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[REDACTED] (CTD) (FBI)

Subject: FW: E-mail and guidance

ALL INFORMATION CONTAINED  
 HEREIN IS UNCLASSIFIED EXCEPT  
 WHERE SHOWN OTHERWISE

[REDACTED]  
 Conus2/ITOS 1/CTD/FBIHQ  
 w 571-280-4079  
 p 888-468-4030

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

**From:** [REDACTED] (Div13) (FBI)  
**Sent:** Tuesday, May 18, 2004 6:24 AM  
**To:** [REDACTED] (Div13) (FBI); [REDACTED] (Div13) (FBI)  
**Cc:** [REDACTED] (Div13) (FBI); [REDACTED] (Div13) (FBI); [REDACTED] (Div13) (FBI); [REDACTED] (WF) (FBI)  
**Subject:** RE: E-mail and guidance

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(U) ~~SECRET//ORCON,NOFORN~~  
 RECORD 315n-hq-c1406946-e

[REDACTED] I believe [REDACTED] point was that [REDACTED] and MLDU know and understand what the mission is and where sensitive issues need to be addressed. Now that the Amerithrax team has departed, we have directed [REDACTED] and [REDACTED] to make their way back to Bagram asap. The issues you addressed below were discussed when Bald visited Afghanistan, as well as post visit with [REDACTED] and the command staff there. It was made very clear to the military how the FBI interviews, what we cannot and will not participate in. We have already had one Agent working with [REDACTED] interviewing a detainee at Bagram. [REDACTED] will provide you with details regarding these discussions upon arrival. OGC guidance will be provided as soon as it is received. MAC

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bl Per DOD

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

**From:** [REDACTED] Div13) (FBI)  
**Sent:** Tuesday, May 18, 2004 5:24 AM  
**To:** [REDACTED] Div13) (FBI)  
**Cc:** [REDACTED] (Div13) (FBI); [REDACTED] (Div13) (FBI); [REDACTED] (Div13) (FBI); [REDACTED] (WF) (FBI)  
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[REDACTED] I understand completely. I knew that when I called Tom Harrington that it would be problematic and that I would most likely get in trouble. I felt like under the circumstances at Abu Gareb prison, our assignment here and my read of the situation that I required immediate guidance from senior management. I accept full responsibility for the decision to make the call and apologize if I placed you or anyone else in a difficult position. Please feel free to forward this email to Mr. Battle in that I'm sure he is upset with my actions.

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I have been placed in a very precarious situation here. I was given an assignment by the military and read in on a compartmentalized TS/SCI Spec Ops program that no one in my chain of command at HQ has been read in on with the exception of [REDACTED] who was with us at Bragg - at least that is my understanding (and trust me when I say that even if you are read in, you have to be here to understand what I am concerned about). Hence, its difficult for me to even discuss some of the issues with the chain of

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command at HQ. Simply stated some of the things we are doing do not exist if you get my drift. It's a tough position to be in, in regard to obtaining solid guidance..

When I made the call, I was in the position where I was being asked to do something that I felt was wrong given what FBI agents can and can not do in the U.S. or overseas and was being asked to split my force as well (which made it even tougher on the non-supervisors agents in my team). All four of us became very concerned at that point thus my call directly to Harrington. Prior to making the call I spoke with [redacted] 2-3 times on the same day advising him of the call. [redacted] is new here like myself and doing the best he can. I believe [redacted] trusted my judgement. [redacted] secure commo was down on that day as was my email and I was unable to explain the situation over the phone in an expeditious manner. [redacted] was out of the net working hard with the military and not available to discuss the issue. It was under these circumstances that I made the call. To be frank, I almost called Bald directly in that it was Bald and Bald only that made a deal with the CG re this assignment (resulting in secrecy surrounding this whole gig).

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(S) At the present time we are supporting the military the very best we can given the interim guidance from Battle and general circumstances. [redacted] are now forward at FSB Salerno supporting TF [redacted]. They will not/leave the wire unless the policy changes. They are performing interrogations at this time as well the other investigative skill sets re investigative abilities that we bring to the table. The military is extremely happy we are here and assisting them. After a number of talks with the J2 (Col Keller), his replacement [redacted] the J2X and others, I agreed for our three agents to go forward given that all interrogations in theater have been restricted to FBI style "Direct Approach" interviews only (in other words stress positions, sleep dep, dogs, diet manipulation etc. are not being conducted at this time by military and contract interrogators). Apparently [redacted] is discussing this matter with Gen Abizade over the next few days in order to analyze their own policies. It is very possible that within the next 24 to 48 hours that this ban on aggressive interrogation methods is lifted and we are again co-located in areas where these methods are being employed. I advised the J2 that if/when the banned tougher interviews commence again, then we (4 FBI with TF [redacted]) will reassess our participation in the unit. This is just one more reason that FBIHQ needs to get out a policy ASAP! Something I know you appreciate and are pushing.

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b1 Per DOD

Re interviews/interrogations, ALL FBI agents in theater are in a tough position re this issue. Bottom line is that if we can't come back to the States and testify before congress on what we are doing over here then we shouldn't be doing it. Period. Although the interrogation techniques performed by the military are legally acceptable under the Geneva Convention (and should be after all this is WAR), there are clear boundaries re FBI participation in these matters. Pairing up with a military or contract interrogator who uses these techniques on the detainee, or being present in an area where they are commonly used, implicates the agent in the general interrogation plan. How many abused and/or dead detainees have been periodically interviewed by FBI agents during the course of their interrogations? When aggressive techniques are applied on a detainee (known or unknown by the participating FBI agent) in the course of an interview, the agent can still be held culpable in what happens to the detainee.

The question then comes down to how do we as the FBI participate in the interrogation process in this war. A few things are clear; good cop (FBI) bad cop (military or contract interrogator) is an unacceptable method and sets the agent up for potential prosecution if something goes wrong in the interrogation. Further, in my own opinion, it doesn't pass the ethics test for agents. My concern is that we are now conducting interrogations/interviews in this war which are bringing short term results for the military, however, lead to long term problems for the FBI.

(S) To me the only viable option re FBI interviews in theater is that they take place under conditions where the detainee is interviewed by the FBI exclusively; where the detainee is provided to the FBI quickly after capture or, directly on the objective (NOT after having been "softened up" by military interrogators) and interviewed by FBI agents only. Upon capture, the detainee is interviewed by the FBI until which time he is either released or turned over completely (and documented) to the military for further interrogation. This I believe is the only approved course of action if the FBI wants to continue with interviews in this war... otherwise, we cease operations all together, or, we only conduct interviews on subjects directly related to FBI cases or subjects with special conditions. I understand completely that this is not a perfect world solution and makes things very tough on the military especially, but we are going to have to understand that we are part of the FBI and NOT the military. I say this as a former 10 year Army Officer and U.S. Army Ranger. It is specifically challenging for me at TF [redacted] given that I personally know a number of these

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leaders very well to include [ ] with whom I served with for 2 years at the 2d Ranger Battalion. I completely support the FBI mission in Afghanistan, and I know that good people have worked and continue to work very hard to contribute here to the war effort, however, we have to realize that we have limits given who we are as an organization and I have some very serious concerns as to what we are doing here re the interrogation/interview process.

Two of the agents with me from the Fly Team have already been approached via email, by FBI inspectors doing the internal FBI investigation on Abu G. prison in Iraq. Both agents have been queried as to what they saw and did in the prison. Both have concerns about what they observed in that prison. To date, both military personnel and civilian contractors will be prosecuted as a result of abuses during interrogations at Abu G. So far, humiliation photos of prisoners is small stuff....we are now looking at rape on video and homicide (confirmed by the J2 here at Bagram). At the Bagram detention facility there are also ongoing investigations that includes homicide investigations of 3 detainees, one of which involves a contract CIA employee. WE CAN NOT PLACE FBI AGENTS IN A POSITION WHERE THEY CAN BE CULPABLE FOR CRIMES AND/OR ABUSES (ALLEGED OR PROVEN) AND WE HAD BETTER FIGURE THIS THING OUT QUICKLY SO AS TO GIVE SOLID AND DEFINITIVE GUIDANCE TO AGENT AND LOW LEVEL MANAGEMENT IN AFGHANISTAN WHO ARE DOING THEIR VERY BEST TO SUPPORT THIS MISSION.

As far as the chain of command goes, I understand [ ] are extremely busy and tied up on their own matters and have not always been available to assist in contributing to some of these timely decisions. This is not their fault, they are simply busy as hell and doing their jobs where they are located. Comms are also terrible and frustrating as hell (PAUSE) I just got off the phone with [ ] I have expressed my concerns and he advised he will assist me in this situation as soon as possible.

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I have called [ ] daily and will continue to reach out to them re any issues. Due to matters they are working, we have already delayed meeting face to face to discuss these issues now for 2 days. Hopefully, [ ] and I can meet this evening (5/18) if he is able to get a flight down to Bagram. [ ] is scheduled to fly here tonight.

Last, for future reference if I need an answer on something IMMEDIATELY I'm going to start calling. I will start with [ ] and make my way up the chain. I will do everything in my power to keep issues at your level. If the assignment were less complicated I wouldn't need guidance at all....I would prefer not to have to be in this position and seek guidance. In the cases where there is a lack of policy and guidance I will make decisions as an FBI supervisor based on my judgment and the information at my disposal. That's all I can do at this time. This is NOT your fault but it's the reality in which I am working with.

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Aside from the email from Battle and [ ] re interim guidance on investigations, which stated that we as agents essentially use our best judgment regarding interviews, I have been given no guidance as to how the Bureau conducts interview/interrogations overseas as it relates to working with the military and specifically their hard approach techniques. (Let me qualify this with saying that [ ] and I just talked about this via telcall and he advised me that there is no written policy on the matter and only email traffic.)

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(S) The faster OGC give us definitive guidance on how we conduct interviews in an environment where the military conducts hard approach military interrogations, I may be placed in position soon where I make the decision to pull chalks on the interview part of this mission at TF [ ]. Re OGC guidance, to state that it is essentially on the back of the interviewing agents to make decisions on their own is unacceptable. Agents overseas in a war zone are guests of DOD and CIA and often find themselves in positions where their limits and the limits of the military are not clear. Otherwise, as I have stated, we are setting our people and the FBI up for failure in the future if we don't address this issue now. If I'm off base here then somebody needs to say so

b1 Per DOD

If you want to talk on the STU, I can be reached at the Bagram number at [ ] workspace. It may take a while for me to respond in that my work space is about 1/2 mile away. Standing by for your response;

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Thanks [ ]

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

From: [REDACTED] (Div13) (FBI)

Sent: Monday, May 17, 2004 9:13 AM

To: [REDACTED] (Div13) (FBI)

Cc: [REDACTED] (FBI); [REDACTED] (Div13) (FBI); [REDACTED]  
(Div13) (FBI); [REDACTED] (Div13) (FBI); [REDACTED] (Div13) (FBI)

Subject: E-mail and guidance

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[REDACTED]

Please make certain no e-mails are sent directly to Frank Battle or Tom Harrington. [REDACTED]  
and [REDACTED] are the OSCs and all information back to HQ MUST go through them.. I  
understand your frustration and confusion, but until we get clear guidance from AD Bald, the three  
fly team personnel and yourself are to get guidance from [REDACTED] If you need to speak to  
HQ please follow this chain of command:

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1st: [REDACTED]

2nd: [REDACTED]

3rd: [REDACTED]

Thanks.

[REDACTED]

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DERIVED FROM: G-3 FBI Classification Guide G-3, dated 1/97, Foreign Counterintelligence Investigations  
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