

- 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

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

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

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

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

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.

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.

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

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

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

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.

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

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

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

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

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

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

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

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.

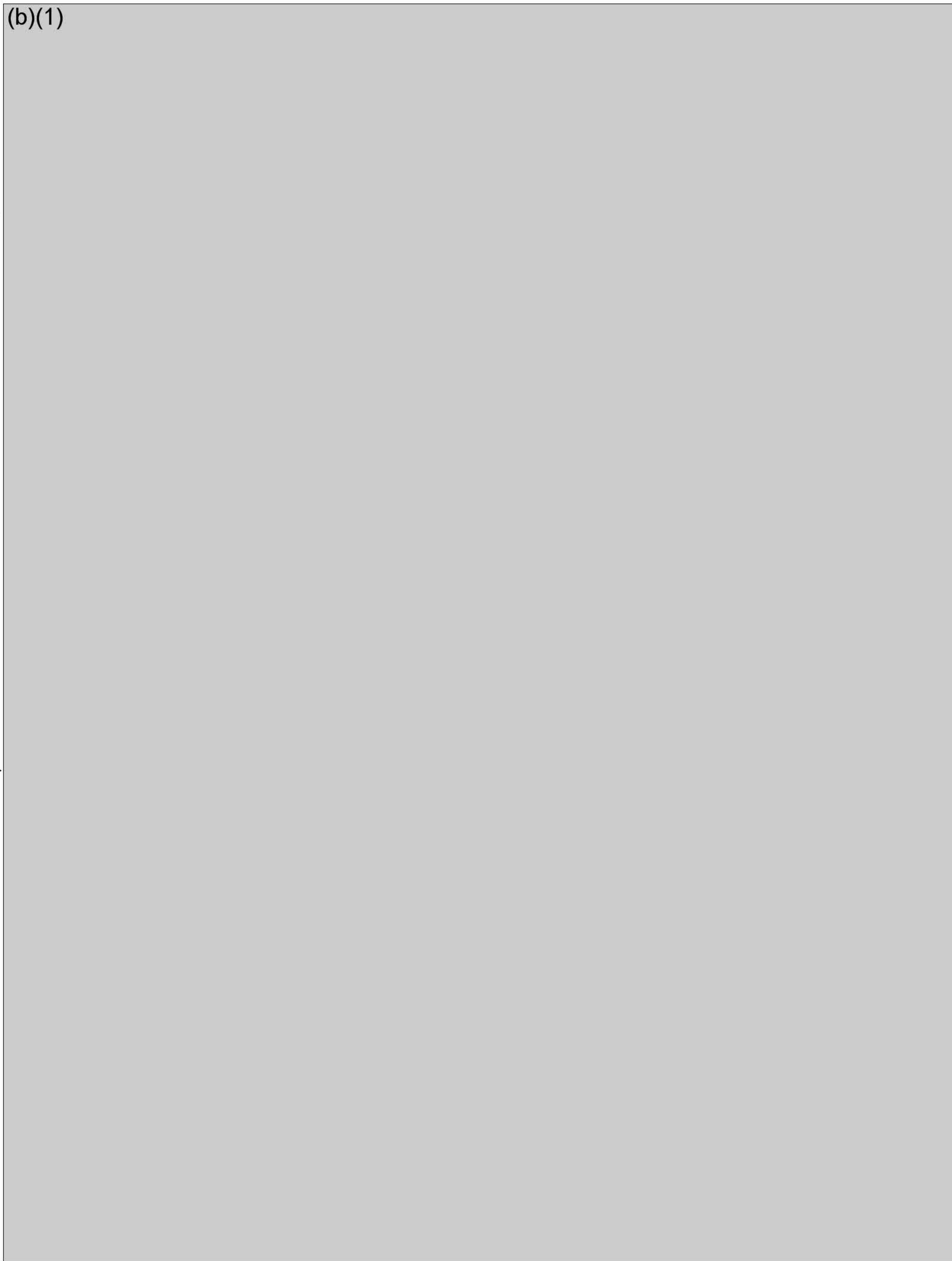
In sum, we believe that while the FBI could have provided clearer guidance earlier, and while the FBI could have pressed harder for

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.


(b)(1),(b)(6)




(b)(1)



(b)(1)



(b)(1)



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12 Oct 2006

ECJA POC: LCDR (b)(2),(b)(6)

SUBJECT: ECJA Review of Detainee Divert Options

1. The US European Command (USEUCOM) Office of the Judge Advocate (ECJA) has reviewed the comments provided by US Central Command (USCENTCOM) Office of the Judge Advocate (CCJA) and concurs with their recommendation that agreements be negotiated with countries that may be used as detainee movement divert locations. However, ECJA advises that the current political environment may not permit the negotiation of such agreements, especially in the USEUCOM area of responsibility (AOR) because of the positions of the Council on Europe, the EU and various heads of state in the AOR.

(b)(5)

1.A. Similar to USCENTCOM, most of our existing US Government (USG) agreements in the AOR require us to “respect” the host nation laws. Failure to comply may prevent successful future engagements; therefore it is in the USG’s best interest to not violate host nation law or cause the host nation to violate its own legal obligations.

1B. CCJA also raised the issue regarding the nationality of the detainees and the locations where the detainee flights may land. The recent Council of Europe Venice Commission examined alleged “secret detention sites” and “rendition flights” occurring in territories under control of member states. The Commission’s opinion may have some bearing on member states ability to permit Guantanamo (GTMO) detainee transits

through their countries. The Venice Commission opinion called for a prohibition on extradition, transfer, or transit through a Council of Europe country to a foreign country where there is a risk of torture or ill treatment. It also stated that states must secure respect for human rights obligations in cases of overflights of foreign aircraft. This opinion may be interpreted by member states that they have an affirmative responsibility to take a detainee into custody once the individual lands on their soil because of their obligations contained in the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR).

1.C. It is unlikely any EU countries will be able to accept GTMO detainees because of existing obligations under the Universal Declaration on Human Rights (UDHR), ICCPR, ECHR, and the United Nations (UN) Convention Against Torture (CAT). All of the European countries listed below are members of the Council of Europe (COE) and, therefore, are bound not only by international and domestic law but also by additional obligations required under European Law.

2. **Applicable Legal Authorities:**

2.A. The UDHR prohibits arbitrary arrest, detention or exile. The UN General Assembly adopted the UDHR as a Resolution; it is not a treaty and is non-binding. However, most international lawyers consider the UDHR a normative instrument that creates some legal obligations for UN Member States and some provisions are considered customary international law.¹

2.B. The ICCPR prohibits the deprivation of liberty except on such grounds and in accordance with such procedures as established by law. The ICCPR obligates each member to respect and to ensure to all individuals within its territory and subject to its

¹ Universal Declaration of Human Rights, G.A. Res 217A(III), U.N. Doc. A/810 (1948).

jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political, or other opinion, national or social origin, property, birth or other status.² The Council of Europe and Member States have some concerns regarding the military commission/detainee process and if able to do so, may take action to assume jurisdiction over detainees present on their soil.

2.C. The ECHR obligates each state party to secure the right to liberty and security of every person within its jurisdiction, and limits the circumstances under which persons may be arrested, detained, or deported.³ Because there is widespread disagreement between European countries and the U.S. regarding the rights of GTMO detainees, it is possible that under ECHR, Governments in which the detainees land may claim legal obligations to act on behalf of the detainees and remove them from USG custody.

2.D. CAT prohibits torture and cruel, inhuman or degrading treatment of persons, including the extradition or transfer of an individual to a foreign country where it is likely that the person will be subjected to torture.⁴

3. An access agreement may permit the U.S. to land in a particular country but if the U.S. chooses not to notify the host nation of the presence of detainees on the aircraft it may place the host nation in direct contravention to some of the countries treaty obligations. None of the access agreements in question mention or consider detainee transfers in their sovereign territory. The silence on the subject of detainees can be interpreted either as permissive or prohibitive depending on the situation and specific circumstances surrounding each detainee transfer. Europeans have had a very negative

² International Covenant on Civil and Political Rights, 999 U.N.T.S. 171 (1966).

³ European Convention on Human Rights(ECHR) art. 5, Rome, 4.XI.1950.

⁴ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, Annex, 39 U.N. GAOR Supp. No. 51, U.N. Doc. A/39/51 (1984).