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DATE 03-12-2009 BY 65179 DMH/lsc

FOGLE, TONI M. (INSD) (FBI)

From: FOGLE, TONI M. (INSD) (FBI)
Sent: Tuesday, October 05, 2004 3:35 PM
To: MERSHON, MARK J. (SF)(FBI)
Subject: FW: Detainee abuse

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Another old email I located re the GTMO situation -- you were asking the other day for the history as I know it.

-----Original Message-----

From: FOGLE, TONI M. (INSD) (FBI)
Sent: Wednesday, August 25, 2004 3:57 PM
To: [REDACTED] (INSD) (FBI)
Subject: RE: Detainee abuse

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I agree with your position. Although no one has shared specific facts with me, I can see where an agent may be complicit in an offense if he/she allowed "something" to occur in his/her presence. I think a presentation must be made to DOJ of all the cases for declination (I'm not sure DOJ would even consider a blanket declination with a sampling of 6) -- otherwise they should allow the interviewees to provide information voluntarily. [If they want to allow the invocation of Garity, they could always force the interviews pre-declination -- but that is not being fair to any involved.]

As for whether or not the disciplinary process is invoked -- the DD and GC have to do the balancing at a higher level than us. They have the authority to not report it to us. If it is reported to us -- we follow protocol without exception, otherwise we can no longer charge anyone with "failure to report."

If the Office of Inspections is handling, we should disengage. T>

-----Original Message-----

From: [REDACTED] (INSD) (FBI)
Sent: Wednesday, August 25, 2004 12:16 PM
To: FOGLE, TONI M. (INSD) (FBI)
Subject: Detainee abuse

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As you know, [REDACTED] was given a project by McCraw to canvass all tdy agents to GITMO to determine if our people witnessed, or participated in any abuse of detainees held at GITMO. W/o IIS' knowledge [REDACTED] emailed approx. 560 agents and asked them to come forward w/anything they witnessed that could be construed to be abuse. I don't know what the language of the email was, but approx. 26 positive responses were received. [REDACTED] and Val Caproni went through the 26 responses and after consultation w/DOD they were able to determine that most were not violations of DOD rules and regs pertaining to interrogation procedures. [REDACTED] was left with 6 responses that may or may not be violations of the UCMJ. [REDACTED] stated that he is certain that in all the responses, no agent was the alleged abuser. They may have witnessed or seen the aftermath of the alleged-abuse. Now they want to interview the agents that gave positive responses, via 302 and provide a final package to DOD; however, they want to ensure the agents that no action will be taken against them for not reporting the alleged abuse.

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11/9/2004

I met w [] on Monday and told him that I could not give him a guarantee that we would not open investigations, based on the contents of the emails and ECs that he'd received as a result of his canvass. I explained the process to him. First and foremost, there is potential criminal liability and if you pass that test there is the IG and then potential admin inquiries, etc. [] was concerned that the FBI would now go back and start admin inquiries against people who volunteered this info. Bottom line, I was unable to give him the assurances he wanted.

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Tuesday afternoon, I attended a meeting w [] Val Caproni and Mary Rook to try to move this thing forward. We rehashed many of the same arguments that [] made on Monday. I stated that absolutely no interviews can take place w/o obtaining a declination from DOJ. That is the first hurdle that must be cleared. Val stated that if an agent did witness abuse and did not report it, that she does not think that is a crime. My argument was that it may not be a crime, but I'd like to know for certain before we start interviewing agents. We went back and forth for some time, but below is what they would like to do, pending your approval:

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1. Present the 6 incidents in question to DOJ and obtain a blanket declination on the agents.
2. Once declination obtained, have the Director/DD state that no admin inquiries (failure to report) will be opened w/respect to agents that came forward with the info. (6 alleged incidents) This action would be similar to what took place with the mementos/souvenirs in the WTC Tiffany Globe case.
3. Once "immunity" has been granted [] will conduct interviews and provide results to DOD.

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I told them that if this comes to IIS to be handled we will have to follow our protocols and refer to the IG. They don't want to do that because the IG could make this into another Tiffany Globe matter and they need to know this information now to pass onto DOD. I told them that if it comes to us, we have no choice but to refer it. Their argument is that the FBI's need to know this information outweighs any admin inquiry for failure to report.

I told them if DOJ declines and the DD agrees to this course of action, then INSD should handle this as an audit function and keep it on the 7th floor. If it comes to us, we have no choice but to handle in accordance w/our policy and procedures. This is the way they would like to handle. I told them I could not give them the go ahead w/o running it past you. This is a mess and should have been handled differently from the start, but this is where we are now.

Your thoughts.

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ext. []

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