted by the Chief of the DOD's Interrogation Control Element, in which the interrogators were encouraged to get as close to the torture statute line as possible. Brett said he did not feel that the incident he witnessed involving the female interrogator was a case of a rogue interrogator acting on her own.[123]

Brett gave an account of this incident to the Schmidt-Furlow investigators, who also interviewed the female interrogator and her supervisor. *Schmidt-Furlow Report* Exhibits 21, 24 and 32. The interrogator and her supervisor stated that she did rub perfume or lotion on a detainee's arm in order to make him stop praying because he would be "unclean," and that when the detainee attempted to attack the interrogator he fell and chipped a tooth. The *Schmidt-Furlow Report* found that the interrogator's conduct was an authorized technique under Field Manual 34-52 (mild non-injurious touching), although the report did not address Brett's allegations regarding bending the detainee's thumbs back. *Schmidt-Furlow Report* at 8.

Another FBI agent told the OIG about an incident that occurred during his deployment at GTMO between October and November 2002, which could have been the same incident. The agent said he observed three U.S. military personnel picking a detainee up off the floor of the

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[123] A different FBI agent gave an account of what might have been the same incident or a similar incident involving the same female military interrogator. He stated that on one occasion he observed a military interrogator who was "invading the space" of a detainee and speaking into his ear. She was also trying to hold hands with the detainee and he was resisting. The agent said the interrogator seemed to be speaking seductively and may have put her hand on the detainee's leg. The agent said that it did not appear that the detainee was in any pain or physical distress. He said that the interrogator and the detainee looked like they were "hand wrestling" but it did not appear that she was bending back his thumbs. The FBI agent described these actions as "non-standard," but said he definitely did not consider them abuse.

interrogation room, and that the detainee was bleeding from the nose. The agent said there was a female interrogator who appeared to have her hands on the detainee. The agent identified the interrogator by the same name that Brett provided to the OIG in connection with the thumb-bending incident. The agent reported that he overheard other military personnel in the observation booth say that the female interrogator had been rubbing perfumed lotion on the detainee, including on his genital area, and that when the detainee began yelling and tried to stand up he immediately fell because his handcuffs were shackled to the floor. The agent stated that he spoke to the CITF Commander about this incident.

SA Siebern.[124] SA Siebern told the OIG that on one occasion while he was conducting an interview at Camp Delta with an Army Sergeant and Major, they heard a loud noise down the hall and stopped their interview to investigate. What they found was a detainee on the floor of a different interview room, on his knees. The detainee was leaning forward with his forehead touching the floor and he was moaning. Siebern asked the military personnel in the room what had happened and they replied that the detainee had gotten upset and thrown himself to the floor. They also said that they had already called for a medic to treat the detainee. Siebern told the OIG that there was a small amount of blood on the floor in front of the detainee that was consistent with a nose bleed. Siebern said that the Major began to question the other military personnel in the room about this incident and Siebern then left with the Sergeant.[125]

Siebern said he felt that the explanation he received regarding the detainee was both plausible and credible. He said that such an action by the detainee seemed consistent with behavior that Siebern had observed from other detainees at GTMO. Siebern said that the military personnel in the room did not seem to be agitated and nobody was being restrained away from the detainee as if there had been some sort of confrontation. Siebern believed this was a military issue that most likely would be handled by the Army Major, who was a field grade officer. Siebern said he did not report this incident to his OSC because he did not "feel that it was an issue," and he thought the Major was doing what appeared to be a sufficient albeit superficial investigation. Siebern stated that he did not document the incident or tell anyone else about it at the time. [126]

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[124] This name is a pseudonym.

[125] This incident may be the same incident that Brett related regarding the chipped tooth.

[126] Siebern later reported this incident on August 18, 2004, in response to the e-mail inquiry from the FBI Inspection Division regarding observation of aggressive techniques. He told the OIG he reported it out of an abundance of caution.

Allegations made by detainees to the FBI regarding physical abuse by military personnel. Several FBI agents deployed to GTMO noted that detainees had complained to them about beatings or other physical abuse by military personnel. Some of these complaints were recorded contemporaneously in FBI FD-302 interview summaries and others were reported to the OIG in survey responses and interviews. No FBI agents reported that they witnessed these events and none were alleged to have participated in them.

For example, according to FBI documents and two agents interviewed by the OIG, an allegation regarding a beating by military personnel was made by detainee Juma Muhammad Abdul Latif Al-Dosari (#261). On May 22, 2002, Al-Dosari told an FBI agent that three or four weeks earlier an unknown number of guards had entered his cell unprovoked and began spitting and cursing at him. Al-Dosari said that a soldier named Smith had jumped on his back, beat him in the face, and choked him until he passed out, and that a female guard named Martin beat him and banged his head against the cell floor. According to the FD-302 interview summary prepared by the FBI agent, Al-Dosari had a recent wound on his nose. Two other FBI agents told the OIG that they heard allegations from detainees of beatings by military guards which we believe related to the same incident, but neither agent witnessed the alleged beatings. The agents told the OIG that Al-Dosari's allegations were well known at GTMO and that they understood that the allegations had been reported to military officials.

Another agent told the OIG about allegations made by detainee Mamdough Ahmed Habib (#661). Habib alleged that "Mike," a private contract interrogator with Lockheed Martin, had hit him during an interrogation approximately a year before the agent arrived at GTMO. The agent said she found Habib's allegation "very hard to believe" based on the agent's experience of working with the interrogator at GTMO.[127]

We also received FD-302 interview summaries prepared by FBI agents at GTMO that indicated detainees had reported other incidents or rumors of beatings or other physical abuse. According to an FD-302 prepared by special agents from the FBI and the CID, on October 4, 2002, detainee Allal Ab Aljallil Abd Al Rahman Abd (#156) told FBI interviewers that he had

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[127] According to another FBI agent, Habib also made allegations about beatings of other detainees during an interview with the FBI agent on January 8, 2003. The agent reported these allegations in an FD-302 interview summary that he prepared at the time, which stated among other things that Habib claimed that detainees were beaten when guards searched their cells. According to the Church Report, Habib has been released and has made widely-publicized claims of torture that are the subject of an ongoing investigation by the NCIS. The OIG has requested updated information regarding this investigation from the DOD, but to date it has not been provided.

witnessed U.S. guards shoot another detainee and throw him in the ocean, and that four or five Camp Delta guards had hit him (#156) in the head about two weeks earlier. Another FD-302 prepared by the FBI states that on January 21, 2003, detainee Abdel Wahab (#37) told the interviewer he had heard that a detainee had been severely beaten by a guard and had died as the result of an altercation that began when the guards treated the Koran disrespectfully.

An FD-302 summary prepared by an FBI agent stated that on May 31, 2003, detainee Abdallah Aiza Al Matrafi (#5) claimed that some detainees were being beaten during late night interrogations. Another FD-302 prepared by an FBI agent stated that on July 19, 2003, detainee Zahir Shah (#1010) complained that he was shackled and hooded by U.S. Forces in Bagram and was subsequently beaten by guards during transfer to GTMO.

B. Prolonged Shackling and Stress Positions

Over 30 FBI agents told the OIG in survey responses or interviews that they saw or heard about the use of prolonged shackling or stress positions on detainees at GTMO.[128] Many described a particular practice known as "short chaining" or "short-shackling" in which the detainee's hands and feet were chained close to a bolt on the floor so that the detainee could not stand or sit comfortably. Several agents described detainees being short-shackled overnight or while being subjected to cold temperatures, loud music, or flashing lights. We describe the more severe examples of short-shackling and stress positions reported by the agents below.

According to the *Church Report*, "[t]hroughout interrogation operations at GTMO, interrogators have made a practice of chaining detainees' hands and feet to an eyebolt in the floor of the interrogation room, ostensibly as a matter of safety." *Church Report* at 168. The *Church Report* found that this practice prevented seated detainees from standing up straight, and forced standing detainees into a stooped or hunched over position. *Id.* The Church investigators observed that the practice of "short chaining" (intentionally placing a detainee's hands even closer to the eyebolt) caused "moderate physical discomfort" and was employed "to intimidate and establish control over resistant detainees." Accordingly, they classified this practice as a "stress position." *Id.* Stress positions were approved for use at GTMO by Secretary Rumsfeld on December 2, 2002, but permission to use

[128] The OIG survey asked separate questions about prolonged shackling and stress positions. However, respondents described incidents of short-shackling under both categories. In addition, as mentioned above, the Church investigators have classified short-shackling as a type of stress position. We therefore combined the categories in this discussion.

stress positions without advance approval from the Secretary was rescinded on January 12, 2003. *Id.* at 117-120. The military at GTMO apparently did not consider short-shackling to be a prohibited "stress position," at least until May 2004 when the military commander at GTMO specifically prohibited this practice. *Id.* at 168.

Direct observations. The OIG interviewed 23 FBI agents who personally observed prolonged shackling or detainees in stress positions.[129] For example, one FBI agent stated that during her deployment from December 2003 to September 2004, she personally observed detainee Mohammad Mehdi (#166) "short-shackled" in an interrogation room. Mehdi was also being forced to listen to loud music with flashing strobe lights, and later placed in a hot room. The agent did not know how long Mehdi was in the hot room, but she thought it was for several hours. She also estimated that the room temperature was about 90 to 95 degrees. She stated that two Lockheed Martin contract interrogators most likely ordered that Mehdi be short-shackled. The agent told the OIG that she understood that short-shackling was a permitted interrogation tactic for military personnel, and that she therefore did not report this activity to anyone in the FBI until July 9, 2004, when she responded to the Inspection Division's survey of agents deployed to military zones. In her e-mail she stated that Mehdi was short-shackled for approximately 15 hours.

Another FBI agent indicated in her OIG survey response and her OIG interview that on a few occasions during her deployment to GTMO in February and March 2003 she observed detainees that were "short chained" to the floor for extended periods and subjected to extreme temperatures. She said that the first time she encountered this was when she walked into an interview room and encountered a detainee whose hands and feet were shackled to the floor so that the detainee could not stand. She said that the room was stifling hot, there was a strong smell of urine and feces, and there was a small pile of hair next to the detainee's head. The MPs on duty told the agent that the detainee had been there since the day before and that the MPs were told by his interrogators to leave him there and not bring him any food or water until the interrogators came back. The MPs also told the FBI agent that they had been instructed to do this for other detainees.

The same FBI agent told the OIG that approximately two weeks later she encountered another detainee who was shackled to the floor of an interview room. She said the air conditioner had been set to make it very cold in the room and the detainee was shivering. Also, the detainee had

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[129] In addition to the incidents described in this Section we also address an incident involving the short-shackling of detainee Yousef Abkir Saleh Al Qarani (#269) in Chapter Eleven.

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urinated in his pants. The MPs advised her that the detainee had been in the room since the previous day with the air conditioner left on the whole time, and that they were told not to bring the detainee food, water, or anything else until the interrogators returned. The agent said the MPs told her that the interrogators were trying to "break down" detainees through the use of temperature manipulation, loud music, and immobility.

The FBI agent stated that she did not report either incident to her FBI OSC, but she believes that she did discuss this with her FBI colleagues at GTMO, some of whom told her that they had heard about this sort of thing being done at GTMO.[130]

Two other witnesses also told the OIG about another incident involving use of a stress position on detainee Salman Yahya Hassan Mohammed Rabeii (#508). One FBI agent said that early in his deployment at GTMO in 2002 he observed two young soldiers laughing and snickering at a detainee who was in what appeared to be a stress position on his knees. The detainee was rubbing his leg and the Arabic translator in the room was yelling at the detainee. The agent asked the soldiers if what was taking place was authorized activity. One soldier told the agent that the activity was authorized, but the agent was not convinced and he sought out a CITF legal advisor. The two of them brought this incident to the attention of the Commanding General's JAG.[131] We interviewed the former CITF legal advisor (who has since left the military and is now an Assistant General Counsel for the FBI), who provided a similar account to the OIG and identified the detainee as Rabeii. The former CITF legal advisor also told the OIG that on another occasion near that time he observed a detainee being short-shackled to the floor in a squatting position during an interview for the purpose of using the offer of a chair as an incentive for cooperation.

Second hand reports and detainee allegations. Several FBI agents told the OIG that they heard about incidents of prolonged shackling or stress positions from other agents or from detainees.[132] For example, the FBI OSC at GTMO during June 2002 said that he heard that some detainees had been shackled to the floor for prolonged periods in a manner that put some stress on the lumbar region of the back as a way to induce

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[130] The agent later reported these incidents in an e-mail response to the FBI Inspection Division survey and in an interview with the Inspection Division.

[131] The disposition of this report to military superiors is discussed below in Section III of this chapter.

[132] In commenting on a draft of this report, the DOD stated that "short shackling" is also a technique used to control violent or belligerent detainees to ensure the safety of others, and that this use could explain some of the agents' observations and second-hand information on the use of this measure.

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the detainees to talk. The OSC said he told his staff "we're not going to do that anymore," and to the best of his knowledge most agents stopped using this technique. The OSC stated that he heard that two task force officers from New York (not FBI agents) continued to use this technique, however, and that the OSC threatened to have them removed from GTMO if they continued to use this technique. The OSC said he could not recall the names of the New York task force agents or of any FBI agents who had employed this technique. None of the approximately 440 other FBI agents who served at GTMO that responded to the OIG in this review reported in their survey responses or interviews that they ever observed FBI agents use short-shackling or other stress positions at GTMO, and we were unable to determine the identity of any agents that the OSC said had used this technique.

Another FBI agent said that detainees Shafiq Rasul (#86), Asif Iqbal (#87), and Ruhel Ahmed (#110) told her that they had been "short-shackled" by the military on occasion to get them to cooperate in interrogations. The agent told the OIG that she understood that these detainees were short-shackled to wear down their resistance to interrogation. She stated that the alleged incident happened about 6 months before she arrived at GTMO, and it was used in conjunction with loud music, strobe lights, and temperature manipulation.

The same agent told the OIG that another detainee, Ahmed Ould Abdel Aziz (#757), complained that he was shackled for an extended period of time in conjunction with other aggressive interrogation techniques. The agent stated that during her time at GTMO, from December 2003 to September 2004, she was a member of a multi-agency interrogation team that had been building rapport with Aziz over a long period of time. She told us that another interrogator told her that Aziz had alleged that in February 2004 he had been subjected to yelling, short-shackling, lowered room temperature, strobe lights, and music. Aziz also alleged that he was left in the interrogation room for over 12 hours with no food, bathroom breaks, or breaks to pray. The agent told us that she and her team believed that the CIA had conducted this interview. She said she and the other interrogators on her team were angry because the incident undermined their lengthy effort to build rapport with this detainee, and because there had been no coordination with them prior to interrogating the detainee. She said she reported this incident to an FBI SSA and the FBI OSC, and the problem did not recur.

C. Sleep Deprivation or Sleep Disruption

Over 70 FBI agents deployed to GTMO told the OIG that they had information regarding the use of sleep deprivation or sleep disruption on

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detainees. This was the single most frequently reported interrogation technique.[133]

According to the *Church Report*, "sleep adjustment" was utilized frequently throughout the period of interrogation operations at GTMO. *Church Report* at 155, 170. The Memorandum approved by Secretary Rumsfeld on April 16, 2003, explicitly approved the use of "sleep adjustment," which it defined as "[a]djusting the sleeping times of the detainee (e.g. reversing sleep cycles from night to day." It further stated that this technique is not "sleep deprivation." According to the *Church Report*, the distinction between permissible "sleep adjustment" and prohibited "sleep deprivation" was imprecise and "blurry." *Id. at* 171, 174.

Many FBI agents described a program of sleep disruption employed by the military at GTMO designed to disorient detainees and thereby obtain their cooperation, which was known as the "frequent flyer program." According to military documents, this program consisted of frequent cell movements for a detainee in order to disrupt his sleep patterns and lower his ability to resist interrogation. The length and frequency of the cell moves varied with each detainee.

An FBI agent who was deployed to GTMO from December 2003 through September 2004 told the OIG that she was briefed by the U.S. military about this program, which consisted of moving detainees every few hours in order to disrupt their sleep pattern and to undermine any supportive relationships on their cell block. She stated that under the program detainees were moved every 4 hours, but that that the program could only be continued for about a week or two. The agent was not told by anyone in the FBI that this program was not available for her to use, and she believed that this technique would not be prohibited by any FBI policy. She told the OIG she never utilized this program, because she felt there were much more effective ways to accomplish the same goals.

Another FBI agent stated in his survey response that several Uighur detainees were subjected to sleep deprivation or disruption while being interrogated at Camp X-Ray by Chinese officials prior to April 2002.[134] The

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[133] In addition to the incidents described in this Section, several FBI agents told us that sleep deprivation or sleep disruption was a technique that the military employed with detainee #63, Al-Qahtani, in 2003. This information is described in Chapter Five. Also, as discussed in Part IV of Chapter Eleven, FBI agents participated in subjecting detainee Zuhail Abdo Al-Sharabi (#569) to extended isolation in 2003 at GTMO.

[134] Uighurs are an ethnic minority in China who are predominantly Muslim. While the Uighurs were detained at Camp X-Ray, some Chinese officials visited GTMO and were granted access to these detainees for interrogation purposes. The agent stated that he understood that the treatment of the Uighur detainees was either carried out by the

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agent said that one Uighur detainee, Bahtiyar Mahnut (#277), claimed that the night before his interrogation by Chinese officials he was awakened at 15-minute intervals the entire night and into the next day. Mahnut also claimed he was exposed to low room temperatures for long periods of time and was deprived of at least one meal.

The FBI agent who served as OSC at GTMO from June to August 2003 also told the OIG about a program at GTMO called "Operation Sandman," which involved sleep interruption and frequent cell relocations. He said he was briefed on this operation at a command staff meeting at which General Miller and all the department heads at GTMO were present. The OSC stated that at this time the military was concerned that the Saudi detainees were exerting too much influence over the other detainees and encouraging them not to cooperate with U.S. officials. As the OSC understood it, Operation Sandman was designed to keep some of the Saudi detainees mentally off balance, to isolate them either linguistically or culturally, and to induce them to cooperate.

D. Extreme Temperatures

Approximately 29 agents provided information to the OIG regarding the use of extreme temperatures on detainees at GTMO. Some agents simply observed that most interview rooms were cold. In a few cases however, it appears that detainees were intentionally subjected to extreme temperatures by unknown interrogators in an apparent effort to break the detainees' resolve to resist cooperating. As noted above, several agents reported the use of extreme temperatures in conjunction with prolonged short-shackling.

FBI agent observations regarding this technique were confirmed by the *Church Report*, which found that "environmental manipulation has been regularly employed throughout interrogation operations at GTMO. By far the most common version of this technique involved turning the air conditioning up in the interrogation room to induce moderate discomfort in the detainees, most of whom are accustomed to warm climates." *Church Report* at 171. According to the *Church Report*, environmental manipulation was not specifically addressed in a military interrogation policy for GTMO until it was listed as an approved technique in the April 16, 2003, Policy. *Id.* at 138, 155.

Chinese interrogators or was carried out by U.S. military personnel at the behest of the Chinese interrogators. He said he also heard from the Uighur translator that other Uighur detainees experienced this same treatment.

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Although temperature manipulation was an approved military technique, FBI agents told us that they avoided using this technique in connection with their interviews. One agent stated that the FBI OSC at GTMO told agents deployed to GTMO that the FBI was "not in that business."

E. Use of Working Dogs

We found no evidence of any FBI employees involved in the use of military working dogs in any fashion. Several agents described the use of dogs by the military, however. Secretary Rumsfeld's December 2, 2002, memorandum explicitly approved the exploitation of a detainee's individual phobias (such as fear of dogs) as an interrogation technique at GTMO. *Church Report* at 116. This technique was one of those for which approval was rescinded on January 12, 2003, however. *Id.* at 118-121.

Several FBI agents reported that military dogs were used at GTMO for purposes other than interrogations, including for the purpose of controlling or intimidating detainees when they arrived at GTMO.

In addition, as detailed in Chapter Five, SSAs Lyle and Foy from the FBI's Behavioral Assessment Unit (BAU) reported that they witnessed the use of a military dog to interrogate Al-Qahtani during the fall of 2002.[135] Several other agents stated in survey responses or interviews that they heard about the incident with the dog and Al-Qahtani, but that they did not witness it personally. The information they provided was generally consistent with the accounts given by Lyle and Foy. No other FBI agents reported the use of dogs during interrogations of any other detainees.

F. Isolation

GTMO had several areas that were used to segregate or isolate detainees, including the Navy Brig, certain sections of Camp Delta, Camp Echo, and Camp X-Ray.

Over 50 FBI agents provided the OIG with information regarding the use of isolation at GTMO. Some agents reported the use of extended isolation as part of an interrogation strategy to wear down a detainee's resistance. Others described the use of isolation by the military for disciplinary or security purposes. Different FBI agents had different understandings regarding whether the FBI could participate in the use of isolation as an interrogation strategy: some told us that they participated in

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[135] Lyle and Foy are pseudonyms

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the decision to put a detainee in isolation, while others stated that they understood that FBI agents were not authorized to employ this technique.

Secretary Rumsfeld explicitly approved the use of isolation for military interrogation purposes at GTMO on December 2, 2002. The December 2002 Policy provided for isolation up to 30 days, with any extensions requiring approval from the JTF-GTMO Commander. This approval was rescinded on January 12, 2003, but approval for this technique at GTMO with prior notice to the Secretary of Defense was reinstated on April 16, 2003.[136]

Isolation as an interrogation technique. Several FBI agents told us that the FBI participated in using isolation as an interrogation technique.[137] For example, one agent stated in his survey response that detainee Ghassan Abdullah Al-Sharbi (#682) was believed to have knowledge of a potential terrorist cell in the United States. Despite efforts to build rapport with this detainee, he remained uncooperative and even started to incite trouble within his cell block. The agent stated that the military and the FBI agreed that Al-Sharbi should be isolated for a period of 30 days in Camp Echo before the interview process resumed.

Two SSAs from the FBI's Behavioral Analysis Unit (BAU) who were deployed to GTMO in early 2003 told the OIG that isolation of detainees was a common practice at GTMO and was not considered abusive. These two SSAs encouraged the use of isolation with respect to certain detainees' interview strategies. One stated that if a detainee was behaving like a leader and gaining status, power, and momentum with other detainees, sometimes it was helpful to isolate him to make him more dependent on the interrogator. The agent stated that this practice was not necessarily in conflict with rapport building. The other BAU agent said that isolation of detainees was an appropriate practice, and said she never saw or heard of it being used improperly.

Another FBI agent said that while at GTMO she was aware of three detainees, Shafiq Rasul, Asif Iqbal, and Ruhel Ahmed, who were isolated within Camp Delta for an extended period of time as part of a concerted plan to gain actionable intelligence from them. She stated that the term "segregation" might be a more appropriate term than "isolation" for the conditions she observed.

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[136] *Church Report* at 117-121, 138. According to the *Church Report*, isolation was used by the military throughout interrogation operations at GTMO. *Id.* at 155.

[137] In addition to these incidents, 11 agents also described the use of isolation as an interrogation technique on Al-Qahtani (#63) as described in Chapter Five.

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Another agent who was deployed to GTMO during June and July 2003 told the OIG that isolation was an allowable interrogation technique available to both military and FBI interrogators at GTMO, and that an interviewer could request that a detainee be put into isolation. He said he never used this technique and was not aware of any other FBI or military interrogators using it. The agent said that isolation was used for only a short period of time and that the Commanding General of GTMO had to approve the request.

Other agents reported the opposite, and said that FBI agents were prohibited from using isolation as an interview technique. Similarly, the legal advisor to the Criminal Investigative Task Force (CITF) from March to July 2002 stated that the law enforcement agents of the CITF were not permitted to recommend that a detainee be placed in isolation and that CITF avoided even being consulted on the decision. One FBI agent expressed frustration that detainees could be isolated in Camp Echo for disciplinary reasons but not for intelligence gathering, because she thought it would be an effective technique.

Isolation for Disciplinary or Security Purposes. Several agents described incidents in which the military isolated detainees for disciplinary or security purposes, which sometimes complicated the agents' interview efforts. For example, one agent indicated in his survey response that detainee Shaker Abdul Raheem Mohammed Aamer (#239) was put into isolation at Camp Echo by the military for the maximum of 30 days because he was causing trouble at Camp Delta. The agent stated that although this may have served some behavioral purpose, it was counterproductive to the agent's efforts to get Aamer to provide information. In addition, agents told us the military would segregate detainees who were about to be released in order to ensure their safety just prior to release, and that detainees were isolated immediately before and after they met with the Red Cross.

G. Mistreatment of the Koran

Thirty-one FBI agents told the OIG they were aware of allegations regarding disrespectful statements, handling, or actions involving the Koran at GTMO.[138] However, the only two agents who said they personally witnessed such an incident during an interrogation were the SSAs who reported the incident with detainee Al-Qahtani, as previously described in Chapter Five. The remaining witnesses reported allegations they heard,

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[138] We are not aware of any military interrogation policy that explicitly addressed conduct designed to provoke a detainee by showing disrespect to a religion or religious item, although it is possible to characterize such conduct as part of a "pride and ego down" or "futility" technique.

mainly from detainees, of guards disrespecting the Koran in non-interrogation contexts, such as during cell searches.

Several agents identified a particular detainee, Ghassan Abdullah Al-Sharbi (#682), as having complained about disrespectful treatment of the Koran. According to these agents, Al-Sharbi claimed that the Koran would sometimes be knocked on the ground during detainee cell searches and that guards handled it disrespectfully. One agent told us that Al-Sharbi said that the simple act of a non-Muslim handling a Koran was considered inappropriate, which sometimes resulted in detainees being encouraged by block-mates to throw water or urine on the MPs. Al-Sharbi told the agent that a compromise was reached in which detainees would flip through their Korans while the MP watched to ensure nothing was hidden inside. Then the detainee would put the Koran down while the MP searched the rest of his cell. Other agents reported similar claims by detainees that military personnel had mistreated the Koran. We did not find any allegations or evidence that any FBI agents mistreated a Koran.

H. Touching or Acting Toward a Detainee in a Sexual Manner

Over 20 FBI agents reported in interviews or survey responses that they had seen or heard about female interrogators touching or acting toward a detainee in a sexual manner. We determined that several of these reports related to one interrogator and possibly to the same incident. In most of the other cases, the agents did not have personal knowledge of the incident and were reporting detainee allegations or information they had heard from others at GTMO. We describe the most specific and significant of these reports below.

According to the *Church Report*, sexual acts and mock sexual acts have always been prohibited interrogation techniques. The Church investigators found a single incident of an interrogator violating this prohibition, involving sexually suggestive comments and body movements. *Church Report* at 174-176. The *Schmidt-Furlow Report* stated that some conduct by female interrogators "designed to take advantage of their gender in relation to Muslim males" were authorized under military policies as "futility," and "mild non-injurious physical touching." *Schmidt-Furlow Report* at 7-9, 16-17.

As discussed in a prior Section of this chapter, SSA Brett told the OIG that during his deployment to GTMO in November or December 2002 he observed a female military interrogator apply lotion to the arms of a detainee, bend the detainee's thumbs back, and grab his genitals. As also discussed in that Section, another agent reported an incident involving the same female interrogator in which a detainee fell when he sought to evade the female rubbing lotion on him.

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Another agent who was deployed to GTMO during March through May 2003 described a claim by detainee Adel Fattough Ali Algazzar (#369) that Algazzar had seen another unnamed detainee return from an interrogation with blood on his face and head. Algazzar told the agent that when the other detainee did not cooperate with a female interrogator, she called four guards into the room to restrain him, removed her blouse, embraced him from behind, put her hand on his genitals, and wiped menstrual blood on him. The agent said he did not know the identity of the female interrogator and that at the time he suspected that the story was a lie or had been embellished. The agent said he reported the allegation to the FBI OSC, and that at the OSC's instruction the agent put the information in an FD-302 report dated April 21, 2003. We interviewed the OSC, who stated that he had no recollection of the agent or the fact that any agent reported such an allegation to him.

However, the Schmidt-Furlow investigation found that in March 2003 a female military interrogator retaliated against a detainee who had spit on her by showing him red ink on her hand and saying she was menstruating.[139]

According to an FBI FD-302 interview report that was dated April 8, 2003, detainee Abdul Latif Nasir (#244) made allegations of possible rapes of more than one detainee by either a military guard or interrogator during the 1:00 a.m. to 6:00 a.m. shift. The FD-302 also stated that Nasir described instances when detainees were searched in the groin area and touched sexually by male guards in the interview rooms. Nasir also described the possible attempted suicide of a Saudi detainee who had allegedly been raped and beaten by guards. Neither of the agents identified in the FD-302 stated in their OIG survey responses that they had heard these allegations. As previously noted, the FBI did not have a formal procedure for communicating allegations of this type to appropriate military officials until February 2005. According to the FBI, Nasir's allegations were transmitted to military officials at GTMO.

Several FBI SSAs told the OIG that they received reports about military interrogators behaving in a sexually provocative manner toward detainees. An SSA who served as OSC at GTMO from June 2003 to August 2003 stated in his survey response and interview that while he was at GTMO FBI agents told him that they observed female military interrogators

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[139] The *Schmidt-Furlow Report* found that the interrogator wiped the ink on detainee's arm after showing him her hand and telling him that it was menstrual blood. The report found that this technique was authorized under military policy as an act to demonstrate the "futility" of the detainee's situation, but faulted the interrogator for using a technique that was not approved in advance and recommended that she be formally reprimanded. *Schmidt-Furlow Report* at 9.

straddling detainees, whispering in their ears, and generally invading the detainees' personal space. The SSA stated that one agent told him a female military interrogator unbuttoned her blouse while straddling a detainee. The SSA said he could not recall the agents who provided this information to him.

Two other FBI SSAs told the OIG that an FBI Intelligence Analyst told them that a female military interrogator named "Sydney" had exposed her breasts and performed sexual lap dances on detainees to make them uncomfortable and ashamed, although the analyst had not witnessed this conduct personally.

Also, one FBI agent indicated in his survey response that he had information that detainees Slahi (#760) and Al-Qahtani (#63) were subjected to sexual conduct or touching. The agent was not specific about the actual techniques that were employed on Slahi and Al-Qahtani. Further information regarding the interrogation of Slahi and Al-Qahtani is provided in Chapters Five and Eight.

I. Use of Bright Flashing Lights or Loud Music

Approximately 50 FBI agents told the OIG that they had witnessed or heard about the use of bright lights on detainees, sometimes in conjunction with other harsh non-law enforcement techniques. Many agents stated they observed or heard about the use of loud music. These were among the most frequently reported techniques at GTMO. None of the witnesses we interviewed described the use of this technique by an FBI agent.[140]

According to the *Church Report*, these techniques were never specifically addressed by military interrogation policies for GTMO, although some interrogators consider them a form of "environmental manipulation" approved by the Secretary of Defense on April 16, 2003. *Church Report* at 138, 172. The Church investigators found that bright lights and loud music were used "occasionally" throughout the interrogation operations at GTMO. *Id.* at 155, 172. The *Schmidt-Furlow Report* found that this technique was used on "numerous occasions" between July 2002 and October 2004, and that this technique was authorized by Field Manual 34-52, "Incentive and Futility." *Schmidt-Furlow Report* at 9-10.

Many FBI agents witnessed the use of these techniques while walking through the interrogation trailers at Camp Delta. For example, one FBI agent told the OIG that approximately halfway through his tour at GTMO,

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[140] In addition to the incidents described in this section, bright lights and loud music were apparently employed by the military against detainee Al-Qahtani (#63), as described in Chapter Five.

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which was from June 25, 2003, through August 14, 2003, he observed a detainee alone in a darkened interrogation room, apparently bolted to the floor in a kneeling position, with a strobe light close to his face and loud music blaring in the room. The agent described the music as hard rock music, similar to the music performed by the group Metallica, played at a volume equivalent to a rock concert. The agent stated that he and another agent reported this activity at a meeting with their OSC. Other agents reported similar incidents during the same general time period.

The SSA who served as the OSC at GTMO from June to August 2003, when most of these incidents apparently occurred, told the OIG that he heard from his agents that military interrogators were using loud music as a pre-interrogation technique. He stated that although he did not think this technique was effective, he also did not think that the music was ever played at a level that would have been damaging to someone's hearing. The OSC stated that he may have mentioned this activity in a phone call with the Military Liaison and Detainee Unit (MLDU) Unit Chief, but that by that time it was well established that the military was employing this technique.[141]

J. Use of Duct Tape on Detainees

Five OIG survey respondents stated that they observed or heard about the use of duct tape on a detainee. We believe that most or all of these agents were likely referring to the same incident.

As noted in Chapter Five, SSAs Lyle and Foy were agents from the FBI's Behavioral Analysis Unit (BAU) who were deployed to GTMO in September and October 2002.[142] Lyle told the OIG that one evening while he and Foy were observing a law enforcement interview at Camp Delta, Andrews, the Chief of the the DOD's Interrogation Control Element at GTMO at the time, came into their observation room and said to them: "Hey come here I want to show you something."[143] Lyle followed Andrews to another observation room that was "packed" with military personnel, and pointed to one of the interrogation rooms that contained a detainee with duct tape wrapped around his head. Lyle said that two bands of tape went entirely around the detainee's head, one that covered his eyes and one that covered his mouth. Lyle said that the detainee had a full head of hair and a beard. The detainee was sitting on the floor handcuffed to the I-bolt in the floor.

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[141] Several of the survey respondents described the use of loud music over the public address system at Camp X-Ray in 2002 rather than as a specific interrogation technique. We received no reports that this practice occurred outside of Camp X-Ray.

[142] Lyle and Foy are pseudonyms.

[143] Andrews is a pseudonym.

There were two interrogators and two guards in the room with the detainee, and one of the interrogators was yelling at the detainee. Lyle asked Andrews, "Was he [the detainee] spitting on someone?" Andrews responded, "No, he just wouldn't stop chanting the Koran."

Lyle told the OIG that he left the room and described the incident to Foy and to the FBI OSC. Lyle stated that he then briefed the CITF commander and the chief JAG officer at GTMO.

SSA Foy and the FBI OSC provided accounts of the incident that were consistent with Lyle's description. The OSC told us that Foy told him about the duct tape incident and that he in turn reported the incident to his JAG counterpart and to FBI Headquarters. Foy also included a description of the duct tape incident in his EC to senior officials at FBI Headquarters dated November 22, 2003, which is discussed in Chapter Five. As also discussed in that chapter, around the time the MLDU Unit Chief learned of this incident, he raised the larger issue of aggressive military interrogation tactics – particularly in the context of the al-Qahtani interrogations - with DOJ officials.

The duct tape incident was addressed in the *Schmidt-Furlow Report*, which stated that duct tape was wrapped around the detainee's mouth and head in an effort to quiet the detainee. According to that report, Andrews claimed that he ordered the detainee to be duct taped because the detainee was screaming resistance messages and was potentially provoking a riot. Andrews claimed that at the time there were from seven to ten other detainees in the interrogation facility at the time and he was concerned about losing control of the situation. The Schmidt-Furlow investigators took statements from SSAs Lyle and Foy in which the FBI agents provided essentially the same information that they provided to the OIG. *Schmidt-Furlow* Exhibit 6. The *Schmidt-Furlow Report* found that Andrews's conduct was "unauthorized."[144]

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[144] There were differences between the statements provided by Andrews and the FBI agents, which the *Schmidt-Furlow Report* did not attempt to resolve. For example, Lyle and Foy stated that there were only one or two other interrogations underway at the time. Andrews, however, asserted that there was anywhere between seven and ten other interrogations taking place at the time of the duct tape incident, and that his action was necessary to prevent the possible incitement of other detainees. Yet, both Lyle and Foy described Andrews's demeanor as laughing or giggling. Lyle also indicated he was certain that Andrews said the reason he had the detainee duct taped was because he would not stop chanting the Koran.

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K. Forced Shaving

Approximately 20 FBI agents provided information to the OIG regarding the forced shaving of detainees' heads and faces. One agent described the use of shaving to undermine a detainee's standing within the cell block, while others reported the use of forced shaving as a disciplinary or hygiene measure.

"Forced grooming" (shaving of hair and beard) was specifically approved as a military interrogation technique by Secretary Rumsfeld on December 2, 2002, but this approval was rescinded on January 12, 2003. *Church Report* at 117-121. According to the *Church Report*, military interrogators sometimes used this technique at GTMO, including during the period after the Secretary's approval had been withdrawn. *Id.* at 155.

A former FBI OSC at GTMO said that in 2002 the FBI agent interviewing detainee Ghassan Abdullah Al-Sharbi (#682) told him that Al-Sharbi should have his beard shaved. The agent told the OSC that Al-Sharbi's beard was down to his waist and he was getting too much respect on the cell block for this. The agent recommended that Al-Sharbi be shaved in order to reduce his influence and the level of respect he was receiving from the other detainees on the cell block. The OSC said he thought that the agent had already consulted with the military about having Al-Sharbi's beard shaved. The OSC gave his consent and shortly thereafter Al-Sharbi's beard was shaved. However, the agent told the OIG said he neither observed nor heard about subjecting a detainee to forced shaving, except for hygiene purposes.

Two FBI agents reported to the OIG allegations from detainees that guards were shaving some of the detainees' beards half off in an effort to embarrass them, although neither agent observed this conduct. Several other agents described incidents of shaving as a punishment for detainee misconduct, such as attacking a member of the military.[145] Other agents reported that the shaving of detainee's heads and their facial hair was usually done for hygienic or health reasons.

L. Withholding Medical Care

We questioned the FBI agents about allegations that medical care was withheld from detainees. One agent described an incident that caused her to question whether adequate care was provided to a detainee, and several

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[145] During the OIG's visit to GTMO in February 2007, military personnel stated that cutting a detainee's hair and beard was a standard punishment for certain disciplinary infractions. At least one of the detainees interviewed by the OIG in 2007 had recently been subjected to such punishment.

other FBI agents told us about complaints from detainees that their medical needs had not been addressed. However, we received no reports that medical care was ever intentionally delayed or denied to a detainee.

One agent told the OIG that in early April 2004 she observed an interview of Mamdough Ahmed Habib (#661) in which he repeatedly vomited during the course of a lengthy interrogation.[146] She said she did not observe Habib receive any medical treatment, but that she heard that Habib was given Motrin to help alleviate his condition at some point during the interrogation. The agent reported that a Lieutenant Colonel who was a medical doctor was present at the time. The agent told the OIG that Habib's condition did not bother her at the time, but in retrospect she questioned whether the treatment of Habib was appropriate. However, she said she was certain that there was no plan or intention on the interrogators part to make Habib sick or take advantage of his condition.

Another FBI agent told the OIG that he interviewed a detainee at GTMO who complained that he needed to see a doctor about treatment for a wound he received in a shootout with the U.S. military in Afghanistan. The agent stated that the detainee did not appear to be in pain or distress at the time. The agent said that the guards told him that they were aware of the detainee's condition, and that military officials later told him that this detainee said that he needed to go to the base hospital every time he was interviewed.

Another agent told the OIG that one detainee at GTMO complained to her several times about what appeared to be a gastro-intestinal problem. The agent said she thought that the detainee in question should have been evaluated by military medical staff, and that she believed that the military was not taking this detainee's complaints seriously because he complained about many things. She said it took several complaints by her to the MPs before the detainee was evaluated, and that it turned out the detainee did have a real medical problem that required treatment. However, she stated that language barriers and limited availability of translators may have contributed to the delay in getting him treatment.

We found no evidence of any FBI agent who intentionally or otherwise delayed or denied a detainee's access to medical care. In fact, some agents told us that interceding on a detainee's behalf regarding a medical issue was extremely helpful in building rapport.

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[146] The agent said that she observed two interview sessions with Habib and that both lasted 15 hours with only a short break in between. She said that that she did not schedule these interviews but that FBI management at GTMO knew that she was participating and nobody ever told her not to be a part of it.

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M. Forced Cell Extractions

During an OIG visit to GTMO in April 2005, military officials advised that detainees held at GTMO were not allowed to refuse to report to any interviews or interrogations scheduled by any of the intelligence agencies. OIG investigators were told that if a detainee refused to attend an interview, he was subject to being forcibly removed by a special team of soldiers from the Joint Detention Operations Group (JDOG). In April 2005 the non-commissioned officer in charge of detention operations told the OIG that the extraction would be performed by a seven-man team consisting of one medical person, one person designated to video tape the extraction, and five people to perform the extraction. However, during an OIG visit to GTMO in February 2007, military officials advised that this policy had changed and that detainees are no longer required to attend interrogation or interview sessions with the various intelligence and law enforcement agencies.

Several FBI agents confirmed that forced cell extractions were used when detainees refused to comply with guard instructions. None of the agents we interviewed reported that forced cell extractions were used as an interrogation technique to break down a detainee.

N. Placing Women's Clothing on a Detainee

Four FBI agents deployed to GTMO reported that they heard about military personnel placing women's clothing on detainees, although none of them personally witnessed this conduct.

One agent described an incident involving detainee Yussef Mohammed Mubarak Al-Shihri (#114) during March to May of 2003. The agent stated that he and another FBI agent were building rapport with Al-Shihri over the course of three interviews, but that during their fourth interview Al-Shihri told them that "the mean ladies" came and got him from his cell in the middle of the night and interrogated him for hours. Al-Shihri said that during this interrogation he was also forced to listen to a recorded loop of the "meow mix" jingle for hours, was sprayed with perfume, and had a woman's dress draped on him. The agent told us he confronted a young female military intelligence contract interrogator whose name was unknown. She admitted to "poaching" his detainee and subjecting him to the treatment that he had alleged. The agent told us that after this incident Al-Shihri became uncooperative and that the techniques employed on Al-Shihri were counterproductive. The agent said he did not report this incident to

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the OSC at GTMO at the time or describe it in his FD-302 interview summaries for Al-Shihri.[147]

Other FBI employees told us they heard rumors of the use of women's clothing on detainees. An FBI Investigative Support Specialist said that while at GTMO he heard rumors that a detainee was forced to wear women's clothing and makeup during an interrogation and that this same detainee was also given a "lap-dance" by a female guard. An FBI Intelligence Analyst told us that while at a social function at GTMO she was told that a female military interrogator placed women's undergarments on a detainee during an interrogation. The analyst said that it was obvious to her that this was done to humiliate and demean the detainee. The analyst was also told that the female military interrogator performed a lap dance on this same detainee during the same interrogation.[148]

O. Transfer to Another Country for More Aggressive Interrogation

A few FBI agents who served at GTMO reported hearing about claims that detainees had been sent to another country for more aggressive interrogation by foreign interrogators.[149] However, it appears that these agents were likely describing an allegation relating to the same detainees.

One agent stated in his survey response that detainees Mohamadou Ould Slahi (#760) and Mahmdouh Habib (#661) told him that they had been sent to different countries before they were sent to GTMO: Slahi from Mauritania to Jordan, and Habib from Afghanistan to Egypt.[150] Another agent told the OIG that Habib told her that when he was in Afghanistan he was turned over to Egyptian authorities. The agent said that although Habib had been born in Egypt, he was a citizen of Australia. Habib told her that prior to his transfer to Egypt he met with both Australian and U.S. Government officials, and that while he was in Egypt he was subjected to several forms of torture. A third agent described hearing a second-hand report about an Australian detainee (likely Habib) who had been sent to

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[147] Another detainee told us that an FBI agent made him put on a woman's coat that had perfume on it, and that when he took it off he smelled like the perfume. We address this matter in Part IV of Chapter Eleven.

[148] As noted in Chapter Five and confirmed in the *Schmidt-Furlow Report*, in late 2002 military interrogators forced Al-Qahtani to wear women's clothing in an attempt to humiliate and embarrass him.

[149] The military policies for GTMO did not explicitly address actual or threatened rendition.

[150] Military and FBI documents indicate that Slahi was arrested in Mauritania and interrogated in Jordan for several months before he was transferred to GTMO.

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Egypt and interrogated by the Egyptian intelligence service prior to being transferred to GTMO.

P. Threatened Transfer to Another Country

Several FBI agents told the OIG that they had information about threats to send detainees to another country for detention or more aggressive interrogation. According to the *Church Report*, threat of transfer to another country was never specifically listed as a pre-approved interrogation technique under military policy for GTMO, and beginning in January 2003 prior notice to the Secretary of Defense was required before using it. The Church investigators identified one incident involving the use of this technique in a June 2003 interrogation of a high value detainee. *Church Report* at 168-69, 173.

SSA Lyle stated in his OIG survey response that military interrogators threatened Al-Qahtani using this technique.[151] Lyle said that at some point during the military's interrogation of Al-Qahtani at Camp X-Ray military interrogators threatened to send him to another country. Lyle believes that the country they threatened him with was Jordan. Lyle paraphrased what the interrogators said to Al-Qahtani as "we are going to send you to a place where the people aren't as nice as we are."

An SSA who served at GTMO in 2002 told the OIG that he was present at a GTMO staff meeting where this technique was discussed concerning Al-Qahtani and other detainees. The SSA said that the military wanted to handcuff Al-Qahtani, put a hood over his head, and fly him around in a helicopter and then an airplane. The plan was to return Al-Qahtani to GTMO but completely isolate him so that he would believe he was somewhere else. The agent said the goal was to make Al-Qahtani believe that they were just about to turn him over to officials from another country. We believe that this SSA may have in fact have been referring to interrogation plan for Slahi (#760) rather than Al-Qahtani. This plan is discussed in Section XV of Chapter Five. The SSA said that after he objected to this plan, he was not invited to any more staff meetings.

Another FBI agent who served at GTMO from December 2003 until September 2004 said that some detainees at GTMO were threatened with the prospect of being returned to their home countries which could go badly for the detainee. She indicated that this could be threatening to some detainees depending on where they were from, and that she probably used this technique herself. She stated that she did not consider this a threat because it was a real possibility for some of the detainees. As an example,

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[151] Lyle is a pseudonym.

she said that the Russian detainees did everything they could to be as valuable as possible in order to avoid returning to Russia. However, the agent stated that eventually these detainees were repatriated to Russia despite their cooperation.

Another FBI agent stated in his survey response that he asked certain uncooperative detainees if they would like to be sent back to their home countries for interrogation. He stated that some of the detainees may have perceived this as a threat and that some of them acknowledged that they were being treated better at GMTO than they would be in their home countries.

Other agents reported that they heard about the use of this technique from others. One agent reported that he heard that some detainees were threatened with being sent to Israel for interrogation. In addition, a Detective from the Phoenix Police Department who was deployed to GTMO as part of the FBI's Joint Terrorism Task Force stated in his survey response that a New York City Detective posed as an Egyptian Intelligence Officer, and the detainee involved was told that he would go back to Egypt with this Intelligence Officer unless he was cooperative.

Q. Threatening a Detainee's Family

Four agents told the OIG that they were aware of threats to take action against a detainee's family. According to the *Church Report*, threatening harm to others was a prohibited technique for military interrogators at GTMO. The Church investigators found one incident of threats made against the family of detainee Slahi (#760). *Church Report* at 174.

A police officer from California who served at GTMO as a member of the FBI's Joint Terrorism Task Force stated in his survey response that detainee Ahmed Esmatullah Fedah refused to give truthful answers in his interviews and that the officer told Fedah that he would attempt to deport any of Fedah's relatives living illegally in the United States.

Several FBI agents indicated that they had second-hand information about threats to detainees' families. Two FBI employees reported that they read or heard from others that military interrogators threatened detainee Slahi (#760) with the possible mistreatment of his family, including his mother, unless he cooperated with interrogators.[152]

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[152] The military's use of threats with Slahi is discussed in more detail in Section XV of Chapter Five.

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R. Depriving a Detainee of Food or Water

Six FBI agents reported that they saw or heard about detainees who were deprived of food or water, although some of them were citing instances in which detainees simply said they were hungry. According to the *Church Report*, denial of basic human needs such as food was always prohibited at GTMO. The Church investigators did not find any violations of this prohibition at GTMO. *Church Report* at 35, 106, 155, 173-4.

Two agents stated that detainees were likely deprived of food or water during periods of extended shackling. The incidents they reported are described in detail in Section II.B above. In addition, an FBI Intelligence Analyst said that she heard from agents at GTMO that water and certain food items were used as bargaining tools in interviews. She said that she heard that in some interviews if the detainee asked for water the agent would say "first you have to give me some information then I will get you some water." She added that agents would let the detainees have snacks or cigarettes if the detainees would first give them some information. She also stated that this technique was used by the FBI, NCIS, CID, CIA, and the U.S. military.[153]

S. Depriving a Detainee of Clothing

Several agents told the OIG that they saw or heard about detainees who were deprived of clothing. Removal of clothing was an explicitly authorized interrogation technique at GTMO between December 2, 2002, and January 12, 2003. *Church Report* at 117-121. As described in Chapter Five, two witnesses stated that Al-Qahtani (#63) had been at least partially deprived of clothing during part of his interrogation by the military.[154] The other incidents reported by the agents did not involve the removal of clothing as an interrogation technique, but rather as a disciplinary measure in response to detainee misconduct.

For example, one agent reported that the DOD's Joint Detention Operations Group confiscated the long pants from a segment of the detainee population that was notorious for throwing urine and feces on the guards, leaving the detainees with only short pants or underwear. The agent said that there were no other comfort items left to confiscate from these

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[153] The FBI has stated that this technique falls short of "depriving" a detainee of food or water.

[154] The *Schmidt-Furlow Report* found that in December 2002 interrogators forced Al-Qahtani to stand naked in front of a female interrogator, and used strip searches as an interrogation technique. *Schmidt-Furlow Report* at 20-21. This contradicted a finding in the Church Report that removal of clothing was not a technique used in the interrogation of Al-Qahtani. *Church Report* at 158.

detainees. She said the incident was referred to as "Pants Jihad" because other detainees protested by refusing to come to scheduled interrogations and generally being very uncooperative. Another agent stated in his survey response that detainees told him that the guards took away a detainee's clothing due to repeated suicide attempts.

T. FBI Impersonation

Approximately 20 FBI agents told the OIG that they had information regarding non-FBI personnel impersonating FBI agents. However, only one agent reported that she personally observed this conduct. In many cases FBI agents reported that detainees told them they had already been interviewed by the FBI, when the agents knew otherwise.

An FBI agent who was deployed to GTMO from December 2003 through September 2004 told the OIG about two occasions when a CIA interrogator represented herself as an FBI agent in a detainee interrogation. The agent stated that she reported this activity to her immediate supervisor at GTMO and also to the OSC. She also described another incident in which a detainee told her that he had been polygraphed by a female African-American FBI polygrapher. She said she could not confirm that the FBI ever had an African American female polygrapher on the island, and that she concluded that someone from another agency was impersonating FBI personnel.

Several other FBI agents reported to the OIG that detainees told them they had previously been questioned by other FBI personnel under circumstances that led the agents to believe that they had in fact been questioned by personnel from other agencies posing as FBI agents. Two agents told the OIG that they heard that intelligence personnel from the Defense HUMINT Service and the CIA started to dress like FBI agents at GTMO in order to either confuse detainees or to outright impersonate FBI agents during interrogations.

The FBI OSC at GTMO from June 2003 to August 2003 said that before he arrived at GTMO he was aware that U.S. military interrogators had been representing themselves as FBI agents by dressing casually and telling detainees they were FBI agents. He stated that he knew that some military and CIA interrogators would tell detainees that they were FBI as a ruse in an interrogation, and that it was a common practice for CIA agents to say they were FBI so as not to reveal their presence.[155]

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[155] The OIG also determined that a U.S. Army Sergeant falsely identified herself to detainee Slahi (760) as an FBI agent. This incident is discussed further in Section XV of Chapter Five.

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U. Other Conduct

A small number of FBI agents at GTMO told the OIG that they observed or heard about various other interrogation or detention techniques not addressed above. Some of this information was provided in response to the "catch all" OIG survey question regarding other interrogation techniques that were unprofessional, unduly harsh or aggressive, coercive, abusive, or unlawful.

Using water to simulate drowning. No FBI employees reported witnessing the use of water to simulate drowning (including "waterboarding") or similar techniques at GTMO. Out of the approximately 500 FBI employees who were deployed to GTMO, only 2 told the OIG that they had even heard of the use of such a technique. The first agent's information is described above at page 109. The second agent told the OIG that he once heard a discussion at GTMO when someone mentioned using water as an interrogation tool and someone else in the group said, "Yeah I've seen that." The agent told the OIG he doubted that anyone he talked to actually saw such a technique being employed at GTMO.

Hooding or Blindfolding. We sought information regarding the hooding or blindfolding of detainees for reasons other than the transportation of detainees at GTMO. Several agents indicated that they were aware of the use of hoods during the transportation of detainees, but not situations involving interrogations or detention operations.

Using Snakes. One FBI employee reported in his survey response that a detainee, whose name or number he could not recall, told him that he found a snake in his cell and he suspected that his "interrogators" had something to do with it. The employee indicated in his survey response that he too suspected that an interrogator from another agency might have been responsible for placing the snake in the detainee's cell.

Use of Pornography. Several FBI agents reported incidents involving the exposure of a detainee to pornography. For example, one SSA told the OIG that on July 30, 2003, he observed two military intelligence interrogators showing homosexual pornographic movies to a detainee and using a strobe light in the room. The SSA reported this incident in an e-mail to his Unit Chief.[156] Several other FBI agents also reported hearing

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[156] This incident was the subject of a "Commander's Inquiry" at GTMO in which Major General Jay W. Hood found "no credible evidence to support" the agent's claim that a homosexual pornographic movie was used during a military interrogation. However, General Hood did find that from August 2002 through July 2003 pornographic photos were used in 14 instances as an interrogation technique during military interrogations. As of March 20, 2006, General Hood prohibited the use of pornography in any form as part of an (Cont'd.)

allegations that detainees had been exposed to pornography at GTMO, but they did not themselves observe this conduct.[157]

Mistranslation. One FBI agent who served at GTMO from late December 2002 until early February 2003 told the OIG that on one occasion he and a translator listened in on an interview being conducted by an FBI agent and a translator named George (last name unknown). The observing agent said his translator told him that George was mistranslating what the interviewing agent was attempting to communicate to the detainee, and that what George was telling the detainee was considerably more inflammatory than what the interviewing agent was saying. The agent said that at some point much later he wrote an EC documenting this incident.

Draping a detainee in the flag of Israel. One agent reported an incident during the summer of 2003 in which a detainee was draped in an Israeli flag. The agent said that after finishing an interview he walked into an observation room where he heard loud music, saw a strobe light, and saw a detainee sitting on the floor with an Israeli flag draped over his shoulders.[158] There was no one in the interview room or in the monitoring room, but there were one or two men in the hallway wearing olive green fatigues with tape over their name badges. The agent said he reported this incident to the OSC, who responded that he would raise the incident with the General at the next staff meeting. The OSC told the OIG he had no recollection of being told about an incident involving an Israeli flag.

Performing a mock baptism. One agent told the OIG that he tried to establish rapport with detainee Yussef Mohammed Mubarak Al-Shihri (#114). The agent said that prior to his attempts to interview Al-Shihri, he heard that the military had someone dress up as a Catholic priest and pretend to baptize Al-Shihri. However, he said he never verified that this actually happened. The OSC at the time told the OIG said he did not recall the agent telling him about this incident.

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interrogation plan or as an incentive without prior approval of the Joint Task Force Commander.

[157] Two SSAs described circumstances surrounding the alleged treatment of a detainee Zuhail Abdo Al-Sharabi (#569) by another FBI agent. Among other things, they alleged that the agent placed pornography in Al-Sharabi's cell. The OIG's investigation of this incident is discussed in Chapter Eleven of this report. In addition, during an OIG interview on February 28, 2007, detainee Muhammad Al-Qarani alleged that an FBI agent exposed him to pornographic pictures. This incident is addressed in Chapter Eleven.

[158] A different agent said in his survey response that detainee Juma Mohammed Abdul Latif Al-Dosari, #261 told him that an interrogator wrapped an Israeli flag around Al-Dosari and then urinated on the flag.

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Sham interviews. The OIG survey also asked respondents to report any information they had concerning any "sham" or "staged" detainee interviews or interrogations conducted for Members of Congress or their staff. Two agents reported that they saw interviews that were being observed by congressional staffers. (From the dates and descriptions given, we believe that they may have been reporting the same incident.) In neither case did the agents consider the interview to be a sham. Another agent reported that she heard a second-hand account from a DOD interrogator that a sham or staged interview had taken place on multiple occasions, but that she did not observe this practice herself.

III. Disposition of FBI Agent Reports Regarding Detainee Treatment at GTMO

In this Section we examine the disposition of reports by FBI agents to their superiors or to military personnel regarding their concerns about detainee treatment at GTMO. The most significant such reports were the series of communications relating to military's use and planned use of various aggressive interrogation techniques on Al-Qahtani (#63) during 2002 and 2003, which are described in detail in Chapter Five. The agents who made the greatest efforts to elevate these issues were SSAs Lyle, Foy, McMahon, and Brett from the FBI's Behavioral Analysis Unit (BAU). As previously detailed in Chapter Five, these agents' concerns were elevated to officials in FBI Headquarters through Foy's EC of November 22, 2002, and McMahon's EC dated May 30, 2003, and were ultimately taken to the Department of Justice and the inter-agency process. In the end, the DOJ representatives were told that the military's methods would be pursued over DOJ's objections. In addition, the agents did not receive the formal guidance they requested from FBI Headquarters regarding how they should respond to the use of non-FBI techniques by interrogators from other agencies. Prior to the Abu Ghraib disclosures in 2004, most FBI agents who requested guidance regarding aggressive military interrogation techniques were given oral instructions to "stand clear" of such techniques.

The outcome of the FBI's attempts to elevate the dispute regarding Al-Qahtani inevitably influenced how the FBI handled subsequent reports regarding potential detainee mistreatment. FBI agents came to understand that military interrogators were authorized to use more aggressive interrogation techniques than were permitted for FBI agents, although the outer boundaries of military policy were not necessarily made clear. Many agents saw no point in reporting or complaining about conduct that they understood had been approved by the Secretary of Defense. The reluctance of many FBI agents to elevate their concerns about aggressive techniques was increased by the fact that the FBI was seeking to carve out a significant role in counterterrorism rather than to be cast in the unwelcome role of

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policing the conduct of other agencies' investigators. The FBI also generally sought to avoid becoming involved in determining whether particular techniques employed by the military were permitted under military policy.

There were additional factors that operated to limit the number of contemporaneous reports regarding detainee mistreatment at GTMO. Although some agents told us they understood that they were supposed to make such reports if they witnessed such abuses, other agents said they were never given any instructions in this regard, or that no mechanism for official reporting was in place. As noted in Chapter Six, the FBI had no formal reporting requirement prior to May 19, 2004. In addition, many FBI agents told us that they were never given clear instruction on what procedures were prohibited or permissible under military policy.

Despite these factors, some agents did report their concerns about detainee mistreatment, as detailed below. In general, these reports did not appear to have had a significant impact on military practices at GTMO.

A. Early Reports of Short-Shackling

Even before the concerns relating to Al-Qahtani reached FBI Headquarters, some FBI agents attempted to elevate the issue of rough interrogation tactics by military interrogators. As described in Section II.B of this chapter, in June 2002 an FBI agent observed a detainee in what appeared to be a stress position on his knees, being yelled at by a translator while two soldiers laughed. The agent reported what he observed to the CITF legal advisor, who relayed the report to the CITF chain of command and to the Staff Judge Advocate for Joint Task Force 170, to which the interrogators were assigned.

According to the FBI agent and CITF legal advisor, a meeting about this issue was held with the JTF 170 Deputy Commander. Both witnesses told the OIG that the Deputy Commander quickly lost his temper during this meeting. The FBI agent told us that the Deputy Commander misinterpreted the agent's concern as constituting a torture investigation, but that the agent was able to clarify the matter with the Deputy Commander.

The CITF legal advisor told us that after the meeting with the Deputy Commander the CITF Special Agent in Charge determined that the conduct in question was unacceptable and required further training and supervision, but that an investigation was not necessary. He said that all FBI and CITF agents were instructed that detainees would have the opportunity to be seated during FBI and CITF interviews. The legal advisor told us that the Defense Intelligence Agency (DIA) supervisor also agreed to instruct the Defense HUMINT Service interrogators to observe this rule.

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This incident apparently did not resolve the issue of short-shackling, however. Another FBI agent who was deployed at GTMO a few months later, in September 2002, stated that he observed non-FBI interviews where the interviewers instructed the guards to chain the detainee to a bolt in the floor in a sitting position that the agent believed was stressful and painful. The agent reported the conduct to his SSA, after which all of the interview teams were called together and given specific instructions about what techniques were not allowed. The agent told the OIG that after this, he no longer heard stories about or observed questionable interviewing techniques. However, as detailed in Section II.B, other FBI agents deployed at GTMO continued to see or hear about instances of short-shackling as late as February of 2004.

B. Agent Reports to Their On-Scene Commanders

Several agents told the OIG that, consistent with instructions that they received at or before the time they arrived at GTMO, they reported their concerns about incidents of detainee mistreatment that they had witnessed to their FBI superiors on the island such as an SSA or the On-Scene Commander (OSC). The incidents or techniques reported in this way included the thumb-bending incident observed by SSA Brett, the incident in which a detainee was draped in an Israeli flag, stress positions, strobe lights, short-shackling, and FBI impersonation. As described in Chapter Five, we found that some of these reports worked their way up the chain of command in the FBI and in DOJ. The MLDU Unit Chief told us that in response to these reports, he relayed instructions to FBI agents at GTMO that there was no revision to the FBI's existing policies about interviews and the FBI was not to participate in any tactics that were questionable. He said that Andrew Arena (Section Chief of the FBI's International Terrorism Operations Section 1) gave the same instruction during a visit to GTMO in 2002.

Some reports that FBI agents made to their OSCs never got elevated to officials in FBI Headquarters or DOJ. For example, once it was established that military interrogators were permitted to use certain interrogation techniques that were not available to FBI agents, the OSC often did not take the matter further up the FBI chain of command. One OSC told us that during his tenure at GTMO in the summer of 2003, FBI agents told him that they had concerns about a variety of techniques, including forcing a detainee to watch gay pornography, flashing red strobe lights in the detainee's face, loud music, and female interviewers straddling a detainee and whispering in his ear in an attempt to belittle him. The OSC told us he discussed these techniques with General Miller's Chief of Staff at GTMO. However, the OSC told the OIG he did not think that any of these techniques warranted intervention by the FBI and that these techniques most likely comported with the techniques approved by the Secretary of

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Defense, such as "pride down." The OSC told us that he may have mentioned some of these techniques to the MLDU Unit Chief, but that by that time it was well established that the military was employing these techniques, so he was not "burning down the phone line" to FBI Headquarters. An agent who served at GTMO in the summer of 2003 under this OSC told us that although he told the OSC about the military using short-shackling, strobe lights, and loud music during detainee interrogations, by that time it was "common knowledge" that these techniques were being used on detainees and he considered it an "ordinary" event.

Other agents described similar experiences. One agent stated that on most occasions when she raised questions about military techniques to her superiors at GTMO in early 2004, she was told something to the effect of "Yes, we agree that this is a bad practice, but it is not illegal." This agent told us that she was advised that most or all of the techniques she reported were permitted for the military under a policy memorandum issued by the Secretary of Defense or his Deputy. Sometimes the OSCs would adopt strategies to help FBI agents avoid using a particular interrogation trailer on a day that the military was using it, so that the agents would not be exposed to military techniques such as loud music.

C. Detainee Allegations of Mistreatment

The FBI agents at GTMO followed somewhat different procedures for dealing with the situation in which a detainee made an allegation during an interview with an FBI agent that the detainee or other detainees had previously been abused. Often these allegations related to alleged abuse that occurred prior to the detainee's arrival at GTMO. These allegations presented different considerations from incidents in which FBI agents personally observed the use of non-FBI tactics by military interrogators. To begin with, in many instances the agent hearing the allegations did not deem them credible. They knew that captured al-Qaeda training materials recommended that detainees should make false allegations of mistreatment. However, FBI agents did not find all detainee allegations to be incredible, and several agents sought guidance regarding what to do with such claims.

One SSA who served two rotations as OSC at GTMO told us that he initially told the agents to write up detainee abuse allegations to a "war crimes" file so the FBI could retrieve the information if it was needed for further investigation. Two agents described instances in which they made such reports.

For example, one agent who served in 2002 told the OIG that during his administrative orientation with the FBI when he first arrived at GTMO he was told that he should write up any potential "war crimes" allegations in

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an FD-302 for inclusion in the "war crimes" case files in the FBI office at GTMO. He stated that the agents were not given a definition of "war crime," however. This agent wrote up one such allegation from detainee Abbas Abed Romi Al Na'ely (#758) in an FD-302. The detainee claimed that while being interrogated by an American in Bagram, Afghanistan, he was required to stand or kneel with his hands and arms over his head for hours at a time over a period of three days, until he would admit to his interrogators having connections to al-Qaeda. The FBI agent told the OIG he did not have the resources to further investigate the detainee's claims but that it was his understanding was that it "would be looked at sometime in the future" and "leads" would be sent out to agents working in the field where the incidents occurred. The agent did not know if this particular detainee's claims were ever actually investigated.

Another detainee told an FBI agent in November 2002 that he was beaten by an FBI or CIA agent in Afghanistan before his transfer to GTMO, and that stress positions had been used on him. It was not clear how the detainee knew the FBI was involved. The detainee gave very specific details about what happened to him, which the agent wrote up in an FD-302 interview summary for inclusion in the "war crimes" file. The agent told the OIG that he believed that something bad had happened to the detainee but doubted that the FBI was involved.

At some point in 2003, however, the OSC at GTMO received instructions not to maintain a separate "war crimes" file. The OSC stated that the MLDU Unit Chief told him that investigating detainee allegations of abuse was not the FBI's mission. The OSC stated that he was told that the agents could continue to memorialize such allegations in their FD-302 interview summaries, but that the FBI wouldn't segregate such allegations into a separate file.

The documents provided by the FBI to the OIG included several FD-302 interview summaries that reported detainee claims of mistreatment together with the substantive information obtained during the interview. As previously noted, one agent told us that in April 2003 a detainee claimed that a female interrogator touched the genitals of another, unidentified detainee, removed her blouse, and wiped what she said was menstrual blood on the detainee. The agent told his OSC, who instructed him to record the allegations in an FD-302 report. The agent told the OIG that he doubted the credibility of the detainee's account or believed the incident had been embellished.

Another agent who served at GTMO in the summer of 2003 told the OIG that he made a report to his OSC at GTMO about a detainee who claimed he had been raped by a female CIA agent in Afghanistan. The agent also reported the allegation in the FD-302 he prepared at the time, but

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indicated that the interviewers doubted the truth of these claims. The OSC told us he did not recall hearing about this allegation, but that he probably did and would not have believed it, based on the OSC's own experiences in Afghanistan. We concluded that this allegation was not elevated further because the agents at GTMO (including the OSC) did not find it credible.

We believe that the OIG did not receive an FD-302 summary for every claim of mistreatment that a detainee made to an FBI agent. There were several reasons that some allegations were not reported contemporaneously in the interview summaries. Some agents told us they did not recall getting instructions about what steps to take if a detainee made a claim of mistreatment. In other cases, the agent believed that the alleged conduct was consistent with military policy and therefore did not need to be reported. Further, some agents reported that their OSC specifically instructed them not to include allegations of abuse in their FD-302 reports.

D. Referral Back to the Military

The FBI and DOJ generally did not consider themselves to have jurisdiction over detainee claims of abuse by interrogators from other agencies in the military zones. Although some FBI agents understood that they should report incidents of detainee mistreatment to their supervisors or record detainee allegations of abuse in their FD-302 interview summaries, we found no indication that there was any formal procedure for communicating the incidents or detainee claims of abuse back to the military or of otherwise following up on such claims until after the Abu Ghraib scandal became public.[159]

On July 14, 2004, the FBI referred three particular incidents to the military for "appropriate action": the thumb-bending incident witness by SSA Brett (described in Section II. A of this chapter), the duct tape incident witnessed by SA Lyle (described in Section II.J of this chapter), and the use of a dog during the interrogation of Al-Qahtani witnessed by SAs Lyle and Foy (described in Section II.E of this chapter.[160] These incidents were referred by means of a letter from DAD Harrington to Major General Donald J. Ryder of the Army Criminal Investigation Command. The incidents reported in this letter involved matters personally observed by FBI agents in the fall of 2002, nearly 2 years before the letter was sent. In selecting which

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[159] Military personnel had access to the FD-302 interview summaries, some of which were prepared jointly by FBI and military interrogators. However, such access was primarily for the purpose of developing intelligence or evidence rather than for seeking out or tracking allegations of detainee mistreatment.

[160] The FBI also referred several allegations of detainee mistreatment by FBI agents at GTMO to the OIG for investigation. These are addressed in Chapter Eleven.

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incidents to refer, the FBI excluded incidents involving techniques such as stress positions that the FBI believed were approved under military policy. Harrington told the OIG that although there had been prior discussions of these incidents with the military, the FBI was concerned that the incidents had not been formally reported to the proper personnel.

As detailed in Chapter Six, during July 2004 the FBI surveyed approximately 500 employees who served at GTMO to determine the extent of the FBI's knowledge of aggressive interviews of detainees. In September of that year the FBI conducted several follow-up interviews. FBI General Counsel Valerie Caproni forwarded the results of the survey and the interviews to John H. Smith, Deputy General Counsel for the DOD. Caproni's letter stated:

> Our initial evaluation [of the results of the GTMO inquiry] was that no employee reported conduct appropriate for referral (either because the conduct appeared to be within the techniques authorized for Department of Defense employees or because the employee had insufficient factual detail on the reported incident). Nonetheless, all affirmative responses to the survey are attached for any follow-up investigation the Department of Defense deems appropriate.

We did not attempt to ascertain what action the DOD took in response to Caproni's letter.

In August 2004, the FBI Assistant General Counsel assigned to GTMO reviewed FBI interview summaries (FD-302 Forms) and relayed any allegations of abuse contained in them to FBI Headquarters and to the legal and command elements of the military at GTMO. As discussed in Chapter Six, in February 2005 the FBI established a formal process for reporting any such allegations to the military and, in the case of allegations against FBI agents, to the OIG or the FBI Office of Professional Responsibility.

IV. Conclusion

The most commonly reported technique used by non-FBI interrogators on detainees at GTMO was sleep deprivation or disruption. Numerous FBI agents told the OIG that they witnessed the military's use of a regimen known as the "frequent flyer program" to undermine cell block relationships among detainees and to disrupt detainees' sleep in an effort to lessen their resistance to questioning. A few FBI agents participated in this program by requesting military officials to subject particular detainees to these frequent cell relocations. Other FBI agents described observing military interrogators use bright lights, loud music, and extreme

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temperatures to keep detainees awake or otherwise wear down their resistance.

Prolonged short-shackling, in which a detainee's hands were shackled close to his feet to prevent him from standing or sitting comfortably, was another of the most frequently reported techniques observed by FBI agents at GTMO. This technique was sometimes used in conjunction with holding detainees in rooms where the temperature was very cold or very hot in order to break the detainees' resolve. "Stress positions" were prohibited at GTMO under DOD policy beginning in January 2003. FBI agents' observations confirm that prolonged short-shackling continued at GTMO for at least a year after the DOD policy prohibiting stress positions took effect.

FBI agents also observed the use of isolation at GTMO, both to prevent detainees from coordinating their responses to interrogators and, in its most extreme form, to deprive detainees of human contact as a means of reducing their resistance to interrogation. We found that, in several cases, FBI agents participated in interrogations of detainees who were subjected to prolonged isolation by the military.

In addition, FBI agents reported a number of other harsh or unusual interrogation techniques used by the military at GTMO. These incidents tended to be small in number but became notorious because of their extreme nature. They included using a growling military dog to intimidate a detainee during interrogation; twisting a detainee's thumbs back; using a female interrogator to touch or provoke a detainee in a sexual manner; wrapping a detainee's head in duct tape; exposing a detainee to pornography; and wrapping a detainee in the flag of Israel.

We examined how reports from agents regarding detainee treatment at GTMO were handled by the FBI. In addition to the reports addressed in Chapter Five, we found that early FBI concerns about detainee short-shackling were raised with JTF-GTMO in June 2002. However, FBI agents continued to observe the use of short-shackling as a military interrogation technique as late as February 2004. Some reports to FBI Headquarters led to instructions that FBI agents should stand clear of non-FBI techniques. As time passed, other reports from FBI agents to their OSCs regarding military conduct were not elevated within the FBI chain of command because the OSCs understood that the conduct in question was permitted under DOD policy.

Detainees sometimes told FBI agents they had previously been abused or mistreated. FBI practices in dealing with such allegations varied over time. Some agents were told to record such allegations for inclusion in a "war crimes" file; others were told to include the allegations in their regular FD-302 interview summaries; and others told us they were instructed not to

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record such allegations at all. No formal FBI procedure for reporting incidents or allegations of mistreatment to the military was established until after the Abu Ghraib prison abuses became public in 2004.

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CHAPTER NINE
FBI OBSERVATIONS REGARDING DETAINEE TREATMENT IN AFGHANISTAN

I. Introduction

Most of the FBI employees we contacted reported that they never observed or heard about any potentially abusive treatment of detainees in Afghanistan. Overall, of the 172 FBI agents who responded to our survey and who served in Afghanistan between late 2001 and the end of 2004, 118 stated that they neither observed nor heard about any of the kinds of detainee treatment described in the survey. We received similar reports during our interviews with agents who had served in Afghanistan.

Several of the FBI agents sent to Afghanistan reported that they observed or heard about various rough or aggressive treatment of detainees by military interrogators, including harsh or prolonged use of shackles or restraints, coercive use of stress positions, deprivation of clothing, and sleep deprivation by means of frequent awakenings, loud music, or lights. Table 9.1 summarizes the survey responses to our questions regarding the use of particular interrogation techniques in Afghanistan.[161]

TABLE 9.1
Survey Results Concerning
Interrogation Techniques Observed in Afghanistan

	Interrogation Technique	Personally Observed	Observations Led Me to Believe	Detainee Told Me	Others Described To Me	None of the Above
1	Depriving a detainee of food or water			1		185
2	Depriving a detainee of clothing	2		1	1	180
3	Depriving a detainee of sleep, or interrupting sleep by frequent cell relocations or other methods	8	5	2	14	153
4	Beating a detainee			2	3	178

[161] For a discussion of the limitations to the interpretation of this data, see Chapter Eight, Section I.

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	Interrogation Technique	Personally Observed	Observations Led Me to Believe	Detainee Told Me	Others Described To Me	None of the Above
5	Using water to prevent breathing by a detainee or to create the sensation of drowning					187
6	Using hands, rope, or anything else to choke or strangle a detainee					185
7	Threatening other action to cause physical pain, injury, disfigurement, or death	2				185
8	Other treatment or action causing significant physical pain or injury, or causing disfigurement or death			1		184
9	Placing a detainee on a hot surface or burning a detainee		1	1		185
10	Using shackles or other restraints in a prolonged manner	3				183
11	Requiring a detainee to maintain, or restraining a detainee in, a stressful or painful position	1			5	179
12	Forcing a detainee to perform demanding physical exercise				1	182
13	Using electrical shock on a detainee					184
14	Threatening to use electrical shock on a detainee					183
15	Intentionally delaying or denying detainee medical care					186
16	Hooding or blindfolding a detainee other than during transportation	5	1		2	177
17	Subjecting a detainee to extremely cold or hot room temperatures for extended periods				1	185
18	Subjecting a detainee to loud music	13			5	165
19	Subjecting a detainee to bright flashing lights or darkness	2	1		4	177
20	Isolating a detainee for an extended period	5	1	2	5	172
21	Using duct tape to restrain, gag, or punish a detainee				1	185
22	Using rapid response teams and/or forced cell extractions	3	2		4	175
23	Using a military working dog on or near a detainee other than during detainee transportation	1			2	181
24	Threatening to use military working dogs on or near a detainee	1				183
25	Using spiders, scorpions, snakes, or other animals on or near a detainee					184
26	Threatening to use spiders, scorpions, snakes, or other animals on a detainee					185

	Interrogation Technique	Personally Observed	Observations Led Me to Believe	Detainee Told Me	Others Described To Me	None of the Above
27	Disrespectful statements, handling, or actions involving the Koran			1		185
28	Shaving a detainee's facial or other hair to embarrass or humiliate a detainee	3				182
29	Placing a woman's clothing on a detainee					185
30	Touching a detainee or acting toward a detainee in a sexual manner				1	186
31	Holding detainee(s) who were not officially acknowledged or registered as such by the agency detaining the person.	2	1		2	179
32	Sending a detainee to another country for more aggressive interrogation	2		3	2	178
33	Threatening to send a detainee to another country for detention or more aggressive interrogation	2			3	182
34	Threatening to take action against a detainee's family	3				183
35	Other treatment or action causing severe emotional or psychological trauma to a detainee		1			184
36	Other religious or sexual harassment or humiliation of a detainee					184
37	Other treatment of a detainee that in your opinion was unprofessional, unduly harsh or aggressive, coercive, abusive, or unlawful					185
	Observation Totals	58	13	14	56	6,701

In Part II of this chapter, we describe the FBI agents' specific observations regarding particular interrogation techniques.[162] In Part III, we examine the handling of reports by FBI agents to their superiors or to military personnel regarding their concerns about detainee treatment in Afghanistan.

[162] Many of the incidents described below have previously been discussed in press accounts of FBI documents that were released to the American Civil Liberties Union pursuant to a Freedom of Information Act request.

II. Observations Regarding Particular Techniques

A. FBI Knowledge of Detainee Beating Deaths

None of the FBI employees reported that they ever personally witnessed any beating or other treatment which caused physical injury to a detainee in Afghanistan.

Four FBI agents stated in their survey responses or interviews that while they were in Afghanistan they heard about two detainee deaths at the military facility in Bagram. These agents were referring to two incidents in December 2002 at Bagram that have been described in the *Church Report* and news reports. The two detainees died at the Bagram facility following interrogations in which the detainees were shackled in standing positions to prevent them from sleeping and were kicked and beaten by military interrogators and military police.[163] *Church Report* at 235-236; 2/13/2006 www.NYTimes.com; New York Times, 9/14/05.

None of the FBI agents who referred to these deaths said that they had personal knowledge of the incidents or were aware of any of the details, and none indicated that any FBI personnel had contact with either of these detainees. One of the FBI agents told the OIG that he and his FBI partner discussed the matter and called back to FBI Headquarters about it. He said they were told that U.S. Army Criminal Investigation Command was investigating the deaths.

[redacted][164] However, no FBI agent provided any information to us relating to these incidents.

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[163] The Army's Criminal Investigative Division recommended charges against 28 soldiers in connection with these deaths. *Church Report* at 235-6. At least 15 of these soldiers have been prosecuted by the Army. At least 6 have pleaded guilty or been convicted of assault and other crimes, but several have been acquitted. New York Times, 2/13/06 "The Bagram File."

[164] [redacted] The Department of Justice decided that there was inadequate evidence to support criminal prosecution of any individual in connection with this incident. In June 2003 a military detainee died at Asadabad Base after being assaulted by a CIA contractor. David Passaro, a civilian CIA contractor, was found guilty on several counts of assault in that case, and his conviction is on appeal as of August 2007. 8/17/2006 Washington Post, at A17; USAToday.com (Aug. 17, 2006); PACER Docket Summary (4th Cir.). According to the *Church Report*, Afghan lawyers have also alleged that an Afghan Army recruit was killed and that seven other Afghans were severely mistreated in March 2003 at a forward operating base in Gardez. Although the military initially closed the case for lack of evidence, in September 2004 the military reopened its investigation. *Church Report* at 237.

B. Beating, Choking, Strangling, or Other Abusive Handling of Detainees

The OIG survey asked FBI agents to provide information concerning physical violence against detainees, including beatings, the use of hands, rope, or anything else to choke or strangle a detainee, or other treatment causing significant physical pain, injury, disfigurement, or death. Nothing in the *Church Report* suggests that techniques involving the infliction of pain, injury, or death were ever officially approved for use in military interrogations in Afghanistan. According to the *Church Report*, "mild, non-injurious physical contact" that did not cause pain was approved for use in Afghanistan for at least part of the relevant period, but this would not encompass beating, choking, or other treatment causing pain, disfigurement, or death. *Church Report* at 221. The *Church Report* described allegations of detainee beatings by military personnel that were either confirmed by military investigators or still under investigation by the Army Criminal Investigation Command. *Id.* at 234-35, 237.

No FBI agents reported to us that they ever saw a detainee whom they suspected had been injured other than during battle or capture, or reported that they observed any injuries which by their nature or appearance suggested post-capture mistreatment. Two agents stated in their survey responses that they witnessed incidents involving rough treatment of detainees by military personnel. One agent who served at Kandahar during January and February 2002 reported that, on occasion, he observed MPs at Kandahar "man-handling" or roughly handling detainees. For example, the agent told us that on one or two occasions MPs brought a detainee to an interview tent with his arms restrained behind his back, and that the MPs raised his arms, causing him to wince in apparent pain as they brought him in. The agent said he became angry when the MPs laughed about it because this started the interview badly. He told us that when he spoke to the Sergeant in charge about it, the Sergeant agreed this should not happen, and the agent said he "did not see this again from the same people." The agent indicated that in general, "[t]he Army chain of command was supportive" in response to FBI concerns about detainee treatment and in correcting the problems. The agent stated he also raised his concerns orally with his OSC, but that he did not know if any FBI action was taken as a result of his report.

Another FBI agent told us that in July 2003, during his processing of detainees at Bagram, he observed two military personnel escorting a shackled detainee. He said that one of the soldiers started yelling at the detainee, and then gave him a two-handed push which "bounced him off a wall." This agent said that he immediately brought this to the attention of a Master Sergeant who was present, and that she reprimanded the soldier.

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When the FBI agent also described the incident to a military Captain, the soldier was removed from the operation.

FBI documents, including FD-302 detainee interview summaries prepared in 2003 and a timeline prepared by the FBI Office of General Counsel, describe other claims by detainees that they had been physically abused in Afghanistan. For example, detainee Naqibullah Shawali Zair Mohammed (#834) told FBI interviewers that after his arrest by U.S. forces in October 2002, he was taken to Bagram and hung from the rafters by his handcuffs for five to seven days and had his head smashed against the wall. Detainee Bashir Nasir Ali Al Marwalah (#837) told FBI agents at GTMO that after being arrested in Pakistan he was beaten by unidentified captors in Bagram. In another interview, Marwalah stated the beatings occurred at a prison run by Pakistanis before he was transferred to Bagram. Detainee Zahir Shah (#1010) told the FBI that he was beaten by guards while in detention in Bagram or in transit to GTMO.[165]

As noted in Chapter Six, the FBI eventually implemented a procedure for recording and tracking detainee claims of abuse at GTMO and referring them to the military for possible investigation. We found no indication that any similar procedure was adopted for Afghanistan.

The FBI OSC in Afghanistan during February to April 2005 told the OIG that shortly before he left Afghanistan, he was advised by the Provost Marshal at the Bagram Airbase that a detainee had alleged that he had suffered physical abuse in Kabul by an unnamed FBI agent many months earlier. The OSC said he was not aware of any holding facility in Kabul at which any FBI personnel worked during his tour and so advised the Provost Marshal. The OSC sought further information from the Army Criminal Investigation Command on the base in an effort to collect information regarding the detainee making the allegation, in order to begin an appropriate investigation. However, the OSC stated that no further information was provided to him prior to his departure on April 26, 2005.

C. Using Shackles or Other Restraints in a Harsh or Prolonged Manner

Five FBI agents provided information in their survey responses and follow-up interviews regarding the use of shackles or other restraints in a harsh, painful, or prolonged manner in Afghanistan. These agents generally

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[165] The FBI also learned about allegations that CIA agents physically assaulted detainees in Afghanistan in August and September 2002. This information was provided by the CIA OIG in connection with a request that the FBI conduct a criminal investigation.

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described the use of restraints as a military security measure for U.S. personnel and operations.

The *Church Report* did not specifically describe the use of prolonged shackling by the military as an interrogation technique in Afghanistan. Such a technique could be considered a form of a "safety position" or "stress position," which the *Church Report* generally described as requiring a detainee to maintain an awkward or uncomfortable position in order to control his movement during interrogation, both for purposes of interrogator safety and as an incentive to cooperate. *Church Report* at 216-18. According to the *Church Report*, military policies governing this technique were not always clear and changed several times during the relevant period.[166] The *Church Report* found that military interrogators used stress positions in Afghanistan as an interrogation tool at least until February 2003 and again between March and June 2004. *Id.* at 217-18.

Two FBI agents told us that they observed the prolonged use of shackles or restraints by military personnel at Bagram in March and April 2002 on several detainees whom they understood posed a significant danger to U.S. personnel. They said that while outside of the holding enclosures, all detainees were handcuffed and usually shackled at the feet. Depending on the threat level of a detainee, the handcuffs would be removed in the interview room and the leg shackles left on, but for the few dangerous "hard-core" detainees, the handcuffs were left on as well. Neither of these agents believed that the restraints were used to coerce information or cooperation from detainees. One agent said that if the FBI agent felt that he was developing a rapport with the detainee, he would ask to have the restraints removed, but the military guards usually refused.

Similarly, an FBI agent at Bagram and Kabul in the first few months of 2003 reported that "detainees were often handcuffed during entire interrogations for security purposes," and that he was told that "sometimes violent detainees remained handcuffed in [their] cells" as well.

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[166] This method was not specifically discussed in Field Manual 34-52, which governed interrogations in Afghanistan during the early part of that war. *Church Report* at 196-204. According to the military documents described in the *Church Report*, the practice was a "frequent occurrence" in Afghanistan. *Id.* at 217. In February 2003, CJTF-180 directed that safety positions be limited to safety considerations and not "to increase discomfort or as a means of interrogation." *Id.* at 203. In March 2004, however, the use of uncomfortable "safety positions" as an incentive for cooperation was reinstated as an approved interrogation technique as part of an interrogation plan approved by an officer-in-charge or an interrogation team leader. *Id.* at 217. In June 2004, following the Abu Ghraib disclosures, "stress positions" were specifically prohibited in Afghanistan. *Id.* at 211, 217-18.

Another agent reported in his survey response that in January and February 2002 detainees were often brought to the interview tent in shackles or cuffs that were too tight. The agent said that once when he complained a soldier laughed and said the agents were being "too soft." However, after the agents took their complaint up the military chain of command, they did not see the soldier in that capacity again. The agent said incidents like this occurred several times. The agent stated that when he raised this issue with different soldiers, the reaction depended on the individual MP -- some said they would use some other kind of restraints to help the FBI establish more rapport with the detainee, and others said they were too busy to give the detainee special treatment.

The same FBI agent also noted that on several occasions MPs used an "almost medieval-looking," rigid, wrought iron shackle system he had never seen before. The clamps on the wrists were connected by a stiff metal rod, and the rod was joined by a chain to shackles around the detainees' ankles. The devices were not adjustable for the size of the detainees' wrists or ankles or height, and he saw that the detainees were uncomfortable as they shuffled into the interview tent. The agent said that these shackles did not look like anything the U.S. government would have provided, and he believed that they may have been locally obtained.

D. Sexually Abusive or Humiliating Contact

One FBI agent provided information concerning a detainee's allegation that U.S. personnel engaged in sexually abusive conduct toward him in Afghanistan. The agent stated that in July 2003 a detainee in GTMO alleged that a white female CIA agent had raped the detainee while he was a prisoner at Bagram. Because this allegation was reported at GTMO, we address it in Section III of Chapter Eight.

E. Abusive Body Cavity Searches

According to two April 2004 DOD Inspector General memoranda, two military attorneys reported to military investigators that they learned of potential detainee abuses during a dinner with two FBI agents in January 2004 in Florida. We determined that one of the agents was an FBI Special Agent and the other was a New York City Police Department employee assigned to the FBI's Joint Terrorism Task Force (the "NYPD detective"). These agents were deployed to Afghanistan and later to GTMO.

According to the DOD memoranda, during the dinner the NYPD detective told the attorneys that he had been in Bagram sometime in December 2001 or early 2002 "and was involved in photographing detainees during the in-take process." The NYPD detective also said that he observed several detainees coming out of an area where they were being processed

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and searched. He said he saw feces running down their legs and that they were in apparent pain. The NYPD detective said he went into the area and noticed that the detainees were being given what appeared to be anal cavity searches, and that an unknown individual involved in the process asked the agent to photograph him while he performed such a search, but the NYPD detective refused. In addition, the second military attorney told DOD investigators that the NYPD detective stated that the individual performing these searches "was not changing gloves" after each search, because the NYPD detective "observed feces and blood inside a bottle of Vaseline that he observed in the area." The attorney stated that while both agents were intoxicated at the dinner, he "believed the [NYPD detective] was telling the truth . . . ."

We confirmed that the NYPD detective was serving in Afghanistan at the time of the alleged events described. The FBI agent told us that he was deployed to Afghanistan from the end of April 2002 through the beginning of June 2002. The NYPD detective declined our request for an interview.

We interviewed the FBI agent, who stated that he disagreed with the way the military attorneys had characterized in their memoranda what the NYPD detective had described at the dinner. The FBI agent said that he had not been in Afghanistan when the January 2002 cavity searches described by the NYPD detective occurred, but had served in Afghanistan with the NYPD detective later in 2002. The FBI agent believed that the young military lawyers, who had no combat or law enforcement experience, misunderstood or misconstrued the veteran NYPD detective's "locker room" or "battlefield" humor relating to an unpleasant but standard aspect of detainee in-processing in that military theater. The FBI agent said he was not made uncomfortable by the NYPD detective's description, nor did he believe as a result that something inappropriate or abusive had occurred. He also said he did not believe that anyone at the dinner was intoxicated.

The conduct described in the DOD Inspector General memoranda does not appear to have been related to interrogations, but rather to military in-processing of newly captured detainees. Nothing in the materials made available to us suggests that abusive body cavity searches were approved as a military interrogation technique. No similar information regarding abusive cavity searches in Afghanistan was described in the *Church Report*.

F. Stressful or Painful Positions or Calisthenics

The OIG investigation determined that several FBI agents observed or heard about the use of stressful or painful positions by the military in

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Afghanistan.[167] According to their survey responses, one FBI agent observed and five other FBI agents heard about the use of stress positions in Afghanistan. One agent reported that he observed that some detainees were restrained with their hands together above their head, behind their back, or to the wall for long periods of time. Several agents told us that military personnel told them that stress or uncomfortable positions were authorized military interrogation or disciplinary techniques.

An FBI Intelligence Analyst reported in his survey response that he was told that in both Afghanistan and Iraq, "[d]etainees who wouldn't talk were told to do push-ups and other forms of exercise[.] [T]hey weren't forced to do it but they would do it anyway, probably out of fear. They exercised until they talked or for no longer than 1 hour every twenty-four hours[;] water was always on hand and medics readily available."

Other agents told the OIG that detainees alleged during interviews at GTMO that stress positions had been used on detainees in Afghanistan. One agent stated that he heard that a detainee had claimed that he was hung by his heels in Afghanistan, but the agent could not remember which detainee made the claim. Another agent reported in an FD-302 and told the OIG that a detainee in GTMO claimed that in Afghanistan a U.S. interrogator had forced him to admit to being a member of al-Qaeda by requiring him to stand or kneel with his arms over his head for 3-hour intervals.

G. Deprivation of Clothing

The OIG investigated allegations about the removal of clothes as an interrogation technique in Afghanistan. Use of this tactic as an interrogation technique was never expressly approved or prohibited under military policies in Afghanistan. The Church investigators did not report any instances of nudity being employed by the military as an interrogation technique in Afghanistan. *Church Report* at 226-7.

Four FBI agents reported to the OIG that detainees were stripped prior to being issued standard jumpsuits during routine intake procedures in late 2001 and early 2002 in Kandahar, but the agents did not indicate that forced nudity was used as an interrogation technique. The agents told the OIG that after detainees were brought in from the battlefield, military [redacted] personnel conducted medical exams, strip searches, and body cavity searches. The detainees had their clothing removed or cut off so that they were completely naked and had empty sand bags placed over their

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[167] The evolution of the military's policies regarding stress positions in Afghanistan is addressed above in Section II.C of this chapter, footnote 169.

heads. They were then led through a processing tent in which FBI agents were working. The detainees were given jump suits, sandals, blankets, and water, after which FBI personnel fingerprinted, photographed, collected DNA swabs, and asked a few questions to obtain basic biographical information from the detainees. These agents stated that while in the tent, the detainees were naked for usually less than one-half hour, and were unclothed outside of the tent for only a few minutes. These agents did not consider these intervals unduly long or inappropriate.

The agents also told us they understood that the detainee strip and cavity searches were done for safety and security reasons rather than to humiliate the detainees. They further understood that the sandbags helped prevent the detainees from getting a sense of the layout of the camp. None of these agents were aware of any other situation where detainees were deprived of clothing or had hoods placed on their heads, or where either was done in order to coerce information from the detainees. The agents said they believed these actions were reasonable and necessary detention procedures used by the military.

H. Hooding or Blindfolding

Several FBI agents told the OIG that they observed or heard about the use of hoods or blindfolds on detainees in Afghanistan, primarily for security purposes. According to the *Church Report*, between February 2003 and March 2004 the use of hoods during interrogations was prohibited in Afghanistan, although the use of blacked-out goggles was allowed. *Church Report* at 220. The military's prohibition was changed in March 2004. The Church investigation determined that the military in Afghanistan routinely hooded detainees for security during movement and transportation, and sometimes also used hoods or blackout goggles as an interrogation technique. *Id.* Beginning in June 2004, military policy required prior legal review and Combined Joint Task Force (CJTF) Commander approval for hooding or blindfolding, and the Church investigation found no evidence that this technique was used by the military after that date. *Id.*

Five FBI agents responded to the OIG survey said that they observed hooding or blindfolding in Afghanistan, and two said that they heard about it from detainees or others. Several of the agents indicated, however, that the hoods were used for military safety and security purposes only. For example, one of the agents we interviewed said that he saw the military use green sandbags placed loosely over the heads of detainees to prevent them from observing their surroundings. Another agent told us that he often observed hoods on detainees, usually during transportation, but that he did not see this done during interrogations. One agent described a high-profile detainee in military custody – Paracha (#593) – whom she interviewed in July 2003 at Bagram. She observed Paracha "in his cell, . . . sitting on the

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ground, blindfolded with ear coverings on . . . ." It was not clear to the FBI agent whether these sensory deprivation measures were to make the detainee more cooperative in interrogations or for safety reasons.

I. Sleep Deprivation or Interruption

We sought information from FBI agents about the use of sleep deprivation or disruption on detainees in Afghanistan. According to the *Church Report*, "sleep adjustment" (defined as limiting a detainee to as little as 4 hours of sleep, not necessarily consecutive, per 24-hour period) was an approved military interrogation technique in Afghanistan for much of the relevant time period until it was prohibited in June 2004. *Church Report* at 221-22. The Church investigators found that military interrogators employed this technique throughout this period. However, according to the *Church Report*, "sleep deprivation" (anything less than 4 total hours of sleep per 24-hour period) was prohibited by law or policy at all times in Afghanistan. *Id.* at 213. The only instances of "sleep deprivation" described in the *Church Report* occurred in connection with the incidents leading to the deaths of two detainees at Bagram in December 2002, discussed above. *Id.* at 228.

Numerous FBI agents told the OIG in their survey responses and interviews that they observed or heard about the use of sleep deprivation or interrupted sleep cycles on detainees in Afghanistan. Twenty-seven survey respondents said that they observed or heard about detainee sleep management or deprivation practices in Afghanistan throughout the period covered by our investigation. Many agents also described the use of loud music or bright or flashing lights to interfere with detainees' sleep or with communications among prisoners.

For example, one agent told us that in early 2002 the military would awaken high value detainees at Kandahar at frequent intervals during their rest period, after which the detainees would be interrogated. The same agent said that he and the other FBI agents often disagreed with the military's use of this technique and did not want to interview detainees who had recently been subjected to a sleep interruption or deprivation regimen because it would not be productive. This agent also told us that FBI agents expressed their opinions to the military commanders. He stated that "[o]nce the military obtained info to their satisfaction, we could generally lay out our conditions and requests for the interview setting and request that the detainees could sleep in advance and/or feed them during the interviews." This agent also stated that agents elected not to participate or attend interrogations of detainees who had been subjected to such treatment.

Other FBI personnel reported similar military practices at Bagram, but they did not describe the specific means used to interfere with detainee

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sleep. Some of the reports were from FBI personnel who obtained their information while serving as members of the military. For example, an FBI agent who served as an Air Force intelligence officer at Bagram in April through June 2002 told us that he "had heard . . . that they altered the sleep times of the detainees to keep them off balance and increase their susceptibility to our interrogation techniques." Another agent reported that in July 2002, while he served in the Army, military intelligence personnel at Bagram described interrogation techniques, including sleep deprivation, generally as a way "to 'set the conditions' for an interrogation." An agent at Bagram in March 2003 said in his survey response that he observed detainee sleep deprivation by military police during an introductory tour of the Bagram detainee facility, which he was told was a disciplinary procedure for detainees who were not cooperating with detention procedures, rather than as an interrogation technique.

An FBI communications support technician at Bagram told us that he learned in daily prison briefings that "Sleep deprivation was a common practice with High Value Targets. The military said that the prisoner did get 8 hours of sleep a day, just not all in one shot." An FBI electronics technician stated that during various conversations throughout 2003 and 2004 at Bagram and Kandahar, he was told that the "more difficult detainees would be awakened every 15 minutes during their rest period by the military police in an effort to wear down their resistance." None of these agents or support personnel reported the use of sleep deprivation to their supervisors or to military personnel.

In one case, an FBI agent acknowledged his own participation in a regimen of sleep deprivation. The agent was deployed primarily to Bagram in July and August 2003. He told the OIG that he and a military interrogator "agreed on a course of sleep deprivation" for a detainee who they believed had information about a recent attack. The lights were left on in the detainee's cell and the detainee was awakened periodically. The agent told us he believed that sleep deprivation was appropriate in that situation. He further stated that he did not know if FBI agents are permitted to use sleep deprivation in the United States, although he "would not think so." The agent stated that he had no discussions about this with anyone at FBI Headquarters.

This incident occurred in 2003, prior to the issuance of the FBI's May 2004 Detainee Policy stating that agents in the military zones should continue to comply with FBI guidelines for custodial interviews applicable inside the United States. The FBI has frequently stated that the 2004 Policy merely reiterated existing policies with respect to FBI conduct during interrogations. We believe that under existing policy it is unlikely that an FBI agent would have been permitted to use sleep deprivation as an interview tool in the United States.

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J. Undocumented "Ghost" Detainees

We also attempted to determine whether any FBI employees observed or heard about incidents in which U.S. personnel held detainees who had not been officially acknowledged or registered as detainees by the U.S. agency responsible for their detention, a practice known as holding "ghost detainees." [redacted] These detainees were not assigned Internment Serial Numbers (ISN), and DOD personnel held them without accounting for them, obtaining biometric information from them, or knowing their identities or the reasons for their detention. *Taguba Report* at 26-27; [redacted]

K. Actual or Threatened Transfer to a Third Country

[redacted]

Thirteen survey respondents who were deployed to Afghanistan reported that they had information concerning [redacted]. Four respondents said that they had information that [redacted] had occurred, four said that detainees alleged that this had occurred to them, and one said he heard such allegations from someone other than a detainee. Eight agents said they were aware of threats to detainees that they would be [redacted] for interrogation.

When we sought further information [redacted]. One agent said that a detainee claimed that he had been sent to Jordan where the interrogators "yelled at him," and another agent stated that a detainee making an allegation about [redacted] appeared mentally unstable and not credible.

L. Isolation of Detainees

We sought information regarding the prolonged isolation of detainees in Afghanistan. [redacted]

Twelve survey respondents reported that they had information regarding the isolation of detainees in Afghanistan for extended periods. Five of these respondents said that they observed the isolation of detainees, and six of them said that they heard about such isolation from detainees or others. However, none of the FBI employees were referring to the use of extended isolation as a coercive interrogation technique, such as a punishment for failure to provide requested information or as a means to manipulate the mental state of the detainee. The FBI agents described several purposes for the isolation of detainees by military personnel within locations such as Kandahar and Bagram, such as prevention of detainee coordination of stories for investigative integrity, rewards for cooperative detainees, and disciplinary measures for disruptive detainees. For example, one agent said that during January and February 2002, he was aware of the isolation of detainees at Kandahar for an extended period to prevent them from telling other detainees what questions were being asked and how to respond, to keep high value detainees from being exposed to the general detainee population, and in some cases as a reward for cooperative detainees. He was not aware of isolation being used as a way of coercing any detainees.

Another FBI agent deployed to Afghanistan in early 2002 stated that "the Marines would isolate" detainees who were disciplinary problems, "just like we put prisoners in the U.S. in isolation if they are causing problems," and stated that he "saw no issue with this." Another agent deployed to Afghanistan later in 2002 also noted the use of isolation as a reward for cooperative detainees.

The agent who served as Deputy OSC in Afghanistan during the last quarter of 2004 said he observed the isolation of detainees by the military at Bagram. However, he stated that the isolation he observed was warranted by safety, security, and tactical considerations, and was not abusive. He likened it to separating suspects in a conspiracy and questioning them individually to get their separate versions of events as a truth verification tool.

M. Impersonation of FBI Agents

We sought information regarding the impersonation of FBI agents by non-FBI personnel in Afghanistan. The *Church Report* did not specifically discuss the practice of impersonating an FBI agent in Afghanistan. It stated, however, that deception was common to many doctrinal techniques approved for use in Afghanistan, and that deception had been employed in detainee interrogations throughout the war in Afghanistan. *Church Report* at 216.

Some FBI agents reported to the OIG that they either observed or heard that military or CIA personnel had falsely represented themselves as FBI agents in Afghanistan. One OIG survey respondent stated that he observed the impersonation of FBI personnel by others, and five agents reported that they heard about such conduct from others.

For example, one FBI agent stated in his survey response that in January or February 2002 an Army specialist told him that he was going to wear an FBI hat in a detainee interrogation. The agent characterized the Army specialist as "an aggressive interviewer" who played the "bad cop." The agent stated he told the specialist "that there was no need for him to pose as an FBI agent when we had agents there. . . ." The agent also indicated he saw the soldier on another occasion with the same hat and that he therefore raised the issue with the soldier's sergeant, who agreed that it was unacceptable and unprofessional for the soldier to act in this way. The FBI agent said he had no knowledge of any subsequent problems of this kind at Kandahar. The agent told the OIG that he may have casually mentioned the impersonation incident to his OSC, who told him that if it happened again the OSC would, if needed, take it up with more senior military personnel.

Several agents told the OIG that they inferred that someone had impersonated an FBI agent from the statements of detainees who claimed they had already been interviewed by the FBI. For example, one agent stated in his survey response that a detainee in either March or April 2002 told him at the outset of an interview that he had already talked to the FBI, which the agent said was impossible because there were only two FBI agents there. The agent suspected that CIA personnel had claimed to be

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FBI personnel. Another agent reported that in October or November 2002 two detainees told him they had been interviewed by FBI agents just days before the agent interviewed them. This agent determined that CIA officers had "tricked the detainees into believing they were FBI agents," and that this problem was handled locally in Afghanistan.

Similarly, the agent who served as the OSC in Afghanistan during February through April 2002 told us that when FBI agents identified themselves, some detainees at Kandahar told them that they had already been interviewed by the FBI, and the agents drew the conclusion that military personnel had said so to the detainees. The OSC believed that this hampered detainees' cooperation with genuine FBI agents. He said he raised this two or three times at the daily joint U.S. personnel meetings at Bagram, and his military contact said that he would bring this up with the commander at Kandahar.

The most notorious instance of someone impersonating a U.S. official in Afghanistan was the Idema matter, although this incident apparently did not involve impersonation of an FBI agent. In mid-2004, Jonathan Idema and two other private U.S. citizens were detained by Afghan authorities for allegedly impersonating U.S. government personnel while detaining, interrogating, and torturing Afghan citizens in an illegal prison in Kabul. An FBI document stated that Idema had impersonated an Army Major and later a CIA agent, but had apparently not impersonated an FBI agent. According to FBI documents, witnesses and videotapes indicated that Idema and a second U.S. citizen interrogated prisoners by dunking their heads into buckets of water and striking their bodies and heads with rifles. The documents also indicate that prior to being arrested, Idema had repeatedly contacted the FBI and other U.S. government agencies claiming to have information about planned future terrorist attacks in the United States and abroad, but that Idema failed one or two polygraph tests and the FBI was skeptical of his credibility. The documents do not reflect any FBI involvement with Idema's activities. The documents indicate that Idema traveled to Afghanistan on his own accord and against FBI direction in April 2004.

N. Other Techniques

The OIG survey sought information regarding other interrogation techniques in addition to those discussed above. In several cases, respondents stated that they had seen or heard of additional techniques, but follow-up investigation revealed that the agents were reporting about measures undertaken for security or hygiene purposes and not as part of an interrogation plan.

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For example, we sought information regarding the use of military working dogs to intimidate detainees, a technique that was publicized in connection with the Abu Ghraib disclosures. Several survey respondents reported the use of dogs as a security measure in Afghanistan, such as during the movement of prisoners or to gain compliance with military police instructions to a detainee. No FBI witness reported the use of dogs during interviews or interrogations in Afghanistan.

We also sought information regarding the shaving of detainees' facial or other hair to embarrass or humiliate them. Although several agents reported that detainees were shaved in Afghanistan, they indicated that this was a hygiene or identification measure undertaken during initial processing rather than for punishment or humiliation.

We sought information concerning threats to detainees by U.S. personnel to take action against members of a detainee's family. Two survey respondents stated that they told a detainee that the agents themselves would have to question detainee family members on certain matters. The agents explained that the sons of one detainee and the wife of another were themselves implicated by other information in terrorist or insurgent activities and were in fact interviewed by the FBI as a result.

One agent reported in a survey response that during his deployment to Kandahar in early 2002 he was told by a detainee that the detainee was "not receiving regular meals." Another agent said that a detainee at GTMO had claimed to him that U.S. personnel in Afghanistan had subjected the detainee to extremely cold or hot room temperatures for extended periods, but this agent provided no specifics.

None of the FBI employees who responded to the survey or whom we interviewed stated that they observed or heard about any the following specific kinds of conduct: (a) placing a detainee on a hot surface or burning him; (b) using water to prevent breathing by a detainee or to create the sensation of drowning, including the practice known as "water-boarding"; (c) using electrical shock on detainees; (d) intentionally delaying or depriving a detainee of medical care; (e) using spiders, scorpions, snakes, or other animals on or near a detainee; or (f) forcibly removing detainees from their cells. In addition, none of the survey respondents or interview witnesses told us that they had observed, heard about, or had other information concerning any instances in Afghanistan when U.S. personnel made disrespectful statements about the Koran, handled the Koran in a disrespectful manner, or placed women's clothing on male detainees.

The OIG survey also asked respondents to report any information they had concerning any "sham" or "staged" detainee interviews or interrogations

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conducted for Members of Congress or their staff. None of the respondents who were deployed to Afghanistan reported any information on this subject.

III. Disposition of FBI Agent Reports Regarding Detainee Treatment in Afghanistan

We found few contemporaneous reports by FBI agents in Afghanistan regarding concerns about the potential mistreatment of detainees.[168] Of the roughly 200 FBI agents who served in Afghanistan and responded to our survey, only 10 agents stated that they made such reports to FBI supervisors, military personnel, or both. When we interviewed FBI agents about particular techniques they observed or heard about in Afghanistan, most indicated that they did not report what they saw or heard about to anyone.

We believe that several factors contributed to the small number of reports made by FBI agents to FBI or military supervisors. As indicated above, the vast majority of FBI agents who served in Afghanistan reported that they never saw or heard about any incidents of detainee treatment that caused them discomfort or that fell into any of the specific categories of potential mistreatment that were listed in the OIG survey. Further, there was no formal requirement to report suspected abuse prior to May 19, 2004, when the FBI issued a policy requiring agents to alert their OSCs about any known or suspected abuse or mistreatment of detainees by non-FBI personnel.

Some agents believed, sometimes incorrectly, that the conduct they saw or heard about was authorized for use by military interrogators and therefore did not need to be reported, even though it was not a technique that was approved for use by the FBI. As a related matter, many agents told us they were never trained regarding what techniques military interrogators were permitted to use. Therefore, some agents assumed that conduct that they saw was consistent with military policy and did not need to be reported.

In addition, unlike the situation at GTMO, many FBI agents in Afghanistan were operating in a war zone in which they were dependent on the military for their protection and material support. They said they understood their role in Afghanistan as seeking information about terrorist

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[168] This Section addresses only the disposition of contemporaneous reports of potential detainee mistreatment in Afghanistan. After the Abu Ghraib prison abuses were publicized in April 2004, FBI Headquarters conducted an informal survey of the four OSCs who had served in Afghanistan to determine if the FBI had additional information about detainee abuses in Afghanistan. This survey is discussed in Section IV.C of Chapter Six.

threats to the United States or its personnel or interests overseas, not as policing or overseeing the conduct of the military. These circumstances made some agents reluctant to elevate their concerns about the military's treatment of detainees.

Despite these factors, several agents told us that they did make reports regarding particular incidents or allegations of detainee mistreatment to their supervisors. The report that received the greatest attention was the one made by SSA Horton, which is addressed in detail in Section II of Chapter Six. As detailed there, Horton did not actually witness any detainee abuse, and several of his supervisors and CTD personnel in FBI Headquarters said they concluded that he had overreacted. However, the FBI supervisors did not specifically address his larger concern that the FBI could be deemed to have participated in detainee abuse simply by interviewing detainees at a location where rougher military techniques were being used on the same detainees.

As noted in Section II.A of this chapter, FBI Headquarters also received a report from FBI agents regarding detainee deaths at Bagram. One of the agents told the OIG that he and his partner were told that the Army Criminal Investigation Command was investigating the deaths, and that the FBI was not in Afghanistan to investigate such matters.

There were several other cases in which FBI agents reported their concerns about detainee mistreatment.

One agent said he alerted his OSC in early 2002 to the fact that military interrogators had treated detainees roughly. But this agent also discussed his concerns with military supervisors, as discussed in more detail below, and he told the OIG that they resolved his concerns. Therefore, there was no need for the OSC to take further action on these reports.

One agent told the OIG that before he arrived in Afghanistan in April 2004, he heard general, second-hand rumors about mistreatment of detainees from other agents who had been deployed to GTMO. In Afghanistan he asked his OSC about detainee treatment and the OSC told him that on his visits to detention facilities in Afghanistan he had witnessed no evidence of improper treatment of detainees.[169] Since the agent had not reported a particular incident or allegation about detainee mistreatment to the OSC, the OSC did not report up the chain of command.

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[169] The agent said he also discussed the rumors with [redacted], who informed the agent that the rules of the Geneva Convention did not apply in this conflict, but that prisoners were not being mistreated.

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One agent told us that he reported concerns about detainee treatment in Afghanistan to the MLDU Unit Chief at FBI Headquarters. The agent reported in his survey response that during a tour of [redacted] in November 2002, he was told that the CIA used loud music to deprive detainees of sleep. [redacted] there unless we wanted to be part of a congressional hearing at some later date." The agent wrote in his survey response that: "This info was reported up to [the Unit Chief]" in writing "without any response or guidance." When we interviewed this agent, he explained that he and another agent sent the Unit Chief multiple e-mails and became frustrated that they could not get any guidance relating to detainees and working with other agencies. The Unit Chief told us that he may have received a call from this agent but he did not recall his response or what instructions he might have given. He said that he generally told agents to [redacted].

We interviewed all but one of the 14 former OSCs and all of the 6 Deputy OSCs who served in Afghanistan between late December 2001 and the end of 2004. None of these OSCs or Deputy OSCs said that they received any report from an agent in Afghanistan concerning potential mistreatment of any detainees. Given the nature of the reports that were described to the OIG by the agents who made them, it is not surprising that the OSCs did not recall these reports. Some of the reports were actually questions about rumors rather than reports of witnessed incidents. Others involved matters that were resolved cooperatively with the military and did not require further elevation.

Several agents told the OIG that they spoke to military supervisors in Afghanistan about the treatment of detainees by military personnel. One of the agents deployed to Afghanistan in late 2001 told us he felt the military was ill-equipped to deal with interrogating detainees. He stated:

> Many of the interviewers were young and inexperienced and yelled and screamed at the detainees, but had no knowledge of al-Qaeda. Any concerns we as the FBI raised were dismissed because the military [redacted] needed intelligence immediately. We (FBI) were also told in no uncertain terms we were not in charge and the military [redacted] were running the show.

Another agent reported in her survey response that during her service in Afghanistan in July 2003 she raised concerns about military interrogators at the Bagram Collection Point who wanted to interrogate a detainee in "a different way." She stated that she informed the Major that there would be no disrespectful or potentially harmful things done to the detainee. Three other agents told us that they elevated concerns about detainee treatment with military supervisors, and that these concerns were

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resolved as a result. For example, one FBI agent who served in Bagram and Kandahar told us he complained to military supervisors about military personnel who hurt a detainee whose arms were restrained behind his back, by lifting his arms in a painful manner. The same agent said he also complained to military supervisors about MPs who shackled detainees too tightly and about military interrogators who posed as FBI agents. The agent told us that the military chain of command was supportive and that after these complaints he did not see a repeat of this conduct.

Another FBI agent deployed to Bagram reported to military supervisors his objection to military police shoving a shackled detainee against a wall. The agent told us that the soldier was removed from detainee escort duty as a result.

IV. Conclusion

FBI employees in Afghanistan conducted detainee interviews at the major military collection points in Bagram and Kandahar and at other smaller facilities. The most frequently reported techniques used by military interrogators in Afghanistan were sleep deprivation or disruption, prolonged shackling, stress positions, loud music, and isolation. Several FBI employees also told us they had heard about two detainee deaths at the military facility in Bagram, but none of the FBI employees said they had personal knowledge of these deaths, which were investigated by the DOD.

We found few contemporaneous reports by FBI agents in Afghanistan regarding concerns about the potential mistreatment of detainees. In many cases the agents believed, sometimes incorrectly, that the conduct they saw or heard about was authorized for use by military interrogators and therefore did not need to be reported. The desire of the FBI agents to establish their role in Afghanistan and their dependence on the military for their protection and material support may have contributed to a reluctance to elevate their concerns about the military's treatment of detainees. In addition, several agents told the OIG that they were able to resolve concerns about the mistreatment of individual detainees by speaking directly to military supervisors in Afghanistan.

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CHAPTER TEN
FBI OBSERVATIONS IN IRAQ

I. Introduction

Iraq was the location of the Abu Ghraib prison, the site of many notorious incidents of detainee abuse that were widely publicized in April 2004. Although FBI agents served at Abu Ghraib and other detention facilities in Iraq, most of the FBI employees reported to the OIG that they never observed potentially abusive treatment of detainees in Iraq or heard about it from detainees or other witnesses. Overall, of the 267 survey respondents who served in Iraq between March 2003 and the end of 2004, 188 stated that they neither observed nor heard about any of the kinds of detainee treatment described in the survey.

However, some of the FBI agents sent to Iraq reported that they observed or heard about the use of various rough or aggressive treatment of detainees by military personnel. With a few exceptions, the FBI agents did not report seeing detainee abuse in Iraq that was similar to the most notorious abuses reported in connection with the Abu Ghraib scandal. The most frequently reported techniques were deprivation of clothing, sleep deprivation or interruption, and hooding or blindfolding. A smaller number of agents reported incidents such as detainees being accidentally burned by exposure to hot vehicle surfaces during transport, prolonged shackling, and stress positions. Table 3 summarizes the survey responses to our questions regarding the use of particular interrogation techniques in Iraq.[170]

The agents' specific observations regarding particular techniques as reported to the OIG are discussed in Part II of this chapter. In Part III, we describe the handling of reports by FBI agents to their superiors or to military personnel regarding their concerns about detainee treatment in Iraq.

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[170] For a discussion regarding the limitations to the appropriate interpretation of this data, see Chapter Eight, Section I.

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TABLE 10.1
Survey Results Concerning
Interrogation Techniques Observed in Iraq

	Interrogation Technique	Personally Observed	Observations Led Me to Believe	Detainee Told Me	Others Described To Me	None of the Above
1	Depriving a detainee of food or water			1	2	284
2	Depriving a detainee of clothing	5	3	3	5	273
3	Depriving a detainee of sleep, or interrupting sleep by frequent cell relocations or other methods	10	6	7	28	234
4	Beating a detainee		3	7	4	274
5	Using water to prevent breathing by a detainee or to create the sensation of drowning	1				287
6	Using hands, rope, or anything else to choke or strangle a detainee					287
7	Threatening other action to cause physical pain, injury, disfigurement, or death	1		2		281
8	Other treatment or action causing significant physical pain or injury, or causing disfigurement or death		1	2		287
9	Placing a detainee on a hot surface or burning a detainee		3	4		281
10	Using shackles or other restraints in a prolonged manner	6		1	5	277
11	Requiring a detainee to maintain, or restraining a detainee in, a stressful or painful position	6	1	2	5	274
12	Forcing a detainee to perform demanding physical exercise	1		1	4	277
13	Using electrical shock on a detainee			1	2	283
14	Threatening to use electrical shock on a detainee					289
15	Intentionally delaying or denying detainee medical care					289
16	Hooding or blindfolding a detainee other than during transportation	22	3		1	260
17	Subjecting a detainee to extremely cold or hot room temperatures for extended periods	1	1	1	1	285
18	Subjecting a detainee to loud music	11	1	3	19	252
19	Subjecting a detainee to bright flashing lights or darkness	6	1	2	7	268
20	Isolating a detainee for an extended period	20	1	1	6	257
21	Using duct tape to restrain, gag, or punish a detainee	1			1	286

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	Interrogation Technique	Personally Observed	Observations Led Me to Believe	Detainee Told Me	Others Described To Me	None of the Above
22	Using rapid response teams and/or forced cell extractions	2	3	1	9	275
23	Using a military working dog on or near a detainee other than during detainee transportation	1			3	285
24	Threatening to use military working dogs on or near a detainee	2			1	284
25	Using spiders, scorpions, snakes, or other animals on or near a detainee					288
26	Threatening to use spiders, scorpions, snakes, or other animals on a detainee					287
27	Disrespectful statements, handling, or actions involving the Koran			2		287
28	Shaving a detainee's facial or other hair to embarrass or humiliate a detainee	2		1	1	285
29	Placing a woman's clothing on a detainee					286
30	Touching a detainee or acting toward a detainee in a sexual manner					290
31	Holding detainee(s) who were not officially acknowledged or registered as such by the agency detaining the person.	1	2		4	280
32	Sending a detainee to another country for more aggressive interrogation	2		2	5	279
33	Threatening to send a detainee to another country for detention or more aggressive interrogation	6			2	278
34	Threatening to take action against a detainee's family	3		2	1	283
35	Other treatment or action causing severe emotional or psychological trauma to a detainee					290
36	Other religious or sexual harassment or humiliation of a detainee	1				287
37	Other treatment of a detainee that in your opinion was unprofessional, unduly harsh or aggressive, coercive, abusive, or unlawful	1	1		1	284
	Observation Totals	112	30	46	117	10,333

II. Observations Regarding Particular Techniques

A. FBI Knowledge Regarding Detainee Deaths

Several detainees died while in military or CIA custody in Iraq under circumstances raising questions about detainee abuse.[171] For example, news reports stated that a former Iraqi Major General, Abed Hamed Mowhoush, died of asphyxia in November 2003 while being interrogated by U.S. and/or Iraqi personnel, and that his chest and legs bore "evidence of blunt force trauma."[172] Other news reports described the November 2003 death of another detainee, Manadei al-Jamadi, at Abu Ghraib. According to these public reports, al-Jamadi was captured by Special Forces personnel and died while being interrogated at Abu Ghraib by the CIA.[173]

None of the FBI employees contacted by the OIG reported that they ever personally witnessed, or heard about from those who witnessed, any beating or other treatment which caused the death of a detainee in Iraq, including the two detainee deaths described above. [redacted]

B. Beating, Choking, Strangling, or Other Abusive Handling of Detainees

The OIG survey asked respondents to provide information concerning detainee beatings, the use of hands, rope, or anything else to

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[171] According to the *Church Report*, as of September 30, 2004, there were five substantiated abuse cases in Iraq that resulted in a detainee's death, although none of them involved interrogation-related abuse. *Church Report* at 293-94.

[172] 5/28/04, 12/22/04, 8/3/05, www.talkleft.com; 1/15/05 www.smh.com.au; 4/3/05 www.washingtonpost.com; Washington Post - 4/19/2005; 12/18/06 New York Times. We found no evidence that FBI personnel were deployed to the facility in Iraq where this incident allegedly occurred. An Army Chief Warrant Officer was convicted of negligent homicide in a court martial in January 2006 in connection with this incident. CNN.com 1/22/06; New York Times 9/4/07.

[173] In 2005 the commanding officer of the Navy SEALs who were allegedly involved in the interrogation of this detainee was acquitted of responsibility for the death in a court-martial. We are not aware of any charges or other discipline having been brought against any CIA agent involved in the interrogation of this detainee.

choke or strangle a detainee, or other actual or threatened kinds of treatment causing significant physical pain, injury, disfigurement, or death. These techniques do not appear to have been approved in Iraq under any military policy. *Church Report* at 257-273. Other than the widely publicized incidents at Abu Ghraib, the Church investigators stated there were only "rare reports" of beatings. The *Church Report* described 16 cases in which interrogation-related abuse of detainees was substantiated, including several closed military investigations concluding that interrogators struck detainees, as well as other incidents of detainees being slapped, punched, kicked, or struck with objects. Additional cases remained open as of the time the *Church Report* was issued.

None of the approximately 267 FBI agents who served in Iraq through the end of 2004 and who responded to the OIG survey reported that they ever observed any beating or other physical abuse that caused physical harm or injury to a detainee. However, 14 agents responded either that their observations led them to believe that such physical abuse had occurred or that they had heard about it from others. For example, one agent told us that a detainee alleged he had been mistreated by the Iraqi police, and another detainee claimed that U.S. military personnel had mistreated him. The agent said that the first detainee looked like he had been beaten. Another agent stated in his survey that a detainee claimed he was beaten at "Camp Babylon" by Polish soldiers before being transferred to U.S. custody at Abu Ghraib. The agent said the detainee's face was bruised and swollen and that it was requested he be given medical treatment. Another FBI agent stated that he recalled one or two detainees at a particular facility who claimed to have been beaten when they were first taken into custody by the military, but that these detainees showed no signs of bruising or mistreatment.

In addition, most agents told us that they had no information that any detainee injuries that they observed were sustained as a result of the conduct of U.S. personnel other than in battle or during capture. Other agents stated that detainee claims of such abuse were not corroborated.

On March 14, 2004, CENTCOM Major General Taguba completed the investigation and report concerning the Abu Ghraib abuses. *Church Report* at 257. The *Taguba Report* stated that between October and December 2003, the "numerous incidents of sadistic, blatant, and wanton criminal abuses of detainees intentionally perpetrated" by military personnel at Abu Ghraib included "punching, slapping and kicking detainees and jumping on their naked feet." *Taguba Report* at 16-17. We found no evidence that FBI personnel were aware of the conduct described in the *Taguba Report* at the time it occurred.

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One FBI agent reported in his survey responses that he had seen a detainee in early 2004 that appeared to have been beaten by a member of the U.S. military or by Iraqi personnel. During his interview, however, the agent clarified his response by stating that the detainee looked disheveled and as though he had been "slapped around" or "roughed up." The agent reported that he and three other FBI agents observed the detainee being treated roughly during a joint FBI-DOD interrogation. We address this allegation separately in Part VII of Chapter Eleven.

The FBI received at least one report in the United States from a returning serviceman regarding detainee abuse in Iraq. On June 24, 2004, a former National Guardsman who had served in Iraq came into the FBI's Sacramento Field Office and told the FBI that he had observed detainee abuses at an Iraqi police station in Samara, Iraq, including strangulation, beatings, and burning with lit cigarettes, and that U.S. military personnel had conspired to cover up these abuses by means of threats to witnesses. According to an FBI agent from the Sacramento Division who interviewed the former Guardsman, the Guardsman claimed that he had to resuscitate some of the detainees after this abuse. The Guardsman identified several U.S. Army personnel who perpetrated these alleged abuses. The FBI agent stated that the FBI forwarded the information to the DOD Inspector General.

Also, as discussed in Chapter Six, in late January 2004 an FBI agent serving as an interview team leader in Iraq sent an e-mail to her OSC alerting him that there was substance to allegations of prisoner mistreatment at Abu Ghraib, including videotape evidence of the mistreatment which included beatings and rape. The OSC forwarded this information to senior CTD officials at FBI Headquarters, including then-Deputy Assistant Director Gary Bald, CTORS Section Chief Frankie Battle, and DAD T.J. Harrington, together with the OSC's recommendation that the FBI not conduct an abuse investigation but rather let the Army CID handle it. Bald concurred with this recommendation, and we found no evidence that the FBI took any further action with respect to the agent's report.[174]

Another agent stated that in approximately June or July 2004 he had learned that Defense Intelligence Agency (DIA) personnel [redacted]

[174] We determined for various reasons that other allegations described in survey responses to this question did not merit further investigation. For example, one agent reported that while she was interviewing detainees at GTMO in July and August 2002, a detainee alleged to her that he had *previously* been beaten by U.S. military personnel in Iraq, an obvious fabrication or mistake by the detainee, since U.S. forces did not invade Iraq until March 2003.

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[redacted]. We address allegations about detainee abuse at this facility in Part VIII of Chapter Eleven.

C. Causing Burns by Placing Detainees on Hot Surfaces

Several agents told the OIG in interviews or survey responses that they were aware of incidents involving the placement of detainees on hot surfaces or otherwise inflicting burns on detainees in Iraq. At least four of these witnesses were apparently referring to the same detainee.

Burning detainees was never an approved military technique in any military theater. Burning was not specifically reported as a category of interrogation technique in the *Church Report*, and no substantiated incidents of burning detainees were described in the report.

Two FBI employees (a Special Agent and a linguist) told us that in an interview of detainee Ibrahim Khalid Samir Al-Ani in the fall of 2003, Al-Ani told them that U.S. military personnel came to his home late at night, hooded him, restrained his hands, put him the back of a vehicle, and drove for a very long time. Al-Ani said he was face down and squirming on the rear bed of the vehicle. He told the agent and the linguist that he thought the military personnel believed he was being uncooperative because they held him down without realizing he was burning. The agent noted that in a Humvee, the engine heat conducts all the way back through the bed of the vehicle. The soldiers were sitting on the sides in the rear, and the agent said he concluded that the soldiers apparently did not feel the heat in the bed through the soles of their boots. The agent and linguist also told us that the agent photographed Al-Ani's burn scars.[175]

Three other agents, including two former OSCs, told the OIG about an incident that we concluded also related to detainee Al-Ani. One former OSC told us that in the summer of 2003 the FBI wanted to interview a detainee, but the military said that because of injuries the detainee had sustained during capture, he was hospitalized in a military medical camp. The OSC stated that an FBI agent could not interview the detainee because of the detainee's serious burn injuries and sedation. The OSC recalled hearing from the agent that the military may have said

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[175] The agent and the linguist told us that they included the photographs with the interview ECs. The FBI was unable to find copies of these photographs, however, and neither the agent nor the linguist knew what became of them.

that the detainee was burned in the back of a hot Humvee. He also said that this was one of the matters he handed off to the incoming OSC who replaced him. We also learned that during mid-July 2003, another agent tried to interview Al-Ani in the hospital, but also could not do so because of the severity of the detainee's injuries.

The second OSC, who served in Iraq from September to November 2003, told us that he understood that [redacted] had captured a prisoner during a [redacted] had transported him for a long period on the hot hood of a jeep, and as a result, the detainee "got fried." The FBI interviewed the detainee when his medical condition improved, but his burns were still apparent. This OSC said that his recollection was uncertain, but he thought the military told him that they had no other way to transport the detainee, that they had to leave the scene of the [redacted] hastily, or that they did not know the detainee was being burned because he was unconscious.

Another survey respondent described what appears to have been a second burning incident in July 2003. This agent stated that he learned that Walid Nayif Mohammed Al-Jabburi, a former Lieutenant Colonel in the Iraqi Intelligence Service, had suffered a 2-inch burn on his upper left arm after being taken into custody [redacted] and transported back to the [redacted]. The agent stated that he saw the injury, and that the detainee told him that "while lying in the back bed of a HUMVEE, he suffered the burn to his arm from being in contact with a hot portion of the metal on the HUMVEE." The agent added:

> This injury did not appear to have occurred during the course of an[ ] interrogation from what Al-Jabburi said and because to our knowledge, we were the first people to interrogate him. It is not known whether this injury was accidental or whether Al-Jabburi was negligently or purposely placed against the hot metal of the vehicle. We informed the MP guard to have a medic look at the wound. In a later interview, Al-Jabburi showed us the burn and said that a medic had looked at it and treated him. I could see there was some type of salve on the wound.

An FBI agent who interviewed detainees at [redacted] and Abu Ghraib in late 2004 stated in his survey responses that a detainee at [redacted], whose name he did not recall, told the agent that "when he was taken into custody by military personnel . . . he was handcuffed and placed on [a] truck bed which caused severe burning to his arms, legs, and chest." According to the agent, the detainee had scars and his Army 'handler' had documented the allegations and injuries in the detainee's dossier. We did not determine whether this was a fourth

detainee or one of the detainees described above whose injuries had since healed.

D. Use of Electric Shock

We sought information concerning the use by U.S. personnel of electric shock or the threat of it to coerce information from detainees. According to the *Church Report*, use of electric shock was never an approved technique at any time in any military theater. *Church Report* at 29-34. The only incident of actual or mock electric shock described in the *Church Report* was the infamous Abu Ghraib photograph showing a hooded detainee balancing on a box while wired with mock electrodes. *Id.* at 287. The *Taguba Report* likewise stated that between October and December 2003, the abuse of detainees included positioning a naked detainee on a box with a sandbag on his head, and attaching wires to his fingers, toes, and penis to simulate electric torture. *Taguba Report* at 16-17.

Six FBI agents told the OIG in survey responses or interviews that they heard about the use of electric shock, although five apparently described the same incident.

[redacted] This information was relayed to the military chain of command and eventually briefed to all individuals (FBI and non-FBI) assigned to the [redacted]." Other agents stated that the [redacted] commanding officer promptly began a military investigation. [redacted]

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[redacted] an internal DOD investigation found "improper use of a Tazer that resulted in burn marks on a detainee."

E. Harsh or Prolonged Shackling

The OIG sought information regarding the use of shackles or other restraints in an abusive or harsh manner. The *Church Report* did not specifically describe the use of prolonged shackling by the military as an interrogation technique in Iraq. As noted in connection with Afghanistan, such a technique might be considered a form of a "safety position" or "stress position," which the *Church Report* generally described as requiring a detainee to maintain an awkward or uncomfortable position in order to control his movement during interrogation, both for purposes of interrogator safety and as an incentive to cooperate. *Church Report* at 216-18. According to the *Church Report*, use of stress positions not exceeding four hours was specifically approved in Iraq under a DOD policy issued in September 2003. *Id.* at 265-70. It was removed from the list of pre-approved techniques in October 2003, but permitted to be used with prior approval from the CJTF-7 Commander. *Id.* The DOD May 13, 2004, Policy stated that "under no circumstances" would approval for stress positions be given. *Id.* The Church investigators found that stress positions were frequently used by the military in Iraq, and that some interrogators reported using them even after this technique was explicitly prohibited. *Id.* at 276-77, 281-82.

Six FBI agents responded to the OIG survey that they observed prolonged shackling of detainees, and five said they had heard about such treatment from others who had observed it. In general, these FBI agents described two ways in which detainees were restrained: handcuffing them in various ways and shackling them to floors or other structures in uncomfortable or stressful positions.

Several agents provided information regarding potentially harsh practices at the [redacted]

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[176] Adair is a pseudonym. The OIG's investigation of additional allegations regarding Adair's conduct at this facility is described in Part VIII of Chapter Eleven.

[redacted].

[redacted] We found that FBI agents working at this facility participated in the use of the military's detainee restraint category system by informing guards of the level of the detainee's cooperation and recommending the degree of in-cell restraint to be imposed as a result.[177] In mid-2004, at least one FBI agent at [redacted] was also involved in deciding whether a detainee would receive a blanket or mattress in his cell, again based on whether he was cooperative in interviews. [redacted]

[redacted] The agent told the OIG she believed she discussed this incident with an FBI supervisory special agent, who in essence told her that because the

[177] We address whether the agents' participation in this system violated FBI policy in Chapter Eleven. We note also that, as described in Section III.D. of Chapter Six, in May 2006 the FBI Office of General Counsel issued an Electronic Communication addressing this practice.

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FBI did not intend to interview the detainee at issue, the military's treatment of the detainee would not be an issue for the FBI.

Another agent described an incident in which a military detainee at [redacted] was handcuffed in his cell in a standing position for several hours as punishment for making noise and inciting other prisoners.

F. Using Military Working Dogs

Public images of detainees at Abu Ghraib depicted military working dogs with frightened detainees. Use of muzzled dogs to exploit the detainees' fear of dogs was approved in Iraq under the DOD's September 2003 Policy for Iraq. *Church Report* at 265. This technique was removed from the list of approved techniques in October 2003, but its use was still permitted with specific prior approval from the CJTF-7 Commander. *Id.* at 268. The use of unmuzzled dogs was never approved under military policy. *Id.* at 281. Several different military investigations found that dogs were used to intimidate and attack detainees at Abu Ghraib, including after October 2003. E.g. *Taguba Report* at 15-17; *Church Report* at 280-81.

We asked FBI agents in Iraq about the use of military working dogs on or near detainees other than for security or safety during detainee transport. In 2003, FBI supervisors and field agents had considerable contact with [redacted], who provided assistance to FBI personnel working at Abu Ghraib. However, none of the agents we interviewed said that they knew of the conduct for which [redacted] was punished. Most of the FBI agents told us that in 2003 and 2004 they never saw or heard about any military working dogs used at Abu Ghraib or at the [redacted] during detainee interrogations, or to menace, intimidate, or physically harm detainees at any location in Iraq.

The FBI's OSC in Iraq in May 2004 told us that he learned about the use of military working dogs at a particular facility from a set of military e-mails that the resident FBI supervisor there had brought back to the FBI's Baghdad Operations Center (BOC).[178] The OSC sent an e-mail to senior CTD personnel at FBI Headquarters on May 22, 2004, describing an "e-mail stream I have seen" [redacted]. The OSC told us that even if the use of dogs was allowed by military rules, the fear of dogs made such actions troubling in environments in which FBI agents were also working.

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[178] We were unable to obtain a copy of these e-mails during our investigation.

G. Sexually Abusive or Humiliating Contact

The widely publicized Abu Ghraib disclosures included sexually humiliating photographs of detainees and other sexually abusive conduct. The March 2004 *Taguba Report* stated that between October and December 2003, the abuses of detainees at Abu Ghraib included: (1) videotaping and photographing naked male and female detainees; (2) forcibly arranging detainees in various sexually explicit positions for photographs; (3) forcing male detainees to wear women's underwear; (4) forcing groups of male detainees to masturbate while being photographed and videotaped; (5) arranging naked male detainees in a pile and then jumping on them; (6) placing a dog chain around the neck of a naked detainee and having a female soldier pose with him in a picture; and (7) a male guard having sex with a female detainee. *Taguba Report* at 16-18.

According to the *Church Report*, sexual acts or mock sexual acts were never an approved interrogation technique in Iraq. *Church Report* at 273. The *Church Report* described a sexual assault of a female detainee by military intelligence personnel at Abu Ghraib in October 2003. *Id.* at 296-97. In addition to the other widely publicized incidents at Abu Ghraib, the Church investigators found one anecdotal report of stripping and photographing female detainees. *Id.* at 289.

None of the 267 FBI employees who were deployed to Iraq and who responded to the OIG survey reported any information of this nature. However, during our investigation we received documents describing an allegation that at [redacted] However, we examined this allegation because FBI agents were stationed at this facility in 2004. We determined that this alleged incident took place before any FBI agents were deployed at this facility. No FBI agent had personal knowledge of this incident.

H. Using Water To Prevent Breathing by a Detainee or To Create the Sensation of Drowning

The OIG survey also asked respondents to provide information regarding the use of water to prevent breathing by detainees or to create the sensation and fear of drowning. This question was intended to include and capture information about a practice known as "waterboarding." We found no evidence that waterboarding or similar techniques were approved for use under military policies for Iraq or any other theater.

One FBI agent deployed to Iraq during January through March 2004 told the OIG that he personally observed a non-FBI interrogator

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give a shackled detainee a drink of water in a rough manner that caused the detainee to cough or choke at an unidentified building [redacted]. He added that three other FBI agents also observed this incident. This matter is discussed in Part II of Chapter Eleven.

[redacted], and that the military considered this a "harsh-up" technique. Because an FBI agent was allegedly involved in this practice, we address this matter further in Part VIII of Chapter Eleven.

I. Stressful or Painful Positions or Calisthenics

We determined that several FBI agents observed or heard about the use of stressful or painful positions by the military in Iraq. As previously noted, under military policies stress positions were permitted in Iraq at least from September to October 2003, and thereafter until May 2004 with prior approval of the CJTF-7 Commander. *Church Report* at 265. The May 13, 2004, DOD policy for Iraq stated that "under no circumstances" would approval for stress positions be given. *Id.* at 270. The *Church Report* found that stress positions were frequently used by the military in Iraq. *Id.* at 281-82. According to the *Church Report*, physical exercise was not explicitly addressed in any Iraq policy. *Id.* at 283-87. The Church investigators discovered several incidents in which detainees in Iraq were made to engage in physical exercise to overcome their resistance to questioning, and that some interrogators considered this to be part of a stress position regimen. *Id.* at 286-87.

Several FBI agents described the use of stress positions or forced exercise in Iraq. Most of these reports pertained to conduct that took place [redacted].

FBI agents reported that they personally observed only a limited number of instances in which detainees were subjected to "harsh-up" techniques. Agents deployed [redacted] in mid-2004 told us that they believed this was not a common occurrence and that only two or three "harsh-ups" were approved during each of the two 3-month rotations they were deployed there. Other agents stated that

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they observed or heard about one or two such interrogations during their deployments from July through October 2004. Most of the information we gathered related to what agents were told by others, because FBI agents said they sought to avoid participating in or observing such interrogations. FBI agents typically learned during shift change meetings at the facility, for example, that the military had decided to engage in such an interrogation and therefore knew in advance to avoid that interrogation. One agent said that the military personnel with whom he dealt at the facility did not want FBI agents to witness interviews in which the military employed "harsh-up" techniques. He also said that the Deputy OSC ordered him not to observe or take part in any such practices.

However, FBI agents told us that they observed or were told by others about the military's use of several stressful positions at the [redacted]. These included ordering one or more detainees to stand on one leg, to stand for long periods of time, sometimes with bags over their heads, in order to "soften" them up for interrogations, or to "hold their hands above their heads for long periods of time." Other FBI agents told us that detainees were told to squat in order to simulate sitting in an invisible chair.

FBI employees also described the use of stressful or prolonged exercises for uncooperative detainees by military and intelligence service personnel. One FBI intelligence analyst said that he was told by those who had observed such techniques that uncooperative detainees in both Afghanistan and Iraq were "told to do push-ups and other forms of exercise." He was also told that "they weren't forced to do it but they would do it anyway, probably out of fear. They exercised until they talked or for no longer than 1 hour [out of] every twenty-four hours." This analyst also noted that "water was always on hand and medics readily available." An FBI agent reported that during February or March 2004 he was walking [redacted] when he observed Army personnel "direct[ing a detainee] to do squats while holding two or three cases of MREs." Another agent told us that sometime in March or April 2004 at an unnamed location, he saw a detainee walking and doing calisthenics while holding a case of MREs.

Several agents at [redacted] in 2004 reported that they observed or heard about the use of calisthenics during military interrogations, such as push-ups, deep knee bends, or sit-ups, in order to induce detainee fatigue and cooperation. One agent told us that other agents told him in early 2004 that military "interrogators would occasionally have a detainee pace back and forth along a wall for hours in order to induce fatigue" and thereby lessen his resistance to answering their questions. While this witness heard about some

detainees refusing to comply with instructions to continue the calisthenics or walking, he said he had no information about what the military did in such cases.

J. Deprivation of Food and Water

The OIG survey asked respondents to provide any information they had about any intentional deprivation of food or water for detainees by any U.S. personnel. According to the *Church Report*, denial of basic human needs such as food was always prohibited in every theater. *Church Report* at 155, 213, 273. The *Church Report* stated that one interrogator reported that his unit nevertheless tried food deprivation as an interrogation technique in Iraq. *Id.* at 35, 273, 288.

One FBI agent told the OIG that a group of detainees one day were yelling and screaming that they were not being fed. However, the agent said that he "observed water and food being provided daily" to the detainees."

We received several reports that the [redacted] had a policy or practice of denying food or water to detainees for the first 24 hours of their detention. Because these allegations relate to the conduct of an FBI agent, we address them in detail in Part VIII of Chapter Eleven.

K. Depriving Detainees of Clothing

In Section II.G. of this chapter we discussed FBI observations of sexual abuse of detainees involving nudity. A related form of reported detainee abuse involved the humiliation of detainees by forcibly removing their clothing with no related sexual assault. *Taguba Report* at 16-17. Some of the most infamous photographs of the abuses at the Abu Ghraib prison depicted the humiliation of naked or almost-naked detainees by U.S. military personnel. The March 2004 *Taguba Report* stated that between October and December 2003, military personnel at Abu Ghraib forcibly removed detainees' clothing and kept them unclothed for days at a time. *Id.*

According to the *Church Report*, removal of clothing was not explicitly addressed in the military interrogation policies for Iraq. *Church Report* at 283-85. This technique could have been considered to be encompassed by one of the Field Manual 34-52 techniques, such as "pride and ego down" or "incentive." The *Church Report* stated that in addition to the highly publicized nudity incidents at Abu Ghraib, there were two reports of military interrogators using this technique in Iraq but no evidence of the "systematic use" of this technique. *Id.* at 285.

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Deprivation of clothing was one of the frequently reported techniques in Iraq described by FBI agents. Five survey respondents said that they personally observed this conduct and eight stated that they heard about it from others. Almost all of the observations reported to us related to incidents at the Abu Ghraib prison or the [redacted].

1. Abu Ghraib Prison

One FBI agent told the OIG that sometime in November 2003 he saw that "[u]nknown detainees in Abu Gh[ra]ib prison were being held naked in isolated cells, [and] others were being asked to rol[l] naked on the floor from one end of the cell block to the other." He added that on another occasion, he and a second agent saw a naked detainee being told to roll on the corridor floor between two rows of cells at Abu Ghraib. He said that a military guard told him the detainee was being disciplined for being disruptive or uncooperative. He also said that military personnel told him that detainees were also held naked in cells if they were disruptive or uncooperative by yelling or screaming in their cells, and that taking away their clothes had the effect of quieting them.

The agent told us that he did not report or discuss this incident with anyone in Iraq, including the OSC or Deputy OSC, because he did not know whether or not this was allowed under military rules, and because this occurred before the Abu Ghraib photos became public. However, he did not report these incidents during the May 2004 OGC-Inspection Division special inquiry, which was conducted within the FBI after the Abu Ghraib photos became public.[179]

A second agent told the OIG that while he was deployed in Iraq in November 2003 through January 2004, he saw a detainee at Abu Ghraib lying on the floor either naked or in boxer shorts with a military guard and possibly an interrogator nearby. The agent thought this was a disciplinary measure rather than an effort to coerce information from the detainee. This agent said that the incident appeared to him to be similar to common disciplinary procedure in a U.S. jail when a prisoner is being disruptive. This agent did not report this incident to his chain of command in Iraq at the time, but he did report it during the May 2004 OGC-Inspection Division special inquiry.

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[179] This agent said he did not report this incident to the FBI Inspection Division interviewers who interviewed him in 2004 because he did not believe it was within the scope of the questions asked.

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Another agent who worked at Abu Ghraib told the OIG that on one occasion in December 2003 while he was walking through part of the prison, he saw several detainees "in their cells with only underwear on." He said that the Army sergeant escorting him through the prison said that this "was an approved technique." The agent said he understood that this was meant to soften the detainees up and make them more cooperative in interrogations. He told us that he did not discuss his observations of the detainees in their underwear with the OSC or Deputy OSC because he assumed it was an approved technique and thought there was no controversy about it. He said that the sergeant volunteered that the deprivation of clothing was authorized, and the agent received the impression that this practice was not uncommon at Abu Ghraib at the time for detainees who were being difficult.

2. [redacted]

One FBI agent described an incident that occurred at the [redacted] between November 2003 and January 2004. This agent said he observed detainees stripped naked or nearly naked and marched around a room in that facility. He stated that the same room was often in use with the door closed while he was at the facility. The agent told us he was not sure he described to his OSC or Deputy OSC what he had observed, and he did not believe it was necessary to report it to anyone.

In addition, SA Adair, [redacted], reported that he was told that before he arrived there the military interrogators would strip a detainee naked in order to humiliate him.[180] He said that his understanding was that the military had stopped using this technique by the time he arrived there in February 2004.

Another agent who served at the [redacted] told us that he observed on one occasion during April or May 2004 a "detainee shackled to [the] floor, naked and blindfolded." The agent did not know how long the detainee had been in that position. The agent said that a second agent was with him at the time, but neither of them questioned military personnel about this or reported it to the OSC or Deputy OSC. The agent said he had no information as to whether or not

[180] Adair is a pseudonym.

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this had been authorized by military commanders, or why the detainee was being held in that condition.[181]

Several agents reported to us that they had heard that the deprivation of detainee clothing was a standard procedure, but never saw it themselves. One of these agents stated that at least in some cases, military personnel may have done so for purposes of discipline rather than to coerce information from detainees.

L. Hooding or Blindfolding Detainees

The OIG survey also asked respondents to provide information concerning the use of hoods or blindfolds on detainees other than during detainee transportation. According to the *Church Report*, hooding was not explicitly addressed as an interrogation technique in military interrogation policies for Iraq. *Church Report* at 283. The *Church Report* stated that there were no reports that hooding had been used as an interrogation technique, as distinct from a force protection measure during the transport of detainees. *Id.* As detailed below, this finding was not consistent with the accounts given to the OIG by some FBI agents.

Twenty-two FBI employees responded to the survey that they had observed detainee hooding and blindfolding and three stated that they had heard about it from others. However, many of the responses indicated that the blindfolding occurred during detainee transportation or for purposes of safety, security, or discipline. However, other agents reported the use of blindfolding or hooding as an interrogation technique.

Several of these other agents told the OIG that the U.S. military in Iraq routinely used blindfolds to prevent detainees from seeing their detention surroundings and for the protection and security of U.S. and Iraqi personnel. Agents reported to us that the common practices they observed during the movement of detainees within or outside of the detention facilities were the use of either (1) hoods or sandbags over the heads of detainees, left loose or secured loosely with tape on the outside of the bags, or (2) large goggles with the lenses blacked out with duct tape or spray paint.

Other agents described the use of blindfolds, blackened goggles, or hoods, together with other efforts to disorient and confuse detainees during the period shortly after their capture. For example, a former OSC told us that when a group of captured insurgents was brought in to a

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[181] The second agent reported in his survey responses that sometime in May 2004 he observed a detainee who was blindfolded and naked, but his recollection was that he saw this at a different facility.

detention compound [redacted] during the fall of 2003 at around 3:00 a.m., military personnel yelled in Arabic and English through bull horns while loud rock music was played. The OSC stated that the detainees were told to stand up and squat down in the middle of the compound with hoods on their heads.

Several agents told us that in the period of May through October 2004, the military required that detainees be blindfolded for as much as the first 24 hours after arrival at the [redacted]. One agent said that the purpose was to disorient the detainees and to persuade them to cooperate with interrogators.

Agents also described the use of hoods or blindfolds during interrogations. Although detainees were often blindfolded during their initial interrogations at the military's request, the FBI agents said it was not the general practice to blindfold detainees during subsequent interrogations or interviews. Removing the handcuffs and blindfold depended on the interviewer's assessment of how cooperative and candid the detainee was. In some cases, detainees who were considered dangerous were blindfolded during interrogations or interviews. Another agent told us that some detainees were interrogated by the military with hoods on, possibly as part of "harsh-up" interrogations.

One agent who served at [redacted] in early 2004 stated that some detainees were left in their cells with hoods on for extended periods of unknown duration. Detainees who removed their hoods were directed to put them back on by guards who checked through the cell door "peep holes." Another agent told us that he observed that some detainees wore blacked-out goggles while in their cells, but he did not know why or for how long.

Two FBI personnel also told us about what they viewed as inappropriate military humor using drawings of "smiley faces" on the outside of bags over the heads of detainees at Abu Ghraib. An agent in Iraq in the fall of 2003 told us that an MP brought a detainee for an FBI interview with a hood marked in this way, and the agent "told the soldier it was unprofessional." The MP "apologized and came back with a clean hood at the end of the interview." The agent told us he believed he reported this incident to an SSA in his FBI Division when he returned to the United States. An intelligence analyst likewise stated that in the fall of 2004 she saw a seated prisoner at Abu Ghraib, hands bound behind his back, wearing a burlap sack on his head with the face drawn on the sack. She "felt [this] was unprofessional, humiliating and a sick joke," but when she said so to a military officer, "he seemed to think it was an acceptable MP practice."

We also received reports that FBI agents observed and may have participated in the use of duct tape to blindfold detainees in Iraq. These reports are addressed in Part II of Chapter Eleven.

M. Sleep Deprivation or Interruption

Sleep deprivation or interruption was one of the most frequently reported forms of detainee treatment reported by FBI agents who served in Iraq. Most agents who described this conduct stated that detainees had their sleep interrupted by frequent awakenings or through the use of loud music and lights.

The military's September 2003 Iraq Interrogation Policy explicitly authorized the use of sleep adjustment, including adjusting sleep cycles from night to day and limiting total sleep to as little as 4 hours per day. *Church Report* at 265, 283. The October 2003 Policy removed sleep adjustment from the pre-approved list but authorized its use with prior approval from CJTF-7 Command. *Id.* at 268. The May 2004 Policy stated that henceforth this technique would not be approved under any circumstances. *Id.* at 270. According to the *Church Report*, military interrogators continued to use this technique in Iraq even after it was explicitly prohibited, and although interrogators apparently adhered to the 4-hour minimum, they did not always require that the 4 hours be consecutive. *Id.* at 282.

Altogether, 15 survey respondents said they observed and 32 said that detainees or others told them about sleep deprivation being used as early as June 2003 at various detention facilities in Iraq, especially at the [redacted]. FBI agents reported that they heard that this was a standard, approved military [redacted] procedure.

Similarly, 9 FBI employees stated that they observed the interference with detainee sleep by loud music or in some cases the broadcast sound of a baby crying, and 16 stated that they heard about such actions from others. However, they suggested that the purpose of such actions could have been sleep deprivation, interference with communication among detainees, or to create additional stress for uncooperative detainees as part of a "harsh-up" interrogation.

One FBI agent deployed to Iraq between the fall of 2003 and early 2004 told us that based on what he had heard, "[i]t was commonly known that the military made detainees stand for long periods with bags on their heads" in order to interfere with their sleep. Another agent who worked at [redacted] also told us that in February or March 2004 he observed a detainee who was forced to stand in his cell for an unknown period of time in order to keep the detainee awake. The

agent said that a military guard told him that the guard had been instructed to keep the detainee awake.

According to FBI agents, the purpose of sleep disruption or deprivation was to disorient and confuse the detainees about the time of day and how much time had passed since their capture. [redacted] The OSC said that he told agents in Iraq that the FBI was aware of this practice and that agents need not report it further. He did not consider the conduct abusive.

[redacted]

Another agent deployed to [redacted] told us that detainees were interviewed several times over the course of 24 hours in a deliberate effort to disrupt their sleep patterns. Further, the detainees were prevented from knowing what time of day it was. They were held in a building with no windows and in completely dark cells, except when they were taken out to go to the bathroom or to be interrogated. There were also set times at which they were awakened to be moved from cell to cell, fed, or taken to the bathroom, and the times for these events changed periodically.

N. Unregistered "Ghost" Detainees

Ten FBI agents told the OIG that they had personal knowledge of or had heard about the detention of individuals by the United States in Iraq without official acknowledgment of the detainee [redacted]. The incidents reported by the FBI agents occurred during September through

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December 2003, and high value detainees were the focus of the practice. Although the agents usually learned of this practice from military personnel, in each case they were told that the detainees were being held in undocumented status at the behest of the CIA.

According to the *Church Report*, Lt. Gen. Sanchez (the CJTF-7 Commander) stated in July 2004 that CJTF-7 staff officers and the CIA reached an unwritten agreement to provide a number of cells at Abu Ghraib for the CIA's exclusive use in holding "ghost" detainees. *Church Report* at 317. Under this agreement, there was no requirement for the CIA to register the prisoner with the military when the CIA used those cells. *Id.* The Army investigation led by Lt. Gen. Anthony Jones in 2004 also concluded that "ghost detainees" occurred at Abu Ghraib because detainees were accepted from other agencies and services without proper in-processing, accountability, and documentation. The Jones investigation concluded that "[t]he number of ghost detainees temporarily held at Abu Ghraib, and the audit trail of personnel responsible for capturing, medically screening, safeguarding and properly interrogating the 'ghost detainees,' cannot be determined." 2004 US Army, LTG Anthony R. Jones, Investigation of Intelligence Activities at Abu Ghraib, AR 15-6 (*"Jones Report"*) at 23.

A former FBI OSC in Iraq stated in his survey responses that military intelligence personnel described to him in general terms the existence of ghost detainees at Abu Ghraib. Two other agents told us that during the period of September through December 2003, the CIA refused to allow the FBI to interview certain high value detainees held at Abu Ghraib. One of these agents told us that he learned about the "ghost" detainee practice when some detainees scheduled for FBI interviews at Abu Ghraib could not be located, and military personnel told him that the detainees were likely on a CIA "ghost" list because the facility had no records or identifying information for the detainees. The agent said that he thought there were at most three or four such "ghost detainees" while he served in Iraq.

Another agent reported to us that during the fall of 2003 he was told that a particular high value detainee had been interrogated by the CIA at Abu Ghraib for some time before this agent was given access to him. The detainee remained unregistered during part of the period in which this agent interviewed him. During that period, the agent told us the International Committee of the Red Cross was making a very public effort to get access to all detainees. The agent said he and a military officer obtained a prisoner number for the detainee, who subsequently was reported to the Red Cross. The agent also told us that he did not know whether the detainee's "ghost" status was legal. In addition, according to another FBI agent, an officer at Abu Ghraib told him in

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December 2003 that the CIA had an arrangement whereby they could house "ghost detainees" without documenting them.

O. Actual or Threatened Transfer to a Third Country

[redacted]

An FBI SSA who served as supervisor for the FBI agents at [redacted] in 2004 told the OIG on one occasion he was informed that a detainee the FBI wanted to interview was going to be removed [redacted]. He stated that the FBI moved up its interview timetable because it was going to lose its access to the individual. The SSA also stated that he did not recall the name of the detainee or the reasons he was being [redacted], and therefore he could not say it was [redacted]

Two FBI agents told us that they told uncooperative and untruthful detainees that they could be transferred to GTMO. One of these agents stated that while detailed to [redacted] in 2004, he and his partner occasionally used a ruse with detainees, telling them that if they did not cooperate, they could be sent to GTMO or a U.S. prison far away from their families, and implying that the detainees would not be well-liked and would be vulnerable to the kinds of violence that existed in U.S. prisons. Three other agents told us that they used the ruse of advising untruthful or uncooperative foreign fighter detainees that they would be sent back to their home countries for further interrogation.

One of the agents we interviewed described another ruse that involved telling the detainee that the agents were sent to Iraq specifically to interview him, and that if the detainee did not cooperate he would be taken back to the United States to face criminal charges of terrorism and murder and would be imprisoned in a federal maximum security facility.

P. Threats Against Detainee Family Members

We sought information regarding the making of threats against detainees' families. According to the *Church Report*, threatening harm to others was prohibited by law or doctrine throughout interrogation operations in Iraq. *Church Report* at 273. The Church investigators found no evidence that detainees were subjected to threats against family

or friends beyond general statements that detainees' failure to cooperate could result in the arrest of those friends or family members. *Id.* at 289.

Two FBI agents told the OIG about a ruse they used in mid-2004 on certain uncooperative or deceptive detainees by telling them that the military was going to detain members of their families and bring them to [redacted] for questioning. One of the agents told us that detainees' family members were often also involved in insurgent activities, especially fathers, cousins, and brothers. According to the agent, uncooperative detainees would be asked if they wanted their family members to be picked up and questioned knowing that they could incriminate the detainee in insurgent activities. He stated that there were numerous times that fathers, sons, and brothers were detained together because they were all involved, and that detainees were also told that if they cooperated their father or brothers could be released.[182]

Another agent said that he advised a detainee in Mosul during the first quarter of 2004 that the detainee's failure to cooperate could result in his family being questioned or detained by Kurdish Security Forces, which the agent understood was true under the circumstances.

Q. Impersonation of FBI Agents by Other U.S. Government Personnel

Some agents reported in their survey responses that they had heard that military or CIA personnel had falsely represented themselves as FBI agents.[183] Five FBI agents reported that they heard about the impersonation of FBI personnel in Iraq, but none stated that they ever observed such conduct. Three agents told us that they usually suspected CIA or military DIA personnel because of mistaken claims by detainees that other FBI agents had interviewed the detainees shortly before these agents arrived. However, a former Deputy OSC told us that he knew that at locations such as Abu Ghraib and [redacted], detainees were interviewed by personnel from many different agencies, and the detainees often did not know which agency's employee was asking them questions. As a result, when an FBI agent showed up, the detainee would say he had already been interviewed by the FBI. The

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[182] We discuss whether this conduct constituted misconduct in Section VIII of Chapter Eleven.

[183] The Church Report did not specifically discuss the practice of impersonating an FBI agent. It stated that "deception" was explicitly approved in the September 2003 Policy but was removed from the pre-approved list in October 2003, after which requests to use this technique had to be submitted to the CJTF-7 Commander. *Church Report* at 265-268. The Church Report stated that deception has been employed in detainee interrogations throughout the war in Iraq. *Id.* at 273.

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Deputy OSC said he and his colleagues concluded that this was confusion on the part of the detainee, rather than deliberate misrepresentation by the prior interviewer.

R. Other Findings Concerning Agent Observations

Extremely Cold or Hot Room Temperatures. One survey respondent said he observed detainees subjected to extremely cold room temperatures in Iraq, and another said he heard about such an incident.[184] The first agent told us that at [redacted] during the first quarter of 2004 he once observed a detainee through the open door of an interrogation room who appeared to be shaking due to the cold. He said he heard the wall air conditioning unit operating in the room and knew that the room could get cold because he had conducted interviews there, but did not know how long the detainee was kept there. Another agent who worked at [redacted] reported to us that military personnel told him in mid-2004 that cold temperatures were used to place stress on the detainees, but that he never personally saw this done.

Isolation. Over 30 agents told the OIG that they observed or heard about various forms of isolation of Iraqi detainees, including the isolation of some detainees as long as 2 or 3 weeks.[185] Some witnesses told us that detainees were regularly kept in one-person cells in which the detainees could hear but not see one another. Other witnesses told

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[184] According to the Church Report, military interrogators used temperature manipulation (both hot and cold) in Iraq prior to May 2004. The technique was used as a prelude to the incentive technique under Field Manual 34-52 (i.e. moving the detainee to a more comfortable environment as an incentive for cooperation). In September 2003, environmental manipulation was explicitly approved under DOD policy as an interrogation technique in Iraq. The October 2003 DOD policy removed this technique from the pre-approved list but authorized its use with prior approval from CJTF-7 Command. *Church Report* at 268. The May 2004 DOD policy for Iraq stated that henceforth this technique would not be approved under any circumstances. *Id.* at 270.

[185] The September 2003 Iraq military interrogation policy listed isolation as an approved technique, although its use on enemy prisoners of war (as distinct from security or criminal detainees) required advance approval by the CJTF-7 Commander. *Church Report* at 265. The October 2003 Policy removed "isolation" as a listed technique but authorized the use of "segregation" for several purposes, including "to ensure the success of interrogations." CJTF-7 approval was required for any segregation in excess of 30 days. *Id.* at 269. (The difference between "segregation" and "isolation" is not made clear, although it appears that the former relates to the separation of the detainee from other detainees, while the latter relates to limiting the contact of the detainee with any other persons.) The May 2004 Policy expressly prohibited "sensory deprivation" as an interrogation technique, which could encompass more extreme versions of isolation. *Id.* at 270. The Church investigators found that isolation was used in Iraq. *Id.* at 273.

us that detainees were isolated as rewards for their cooperation, and therefore had better living conditions than did other detainees. Several survey respondents stated that detainees at one facility, particularly high value detainees, were kept in individual cells to reduce their influence on other detainees, and to "maximize [their] cooperation" with interrogators.

Handling of the Koran and Forcible Shaving of Detainees. One survey respondent reported in his survey response that a detainee had objected to him about the fanning of the pages of his Koran by military guards. Another agent reported that detainees believed that shaving of their heads and beards was a form of punishment by military personnel, but the agent also stated that military personnel told her that it was done for hygiene purposes. A second agent reported that he had observed the forcible shaving of detainees, but provided no details.

Techniques that No Agents Reported to the OIG. There were two techniques that none of survey respondents stated they ever observed or heard about, including: (a) intentionally delaying or depriving a detainee of medical care; and (b) using or threatening to use spiders, scorpions, snakes, or other animals on or near a detainee.

We also asked witnesses who were involved in detainee interviews about any complaints that detainees made to them that the detainees had been mistreated. As in Afghanistan, FBI agents in Iraq often asked detainees about their treatment and custodial conditions. FBI employees told us that detainees seldom complained to them about the way they were being treated by U.S. personnel, and seldom told the agents they had been mistreated. Rather, detainees often complained that they could not contact their families, complained that they should not have been detained at all, or complained about prison conditions generally.

III. Disposition of FBI Agent Reports Regarding Detainee Treatment in Iraq

As was the case with Afghanistan, we found that very few of the FBI agents who served in Iraq made contemporaneous reports to anyone in the FBI or the military regarding the potential mistreatment of detainees in Iraq. Of the 267 agents who served in Iraq and responded to the OIG survey, only 13 agents said they made such a report to FBI superiors or to military personnel. Likewise, most of the agents we interviewed stated that they did not report any incidents of detainee abuse to their supervisors or to the military.

We believe that the factors that contributed to the small number of reports in Afghanistan, discussed in Section III of Chapter Nine, had a similar impact in Iraq. Most agents said they saw no abuses to report.

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Moreover, there was no formal reporting requirement prior to May 19, 2004, and many agents assumed that any conduct that they observed was permitted under military interrogation policies in Iraq. As in the other military zones, the FBI agents in Iraq generally did not consider their role to include policing the conduct of the military personnel with whom they were working.

Several FBI agents stated that they raised concerns with their Supervisory Special Agents (SSA) or with military personnel regarding the military's detentions of minors in Iraq. Some told the OIG that their concerns related to the young age and lack of intelligence value of the detainees rather than any indication that the detainees had been mistreated. One of the agents stated that shortly after his concerns were elevated to the SSA and the military commanders, the minor detainees were released. Two other agents in Iraq during May through July 2004 told the OIG that they spoke to their SSA about their concern that the military did not have an adequate basis for holding some detainees. One agent stated that this concern was also communicated to military intelligence personnel, but he did not know the outcome. Again, these concerns did not relate to mistreatment of detainees but rather to the detention itself.

Another agent told us that he heard about but did not see detainees being forced to pace back and forth along a wall for hours in order to induce fatigue and lessen resistance to interrogation. This agent reported the practice to a supervisory agent. The agent said he received a reiteration of the standard general guidance that agents should not participate in any practices beyond FBI procedures, that they should keep the on-scene supervisors informed if they saw anything "abusive [or] illegal," and that they should use their good judgment as agents.

An agent who served at [redacted] during 2004 observed sleep deprivation, shackling, stress positions, and other techniques by the military. He told the OIG that he made a report to an SSA that some of the agents had concerns that the environment was coercive. He did not indicate to the OIG whether any action was taken as a result of his report.

Another agent stated in his survey response that after he saw [redacted] being yelled at by military guards, he asked that a particular detainee he had interviewed several times be transferred back to the general detainee population. One agent told us that his complaint to an Army Captain about guards putting a "smiley face" on a hooded detainee was met with apparent indifference.

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Most of the agents' reports did not reach as high as the FBI OSCs or Deputy OSCs in Iraq. We interviewed all of the former FBI OSCs and most of the Deputy OSCs who served in Iraq during 2003 and 2004, and with a single exception detailed below, none of these witnesses said that they ever received any reports from subordinates regarding detainee mistreatment. In particular, OSCs and Deputy OSCs who served in Iraq at the time that the abuses at the Abu Ghraib prison were taking place told us that they did not recall receiving any reports from FBI agents of such conduct, despite having instructed the agents to make such reports if they witnessed detainee abuse.

The one significant exception that we learned about was an e-mail report made in January 2004 from an FBI interview team leader to the FBI OSC alerting him that there was evidence that prisoners had been mistreated at Abu Ghraib. This report relayed information provided by the Army Criminal Investigation Command (CID). As previously explained, this report was elevated to Executive Assistant FBI Director Gary Bald, who concurred with the OSC's assessment that the matter was outside the scope of the FBI's mission in Iraq and that the Army CID should handle the matter. According to the Deputy OSC at the time, "we advised all agents working at the prison to watch for any activity they considered abusive."

Our survey uncovered another incident in which FBI agents in Iraq reported detainee mistreatment by a foreign interrogator in a non-U.S. controlled detention facility. An agent who served as the FBI's Legal Attaché (Legat) to the U.S. Embassy in Iraq in late 2004 told us in his survey response that an FBI agent and an agent from the U.S. intelligence community observed a detainee being slapped by a foreign interrogator. The Legat stated both U.S. agents terminated the interrogation and left the facility. The Legat stated that he or the agent e-mailed FBI Headquarters about the incident and were told that Headquarters was aware of it. We did not receive any additional information regarding the disposition of this report.

As detailed in Chapter Six, on May 17 and 18, 2004, the FBI Inspection Division interviewed 14 FBI employees who had conducted interviews or otherwise been present at Abu Ghraib from October through December 2003. The results of the inquiry were summarized in an Inspection Division report to the Counterterrorism Division, the Director's Office, and the FBI Office of General Counsel, dated May 19, 2004. On January 6, 2005, FBI General Counsel Valerie Caproni forwarded the results of the Inspection Division interviews to John H. Smith, Deputy General Counsel for the DOD. Caproni's letter stated: "None of the employees reported observing the sort of mistreatment of detainees that gained widespread media attention, although a few

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observed handling of detainees in ways that would not be appropriate for within the United States."

IV. Conclusion

We received varied reports about detainee interrogation practices from FBI agents who were detailed to Iraq. As detailed in this chapter, several FBI agents said they observed detainees deprived of clothing. Other frequently reported techniques identified by FBI agents as used by military personnel in Iraq included sleep deprivation or interruption, loud music and bright lights, isolation of detainees, and hooding or blindfolding during interrogations. FBI employees also reported the use of stress positions, prolonged shackling, and forced exercise in Iraq. In addition, several FBI agents told the OIG that they became aware of unregistered "ghost detainees" at Abu Ghraib whose presence was not reflected in official records. We also heard reports from FBI agents that detainees had been sent or were threatened with being sent from Iraq to a third country for interrogation.

Although several FBI agents were deployed to the Abu Ghraib prison in Iraq, these agents told us that they did not witness the extreme conduct that occurred at that facility in late 2003 and that was publicly reported in April 2004. The FBI agents explained that they typically worked outside of the main prison building where the abuses occurred, and that they did not have access to the facility at night when much of the abuse took place.

We found that few of the FBI agents who served in Iraq made contemporaneous reports to anyone in the FBI or the military regarding the potential mistreatment of detainees in Iraq. The FBI OSCs who served in Iraq during 2003-2004 were virtually unanimous in telling the OIG that they never received any reports from FBI agents regarding detainee mistreatment. There was no formal FBI reporting requirement prior to May 19, 2004, and many agents assumed that the conduct that they observed was permitted under military interrogation policies in Iraq. As in the other military zones, the FBI agents in Iraq generally did not consider their role to include policing the conduct of the military personnel with whom they were working. Some agents told us that they were able to get their concerns resolved by taking them directly to the military. We believe these factors contributed to the relatively small number of reports made by FBI agents regarding detainee mistreatment.

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CHAPTER ELEVEN
OIG REVIEW OF ALLEGATIONS OF MISCONDUCT BY FBI EMPLOYEES IN MILITARY ZONES

In this chapter, the OIG describes our investigation and findings with respect to allegations that particular FBI employees in the military zones were involved in detainee abuse or mistreatment or other misconduct. Some of the allegations were made by detainees, but some of the allegations came from other FBI employees, in most instances in response to the OIG's survey.

In general, we evaluated FBI conduct by reference to the FBI policies discussed in detail in prior chapters. The FBI has stated that its agents were at all relevant times subject to the same policies regarding detainee interrogations that applied to FBI interrogations inside the United States, with the exception of the requirement to provide Miranda warnings. These policies prohibited brutality, physical violence, duress or intimidation of detainees, and obtaining statements from detainees by force or threats. In addition, many FBI agents were instructed not to participate in joint interrogations in which military interrogators were using techniques not approved for use by the FBI. On May 19, 2004, the FBI issued a written policy that reiterated the general injunction against participating in such interrogations and that added for the first time a requirement that agents report any abuse or mistreatment of prisoners by non-FBI personnel up the FBI chain of command.

In evaluating the conduct of FBI agents who were alleged to have abused or mistreated detainees, we recognized that FBI agents sent to GTMO, Afghanistan, and Iraq were working in environments that were not analogous to those the agents faced in the United States. We also found that the FBI's existing policies did not always provide clear guidance to agents working in unfamiliar circumstances in the military zones. In addition, in the absence of more detailed definitions of concepts such as "participation" and "abuse," it was sometimes difficult for agents in the military zones to know the degree to which the agents were required to separate themselves from interrogations that included non-FBI techniques or when to report the use of such techniques to their supervisors.

This chapter addresses the individual allegations of misconduct by FBI employees and is divided into eight Sections describing differing allegations.

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I. Alleged Mistreatment of Moazzam Begg

In this Section we address allegations made against the FBI by Moazzam Begg, who was arrested in Pakistan in late January 2002 and detained in [redacted] and at GTMO until his release in January 2005. Begg alleged that he was subjected to mistreatment and coercion at both locations and that FBI agents participated in or knew about this conduct.

A. Background

Begg, a British and Pakistani national, was arrested in Islamabad, Pakistan by Pakistani authorities on January 28, 2002. He was held [redacted] and was questioned by U.S. and coalition intelligence personnel, including several FBI agents.

In late February 2002, Begg was transferred to the United States military detention facility at [redacted], where he was questioned by U.S. and British intelligence personnel. Begg was also questioned [redacted] by FBI Special Agent Bell and by Detective Harrelson, a New York City Police Department detective serving on the FBI-sponsored Joint Terrorism Task Force in New York City.[186]

In February 2003, Begg was transferred to GTMO, where he was again interviewed by Bell and Harrelson, [redacted]. Begg subsequently disavowed the signed statement, claiming it was obtained under duress, and stated that he was innocent of the accusations against him.

In 2004, Begg was scheduled to be the first detainee tried by the Military Commission at GTMO. Begg was accused by the military of being a member of al-Qaeda and other affiliated terrorist organizations, recruiting individuals to attend al-Qaeda terrorist training camps, receiving training at such camps, and providing support to terrorists by providing shelter for their families. He was also accused of being prepared to fight on the front lines against United States and allied forces along with Taliban and al-Qaeda fighters.

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[186] Bell and Harrelson are pseudonyms.

In January 2005, Begg and three other British nationals held at GTMO were released to British custody. Upon arrival in the United Kingdom, Begg was released by British authorities and he returned to his residence in Birmingham, England.

B. Begg's Allegations

Begg made his allegations regarding mistreatment in a letter dated July 5, 2004, to the United States Forces Administration, Joint Task Force/Joint Detention Operations Group, and in a written statement to the Combatant Status Review Tribunal dated July 12, 2004. He provided further details in interviews with the Naval Criminal Investigative Service (NCIS) on December 15 and 16, 2004, and with the OIG on May 31, 2006. Begg made additional allegations of mistreatment in a report prepared by his attorney entitled, "One Thousand Days and Nights of Torture – The Systematic Torture and Abuse of Moazzam Begg, a British Citizen, by the United States of America." In addition, Begg wrote a book describing his arrest and detention, entitled: Enemy Combatant: My Imprisonment at Guantanamo, Bagram, and Kandahar (The New Press, 2006).

Begg made the following specific allegations of mistreatment and coercion potentially involving FBI employees:

1. Begg alleged that FBI agent Bell and NYPD officer Harrelson participated in interrogations [redacted] during which Begg was [redacted].

2. Begg alleged that on one occasion at Bagram he was hooded and "hog-tied" by military personnel as punishment for failing to tell the interrogators what they wanted to hear, struck or kicked in the back and head, and left in this position overnight. He stated that his interrogators, including Bell and Harrelson, directed or were aware of this treatment.[188]

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[187] Begg identified the individuals who participated in these interviews by their correct first names, and the FBI later determined that he was referring to Bell and Harrelson.

[188] Begg also alleged that he was aware of two detainee deaths at Bagram and that the FBI might have been aware of them at the time they occurred. However, he did not identify any FBI agent who had this knowledge. Bell and Harrelson had already left Bagram by the time the deaths occurred. We address the FBI's knowledge regarding deaths at Bagram in Chapter Nine.

3. Begg alleged that Bell and Harrelson coerced Begg into signing the written statement at GTMO by threats of imprisonment and execution without legal recourse.

According to an undated letter from the United States Principal Undersecretary of Defense to the British Embassy, the Department of Defense (DOD) conducted three investigations of Begg's allegations of abuse and found no evidence to substantiate his claims. The DOD provided the OIG with a Report of Investigation prepared by the U.S. Army Criminal Investigation Command dated July 23, 2005. According to this report, the Army reviewed correspondence and statements by Begg and interviewed over 30 witnesses who were stationed at the facilities at which Begg claimed the abuses occurred. The report concluded that "the offenses of Communicating a Threat, Maltreatment of a Person in U.S. Custody, and Assault did not occur as alleged." Many of the witnesses interviewed by the Army investigators said that Begg cooperated with military interrogators by assisting with translations, that Begg received comforts such as reading and writing materials, and that Begg never complained about mistreatment while he was at Bagram.

C. OIG Investigation

The primary subject of the OIG's investigation was FBI agent Bell, who was the only FBI agent against whom Begg made any allegations by name. Harrelson was a detective with the New York City Police Department. Although Harrelson was a member of the FBI-sponsored Joint Terrorism Task Force in New York City, he was not an FBI employee and therefore not subject to the OIG's jurisdiction.

The OIG interviewed Begg, Bell, and two other FBI agents who witnessed Begg's interrogations in Bagram and GTMO. Harrelson declined to be interviewed by the OIG. The OIG also reviewed the FD-302s and Electronic Communications summarizing Begg's FBI interviews, his letters and statements complaining about abuse in Afghanistan and GTMO, his book, and an interview conducted by NCIS in December 2004.

The OIG interviewed Begg by telephone on May 31, 2006. Begg is fluent in English, and no interpreter was required. His attorney was on the phone during the interview. Begg's statements to the OIG were largely consistent with the allegations that he had made in letters to the DOD and in his book.

D. OIG Analysis of Begg's Allegations

In this subsection, we summarize and analyze the evidence relating to Begg's allegations. We also assess the conduct of the FBI

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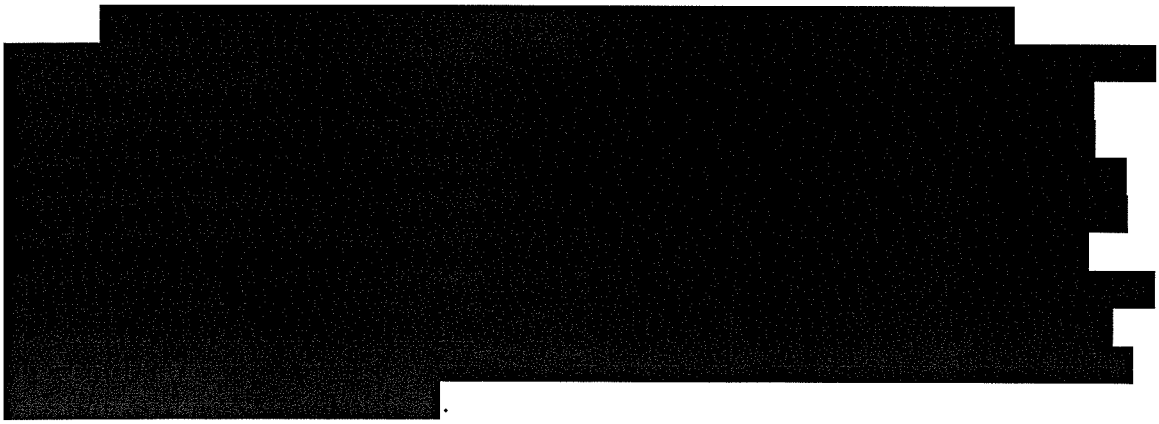
employees allegedly involved in this matter pursuant to the FBI policies relating to interrogations as detailed in prior chapters of this report.

1. Alleged Threats and Psychological Ploys in Afghanistan

Begg Interview. In his OIG interview, Begg alleged that while he was incarcerated at Bagram Air Force Base, he was questioned by a variety of interrogators, including Bell, Harrelson, a CIA employee named "Martin," and a military interrogator named "Alex." He said that during the interrogations, both his hands and feet were usually in restraints unless he needed to write something. He said that his hands were restrained in front of his body.

He said that while Bell and Harrelson asked him many questions, the CIA employee and the military interrogators were "clearly in control." Begg stated that over a period of about a month, he was interviewed 10 to 15 times. He said in addition to Bell and Harrelson, he was interviewed by four other unidentified FBI agents. He said that sometimes these were cordial conversations and were not always interrogations.

Begg told the OIG that during interrogations attended by Bell and Harrelson in May 2002, he was threatened with rendition to Egypt. He stated that he was told that a captured al-Qaeda member had "played the same games" with the interrogators and was sent to Egypt, where he "broke down" within two days, and that Begg would also be sent to Egypt if he did not cooperate. He said that initially this threat was made by the CIA employee, and that Harrelson "possibly" discussed it. Begg said that he did not recall Bell making any reference to Egypt. Begg stated that he understood that the threat to send him to Egypt meant that he would be tortured there, as it was commonly known in the Muslim world that Egypt uses such methods as rape and electric shocks to interrogate prisoners.



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Bell Interview. Bell told the OIG that when he and Harrelson began interviewing Begg in May 2002, Begg was generally cooperative. He stated that when they interviewed Begg, he was given "Miranda warnings." In an FD-302 relating to an interview with Begg on May 11, 2002, Bell wrote that at the outset of the interview Begg was asked if he had previously been read his rights, and that Begg stated he had and that he fully understood those rights. Bell said that during the interview there was some "back and forth" with Begg when Begg would deny any knowledge of something that they believed he knew about. Bell said that the most aggressive tactic that the interviewers used with Begg was to raise their voices to challenge him. Bell said that the interviews were never more aggressive than that and that they never had any physical contact with Begg or harmed him physically.

Bell stated that for a majority of the interviews of Begg, he and Harrelson were joined by other members of the intelligence community. He said that the interviews of Begg were all documented with either an FD-302 or an EC if a member of the intelligence community was present.

Bell told the OIG that Begg was escorted into the room for interviews in hand restraints and was hooded during transport. Bell stated that the hood was removed when Begg entered the room and that Bell asked the military escort to remove the restraints, which was done.

Bell denied threatening Begg with being sent to Egypt or referencing another detainee being sent to Egypt. He told us that such an approach would be inconsistent with what he and Harrelson were trying to accomplish with Begg, which was to elicit information that could be used in a United States court.

[redacted].

We asked Bell whether he heard anyone question Begg with words to the effect of "do you ever want to see your children again?" Bell stated that he did not recall that question being asked. He stated, however, that one of the strategies that he and Harrelson employed was to try to encourage Begg to cooperate so that they could move him into FBI custody, have him plead guilty, and then try to help his family to move closer to him. Bell said that they were nevertheless frank with Begg that they did not know what the future would hold for him or any of the detainees. Bell stated that they never threatened him that he would not be able to see his family, but they did warn him that if he lied to them they would not be able to help him.

Bell stated that he had no recollection of a woman screaming in a room next to Begg, nor was he aware of the use of that tactic or even that there were female detainees held at the facility. He stated that neither he nor Harrelson ever made any threats or indicated that Begg's family would be abused or harassed in any way.

OIG Conclusions. Begg stated that a CIA agent and "possibly" Harrelson threatened him with being sent to Egypt if he did not cooperate, but that he did not recall Bell threatening to send him to Egypt. Given Begg's uncertainty about what Harrelson said to him and lack of recollection of Bell making such a threat, we found insufficient evidence to conclude that an FBI employee threatened Begg with rendition to Egypt.

When Begg was interviewed in Bagram in May 2002, the FBI Director had not yet made the decision that the FBI would not participate in interrogations when other agencies were using tactics not normally available to the FBI. (As noted in Chapter Four, we believe this decision occurred in July 2002 in connection with the Zubaydah interrogation.) In other words, the FBI's "do not participate" policy had not yet been communicated to all agents serving in military venues. Therefore, even if a CIA agent did threaten Begg with rendition in the presence of Harrelson or Bell, FBI policy did not yet clearly require them to leave the interrogation.

A similar analysis applies with respect to Begg's allegation that he was led to believe that his wife was screaming in an adjacent room. Bell said he did not recall this incident, and we found no other evidence that it occurred or that Bell or Harrelson directed it. Moreover, Begg acknowledged that the CIA and the DOD were in charge of his interrogations.

We also found insufficient evidence to conclude that the interrogators explicitly or implicitly threatened Begg's children when they showed Begg pictures of his family. Even assuming that the interrogators asked Begg if he cared for his family, as he alleged, this form of questioning as a means to induce cooperation would not constitute an improper threat in violation of FBI interrogation policies.

2. Alleged Physical Abuse in Afghanistan

Begg Interview. Begg also told the OIG that he suspected that interrogators in Afghanistan, including Bell and Harrelson, were involved in an incident in May 2002 in which Begg was physically abused by military personnel. Begg said that during his second or third interrogation, he was in an interrogation room with Bell, Harrelson, and

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a CIA employee. He said that at the end of the interrogation session the interrogators said they did not believe that he was telling the truth. According to Begg, the CIA employee stated as he was leaving the room that he was going to arrange Begg's punishment. Begg said that shortly thereafter military personnel escorted him to an adjoining room where his hands were restrained behind his back and closely connected to his ankle restraints by a chain. Begg described this as being "hog-tied." He said that he was also hooded. Begg told the OIG that Bell and Harrelson were present in the interrogation room when he was being moved to the other room by soldiers.

Begg told the OIG that several hours later a soldier named Nathan came in and told Begg that the cases of detainees being sent to Syria and Egypt were "very real."

Later in the OIG interview, Begg said that not long after he was restrained on the ground in the room next to the interrogation room, he was struck in the back and head and that he thought it was by the soldiers. He said that he was left alone in that position until the restraints were removed the next day. He said that this was the only time that this kind of treatment occurred.

Begg said that he did not hear any of his interrogators tell the military personnel to tie him up or restrain him, but that he believed that in almost every case, the interrogators would determine how detainees were treated.

According to Army records, one of the accounts that Begg gave to Army investigators was somewhat different from the version he provided to the OIG. According to an investigative report prepared during the Army investigation, Begg told an investigator on June 22, 2004, that he was never beaten or struck by anyone at Bagram, but that he was "hog-tied" and laid on his side for a period of time. In a subsequent interview in December 2004, Begg made essentially the same allegations that he made to the OIG.

Bell Interview. Bell told the OIG that he did not hear a CIA employee stating he was going to arrange Begg's punishment. Bell said that if he had heard such a statement, he would have withdrawn from the interview and reported the statement to his FBI chain of command. Bell also pointed out that such a tactic would have been inconsistent with his approach of attempting to build rapport with Begg.

Bell denied that Begg was "hog-tied" and struck in a room next to the interrogation room at Bagram. Bell said that if such an incident had happened, Begg would have told Bell about it. Bell said that he

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"certainly" would not have allowed something like that to occur. Bell also said that he was not aware of a room that Begg would have been taken to other than the interrogation room or his cell.

Interview of Another FBI Agent. We interviewed another FBI agent who served in the military in Afghanistan in the summer of 2002 before joining the FBI. The agent stated that he attended an FBI interrogation of Begg at Bagram and that the FBI agent's questioning was calm and personable. He also told us, however, that he witnessed Begg being slapped on the back of the head during the interrogation as a way of getting his attention. The agent said he did not recall who slapped Begg, but he was certain it was not the FBI agent. He said that Begg appeared agitated about being slapped, but that shortly after the incident Begg was "laughing and smiling."

OIG Conclusions. Numerous witnesses interviewed by the Army Criminal Investigation Command stated that they never witnessed Begg or any other detainee being hog-tied at the Bagram facility, [redacted].

Even crediting Begg's version of his treatment at Bagram, Begg did not allege that he was struck or hog-tied by an FBI agent or even that an FBI agent was present during this incident. Begg's allegation of his interrogators' complicity in the incident was based not on personal observation or direct knowledge, but rather on his belief that interrogators dictated how detainees were treated and on the statement of the CIA interrogator that he was going to arrange Begg's punishment. In the face of Bell's specific denials and his explanation that abusing Begg would undermine the effort to build rapport with him, we found insufficient basis to conclude that Bell or Harrelson were aware of or complicit in the alleged incident of physical abuse.

3. Alleged Threats and Coercion at GTMO

Begg Interview. Begg told the OIG that several days after he arrived in GTMO, Bell, Harrelson, and two military interrogators interviewed him and took a statement from him. He said that Bell and Harrelson presented him with a draft statement and told him that if he

refused to sign it he could face "untold amounts of years' imprisonment in Guantanamo without ever seeing [his] family or having any access to any legal recourse, which also could include execution by lethal injection or whatever." Begg said that Bell and Harrelson mentioned that they wanted him to enter into a plea bargain followed by witness protection. He said they gave him the example of "Sammy the Bull" who killed 19 people and only got 2 years in prison. Begg also stated that Bell and Harrelson gave him confusing messages, telling him at times that he would be sent to Britain and at other times to Pakistan.

Begg said that the agents gave him the draft statement and allowed him to make changes. He said the statement had poor grammar and clearly was not drafted by him. Begg said the agents came back minutes later after having made some of his requested changes and asked him to sign it, but Begg then asked to see a lawyer. Begg said the agents told him that he would only see a lawyer after he signed the statement. He said that he went to pray first and then signed the document out of "desperation, isolation, fear, apprehension, and all those things that had happened like beatings and threats."

Bell Interview. Bell told us that representatives from the DOD Criminal Investigative Task Force (CITF) in GTMO who were preparing for the military commission trials requested his assistance in preparing a case against Begg, who was to be the first detainee tried by the military commission. The representative from CITF wanted Bell and Harrelson to clarify some of Begg's statements and have Begg sign a written statement. Bell said Begg's statement was prepared by an attorney for the Office of Military Commissions. Bell said he thought that the statement was "amateurish" as a way of doing business, but he said it was accurate because it was prepared from the reports of prior interviews with Begg.

Bell stated that he and Harrelson went through the statement with Begg "line by line" and told him that he could cross out the items that he did not agree with. Bell said that Begg initialed each paragraph that he agreed with and crossed out the ones that he disagreed with, and the statement went back to the military. Bell said that he and Harrelson subsequently presented Begg with a final copy of the statement that had been revised by the military. He said that Begg asked to pray first, and after praying signed the statement. Bell recalled that during the meetings with Begg two military personnel were present.

Bell denied that Begg was threatened with imprisonment and the possibility of execution if he did not sign the statement. Bell said that he and Harrelson would have stressed the importance of cooperation as the better route. Bell further said that he never suggested to Begg that if did

not to cooperate there would be repercussions to his family. Bell stated that the agents wanted Begg to be transferred to DOJ custody and have him plead guilty. They discussed with Begg that the FBI could help his family by having them moved close to Begg.

Interview of Another FBI Agent. We interviewed another agent who visited GTMO in February 2003 and worked closely with CITF, which was developing a case against Begg for the military tribunal. The agent said that while he was at GTMO he met with Begg several times, and that Begg was cooperating with the FBI. The agent told us that the guards treated Begg well and that Begg joked around with them.

The agent said that Bell and Harrelson had already left GTMO when the agent visited the first time and that Begg had already given the signed statement to the FBI. According to the agent, Begg told him that he was being threatened at the time that he gave the written statement to the FBI. The agent told the OIG that he did not probe this any further with Begg because he viewed Begg's complaint as an attempt to distance himself from the written statement that he had given and to minimize it. He said that Begg complained about "some other guys" who told him that he would be sent back to Afghanistan, but Begg did not specify whether the people who supposedly said this were from the FBI or the military. Begg also joked with the agent about Bell and Harrelson, referring to them as "big" and "funny."

Begg's Signed Statement. The OIG reviewed a copy of Begg's signed statement dated February 13, 2003. The statement is eight single-spaced pages, signed by Begg, Bell, Harrelson, and two DOD Criminal Investigative Division agents. Begg's signed statement indicates, among other things, that Begg sympathized with the cause of al-Qaeda, attended terrorist training camps in Afghanistan, Pakistan, and England so that he could assist in waging global jihad against enemies of Islam, including Russia and India; associated with and assisted several prominent terrorists and supporters of terrorists and discussed potential terrorist acts with them; recruited young operatives for the global jihad; and provided financial support for terrorist training camps.

Notations that appear to be Begg's hand-written initials appear at the beginning and end of each paragraph of the statement. The statement also has additions and deletions that are also initialed. These include both minor and substantive changes. For example, on the first page Begg apparently corrected the spelling of one of his aliases, changed "handguns" to "handgun," and deleted "hand" in front of "grenades." On page 3, Begg apparently changed the statement "I am unsure of the exact amount of money sent to terrorist training camps of the many years I

helped fund the camps," by replacing the word "many" with the words "couple of." On page 4, he added the following sentence apparently for purposes of explanation for his conduct: "This was to help the Kurds in Iraq."

The facts in Begg's detailed statement are generally consistent with the facts set forth in the numerous FD-302 summaries of Begg's interviews. For example, his statement described the training camps in Afghanistan that he attended and what he learned. This information was similarly developed in the FBI's FD-302s.

Some of the conclusions that appear in his statement are not found in the FD-302s. Specifically, in his statement he admitted that he [redacted] The OIG was not able to find a reference in the FD-302s that correlated with this part of Begg's statement.

OIG Conclusions. If true, Begg's allegations concerning how his statement was obtained would potentially violate the FBI's prohibition against using threats to coerce a confession. However, the OIG did not find sufficient evidence to support Begg's allegations. The statement itself with the additions and deletions initialed by Begg support its voluntariness. In addition, even after making the statement Begg continued to cooperate with the FBI, according to the FBI agent who met with him later.

Furthermore, we found that Bell's denial that he threatened Begg in order to get him to sign the statement was credible because such conduct could have undermined Bell's long-term strategy of building rapport with Begg to obtain his cooperation for other prosecutions. Begg even acknowledged that Bell and Harrelson had mentioned the possibility of a plea bargain, witness protection, and cooperation with the government. Therefore, we concluded that the evidence did not support the allegation that they coerced Begg into signing the statement.

II. Allegations of Mistreatment of Saleh Muklif Saleh

In this Section we address allegations that detainee Saleh Muklif Saleh was abused by interrogators [redacted]) in Iraq during late February and early March 2004. According to the allegations, FBI agents participated in these interrogations.

A. Background and Allegations

Saleh is an Iraqi who was allegedly involved in [redacted]. Saleh also was allegedly involved in [redacted] in Iraq. He was arrested by [redacted].

On February 29, 2004, Saleh was interrogated at the U.S. detention facility in [redacted] by FBI special agents Rohr, Cisco, and Howard, along with an FBI interpreter and two Iraqi police officials.[189] Prior to the interrogation session, the FBI fingerprinted and photographed Saleh. During the interrogation session Howard took photographs to document whether Saleh had any pre-existing injuries, the condition that he was in, and the conditions under which the interrogation was conducted. Rohr provided the OIG with 13 photographs of the interrogation in [redacted].

Rohr, Cisco, and Howard prepared an EC dated March 1, 2004, summarizing a 5-hour nighttime interrogation session (including a 1-hour break). [redacted].

Shortly after Saleh's interrogation, the FBI agents and interpreter returned to [redacted]. Around the same time, Saleh's cousin was arrested and brought to the U.S. detention facility [redacted]. Over the next several days, both Saleh and his cousin were further interrogated by military personnel, who Howard stated were from the U.S. Air Force Office of Special Investigations (OSI).

According to Rohr, [redacted], and the OSI agent contacted the FBI about assistance in further interrogating Saleh and his cousin. Arrangements were made to bring Saleh and his cousin to [redacted] for additional questioning. Howard said that the reason Saleh was interrogated at [redacted] was to bring him closer to the location where his information could be put to use.

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[189] These names are pseudonyms.

Late on March 3, 2004, two FBI employees assisted in transporting Saleh and his cousin to [redacted], where they were placed in the U.S. detention facility prior to the interrogation. A "Receipt for Inmate or Detained Person" indicates that Rohr delivered Saleh to the military at [redacted] at 1:11 a.m. on March 4, 2004. The receipt states "receved [sic] in good heath," with the additional words "with minor bruising & scratches" added in different handwriting. The military police sergeant who signed the receipt told military investigators that he did not write the additional words on the form and that he did not know who added them.

When asked about the reference in the receipt to "bruising and scratches," one of the FBI agents said that Saleh had no shoes and that his feet were bruised and scratched from walking around barefoot. An FBI medic told military investigators that prior to the interrogation session [redacted], he examined the two detainees and treated both of them for abrasions on the wrists that were likely associated with plastic handcuffs.

Another Receipt for Inmate or Detained Person states that Rohr picked up Saleh for questioning at 7:16 a.m. on March 5, 2004. According to Rohr, Saleh and his cousin were brought to a [redacted] where they were further interrogated by the same three FBI agents (Rohr, Cisco, and Howard) and an OSI agent who had previously interviewed Saleh in [redacted]. Also present during the interrogation were two Iraqi police officers who were working closely with the three FBI agents in Iraq.

The interrogation session lasted for less than 8 hours. According to Howard, the interrogation was conducted with a sense of urgency because the interrogators had information that [redacted]. For a portion of the interrogation, a third detainee was brought into the room and was questioned. A fourth FBI agent, Bennett, was brought to the interrogation session for security, although he did not stay for the entire interrogation session.[190] Howard told us the FBI took the lead in the interrogation, although the OSI agent also participated actively. Howard stated that he did not recall the name of the OSI agent who participated.

Saleh's cousin was blindfolded with duct tape for some portion of the interrogation so that [redacted]. Howard took photographs at this interrogation session, which were included in the photographs provided to the OIG.

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[190] Bennett is a pseudonym.

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Rohr stated that they treated Saleh professionally. Rohr and Cisco said that they bought him sandals and food and allowed him bathroom breaks. They said that they sat in a semi-circle around Saleh, who was also seated, and threw questions at him quickly to confuse him. They also said that they yelled at him to confuse him.

According to the agents, Saleh and his cousin [redacted], although the FBI did not provide the OIG with any Form FD-302 or other contemporaneous record of what happened at this interrogation session. On March 8, 2004, another FBI agent who was not present at the interview signed a sworn statement for the military's investigative file summarizing information provided by Saleh, [redacted].

[redacted] On March 11, 2004, Saleh was transferred to Abu Ghraib prison.

From records provided by the military, it appears that the first time Saleh made any allegations of abuse was on June 16, 2004, when he was at Abu Ghraib prison. According to a military document, Saleh told military personnel that he was abused during 4 days in February while detained at [redacted], and on the first day that he was detained at [redacted]. He stated that he had sustained injuries, including a dislocated shoulder. However, the translations of two sworn statements that Saleh gave to the military dated June 19 and July 14, 2004, describe only abuse that allegedly took place before Saleh was transferred [redacted].

In the June 19 statement, Saleh alleged that "[t]hey tortured me and cuffed me in an act called the scorpion, and pouring cold water on me. They tortured me from the morning until the morning of the next day, and when I fell down from the severing torture I fell on the barbed wires, and then they dragged me from my feet and I was wounded and, and they punched me on my stomach." CID provided Saleh's statement to the FBI's Baghdad Operations Center on June 29, 2004.

In the July 14 statement, Saleh made more detailed allegations. He stated that while he was detained [redacted], soldiers cut his clothes off, tied his arms and legs together behind his back in a "scorpion operation," tied boxes of canned food to his shoulders, and poured cold water on him if he fell on the ground from exhaustion. He also stated: "They gave me one or two bottles of water and they asked me to drink it while I was hungry and they forced me to drink it, so I did, and I felt vomiting, then they ordered me to drink

again, and they were looking at me and laughing." He also described forced exercise and being subjected to "loud music like the devil's voices." Saleh stated that when he refused to confess, he was punched in the stomach and face. He stated that one person used a tool around his neck, pulling him backward, and said that "when I fell down on barbed wires they dragged me from my feet until I get cuts in my body." Neither the June 19 statement nor the July 14 statement contained an allegation that Saleh's shoulder was dislocated.

The Army conducted an investigation into these allegations and took sworn statements from Rohr, Howard, Cisco, the FBI agent who transported Saleh and his cousin to [redacted], and the FBI medic who had bandaged Saleh and his cousin. On October 20, 2004, the Army Criminal Investigation Command issued a Memorandum concluding that its investigation "established there was insufficient evidence to prove or disprove the offenses occurred as alleged by Mr. Saleh." The memorandum noted that FBI witnesses denied that Saleh was harmed during their interviews, that they did not observe evidence of recent injuries, and that medical screenings of Saleh on March 11 and July 13 did not document treatment for injuries that might have been caused by punching, kicking, or being dragged across barbed wire. The Army memorandum did not provide further explanation for the conclusion of "insufficient evidence to prove or disprove."

According to DOD documents, on February 1, 2005, the Army Criminal Investigation Command reopened the investigation in order to "conduct a thorough review of this investigation and determine if the investigative summary supported the listed offense and justified the listing of those offenses as 'insufficient evidence.'" On February 2 (the next day), the Army's Special Agent in Charge (SAC) issued a report based on his review of the existing record that concluded that:

> [T]he investigation clearly demonstrates the detainee was not injured during his apprehension or subsequent interrogations by the FBI. This fact was documented within hours of the event by both the FBI Interrogator and a medical screening conducted two days after his apprehension. The review indicates the investigation does not support listing the offenses as "Insufficient Evidence" rather, clearly indicates the offense did not occur as alleged and should therefore list the offenses as "Unfounded".

In support of this conclusion, the Army SAC cited the testimony of Rohr, Cisco, Howard, as well as the statements of an FBI agent who accompanied Saleh [redacted] and an FBI medic who treated wounds on Saleh's wrists. The SAC also cited a report of a medical examination on

July 13, 2004, which found no injuries consistent with the detainee's allegations. On February 2, 2004, the Detachment Commander approved a memorandum adopting the SAC's conclusion that the offenses did not occur.

B. OIG Investigation

The OIG further investigated Saleh's allegations by interviewing the four FBI agents who were present during the interrogation of Saleh and his cousin [redacted] (Rohr, Cisco, Howard, and Bennett), the FBI interpreter who was present during the interrogation at [redacted], and the FBI agent who was involved in transporting the two detainees [redacted].[191] We also reviewed relevant documentation, including statements to CID, survey responses, and digital photographs provided by one of the FBI agents. Because one of the FBI agents we interviewed provided a recollection of events that in part was materially different from the versions provided by the other agents, we summarize each agent's version of the incident separately.

1. FBI Special Agent Bennett

In his response to the OIG survey, Bennett indicated the he personally observed the following conduct: "using water to prevent breathing by a detainee or to create the sensation of drowning." In the descriptive part of his response, Bennett referred to the interrogation at [redacted] involving three FBI agents and two police officers. Although the response did not mention Saleh, it identified Rohr, Cisco, and Howard as witnesses to an interrogation session that allegedly involved aggressive treatment of the detainees by Iraqi police officers.

When we interviewed Bennett, he told us that on an evening in early March 2004, he was sitting at his desk in the common area of the [redacted] when Rohr walked by and asked him to assist in an interrogation session [redacted] involving three detainees. Bennett said that he understood he was needed as an extra body.

Bennett told us that he and Rohr drove to [redacted] where he observed three detainees being interrogated by Rohr, Cisco, Howard, a military officer (identified by others as the [redacted] agent), and two Iraqi police officers [redacted].

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[191] The OIG was interested in interviewing Saleh, but the DOD has not responded to requests from the OIG regarding Saleh's current whereabouts.

Bennett stated that when he entered the house he was immediately struck by the scene before him because he had never seen Iraqi detainees or witnessed an interrogation session in Iraq. He said that the questioning was already underway when he arrived. He also observed that the Iraqi police officers were yelling at the detainees while the FBI agents were standing back and writing down questions. He said that the military officer also was yelling at the detainees.

Bennett said that he was not sure about the sequence of events, but he observed a detainee in a "stress position" and two other detainees having water poured down their throats by a military interrogator. He said that at the house he saw a detainee in a "stress position," which consisted of kneeling and facing a wall. He described the position of the detainee as kneeling such that he was not able to touch the wall or lean back on his legs.

Bennett said that he also observed that the other two detainees were seated in chairs and that one of the detainees was blindfolded with duct tape. He believed that the detainees had their hands in restraints.

Bennett recalled that at some point during the interrogation the military officer "put water down" a seated detainee's throat. He said he guessed that the purpose of the water was to give the detainee the sensation that he was drowning so that he would provide the information that the interrogator wanted. Bennett stated that the detainee was gagging and spitting out water. He said that the detainee appeared to be uncomfortable and assumed that he had trouble breathing. Bennett said that one water bottle was used, but he did not know how long that the incident lasted.

Bennett stated that the military officer walked behind the sitting detainee, pushed the detainee's head back, and put the water in his mouth. Bennett said that he did not know how the military officer held the detainee's mouth open or held the detainee's head back, but that he acted on his own without assistance from others. Bennett stated that the military officer "held the guy's head back and poured water down his throat."

Bennett said that during the water incident he went outside the house on the doorstep or front porch with the door open. He said that he could still observe the interrogation from the front porch through the door. He believed that other FBI agents joined him on the front porch at some point in time. He said that one of the agents on the front porch with him said, "When stuff like this happens, you leave the room." Bennett said he did not recall which agents said that, but he believed the reference was to the water incident.

Bennett said he was uncomfortable with what he saw because "that's not the way you do things in the U.S." He said that he walked in and out of the house more than once because he was uncomfortable and also wanted to chew tobacco.

Bennett stated that less than 30 minutes after the water incident involving one detainee, the military officer repeated the water procedure on the other seated detainee. He said that he did not recall whether he was inside or on the front porch when the second water incident occurred or where the other FBI agents were.

Bennett said that after the first water incident, he went back into the house and that some of the other FBI agents were with him. Bennett said he did not recall whether the agents participated in asking questions between the two water incidents.

When asked what the detainees' reactions were to the water incidents and whether they appeared to be frightened or intimidated, Bennett said that they appeared to be used to it or to have been through it before.

Bennett said that the detainees appeared disheveled and dirty. He stated that they looked like they had been "slapped around" or "roughed up," but they did not appear to have any contusions and were not bleeding. He said that other than the water incidents, he did not see any touching of the detainees by the interrogators.

Bennett said that not long after the second water incident he received a ride back to the Baghdad Operations Center from another FBI agent who had brought paperwork to the three agents. He said that the other three agents stayed at the interrogation, but that he did not know how long it lasted. He said that he only stayed for approximately an hour.

Bennett stated that he did not provide any information to the FBI's OSC or Deputy OSC regarding the interrogation. He said that he assumed the other three agents kept the OSC and Deputy OSC informed. Bennett also described Rohr, Cisco, and Howard as the "hardest working people there."

The OIG showed Bennett the photographs taken of the interrogation session [redacted], and he identified two of the detainees in the photographs as the detainees involved in the water incidents.

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2. FBI Special Agent Howard

Howard said that he took photographs of both Saleh and the interrogation session so that there would be a record of what was going on and to show that the injuries to Saleh were pre-existing. He identified all but one of the photographs as being taken [redacted], where the FBI agents spent 2 days, and he identified one from the interrogation of Saleh and his cousin [redacted].

Howard said that he was in and out of the interrogation at the [redacted] "a lot" and that the interrogation had started before he arrived. He said that the military officer was taking an active role in the interrogation, but that the FBI had the lead. Howard stated that [redacted] source was also involved in the questioning.

When asked by the OIG investigators about an agent observing a detainee kneeling against the wall, Howard stated that he did not recall any of the three detainees being questioned while kneeling. He stated that the only time that he recalled any detainee kneeling was when a detainee asked for a drink of water and was given a drink by the OSI agent. When asked to describe the circumstances of the drink, he said he could not remember why the detainee was kneeling, but he said that the detainee's hands were bound and that the OSI agent poured water down the detainee's throat after he had asked for a drink of water.

When we asked Howard whether the incident involved forcing water down a detainee's throat, he responded that if too much water was being poured, all the detainee had to do was close his mouth because there was never a situation where the mouth was forced open. He said that the interrogators had only one-liter bottles of water.

Howard further stated that he would not have wanted to drink that way, but if his hands were bound, that was the only alternative. He said that he thought it was an odd way to give water to a detainee and that he had not seen it before. He stated that it appeared to be the routine method for giving the detainee water and the detainee was used to it.

Howard said he did not observe that the detainee was squirming. He also said that when the detainee had enough water, he closed his mouth, and that he did not recall the detainee gagging or choking. He stated that the detainee was holding his own head back. Howard said that had he been the one providing water he would have placed the bottle to the detainee's lips rather than pouring it down his throat like the OSI agent did. Although he said he viewed this method of giving the detainee water as odd and unusual, he did not see it as abusive. However,

Howard said that the OSI agent would not have had to go much further for the method to "be a problem."

Regarding the kneeling, Howard said that he had seen detainees placed in a kneeling position as a security measure during a detainee movement. He said that this incident involving the detainee kneeling was probably for the purpose of interrogation rather than security. When asked how long the detainee was kneeling, Howard said not longer than a minute or two – long enough for him to get a drink of water.

Howard said that he never intentionally left the room to avoid observing an incident at an interrogation. He said that if he saw something that he was uncomfortable with, he would step in to stop it.

Regarding the duct tape around the head of Saleh's cousin, Howard said that he had no part in placing the tape on the detainee's head and that he did not see it happen. He stated that at the time the military's standard protocol for a detainee movement was to have cloth over the detainee's eyes taped on his head and then hooded. He said that the military usually removed the tape after the transport, and that he guessed that the photograph was taken shortly after the detainee arrived. When the OIG investigators mentioned the scenario of blindfolding the detainee so that he could not see another detainee who was in the room, Howard said that "we did that at one point."

3. FBI Special Agent Rohr

Rohr also told the OIG that he was in and out of the interrogation. He said that he and Howard had to pick up and return one of the detainees to the detention facility, and that each movement took approximately 90 minutes while the interrogation of the other detainees would have continued.

Rohr said that placing detainees on their knees was routine when moving detainees. He stated, however, that having a detainee kneel as a stress position for purposes of an interrogation was not permitted.

Rohr stated that he never saw anyone pushing water down a detainee's throat and that he would not sanction that type of conduct. He said that when detainees drank water during interrogations, the bottle was held for them because their hands were restrained. He said that he recalled that Saleh and his cousin were given water and food during the interrogation, and that he never heard complaints from the detainees that they were abused with water.

We asked Rohr whether he stated or heard another agent state that the FBI should leave the room when things like the water incident

occur. Rohr responded that neither he nor any of the other agents made such a statement.

When the OIG asked Rohr about the duct tape around the head of Saleh's cousin, Rohr responded that one of the FBI agents (he thought it might have been Cisco) placed cloth over the detainee's eyes and then lightly taped the head with duct tape. He explained that the purpose of the cloth was to avoid pulling off the detainee's eyelashes and eyebrows. He said that the tape was not ripped off the detainee's head.

Rohr said that the purpose of the blindfold was to have Saleh's cousin repeat his admission for Saleh to hear without letting Saleh's cousin know that Saleh was in the room. Rohr said that they could not use a bag because then Saleh would not be certain that his cousin was making the admission.

Rohr said that when he retrieved the detainees from the detention facility at [redacted] prior to the interrogation, they were smiling when they saw that he was picking them up because in his view they recognized that the FBI was not going to use harsh tactics.

Rohr pointed out that in the photographs of Saleh at the interrogation sessions, Saleh does not appear to be scared of his interrogators, but instead looks comfortable with them. In addition, Rohr suggested that if they were trying to torture the detainees, they would not have called in the FBI medic to examine and treat the minor abrasions on Saleh's and his cousin's wrists.

4. FBI Special Agent Cisco

We interviewed Cisco prior to receiving the allegations from Bennett. Cisco subsequently resigned from the FBI. When contacted for a second interview, Cisco informed the OIG that he was being sent to Iraq several days later by his new private employer, but he agreed to be interviewed. However, he did not return our subsequent phone calls to schedule the interview. Therefore, we were not able to ask Cisco questions about Bennett' observations.

In his earlier OIG interview, however, Cisco provided an account that was similar to his statement to CID. He said that the FBI agents yelled at Saleh and that they were playing "good cop/bad cop" during [redacted] interrogation.

Cisco told the OIG that Saleh initially denied everything during the interrogation [redacted]. The agents subsequently brought Saleh and his cousin [redacted], where his cousin started confessing to [redacted].

When Cisco was asked if he observed any treatment of detainees that would cause him concern, he stated "no," except for an incident at [redacted] where he saw a detainee carrying a case of MREs while doing calisthenics. Cisco said he did not know whether this incident involved regular exercise or whether the detainee was being forced to carry the case. He said that the detainee did not appear to be in any stress.

He said that when the FBI brought Saleh and his cousin to [redacted], the agents noticed that the detainees' wrists had minor abrasions from the flex-cuffs, and the FBI medic was called to treat them.

5. Other Witnesses

We interviewed the FBI agent who was involved in transporting Saleh and his cousin [redacted]. He stated that he was not involved in the interrogation sessions, and the photographs of the interrogations sessions do not include this agent. He said that when he picked up Saleh and his cousin [redacted], they appeared healthy, had no visible marks, and did not express any complaints. He said that he witnessed the interrogation [redacted] for only about 10 or 15 minutes when he brought the FBI agents paperwork to sign relating to the custody of the detainees. He said that he did not see anything unusual during that time. He also said that he never witnessed any treatment of detainees that was inconsistent with what he was taught at Quantico.

We also interviewed a contract translator for the FBI, who was present at the [redacted] FBI interview but who said that he was not present during the interrogation session of Saleh and his cousin at the [redacted], where the alleged water incident took place. The photographs of the [redacted] interrogation do not show the translator. He said that [redacted] the OSI agent may have played the "bad cop" and exhibited some sort of aggression, but he could not remember what it was.

The translator said that the technique of requiring Saleh to kneel possibly was used [redacted], but he was unable to make the distinction whether the kneeling was directed by the FBI agents or the OSI agent. He further stated that Saleh was not struck with any object or with a "fist to the head," but that he was "flipped about" by the interrogators during the process of having him face the wall.

In addition, the translator said that Saleh's cousin was the only detainee he saw blindfolded with tape – others wore blackened goggles or hoods. When asked what the purpose of blindfolding was, he said that it may have been to punish or disorient the detainee. He also said that he observed the blindfold being taken off the detainee and that it was not

painful at all. He believed that Howard took off the blindfold in the least painful way possible.

We were unable to interview the OSI agent because none of the four FBI agents who were present during the interview said they could recall his name. In addition, the materials provided to the OIG by the DOD do not indicate that military investigators attempted to identify or locate this witness or the Iraqi policemen who were present at the interrogations.

C. OIG Conclusions

We analyzed separately Saleh's allegations regarding events at [redacted] in late February 2004 and events at BIAP on approximately March 5, 2004.

1. Saleh's Allegations Regarding [redacted]

Saleh alleged that he was mistreated over a period of several days beginning on February 26, 2004, until he was transported to [redacted] late on March 3, 2004. Saleh was detained at [redacted] during that time. As noted above, Saleh claimed he was restrained in a "scorpion position," subjected to forced exercise and loud music, and dragged over barbed wire during this period. The evidence did not show that any FBI agents witnessed or participated in abusing Saleh at [redacted].

Saleh stated that one of his alleged abusers [redacted] was a "black soldier" and that one was a soldier with blue eyes, blonde hair, and tattoos who was accompanied by a female. These descriptions did not match any of the FBI agents who interviewed Saleh. Moreover, Saleh did not specifically identify any of his abusers at [redacted] as FBI agents.

Saleh was detained at that location for nearly a week. The available evidence indicates that Rohr, Cisco and Howard interviewed Saleh together for 5 hours [redacted] on February 29. The rest of the time Saleh was in confinement [redacted] he was in the custody and control of the military. Rohr told us that Saleh was interrogated by the military after the FBI agents left the air base, possibly by OSI personnel, and that he provided information which resulted in him being transferred to [redacted] for further questioning. Moreover, if Saleh was in fact subjected to harsh treatment during this interrogation, the FBI agents would not necessarily have known about it.

The Army concluded that Saleh was not injured during his apprehension or subsequent interrogations by the FBI, stating that "[t]his fact was documented within hours of the event by both the FBI

Interrogator and a medical screening conducted two days after his apprehension." However, we did not find this assessment of the evidence complete. The materials supplied to the OIG by the Army did not include any indication that the Army conducted any interviews of non-FBI interrogators or military police who had contact with Saleh [redacted] during February 26-March 3, 2004. The Army's materials neither identified nor discussed the existence of the OSI personnel who were involved in the interrogation of Saleh [redacted]. Moreover, the FBI "documentation" referred to by the SAC was the EC dated March 1, 2004, which did not contain any assessment of whether Saleh had been injured.

In the photographs taken during the [redacted] interrogation on February 29 and the [redacted] interrogation on approximately March 5, no clear evidence of wounds or other recent injuries is visible. In addition, as noted above, the receipt for Saleh's arrival [redacted] at 1:11 a.m. on March 4 indicates he was received "in good health," although an unknown person added the words "with minor bruising & scratches."

However, we found some evidence that could be interpreted to be consistent with some of Saleh's allegations. Bennett told the OIG that when he saw Saleh and the other detainee [redacted], they looked like they had been "slapped around" or "roughed up," although they did not appear to have any contusions and were not bleeding. Some of Saleh's complaints related to treatment that would not necessarily have resulted in obvious injuries that would appear in photographs. Saleh described having boxes of canned food being tied to or put on his shoulders and being ordered to step up and down on other boxes. Cisco told the OIG that he observed a detainee "doing calisthenics with a case of MREs," although he did not identify Saleh as the detainee.[192] Moreover, Saleh's description of being forced to drink bottles of water until he felt sick was consistent with at least one agent's description of a technique used on Saleh [redacted] (discussed in the next section). Saleh also described being choked with a tool that extended and "was solid like a stick with a white thing that extended like a knife." The military investigator found that this description was consistent with a device know as an ASP baton, which is sometimes used to control prisoners. In addition, a Detainee Preinterrogation Evaluation dated March 11 indicated that Saleh had an "abdominal strain," which conceivably could have been associated with being struck in the stomach, as Saleh alleged occurred [redacted].

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192 [redacted].

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We concluded, however, that even if Saleh's allegations about mistreatment [redacted] are true, there is insufficient evidence to conclude that the FBI agents who interviewed Saleh at that location on February 29, 2004, participated in this conduct, heard about it, or saw clear evidence that abuse of this nature had taken place outside of the FBI's presence.

2. Alleged Mistreatment of Detainees at [redacted]

We also analyzed the conduct of the FBI agents during the interrogation of Saleh [redacted] on March 5, 2004. The allegations regarding this interrogation came primarily from information provided by Bennett, not Saleh.[193]

Alleged Use of Water on Detainees. We concluded that a non-FBI interrogator used water on one or more shackled detainees (one of which may have been Saleh) in a manner that would be considered coercive and would not be permitted to FBI agents conducting interviews in the United States.

We credited Bennett's account of the water incident. Bennett had no reason to fabricate this account; indeed, he appeared to be reluctant to provide it to OIG investigators. Howard described the same conduct, albeit in somewhat gentler terms. He told the OIG that the OSI interrogator gave a drink to the detainee by pouring water down the throat of the detainee's open mouth while he was kneeling with his hands cuffed behind his back. We did not agree with Howard, however, that this conduct was solely for the purpose of giving the detainee a drink. Other means of supplying water to the detainee were available, such as raising the bottle to the detainee's lips. Indeed, the photographs of Saleh [redacted] show him with his hands cuffed in front. He could have given himself a drink of water from a plastic bottle in that condition. The FBI agents also told us they offered the detainees food during the interview. Unless the agents were planning to feed them by hand, they apparently expected to allow the detainees to feed themselves with their hands cuffed in front. Likewise, the detainees could have been permitted to drink from a plastic bottle with cuffed hands. Instead, the detainees were re-cuffed with their hands behind their backs before the water was poured down their throat. Therefore, we concluded that Howard's

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[193] In the two sworn statements that Saleh provided to Army investigators, Saleh did not allege that any mistreatment occurred during the interview that took place [redacted] on approximately March 5, 2004. Memoranda prepared by Army investigators suggest that Saleh did make such allegations during interviews on other occasions. However, we were unable to determine from the military documents provided to us what Saleh specifically alleged about his treatment at [redacted].

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description of this incident as merely an unconventional way of giving a detainee his requested drink of water was not persuasive.

We also note the consistency between Bennett's description of the water incident and Saleh's allegation that "[t]hey gave me one or two bottles of water and they asked me to drink it while I was hungry and they forced me to drink it, so I felt vomiting, then they ordered me to drink again, ..."[194]

At the same time, we do not consider what Bennett and Howard saw to be equivalent to "waterboarding," in which drowning is simulated by pouring water on a prisoner's face and mouth while he is restrained on an inclined board. As described by both Bennett and Howard, the water was administered by a single interrogator. A single interrogator would have had difficulty preventing a detainee from closing his mouth or turning his head to avoid choking. Rather, we believe that this rough technique was part of an effort to intimidate the detainees and increase their feelings of helplessness.

Bennett left the room when he observed this activity; he also stated that that another FBI agent said that "when stuff like this happens, you leave the room." Such an instruction would have been consistent with the training that some (but not all) agents told us they received before deploying to the military zones: that FBI agents should remove themselves from any interrogation in which another agency's interrogator used techniques that would not be permitted for an FBI agent.[195]

None of the FBI agents personally participated in the conduct that Bennett described. The question therefore is whether any agent's presence in the room or continued involvement in the interrogation after the incident occurred violated any FBI policy.

As detailed in Chapter Six, on May 19, 2004, FBI Headquarters issued a policy stating, among other things, that "[i]f a co-interrogator is complying with the rules of his or her agency, but is not in compliance with FBI rules, FBI personnel may not participate in the interrogation and must remove themselves from the situation." This policy had not yet been issued in March 2004 when the Saleh interrogation [redacted] took

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[194] We recognize that Saleh's statement to the military, taken several months after the incident, indicates that the incident occurred [redacted]. We believe that at the time he made this allegation he may have confused locations and events, so that he may have been describing the water incident [redacted].

[195] These instructions are described in Chapter Seven.

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place. The policy states that it merely "reiterates and memorializes existing FBI policy with regard to the interrogation of [detainees]."

We found that FBI policy clearly prohibited an agent from "participating" in an interrogation in which other agencies used non-FBI techniques, but that before May 19, 2004, FBI policy was unclear regarding whether "non-participation" could be satisfied merely by not joining actively in the proscribed conduct. The May 2004 FBI Detainee Policy required agents to physically withdraw from any interview in which non-FBI techniques were being used by others. Based on responses to the OIG survey, some agents deployed to the military zones prior to May 19, 2004, received training to this effect, but many agents did not.

Howard told us he did not leave the room during the interrogation [redacted]. However, the requirement that an FBI employee "remove himself from the situation" when another agency uses non-FBI techniques had not yet been clearly articulated in FBI policy at that time. Similarly, FBI policy did not clearly preclude Howard and the other agents from resuming participation in the interrogation after the OSI agent was finished administering the water to the detainees. Indeed, as discussed in Chapter Twelve, the FBI still has not provided clear guidance to its agents regarding the circumstances under which an agent may resume interrogation after non-FBI techniques have been used. Therefore, we do not find that Howard's conduct clearly violated FBI policy in effect at the time.

However, we believe that Howard should have recognized that this activity was inappropriate to an interrogation being led by the FBI, even if the acts were those of a non-FBI agent. In our opinion, an FBI employee who observed conduct of this kind should have at least reported the activity to his OSC.

The other FBI agents who were present during the [redacted] interrogation did not tell the OIG that they saw the water incident. One possible explanation is that they were outside of the room at the time it took place. Rohr stated that he and Howard may have left the interrogation for at least one 60- to 90-minute period to transport a detainee. We therefore found insufficient evidence to conclude that Rohr was aware of the water incident.

Cisco, who is no longer an FBI employee, did not volunteer any information about this incident in his interview, which occurred before we learned about the incident. Cisco did not respond to our requests for a follow-up interview. We therefore could not make any finding regarding Cisco's involvement in this incident.

We also did not conclude that the failure of Howard and Bennett to report the water incident to their supervisors was misconduct. The FBI policy requiring that any abuse be reported was not issued until May 19, 2004, more than 2 months after the interrogation. Moreover, the FBI agents may have inferred that this conduct was permissible for military interrogators in Iraq. As explained in Chapter Six, even after the issuance of the FBI's May 19, 2004, policy, it was not clear how FBI agents were expected to know the boundaries of permissible military interrogation techniques.

Alleged Use of Stress Positions. Bennett told us that the detainees were placed in an uncomfortable kneeling position or "stress position" at some point during the Saleh interrogation [redacted]. Rohr also stated that the detainees were made to kneel against the wall, but that this was not as a stress position for purposes of the interrogation. He stated that detainees were often put in this position during transportation.

Howard told the OIG that one of the detainees was already in the kneeling position when he was being "given a drink," but that he could not remember why. However, in the written statement Howard provided to the Army he stated that Saleh "was seated in a chair the whole time and was never put in any odd positions."

FBI agents would not be permitted to put a prisoner in a kneeling "stress" position as an interrogation technique during a custodial interview in the United States (as distinguished from a security measure during an arrest). However, there is no evidence that any FBI agents participated in placing detainees in stress positions. Moreover, the interrogation facility [redacted] was not equivalent to a typical facility used for custodial law enforcement interrogations in the United States, and security may have been a concern underlying the use of a kneeling position for a limited period of time to ensure control over the detainees. For these reasons, we did not find sufficient evidence to conclude that a kneeling "stress position" was used as an interrogation technique as contrasted to a security measure, or that the FBI agents improperly "participated" in the use of stress positions during the [redacted] interview. In addition, given the widespread use of this technique by the military in Iraq, the agents could have reasonably inferred that the use of stress positions was permitted at the time of the interrogation, and there was no FBI policy at that time requiring the agents to report this conduct to their superiors.

Alleged Use of Duct Tape To Blindfold a Detainee. Several witnesses told us that a detainee (identified as Saleh's cousin) was blindfolded with duct tape. One of the photographs made available to

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the OIG shows a detainee with duct tape wrapped on his head, which would have likely been painful to remove.

Rohr said he thought Cisco might have put duct tape on the detainee. As mentioned previously, Cisco was originally interviewed before this issue came to light and has since left the FBI. He did not respond to our requests for a follow-up interview, and as an ex-FBI employee he could not be compelled to cooperate. Howard stated that the military typically used duct tape this way when transporting detainees, and that the detainee may have arrived in this condition. However, this suggestion was inconsistent with Rohr's statement that detainees were usually hooded during transportation but that duct tape was used in this instance so that the other detainee would be able to tell the identity of the person making the confession, which hooding would not permit.

We believe that FBI policies regarding coercion would have prohibited an FBI agent from using duct tape in this manner in the United States. We also believe that the FBI participated in this technique during [redacted] interview. However, we were unable to determine which FBI agent was directly involved in duct taping a detainee's head to blindfold him, in part because Cisco declined to provide a follow-up interview. None of the agents objected to the use of duct tape at the time, or reported the incident to their superiors. We acknowledge that in the United States alternatives would be available that may not have been available in the Iraq war zone, such as videotaping the confessing detainee or using a one-way mirror. This does not excuse the potentially painful use of duct tape, however, because other alternatives could have been used, such as a conventional blindfold or blacked-out goggles.

Conclusion. The available evidence was insufficient for us to conclude that any FBI employee actively participated in using coercive or otherwise prohibited interrogation techniques [redacted] in March 2004. Techniques were used by non-FBI personnel during this interview that clearly would not have been permitted for use by FBI agents in the United States. With the exception of Bennett's leaving the room during the water incident, we found that the FBI agents generally did not withdraw from the interview, object to these techniques, or report the matter to their OSC. Because of the lack of clarity in FBI policies at the time and the vagueness of some witnesses' recollections, we did not find a sufficient basis to conclude that these agents violated FBI policy.

However, the FBI was the lead agency during the interviews of Saleh and his cousin [redacted], and we believe that agents could have

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influenced the techniques used by other interrogators during these interviews, or at least reported this incident to their OSC.[196] We also believe that this incident illustrates shortcomings in the guidance that the FBI provided its agents regarding interrogation techniques in the military zones. We address this issue further in Chapter Twelve.

III. Allegations of FBI Mistreatment of Mohamedou Ould Slahi

In this Section we address allegations made by detainee Mohamedou Ould Slahi (#760) relating to the conduct of FBI agents at GTMO. In Section XV of Chapter Five we discussed the treatment of Slahi, primarily by the military, and the FBI's reporting on the allegations that it received relating to his treatment. This section analyzes the conduct of FBI agents involved in the handling of Slahi.

A. Slahi's Allegations

Slahi made his allegations relating to FBI conduct during two interviews conducted on April 25 and 27, 2005, by a military interrogator on behalf of the OIG.[197] Prior to these interviews, the military interrogator provided the OIG with a Memorandum for Record (MFR) dated December, 24, 2004, summarizing an earlier interrogation in which Slahi had made allegations of mistreatment by the military.

In the interviews for the OIG, Slahi told the military interrogator that most of his contact with the FBI was with FBI agents Poulson and Santiago, and he identified Santiago as a "nice guy."[198] He stated that no one from the FBI ever threatened his family. However, he made the following allegations relating to the FBI, which the OIG investigated:

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[196] Our criticism is not directed at Bennett, who was not an FBI interrogator responsible for [redacted] interrogations and who was clearly surprised and upset at what he observed. We believe that Bennett provided the most complete and candid information about this incident to the OIG.

[197] During the OIG's visit to GTMO in April 2005, the OIG requested access to Slahi to interview him regarding FBI e-mails that referenced his treatment by the military. General Hood, the JTF Commander at the time, expressed concern about disrupting the detainee's interrogation by a military interrogator who he said had developed an excellent rapport with Slahi. As a result, the military interrogator presented our questions to Slahi and provided us with his responses. The military interrogator posed the OIG's questions in two separate sessions with Slahi. During the OIG's second trip to GTMO in February 2007, the OIG investigators obtained direct access to Slahi, and he confirmed much of what he had told the military interrogator asking questions on our behalf. He also provided additional details on several issues.

[198] Poulson and Santiago are pseudonyms.

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- An FBI agent named "Samantha" was involved in putting him on the boat for the "boat ride" as a ruse for making him believe he was being transferred to a different location. (This incident is described in detail in Chapter Five.)
- When Poulson was leaving GTMO, he said that Slahi would "not have a good time in the near future," which Slahi later interpreted as a prediction that the military would torture him.[199]
- Santiago said Slahi would be sent to Iraq or Afghanistan if the charges against him were proved.
- On the behalf of the FBI, an interrogator told Slahi that he would be sent to a "very bad place" if Slahi did not provide certain information.

In addition to interviewing Slahi, the OIG interviewed Poulson and Santiago and examined relevant records.

B. OIG Analysis

1. Alleged FBI Participation in the "Boat Ride" Incident

As discussed in Chapter Five, at GTMO Slahi was taken on a boat ride as part of a ruse to make him believe he was being transferred to a different location. Slahi alleged that the only FBI agent who was involved in the boat ride was an agent named "Samantha." He said that Samantha conducted the interrogation just prior to when he was removed to the boat and that she may have observed this movement.

Santiago told the OIG that a person who referred to herself as "Samantha" to Slahi was not an FBI agent. As detailed in Chapter Five, the OIG determined from FBI and military records that the person who identified herself as "Samantha" was actually an Army Sergeant.

2. Alleged FBI Predictions of Harsh Treatment by Military

Slahi stated during his interview that when Poulson told him Poulson was leaving GTMO, Poulson said that Slahi would "not have a

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[199] According to the December 24, 2004, MFR, Slahi alleged that Poulson had told Slahi that he "would not be invited to tea and snacks" when he was transferred to military interrogators. Slahi did not allege that Poulson said anything else about the transfer.

good time in the near future." Slahi said he interpreted this to mean that he was going to be tortured by the military. Slahi told the OIG that he did not take this statement by Poulson as a threat, but rather that Poulson was objectively telling him what would happen. Slahi also told the OIG that when he was treated harshly by the military, referring to the boat ruse discussed in Chapter Five, he did not believe that Poulson or the FBI had any control over what happened.

Poulson told the OIG that his approach to interviewing Slahi was to build rapport with him. He said that he never suggested to Slahi that if he did not cooperate he would be turned over to the military and the military would use harsher techniques. He said that Slahi often asked Poulson what was going to happen to him, and Poulson told him he did not know but that things were changing, as a way of planting doubt in Slahi's mind.

Poulson told the OIG that in his last interview with Slahi, he told Slahi that he would not be working with him anymore, but said he did not state this in a threatening way. Poulson said that he wanted Slahi to know that he was no longer going to be handled by the FBI. Poulson told us that he had no idea what the military planned to do with Slahi, but he suspected the treatment would be similar to how the military handled Al-Qahtani (#63), which would likely involve some harsh techniques. Poulson's partner, Santiago, told us that before he left GTMO he saw a draft of a special interrogation plan that the military was preparing for Slahi, and that it was similar to Al-Qahtani's interrogation plan.

As described in Chapter Five, the interrogation plan that was approved for Slahi did in fact include harsh techniques, including the helicopter ruse (later changed to a boat), 15-hour interrogations (during which Slahi would be prevented from sleeping), and continuous sound to hinder Slahi's concentration and establish fear. In addition, after assuming control of the Slahi interrogation, the military subjected Slahi to "variable lighting patterns and rock music" in order to keep Slahi "awake and in a state of agitation," as well as a "Fear Up" approach in which Slahi was deprived of some clothes and yelled at. The military also used a masked interrogator, "Mr. X," to question Slahi and used a forged memorandum as part of a ruse to make him believe that his mother would be arrested and brought to GTMO. Slahi subsequently made further allegations of abuse by military interrogators, including a claim that he was severely beaten during the boat ride. (See Chapter Five, Section XV.)

However, we concluded that even if Poulson did discuss Slahi's future military interrogation with Slahi, Poulson did not intend to threaten Slahi. It would have been inconsistent with Poulson's and

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Santiago's weeks-long rapport-building approach for Poulson to threaten Slahi.[200] We found that, if anything, the military investigators were critical of Poulson's and Santiago's reluctance to push Slahi. Military intelligence personnel observed many of Slahi's interviews by Poulson and Santiago from an observation booth. In an MFR dated March 21, 2003, a military intelligence officer observed that the agents had established "an excellent rapport" with Slahi, but that the FBI agents stated that they did not "want to push [Slahi] because doing so will damage their rapport with him." In an MFR dated May 23, 2003, the same military intelligence officer offered the following criticism of the approach taken by Poulson and Santiago:

> FBI Special Agents have built strong rapport with [Slahi], but have generally not used that rapport to gain intelligence. While rapport is normally used as a means by which to gain intelligence, it seems as though FBI agents have not been willing to offend detainee or push him on matters on which he is uncomfortable because of the desire to maintain rapport.

We concluded that Poulson's alleged statement to Slahi regarding what he could expect in the future did not constitute a threat made to induce Slahi to make a statement or to cooperate with the FBI. Poulson was leaving GTMO and the FBI was no longer going to handle Slahi. The military's plan to use much harsher techniques on Slahi was not agreed to or condoned by the FBI, and we found no evidence that the FBI agreed to the military's decision to assume control of Slahi's interrogation.

3. Alleged FBI Threat to Transfer Slahi to Afghanistan or Iraq

Slahi said that Santiago once told him that he would be sent to Iraq or Afghanistan if the government agents could prove what they thought Slahi was involved in. Slahi said he interpreted this to be a reference to the "Millennium bomb plot," which he understood as the reason for the FBI's interest in him. Slahi said that Santiago repeated

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[200] The non-threatening approach used by Poulson and Santiago was also confirmed in contemporaneous records. Two agents from the FBI's Behavioral Analysis Unit (BAU) observed Poulson and Santiago conduct more than 20 hours of interviews with Slahi. The two BAU agents, along with Poulson and Santiago, prepared an "Interview/Interrogation Plan" for Slahi dated February 3, 2003. The plan stated that Poulson and Santiago had "successfully established a high level of rapport with the detainee." In the strategy section of the plan, it stated that the "investment in a long-term strategy of building rapport with the detainee will continue to pay off with higher quality dialogue."

this statement about being sent to Iraq or Afghanistan, but that Slahi did not consider this to be a valid threat at the time. Slahi told the OIG interviewers that he viewed Santiago's statement as an objective, factual prediction.

Santiago told the OIG that he did not recall ever telling Slahi that he would be sent to Afghanistan or Iraq. Poulson also told the OIG that he never heard Slahi being told that he would be sent to Afghanistan or Iraq.

We did not find a sufficient basis to conclude that Santiago made a threat against Slahi. Slahi did not characterize Santiago's alleged statement about being transferred to Iraq or Afghanistan as a threat to induce him to cooperate. Furthermore, Slahi did not claim that Santiago suggested he could avoid this outcome by providing information to the FBI. Moreover, Santiago said he did not recall making a statement about sending Slahi to Afghanistan or Iraq, and we did not find that he had any incentive to do so.

4. Alleged Threat by a Task Force Officer

During his interview with the military interrogator, Slahi described another person he believed was questioning him on behalf of the FBI in January 2003. Slahi stated that this person identified himself as a police officer named "Tom" and told Slahi that if he did not explain certain phone calls he would be sent to a "very bad place." Slahi told the OIG interviewers that he believed the statement by "Tom" was just an interrogation technique, but he also said that he believed it was possible that he could be transferred to the control of another agency.

We concluded that Slahi was referring to a Detective from the New York Police Department who was a member of the Joint Terrorism Task Force (JTTF) and who interviewed Slahi with Poulson in January 2003. Although the Detective was not an FBI employee, he did participate in interviews on behalf of the FBI, and we therefore analyzed his alleged statement.

The Detective's alleged statement about sending Slahi to a "very bad place" if he did not provide certain information (and the related implication that he would not be sent there if he cooperated), could be interpreted as an impermissible threat or promise if used by an FBI agent in the United States. However, we found that even if the statement was made, it was too vague to constitute a clear violation of the FBI's policy against threats or promises.

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IV. Misconduct Involving Zuhail Abdo Al-Sharabi

In this Section we address two separate allegations of FBI mistreatment of Zuhail Abdo Al-Sharabi (#569) at GTMO. Al-Sharabi was a Yemeni detainee suspected of having a connection with early planning for the September 11 attacks. The first allegation of mistreatment arose when two FBI agents described an incident involving Al-Sharabi in their responses to the OIG survey. The agents stated that in late February 2003 FBI Special Agent Demeter told them that he had sprayed perfume on Al-Sharabi, doused him with water, and placed a pornographic magazine his cell in order to undermine his status among his cellmates.[201] The second allegation was raised by Al-Sharabi himself, who stated during an FBI interview in April 2003 that he was being subjected to "psychological torture" as a result of being isolated from other detainees. [202]

A. OIG Investigation

1. Contemporaneous FBI Documents

We reviewed numerous interview summaries prepared from interviews of Al-Sharabi conducted by FBI agents from [redacted]. These summaries indicate that beginning on [redacted], Al-Sharabi was placed in an isolation cell for at least [redacted]. Although the FBI agents working with him during this period were not involved in the decision to isolate him, they repeatedly told him that he would remain in isolation until he decided to cooperate in providing information to the agents. According to an FBI interview summary for [redacted], Al-Sharabi "stated he would admit to anything at this point because he is being subjected to psychological torture" and that he "felt like he was going to catch a disease from the living conditions and die." Al-Sharabi continued to demand to be removed from isolation before he would talk to the interviewing agents. The summary stated that at the end of the interview, the FBI agents told Al-Sharabi that "he had better take a good

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[201] Demeter is a pseudonym.

[202] The allegation of "psychological torture" was discovered in November 2004 by the military's Criminal Investigation Task Force (CITF) staff during a review of the FD-302 interview summaries for Al-Sharabi. A CITF staff memorandum dated November 16, 2004, stated that the claim of "psychological torture" constituted an allegation of "questionable techniques that may be considered criminal conduct," inconsistent with the Presidential Order dealing with humane treatment of detainees and contradictory to the Convention against Torture. The military informed us that there was no further military investigation of this allegation, however.

look at their faces because these were the only human faces he would see until he decided to be fully cooperative."

The agents met with Al-Sharabi frequently over the subsequent weeks and repeatedly told him that he would only be removed from isolation if he began to cooperate in providing information. According to the interview summaries, the agents also repeatedly suggested that Al-Sharabi could not only be moved from isolation but could also win his freedom and return to Yemen if he spoke openly and provided full details regarding the subjects of the agents' inquiries. Al-Sharabi repeatedly complained that he could not talk because the "mental pressure and stress" from his isolation was not allowing him to think straight. On May 12, Al-Sharabi began providing detailed information which the FBI found to be credible. According to a summary for [redacted], however, Al-Sharabi remained in isolation and the FBI agents told him that if he did not provide the information requested, his case would be turned over to military investigators.

The FBI interview summaries do not contain any information relevant to the claims relating to the use of water, pornography, or perfume on Al-Sharabi.

2. Interview of Al-Sharabi

The OIG interviewed Al-Sharabi on February 25, 2007. Al-Sharabi stated that he recalled finding a picture of an immodestly dressed or naked woman in his cell at GTMO, which he tore up and threw into the toilet. He believed that the picture was planted by interrogators as a ploy to undermine him with other detainees. He stated that an interpreter approached him when he found the picture but that he told the interpreter "oh, you are playing a game, go away."

Al-Sharabi also said he recalled an instance in which interrogators made him put on a woman's coat that had perfume on it, and that when he took it off he smelled like the perfume. He thought this was an effort to humiliate him.

Al-Sharabi stated that he did not remember ever telling anyone that he was suffering from "psychological torture," although it is possible he said this. He stated that he spent [redacted] by himself in an isolation cell [redacted] because he would not cooperate during interrogations.

3. Interview of FBI Special Agent Demeter

In his OIG interview, Demeter said that he was assigned to GTMO full-time, with several brief breaks, from February 2002 until April 2003.

He was designated as one of the two case agents for the entire GTMO case. Demeter said that, as a result, he had extensive contact with Al-Sharabi over a long period of time. He said that at some point, Al-Sharabi had taken a role in the cell block as a leading advocate against cooperating with the interviewers. Demeter stated that he and the other agents assisting him tried to devise ways to undermine Al-Sharabi's status among the other detainees on his cell block as a way to isolate him from others.

According to Demeter, one method that he and his team used was to interview Al-Sharabi in the evening hours during the time that the detainees on the cell block engaged in "chatter" and were likely to notice that Al-Sharabi was often being interviewed while at the same time he was telling the other detainees to resist.

Another method that Demeter said he used with Al-Sharabi was to secretly place a sexually suggestive men's magazine in his cell late at night so that other detainees would see it in the morning and would have a strong reaction to Al-Sharabi possessing the magazine. Demeter stated that the magazine was not pornographic – it was a magazine like "Maxim" or "FHM." As part of this method, Demeter said that he coordinated with an Arab linguist to chastise Al-Sharabi in front of his cell neighbors for bringing back the magazine from his interview, which was not permitted.

Demeter told the OIG that on one occasion, Al-Sharabi was not cooperating during the interview and started singing. Demeter stated that he and his team surreptitiously sprayed Al-Sharabi with perfume on his back, by pretending to cough or sneeze when spraying it on Al-Sharabi. Demeter said that the intent with the perfume was to create doubt about Al-Sharabi in the minds of his cell neighbors and to drive a wedge between him and his cell neighbors so that he would focus more on his relationship with his interviewers.

Demeter stated that the perfume and magazine techniques were completed in such a way as to prevent Al-Sharabi from knowing that Demeter or the other interviewers were behind either incident.

Demeter said that another method he and the team considered to drive a wedge between Al-Sharabi and his cell neighbors was to wet Al-Sharabi's hair to make it appear that he was receiving extra shower time during interviews. Demeter stated that he did not recall whether he and the team actually implemented this ploy because he did not recall dousing Al-Sharabi with water, but he did have a recollection of Al-Sharabi's hair being wet at some point. Demeter stated that in his view these techniques would be available for him to use as an FBI agent in the

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U.S. and that he would not be prohibited from using them. Demeter said that Al-Sharabi was the only detainee with whom he used these methods.

4. Interviews of Other Agents

The description that Demeter provided to the OIG regarding the techniques he used on Al-Sharabi was generally consistent with what other FBI agents told us Demeter had told them earlier. Two agents from the FBI's Behavioral Analysis Unit told the OIG that in late February 2003 Demeter told them that he had used the following techniques with Al-Sharabi, who was not cooperating with the FBI: sprayed perfume on the detainee to make it seem like he had been with a woman, poured water on the detainee's hair to make it look like he had broken the shower strike, and placed pornography in his cell. [203]

One of the BAU agents said that Demeter seemed to be proud of his use of these techniques and appeared to be surprised when the two agents expressed astonishment and criticism of this approach. The BAU agent said that she told Demeter that he and the other agent who used these techniques should have no further contact with Al-Sharabi because they had "lost all credibility" with him.

One BAU agent characterized Demeter's conduct with Al-Sharabi as non-criminal harassment and "nonsense," but she said she did not consider it serious enough to report to the FBI chain of command on GTMO. The other BAU agent said that she later told her supervisor in the United States about the incident. She said her supervisor was shocked, but that she did not know whether anything was done about it.

Demeter's supervisor at GTMO told the OIG he did not recall hearing about Demeter's use of these techniques. However, he said sometimes the interrogator "reaches the limit" and wants to place the detainee in an uncomfortable situation. He also stated that an appropriate strategy is to make it look to others that the detainee is cooperating, thereby potentially isolating him from his peers and making him more dependent on the interrogators. He said that in the United States, the FBI sometimes uses techniques of this kind.

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[203] Demeter told the OIG that he did not recall discussing the use of these techniques on Al-Sharabi with the BAU agents.

B. OIG Analysis of the Allegations

1. Analysis of Allegations of "Psychological Torture"

Al-Sharabi's claim that he was subjected to "psychological torture" was a reference to his isolation from other detainees. As detailed in Chapter Eight, Section II.F, numerous FBI agents reported observing the use of extended isolation as an interrogation technique at GTMO. Some FBI agents told us that they participated in using this technique, while others said they understood that the FBI should avoid being involved in this interrogation tactic. The FBI interview summaries for Al-Sharbi establish that FBI agents participated in a program to isolate Al-Sharbi from human contact in order to induce him to cooperate.

We believe that under FBI policies prohibiting coercive interview techniques, an FBI agent in the United States would not be permitted to order a prisoner into isolation or prevent him from being returned to the general prison population for a period as long as 2 months solely because the prisoner would not provide information to the agent. The Legal Handbook for Special Agents specifically identifies psychological pressure, isolation, and incommunicado interrogation as circumstances that will tend to undermine the legitimacy and voluntariness of a statement. LHBSA at 7-2.2.

However, it is clear that this practice was fairly widespread at GTMO. Moreover, at least with respect to this technique, many FBI agents at GTMO believed that they could participate in at least some coercive interview practices that might be prohibited in the United States. The FBI policy reiterating that "existing FBI policy with regard to the interrogation of prisoners" continued to apply in the military zones was not issued until May 19, 2004. Under these circumstances, and given that isolation did not involve the use of force or threats, we do not believe that the FBI agents who exploited the isolation of Al-Sharabi committed misconduct. However, we believe that this matter illustrates the inadequacy and lack of clarity in the guidance provided to FBI agents regarding permissible interrogation techniques in the military zones.[204]

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[204] Several agents understood that they could not participate in using isolation as an interrogation technique, including Demeter, who told us that as "sworn law enforcement officers" at GTMO, FBI agents were prohibited from recommending a detainee for isolation purely for intelligence gathering or information gathering purposes. Although Demeter had extensive involvement with Al-Sharabi, he was not one of the agents interrogating Al-Sharabi during the time the detainee was in isolation. Demeter said that Al-Sharabi was placed in isolation as a disciplinary matter because of a spitting incident, but he acknowledged that Al-Sharabi provided useful information during his isolation. In fact, the contemporaneous documents do not indicate that the

(Cont'd.)

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It is not clear whether the lengthy isolation of Al-Sharabi was consistent with military rules. As previously noted, on April 16, 2003, Secretary Rumsfeld explicitly approved the use of isolation as an interrogation technique at GTMO upon a determination of "military necessity" and with prior notice to the Secretary of Defense. *Church Report* at 139-40. The April 16 DOD Policy cautions that "[t]his technique is not known to have been generally used for interrogation purposes for longer than 30 days," and that some nations may view this technique as inconsistent with the Geneva Convention. Al-Sharabi was isolated for much longer than 30 days. We do not know whether the requisite finding of military necessity was made or whether prior notice was provided to the Secretary of Defense.

We also believe that by telling Al-Sharabi that he could earn his release and be returned to Yemen if he cooperated, the FBI agents made promises to Al-Sharabi that they would not have been permitted to make in the United States. FBI Policy prohibits agents from attempting "to obtain a statement by force, threats, or promises." LHBSA 7-2.1. FBI training materials indicate that an explicit promise of leniency usually renders a confession involuntary. Again, we believe that this tactic was the product of an understanding that the rules for interrogating suspected terrorists at GTMO (especially a detainee suspected of involvement in the September 11 conspiracy) were different. The FBI's rule against such promises stems from considerations of legal voluntariness applicable to criminal prosecution in U.S. courts. The agents understood they were collecting intelligence and not necessarily or exclusively preparing for conventional criminal prosecutions. However, this illustrates again the tension between FBI rules designed to serve its traditional law enforcement function and the changing role of the FBI in collecting intelligence for the prevention of terrorist attacks.

2. Analysis of Demeter's Conduct

The FBI policies on interviews do not prohibit specifically the techniques that Demeter used on Al-Sharabi, such as using a men's magazine or perfume in an effort to undermine Al-Sharbi's standing among the detainees. These techniques also did not involve the use of force, threats, or coercion. We recognize that in the United States, FBI agents might use ruses to drive a wedge between co-conspirators, or arrange that these prisoners be separated. However, in this case we

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spitting incident was the reason for Al-Sharabi's lengthy isolation. Rather, the documents make clear that the FBI agents who interviewed him told him he would never escape isolation unless he began to provide the information they wanted.

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believe that Demeter's techniques such as using a men's magazine and perfume, were ineffective and possibly counterproductive.

V. Allegations Regarding FBI Participation in Interrogation of Detainee Yousef Abkir Salih Al Qarani

In this Section we address the conduct of FBI agents, together with the military, in the interrogation of detainee Yousef Abkir Saleh Al Qarani (#269) at GTMO. We determined that in September 2003, FBI agents participated in a joint interview with the military that resulted in Al Qarani being short-chained and left alone for several hours, during which time he urinated on himself. In addition, at least one FBI agent participated in subjecting Al Qarani to a technique of disorientation and sleep disruption through frequent cell movement known at GTMO as the "frequent flyer program." We also examined additional allegations made by Al-Qarani during an OIG interview in March 2007 regarding FBI mistreatment.

A. Background

FBI records indicate that Al Qarani's telephone number was found in the possession of other detainees known to be associated with al-Qaeda. At least 10 different FBI agents participated in interviewing Al-Qarani at GTMO between July 2002 and September 2003. The agents sometimes worked in pairs and sometimes conducted joint interviews with military investigators.

[205] Hajj is an annual pilgrimage of Muslims to Mecca, Saudi Arabia.

[redacted].

B. FBI Special Agents Brandon and Stephenson

FBI agents Brandon and Stephenson were deployed to GTMO in August 2003 and they worked together on numerous detainee interviews.[206] Stephenson said she learned what techniques she could and could not employ in detainee interviews from other FBI agents who were already at GTMO. She said that she understood that "we are FBI agents no matter where we go, so we have policies in place, and there are things that we do, and things we don't do. And the rules were no different on GTMO, in terms of what we could do and what we couldn't do." Stephenson said that no one specifically used those words; rather it was something she picked up from the operational environment at GTMO. Stephenson told us that the FBI's general approach with the detainees was rapport building. She also said that she and Brandon discussed the use of other techniques that were not available to FBI agents in the United States because on GTMO they were working with the military. She said that the FBI's OSC had advised FBI agents that they had opportunities to "collaborate" with the military on detainee interviews.

Brandon stated that he did not receive specific guidance on interview techniques at GTMO, but he knew what was permissible based on his good judgment and 15 years of law enforcement experience. Brandon said that at GTMO he attended mandatory meetings every Friday with military and FBI personnel to discuss what had transpired during the week in the detainee interrogations. He said that during those meetings the military personnel described what they were doing in detainee interrogations, including frequent movements of detainees and isolation. Brandon also stated that during these meetings, military personnel described "different areas that the military could enhance what the FBI was doing." He said that he received a list of DOD approved interrogation tactics that could be utilized and that programs were built around them, including "the frequent flyer program and isolation techniques . . . dietary disruption and sleep disruption."

During the period from August 28, 2003, until September 23, 2003, Brandon and Stephenson together interviewed Al Qarani on at least six separate occasions.

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[206] Brandon and Stephenson are pseudonyms.

C. The Alleged Short-Chaining Incident

Brandon and Stephenson told the OIG about an incident in which Al Qarani was short-chained for several hours following an FBI interview. Initially, the agents had used a friendly approach with Al Qarani, bringing him coffee and food and engaging in light conversation. Brandon said he confronted Al Qarani about the inconsistencies in his story, but that he was "getting nowhere" with Al Qarani, and that when Al Qarani realized Brandon would not accept his story, he began to "shut down." Brandon said that he and Stephenson told the detainee that if he did not cooperate, they would turn him over to the military and that the military would not bring him "cheeseburgers and coffee in the morning," as the FBI agents had done. Stephenson also stated that the agents threatened to cut their ties with Al Qarani and let the military handle him. Brandon said the purpose of this statement was to play on Al Qarani's paranoia and dislike of the military. However, this technique did not work and Al Qarani continued to be uncooperative. Contemporaneous FBI records indicate that Brandon and Stephenson interviewed Al Qarani on August 28, September 3, September 6, and September 15, 2003, and that he became increasingly uncooperative during that period.

Brandon stated that the approach that they decided to use with Al Qarani in collaboration with the military was the "Mutt and Jeff" or "good cop/bad cop" routine. Brandon and Stephenson stated that they obtained approval for this approach from their OSC. The OSC told us he had no recollection of this discussion, but that he would have agreed with Stephenson's request to have the military engage in a good cop/bad cop scenario with the detainee.

In preparation for an interview of Al Qarani on September 15, 2003, Brandon and Stephenson enlisted the assistance of a military interrogator, U.S. Marine Captain Wyatt.[207] Brandon said the plan called for Wyatt to come into the interrogation room and "do his boot camp thing" in an effort to intimidate Al Qarani, and the FBI would subsequently return and "save" the detainee.

Stephenson and Brandon began with a normal interview of Al Qarani around 8:00-9:00 a.m. on September 15, 2004. After a period of unsuccessful questioning, Brandon told Qarani that Brandon was done with him. Stephenson left the interview to watch from the observation room. Captain Wyatt entered the interview room and began yelling and screaming at Al Qarani. Brandon told the OIG that it became clear right

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[207] Wyatt is a pseudonym.

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away that this was not going to work because Al Qarani was laughing and said "Captain, I'm really concerned for your voice and if you continue to talk like that you will not be able to talk tomorrow."

Brandon said he and Wyatt left the interview room and Wyatt said that the way to get the detainee's attention was to "short chain" him. Brandon told Wyatt he did not understand that term, and Wyatt demonstrated by ordering the guards to place a chain around the detainee's waist and then bolt the chain to the floor. The detainee could still stand up, but he would be bent over. Brandon said that when he expressed concern to Wyatt about short chaining the detainee, Wyatt responded that the procedure was common and that the detainee would receive bathroom breaks and food. Brandon said he believed that the detainee would be kept in the chained position through most of the afternoon. Brandon also said that at the time Wyatt ordered the short chaining, it did not strike Brandon as abuse.

Stephenson likewise stated that at the end of Wyatt's interrogation, Wyatt ordered the guards to place the detainee in a "stress position." She described the stress position as being shackled on the hands and feet and then chained to the floor to force him to sit on the floor or crouch without a chair. Stephenson told the OIG that she understood that the military's list of approved techniques included stress positions.

Brandon stated that after he returned to the office with Stephenson at about 10:00 a.m., he called the interrogation trailer to make certain that the detainee was "ok" and he was told that the detainee was asleep. He said that he returned at about noon to check on the detainee. He stated that the guards told him the detainee had urinated on himself. Brandon told us that he instructed the guards to return the detainee to his cell. Brandon estimated that the detainee was chained to the floor for approximately 3 hours. In Stephenson's interview, she confirmed Brandon's account of what happened after she and Brandon left the detainee.

Brandon and Stephenson both told the OIG that they reported the chaining incident to the FBI's OSC. Brandon said the OSC told him that he did not need to write an EC about the incident because Brandon told him that he did not participate in the short chaining, that there was no "force" used, and that the detainee was not injured.

We interviewed the OSC, who said that he did not recall Stephenson or Brandon telling him about the incident.

Brandon told the OIG that he later complained to Wyatt about what had happened to Al Qarani. Several days later, Wyatt explained to

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Brandon that a new rotation of guards had come on duty while Al Qarani was chained and were not informed that the detainee was to receive bathroom breaks. Brandon said that when he complained to Wyatt about the treatment, Wyatt ridiculed Brandon for being "weak."

We interviewed Al Qarani at GTMO in February 2007. He stated that he recalled an interrogation session with an FBI agent during which a military official entered the interrogation room and started to yell at him. He also described being chained to the floor in an uncomfortable hunched over position for 3 or 4 hours and urinated on himself, although he did not connect this incident with the yelling military official. Al Qarani said this was not the only time he was chained to the floor and that on another occasion the military chained him overnight for 12-16 hours.

The FD-302 that was prepared by Brandon and Stephenson for the interview of Al Qarani on September 15, 2004, makes at most an obscure reference to the incident that Brandon and Stephenson described to the OIG. It states that Al Qarani was interviewed by Brandon, Stephenson, and Wyatt, and that:

> AL QARANI was questioned in regard to the truthfulness of his travels to Pakistan. When confronted with the illogical nature of the information he was providing, AL QARANI [redacted].

The short chaining of Al Qarani clearly would have violated FBI policies against coercive interview techniques if the FBI agents had employed it in the United States. In this case, the decision to short chain Al Qarani was made by Marine Captain Wyatt, not by Stephenson and Brandon. However, Stephenson and Brandon acquiesced in the use of this technique. Although there was no reporting requirement in place at that time, both Brandon and Stephenson said that they later reported the incident to the OSC.[208]

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[208] We found that the FBI agents' participation in a coordinated interrogation strategy with the military that incorporated the "Mutt and Jeff" or "good cop/ bad cop" strategy was not explicitly prohibited by FBI policy. (We note, however, that under the DOD's April 16, 2003, memorandum, the military was not permitted to use the "Mutt and Jeff" strategy without advance notice to the Secretary of Defense and a determination of military necessity.)

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According to Brandon, Wyatt stated that stress positions were a commonly used technique at GTMO. Stephenson and the OSC both told the OIG that they understand that this was an approved technique for the military. However, military documents indicate that stress positions were not approved at that time. Although "stress positions (like standing) for a maximum of four hours" was on the list of approved counter resistance interrogation techniques permitted at GTMO under the memorandum approved by Secretary Rumsfeld on December 2, 2002, that list was rescinded on January 15, 2003.[209] On April 16, 2003, Secretary Rumsfeld approved a new list of permissible techniques for use at GTMO that did not include "stress positions."

This incident again illustrates the inadequacy of the guidance provided to FBI agents regarding what techniques were approved for use by the military and how the agents were to conduct themselves in joint interrogations. The FBI agents thought that this was an approved military technique; they apparently were not aware that the Secretary of Defense had rescinded his approval of stress positions 9 months before the Al Qarani incident took place. According to the *Church Report*, short chaining was a form of stress position, a technique that was removed from the pre-approved list in January 2003. Yet, the military at GTMO apparently did not consider short-shackling to be a prohibited "stress position" at least until May 2004, when the military commander at GTMO prohibited this practice. *Church Report* at 168.

Although the FBI's May 2004 Detainee Policy had not yet been issued, the FBI agents involved in this matter told us they knew they should not engage in techniques that would be prohibited in the United States. However, it was not clear what an agent should do if another agency's interrogator utilized such a technique without the prior agreement of the FBI agent. Moreover, there was no evidence that Brandon knew in advance that Wyatt would put Al Qarani in a stress position. Under the circumstances, we did not find that Brandon violated any FBI policy in connection with Wyatt's conduct. However, we are troubled by the fact that Brandon and Stephenson did not recognize more quickly that Wyatt's conduct was inappropriate for an interview in which the FBI was participating. Brandon and Stephenson should have acted more quickly to object to the conduct and attempt to stop it.

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[209] Moreover, we believe there is very significant doubt that short chaining a detainee to the floor would have been considered to be "like standing" within the meaning of the December 2 memorandum.

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D. Alleged Use of the "Frequent Flyer Program" on Al Qarani

Brandon told the OIG that he arranged for the use of the "frequent flyer program" on Al Qarani, and Stephenson likewise recalled that this technique was used on the detainee.[210] Stephenson said that a military official at GTMO assisted in coordinating the frequent moving of a detainee from cell to cell in order to break up the detainees' "position of comfort" with guards. She stated that she heard that detainees in the "frequent flyer program" were moved every 4 hours. The OSC at GTMO at that time confirmed that the FBI sometimes interrogated detainees who were in the "frequent flyer" program. He stated that the program was not designed to deprive the detainee of sleep, but to prevent certain detainees from becoming comfortable with their surroundings and to keep them off balance so that the detainees would not have an advantage when being interrogated. He acknowledged, however, that sleep deprivation could be a byproduct of implementing this program.

A Summary Investigative Report prepared by the military dated [redacted], states that Al Qarani complained to military personnel that the FBI was moving him to different cells constantly and he wanted the military interrogator to see if he could get it to stop.

Brandon and Stephenson said they participated in the "frequent flyer" program by asking the military to move Al Qarani. Stephenson acknowledged that this technique would not be permissible for FBI agents in the United States.[211] We did not find any explicit prohibition of this technique in FBI policy. The Legal Handbook for Special Agents identifies deprivation of sleep as a potential factor that a court might consider in evaluating the voluntariness of a defendant's statement, although it does not indicate that disorienting a prisoner or disrupting his sleep patterns is *per se* improper.[212] We also note that the OSC was aware that FBI agents were involved in using this technique. Nevertheless, we are troubled by the fact that Brandon and Stephenson – and other agents, as discussed in Chapter Eight – participated in the

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[210] As noted in Chapter Eight, Section II.C, witnesses and documents indicated that the "frequent flyer" program was also used on other detainees at GTMO to disrupt their sleep patterns and lower their ability to resist interrogation.

[211] In commenting on a draft of this report, the FBI stated that Brandon "stayed within the guidelines laid out, used programs promoted to him and when things went beyond by people not within our control, reported promptly via chain of command."

[212] Unlike stress positions, "sleep adjustment" was on the list of approved techniques for military interrogations at GTMO signed by the Secretary of Defense on April 16, 2003.

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"frequent flyer" program despite the fact that at least some of them told us they believed it would not be available in the United States.

E. Allegations by Al Qarani Regarding "Clint"

During an interview with the OIG on February 28, 2007, Al Qarani made several additional allegations regarding mistreatment by an FBI agent who Al Qarani said called himself "Clint" or "Clean" and who had interviewed Al Qarani at GTMO many times over the course of approximately 1 month in 2003. Al Qarani said that Clint always worked with a particular interpreter Al Qarani identified by name. Al Qarani described Clint as a white, tall, blonde, American male without facial hair, 36 – 37 years of age, who wore civilian clothes with military boots. Al Qarani said that Clint asked him about Afghanistan, that Clint became angry and showed his "worse face" when Al Qarani was unable to answer his questions, and that Clint ordered the guards to move Al Qarani from cell to cell every 2 hours or less, 24 hours per day.

Al Qarani stated that Clint sometimes made him stand during interviews, and told guards to hit him, throw him down, and throw cold water on him. Al Qarani said that on one occasion Clint ordered Al Qarani to be locked on the floor with chains over his back for 3-4 hours, which caused Al Qarani to urinate on himself. He said Clint sometimes used the "N-word" with Al Qarani. Al Qarani stated that once during the period he was being interrogated by Clint, the military short-chained him for 12-16 hours overnight and subjected him to loud music and colored lights. He stated that Clint left GTMO a few days after that incident.

Al Qarani also stated that at one time he had an ingrown toe nail that was removed without anesthesia. The corpsman told Al Qarani that he could not give Al Qarani a painkiller unless Clint approved it. Clint told Al Qarani to talk about his "brothers" (other detainees) if he wanted the painkiller.

Al Qarani stated that he described his experiences with Clint to a female FBI agent some time in 2003. He also said that he told this female agent that he had been beaten in Kandahar but she showed him a photograph from Kandahar and said he "looked fine" in it.

Some aspects of Al Qarani's story suggest that Clint might have been FBI agent Brandon, who interviewed Al Qarani approximately seven times during August and September 2003 and who, as discussed above, reported the incident in which Al Qarani was short chained for several hours and wet himself. Al Qarani's physical description of Clint was generally consistent with Brandon's appearance. In addition, Al Qarani told us that Clint also interrogated Fahd Al-Sharif (#215), and we found

that Brandon had interviewed Al-Sharif in August 2003. Brandon also admitted arranging for Al Qarani to be put in the "frequent flyer" program.

Brandon denied using the name "Clint" or "Clean" at GTMO and said he never heard of anyone using such a name. He also denied engaging in the conduct that Al Qarani attributed to Clint, other than using the "frequent flyer" program. Several other facts also indicate that Brandon was not "Clint." For example, Al Qarani stated that Clint withheld painkillers from him when he was treated for an ingrown toe nail. Available records indicate that the nail on one of Al Qarani's big toes was removed in March 2003 due to an infection. However, Brandon was not deployed to GTMO until August 2003, so he could not have been involved in withholding painkillers from Qarani at the time of this procedure.

In addition, Al Qarani stated that Clint always used the same Egyptian interpreter, "Abbas." FBI records indicate that Brandon used at least five different interpreters during interviews of Al Qarani, none of whom were identified by the name Al Qarani provided. Brandon told the OIG he did not recall any interpreter named Abbas.

Al Qarani also reported that a female FBI agent showed him a photograph of himself to contradict his claim that he was beaten in Kandahar. FBI records indicate that in April 2003, a female agent from the Naval Criminal Investigative Service confronted Al Qarani with a photograph of him in Afghanistan and that Al Qarani subsequently admitted that he had lied about the beatings. Al Qarani told us that at the time of this incident, he told the female agent about his experiences with Clint. However, this incident occurred several months before Brandon arrived at GTMO, further indicating that Brandon was not Clint. FBI records produced to the OIG indicate that prior to April 2003, there were only three FBI agents who had interviewed Al Qarani, and each of them had only met with him once.

Al Qarani also described a different FBI agent who he said was smaller than Clint who we believe was likely Brandon. Al Qarani told us about two FBI agents, one male and one female, who interviewed him. Al Qarani described the female as being an Asian with black hair, medium complexion, thin, and approximately 30 years old. Al Qarani said that he does not recall the male talking, but that he was white with short hair, medium build, about 30 years of age. He said that the agents showed him pictures and they did not promise him anything. Al Qarani said they did not yell and they did not instruct the military to do anything to him. FBI documents indicate that SAs Brandon and Stephenson showed five photographs to Al Qarani on August 28, 2003. In addition, Al

Qarani's description of the female agent was consistent with Stephenson's appearance. If Brandon and Stephenson were the team of agents that Al Qarani was describing, then Brandon was not Clint, because Al Qarani told us the male agent was smaller than Clint. Although other teams of male and female agents interviewed Al Qarani at various times, there is no record that any such team brought photographs for him to identify.

Thus, the evidence does not support that Al Qarani's allegations, if true, relate to an FBI employee. It is possible that Clint was employed by a different agency or that Al Qarani's account was false, exaggerated, or an erroneous conflation of events that related to different interrogators who were not from the FBI. Based on the available evidence we could not conclude that any FBI agent was responsible for the conduct that Al Qarani described.

F. Allegations by Al Qarani Regarding "Daoud"

During his OIG interview, Al Qarani also made allegations about an African American FBI agent named "Daoud" or "David." Al Qarani said that Daoud was large, wore glasses, and had a small beard but no mustache. Al Qarani said that after 2 to 3 weeks, Daoud started doing the same things Clint did, such as ordering Al Qarani to be short-chained and to be moved frequently from cell to cell. Al Qarani said that he was interviewed multiple times by Daoud over a several-month period, and that Daoud was always by himself. Al Qarani said that Daoud put him in isolation at one point. Al Qarani said that on August 8, 2005, Daoud hit Detainee #174 with a chair or refrigerator.[213]

Al Qarani said that Daoud took him to a room that was completely dark and placed him in a chair. When the lights were turned on, he could see that the walls were covered with pornography. Al Qarani said he was introduced to a woman that spoke Arabic and wore a bikini. He was told that if he cooperated, she would sleep with him. Al Qarani said that he did nothing and after an hour he was taken back to his cell. Al Qarani said that he was interviewed by Daoud shortly before he was [redacted].

[redacted] maintained by the military revealed no record that any FBI personnel

[213] Al Qarani used the detainee's number rather than a name during the interview. Detainee #174 is identified in DOD records as Hisham Bin Ali Bin Amor Sliti.

interrogated Al Qarani during 2005, including the months immediately prior to his being [redacted]. We found no evidence that any FBI interrogator deployed to GTMO fit the description that Al Qarani gave for Daoud. In addition, FBI personnel at GTMO stated that they reviewed military records relating to Detainee #174 and found that he was only interviewed once by the FBI in [redacted], with no record of abuse allegations. Neither of the FBI interviewers were African-Americans. We concluded that if Daoud existed he was likely employed by a different agency or that Al Qarani's account was false, exaggerated, or an erroneous description of events that related to an interrogator who was not from the FBI. Based on the available evidence we could not conclude that any FBI agent was responsible for the conduct that Al Qarani attributed to Daoud.

VI. Alleged Mistreatment of Mohammad A. A. Al Harbi

An FBI agent who served at GTMO in late 2002 wrote an FD-302 report dated November 6, 2002, which described an allegation by detainee Muhammad A. A. Al Harbi (#333) that he was beaten by FBI agents in Afghanistan. According to the report, Al Harbi alleged:

> After [Al Harbi's] arrest, he was taken by airplane to Bagram, Afghanistan. While on the airplane, he was struck in the mouth by a member of the Federal Bureau of Investigation (FBI). When he arrived in Bagram, he was beaten by two members of the FBI (one of them being the same as the person who struck him on the airplane). He suffered multiple injuries to his mouth, eye and back as a result of these beatings. He characterized the treatment in Bagram as bad and everyone who participated in these actions were Americans.
>
> The two FBI employees who allegedly beat him were further described as white males; both 40 to 50 years of age.

Al Harbi's allegations were also recounted in a memorandum from the FBI to the Department of Justice entitled "Re: Repatriation Issues," dated January 20, 2004.

In October 2004, in connection with releasing the FBI memorandum along with many other documents in response to a FOIA request from the ACLU, FBI General Counsel Valerie Caproni sought information about whether any investigation of Al Harbi's allegations was ever conducted. According to Caproni, the MLDU Unit Chief told her that no investigation was done.

We interviewed the agent who originally reported Al Harbi's allegations. He stated that the detainee did not make clear the basis for his statement that the agents who beat him were FBI. The agent told us that he believed something bad did happen to the detainee, but the agent did not believe that the FBI was involved.

The OIG interviewed Al Harbi in GTMO on April 26, 2005, with the assistance of a translator. He told the OIG that he had no complaints about his treatment by the FBI, either at GTMO or in Bagram. When the OIG pressed him regarding his complaint about being struck on the mouth and beaten by members of the FBI, he said that he did not think that the individuals who arrested him were FBI agents, but rather he thought that they were either military or possibly CIA.

Al Harbi did not have an explanation for why his earlier account identified the perpetrators as FBI agents. He said that all of his contacts with the FBI have been positive. We also did not find any basis for concluding that Al Harbi was ever mistreated by the FBI.

VII. Abuse Allegations Involving Abu Zubaydah

In this Section we address allegations that FBI Special Agent Gibson participated in the use of abusive interrogation techniques on detainee Abu Zubaydah and other detainees, and that Gibson disclosed classified information to persons unauthorized to receive it.[214] Gibson served as a Supervisor in the FBI's Counterterrorism Division and later as an FBI Legal Attaché. In these capacities he made numerous overseas trips on counterterrorism missions.

The allegations against Gibson were originally raised in an anonymous letter to the FBI which stated, among other things, that Gibson "spoke in detail of the mission leading up to the arrest and interrogation of Abu Zubaydah" and "spoke openly and with much enthusiasm about the torturing of captured al-Qaeda terrorists, undisclosed locations and the brutal interrogation techniques by both CIA and FBI which Agent [Gibson] was involved."

A. The FBI Investigation of the Allegations against FBI Special Agent Gibson

The FBI forwarded the anonymous letter to the OIG, and we initially referred the matter back to the FBI for investigation on

[214] Gibson is a pseudonym.

November 25, 2003. The FBI Inspection Division conducted an investigation of the allegations in the anonymous letter. The FBI determined that the anonymous letter was written by Landis, a civilian acquaintance of Gibson, on the basis of statements Gibson made in Landis's presence, as well as information provided to Landis by Morehead, Gibson's ex-fiancé.[215]

The FBI's investigative file indicates that the scope of the FBI's investigation was limited to FBI interviews of Gibson, Morehead, and Landis, and a polygraph examination of Gibson. Gibson's interview was memorialized in a signed sworn statement. The interviews of Landis and Morehead were summarized by the investigating agents in FD-302 reports. The polygraph examination was memorialized in a written examiner's report. There is no indication in the file that the Inspection Division made any effort to determine whether the information that Morehead attributed to Gibson was accurate or, if so, was classified or sensitive.

B. FBI Interviews of Landis and Morehead

[redacted] psychological/verbal techniques." According to an FBI Inspection Division report, Landis told investigators that:

> SSA [Gibson] spoke of interrogation and torture techniques that are identical to the ones that are now being seen on the news from the Iraqi prisoner abuses, [redacted] SSA [Gibson] accused the CIA of utilizing the worst techniques, and stated that the FBI would utilize techniques of talking to them for 48 hours straight.

Gibson's ex-fiancé, Morehead, told FBI investigators that in late 2002 or early 2003 Gibson told her about the arrest and interrogation of a terrorist. According to the FBI investigator who interviewed Morehead in April 2004, Morehead stated:

> SSA [Gibson] . . . told [Morehead] that he had been present in Pakistan when the raid occurred resulting in the arrest of the second-in-command of the Bin Laden organization. This man had a very noticeable feature in that one of his eyes was

[215] Landis and Morehead are pseudonyms.

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> gone and the eye socket sewn shut. SSA [Gibson] said that this man was injured in the raid and had to be flown to [one of two particular countries] for medical treatment and to be interviewed. [redacted] SSA [Gibson] said that he won the trust of this individual when he leaned over and said something in Arabic to the man. The man was later willing to talk to SSA [Gibson].

Morehead provided more details regarding this matter in an FBI interview in August 2004:

> Following the capture/arrest, this individual was taken to an undisclosed location for medical treatment and interrogation. [Gibson] and FBI SA [Thomas] traveled to this undisclosed location [redacted].[216] [Gibson] eventually informed her the location was [location deleted] or somewhere in [location deleted]. When [Gibson] arrived, [redacted] doctors were operating on this individual. During the operation, [Gibson] said a prayer to this individual in Arabic. This was how he initially developed a relationship with this individual.
>
> * * *
>
> Morehead] advised [Gibson] described the torture of the one eyed man described above. [redacted]

Morehead did not identify the one-eyed man as Abu Zubaydah. Morehead told FBI investigators that Landis had been mistaken when he identified Zubaydah in the anonymous letter as the individual that Gibson had discussed.

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[216] The agent that Morehead referred to here is a particular agent who has been identified elsewhere in this report in Chapters Four and Five and later in this chapter. We therefore substituted the same pseudonym for this agent that we have used elsewhere in this report.

Morehead also provided FBI investigators with several detailed stories that she said Gibson told her about his other activities overseas, including his involvement in an operation involving a [redacted]. She also asserted Gibson kept unauthorized classified information on his personal laptop and pocket PC and leaked confidential information to a television reporter.

In addition, Morehead asserted that Gibson had inappropriately provided information to a member of the press, had used his FBI position to assist family members with law enforcement problems, and had utilized a former informant to provide free limousine service to Morehead and her friends.

C. Gibson's Statement to the FBI

Gibson submitted a 13-page signed sworn statement to FBI investigators in which he denied many of Morehead's allegations. However, he admitted using his personal laptop computer for processing classified information at times when FBI equipment was not available. Gibson's statement also responded to the allegations regarding his contacts with the media, but he did not address the interrogation techniques that he or other agents of the FBI and CIA utilized on suspected terrorists overseas. He stated that he was not aware of having conversations with Morehead during which he disclosed sensitive or classified information. He stated that he never discussed sensitive locations with Morehead but that she may have inferred where he had been from gifts he brought her from overseas. However, he did not address the issue of how Morehead came to know that Gibson and Thomas traveled [redacted] to interrogate a captured terrorist, which in fact was true.

D. Gibson's Polygraph Examinations

Gibson was polygraphed on September 30, 2004, as part of the FBI's investigation. The focus of the polygraph was to determine whether Gibson had been truthful about two issues: whether he disclosed FBI information to a specific reporter, and whether he paid for services rendered by a limousine driver who had previously been his source.

One of the questions posed to Gibson during the examination was "have you ever purposely discussed classified information with family or friends?" Gibson answered "no." The examiner's report did not address this response. It stated that his responses to questions about media contacts were "not indicative of deception." The report stated that

Gibson's responses regarding compensating the limousine driver were "inconclusive."

Gibson had also been polygraphed a year earlier in connection with an FBI promotion. The polygraph report for that earlier test indicated that Gibson's negative response to the question "have you provided classified information to anyone from a non-U.S. Intelligence Service" was not indicative of deception.

E. Findings by the FBI Office of Professional Responsibility

The FBI communicated information regarding the Gibson matter to the Public Integrity Section of the DOJ Criminal Division, which reviewed the file and declined to pursue the matter criminally on September 12, 2005.

The FBI Inspection Division also submitted its investigative report to the FBI Office of Professional Responsibility (OPR) for adjudication. FBI OPR issued a final adjudication of the allegations against Gibson on October 18, 2005. OPR emphasized the "tumultuous five-year relationship" between Morehead and Gibson, which had ended when Morehead believed Gibson was romantically involved with other women, and OPR opined that there was insufficient information to substantiate several allegations against Gibson. OPR found only that Gibson committed a security violation by placing classified or sensitive information on a personal computer, and recommended that Gibson receive a letter of censure.

With respect to the issue of disclosure of classified information, OPR stated: "The investigation was unable to determine whether the information alleged to have been improperly disclosed was in fact classified or sensitive information because [of] the vague descriptions provided by [Morehead and Landis] as to what privileged information was alleged to have disclosed."

The OPR report also did not address the issue of whether Gibson or other FBI agents participated in using "brutal interrogation techniques" overseas as alleged in the anonymous letter.

F. FBI Special Agent Gibson's OIG Interview

Gibson told the OIG that he was involved in the investigation that led to locating Zubaydah in Pakistan. Gibson said he traveled with Thomas and CIA personnel to an undisclosed location in April 2002 to assist in the interrogation of Zubaydah. Gibson said he was instructed by his supervisor, Charles Frahm (then Acting Deputy Assistant Director for the section that became the Counterterrorism Division), not to follow

standard FBI procedures in that he should not give Zubaydah any Miranda warnings and that he should not prepare any interview summaries, which would instead be prepared by the CIA. According to Gibson, Frahm instructed him that the CIA would be in charge of the interrogation and that Gibson was to assist the CIA in any way he could.

Gibson said that he and Thomas initially took the lead in interviewing Zubaydah at the CIA facility because the CIA interrogators were not at the scene. Gibson said Zubaydah was seriously wounded when he arrived. Gibson said he used conventional FBI relationship-building techniques with Zubaydah and succeeded in getting Zubaydah to admit his identity and to identify a photograph of Khalid Sheik Muhammad as the mastermind of the September 11 attacks.

After a few days, CIA personnel assumed control over the interviews, but they asked Gibson and Thomas to observe and assist. Gibson told us that he continued to work with the CIA for several weeks into June 2002. Gibson continued to conduct interviews of Zubaydah after the CIA assumed control. When asked about the interrogation techniques used on Zubaydah during this period, Gibson minimized the harshness of what the CIA was doing. When pressed, however, Gibson admitted that during the period he was working with the CIA, the CIA [redacted]. Gibson stated that the CIA personnel assured him that the procedures being used on Zubaydah had been approved "at the highest levels" and that Gibson would not get in any trouble. Gibson stated that he kept Frahm, his FBI supervisor, informed of his activities with the CIA by means of telephone calls.

When told about Morehead's statements, Gibson asserted that he never disclosed any classified information to Morehead. He described Morehead as being motivated by revenge after a bad breakup. Gibson said that Morehead may have overheard conversations between Gibson and Thomas regarding press coverage of Zubaydah's capture. He also said he sometimes told Morehead general things about difficult experiences he had had overseas, so she could understand his emotional condition. He speculated that Morehead could have inferred that Gibson was involved with Zubaydah from press reports and the timing of Gibson's travel.

G. OIG Interviews of FBI Special Agent Thomas and Acting Deputy Assistant Director Frahm

As detailed in Chapter Four, Thomas told the OIG that he traveled to an undisclosed CIA location in April 2002 to interview a high value detainee who other witnesses confirmed was Zubaydah. He said that after the CIA agents assumed control of the detainee, they [redacted]. Thomas said he considered the [redacted] to be "borderline torture." All of these activities occurred during the period that Gibson was assisting with the CIA.[217] Thomas stated that he and Gibson were ultimately instructed by FBI Headquarters to withdraw from the undisclosed location, and that he left some time before Gibson did.

Frahm, Gibson's supervisor, told the OIG that Gibson and Thomas were sent [redacted] flight to [location deleted] to participate in the joint effort to interrogate Zubaydah. He said he spoke to Gibson several times by telephone, and that Gibson told him that he and Thomas had sat with Zubaydah for hours, prayed with him, and cleaned him up. Frahm said that Gibson told him that Zubaydah was [redacted] and that he (Frahm) told Gibson that Gibson and Thomas should not be involved in interrogations using such techniques.

H. OIG Analysis

We first reviewed the issue of whether Gibson participated in using unauthorized interrogation techniques on Zubaydah, which was not addressed in the OPR Report. In 2007, we sought to interview Zubaydah after he was transferred to GTMO, [redacted].[218]

We concluded that during the spring of 2002 Gibson participated in interviews in which interrogation techniques that would not be available to an FBI agent in the United States were used on Zubaydah. Specifically, Gibson admitted that during the time he was assisting the CIA in interrogating Zubaydah at the undisclosed CIA facility, the CIA utilized [redacted]

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[217] Thomas had left the FBI by the time we interviewed him in August 2005. At the time of Thomas' interview, the OIG had not yet interviewed Gibson and we did not ask Thomas about conversations he might have had with Gibson which Morehead could have overheard.

[218] See footnote 4 above.

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[redacted]. As noted above, Thomas' and Frahm's descriptions of the techniques used on Zubaydah were consistent with Gibson's account.

This interrogation of an extremely high profile detainee took place very soon after the September 11 attacks, and before the FBI had determined whether its traditional policies regarding interviews would apply to overseas interrogations of terrorism suspects. Indeed, as detailed in Chapter Four, it was the Zubaydah incident that sparked the deliberations within the FBI that led to the decision that FBI agents should not participate in interrogations using non-FBI techniques. At the time of Gibson's participation in the Zubaydah interrogation, he had received no guidance regarding his participation in interrogations in which the CIA was using non-FBI approved techniques on detainees in CIA custody. Rather, he was told that the CIA was in charge of the interrogations and that normal FBI procedures such as giving Miranda warnings and writing FD-302 interview summaries should not be followed.

The FBI's formal policy addressing participation in joint interrogations with other agencies in overseas locations was not issued until 2 years later, in May 2004. Gibson's supervisor, Frahm, told Gibson to assist the CIA in any way he could. We concluded that under these circumstances, there was insufficient basis to conclude that Gibson's cooperation with the CIA while the CIA was using non-FBI techniques on Zubaydah violated clear FBI policy.

We also reviewed the question of whether the FBI adequately investigated Morehead's allegation that Gibson disclosed classified or sensitive information to her. The FBI OPR report stated it was "unable to determine whether the information alleged to have been improperly disclosed was in fact classified or sensitive information because [of] the vague descriptions provided by [Morehead and Landis]." However, we found that the information Morehead attributed to Gibson was remarkably detailed, specific, and accurate. It corresponded very closely with the descriptions that we received from other sources regarding accurate facts of the capture and initial interrogation of Zubaydah, described in Chapter Four.[219]

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[219] We recognize that Morehead told OPR that she didn't think the detainee at issue was Zubaydah. However, as detailed below, her description of Gibson's participation in the interview closely matches what other witnesses told us about Zubaydah's detention and interrogation in several respects. We concluded that even if Gibson did not tell Morehead the correct name of the detainee, this does not resolve the (Cont'd.)

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For example, Morehead knew that Gibson traveled with Thomas and CIA personnel to a location in [a particular country or a particular city in another country] to interview a notorious terrorist. In fact, Gibson traveled to the country containing the city that Morehead identified to interview Zubaydah. Morehead stated that the terrorist was missing an eye. Gibson told us that Zubaydah had an infected eye, sometimes wore a patch, and eventually got a glass eye. Morehead knew that [redacted] was utilized with the prisoner, a fact that was confirmed by Thomas. Several witnesses, including Thomas, told us that Gibson and Thomas traveled to an undisclosed CIA location, tended to Zubaydah's wounds, and began to obtain useful information from Zubaydah. They also stated that the CIA intervened and began using interview techniques on Zubaydah that Thomas described as "borderline torture." The interrogation methods that Morehead said were used on the detainee – [redacted] – were among the techniques Thomas said were used on Zubaydah. Morehead also identified Thomas as the agent who accompanied Gibson, which also was true.

We recognize that the fact that Zubaydah had been captured by the United States was not a secret. On April 2, 2002, the White House and the Pentagon confirmed that Zubaydah had been captured and was receiving medical treatment for gunshot wounds. However, the CIA has treated the details of Zubaydah's detention, including the location of the CIA facilities at which he was detained and the interrogation methods used on him, as Top Secret/SCI information. It is also likely that the FBI would consider the identity of the agents who interviewed Zubaydah as sensitive if not classified information. Indeed, as discussed below, the FBI disciplined another agent for revealing only that she was a "foreign counterintelligence agent." The information that Morehead was able to provide about Gibson's activities was much more significant and detailed, but the FBI made no apparent attempt to determine if this information was accurate.

OPR suggested that Morehead was motivated by her animus toward Gibson stemming from the termination of their "tumultuous relationship," which may have been true. However, Morehead's hostility does not explain how she came to possess such strikingly accurate information regarding the interrogation of Zubaydah.

Gibson suggested that Morehead may have reconstructed details about the Zubaydah matter from media accounts and telephone conversations about such reports between Gibson and Thomas. He

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issue of whether the other information Morehead received was accurate and sensitive or classified.

stated Morehead may have inferred that Gibson was involved in the Zubaydah matter from the timing of his overseas travel.

We found that many details of the interrogation of Zubaydah have in fact been reported in the media. However, based on an internet search for media reports, we believe that most of the details corresponding to the information Morehead provided was not reported until after Morehead was interviewed by the FBI in 2004. For example, [redacted] more than 2 years after Morehead made her statement to the FBI describing events very similar to this, [redacted] Morehead could not have based her statement on this report.

Gibson's suggestion that Morehead constructed these accurate details from conversations between Gibson and Thomas that she overheard does not resolve the matter. Even if true, this would suggest that Gibson improperly conducted telephone conversations about classified matters in the presence of Morehead.

Moreover, there is no indication in the investigative file for this matter that the Inspection Division or OPR made any attempt to determine whether the account of Gibson's trip with Thomas that Morehead provided was accurate and if so, whether the information was classified or sensitive.

We also found it inexplicable that the FBI did not make the issue of Gibson's alleged disclosures to Morehead a major focus of its polygraph examination of Gibson in 2004.

We also note that the FBI's indifference to allegations of Gibson's disclosure of his participation in the Zubaydah matter stands in stark contrast to the FBI's treatment of another agent accused of mishandling sensitive information. This agent had concerns about the efficacy of FBI operations in GTMO, where the agent had previously been deployed. In April 2003 the agent addressed these concerns in a letter to FBI Director Mueller. The agent attempted to arrange for the delivery of a letter to the Director by a private citizen who was a mutual acquaintance. In the letter the agent identified herself as an "FCI" (Foreign Counter Intelligence) agent and described (but did not name) detainees she had interviewed at GTMO. OPR ruled in that case that the letter contained sensitive or classified information and that the agent had improperly

disclosed the information to an unauthorized person by giving the letter to a private citizen for delivery to the Director. The agent received a 5-day suspension without pay for this disclosure and for the offense of circumventing the normal channels of communicating with the Director.

The information disclosed by this agent was considerably less specific or sensitive than the information Morehead allegedly received from Gibson about his involvement with a CIA detainee. For example, the agent was criticized for revealing that the agent was assigned to an FCI squad. Morehead somehow obtained far more sensitive information: that Gibson had been assigned to work with Thomas and the CIA on the interrogation of a high value detainee at a secret location, using specific interrogation techniques that the government clearly considers to be secret. Yet, OPR found that this information was too "vague" to be considered sensitive or classified. Again, we found no indication of any effort by the Inspection Division to determine whether the information was accurate or classified.

The issue of whether Gibson disclosed classified information to Morehead was adjudicated by OPR in 2005. We believe that too much time has passed for investigators to determine whether Morehead could have derived her information from non-classified conversations or publicly available sources. Also, much of the information that Morehead described to FBI investigators was subsequently reported in the media, which attributed the information to several unidentified law enforcement and intelligence officials. It would be unfair for the FBI to reopen the investigation of Gibson without initiating an investigation of the sources of the information in the reports.[220] However, the FBI should take note of the inadequate and incomplete investigation it conducted with respect to this matter and take steps to ensure that future investigations of allegations that agents disclosed confidential or classified information are conducted more thoroughly and evenhandedly.[221]

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[220] The New York Times identified the sources of the information in the article as officials who were not present at the interrogation but rather were briefed on the events as they occurred or later. This description, if accurate, would exclude Gibson as the source because he personally witnessed these events.

[221] In commenting on a draft of this report, the FBI stated that the adequacy of the FBI's investigation of the allegation was further supported by the fact that Gibson passed a polygraph examination in connection with a promotion in September 2003, and by the DOJ Public Integrity Section's declination to prosecute Gibson. We disagree. The 2003 polygraph was not a factor in the OPR's adjudication of this issue and does not shed light on the adequacy of the FBI's investigation in 2004-2005. It took place before Morehead made her allegations to the FBI and did not include specific questions about conversations between Gibson and Morehead. Similarly, the decision by the DOJ Criminal Division not to prosecute Gibson does not establish the adequacy of the FBI's (Cont'd.)

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VIII. Allegations of Abuse at the [redacted]

In this Section we address allegations relating to FBI conduct during the spring and summer of 2004 at [redacted]

Most of the allegations that we investigated were made by an FBI agent, Ryan, who served in Iraq [redacted] and who was assigned to the facility for several weeks in [redacted]. From [redacted], another FBI agent, Adair, was the officer in charge of the [redacted].[222] However, Adair was acting in his capacity as an active duty officer [redacted]. From [redacted], approximately seven FBI agents were sent by the FBI to the facility to assist the military in conducting interrogations of detainees held at the [redacted].

As described in detail later in this Section, Ryan reported to military superiors and to the FBI Inspection Division that after he left the facility a military interrogator told him that detainees at the facility were confined in "inhumane conditions" and were subjected to abusive interrogation techniques, including food, water, and sleep deprivation and "water interrogation." Ryan brought the issue to the attention of the FBI Inspection Division because Adair was an FBI agent, although, as discussed below, Adair was acting in his capacity as an officer in the Army at the time of the incidents. The OIG investigated Ryan's allegations and also examined reports from other agents regarding practices by other FBI employees at the facility that might violate FBI policy, including the use of in-cell restraints, blindfolding, and threats in connection with detainee interrogations.

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internal investigation, but rather reflects DOJ's determination on the basis of the FBI information that there was insufficient evidence to prosecute. Neither the 2003 polygraph nor the Criminal Division declination decision address the central deficiencies in the FBI's investigation: the failure to recognize that the information Morehead provided was highly detailed, specific, and accurate; the failure to determine whether the information was sensitive or classified; and the failure to address how Morehead got the information except from Gibson.

[222] Ryan and Adair are pseudonyms.

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A. Background

1. The Facility

[redacted]

[redacted]

2. FBI Special Agent Adair

Prior to joining the FBI, Adair served in the military for over 9 years. Adair remained on Inactive Ready Reserve status and in [redacted] he was recalled to active duty [redacted] in February 2004 where he served as a liaison officer and assisted with developing detainee interrogation strategies. In [redacted], Adair was assigned to be the "J2X" (human intelligence) officer for the Unit when the prior J2X retired.

Adair told the OIG that as the J2X, he was the officer in charge of collecting human intelligence, which included supervising the entire

[redacted]. A Sergeant Major was also assigned to the facility. Either Adair or the Sergeant Major was usually physically present at the facility. Ryan told the OIG that the Sergeant Major "appeared to be in actual control of the facility." However, Adair stated that he, and not the Sergeant Major, was in charge of the [redacted].

Adair told the OIG that when the news accounts appeared about the conduct of military personnel at Abu Ghraib in the spring of 2004, his military supervisor told him that he should "not let anything happen" at [redacted] because of the importance of the actionable intelligence gained from the facility. Adair said he responded to his supervisor that he would let the U.S. Constitution be his guide. Adair told the OIG that all interrogation techniques used at the facility had been approved by [redacted].

Adair said that there was a shortage of experienced interrogators at the facility, and there had been an "informal" decision to have FBI agents assist in the interrogations. As a result of his suggestion, a team of FBI agents was sent to the [redacted] in May 2004 to assist with the interrogations.

Adair left the military and returned to the United States in the middle of July 2004.

3. The Team of FBI Agents

Prior to May 2004, primarily military intelligence officers and Defense Intelligence Agency (DIA) interrogators conducted detainee interrogations at the [redacted]. Beginning in early May 2004, a team of approximately five FBI agents, including a Team Leader, was deployed to the facility to assist the military in conducting interrogations of the detainees for the purpose of obtaining intelligence concerning threats to coalition forces and to obtain information that had a U.S. nexus to terrorism. About a week later, two additional FBI agents joined the five at the facility. The entire team of FBI agents returned to the United States in July 2004 after a 60-day deployment.

The Team Leader said that his team was the first group of FBI agents to be [redacted]. Several of these agents told us that they received some instruction for their assignment, either prior to their deployment to the facility or after they arrived. According to the FBI Team Leader, the Deputy OSC for Iraq gave instructions that the FBI agents should conduct the same type of interviews as in the United States and should not to take part in or even stay and observe interrogations where the military was employing any

"harsh-up" techniques, such as [redacted]. The Team Leader stated that he relayed these instructions to the agents, and several agents told us that they received instructions to conduct themselves as they would in the United States.

Three of the agents told us that they understood that if they saw conduct by the military that was inconsistent with FBI policies, they should not participate and should report the incident through the FBI chain of command. Several agents also told us that after they arrived in Iraq, they received written guidance from FBI Headquarters, which we concluded was likely the FBI's May 2004 Detainee Policy described in Chapter Six.

However, three other agents told us that the team did not receive training on military interrogation. They said that they did not know what techniques were and were not authorized by the military and other agencies.

At the [redacted], the FBI agents were split into two 12-hour shifts for conducting interviews of detainees. The agents said that twice a day the agents, the military interrogators, and the Sergeant Major met between shift changes to discuss the interrogations. At these meetings, they would discuss general issues involving interrogations and also specific detainees. Adair was also in attendance at the briefings whenever he was present at [redacted].

Initially, the agents were teamed up with military interrogators, but after a short period of time they generally worked with other FBI agents. According to the FBI, this change was implemented to be consistent with an FBI rule requiring that all interviews be conducted by two agents. One of the agents stated that the reason for this change was that FBI interviewers had a different purpose than military interviewers. The focus of the military interviews was for force protection, while the FBI agents were looking for information with a U.S. nexus. The agents did not write FD-302 summaries for each interview, but rather summarized their interviews in the form of ECs that were submitted weekly.

4. FBI Special Agent Ryan

Ryan has worked for the FBI since 1999. He has also been a U.S. Marine Corps reserve officer since 1996. Ryan told the OIG that when the Iraq war began he sought to be deployed with the Marine Corps. He received orders from the Defense Intelligence Agency (DIA) in April 2004 to deploy to Iraq, and arrived in Baghdad on May 1, 2004. He was assigned to lead a team of human intelligence personnel to support [redacted]

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[redacted], including interrogation of detainees.

Ryan was in Iraq from May 1 to the beginning of June, 2004. Of that time he spent approximately 2 weeks at [redacted] and approximately 2 weeks at [redacted]. Ryan said that during his time at [redacted] he experienced friction with the Sergeant Major over who was in control of the DIA interrogators. Ryan complained to his military superior in the United States, and in mid-May he was directed to leave the facility and move to [redacted] to monitor DIA officers. He stayed in that area for 2 weeks and returned to [redacted] briefly. Shortly thereafter, he took a flight back to the United States.

When Ryan returned to the United States, he complained to his superiors at DIA about problems at the facility, including that the military command at the facility had treated him poorly and that the environment at the facility was abusive towards detainees. He also eventually complained to FBI OPR about his view of Adair's operation of the facility.

Adair told us that at one point he was informed that Ryan was missing from the facility and that no one knew where he was. Adair later learned that Ryan had returned and was staying at a nearby airport hanger waiting to catch the next flight to the United States because he knew he was in trouble and that people were looking for him. Adair said that Ryan had "split from the program."

B. Allegations by Ryan

When Ryan returned to the United States, he reported his concerns about the treatment of detainees at [redacted] to his military superiors and to the FBI Inspection Division. He also signed an affidavit for FBI OPR describing these concerns. Ryan also provided information about these concerns in an interview with the OIG.

Ryan reported that shortly before he left the [redacted] in mid-May 2004, he overhead a facility military guard who was observing approximately six handcuffed and blindfolded detainees awaiting release from the facility. Ryan said the guard made a comment to the effect of, "If we give these guys a sporting chance, how far do you think we should let them go before we shoot them in the back?" Ryan said he reported the statement to the guard's supervisor, and that within 48 hours the Sergeant Major banned Ryan from the facility.

Ryan stated in his OPR affidavit that after he left the in mid-May 2004 to go elsewhere in Iraq, he had a conversation with an unnamed military interrogator. According to Ryan, the military interrogator told him that some of the detainees at the facility were confined in "inhumane conditions" without proper medical treatment and without adequate hygiene opportunities. Ryan also stated that the military interrogator told him that techniques such as food, water, and sleep deprivation were used by military interrogators to extract information from the detainees. In addition, the military interrogator reported that detainees would be stripped naked and subjected to "water interrogation."

Ryan told the OIG he did not personally observe these conditions or the abuse described to him by the military interrogator. He alleged that as the Officer in Charge at , Adair should have known about the conditions and the abuse and should have taken steps to correct them.

Ryan also stated that he learned when he returned to Baghdad in late May or early June 2004 that someone at the had posted his photograph in the main building of the facility. We obtained a copy of the poster, which had printed in large letters "Wanted for Questioning" above Ryan's picture and stated that "if seen detain and escourt [sic] to the [task force] commander or the [task force] J-2" (i.e., Adair).

Ryan stated that he did not know who had made the poster, but that he viewed it as threatening and as retaliation for his reporting the comments by the guard about shooting detainees in the back. He said that after returning to the United States, he called the FBI Team Leader who had been at the facility with the FBI agents, and the Team Leader denied that the FBI agents made the poster. In our interview with the Team Leader, he said that someone in the military hung up the poster in the briefing room after a briefing where Ryan's absence was noted.

C. Prior Investigations

After Ryan returned to the United States, his allegations of abuse were referred to the DIA OIG, which conducted an interview of Ryan. The

DIA OIG concluded that no investigation by the DIA OIG was warranted because Adair was not a DIA employee, and referred the allegations to the DOD OIG. We did not find any indication that the DOD OIG ever addressed the allegations against Adair.

Documents provided by the military indicate that a DIA civilian debriefer who was assigned to [redacted] in April 2004 also made allegations to the DOD regarding detainee abuse at the facility, [redacted] had been approved by the J2 of the Task Force (who was Adair).

Other DIA employees assigned to the facility reported to DIA or DOD investigators that detainees arriving [redacted] had bruises and burn marks indicating they had been abused, and that some detainees were held at the facility for weeks at a time at the whim of interrogators despite a general rule that detainees should be transferred or released within 4 days. One DIA employee reported that when the Task Force was notified that an IG investigation had been initiated, the Sergeant Major and the Officer in Charge (Adair) became very upset and the Sergeant Major made threatening statements against the DIA employee believed to have initiated the complaints. [redacted].

Due to these events and other concerns regarding the relationship between the Task Force and the DIA personnel, the DIA directed its personnel serving at [redacted] to leave the facility and to return to Camp Slayer in late June 2004. A memorandum from [redacted] to the Director of the DIA dated July 6, 2004, stated that an investigation of detainee abuse was underway and that it had revealed [redacted].

However, we are not aware of any report or findings by the DOD OIG, the Task Force, or any other military component regarding the alleged incidents of detainee abuse at [redacted] during Adair's tenure at that facility. As noted above, Ryan also reported his concerns to the FBI Inspection Division in August 2004. The Inspection Division initiated an investigation of the allegations against Adair, who by that time also had returned to the FBI as a Special Agent. On September 1, 2004, the Inspection Division conducted an interview of Ryan and obtained a 7-page affidavit from him setting forth his

allegations. The Inspection Division did not interview Adair or conduct any further investigation before closing the matter as "unsubstantiated" in September 2004. An FBI Inspection Division official later characterized Ryan's allegations as "rumor and innuendo." However, the Inspection Division referred the matter to the OIG on October 20, 2004, by providing Ryan's affidavit to the OIG.

D. OIG Investigation

The OIG interviewed Ryan, Adair, and the team of seven FBI agents who were deployed to the facility to conduct interrogations of detainees. We also reviewed the survey responses of the FBI interrogation team and the electronic communications summarizing detainee interviews that were prepared during the period. We obtained documentation from the DOD OIG regarding complaints made by Defense HUMINT Service interrogators regarding conditions at the [redacted].

In evaluating Adair's conduct, we recognized that Adair was acting in his capacity as a military commander while he was stationed at the detention facility. In this capacity, he was expected to comply with military regulations relating to the treatment of detainees, not FBI policies. As noted in prior chapters, military policies regarding interrogation techniques were significantly different and less restrictive than policies applicable to FBI agents. As a result, Adair's conduct should be evaluated as a military commander by reference to military standards, not FBI standards.[223]

Nevertheless, the FBI retains an interest in the "off-duty" conduct of its agents. The FBI's MAOP, Section 1-21.2, provides that "a disciplinary inquiry is not restricted to activities within the critical elements and performance standards of the employee's position and may also include on- or off-duty conduct when such conduct affects an employee's ability to perform his or her job or adversely affects the Bureau's ability to secure needed cooperation from members of the public."

In evaluating Adair's conduct as a military officer, however, we recognized that compliance with military policies is primarily within the jurisdiction of the military and not normally a subject within the purview of the DOJ OIG. The *Church Report* described in detail the extremely

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[223] Moreover, we are not aware that the FBI has established any policy or guidance regarding the applicability of its policies to FBI employees serving in the military forces.

complex evolution of the military policies and found that in many cases there were serious deficiencies in the communication of the contents of military policies to units in the field. *Church Report* at 276. Moreover, most of the potential witnesses to conditions and events at the [redacted] during Adair's tenure are not DOJ employees and therefore are not subject to the OIG's investigative authorities. Consequently, the scope of our review was primarily limited to the accounts provided by FBI employees.

We identified instances where Adair's conduct might potentially have implicated particular military policies, based on the descriptions of such policies in the *Church Report* and summarized in Chapter Three. However, we believe that the military should make the ultimate determination of whether one of its officers complied with military policy. If the military determines that Adair's conduct violated military policy, we recommend that such findings be communicated to the FBI for its assessment whether any discipline is warranted under MAOP 1-21.2.

Although Adair was acting as a military officer, the FBI agents who were deployed as a team to [redacted] during May through July of 2004 were at all times acting as FBI employees. These agents were subject to the more restrictive FBI policies regarding interrogation, as described in prior chapters. As discussed in the following sections, we assessed their conduct in light of FBI rather than military standards.

E. OIG Analysis of the Allegations

In this subpart we present the results of the OIG's investigation into the allegations relating to misconduct at the [redacted].

1. Alleged Inhumane Physical Conditions

Ryan stated that a military interrogator had told him that there were "inhumane conditions at the Baghdad detention facility." The military interrogator told him that detainees who were not cooperating with the interrogators were kept in [redacted]

The FBI agents who conducted interrogations at the [redacted] acknowledged that the conditions for the detainees were "primitive" and uncomfortable, but the agents did not view them as inhumane and instead viewed them as appropriate to the circumstances.

One agent estimated the cells to be [redacted]. One agent said that the cells were clean and were swept regularly and mopped on occasion. Several agents said that the cells had sleeping mats in them. One agent said that the cells were large enough [redacted] According to most of the FBI agents, the plywood detainee cells were open at the top and were in buildings that were enclosed and air-conditioned, including the [redacted]

[redacted]

We believe that conditions in the [redacted] were likely extremely uncomfortable, particularly in the summer. However, we have no evidence that, as J2X of the Unit, Adair was involved in designing or constructing the facility, which was already in operation when Adair arrived in Iraq. We also received no evidence that Adair could control the size or temperature of the [redacted], or that he or others intentionally manipulated temperatures in the [redacted] to increase detainee discomfort. Accordingly, we did not analyze whether the conditions in the [redacted] violated military policies or applicable treaty obligations. We believe that this issue is not specific to Adair. [redacted]

2. Allegations Regarding Medical and Hygiene Conditions

Ryan stated he believed that the detainees at the facility were "denied showers for periods up to one month and medical attention." He said that although "each detainee was screened by an individual known as 'Doc,' there were problems with detainees receiving prescribed medication." He did not provide any specific examples of detainees not receiving prescribed medication.

The FBI agents interviewed by the OIG said that a doctor gave all detainees a medical examination upon their arrival at the facility. One agent also recalled several incidents when the doctor interrupted an interview to check on the detainee. Another agent stated that some of the detainees had diabetes or heart conditions, and the outside of each detainee's cell would indicate whether he needed specific medication and when he was to receive it.

Agents stated that detainees were given showers regularly and were escorted to the toilets periodically and also upon request. The FBI Team Leader stated that detainees stayed at [redacted].

Adair described the medical screening process for new detainees in a similar fashion as the FBI agents. He stated that the surgeon and an interpreter interviewed each detainee individually to determine if there were health problems or injuries. Once the doctor cleared a detainee, the detainee was given a prison uniform consisting of medical scrubs and was assigned to an individual cell.

During a DOD investigation of conditions in the [redacted], one of the DIA civilian interrogators stated in his affidavit that he noticed some detainees arriving at the facility in May and June 2004 with fresh injuries such as bruises that were not recorded in the medical screening sheets. The DIA interrogator stated that all detainees were screened by the facility's medical doctor within the first hour of their arrival, but only "major medical problems" were being recorded. He said that some detainees complained to him of back pain in the area of the kidneys, but that the medical screening did not note these complaints. Another DIA debriefer stated that about 50 percent of the detainees arriving at [redacted] "appear to have been mistreated" before they got there.

A memorandum from [redacted] to the Director of the DIA dated July 6, 2004, stated that the ongoing internal investigation of detainee abuse by the [redacted] found that "it is not uncommon for detainees to arrive with bruises from actions during capture," and that there was an "on-going case of kidney stones in the facility, and medical opinion of recurrent kidney problems due to the water, but no abuse specific to detainees' kidneys."

We found insufficient evidence to support the conclusion that Adair was responsible for any inadequacies in medical treatment at the [redacted].

3. Alleged Deprivation of Food or Water

Ryan said that when he was in another city in Iraq, he "observed the utilization of food/water deprivation on one detainee." He said that he "only personally observed this abuse occurring" in another city, but that the unnamed military interrogator told him that the "same thing was going on at the [redacted]."

[redacted][224] We are not aware of any military policies that permitted depriving detainees of minimally sufficient food or water, either as an interrogation technique or as a general detainee management practice.

The accounts of the FBI agents varied concerning food and water restrictions at the facility. Some agents said they were unaware of any food or water deprivation. [redacted]

However, neither of the two agents [redacted] stated that they personally participated in depriving detainees of food or water. One of these two agents said that when a detainee asked for food, the agents asked the military personnel to give the detainee an MRE. Other agents told us

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[224] Item "T" in the April 2003 GTMO Policy approved by the Secretary of Defense explicitly provided that the permitted tactic of "dietary manipulation" did not include the "intended deprivation of food or water." [redacted].

[225] [redacted]

that after they gave water to detainees or that whenever a detainee asked for a drink, they would give him one. Three agents said that there was water in the interrogation rooms for the detainees or that they often offered water to the detainees. One of the agents said that food and water was always available, but that he received a few complaints about the quality of the food.

Two agents also stated that none of the detainees appeared to be malnourished or dehydrated. They added that the detainees appeared well fed or gained weight at the facility. However, this observation seems inconsistent with the agents' statement that most detainees were released or transferred out of the [redacted].

Adair said that [redacted] the detainees were never deprived of food or water. He stated that if a detainee arrived at night, the detainee might have to wait until morning for the next ration cycle, but he would never be deprived of water. [redacted]

The limited evidence available to the OIG regarding the deprivation of food or water at [redacted] was conflicting. [redacted] Moreover, we did not find any evidence that the team of FBI agents deployed to the facility participated in depriving detainees of food or water.

We recommend that the military make its own findings regarding whether military policy was violated and whether Adair was responsible for any violation. If the military concludes that Adair was culpable, we recommend that the military communicate this finding to the FBI.

4. Alleged Sleep Deprivation

Ryan stated that in another Iraqi city "sleep deprivation techniques [redacted]. He said that he did not personally observe this technique employed at [redacted] but said that the military interrogator in Falluja told him that it was used there.

Several FBI agents deployed to [redacted] gave information consistent with what Ryan reported. [redacted] However, both agents insisted that they were not deliberately using sleep deprivation as an interview technique.

Adair told the OIG that sleep deprivation was used at the facility as an interrogation technique while he was there. He stated that it was considered a "harsh-up technique." [redacted] He said that he knew that sleep deprivation could not be used by the FBI in the United States.

[redacted] Initially, the military relied on Field Manual 34-52, which did not list sleep management, sleep deprivation, or extended interrogations among the 17 interrogation "approaches" that could be used in order to elicit information from detainees. *Church Report* at 33-37, 257. On September 14, 2003, the first Interrogation and Counter-Resistance Policy for the Iraq theater was issued. *Id.* at 257, 263. Among other things, this Policy described "Sleep Management" as an approved technique, and defined it as: "Detainee provided minimum 4 hours sleep per 24 hour period, not to exceed 72 continuous hours." *Id.* at 265. [redacted].

On October 12, 2003, however, a revised Policy was issued that removed several of the previously approved techniques, including "Sleep Management." *Church Report* at 268. The revised Policy, which was in effect when Adair assumed control of the [redacted] indicated that any "requests for use of approaches not listed" (which would include requests for sleep management) were to be submitted to the Combined Joint Task Force Commander. [redacted]

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[redacted] We note, however, that the *Church Report* found that "dissemination of approved interrogation policies [in Iraq] was ineffective, resulting in widespread lack of awareness of which techniques were currently authorized at the unit level." *Church Report* at 276.

We recommend that the military make its own findings regarding whether military policy was violated and whether Adair was responsible for any violation. If the military concludes that he was responsible, we recommend that the military communicate this finding to the FBI.

5. Allegations Regarding Harsh Interrogation Techniques

[redacted]

[redacted]

Adair confirmed that one technique used by the military at the facility was to drip cold water down the detainee's back during an interrogation to make him cold. He said that this was a "harsh-up" technique [redacted]. He acknowledged that it was used while he was at the facility. Adair described this practice of dripping water down a detainee's back if he was being uncooperative as "annoying" to the detainee.

In addition, Adair said that before he arrived at the facility interrogators would "strip down" detainees, which he said was culturally

humiliating. He said that he heard that interrogators also would tell the detainee after using the "strip down" technique that [redacted].

Adair also described other "harsh-up" techniques used by the military, including requiring detainees to do push-ups or calisthenics or to sit in the "invisible chair" condition, blindfolding, and sleep deprivation, which we addressed above. He said that the number of times "harsh-up" techniques were used during the time he was at the facility [redacted].

Adair stated that although these techniques were approved by the military hierarchy, he would not have used them as an FBI agent in the United States. He also said that he did not think these techniques were as effective as the FBI's rapport-building approach. He stated that he believed that none of the detainees were in grave danger or were physically harmed and that he had personally been through worse treatment during Army Ranger training and pledging for his college fraternity.

The FBI agents who were deployed to the facility provided little information to the OIG regarding the use of harsh or aggressive techniques at the facility. One agent said that the military interrogators wanted to use methods like forced physical training and hooding, but that these techniques had been abandoned after the Abu Ghraib prison scandal. This agent said that at the end-of-shift briefings, the topic of applying more stringent interrogation techniques with a detainee was raised only two to three times. However, he said that he did not consider the stricter techniques to be abusive and believed that they were closely monitored by the military.

Another agent reported that he heard loud music from certain interrogation rooms and that military interrogators told him they were forcing detainees to perform physical training exercises.

The FBI Team Leader told us he recalled that while he was at the facility, [redacted] to use "harsh-up" techniques two times, but the FBI agents did not participate. He said he did not look at the request and did not know specifically what techniques were to be used. The Team Leader added that [redacted].

Adair told the OIG that a lot of the harsher military techniques that had been used before he came to the [redacted].

Therefore, the evidence indicated that during Adair's command of the facility, interrogators used interrogation techniques that were not approved by the military. However, as noted above, the *Church Report* found that dissemination of approved interrogation policies in Iraq was ineffective. *Church Report* at 276. The report also indicated that compliance with the policies was "often incomplete, even when units were in possession of the latest guidance." *Id.* The Church investigators [redacted].

We recommend that the military review whether military policies were violated at the [redacted], and whether Adair was responsible for any such violations. We recommend that that the military communicate any findings to the FBI.

6. Allegations Regarding Use of Restraints

Several FBI agents told the OIG that [redacted]. Detainees were also handcuffed while outside of the cells for security reasons. One of the agents said that it was the interviewer's discretion whether the detainee was restrained during the interview, and that

handcuffs were generally removed as a reward for cooperating and as a sign of respect that often had a positive impact on the interview. Occasionally a detainee would complain about the handcuffs being too tight during the interviews, and the agent would ask the military personnel to loosen the cuffs.

We also received information that FBI agents participated in deciding whether detainees would be handcuffed inside their cells following an interview, as part of a system of rewards for cooperation and punishment for non-cooperation. [redacted]

One of the two FBI agents who described [redacted]. The other said this happened "most of the time." The first agent said that on more than "a couple" of occasions he and his FBI partner [redacted] until the detainee's next interrogation. However, the other agent said that the [redacted] was a military tool and not an FBI creation. The first agent also told us that it would have created problems for the agents' relationship with the military to designate a detainee as cooperative, [redacted], if the detainee had in fact lied or been uncooperative.

[redacted]

[redacted]

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As previously explained, at all relevant times FBI policy prohibited agents from obtaining statements from detainees by the use of force, threats, physical abuse, threats of such abuse or severe physical conditions. Part 1, Section 1-4 of the MAOP specifically provides that these prohibitions are applicable to "all phases of the FBI's work [including] foreign counterintelligence." Accordingly, it has been the official FBI position that agents should not participate in any interrogation techniques overseas that they would not be permitted to use in the United States.

We do not take issue with using restraints for safety or security considerations. However, the restraint classification system described by several of the agents appears to have been in large part connected to the interrogation function and whether the detainee was cooperating. The OIG concluded that in the United States FBI agents would not have been permitted to require that a person in custody be restrained (handcuffed) in his cell for hours or days as punishment for failure to cooperate in an interview. We believe that such a tactic would likely be considered using physical abuse or severe physical conditions to obtain a statement, which would be in violation of FBI policy.[226]

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[226] As noted in Chapter Ten, we determined that at least one FBI agent at [redacted] was also involved in deciding whether a detainee would (Cont'd.)

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As detailed in prior chapters, however, before May 2004 the FBI's written policies did not clearly address whether FBI agents should participate in joint interview strategies with non-FBI personnel who were using techniques that were approved by their agencies. In approximately July 2002, the FBI Director made a determination that the FBI would not participate in detainee interrogations in which other agencies' harsher techniques were being used, but this was not reflected in written policy until the FBI issued its May 2004 Detainee Policy, which stated: "If a co-interrogator is complying with the rules of his or her agency, but is not in compliance with FBI rules, FBI personnel may not participate in the interrogation and must remove themselves from the situation." Some FBI agents deployed at the facility recalled receiving a policy statement while in Iraq, which was likely the FBI's May 2004 Detainee Policy. Although implementation of the categorization program at the detention facility did not strictly speaking involve a "co-interrogator," the FBI agents should have recognized that their participation in this program was at least problematic, and should have considered seeking guidance from FBI managers.[227]

The FBI's May 2004 Detainee Policy also required agents to report any instances of "abuse" by non-FBI interrogators to the FBI's On-Scene Commander. We found no evidence that the FBI agents deployed to the detention facility considered the use of in-cell restraints by the military to punish uncooperative detainees to constitute "abuse," or that the agents

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receive a blanket or mattress in his cell, based on whether he was cooperative in interviews. [redacted]

[227] As discussed in Section III.D. of Chapter Six, the FBI OGC addressed the [redacted] in a May 2006 Electronic Communication. The OGC concluded that [redacted] for more than 8 hours constituted "severe physical conditions." The OGC therefore recommended that CTD prohibit its employees from interrogating detainees who had been kept in these conditions for 8 hours or more until completion of a "cooling off" period (typically at least 12 hours) following removal of these conditions. The OGC's May 2006 EC did not address whether it would be permissible for an FBI agent to make a recommendation regarding whether a detainee should be [redacted] based on the detainee's level of cooperation in an interview. We believe that the OGC's analysis strongly suggests that an FBI agent would not be permitted to make such a recommendation if the [redacted] exceeded 8 hours. For the reasons discussed above, we believe that any involvement in using [redacted] as an incentive to provide information would be contrary to FBI policy, even if the [redacted] was less than 8 hours.

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reported the use of such techniques up their own chain of command. Moreover, no useful guidance was provided to assist the agents to discern the line between acceptable aggressive techniques permitted under military policy and "abuse." In this environment, and in light of the nature of the restraints used by the military, we do not conclude that the FBI agents deployed to the detention facility violated their obligation to report "abuse."

As previously noted, we evaluated Adair's conduct as the officer in charge of the detention facility in terms of applicable military policy, because Adair was acting in his capacity as a military officer at the time. [redacted]

The program also could have been considered as an example of "Incentive/Removal of Incentive," which was approved for use throughout the relevant period. [redacted] Moreover, if the program was neither a "stress position" nor an "incentive/removal of incentive," and did not fall within any of the other specific listed techniques, [redacted].

Adair denied knowing that in-cell restraints were used as a punishment for non-cooperation. Yet, in light of the FBI agents' specific recollection of this program, and the DIA interrogator's affidavit, we found that such a practice took place at the detention facility. We believe that the military should assess whether the categorization procedure was consistent with applicable military interrogation policies. If it was not, we recommend that the military assess Adair's role in permitting the categorization system for applying in-cell restraints, and report the findings to the FBI.

7. Allegations Regarding Blindfolding/Goggles

We did not question the use of goggles or blindfolds during the transportation of detainees as a security precaution. . We believe that, absent a legitimate security purpose, such a technique could be considered "duress or intimidation" and would not be permissible in the United States under FBI policy. See MAOP Part 1, 1-4(4), p. 27. Under FBI policy, the FBI agents deployed to the detention facility should not have participated in interrogations using this technique. However, we did not find any evidence that FBI agents used this technique during interrogations, except for the single, relatively minor incident described above.

We did not receive any evidence that the FBI agents reported the military's use of blindfolding or goggles up the FBI chain of command. For the same reasons discussed in the prior section, we cannot conclude that this technique constituted "abuse" as that undefined term is used in

the FBI's May 2004 Detainee Policy, and we cannot fault the agents for declining to report it.

8. Alleged Threats

One of the FBI agents told us that he and another agent sometimes used a ruse in which they would advise a detainee that if he did not cooperate, they would take him back to the United States where he would face criminal charges and spend time in a maximum security prison. A summary of a detainee interview in an EC dated May 22, 2004, referred to the use of this technique and the detainee's reaction: "It should be noted that [the detainee] was visibly upset when told that a letter would be written to his wife in order to notify her of his impending departure to the United States to face a prison sentence, a pretext utilized by the interviewing agents." This EC was sent through the Team Leader to CTD.

The same FBI agent mentioned another ruse where the agents would threaten to bring the detainee's family members to the facility and then eventually to the United States for prosecution. He said that they stopped employing this ruse when they realized that it was not working. The agent said that they discussed the use of the ruse with the other agents, including the Team Leader, and that no one expressed any objection.

Section 7 of the Legal Handbook for Special Agents (LHBSA), "Confessions and Interrogations," states in pertinent part: "It is the policy of the FBI that no attempt be made to obtain a statement by . . . threats . . . ." LHBSA § 7-2.1. However, the line between permissible ruses and impermissible threats is difficult to state with precision. FBI training materials provided to the OIG do not elaborate on this distinction but refer to court decisions regarding the admissibility of confessions. These materials point out that although courts have found confessions inadmissible when extracted by threats to arrest a relative or friend, courts applying the "totality of circumstances test" have admitted confessions following threats to arrest or charge another. Consequently, we did not find a basis for concluding, under the totality of the circumstances, that the FBI agents violated FBI policy with respect to using these ruses.

9. Allegations that Detainee Was Subjected to Electric Shock

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[redacted] This alleged incident involved solely military personnel, and did not occur at the facility while under Adair's command.

10. Allegation Concerning Abuse of a Female Detainee

Ryan told the OIG that he overheard a conversation between [redacted] Ryan also said that the staff members discussed that the incident was under investigation.

Adair also told us that he recalled hearing about this incident and that it was investigated by the military, but that it allegedly occurred prior to his arrival. We found no evidence that any FBI agent was involved or alleged to be involved in the matter. Because this incident involved solely military personnel and occurred prior to the FBI agents or Adair arriving at the facility, the OIG did not investigate it. We do not know whether the DOD ever investigated this matter.

F. OIG Conclusions Concerning Allegations at the [redacted]

In sum, the OIG did not substantiate that the FBI agents who served as interrogators at the facility from May to June 2004 engaged in the inappropriate conduct alleged by Ryan, including deprivation of food and sleep, and inhumane treatment. However, we found that some FBI agents knowingly participated in the categorization system for restraining detainees in the cells who were not cooperative in interrogations. We believe that this activity probably would not have been permitted in the United States under FBI policies. The FBI's May 2004 Detainee Policy, which reiterated the applicability of existing FBI interrogation policies in the military zones, was issued very near the time that this conduct took place. We also believe that these incidents demonstrate that the applicability of existing FBI policies in the military zones was not made clear to all FBI agents prior to the issuance of the May 2004 Detainee Policy.

We recommend that the military review Adair's conduct in light of the applicable military policies to determine whether he was in

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compliance with those policies. If the military concludes that he was not, we recommend that the military share its findings with the FBI.

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CHAPTER TWELVE
CONCLUSIONS

In this chapter we summarize our findings regarding the FBI's participation in, observations of, and reporting of the treatment of detainees in the military zones in Guantanamo Bay, Iraq, and Afghanistan. We also describe the disposition of reports that FBI agents made regarding concerns they had about detainee treatment. We also provide our conclusions and recommendations relating to the adequacy of the FBI's response to requests from its agents for guidance regarding these issues and the adequacy of responses from FBI Headquarters and the Department of Justice (DOJ) to reports from FBI agents regarding other agencies' interrogation practices.

I. Background

As a result of the September 11 attacks, the FBI refocused its top priority to counterterrorism and preventing terrorist attacks in the United States. As a consequence of this shift, and in recognition of the FBI's investigative expertise and familiarity with al-Qaeda, the FBI became more involved in collecting intelligence and evidence overseas, particularly in military zones in Afghanistan, at the U.S. Naval Base at Guantanamo Bay, Cuba (GTMO), and in Iraq.

Beginning in December 2001, the FBI sent a small number of agents and other employees to Afghanistan to obtain actionable intelligence for its counterterrorism efforts, primarily by interviewing detainees at various Department of Defense (DOD) and CIA facilities. In January 2002, the military began transferring "illegal enemy combatants" from Afghanistan to GTMO, and the FBI began deploying personnel to GTMO to obtain intelligence and evidence from detainees in cooperation with military interrogators. Following the invasion of Iraq in March 2003, the FBI sent agents and other employees to Iraq with the primary objective of collecting and analyzing information to help protect against terrorist threats in the United States and protecting U.S. personnel or interests overseas. FBI deployments in the military zones peaked at approximately 25 employees in Afghanistan, 30 at GTMO, and 60 in Iraq at any one time. In total, more than 200 FBI employees served in Afghanistan between late 2001 and the end of 2004 (the period covered by our survey), more than 500 employees served at GTMO during this period, and more than 260 served in Iraq.

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II. FBI Policies Regarding Detainee Interrogations

Prior to May 19, 2004, the FBI did not issue any formal written policies to its agents regarding FBI interviews of detainees in the military zones. Many FBI agents told us that they were instructed to comply with existing FBI policies for custodial interviews in the United States, except for providing Miranda warnings. These FBI policies, which prohibit agents from attempting to obtain statements by force, threats, or promises, reflect constitutional considerations of voluntariness as a condition of preserving the legal admissibility of statements in judicial proceedings. They also reflect the FBI's long-standing belief, based on years of experience, that rapport-based interview techniques are the most effective means of obtaining reliable information through custodial interviews.

However, existing FBI interrogation policies did not address the difficult issues confronted by FBI agents in the military zones, such as what agents should do when they observe an interrogator from another agency using techniques that are not permissible for the FBI. On May 19, 2004, shortly after the detainee abuses at Abu Ghraib prison in Iraq became public, the FBI issued a policy instructing its agents to remove themselves from any interview in which non-FBI interrogators used techniques not in compliance with FBI rules. In addition, the May 2004 Policy directed FBI employees to report any incidents of known or suspected abuse or mistreatment to their On-Scene Commanders (OSC).

III. Agent Observations Regarding Detainee Treatment

Several military and commission reports have assessed the treatment of detainees by the military, but none have comprehensively addressed the FBI's role and observations regarding detainee treatment. As part of this review, the OIG surveyed more than 1,000 FBI employees who were sent to the military zones between late 2001 and the end of 2004. Our survey sought information about more than 30 separate interrogation techniques, ranging from depriving a detainee of clothing to electric shocks and beatings. (A copy of the OIG survey is attached to this report as Appendix A.) We also conducted over 230 interviews to determine what FBI employees witnessed or learned about potentially abusive treatment of detainees.

While a majority of FBI employees in each military zone reported in response to our survey that they never saw or heard about any of the specific aggressive interrogation techniques listed in our survey, a significant number of FBI agents said they had observed or heard about military interrogators using a variety of harsh interrogation techniques

on detainees. Most of these harsh techniques involved conduct or interrogation techniques that the FBI would not be permitted to use in the United States. It appears that many - but not all - of these harsh interrogation techniques were authorized under military policies in effect in the military zones. However, virtually none of the FBI employees reported that they observed detainee abuse comparable to that which occurred at Abu Ghraib prison.

GTMO. The most commonly reported technique used by non-FBI interrogators on detainees at GTMO was sleep deprivation or disruption. Numerous FBI agents told the OIG that they witnessed the military's use of a regimen known as the "frequent flyer program" to undermine cell block relationships among detainees and to disrupt detainees' sleep in an effort to lessen their resistance to questioning. A few FBI agents participated in this program by requesting military officials to subject particular detainees to these frequent cell relocations. Other FBI agents described observing military interrogators use bright lights, loud music, and extreme temperatures to keep detainees awake or otherwise wear down their resistance.

Prolonged short-shackling, in which a detainee's hands were shackled close to his feet to prevent him from standing or sitting comfortably, was another of the most frequently reported techniques observed by FBI agents at GTMO. This technique was sometimes used in conjunction with holding detainees in rooms where the temperature was very cold or very hot in order to break the detainees' resolve.

The DOD's *Church Report* found that the practice of short-shackling prisoners constituted a "stress position." Stress positions were prohibited at GTMO under DOD policy beginning in January 2003. FBI agents' observations confirm that prolonged short-shackling continued at GTMO for at least a year after the DOD policy prohibiting stress positions took effect.

FBI agents also observed the use of isolation at GTMO, both to prevent detainees from coordinating their responses to interrogators and, in its most extreme form, to deprive detainees of human contact as a means of reducing their resistance to interrogation. We found that in several cases FBI agents participated in interrogations of detainees who were subjected to prolonged isolation by the military.

In addition, FBI agents reported a number of other harsh or unusual interrogation techniques used by the military at GTMO. These incidents tended to be small in number but became notorious because of their nature. They included using a growling military dog to intimidate a detainee during interrogation; twisting a detainee's thumbs back; using a

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female interrogator to touch or provoke a detainee in a sexual manner; wrapping a detainee's head in duct tape; exposing a detainee to pornography; and wrapping a detainee in the flag of Israel.

Afghanistan. FBI employees in Afghanistan conducted detainee interviews at the major military collection points in Bagram and Kandahar and at other smaller facilities. The most frequently reported techniques used by military interrogators in Afghanistan were sleep deprivation or disruption, prolonged shackling, stress positions, loud music, and isolation. Several FBI employees also told us they had heard about two detainee deaths at the military facility in Bagram, but none of the FBI employees said they had personal knowledge of these deaths, which were investigated by the DOD.

Iraq. We received varied reports from agents who were detailed to Iraq. For example, several FBI agents said they observed detainees deprived of clothing at Abu Ghraib prison or the [redacted]. Other frequently reported techniques identified by FBI agents as used by military personnel in Iraq included sleep deprivation or interruption, loud music and bright lights, isolation of detainees, and hooding or blindfolding during interrogations. FBI employees also reported the use of stress positions, prolonged shackling, and forced exercise in Iraq. In addition, several FBI agents told the OIG that they became aware of unregistered "ghost detainees" at Abu Ghraib whose presence was not reflected in official DOD records. We also heard reports from FBI agents that detainees [redacted].

Although several FBI agents were deployed to the Abu Ghraib prison in Iraq, they told us that they did not witness the extreme conduct that occurred at that facility in late 2003 and that was publicly reported in April 2004. The FBI agents explained that they typically worked outside of the main prison building where the abuses occurred, and they did not have access to the facility at night when much of the abuse took place.

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IV. The Disposition of FBI Agents' Reports Regarding Detainee Mistreatment

In our review, we examined how FBI agents' reports about military detainee interrogation practices were handled, both by FBI managers and by senior officials in the Department of Justice.[228]

Our review found that the first time a major incident of possible detainee mistreatment was reported to senior managers in the FBI was in the spring of 2002 when two FBI agents were assigned to assist in the interrogation of a high value detainee, Zubaydah, at a secret CIA facility overseas. Zubaydah had been severely wounded when he was captured in Pakistan in March 2002, and the two FBI agents obtained intelligence from him while helping him recover from his injuries. Within a few days after the CIA assumed control of Zubaydah's interrogation, one of the FBI agents expressed concern to senior officials in the Counterterrorism Division (CTD) at FBI Headquarters about the techniques being by used the CIA. The techniques reported by the agent included [redacted]. This agent's concerns led to discussions at FBI Headquarters and with the DOJ and the CIA about the FBI's role in joint interrogations with other agencies, and ultimately resulted in a determination by FBI Director Mueller in the summer of 2002 that the FBI would not participate in joint interrogations of detainees with other agencies in which harsh or extreme techniques not allowed by the FBI would be employed.

Later in 2002, FBI agents assigned to GTMO began raising questions to FBI Headquarters regarding harsh interrogation techniques being used by the military. These concerns were focused particularly on the treatment of Muhammad Al-Qahtani, a Saudi national who had unsuccessfully attempted to enter the United States in August 2001, and who was allegedly sent to the United States to be one of the September 11, 2001, hijackers. After his capture and transfer to GTMO, Al-Qahtani resisted initial FBI attempts to interview him. In September 2002, the military assumed control over the interrogation of Al-Qahtani, although behavioral specialists from the FBI continued to observe and provide advice. The FBI agents became concerned when the military announced a plan to keep Al-Qahtani awake during continuous 20-hour interviews for an indefinite period and when they observed military interrogators use increasingly harsh and demeaning techniques, such as

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[228] We did not examine issues related to DOJ Office of Legal Counsel opinions concerning the legality of several interrogation techniques the CIA sought to use on certain high value detainees. While senior FBI and DOJ officials were aware of these opinions, an assessment of the validity of OLC legal opinions was beyond the scope of this review.

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menacing Al-Qahtani with a snarling dog in very close proximity to him during his interrogation.

Friction between FBI officials and the military over the interrogation plans for Al-Qahtani increased during October and November 2002. The FBI continued to advocate for a long-term rapport-based strategy, while the military insisted on a more aggressive approach. Between late November 2002 and mid-January 2003, the military used numerous aggressive techniques on Al-Qahtani, including attaching a leash to him and making him perform dog tricks, placing him in stress positions, forcing him to be nude in front of a female, accusing him of homosexuality, placing women's underwear on his head and over his clothing, and instructing him to pray to an idol shrine. FBI and DOJ officials did not learn about the techniques used between late November 2002 and mid-January 2003 until much later. However, in early December 2002, an agent learned that Al-Qahtani was hospitalized briefly for what the military told the FBI was low blood pressure and low body core temperature.

As a result of the interrogations of Al-Qahtani and other detainees at GTMO, several FBI agents raised concerns with the DOD and FBI Headquarters about: (1) the legality and effectiveness of DOD techniques; (2) the impact of these techniques on the future prosecution of detainees in court or before military commissions; and (3) the potential problems that public exposure of these techniques would create for the FBI as an agency and FBI agents individually. Some of these concerns were expressed to FBI Headquarters in e-mails from agents at GTMO. The informal response these agents received from Headquarters was that agents could continue to witness DOD interrogations involving non-FBI authorized techniques so long as they did not participate. During this period, however, FBI agents continued to raise objections directly with DOD officials at GTMO and to seek guidance from senior officials in the FBI's Counterterrorism Division (CTD). Senior FBI officials told us they had no recollection of these communications, and no formal responses were ever received by the agents who wrote these communications.

We determined, however, that some of the FBI agents' concerns regarding the DOD's interrogation approach at GTMO were communicated by senior FBI officials in the CTD to senior officials in the Criminal Division of DOJ and ultimately to the Attorney General. FBI Headquarters officials said they discussed the issue in meetings with Bruce Swartz (Deputy Assistant Attorney General), David Nahmias (counsel to the Assistant Attorney General), and others in the Criminal Division. Two witnesses told us that they recalled conversations with Alice Fisher (at the time the Deputy Assistant Attorney General for the Criminal Division) regarding the ineffectiveness of military interrogations

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at GTMO. Fisher told us that she could not recall discussing detainee treatment or particular interrogation techniques with the FBI, but that she was aware that the FBI did not consider DOD interrogations at GTMO to be effective. Concerns about the efficacy of DOD interrogation techniques also reached Michael Chertoff (then Assistant Attorney General for the Criminal Division), Deputy Attorney General Larry Thompson, and Attorney General John Ashcroft.

The witnesses we interviewed generally said they recalled that the primary concern expressed at this level was that DOD techniques and interrogators were ineffective at developing actionable intelligence. These witnesses did not identify the FBI agents' concerns about the legality of the techniques or their impact on future prosecutions as a focus of these discussions.

We also learned about a proposal developed by certain FBI and DOJ officials in late 2002 to [redacted] Al-Qahtani [redacted] for interrogation. This recommendation was reflected in a draft letter from a DOJ official's files describing a proposal to request the National Security Council [redacted]. The draft letter recommended that Al-Qahtani be interrogated using [redacted] such as the one the CIA used on Zubaydah. Nahmias and the Unit Chief of the FBI's Military Liaison and Detainee Unit told the OIG that the rationale for this proposal was to get Al-Qahtani away from the military's ineffective interrogation techniques [redacted]. However, both the Unit Chief and Nahmias stated that they did not know what techniques had been used by the CIA until much later. The proposal [redacted] Al-Qahtani was discussed with the DOD, [redacted] and the National Security Council. However, there is no evidence that these discussions included specific references to the methods used on Zubaydah.

The DOD resisted the proposal [redacted] and it was not pushed to an ultimate decision. Nahmias told us the proposal was "overtaken by events." One such event was likely the fact that Al-Qahtani began cooperating with military interrogators in April 2003, obviating the underlying rationale for the proposal. Senior officials such as FBI Director Mueller, former Assistant Attorney General Chertoff, and current Assistant Attorney General Fisher told us that they did see the draft letter or take part in any specific discussion of the proposal [redacted].

On a broader level, we were unable to determine definitively whether the concerns of the FBI and DOJ about DOD interrogation

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techniques were ever addressed by any of the structures created for resolving inter-agency disputes about antiterrorism issues. These structures included the Policy Coordinating Committee, the "Principals" Committee, and the "Deputies" Committee, all chaired by the National Security Council (NSC). Several senior DOJ Criminal Division officials also told us that they raised concerns about particular DOD detainee practices in 2003 with the National Security Council, but they did not recall learning that any changes were made at GTMO as a result. Several witnesses told us that they believed that Attorney General Ashcroft spoke with the NSC or the DOD about these concerns, but former Attorney General Ashcroft declined our request for an interview in connection with this report.

Several factors likely affected the resolution of the FBI and DOJ concerns about the military's interrogations. On January 15, 2003, Defense Secretary Rumsfeld rescinded his prior authorization of some of the more aggressive DOD interrogation techniques. In addition, in April 2003 Al-Qahtani became fully cooperative with military interrogators. Moreover, based on the information we obtained in the OIG survey and our follow-up interviews, we believe that around this time the military also reduced the frequency and severity of its use of many of the techniques that troubled the FBI agents deployed at GTMO.

Ultimately, we found that the DOD made the decisions regarding what interrogation techniques would be used by military interrogators at GTMO, because GTMO was a DOD facility and the FBI was there in a support capacity. Similarly, the DOD controlled what techniques were used in Afghanistan and Iraq. As a result, once it was clearly established within each zone that military interrogators were permitted to use interrogation techniques that were not available to FBI agents, the FBI On-Scene Commanders said they often did not elevate reports of harsh detainee interrogations to their superiors at FBI Headquarters.

In general, we found that FBI agents deployed to Afghanistan and Iraq made fewer reports to their supervisors regarding detainee mistreatment than were raised by FBI agents assigned to GTMO. Unlike the situation at GTMO, FBI agents in Afghanistan and Iraq were operating in a war zone – an environment in which they were dependent on the military for protection and support. In such a situation, agents were reluctant to raise complaints about the military's conduct, and also assumed that the rules were different in this environment.

We also found that in all three military zones FBI agents sometimes sought to resolve their concerns about detainee treatment directly with military personnel without elevating the issue to FBI Headquarters. These efforts met with mixed results. At GTMO, FBI

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personnel who were concerned about short-shackled detainees worked with the DOD's Criminal Investigative Task Force to persuade the DOD to officially eliminate this practice in 2002. However, reports of DOD short-shackling continued into 2004. In other instances, the FBI's On-Scene Commanders and other FBI agents reported that they were able to resolve their concerns with their DOD counterparts in the military zones and therefore did not have to raise them with their supervisors. For example, at GTMO the FBI's On-Scene Commander was able to resolve concerns about military personnel impersonating FBI agents with his military counterpart. Similarly, some agents deployed to Afghanistan and Iraq told us they were able to resolve incidents of rough handling of detainees by the military by discussing the issue with military commanders.

V. OIG Analysis

A. FBI Conduct in the Military Zones

We found that the vast majority of FBI agents deployed to the military zones understood that existing FBI policies prohibiting coercive interrogation tactics continued to apply in the military zones and that they should not engage in conduct overseas that would not be permitted under FBI policy in the United States. To the FBI's credit, it decided in 2002 to continue to apply FBI interrogation policies to detainees in the military zones. As a result, most FBI agents adhered to the FBI's traditional rapport-based interview strategies in the military zones and avoided participating in the aggressive or questionable interrogation techniques that the military employed. We found no instances in which an FBI agent participated in clear detainee abuse of the kind that some military interrogators used at Abu Ghraib prison. We credit the judgment of the FBI agents deployed to the military zones for this result, as well as the guidance that some FBI supervisors provided during the period that the FBI's new role in counterterrorism was first evolving.

However, we found a few incidents of FBI presence or involvement in interrogations in which techniques were used that clearly would not be permissible for FBI agents to use in the United States. These included:

- FBI participation in the interrogations of Ramzi Binalshibh in September 2002 at [redacted] (Chapter Four).

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- An FBI agent recommending isolation from human contact for Al-Qahtani at the Navy Brig in GTMO in August 2002 (Chapter Five).
- FBI agents participating in the isolation of Al-Sharabi at GTMO in April 2003, including telling him that theirs were the only human faces he would see until he provided information (Chapter Eleven).
- FBI agents participating in a system of categorizing detainees according to level of cooperation and [redacted] in 2004. (Chapters Ten and Eleven).
- FBI agents participating in an interrogation in Iraq in which detainees were placed in a stress position, given a "drink of water" in a forceful and inappropriate manner, and blindfolded with duct tape. (Chapter Eleven).

We also found incidents of FBI involvement in activities which, although not constituting clear violations of FBI policy, were sufficiently different from conventional FBI interrogation techniques to raise questions about how existing policies should be applied. For example:

- FBI agents utilized the military's "frequent flyer program" at GTMO, which involved frequent detainee cell relocations and sleep disruption (Chapters Eight and Eleven).
- An FBI agent utilized sleep disruption or deprivation as part of an interrogation strategy in Afghanistan (Chapter Nine).
- FBI agents made promises of leniency to detainees including Al-Sharabi (#569) that might taint a confession in the United States (Chapter Eleven).
- FBI agents made potentially threatening statements to detainees to the effect that unless they cooperated with the FBI they would be turned over to military or CIA interrogators who were permitted to use harsher techniques (Chapters Five and Eleven).

We believe that FBI participation in these interrogation practices, while few in number, reflected the fact that existing FBI policies were not designed to address the new circumstances faced by FBI agents working in military zones. We also believe that some of these incidents could have been avoided if the FBI had responded more quickly and comprehensively to repeated requests from its agents for additional guidance.

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B. FBI Guidance

We concluded that FBI Headquarters did not sufficiently or timely respond to repeated requests from its agents in the military zones for guidance regarding their participation in detainee interrogations. No formal FBI policy was issued until after the Abu Ghraib disclosures in late April 2004, when the FBI's Detainee Policy was quickly prepared and released.

As described in our report, the FBI's involvement in detainee interrogations raised at least four difficult issues: (1) what interrogation techniques should FBI agents be allowed to use in the military zones; (2) what should FBI agents do when other agencies begin using non-FBI approved interrogation techniques during joint interviews; (3) when should FBI agents be allowed to interview detainees who have previously been subjected to non-FBI techniques; and (4) when and how should FBI agents report harsh interrogation techniques used by other agencies. We assess the FBI's response to each of these issues separately below.

1. FBI-Approved Interrogation Techniques

As detailed in Chapter Four, as a result of the Zubaydah incident in the summer of 2002 the FBI decided that it would not be involved in interrogations in which other agencies used non-FBI techniques. Most FBI agents told us that they were instructed or already knew that they should adhere to the same standards of conduct for detainee interviews that applied to custodial interviews in the United States. However, a significant percentage of agents deployed to the military zones prior to May 19, 2004, told us that they received no explicit guidance regarding interrogation policies for detainees prior to their deployments overseas. We believe that the agents had several reasons to be uncertain about whether the rules were different in the military zones.

First, the FBI announced a change in priorities from evidence collection for prosecution to intelligence collection for terrorism prevention. FBI agents in the military zones could reasonably infer that traditional law enforcement constraints on interview techniques were not strictly applicable in the military zones, particularly with respect to "high value" detainees. Second, conditions at detention facilities in the military zones were vastly different from conditions in U.S. jails or prisons, and FBI agents could have concluded that different interrogation techniques were appropriate near combat zones or in dealing with terrorists at GTMO. Consequently, some FBI interrogators used strategies that might not be necessary or appropriate in the United States, such as extreme isolation from other detainees or other strategies to undermine detainee solidarity. Third, the FBI's dependence on the military, which controlled

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the military zones, placed FBI agents in an awkward position to refuse to participate in joint interviews in which non-FBI techniques were employed.

We believe that factors such as these raised a legitimate question for FBI agents as to whether conventional FBI law enforcement interview policies and standards continued to apply to FBI interviews of detainees in the military zones. Ultimately, senior FBI management determined that pre-existing FBI standards (except Miranda warnings) should remain in effect for all FBI interrogations in military zones, even where future prosecution is not contemplated. However, we found that this message did not always reach all FBI agents in the military zones. As noted above, at least some FBI employees determined that departures from conventional FBI strategies were appropriate in certain circumstances.

We concluded that FBI management should have realized sooner than May 2004 that it needed to issue a written policy addressing the question of whether its pre-September 11 policies and standards for custodial interviews should continue to be strictly applied in the military zones. An unequivocal statement to that effect, clearly communicated to all FBI agents being sent to the military zones, could have prevented some of the incidents described above.

2. FBI Policy When Another Agency's Interrogator Uses Non-FBI Techniques

The FBI's May 2004 Detainee Policy states: "If a co-interrogator is in compliance with the rules of his or her agency, but is not in compliance with FBI rules, FBI personnel may not participate in the interrogation and must remove themselves from the situation." As detailed in Chapter Three, the issue addressed by this requirement was not addressed in prior FBI policies, primarily because in most joint interrogations the FBI is in charge of the interrogation or the other agency is subject to rules similar to FBI rules. This issue was raised to FBI Headquarters well before the Abu Ghraib scandal broke, and we believe that the FBI should have clarified its guidance before May 2004.[229] For example, in the fall of 2002 FBI agents sought Headquarters guidance on what they should do when confronted with

[229] As detailed in Chapter Seven, some agents said that before May 2004 they were told to leave interrogations if they saw anything "extreme," "inappropriate," or that made them "uncomfortable." However, many FBI agents who were deployed to the military zones before the FBI's May 2004 Detainee Policy was issued told us they received no training or guidance on conducting joint interviews with military or other agency officials.

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aggressive military interrogation techniques being used on Al-Qahtani and other detainees at GTMO. The agents were initially told that as long as there was no "torture" involved, they could participate; other agents were told that they could observe such techniques as long as they did not participate, because the techniques were "apparently lawful" for the military. These incidents indicate that the FBI should have addressed the issue of what agents should do in these situations more explicitly before May 2004.

3. FBI Interrogation of Detainees After Other Agencies Use Non-FBI Techniques

The FBI's May 2004 Detainee Policy does not address the issue of whether FBI agents may interview a detainee who has previously been subjected to non-FBI interrogation techniques by other agencies. In response to concerns expressed by agents and attorneys in the FBI after the May 2004 Policy was issued, the FBI General Counsel directed OGC lawyers to prepare legal advice that addressed, among other things, how long after the military interrogations FBI agents needed to wait so as not be considered a participant in the harsh interrogation. Several drafts of supplemental policy to address this issue were prepared by OGC, but none was ever finalized. Although the problem was diminished somewhat by the fact that in 2006 the military promulgated a new, uniform interrogation policy for all military theaters that stresses non-coercive interrogation approaches (Field Manual 2-22.3), we believe this has not obviated the need for clear FBI guidance with regard to these questions. The revised military policy still permits DOD interrogators to use some techniques that FBI agents probably cannot employ, such as the methods known as "fear up" or "pride and ego down."

Moreover, to the extent that the FBI continues to be involved with interrogating detainees who previously have been interrogated by the CIA, the problems remain significant and unresolved. CIA interrogation rules diverge from FBI rules much more dramatically than does current military policy. We therefore recommend that the FBI complete the project that OGC began shortly after the issuance of its May 2004 Detainee Policy and address the issue of when FBI agents may interview detainees previously interrogated by other agencies with non-FBI techniques. The FBI should also address the issue of if and when FBI agents may use information obtained in interrogations by other agencies that employed non-FBI techniques.

4. Reporting Abuse or Mistreatment

Prior to issuance of the FBI's May 2004 Detainee Policy, the FBI did not provide specific or consistent guidance to its agents regarding

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when or how the conduct of other agencies toward detainees should be reported. Some agents told us they were instructed to report problematic interrogation techniques, but the definition of what to report was left unclear. Leaving this matter to the discretion of individual FBI agents put them in a difficult position, because FBI agents were trying to establish a cooperative working relationship with the DOD while fulfilling their intelligence-gathering responsibilities. Under these circumstances, FBI agents had many reasons to avoid making reports regarding potential mistreatment of detainees. In addition, the agents lacked information regarding what techniques were permissible for non-FBI interrogators. We were therefore not surprised that some agents who said they observed or heard about potentially coercive interrogation techniques did not report such incidents to anyone at the time.

Despite the absence of useful guidance, however, several FBI agents recognized the need to bring concerns about other agencies' interrogation techniques to the attention of their On-Scene Commanders or senior officials at the FBI. These agents should be commended.

In addition, in light of the recurring instances beginning in 2002 in which agents in the military zones raised questions about the appropriateness of other agencies' interrogation techniques, we think that FBI management should have recognized sooner the need for clear and consistent standards and procedures for FBI agents to make these reports. We believe that the matter could have been addressed by FBI and DOD Headquarters officials to minimize tensions between FBI agents in the military zones and their military counterparts. Such an approach should have clarified: (1) what DOD policies were, (2) how the DOD was dealing with deviations from these policies, and (3) what FBI agents should do in the event they observed deviations.

The FBI's May 2004 Detainee Policy did not resolve these issues. The Policy requires FBI employees to report any instance when the employee "knows or suspects non-FBI personnel has abused or is abusing or mistreating a detainee," but it contains no definition of abuse or mistreatment. According to an e-mail from the General Counsel, agents with questions about the definitions of abuse or mistreatment were instructed by Headquarters to report conduct that they know or suspect is "beyond the authorization of the person doing the harsh interrogation." We found, however, that many agents did not know what techniques were permitted under military policies and therefore could not determine if a particular activity was "beyond the authorization of the person doing the harsh interrogation."

Going forward, the military's adoption of a single interrogation policy for all military zones that focuses more on rapport-based

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techniques (Field Manual 2-22.3) may reduce the difficulties for FBI agents seeking to comply with the reporting requirement in the FBI's May 2004 Detainee Policy. Nevertheless, military interrogators are still permitted to use some techniques not available to FBI agents, and it is therefore important for agents to receive training on military policies and for the FBI to clarify what conduct should or should not be reported.

As a result, we recommend that the FBI consider supplementing its May 2004 Detainee Policy or expanding its pre-deployment training to clarify the circumstances under which FBI agents should report potential mistreatment by other agencies' interrogators. If the FBI requires its employees to report any conduct beyond the interrogator's authority, then the FBI should provide guidance to its agents in military zones on what interrogation techniques are permitted under military policy. Training of FBI On-Scene Commanders regarding these military techniques should be more detailed, so that they can answer FBI agent inquiries in the military zones and prevent unnecessary conflicts or reports. We believe the FBI should also give concrete meaning to any terms that it uses to describe events that must be reported. For example, if the FBI requires agents to report "abuse or mistreatment," it should define these terms and explain them with examples, either in the Policy itself or in agent training.

C. OIG Assessment of FBI Headquarters and DOJ Handling of Agents' Reports Regarding Detainee Mistreatment

We found it difficult to assess the response of FBI Headquarters and senior DOJ officials to reports from FBI agents about detainee issues. The most significant events, relating to the interrogations of Zubaydah and Al-Qahtani, took place in 2002 and the recollection of many senior officials we interviewed regarding these events was vague. Moreover, the Al-Qahtani and the Zubaydah disputes arose within a year of the September 11 attacks, during a period when the FBI and DOJ were scrambling to reorganize and expand their counterterrorism activities.

Due in part to the vague recollections of senior FBI and DOJ officials regarding the FBI-DOD disputes in 2002 and 2003, the paucity of written communications on this issue produced to the OIG, and our inability to interview former Attorney General Ashcroft, we were unable to determine exactly what efforts were made at senior levels to address the FBI's concerns about detainee treatment issues. We did find that some of these issues were the subject of inter-agency discussions, both in meetings at GTMO and with the NSC. FBI and DOJ officials emphasized in these discussions that the harsher DOD interrogation methods were

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ineffective at obtaining intelligence, not that that they were illegal or immoral.

We found that, ultimately, neither the FBI nor the DOJ had a significant impact on the practices of the military with respect to the detainees. The primary reason was that the FBI was not in charge of detainees and generally did not have jurisdiction to police or evaluate techniques used by military interrogators in the military zones.

In addition, the DOJ Office of Legal Counsel had opined that several interrogation techniques sought to be used by the CIA were legal. This information was known to senior officials at the FBI and in the DOJ Criminal Division. FBI and the DOJ officials therefore inferred that DOD interrogation techniques, which were generally less severe than some of those approved for the CIA, were also legal. FBI and DOJ officials were also aware that Secretary of Defense Rumsfeld had approved the DOD interrogation policies for GTMO. DOD policies for the other military zones were similar to the GTMO policies and presumptively had similar approval from senior officials.

Therefore, once the DOD officials with responsibility for detainee matters rejected the FBI's arguments about the benefits of its rapport-building interrogation techniques, the FBI did not press the issue. The FBI knew that the DOD's activities with respect to Al-Qahtani and the CIA's activities with respect to other high value detainees had been approved at high levels.

Under these circumstances, neither the FBI nor the DOJ Criminal Division was in a strong position to affect DOD interrogation policy, and neither organization aggressively pressed the concerns about the legality or propriety of DOD approaches through the inter-agency process.

In addition, the DOD rescinded approval for its most aggressive techniques in January 2003 as a result of its own internal deliberations, and, as mentioned previously, Al-Qahtani began cooperating fully in April 2003. These developments reduced the frequency and severity of the most aggressive techniques at GTMO, with the result that the issue did not have particular urgency for the FBI or DOJ until April 2004 when the Abu Ghraib abuses were disclosed to the public.

As discussed above, we also found that at one point before Al-Qahtani began cooperating, officials in the FBI and DOJ prepared a proposal to transfer Al-Qahtani [redacted]. A draft document regarding this proposal recommended that Al-Qahtani be interrogated using the same sort of methods used on Zubaydah [redacted]. Some FBI officials were

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aware of the interrogation techniques that had been used on Zubaydah [redacted], which were unquestionably outside of the scope of FBI policy. Indeed, FBI concerns about the techniques used with Zubaydah had already led to Director Mueller's decision that the FBI would not participate in joint interrogations in which such techniques would be employed by another agency. However, the FBI and DOJ officials who were involved in developing the proposal told the OIG that they were not aware of the particular techniques in the [redacted] being recommended for Al-Qahtani. While we could not conclude that these officials were aware of these techniques, we were troubled by the fact that they would recommend [redacted] for the purpose of interrogating him with different techniques than the FBI or the DOD had used without knowing what the techniques were. We also believe that the proposal to [redacted] for such interrogations was inconsistent with the Director's instructions regarding FBI involvement in non-FBI interrogation techniques and with the statements made to us by many FBI and DOJ officials who believed that rapport-based techniques were more effective than the more aggressive interrogation techniques employed by other agencies on certain detainees. The proposal stalled because the DOD resisted it and Al-Qahtani began cooperating with interrogators.

VI. Conclusion

The FBI deployed agents to military zones after the September 11 attacks in large part because of the FBI's expertise in conducting custodial interviews and in furtherance of its expanded counterterrorism mission. The FBI has had a long history of success in custodial interrogations using non-coercive rapport-based interview techniques developed for the law enforcement context. However, some FBI agents deployed to GTMO experienced a clash with the DOD, which used more aggressive interrogation techniques. This clash placed some FBI agents in difficult situations at GTMO and in the military zones, but apart from raising concerns with their immediate supervisors or military officials, the FBI had little leverage to change DOD policy.

We found that the vast majority of the FBI agents deployed in the military zones dealt with these tensions by separating themselves from interrogators using non-FBI techniques and by continuing to adhere to FBI policies. In only a few instances did FBI agents use or participate in interrogations using techniques that would not be permitted under FBI policy in the United States. These few incidents were not nearly as severe as the Abu Ghraib abuses.

To its credit, the FBI decided in the summer of 2002 that it would not participate in joint interrogations of detainees with other agencies in which techniques not allowed by the FBI were used. However, the FBI did not issue formal guidance about detainee treatment to its agents until May 2004, shortly after the Abu Ghraib abuses became public. We believe that the FBI should have recognized earlier the issues raised by the FBI's participating with the military in detainee interrogations in the military zones and should have moved more quickly to provide clearer guidance to its agents on these issues.

In sum, we believe that while the FBI could have provided clearer guidance earlier, and while the FBI could have pressed harder for resolution of concerns about detainee treatment by other agencies, the FBI should be credited for its conduct and professionalism in detainee interrogations in the military zones in Guantanamo Bay, Afghanistan, and Iraq and in generally avoiding participation in detainee abuse.

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APPENDICES

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APPENDIX A

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APPENDIX A: DOJ OIG QUESTIONNAIRE

PART I: BACKGROUND

A. Personal Information

Please provide the following information:

1. First name
2. Middle initial
3. Last name
4. Entered on Duty Date (EOD)
5. Current Division/Field Office
6. Current job title
7. Direct dial office telephone number
8. FBI cell phone number
9. FBI pager number
10. Best contact number for you

B. Background of Specific Deployments or Assignments

11. At any time after September 11, 2001, did you serve as a member of the U.S. Military, or as an employee or contractor of the FBI or any other government agency, at Guantanamo Bay, Cuba; Iraq; Afghanistan; or in areas controlled by the U.S. Military or a U.S. intelligence service in connection with the global war on terror?
☐**Yes** ☐**No**

12. (If Yes) Enter the number of times you were deployed or assigned to each of the following locations (Guantanamo Bay, Cuba; Iraq; Afghanistan; or in any areas controlled by the U.S. Military or a U.S. intelligence service):

☐ **Guantanamo Bay (Start and End Dates)**
☐ **Iraq (Start and End Dates)**
☐ **Afghanistan (Start and End Dates)**
☐ **Other (Start and End Dates)**

12a. What was the general nature and purpose of your assignment and activities?

12b. Please provide the names of the specific camps, bases, or facilities where you worked.

12c. **Note**: If information about a specific camp, base, or facility is classified above SECRET, please check here ☐, include in your answer that you have "additional information classified above 'SECRET,'" and, if you know, identify the classification level, ticket, compartment, program, or other designation that applies to the information. Do not include the additional classified information in your questionnaire responses. OIG personnel with the necessary clearance will contact you to receive it.

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12d. Please identify, by name and position at the time, the FBI personnel to whom you directly reported during your deployment or assignment.

12e. Did you jointly interview or interrogate any detainee with non-FBI personnel? ☐**Yes** ☐**No**

(If Yes) With what kinds of non-FBI personnel did you work jointly?

☐ CITF
☐ Other U.S. Military
☐ U.S. intelligence agency
☐ Foreign military or intelligence agency
☐ Other

12f. Did you jointly plan any detainee interview or interrogation strategy, objectives, or tactics with non-FBI personnel? ☐**Yes** ☐**No**

(If Yes) With what kinds of non-FBI personnel did you work jointly?

☐ CITF
☐ Other U.S. Military
☐ U.S. intelligence agency
☐ Foreign military or intelligence agency
☐ Other

12g. Were you ever otherwise involved in detainee interviews or interrogations with non-FBI personnel? ☐**Yes** ☐**No**

PART II: TRAINING

A. Training Prior to Overseas Deployment or Assignment

13. Did you receive any training, instruction, or guidance specifically in preparation for any of your overseas deployments or assignments?
☐**Yes** ☐**No** ☐**Do Not Recall**

(If Yes)
13a. Who provided this training, instruction, or guidance, and where did you receive it?
13b. Describe the subject on which you received this training, instruction or guidance.
13c. Was any of the training, instruction, or guidance provided in writing?
☐**Yes** ☐**No** ☐**Do Not Recall**

14. In preparation for any of your overseas deployments or assignments, did you receive any training, instruction, or guidance concerning the standards of conduct applicable to the treatment, interview, or interrogation of detainees by FBI personnel? ☐**Yes** ☐**No** ☐**Do Not Recall**

    (If Yes)
    14a. Who provided this training, instruction, or guidance, and where did you receive it?
    14b. Briefly describe the substance of the training, instruction, or guidance provided to you.
    14c. Was any of the training, instruction, or guidance provided in writing? ☐**Yes** ☐**No** ☐**Do Not Recall**

15. In preparation for any of your overseas deployments or assignments, did you receive any training, instruction, or guidance concerning the standards of conduct applicable to the treatment, interview, or interrogation of detainees by non-FBI personnel? ☐**Yes** ☐**No** ☐**Do Not Recall**

    (If Yes)
    15a. Who provided this training, instruction, or guidance, and where did you receive it?
    15b. Briefly describe the substance of the training, instruction, or guidance provided to you.
    15c. Was any of the training, instruction, or guidance provided in writing? ☐**Yes** ☐**No** ☐**Do Not Recall**

16. In preparation for any of your overseas deployments or assignments, did you receive any training, instruction, or guidance concerning what you were supposed to do if you observed or heard about the treatment, interview, or interrogation of detainees by FBI personnel, which you believed to be inappropriate, unprofessional, coercive, abusive, or unlawful?
    ☐**Yes** ☐**No** ☐**Do Not Recall**

    (If Yes)
    16a. Who provided this training, instruction, or guidance, and where did you receive it?
    16b. Briefly describe the substance of the training, instruction, or guidance provided to you.
    16c. Was any of the training, instruction, or guidance provided in writing? ☐**Yes** ☐**No** ☐**Do Not Recall**

17. In preparation for any of your overseas deployments or assignments, did you receive any training, instruction, or guidance concerning what you were supposed to do if you observed or heard about the treatment, interview, or interrogation of detainees by non-FBI personnel, which you believed to be inappropriate, unprofessional, coercive, abusive, or unlawful?
    ☐**Yes** ☐**No** ☐**Do Not Recall**

    (If Yes)
    17a. Who provided this training, instruction, or guidance, and where did you receive it?
    17b. Briefly describe the substance of the training, instruction, or guidance provided to you.
    17c. Was any of the training, instruction, or guidance provided in writing? ☐**Yes** ☐**No** ☐**Do Not Recall**

B. Training During Overseas Deployments or Assignments

18. During any of your overseas deployments or assignments, did you receive any training, instruction, or guidance concerning the standards of conduct applicable to the treatment, interview, or interrogation of detainees by FBI personnel? ☐**Yes** ☐**No** ☐**Do Not Recall**

(If Yes)
18a. Who provided this training, instruction, or guidance?
18b. Briefly describe the substance of the training, instruction, or guidance provided to you.
18c. Was any of the training, instruction, or guidance provided in writing? ☐**Yes** ☐**No** ☐**Do Not Recall**

19. During any of your overseas deployments or assignments, did you receive any training, instruction, or guidance concerning the standards of conduct applicable to the treatment, interview, or interrogation of detainees by non-FBI personnel? ☐**Yes** ☐**No** ☐**Do Not Recall**

(If Yes)
19a. Who provided this training, instruction, or guidance?
19b. Briefly describe the substance of the training, instruction, or guidance provided to you.
19c. Was any of the training, instruction, or guidance provided in writing? ☐**Yes** ☐**No** ☐**Do Not Recall**

20. During any of your overseas deployments or assignments, did you receive any training, instruction, or guidance concerning what you were supposed to do if you observed or heard about the treatment, interview, or interrogation of detainees by FBI personnel, which you believed to be inappropriate, unprofessional, coercive, abusive, or unlawful? ☐**Yes** ☐**No** ☐**Do Not Recall**

(If Yes)
20a. Who provided this training, instruction, or guidance?
20b. Briefly describe the substance of the training, instruction, or guidance provided to you.
20c. Was any of the training, instruction, or guidance provided in writing? ☐**Yes** ☐**No** ☐**Do Not Recall**

21. During any of your overseas deployments or assignments, did you receive any training, instruction, or guidance concerning what you were supposed to do if you observed or heard about the treatment, interview, or interrogation of detainees by non-FBI personnel, which you believed to be inappropriate, unprofessional, coercive, abusive, or unlawful? ☐**Yes**☐ **No** ☐**Do Not Recall**

(If Yes)
21a. Who provided this training, instruction, or guidance?
21b. Briefly describe the substance of the training, instruction, or guidance provided to you.
21c. Was any of the training, instruction, or guidance provided in writing? ☐**Yes** ☐**No** ☐**Do Not Recall**

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C. Adequacy of Training

22. In your opinion, did you receive adequate training, instruction, or guidance relating to standards of conduct by FBI and non-FBI personnel relating to treatment, interview, or interrogation of detainees prior to your deployment or assignment?
☐Yes ☐No

- (If No) Please describe the ways in which you believe the training, instruction or guidance was inadequate:

23. In your opinion, did you receive adequate training, instruction, or guidance relating to standards of conduct by FBI and non-FBI personnel relating to treatment, interview, or interrogation of detainees during your deployment or assignment?
☐Yes ☐No

- (If No) Please describe the ways in which you believe the training, instruction or guidance was inadequate:

24. In your opinion, did you receive adequate training, instruction, or guidance concerning what you were supposed to do if you observed or heard about the treatment, interview, or interrogation of detainees, by FBI or non-FBI personnel, that you believed was inappropriate, unprofessional, coercive, abusive, or unlawful?
☐Yes ☐No

- (If No) Please describe the ways in which you believe the training, instruction or guidance was inadequate:

25. (Optional) In what ways can the FBI improve training on this subject for future deployments or assignments?

D. Comments

26. Please provide any additional information concerning training for overseas deployments or assignments of FBI personnel you believe is relevant.

PART III: YOUR KNOWLEDGE OF CERTAIN INTERVIEW OR INTERROGATION TECHNIQUES AND OTHER TYPES OF DETAINEE TREATMENT

Introduction to Part III: In this section, we are seeking information regarding a wide range of interview or interrogation techniques and other types of detainee treatment alleged to have occurred. You should not assume, just because we are asking about a particular technique or practice, that we have concluded that it in fact occurred. We recognize that some of these techniques or practices may at times be necessary for safety and security in a detention setting. In addition, we recognize that some of these techniques or practices may have been authorized for use by military or other government personnel.

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APPENDIX A: DOJ OIG QUESTIONNAIRE

With respect to each identified technique, practice, or type of conduct described below, we are seeking information about its occurrence **during or in connection with the interview or interrogation of a detainee, or during the detention of a detainee beyond what is needed for safety and security**. In that context, we will ask you to tell us whether one or more of the following statements are true:

1. I personally observed this conduct.
2. I observed detainee(s) in a condition that led me to believe that this conduct had occurred.
3. Detainee(s) told me that this conduct had occurred.
4. Others who observed this conduct described it to me.
5. I have relevant information classified above "SECRET".
6. I never observed this conduct nor heard about it from someone who did.

The following are entries for questions 27-63 (Check all that apply):

a. ☐ I personally observed this conduct.

b. ☐ I observed detainee(s) in a condition that led me to believe that this conduct had occurred.

c. ☐ Detainee(s) told me that this conduct had occurred.

d. ☐ Others who observed this conduct described it to me.

e. ☐ I have relevant information classified above "SECRET".

f. ☐ I never observed this conduct nor heard about it from someone who did.

If any of the above 'a' through 'e' are checked for questions 27-63, the following questions appear:

g. Please provide the approximate time frame during which this conduct occurred. **From** **To** ☐**Do Not Recall**

h. The detainee(s) treated in this way were located at the time in:

1 ☐ Guantanamo

2 ☐ Iraq

3 ☐ Afghanistan

4 ☐ Other Location

5 ☐ Do Not Recall

i. Please identify the detainee(s) by name and number:

j. Please identify the person(s) who treated the detainee(s) in this manner, including their name(s) and government agency(ies):

k. Please identify any other FBI personnel or non-FBI personnel who observed detainee(s) treated in this manner, including their name(s) and agency(ies):

l. This conduct occurred in connection with:

1 ☐ one detainee

2 ☐ several detainees (2-4)

3 ☐ Many detainees (more than 4)

4 ☐ Do Not Recall

m. (Optional) Please describe the relevant circumstances in more detail:

27. Depriving a detainee of food or water
28. Depriving a detainee of clothing
29. Depriving a detainee of sleep, or interrupting sleep by frequent cell relocations or other methods
30. Beating a detainee
31. Using water to prevent breathing by a detainee or to create the sensation of drowning
32. Using hands, rope, or anything else to choke or strangle a detainee
33. Threatening other action to cause physical pain, injury, disfigurement, or death
34. Other treatment or action causing significant physical pain or injury, or causing disfigurement or death
35. Placing a detainee on a hot surface or burning a detainee
36. Using shackles or other restraints in a prolonged manner
37. Requiring a detainee to maintain, or restraining a detainee in, a stressful or painful position
38. Forcing a detainee to perform demanding physical exercise
39. Using electrical shock on a detainee
40. Threatening to use electrical shock on a detainee
41. Intentionally delaying or denying detainee medical care
42. Hooding or blindfolding a detainee other than during transportation
43. Subjecting a detainee to extremely cold or hot room temperatures for extended periods
44. Subjecting a detainee to loud music
45. Subjecting a detainee to bright flashing lights or darkness
46. Isolating a detainee for an extended period
47. Using duct tape to restrain, gag, or punish a detainee
48. Using rapid response teams and/or forced cell extractions
49. Using a military working dog on or near a detainee other than during detainee transportation
50. Threatening to use military working dogs on or near a detainee
51. Using spiders, scorpions, snakes, or other animals on or near a detainee
52. Threatening to use spiders, scorpions, snakes, or other animals on a detainee
53. Disrespectful statements, handling, or actions involving the Koran
54. Shaving a detainee's facial or other hair to embarrass or humiliate a detainee
55. Placing a woman's clothing on a detainee
56. Touching a detainee or acting toward a detainee in a sexual manner
57. Holding detainee(s) who were not officially acknowledged or registered as such by the agency detaining the person.
58. Sending a detainee to another country for more aggressive interrogation
59. Threatening to send a detainee to another country for detention or more aggressive interrogation
60. Threatening to take action against a detainee's family
61. Other treatment or action causing severe emotional or psychological trauma to a detainee
62. Other religious or sexual harassment or humiliation of a detainee
63. Other treatment of a detainee that in your opinion was unprofessional, unduly harsh or aggressive, coercive, abusive, or unlawful

PART IV: YOUR KNOWLEDGE OF OTHER MATTERS

64. Did you observe any impersonation of FBI personnel by anyone during an interview or interrogation of a detainee? ☐**Yes** ☐**No**

65. Did any detainee or other person tell you that he or she had witnessed the impersonation of FBI personnel in connection with a detainee interview or interrogation? ☐**Yes** ☐**No**

66. Are you aware of any "sham" or "staged" detainee interviews or interrogations conducted for Members of the U.S. Congress or their staff?
☐**Yes** ☐**No**

For 64 through 66 (If Yes):

a. Please provide the approximate time frame during which this conduct occurred. **From** **to** ☐**Do Not Recall**

b. The detainee(s) treated in this way were located at the time in:
1 ☐ Guantanamo
2 ☐ Iraq
3 ☐ Afghanistan
4 ☐ Other Location
5 ☐ Do Not Recall

c. Please identify the detainee(s) by name and number to the best of your recollection:

d. Please identify the person(s) who treated the detainee(s) in this manner, including, if you recall, their name(s) and government agency(ies):

e. The names of any other FBI personnel, and the names and government agency of non-FBI personnel, whom I believe saw the detainee(s) treated in this manner are:

f. This conduct occurred in connection with:
1 ☐ One detainee
2 ☐ Several detainees (2-4)
3 ☐ Many detainees (more than 4)
4 ☐ Do Not Recall

g. (Optional) Please describe the relevant circumstances in more detail:

67. To your knowledge, did any military or intelligence personnel ever deny or delay FBI access to a detainee the FBI wanted to question because the detainee had sustained injuries after he was captured? ☐**Yes** ☐**No**

67a (If Yes) Describe the nature, time, place and other relevant circumstances, and identify the persons involved:

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PART V: ACTIONS IN RESPONSE TO AND REPORTING OF CERTAIN INTERVIEW OR INTERROGATION TECHNIQUES, AND OTHER TYPES OF DETAINEE TREATMENT

68. Did you ever end your participation in or observation of a detainee interview or interrogation because of the interview or interrogation methods being used? ☐**Yes** ☐**No**

69. Were you ever told that another FBI employee ended his or her participation in or observation of, a detainee interview or interrogation because of the interview or interrogation methods being used? ☐**Yes** ☐**No**

For Questions 68 and 69:

- (If Yes) Briefly describe the interview or interrogation methods being used, and when and where this occurred, including the names of FBI and/or non-FBI personnel involved. **Date, Place, Names, FBI or Non-FBI Person**

70. During any of your overseas deployments or assignments, did you report any concerns regarding any detainee interview or interrogation practices, or other types of detainee treatment, <u>to an FBI supervisor</u>? ☐**Yes** ☐**No**

71. During any of your overseas deployments or assignments, did you report any concerns regarding any detainee interview or interrogation practices or other types of detainee treatment you observed or heard about, <u>to a non-FBI supervisor or other non-FBI personnel</u>? ☐**Yes** ☐**No**

For 70 and 71 (If Yes):

a. When and to whom did you make this report? **Name and Date**

b. Did the report relate to conduct by FBI or non-FBI personnel?
   1 ☐FBI Personnel
   2 ☐Non-FBI Personnel
   - Identify the agency with which the non-FBI personnel were affiliated. **Name**

c. Was this report in writing? ☐**Yes** ☐**No**

d. To your knowledge, was any action taken in response to your report? ☐**Yes** ☐**No** ☐**Do Not Know**
   - (If Yes) Describe the action taken in response to your report?

72. Have you ever been ordered or directed not to report, or discouraged in any way from reporting, observations or allegations related to detainee treatment or interview or interrogation actions or practices? ☐**Yes** ☐**No**

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73. Have you experienced any actual or threatened retaliation for reporting observations or allegations of detainee treatment or interview or interrogation actions or practices? ☐**Yes** ☐**No**

74. (Optional) Please provide any additional comments regarding the reporting of concerns related to interview or interrogation techniques, detention practices, or other detainee treatment.

PART VI: DEBRIEFINGS AND RECOMMENDATIONS

75. Were you debriefed, other than the standard debrief in FD-772, concerning your overseas assignment(s) or deployment(s) after you completed the deployment(s) or assignment(s)? ☐**Yes** ☐**No**

(If Yes)

75a. Who debriefed you?

75b. When and where did the debriefing(s) occur? **Date and Place**

75c. Were you asked about detainee detention or interview or interrogation practices during the debriefing(s)? ☐**Yes** ☐**No**

75d. What other subjects were covered during your debriefing(s)?

75e. Was any document prepared to memorialize the debriefing? ☐**Yes** ☐**No** ☐**Do Not Know**

76. Additional Comments and Recommendations:

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APPENDIX B

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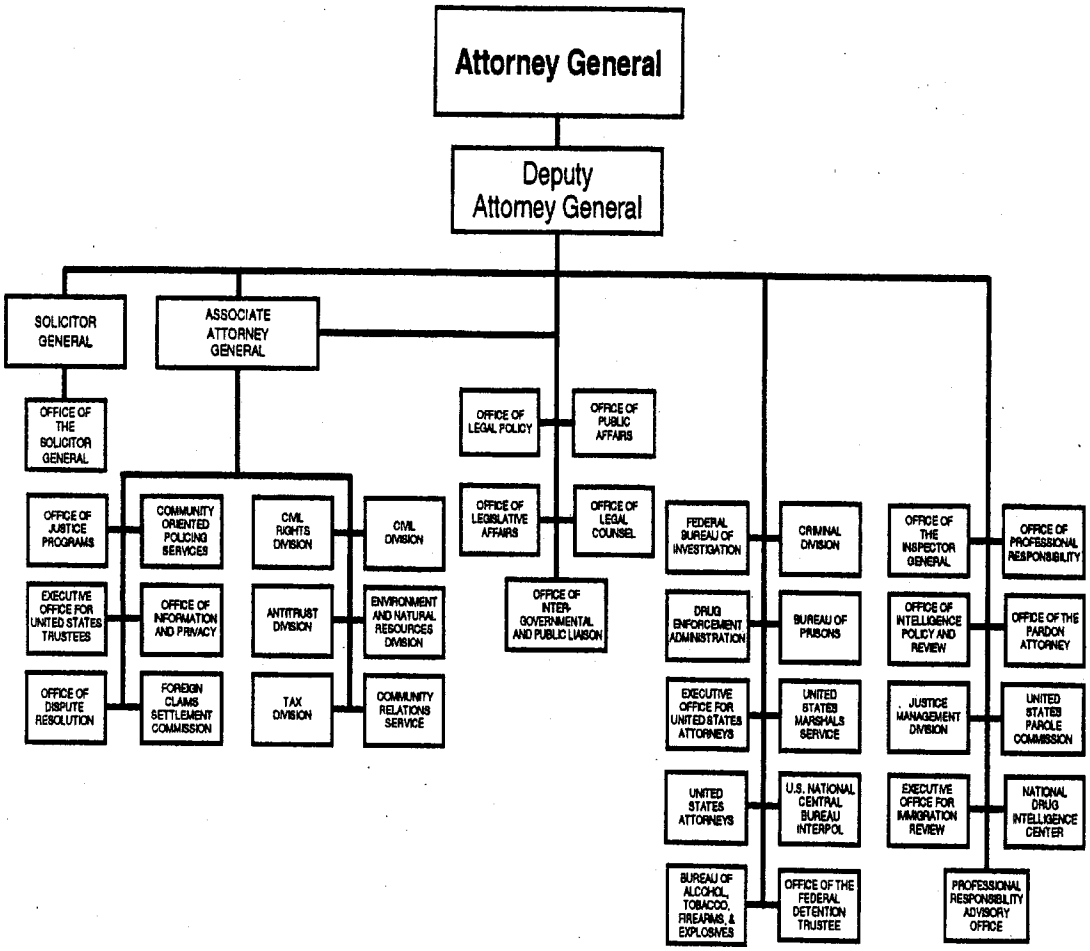
U.S. DEPARTMENT OF JUSTICE



Approved by: John Ashcroft Date: March 1, 2003

JOHN D. ASHCROFT
Attorney General

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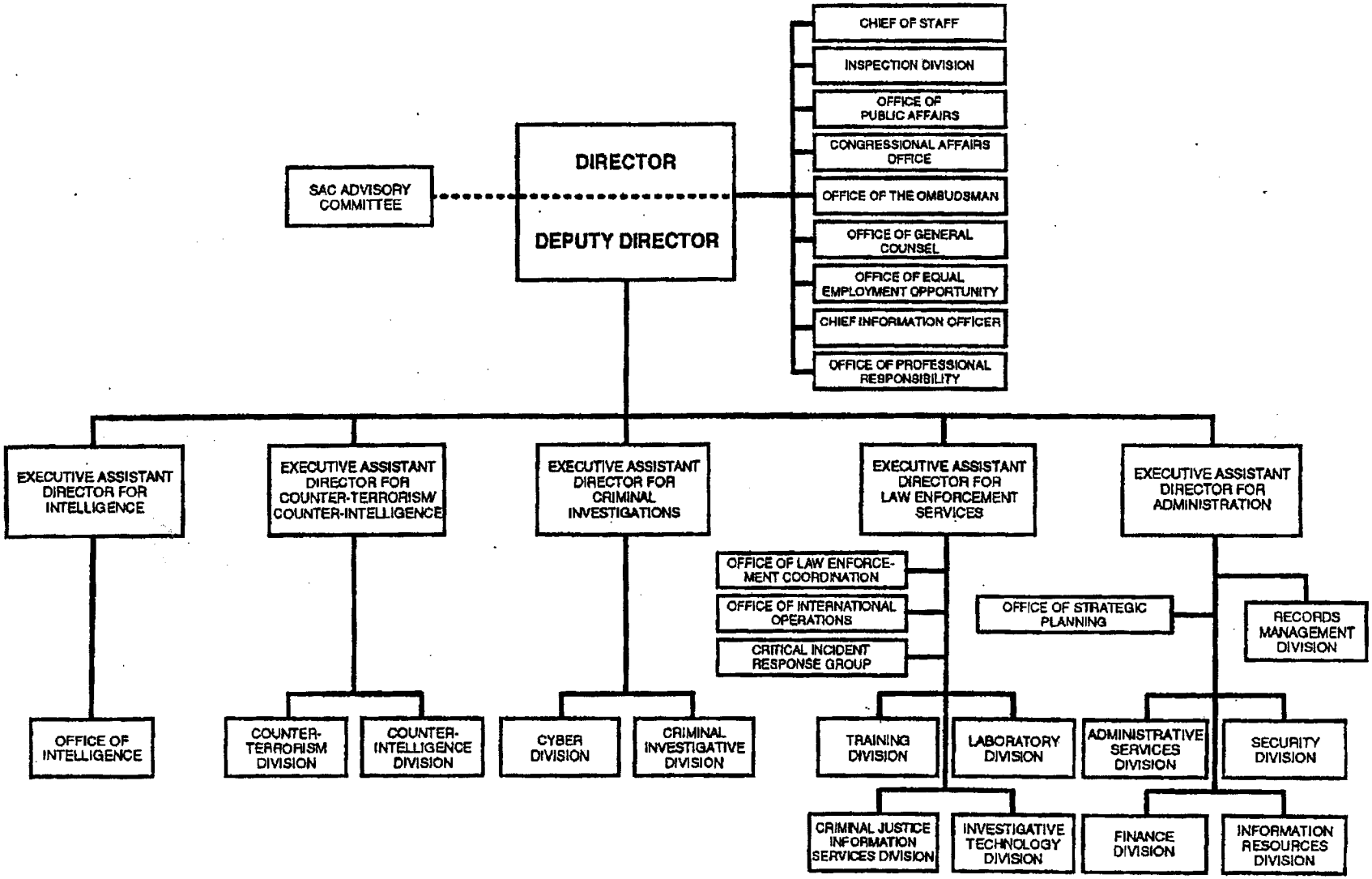
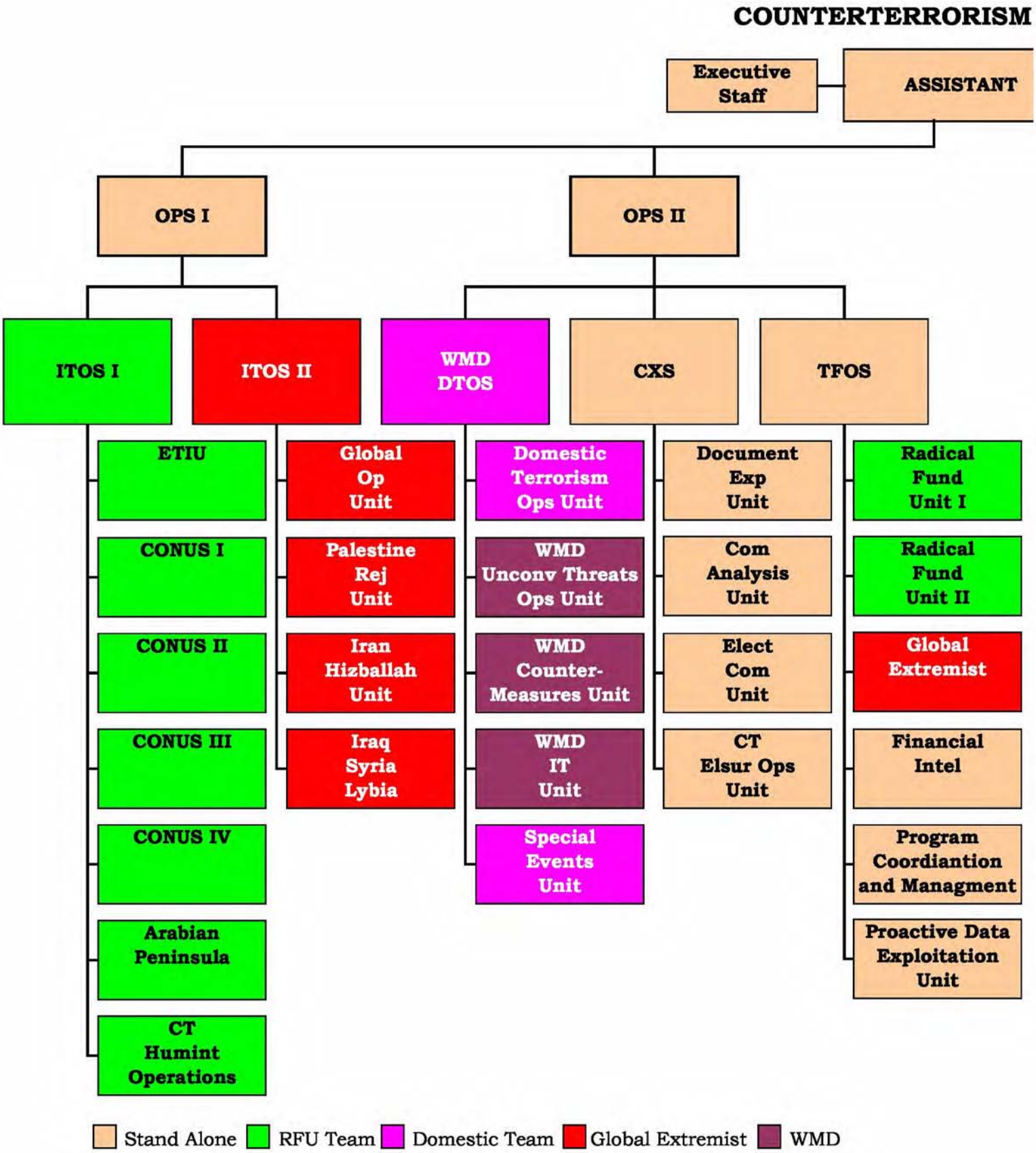
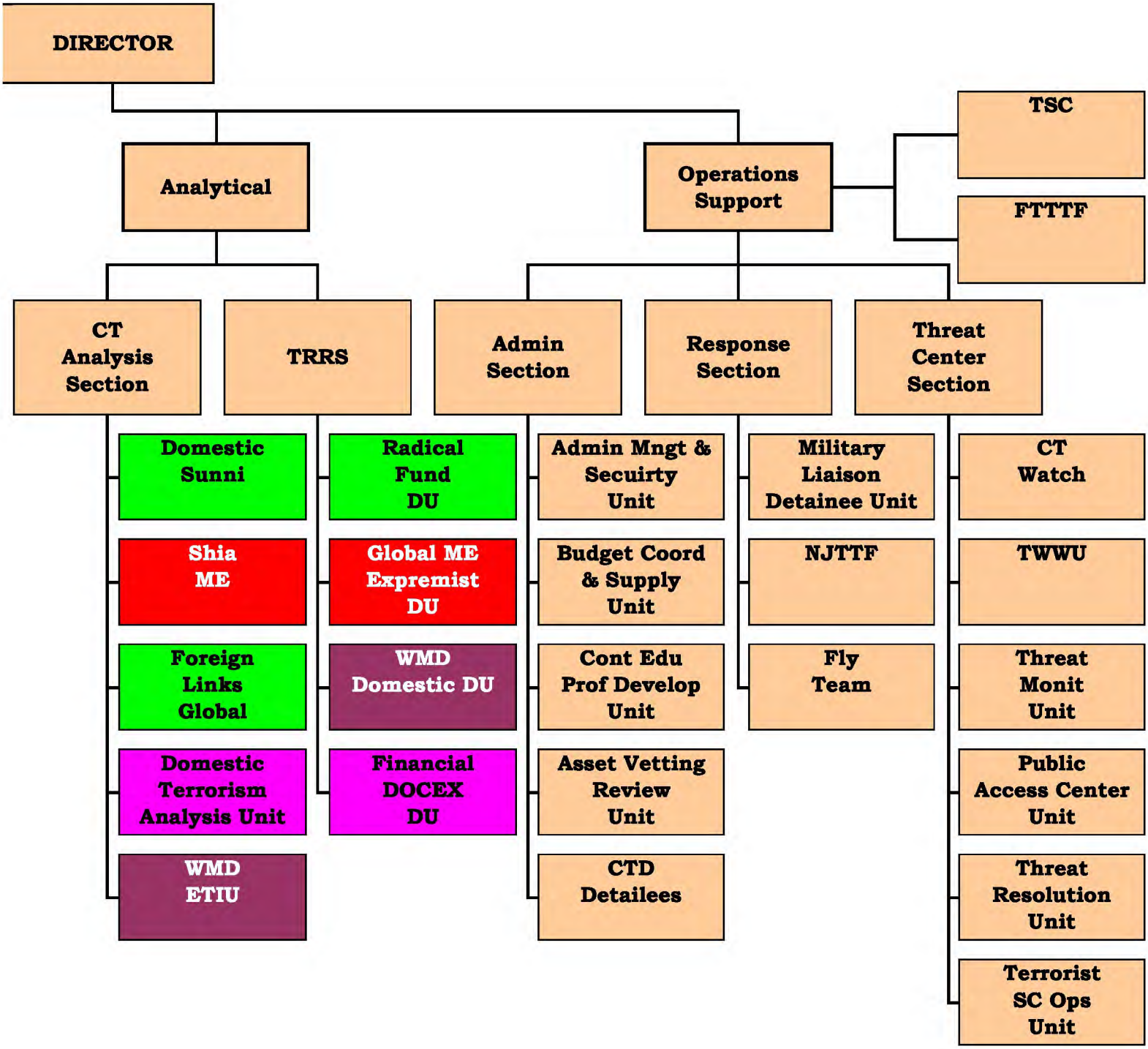
FEDERAL BUREAU OF INVESTIGATION



Approved by: _____ Date: 3-04-04
JOHN ASHCROFT
Attorney General


COUNTERTERRORISM
Executive Staff
ASSISTANT
OPS I
OPS II
ITOS I
ITOS II
WMD DTOS
CXS
TFOS
ETIU
CONUS I
CONUS II
CONUS III
CONUS IV
Arabian Peninsula
CT Humint Operations
Global Op Unit
Palestine Rej Unit
Iran Hizballah Unit
Iraq Syria Lybia
Domestic Terrorism Ops Unit
WMD Unconv Threats Ops Unit
WMD Counter-Measures Unit
WMD IT Unit
Special Events Unit
Document Exp Unit
Com Analysis Unit
Elect Com Unit
CT Elsur Ops Unit
Radical Fund Unit I
Radical Fund Unit II
Global Extremist
Financial Intel
Program Coordiantion and Managment
Proactive Data Exploitation Unit
Stand Alone
RFU Team
Domestic Team
Global Extremist
WMD

DIVISION



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APPENDIX C

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DEPARTMENT OF DEFENSE
CRIMINAL INVESTIGATION TASK FORCE
6010 6TH STREET
FORT BELVOIR, VIRGINIA 22060

REPLY TO ATTENTION OF

CITF-CDR

3 October 2003

MEMORANDUM FOR ALL PERSONNEL ASSIGNED TO THE DOD CRIMINAL INVESTIGATION TASK FORCE

Subject: Interrogation Procedures Guidance (S)

(U)

1. (S) References:

a. (U) Presidential Order Concerning Detention, Treatment and Trial of Certain Non-Citizens in the War Against Terrorism, 13 Nov 01.

b. SECDEF Memo, 16 Apr 03, Counter-Resistance Techniques in the War on Terrorism (S).

(U)

2. (U) The purpose of this memorandum is to reiterate my previous guidance to Criminal Investigation Task Force (CITF) personnel, related to the conduct of interrogations of detainees or persons under custody. For the purpose of this memorandum all references to detainees will also apply to persons under custody.

(U)

3. (~~SNF~~) The President's order of 13 Nov 01 sets forth certain policy guidelines regarding the treatment of persons detained by DoD who are subject to the order. Specifically, the order states that detainees will be treated humanely, without any adverse distinction based on race, color, religion, gender, birth, wealth, or similar criteria. The general guidelines provided are consistant with the criminal investigator's objectives in eliciting information from the detained persons during interrogation and the Secretary of Defense Guidance, dated 16 April 2003, concerning Counter-Resistance Techniques in the War on Terrorism (S).

4. (~~SNF~~) Interrogation:

(U)

a. (~~SNF~~) Detainees will be treated humanely. Physical torture, corporal punishment and mental torture are not acceptable interrogation tactics and are not allowed under any circumstances. Basic human needs, such as food and water, will not be withheld as a means to obtain information. CITF will not arbitrarily limit the duration of the interrogation as a matter of policy. The interrogator may discontinue interrogation when he deems that continued efforts would be unproductive.

~~DRV FM: SECDEF MEMO X01310~~
~~Dated: April 16, 2003~~
~~DECL ON: 2 April 2013~~

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