

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN CIVIL LIBERTIES UNION, et al.,

Plaintiff,

v.

DEPARTMENT OF DEFENSE, et al.,

Defendants.

Civil Action No. 04-CV-4151

DECLARATION OF DAVID M. HARDY

I, David M. Hardy, declare as follows:

(1) I am currently the Section Chief of the Record/Information Dissemination Section (“RIDS”), Records Management Division (“RMD”), formerly at Federal Bureau of Investigation Headquarters (“FBIHQ”) in Washington, D.C., and currently relocated to Winchester, Virginia. I have held this position since August 1, 2002. Prior to joining the FBI, from May 1, 2001 to July 21, 2002, I was the Assistant Judge Advocate General of the Navy for Civil Law. In that capacity, I had direct oversight of Freedom of Information Act (“FOIA”) policy, procedures, appeals, and litigation for the Navy. From October 1, 1980 to April 30, 2001, I served as a Navy Judge Advocate at various commands and routinely worked with FOIA matters. I am also an attorney who has been licensed to practice law in the state of Texas since 1980.

(2) In my official capacity as Section Chief of RIDS, I supervise approximately 256 personnel who staff a total of ten (10) units and two field operational service center units whose collective mission is to effectively plan, develop, direct, and manage responses to requests for

access to the Federal Bureau of Investigation (“FBI”) records and information pursuant to the FOIA; Privacy Act of 1974; Executive Order 12958, as amended; Presidential, Attorney General, and FBI policies and procedures; judicial decisions; and other Presidential and Congressional directives. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

(3) Due to the nature of my official duties, I am familiar with the procedures followed by the FBI in responding to requests for information from its files pursuant to the provisions of the FOIA, 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a. Specifically, I am aware that as a result of a May 25, 2004 FOIA request to the Department of Defense (“DOD”) including Department of Army, Department of Navy, Department of Air Force, Defense Intelligence Agency, Department of Homeland Security (“DHS”), Department of Justice (“DOJ”) including Civil Rights Division, Criminal Division, Office of Information and Privacy, Office of Intelligence, Policy and Review, Federal Bureau of Investigation, Department of State (“DOS”) and Central Intelligence Agency (“CIA”), plaintiffs American Civil Liberties Union (“ACLU”), the Center for Constitutional Rights (“CCR”), Physicians for Human Rights (“PHR”), Veterans for Common Sense (“VCS”), and Veterans for Peace (“VFP”), seeking access to FBIHQ records concerning the treatment, deaths and renditions of individuals apprehended after the September 11, 2001 terrorist attacks in the United States, and who are currently being held or who were formerly held in United States custody at military bases or in detention facilities outside of the United States. (See Exhibit A.)

(4) In the process of responding to plaintiff's FOIA request, defendant, Department of Justice, Office of Legal Counsel ("DOJ/OLC") identified approximately 34 pages which contained FBI-originated information which were referred to the FBI for consultation on September 16, 2009. Following this review, the FBI identified releasable information within the 34 referred pages. The release of this information occurred on October 30, 2009 and November 6, 2009. FBI information has been withheld pursuant to 5 U.S.C. §§ 552 (b)(2), (b)(6) and (b)(7)(C). The withholding of this information will be addressed in greater detail infra.

(5) As a result, the FBI submits this declaration in accordance with Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), in support of defendants' motion for summary judgment. In so doing, the FBI will provide the Court with an explanation for the procedures used in reviewing and processing of the FBI information referred by DOJ/OLC, and provide justifications for the withholding of this information pursuant to FOIA Exemptions 2, 6, and 7(C), 5 U.S.C. §§ 552 (b)(2), (b)(6), and (b)(7)(C).

**JUSTIFICATION FOR WITHHOLDING FBI-ORIGINATED DOCUMENTS
IN THE DOJ REFERRAL**

(6) Each of the 34 referred pages were reviewed, word-by-word, line-by-line and document-by-document, to achieve maximum disclosure consistent with the provisions of the FOIA. Every effort was made to provide plaintiff with all material in the public domain and with all reasonably segregable portions of releasable material. Copies of the 34 pages as released are attached as Exhibit B. Each page of Exhibit B is numbered at the bottom right-hand corner of each page. The documents also contain information which is exempt from disclosure pursuant to FOIA Exemptions 2, 6, and 7(C), 5 U.S.C. §§ 552 (b)(2), (b)(6), and (b)(7)(C).

(7) Copies of the pages contain, on their face, coded categories of exemptions which are provided to aid in the review of the asserted FOIA exemptions. Each instance of information withheld on the attached documents is accompanied by a coded designation that corresponds to the categories listed below. For example, if “(b)(7)(C)-1” appears on a document, the “(b)(7)(C)” designation refers to “Exemption (b)(7)(C)” of the FOIA concerning an “Unwarranted Invasion of Privacy.” The numerical designation of “1” following the “(b)(7)(C)” narrows the main category into the more specific subcategory, “Names and/or Identifying Information Pertaining to FBI Special Agents and Support Employees.” Listed below are the categories used to explain the FOIA exemptions asserted to withhold the protected material.

SUMMARY OF JUSTIFICATION CATEGORIES

EXEMPTION (b)(2)	INTERNAL RULES AND PRACTICES OF AN AGENCY
(b)(2)-1	Internal Telephone Numbers of an FBI Special Agent and Support Employees [Cited in conjunction with Exemptions (b)(6)-1 and (b)(7)(C)-1]
EXEMPTION (b)(6)	CLEARLY UNWARRANTED INVASION OF PERSONAL PRIVACY
AND	
EXEMPTION (b)(7)(C)	UNWARRANTED INVASION OF PERSONAL PRIVACY
(b)(6)-1 and (b)(7)(C)-1	Names and/or Identifying Information of FBI Special Agent and Support Employees [Sometimes cited in conjunction with Exemption (b)(2)-1]
(b)(6)-2 and (b)(7)(C)-2	Names and/or Identifying Information of Non-FBI Federal Employees
(b)(6)-3 and (b)(7)(C)-3	Names and/or Identifying Information of Third Parties who Provided information to the FBI

JUSTIFICATION FOR REDACTIONS

(8) The paragraphs that follow explain the FBI's rationale for withholding each particular category of information under the specific exemption categories described above.

EXEMPTION (b)(2) INTERNAL AGENCY RULES AND PRACTICES

(9) 5 U.S.C. § 552 (b)(2) exempts from disclosure information “related solely to the internal personnel rules and practices of an agency.” This exemption protects routine internal administrative matters and functions of the FBI which have no effect on the public at large. Disclosure of this information could impede the effectiveness of the FBI's internal law enforcement procedures.

(10) Moreover, Exemption 2 also protects internal personnel rules and practices where disclosure may risk circumvention of the law. This exemption encompasses two distinct categories of records that are internal in nature: those involving trivial administrative matters of no genuine public interest (“Low 2”) and those where the disclosure of which would risk circumvention of a statute or regulation (“High 2”). Disclosure of “High 2” information would impede the effectiveness of the internal law enforcement procedures. Disclosure of this information could impede the effectiveness of the FBI’s internal operational and law enforcement support procedures.

(b)(2)-1 Telephone Numbers of an FBI Special Agent and Support Employee

(11) Exemption (b)(2)-1 (High) has been asserted, in conjunction with Exemptions (b)(6)-1 and (b)(7)(C)-1, to protect telephone numbers of an FBI Special Agent and two support employees. The telephone numbers clearly relate to the internal practices of the FBI in that they

are a tool used by FBI personnel during the performance of their duties. Disclosure of the business telephone numbers could subject these individuals to harassing telephone calls which could disrupt official business including impeding their ability to conduct and conclude law enforcement investigations in a timely manner.

(12) Accordingly, because these internal telephone numbers are related solely to the FBI's internal practices and disclosure would not serve any public interest and disclosure would impede the FBI's effectiveness by subjecting the FBI employees whose telephone numbers were disclosed to the possibility of harassment, the FBI properly withheld this information pursuant to FOIA Exemption (b)(2)-1 on the following pages: 3406, 982 and 3413.

EXEMPTION (b)(7) THRESHOLD

(13) Exemption 7 of the FOIA protects from mandatory disclosure records or information compiled for law enforcement purposes, but only to the extent that disclosure could reasonably be expected to cause one of the harms enumerated in the subparts of the exemption. See 5 U.S.C. § 552(b)(7). In this case, the harm that could reasonably be expected to result from disclosure concerns invasion of personal privacy and revealing the identity of confidential sources.

(14) Before an agency can invoke any of the harms enumerated in Exemption 7, it must first demonstrate that the records or information at issue were compiled for law enforcement purposes. Law enforcement agencies such as the FBI must demonstrate that the records at issue are related to the enforcement of federal laws and that the enforcement activity is within the law enforcement duty of that agency.

(15) The FBI is the principal investigatory component of the U.S. Department of Justice and is mandated by federal law to investigate violations of numerous federal criminal statutes, including criminal statutes pertaining to acts of terrorism. Additionally, the FBI has mandated investigative responsibilities in the areas of the national security of the United States, including counterintelligence activities and counterterrorism activities. The records at issue in this case were compiled during the course of the FBI's interviews and investigations of detainees held at Guantanamo Bay pursuant to 18 U.S.C. § 2332(b). In support of the FBI's overriding mission of identifying those responsible for the September 11, 2001 attacks and preventing acts of terrorism, the FBI deployed Special Agents ("SAs") and support personnel around the world to interview terrorist suspects detained in Guantanamo Bay, Afghanistan, Iraq and other locations for the purposes of collection and analysis of investigative and intelligence information.

(16) The FBI documents referred by DOJ relate to the FBI's mission of identifying terrorists and preventing acts of terrorism, these documents were compiled for law enforcement purposes pursuant to 18 U.S.C § 2332(b). The enforcement activities reflected in this collection of documents are well within the law enforcement duties of the FBI and the FBI information at issue readily meets the threshold requirement of Exemption 7. The remaining inquiry is whether their disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy;" and " could reasonably be expected to reveal the identity of confidential sources."

EXEMPTIONS (b)(6) AND (b)(7)(C):
CLEARLY UNWARRANTED AND UNWARRANTED
INVASION OF PERSONAL PRIVACY

(17) 5 U.S.C. § 552 (b)(6) exempts from disclosure "personnel and medical files and similar files when the disclosure of such information would constitute a clearly unwarranted

invasion of personal privacy.” 5 U.S.C. § 552 (b)(7)(C) exempts from disclosure:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . could reasonably be expected to constitute an unwarranted invasion of personal privacy¹.

**(b)(6)-1 and (b)(7)(C)-1: Names and/or Identifying Information
Pertaining to FBI Special Agents and Support Employees**

(18) Exemptions (b)(6)-1 and (b)(7)(C)-1 have been asserted, at times in conjunction with (b)(2)-1, to protect the names and identifying information such as telephone numbers of the FBI SAs who were responsible for interrogating detainees and conducting investigations of individuals who pose a threat to the United States and also support employees who aided in the investigations.

(19) Disclosure of the names could subject the FBI SAs and support personnel to unauthorized inquiries by members of the media and the general public who seek access to this type of information. Accordingly, the FBI determined that the FBI SAs and support personnel referenced in the responsive records maintain a substantial privacy interest in not having their identities disclosed.

(20) The FBI next examined the records at issue to determine whether there was any public interest that outweighed the substantial privacy interests of the FBI SAs and support

¹ The practice of the FBI is to assert Exemption (b)(6) in conjunction with (b)(7)(C). Although the balancing test for (b)(6) uses a “would constitute a clearly unwarranted invasion of personal privacy” and the test for (b)(7)(C) uses the lower standard of “could reasonably be expected to constitute an unwarranted invasion of personal privacy,” the analysis and balancing required by both exemptions is sufficiently similar to warrant a consolidated discussion. The privacy interests are balanced against the public’s interest in disclosure under the analysis of both exemptions.

employees. The FBI could not identify any discernible public interest. The disclosure of the names of the FBI SAs and support employees would not demonstrate how the FBI performs its mission to protect and defend the United States against terrorist and foreign intelligence threats, to uphold and enforce the criminal laws of the United States, and to provide leadership and criminal justice services to federal, state, municipal, and international agencies and partners. There have been no allegations that the FBI SAs and support personnel engaged in any type of significant misconduct which would establish a public interest in the disclosure. Ultimately, disclosure of the names of the FBI SAs and support personnel would shed no light on the performance of the FBI's mission to protect and defend the United States against terrorist and foreign intelligence threats, to uphold and enforce the criminal laws of the United States, and to provide leadership and criminal justice services to federal, state, municipal, and international agencies and partners. Thus, disclosure of the names of the FBI SAs and support personnel would constitute a clearly unwarranted and unwarranted invasion of their personal privacy. The FBI properly asserted FOIA Exemptions (b)(6)-1 and (b)(7)(C)-1 on the following pages: 3406, 3409, 982-988, 1019, 1035, 1056 and 3413.

**(b)(6)-2 and (b)(7)(C)-2: Names and/or Identifying
Information of Non-FBI Federal Employees**

(21) Exemptions (b)(6)-2 and (b)(7)(C)-2 have been asserted to protect the names and identifying information of non-FBI federal government employees.

(22) The relevant inquiry here is whether public access to this information would violate a viable privacy interest of the subjects of such information. Disclosure of this identifying information could subject the employees to unauthorized inquiries and harassment

which would constitute a clearly unwarranted and unwarranted invasion of their personal privacy. The rationale for protecting non-FBI federal employees is the same as that for FBI employees articulated above.

(23) After identifying the substantial privacy interests of the non-FBI federal employees, the FBI balanced those interests against the public interest in disclosure. The FBI could identify no discernible public interest in the disclosure of this information because the disclosure of the non-FBI federal employees' names and identifying information will not shed light on the operations and activities of the FBI. Accordingly, the FBI determined that the disclosure of this information would constitute a clearly unwarranted and unwarranted invasion of personal privacy. The FBI properly asserted FOIA Exemptions (b)(6)-2 and (b)(7)(C)-2 on the following pages: 3406, 983-986 and 1043.

(b)(6)-3 and (b)(7)(C)-3: Names and/or Identifying Information of a Third Party Who Provided Information to the FBI

(24) Exemptions (b)(6)-3 and Exemption (b)(7)(C)-3, have been asserted to protect the name and identifying information of a third party who provided information to the FBI. Disclosure of the identity of this third party would have a detrimental effect on the current and future cooperation of other individuals willing to provide information to the FBI inasmuch as they would have little or no faith in the FBI's ability to maintain their information in confidence. Thus, the name and any specific information provided by this third party which could ultimately identify them has been protected.

(25) The FBI examined the records at issue to determine whether there is any public interest that outweighed the substantial privacy interests of the individual who provided

information to the FBI referenced in the responsive records. The FBI could identify no discernible public interest. In particular, the FBI determined that disclosure of the name of this individual would shed no light on the internal operations and activities of the FBI. Thus, the FBI determined that the privacy interest of the individual who provided information to the FBI outweighed an public interest in disclosure, and that disclosure of the name and/or identifying information of this individual would constitute a clearly unwarranted and unwarranted invasion of privacy. The FBI properly asserted FOIA Exemptions (b)(6)-3 and (b)(7)(C)-3 on the following page: 986.

CONCLUSION

(26) The FBI has carefully reviewed and processed the 34 pages of FBI-originated documents that were referred by DOJ/OLC in response to plaintiff's FOIA request for records on the subject of this request. Fourteen FBI pages have been withheld in part. All withholdings have been taken pursuant to FOIA Exemptions 2, 6, and 7(C), 5 U.S.C. §§ 552 (b)(2), (b)(6), and (b)(7)(C). The FBI carefully examined each of the pages and determined that the information withheld from plaintiff in this case, if disclosed, would reveal internal administrative information and would cause a clearly unwarranted invasion of personal privacy, and could reasonably be expected to constitute an unwarranted invasion of personal privacy. After extensive review of the documents at issue, the FBI has determined that there is no further reasonably segregable information that can be released.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, and that Exhibits A and B attached hereto are true and correct copies.

Executed this 18th day of November, 2009.

A handwritten signature in black ink, appearing to read "David Hardy", written over a horizontal line.

DAVID M. HARDY

Section Chief

Record/Information Dissemination Section

Records Management Division

Federal Bureau of Investigation

Winchester, Virginia

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN CIVIL LIBERTIES UNION, et al.,

Plaintiff,

v.

DEPARTMENT OF DEFENSE, et al.,

Defendants.

)
)
)
)
) Civil Action No. 04-CV-4151
)
)
)
)
)

EXHIBIT A

GIBBONS, DEL DEO, DOLAN, GRIFFINGER & VECCHIONE

A PROFESSIONAL CORPORATION

GIBBONS FELLOWSHIP IN
PUBLIC INTEREST & CONSTITUTIONAL LAW

JOHN J GIBBONS
SENIOR PARTNER

ATTORNEYS AT LAW

ONE RIVERFRONT PLAZA
NEWARK, N J. 07102-5496
973-596-4500

WEB SITE
<http://www.gibbonslaw.com>

LAWRENCE S LUSTBERG
DIRECTOR

SHAVAR D JEFFRIES
DEPUTY DIRECTOR

PHILIP G GALLAGHER
JENNIFER CHING
JONATHAN L HAFETZ*
GITANJALI S GUTIERREZ

* NOT ADMITTED IN N J

May 25, 2004

VIA FACSIMILE AND OVERNIGHT DELIVERY

David M Hardy
Section Chief
Record/Information Dissemination Section
Records Management Division
Federal Bureau of Investigation
Department of Justice
935 Pennsylvania Avenue, N.W.
Washington, D C. 20535-0001

Re: Freedom of Information Act Request

Dear Mr. Hardy

This letter constitutes a request for records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.*, and corresponding regulations. The request is submitted on behalf of the following organizations (collectively, "Requesters") American Civil Liberties Union ("ACLU"), Center for Constitutional Rights ("CCR"), Physicians for Human Rights ("PHR"), Veterans for Commonsense ("VCS") and Veterans for Peace ("VFP")

1. Records Sought

Requesters seek records concerning the treatment of individuals apprehended after September 11, 2001, and held in United States custody in military bases or detention facilities outside the United States ("Detainees"). Over the past months, it has become clear that many Detainees have been subjected to illegal interrogation, physical abuse, and even torture at the hands of United States personnel. In order to shed light on the policies and practices of the United States government with respect to Detainees, Requesters seek the following records.

- a) Records concerning the treatment of Detainees in United States custody,
- b) Records concerning the deaths of Detainees in United States custody, and

David M Hardy, Section Chief
May 25, 2004
Page 2

- c) Records related to the rendition of Detainees and other individuals to foreign powers known to employ torture or illegal interrogation techniques

To assist you in your search for records, Requesters have attached an appendix listing some of the records that fall within the scope of this request. See Appendix A. The list is meant only to provide guidance and is not exhaustive.

As you know, Requesters previously sought records from the Federal Bureau of Investigation ("FBI") relating to the treatment of Detainees through a FOIA request filed on October 7, 2003 ("First Request").¹ The instant request seeks, in addition to all of the records sought by the First Request, records that may have been generated or obtained since October 7, 2003.

2. Requesters Are Entitled To Expedited Processing.

Expedited processing is warranted where a request pertains to a "matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." 28 C.F.R. § 16.5(d)(3), (1)(iv). The instant request clearly meets this standard. See, e.g., Douglas Jehl and Eric Schmitt, *CIA Bid to Keep Some Detainees Off Abu Ghraib Roll Worries Officials*, NYTimes.Com, May 25, 2004; John Barry et al., *The Roots of Torture: The Road to Abu Ghraib Began After 9/11, When Washington Wrote New Rules to Fight a New Kind of War*, Newsweek.com, May 24, 2004 (tracing news coverage uncovering abuse of Detainees in Iraq and Afghanistan); Douglas Jehl and Eric Schmitt, *Dogs and Other Harsh Tactics Linked to Military Intelligence*, NYTimes.com, May 22, 2004; Scott Higham, et al., *Prison Visits By General Reported in Hearing*, WashingtonPost.com, May 23, 2004; Bradley Graham, *Number of Army Probes of Detainee Deaths Rises to 33*, WashingtonPost.com, May 22, 2004; Douglas Jehl and Eric Schmitt, *Afghan Policies On Questioning Taken to Iraq. Harsher Interrogation Practices are Cited*, NYTimes.com, May 21, 2004; David Rose and Gaby Hinsliff, *US Guards 'Filmed Beatings' at Terror Camp*, Observer Guardian.uk.com, May 16, 2004 (British military interrogator posted to Abu Ghraib "made an official complaint to U.S. authorities" regarding the maltreatment of Detainees "as long ago as last March"); R. Jeffrey Smith, *Knowledge of Abusive Tactics May Go Higher*, WashingtonPost.com, May 16, 2004; Charlie Savage, *As Threats to US Changed, So Did Prison Tactics*, BostonGlobe.com, May 16, 2004 (military whistleblower turned in photographs of abuse of prisoners to officials in Abu Ghraib in January, 2004); Douglas Jehl, *Earlier Jail Seen as Incubator for Abuses in Iraq*, NYTimes.com, May 15, 2004 (International Committee for the Red Cross report citing abuse of prisoners submitted to government in February, 2004),

¹ The previous request was filed by the FBI under FOIA No. 984710.

David M Hardy, Section Chief
May 25, 2004
Page 3

Mitch Frank, *A Pattern of Abuse?*, Time.com, May 9, 2004 ("For two years reports have piled up about 'stress and duress' techniques military and CIA officers are using on al-Qaeda and Iraqi captives"), Dana Priest and Joe Stephens, *Pentagon Approved Tougher Interrogations*, WashingtonPost.com, May 9, 2004 *See also* Appendix A-B (further listing of news articles)

Expedited processing is also warranted because delay in releasing the records will deny "substantial due process rights," 28 C.F.R. § 16.5(d)(11), and "pose an imminent threat to the life or physical safety of an individual," *id.* § 16.5(d)(1). Indeed, had the government released records sought by the First Request, many of the abuses and deaths that have recently come to light might have been averted.

Finally, for the reasons stated above and in the First Request, *see* Appendices C-D, expedited processing is warranted because there exists "an urgency to inform the public about an actual or alleged federal government activity," 28 C.F.R. § 16.5(d)(11). Each of the Requesters is "primarily engaged in disseminating information." *See* Appendix C (description of Requesters' media and publication activities).

3. Requesters Are Entitled To A Fee Waiver.

Requesters are entitled to a fee waiver because disclosure of the requested records is in the public interest and "likely to contribute significantly to the public understanding of the activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii). As indicated above and in the attached Appendices, innumerable media reports reflect the extraordinary public interest in the records sought. All of the Requesters are not-for-profit organizations and this request is not "primarily in the commercial interest" of any Requester, *id.*, *see also* Appendix B (description of individual organizations).

Requesters are entitled to a statutory limitation on fees because the records are not sought for commercial use and, as described in the attached appendices, each of the requesters is a "representative of the news media" within the meaning of the statute and relevant regulations. *See* Appendix C (description of Requesters' media and publication activities). Requesters seek records for purposes of publication and to further non-commercial interests that will significantly contribute to the public understanding of government conduct.

* * * *

If the request is denied in whole or part, Requesters ask that the FBI justify all deletions by reference to specific exemptions of FOIA. Requesters expect the FBI to release all segregable portions of otherwise exempt material, and reserve the right to appeal a decision to withhold any information or to deny the within applications for expedited processing and waiver of fees.

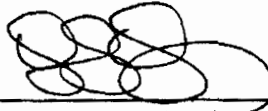
GIBBONS, DEL DEO, DOLAN, GRIFFINGER & VECCHIONE

David M Hardy, Section Chief
May 25, 2004
Page 4

Thank you for your consideration of this request. Kindly direct all future responses to Jennifer Chung, Gibbons, Del Deo, Dolan, Griffinger & Vecchione, P C., One Riverfront Plaza, Newark, New Jersey, telephone (973) 596-4721.

Under penalty of perjury, I hereby affirm that the foregoing and attached Appendices are true and correct to the best of my knowledge and belief.

Signed by:



Lawrence S Lustberg
Jennifer Chung
**GIBBONS, DEL DEO, DOLAN,
GRIFFINGER & VECCHIONE**
A Professional Corporation
One Riverfront Plaza
Newark, New Jersey 07102
(973) 596-4500
Attorneys for Requesters

Judy Rabinovitz
Amrit Singh
Jameel Jaffer
**AMERICAN CIVIL LIBERTIES UNION
FOUNDATION**
125 Broad Street, 18th Floor
New York, New York 10004
(212) 549-2609

Steven Watt
Barbara Olshanksy
Michael Ratner
**CENTER FOR CONSTITUTIONAL
RIGHTS**
666 Broadway, 7th Floor
New York, New York 10012
(212) 614-6464

GIBBONS, DEL DEO, DOLAN, GRIFFINGER & VECCHIONE

David M Hardy, Section Chief
May 25, 2004
Page 5

cc. Leonard S. Rubenstein
Physicians for Human Rights

Wilson Powell
Veterans for Peace

Charles Sheehan Miles
Veterans for Common Sense

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN CIVIL LIBERTIES UNION, <u>et al.</u> ,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 04-CV-4151
)	
DEPARTMENT OF DEFENSE, <u>et al.</u> ,)	
)	
Defendants.)	

EXHIBIT B

(Rev. 01-31-2003)

~~SECRET/ORCON/NOFORN~~

FEDERAL BUREAU OF INVESTIGATION

Precedence: PRIORITY

Date: 01/27/2004

To: Counterterrorism

Attn: AD Bald, CTD
Room 5829

From: EAD Pistole

Attn: M.Chris Briese
Section Chief ITOS II
Room 4972

Attn: Valerie Caproni
General Counsel
Room 7429

Contact: Valerie Caproni

Approved By: Pistole John S
Bald Gary M
Caproni Valerie E
Curran John F
Bowman M E

b2 -1
b6 -1
b7C -1

Drafted By:

(U) Case ID #: ~~(S)~~ 315E-HQ-1448534 (Pending)

(U) Title: ~~(S)~~ Saddam Hussein
IT-IRAQ

(U) Synopsis: ~~(S)~~ HDV-1 Interrogation team, Baghdad, seeks authority to question the subject without reading the subject warnings under Miranda v. Arizona, to video tape questioning of subject, and to identify themselves only as from U.S. Government.

~~(S)~~ Derived From: G-3
Declassify On: X1

b6 -2
b7C -2

(U) Details: ~~(S)~~ The FBI Legal Handbook for Special Agents Section 7-3.2 provides that Special Agents conducting interviews must identify themselves by name and official identity and advise the person interviewed of their rights under Miranda. MIOG PART 2, Section 7.1 provides that

~~SECRET/ORCON/NOFORN~~

Coordinated by [Signature]

003406

~~SECRET/ORCON/NOFORN~~

(U) To: Counterterrorism From: EAD Pistole
Re: ~~(S)~~ 315E-HQ-1448534, 01/27/2004

credentials shall be showed by Special Agents interviewing a subject.

(U) ~~(S)~~ Electronic recording of statements, including surreptitious recordings may be approved by an SAC, sensitive circumstances must be reported to the appropriate Assistant Director at FBIHQ. Legal Handbook Section 7-8, MIOG Sections 10-10.10.

(U) ~~(S)~~ The above guidelines generally apply to subjects held in custody for interrogation in contemplation of prosecution in United States courts. The interrogation of HDV-1 differs in the following ways: the subject is a non-United States person, overseas; he is an enemy prisoner of war under Geneva Convention III, under the control of the U.S. Department of Defense. Further, the primary purpose of the interview is to support other U.S. intelligence agencies in the collection of intelligence for force protection, public safety and the security of the United States. Based on these circumstances, any MIOG or FBI Legal Handbook procedures to the contrary, or other FBI policy or procedure to the contrary, the interrogation team may interview the subject without prior Miranda warnings, may video tape the interviews surreptitiously and may identify themselves only as representatives of the U.S. government. The interviews should be documented in a classified transcript. For each interview, a 302 cover transmittal document shall be prepared documenting that the interview took place. The 302 should be classified but state that it is unclassified when the transcript is removed. No classified information should be placed in the 302. Any classified information, other than the transcript of interview, is to be transmitted in a classified EC. The interviews shall be conducted under the rules of Geneva Convention III, August 12, 1947, and annexes, that have been provided to the team.

LEAD

Set Lead 1 (Action)

COUNTERTERRORISM

AT WASHINGTON, DC

(U) ~~(S)~~ Interviews of HDV-1 are to proceed as per guidance within this EC.

~~SECRET/ORCON/NOFORN~~

~~SECRET~~/ORCON/NOFORN

To: Counterterrorism From: EAD Pistole
(U) Re: ~~(S)~~ 315E-HQ-1448534, 01/27/2004

◆◆

~~SECRET~~/ORCON/NOFORN

Memorandum**To :** Valerie Caproni**Date:** January 27, 2004**From :** AGC [redacted] and
AGC [redacted]b6 -1
b7C -1**Subject:** Legal Issues Surrounding
Interview/Interrogation of Saddam Hussein

Attorney Client Privileged Material

Issue

The following memorandum provides (1) legal guidance on whether Saddam Hussein must be advised of his legal rights, similar to Miranda warnings, prior to FBI interrogation, and (2) provides legal guidance on video taping the interviews.

Summary Conclusion

The answer to the question concerning "advice of rights" largely depends upon the purpose of the interrogation, the legal status of Hussein, and the potential forum or venue in which he may stand trial. Since the Secretary of Defense has granted Hussein Enemy Prisoner of War (EPW) status, his rights regarding detention and interrogation are governed by the Geneva III Convention (GIII), of August 12, 1949. Accordingly, all FBI interviews shall be conducted under the rules of GIII. The FBI interrogation team may advise Hussein that all interviews will be conducted in accordance with GIII, however, it is understood that the U.S. Army has the overall responsibility for complying with GIII in the care and custody of Hussein. Furthermore, the Counterterrorism Division at FBIHQ has advised that the primary mission of the FBI interrogation team is to interrogate Hussein for intelligence purposes with a subsidiary purpose to preserve, to the extent possible, the evidentiary value of such statements in a legal forum. Significantly, we are aware of no current intent to try Hussein in an United States court.

Accordingly, we conclude that the interrogation team is not legally obligated to advise Hussein of his legal rights, which

~~SECRET~~

003409.

Memorandum
Re: Saddam, 01/27/2004

are generally afforded criminal defendants in the United States under Miranda v. Arizona. This opinion is provided with two significant caveats. First, should the purpose of the interrogation of Hussein change or Hussein becomes the target of a potential prosecution in a United States court, our conclusion may also change. Second, if DOJ representatives or political entities with proper authority involved with Hussein's interrogation make a policy decision that "advice of rights" should be afforded, the FBI must follow that advice.

Discussion

A. Prisoner of War-

With regard to the interrogation of EPWs, GIII prohibits the use of coercion or physical and mental torture to secure information of any kind from EPWs. See GIII, Article 17. Additionally, EPWs who refuse to answer questions may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind. Id. Moreover, EPWs must also be provided with proper food, water, clothing, showers, sanitary conditions and medical attention during their detention. See id. at Articles 25-30.

However, until such time as Hussein is charged with a crime (GIII, Article 105) there is no provision in the Geneva Convention III for providing an EPW an advice of rights. Accordingly, we conclude that FBI interrogation for intelligence purposes may proceed without an advice of rights.

B. Enemy Combatant

A similar conclusion would be reached if Hussein were treated as an illegal Enemy Combatant (EC) facing a potential Military Tribunal similar to the detainees held at Guantanamo Bay, Cuba. Although the Presidential Order of November 2001 requires that ECs be treated humanely, ECs generally are not afforded the right to legal counsel, nor are they advised of legal rights prior to custodial interviews.

~~SECRET~~

Memorandum
Re: Saddam, 01/27/2004

C. Impact of Each Possible Legal Forum

1. Iraqi Judicial System

Current Iraqi law does not require Miranda-type warnings for custodial interrogations. A Tribunal created to prosecute Hussein was approved by the Iraqi Governing Council and signed into law by Ambassador Bremmer on December 10, 2003.

This statute creating the Tribunal lists the rights of accused individuals including: the presumption of innocence; the right to be advised of charges; the right to counsel; and the right against self incrimination. However, there is no authority under this statute, or any current Iraqi law of which we are aware, for providing an accused an advice of rights.

In addition, international law specific to the Arab world does not provide for an advice of rights. See Arab Charter on Human Rights, Article 7 ("The accused shall be presumed innocent until proven guilty at a lawful trial in which he has enjoyed the guarantees necessary for his defense"); Cairo Declaration on Human Rights in Islam ("It is not permitted without legitimate reason to arrest an individual, or restrict his freedom, to exile or punish him.")

2. International Criminal Court

Potential charges such as Genocide or other Crimes against Humanity potentially may be brought before an International Court established in the Hague. Although international tribunals guarantee certain fundamental rights, there is no provision for the advice of rights prior to interrogation.

U.N. level international law governing such proceedings provides for basic due process rights for accused including, notification of charges, right to counsel during interrogation and trial, and the right against self incrimination.

Moreover, there is also the potential for the establishment of an ad hoc Nuremberg Model International Criminal Court to try Hussein for crimes against humanity. Since the rules

~~SECRET~~

Memorandum
Re: Saddam, 01/27/2004

governing such a Court have not been established, it would be mere speculation to address whether advice of rights would be required.

3. U.S. Judicial System

There is no indication that a trial of Hussein is contemplated in the United States. That factor, together with the primary intelligence purpose of the interrogation, weigh strongly in favor of our opinion that an advice of rights is not required by law. However, if these factors change, OGC would need to reassess that position.

Other Issues

Videotaping Interrogation

Videotaping, including surreptitious recording, of interviews is permitted by the MIOG with SAC approval, and DOJ/CTS has advised that it has no objection to video taping this interrogation. Army regulations implementing GIII would not present a bar under the current scenario because the regulations permit video taping of an EPW for internal administration and intelligence/counterintelligence purposes. As the primary purpose of the interrogation is for intelligence purposes, video taping would be permissible under GIII.

302 vs EC

The interviews should be documented in a classified transcript. For each interview, a 302 cover transmittal document shall be prepared documenting that the interview took place. The 302 should be classified but state that it is unclassified when the transcript is removed. No classified information should be placed in the 302. Any classified information, other than the transcript of interview, is to be transmitted in a classified EC.

~~SECRET~~

(Rev. 08-28-2000)

~~SECRET~~/ORCON/NOFORN

FEDERAL BUREAU OF INVESTIGATION

b6 -1
b7C -1.

Precedence: ROUTINE

Date: 05/30/2003

To: Counterterrorism

Attn: A/SC [redacted]
CTORS
A/UC [redacted]
MLDU

General Counsel

Attn: Marion E. Bowman,
Senior Counsel for National
Security Affairs

Miami

Attn: SAC Hector M. Pesquera;
ASAC C. Frank Figliuzzi;
SSA [redacted]

From: CIRG

Behavioral Analysis Unit (BAU)

Contact: SSA [redacted]

b2 -1
b6 -1
b7C -1

Approved By: [redacted]

Drafted By: [redacted] :tmn

COPY

Case ID #: (U) 265A-MM-C99102; (Pending) 1209

Title: (U) GTMO-INTEL
GUANTANAMO BAY, CUBA.
OO:MIAMI
MAJOR CASE 188

Synopsis: (U) To document BAU assistance and challenges encountered during TDY assignment in Guantanamo Bay (GTMO).

(X) ~~Derived From: G-3~~
~~Declassify On: X1~~

b6 -1
b7C -1

Enclosure(s): (U) Enclosed documents provide additional details regarding issues encountered by SSAs [redacted] in GTMO:

1. (U) "Intelligence Interrogation," U.S. Army Field Manual (No. 34-52).

(U) 2. (X) "Interrogation Tactics" as promulgated by DHS at GTMO, 12/11/2002.

~~SECRET~~/ORCON/NOFORN

000982

~~SECRET~~/ORCON/NOFORN

To: Counterterrorism From: CIRG
Re: (U) 265A-MM-C99102, 05/30/2003

3. (LES) FBI(BAU) Letter forwarded to, Major General (MGEN) G.R. Miller, Commander, Joint Task Force-170 on 11/22/2002.

(U) 4. ~~(S)~~ U.S. Army Legal Brief on Proposed Counter-Resistance Strategies, 10/15/2002.

5. (LES) Legal Analysis of Interrogation Techniques by SSA [redacted] FBI (BAU).

(U) 6. ~~(S)~~ DHS Interrogation Plan for Detainee #63, 11/22/2002.

b6 -1,2
b7C -1,2

7. (LES) FBI(BAU)/CITF Interrogation Plan for Detainee #63, 11/22/2002.

(U) 8. ~~(S)~~ Review of JTF-GTMO Interrogation Plan by [redacted] 11/22/2002.

9. (LES) Letter from FBI GTMO Supervisor/BAU to MGEN Miller re: Video Teleconference on 11/21/2002.

10. (LES) Draft of CITF Memorandum For JTF-GTMO/J2, 12/17/2002.

11. (LES) Draft Memorandum For Record, " Aggressive Interrogation-Historical Record," 01/15/2003.

12. (LES) FBI(BAU) Interview notes re: Detainee #682, 11/22/2002.

b6 -1
b7C -1

(U) Details: ~~(S)~~ During the TDY assignments of SSA [redacted] (10/27/2002-12/06/2002) and SSA [redacted] (11/07-2002-12/18/2002), to Guantanamo Bay (GTMO), several discussions were held to determine the most effective means of conducting interviews of detainees. These discussions were prompted by the recognition that members of the Defense Intelligence Agency's (DIA) Defense Humint Services (DHS) were being encouraged at times to use aggressive interrogation tactics in GTMO which are of questionable effectiveness and subject to uncertain interpretation based on law and regulation. Not only are these tactics at odds with legally permissible interviewing techniques used by U.S. law enforcement agencies in the United States, but they are being employed by personnel in GTMO who appear to have little, if any, experience eliciting information for judicial purposes. The continued use of these techniques has the potential of negatively impacting future interviews by FBI agents as they attempt to gather intelligence and prepare cases for prosecution.

~~SECRET~~/ORCON/NOFORN

To: Counterterrorism From: CIRG
Re: (U) 265A-MM-C99102, 05/30/2003

(U) ~~(S)~~ The interrogation techniques taught by DHS to military interrogators in GTMO come from a U.S. Army Field Manual (#34-52) entitled "Intelligence Interrogation," (Encl 1) and from tactics used in U.S. Army Search, Escape, Resistance and Evasion (SERE) training (Encl 2) to prepare military personnel to resist interrogation in the event they are taken prisoner by the enemy. Although SERE techniques may be effective in eliciting tactical intelligence in a battlefield context, the reliability of information obtained using such tactics is highly questionable, not to mention potentially legally inadmissible in court.

(U) ~~(S)~~ SSAs [redacted] with the concurrence of BAU management, argued for the use of a rapport-based approach in interrogations (Encl 3), pointing out the success of the FBI in eliciting information from hostile and recalcitrant individuals in previous terrorism investigations. Unfortunately, these arguments were met with considerable skepticism and resistance by senior DHS officials in GTMO, despite several attempts to convince them otherwise. Nonetheless, the DHS have falsely claimed that the BAU has helped to develop and support DHS's interrogation plans.

b6 -1
b7C -1

(U) During their TDY assignment, SSAs [redacted] and [redacted] kept the BAU apprized of details of the above controversy. Additionally, they offered interviewing assistance and provided training on interrogation methods to FBI/CITF personnel.

b6 -1
b7C -1

(U) ~~(S)~~ On 12/02/2002, SSA [redacted] sent several documents via e-mail to Unit Chief [redacted] BAU, Quantico, who advised he would forward them to Marion Bowman, Legal Counsel, FBIHQ. These documents included a letter to the JTF-170 Commanding General, Major General (MGEN) J.G. Miller (Encl 3), a U.S. Army Legal Brief on Proposed Counter-Resistance Strategies supporting the use of aggressive interrogation techniques (Encl 4), and a Legal Analysis of Interrogation Techniques (Encl 5) by SSA [redacted]

b6 -1,2
b7C -1,2

(U) ~~(S)~~ It is noteworthy that the case agent in GTMO, SA [redacted] and senior officials from the Criminal Investigative Task Force (CITF), who have been involved in GTMO since the beginning, concur with the BAU's approach to interrogation. Among those most supportive of such methods is [redacted], Chief Psychologist with the Naval Criminal Investigative Service (NCIS). [redacted] has been an advisor to the CITF in GTMO since its inception and has repeatedly argued for implementation of a rapport-based approach. [redacted] lamented that many DHS interrogators seem to believe that the only way to elicit information from uncooperative detainees is to use aggressive techniques on them.

~~SECRET/ORCON/NOFORN~~

To: Counterterrorism From: CIRG
Re: (U) 265A-MM-C99102, 05/30/2003

b6 -1,2
b7C -1,2

(U) ~~(S)~~ The differences between DHS and FBI interrogation techniques and the potential legal problems which could arise were discussed with DHS officials. However, they are adamant that their interrogation strategies are the best ones to use despite a lack of evidence of their success. The issue regarding the effectiveness of DHS's techniques was amplified during an awkward teleconference between GTMO and Pentagon officials. During this teleconference, the GTMO officer overseeing military interrogations, LCOL [redacted] USA, blatantly misled the Pentagon into believing that the BAU endorsed DHS's aggressive and controversial Interrogation Plan (Encl 6) for Mohammed Al-Qatani, a detainee commonly referred to as #63. Prior to this video teleconference, SSAs [redacted] and [redacted] had discussed with DHS the advantages and rationale regarding the FBI's interrogation strategy for #63 (Encl 7), and had made available to them a written draft of this plan.

(U) ~~(S)~~ Despite objections raised by the BAU as well as concerns articulated by [redacted] (Encl 8), the DHS initiated an aggressive interrogation plan for #63. This plan incorporated a confusing array of physical and psychological stressors which were designed, presumably, to elicit #63's cooperation. Needless to say, this plan was eventually abandoned when the DHS realized it was not working and when #63 had to be hospitalized briefly.

b6 -2
b7C -2

(U) ~~(S)~~ The military and DHS's inaccurate portrayal to the Pentagon that the BAU had endorsed and, in fact, helped to create DHS's interrogation plan for #63 prompted SSA [redacted] SSA [redacted] and the FBI on-scene TDY operations supervisor, SSA [redacted] to send a letter (Encl 9) to MGEN Miller correcting these misstatements and requesting an opportunity to address the matter with MGEN Miller in person. During a subsequent meeting between MGEN Miller and SSAs [redacted] and SA [redacted] details and rationale for the BAU's interviewing approach were presented. Although MGEN Miller acknowledged positive aspects of this approach, it was apparent that he favored DHS's interrogation methods, despite FBI assertions that such methods could easily result in the elicitation of unreliable and legally inadmissible information.

b6 -1
b7C -1

(U) ~~(S)~~ Subsequent contact with FBI personnel in GTMO has revealed that MGEN Miller remains biased in favor of DHS's interrogation methods, although there is some indication that his attitude may be shifting slightly following a recent visit by Pentagon officials. On 12/17/2002, CITF, in consultation with the BAU, drafted a letter (Encl 10) for MGEN Miller reiterating the strengths of the FBI/CITF approach to conducting interrogations. Encl (11), authored by a TDY legal advisor assigned to CITF, provides a detailed historical

~~SECRET/ORCON/NOFORN~~

~~SECRET/ORCON/NOFORN~~

To: Counterterrorism From: CIRG
Re: (U) 265A-MM-C99102, 05/30/2003

record of the development of interagency policies regarding aggressive interrogation techniques in GTMO.

b6 -1
b7C -1

(U) ~~(S)~~ SSAs [] and [] observed that DHS personnel have an advantage over the FBI as a result of their longer periods of deployment. Currently, DHS personnel are deployed for six months, whereas the FBI on-scene supervisor and interviewing agents are assigned for periods of only 30-45 days. About the time an FBI supervisor or interviewing agent begins to feel comfortable with his/her surroundings and is able to establish meaningful rapport with detainees, he/she must prepare to depart GTMO. There are several examples in which DHS personnel have awaited the departure of an FBI supervisor before embarking on aggressive, unilateral interrogation plans which they knew would not have been endorsed by the FBI. For this reason, SSA [] and [] suggested to Acting Unit Chief (A/UC) [] that the GTMO Task Force consider extending periods of deployment for the on-site FBI supervisor and for some agents assigned to conduct interviews.

b6 -1,2
b7C -1,2

(U) ~~(S)~~ SSAs [] and [] discussed the above issues not only with BAU management, but also with A/UC [] who traveled to GTMO in early December. As part of his visit, A/UC [] participated in a second teleconference between MGEN Miller, his staff and the Pentagon. During this teleconference, A/UC [] challenged DHS's assertion that the FBI had endorsed DHS's interrogation techniques. This disclosure surprised Pentagon officials who had been led to believe that the FBI and DHS were working as a team. [] who was present at the Pentagon during this teleconference, advised that he would follow up on this issue by meeting with senior members of the Department of Defense (DOD) Legal Counsel to provide further background on this issue.

(U) Upon their return from GTMO, SSAs [] and [] briefed the BAU and provided unit members with copies of relevant documents. During this brief, both explained that although they were compelled by timing and circumstances to devote a considerable amount of time to the above policy issues, they were able, nevertheless, to assist agents conducting interviews and provide training to FBI/CITF personnel. Of particular importance were a series of successful interviews which SSA [] conducted with [] (known as detainee #682), who had stopped talking to interrogators. Utilizing interviewing techniques taught by the BAU, SSA [] was gradually able to re-establish a dialogue (Encl 12) which ultimately led to the detainee's renewed cooperation.

b6 -1,3
b7C -1,3

~~SECRET/ORCON/NOFORN~~

~~SECRET~~/ORCON/NOFORN

To: Counterterrorism From: CIRG
Re: (U) 265A-MM-C99102, 05/30/2003

b6 -1
b7C -1

(U)

~~(S)~~ SSAs [] and [] recognize that issues regarding differences in interrogation techniques may not be encountered by all BAU agents who travel to GTMO. However, considering the constant placement and turnover of personnel there, it is an issue which is likely to surface again. At present, FBI agents and DOD investigators conduct interviews on a daily basis in response to a steady number of criminal and intelligence-related leads. Some of the information gathered from these interviews is likely to be used in military tribunals and, possibly, in federal court. Therefore, it is essential that FBIHQ, DOJ and DOD provide specific guidance to protect agents and to avoid tainting cases which may be referred for prosecution.

~~SECRET~~/ORCON/NOFORN

~~SECRET/ORCON/NOFORN~~

To: Counterterrorism From: CIRG
Re: (U) 265A-MM-C99102, 05/30/2003

LEAD(s):

Set Lead 1: (Discretionary)

COUNTERTERRORISM

AT WASHINGTON, D. C.

(U) It is recommended that CTD, in coordination with OGC, consider implications of interview and interrogation methods employed by military personnel at GTMO on potential future criminal prosecutions or military tribunals and provide specific guidance to FBI personnel deployed to GTMO. Request CTD provide information contained in this communication to PENTTBOM team, as deemed appropriate.

Set Lead 2: (Discretionary)

GENERAL COUNSEL

AT WASHINGTON, DC

(U) It is recommended that OGC, in coordination with CTD, consider implications of interview and interrogation methods employed by military personnel at GTMO on potential future criminal prosecutions or military tribunals and provide specific guidance to FBI personnel deployed to GTMO.

Set Lead 3: (Info)

MIAMI

AT MIAMI, FLORIDA

(U) For information only.

cc: SSA [redacted] BAU-East
GTMO Coordinator

b6 -1
b7C -1

◆◆

~~SECRET/ORCON/NOFORN~~

As we approach the one-year anniversary of the confinement of Al Qaeda/Taliban detainees at GTMO, perhaps it is a good time to revisit our interrogation strategies which may be in need of revision.

Since last year, detainees have been interrogated by representatives of the Defense Human Intelligence Services (DHS) and by members of the FBI/CITF in an effort to obtain valuable intelligence. In this sense, the missions appear to be identical. However, both the FBI and the CITF have additional responsibilities. While the FBI is working to obtain information to strengthen existing terrorism investigations for prosecution, the CITF is trying to ensure that incriminating information gathered from the detainees is done in a manner acceptable for military tribunals.

Central to the gathering of reliable, admissible evidence is the manner in which it is obtained. Interrogation techniques used by the DHS are designed specifically for short-term use in combat environments where the immediate retrieval of tactical intelligence is critical. Many of DHS's methods are considered coercive by Federal Law Enforcement and UCMJ standards. Not only this, but reports from those knowledgeable about the use of these coercive techniques are highly skeptical as to their effectiveness and reliability. Since nearly all of the GTMO detainees have been interviewed many times overseas before being sent here, the FBI/CITF would argue that a different approach should be undertaken in terms of trying to elicit information from them. The FBI/CITF favors the use of less coercive techniques, ones carefully designed for long-term use in which rapport-building skills are carefully combined with a purposeful and incremental manipulation of a detainee's environment and perceptions. A model of this approach was offered recently in an FBI/CITF interview plan for detainee 063.

FBI/CITF agents are well-trained, highly experienced and very successful in overcoming suspect resistance in order to obtain valuable information in complex criminal cases, including the investigations of terrorist bombings in East Africa and the USS Cole, etc. FBI/CITF interview strategies are most effective when tailored specifically to suit a suspect's or detainee's needs and vulnerabilities. Contrary to popular belief, these vulnerabilities are more likely to reveal themselves through the employment of individually designed and sustained interview strategies rather than through the haphazard use of prescriptive, time-driven approaches. The FBI/CITF strongly believes that the continued use of diametrically opposed interrogation strategies in GTMO will only weaken our efforts to obtain valuable information.

A second problem with the current interrogation strategy is that detainees are smarter now than when they first arrived. No longer are they susceptible to suggestions for early release or special consideration. Indeed, no one seems to know when the military tribunals will begin. As TDY interrogators continue to interview and re-interview detainees utilizing every theme imaginable, detainees have become increasingly cynical of any offers of concession. Moreover, they appear to have become better conditioned for almost all interrogation approaches with many detainees simply refusing to answer any questions. Complicating matters is the structural set-up of Camp

001011

Delta, which enables detainees to exchange counter-interrogation resistance strategies with relative ease while at the same time strengthening their solidarity.

Except for a recently enacted reward system offering minor creature comforts to cooperative detainees, there is a lack of major incentives which could encourage detainees to provide more information. Major incentives are greatly needed. Recently, investigators from Italy were successful in retrieving valuable information and cooperation from some detainees after they were provided with guarantees of judicial leniency.

In addition to a review of interrogation strategies the FBIHQ representatives wish to discuss with the Commanding General the following issues:

1. Projected long term FBI Agent and Professional Support presence in support of JTF GTMO mission
2. FBI continued technical support
3. DOJ prosecutorial interest in GTMO detainees

001012

LEGAL ANALYSIS OF INTERROGATION TECHNIQUES:

Interrogation Techniques

Category I -

1. Gagging with gauze.
2. Yelling at detainee.
3. Deception
 - a. Multiple Interrogators
 - b. Interrogator posing as an interrogator from a foreign nation with a reputation of harsh treatment of detainees.

Category II-

1. Use of stress positions (such as standing) for a maximum of 4 hrs.
2. Use of falsified documents or reports.
3. Isolation facility for 30 day increments.
4. Non-standard interrogation environment/booth.
5. Hooding detainee.
6. Use of 20-hour interrogation segments.
7. Removal of all comfort items (including religious items).
8. Switching detainee from hot rations to MRE's.
9. Removal of all clothing.
10. Forced grooming (shaving of facial hair etc...)
11. Use of individual phobias (such as fear of dogs) to induce stress.

Category III-

1. Use of scenarios designed to convince detainee that death or severe pain is imminent for him or his family.
2. Exposure to cold weather or water (with medical monitoring).
3. Use of wet towel and dripping water to induce the misperception of drowning.
4. Use of mild physical contact such as grabbing, light pushing and poking with finger.

Category IV-

1. Detainee will be sent off GTMO, either temporarily or permanently, to Jordan, Egypt, or another third country to allow those countries to employ interrogation techniques that will enable them to obtain the requisite information.

Legal Analysis

The following techniques are examples of coercive interrogation techniques which are not permitted by the U.S. Constitution:

Category I -

3. b. Interrogator posing as an interrogator from a foreign nation with a reputation of harsh treatment of detainees.

Category II-

1. Use of stress positions (such as standing) for a maximum of 4 hrs.
2. Use of falsified documents or reports.
5. Hooding detainee.
6. Use of 20-hour interrogation segments.
9. Removal of all clothing.
11. Use of individual phobias (such as fear of dogs) to induce stress.

Category III-

1. Use of scenarios designed to convince detainee that death or severe pain is imminent for him or his family.
2. Exposure to cold weather or water (with medical monitoring).
3. Use of wet towel and dripping water to induce the misperception of drowning.

Information obtained through these methods will not be admissible in any Criminal Trial in the U.S. Although, information obtained through these methods might be admissible in Military Commission cases, the Judge and or Panel may determine that little or no weight should be given to information that is obtained under duress.

The following techniques are examples of coercive interrogation techniques which may violate 18 U.S.C. s. 2340, (Torture Statute):

Category II-

5. Hooding detainee.
11. Use of individual phobias (such as fear of dogs) to induce stress.

Category III-

1. Use of scenarios designed to convince detainee that death or severe pain is imminent for him or his family.
2. Exposure to cold weather or water (with medical monitoring).
4. Use of wet towel and dripping water to induce the misperception of drowning.

001020

In 18 U.S.C. s. 2340, (Torture Statute), torture is defined as "an act committed by a person acting under color of law specifically intended to inflict severe physical or mental pain or suffering upon another person within his custody or control." The torture statute defines "severe mental pain or suffering" as "the prolonged mental harm caused by or resulting from the intentional infliction or threatened infliction of severe physical pain or suffering; or the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses of the personality; or the threat of imminent death; or the threat that another person will imminently be subject to death, severe physical pain or suffering, or the administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses of the personality."

Although the above interrogation techniques may not be per se violations of the United States Torture Statute, the determination of whether any particular use of these techniques is a violation of this statute will hinge on the intent of the user. The intent of the user will be a question of fact for the Judge or Jury to decide. Therefore, it is possible that those who employ these techniques may be indicted, prosecuted, and possibly convicted if the trier of fact determines that the user had the requisite intent. Under these circumstances it is recommended that these techniques not be utilized.

The following technique is an example of a coercive interrogation technique which appears to violate 18 U.S.C. s. 2340, (Torture Statute):

Category IV-

1. Detainee will be sent off GTMO, either temporarily or permanently, to Jordan, Egypt, or another third country to allow those countries to employ interrogation techniques that will enable them to obtain the requisite information.

In as much as the intent of this category is to utilize, outside the U.S., interrogation techniques which would violate 18 U.S.C. s. 2340 if committed in the U.S., it is a per se violation of the U.S. Torture Statute. Discussing any plan which includes this category, could be seen as a conspiracy to violate 18 U.S.C. s. 2340. Any person who takes any action in furtherance of implementing such a plan, would inculcate all persons who were involved in creating this plan. This technique can not be utilized without violating U. S. Federal law.

001021

LAW ENFORCEMENT SENSITIVE

Draft: November 22, 2002

INTRODUCTION

The Interrogation Plan for GTMO detainee #63, Mohammad Al-Khatani, offered below is the result of a collaborative effort by representatives of the FBI's Behavioral Analysis Unit (BAU), and behavioral specialists, psychiatrists and psychologists with the Criminal Investigation Task Force (CITF). The members of the FBI (BAU) and the CITF BSCT are well known for their expertise in consultation on interrogation approaches and strategies throughout the world regarding criminal investigations and counterintelligence operations. The CITF Behavioral Consultation Team is comprised of professionals from NCIS, Army CID, Air Force OSI, NSA, NRO, CIA. The FBI BAU is comprised of Supervisory Special Agents with an average of 18 years of experience in criminal and counterintelligence investigations. This plan is based on interrogation approaches, strategies and techniques used by federal agents throughout the United States and around the world in investigations, interrogations, and operations involving potential attacks against the United States and its allies by Al-Qaeda and other terrorist organizations. The approaches developed and included in this plan are derived from an extensive analysis of Al-Qaeda, as it relates to the psychology of the Middle Eastern mindset, organizational recruitment, radicalization as reflected in the training and deployment of operatives against the United States and their allies. These strategies are currently used to train law enforcement and intelligence professionals in the United States and allied professionals currently engaged in investigations and operations against Al-Qaeda around the world.

Based on a review of the limited portions of #63's case file that were made available to us, we strongly recommend that a long-term rapport-building approach be implemented immediately to optimize the reliability of operationally relevant information collected. It is believed that the effects of three months of isolation are beginning to take their toll on #63's psychological state. We believe that this is an advantageous time to initiate a carefully designed plan to create an increasing amount of dependence and trust between #63 and the interviewer which, ultimately, may make him more susceptible to influence and persuasion in deciding to share information he may have previously withheld.

BACKGROUND

In August 2002, #63 was placed into isolation at the GTMO brig for his lack of cooperation in providing truthful information regarding his knowledge of known Al-Qaeda members or terrorist activities. When #63 was placed into confinement, interviewers believed that his isolation from other detainees might provide him with sufficient motivation to cooperate more fully. Indeed, a review of his file reveals that since March 2002, #63 has been interviewed at least eight times in GTMO by an array of interviewers from different agencies. The actual number of interviews is believed to be much higher since it appears that some interviews have not yet been documented in his file. The conclusion drawn from this analysis is that #63 has never been interrogated using a sustained relationship-oriented strategic approach.

001027

EFFECTS OF ISOLATION

Observations by guards, psychologists and members of various interview teams all indicate that #63's behavior has changed significantly during his three months of isolation. He spends much of his day covered by a sheet, either crouched in the corner of his cell or hunched on his knees on top of his bed. These behaviors appear to be unrelated to his praying activities. His cell has no exterior windows, and because it is continuously lit, he is prevented from orientating himself as to time of day. Recently, he was observed by a hidden video camera having conversations with non-existent people. During his last interview on 11/17/02, he reported hearing unusual sounds which he believes are evil spirits, including Satan. It is not clear to us whether these behaviors indicate that #63 is hallucinating or whether these behaviors are a conscious effort designed to convince us of his mental deterioration in an effort to be released from isolation. Indeed, during his last interview, he repeatedly requested to be returned to Camp Delta to be among his fellow detainees. Although we are uncertain as to his mental status and recommend a mental evaluation be conducted, there is little doubt that #63 is hungry for human interaction. Our plan is designed to exploit this need and to create an environment in which it is easier for #63 to please the interviewer with whom he has come to have complete trust and dependence thus developing a motivation to be forthright and cooperative in providing reliable information.

RATIONALE FOR RAPPORT-BUILDING APPROACH

Numerous approaches have been attempted on #63 with a variety of themes including pointing out inconsistencies in his cover story, appealing to his sense of guilt, describing his failures in life, disclosing the betrayal of his comrades, discussing the futility of his predicament, telling him he will never be a father and that he will never see his mother again. None of these approaches has been successful in persuading him to provide truthful information. We believe a predictable pattern has emerged whereby every few weeks, a new set of interviewing agents attempts to establish basic rapport with him over a short period of time before launching into a series of questions about his terrorist activities. The effect of this pattern is that #63 appears to have become resistant to any approach that begins with short-term rapport-building themes and turns quickly into specific questioning. Indeed, it appears that many interviews with #63 have ended with the interviewing agents yelling at him, thereby making it more difficult for subsequent interview teams to establish sincere, meaningful rapport and trust with him.

Ironically, #63's negative contact with interviewing agents only reinforces Al-Qaeda stereotypes about evil Americans and validates their expectation of harsh treatment and potential torture. Rather than creating an environment that might inspire him to identify with his captors and compel him to question his loyalty and alliances to Al-Qaeda, we believe he would be more likely to increase his resolve to withhold information from us, thus reinforcing his belief system in resisting interrogation. Individuals who become affiliated with extremist groups who promulgate hate, whether political or religious, are frequently in search of a psychological anchor. Direct challenges to their belief systems

001028

are a threat to their sense of self-worth. Our approach is aimed at creating a dependency and trust between #63 and a single interviewer whose behavior and personality contradict the negative image that #63 has imagined or encountered. Over time, we believe it is possible that his loyalty to Al-Qaeda may be weakened, and that he is more likely to reveal information to someone whom he trusts.

Whether #63's ability to resist making full disclosure of his activities is a product of personal strength or the successful utilization of counter-interrogation techniques, or both, we believe the time is right for utilization of an altogether different approach, one which has not been tried before with #63 and has been utilized successfully in other investigations against Al-Qaeda.

INTERVIEW PLAN

Our approach emphasizes long-term rapport-building in which questions of an investigative nature would purposely be avoided in order to allow the opportunity for #63 and the interviewer to develop a bond on matters unrelated to the investigation. The long-term strategy would be to create an environment in which total dependence and trust between #63 and the interviewer is established at its own pace. Such a plan should be given up to a year to complete although the actual time may be considerably shorter depending on how events unfold.

To help foster an environment conducive to the establishment of dependence and trust, we propose that the interviewer initially meet with #63 every other day. This should be his only contact with other people, and we believe he will anxiously look forward to these meetings. No investigative questions will be asked. This will confuse #63, as he will expect to be questioned about his terrorist activities.

Built into this plan will be periodic stressors such as the stripping of certain items of comfort from him by guards, such as the removal of his mirror or the issuance of a sheet half the size of the one he likes to drape around himself. These and other stressors will be carefully and subtly introduced not by the interrogator, but by guards. We believe that #63 will likely look to his only human contact, his interviewer, in an attempt to gain help. The interviewer's status as a caregiver and problem-solver will thus be increased. At the same time, consideration should be given to introducing visual stimuli to #63 which is something we believe he is hungry for. Such materials could include visual images designed to invoke sympathy or carefully culled articles from Arabic newspapers which could help weaken #63's sense of loyalty to Al-Qaeda associates.

Built into our plan is flexibility. However, this flexibility will be purposeful, and it will be continuously assessed for its effectiveness. The emphasis must be placed on patience and subtlety. At no time should the plan be rushed. In fact, demands by #63 for restoration of things taken from him should be honored slowly so as to create the impression that the interviewer can ultimately help him although not necessarily quickly or with ease.

001029

5/16/04

b6 -1
b7C -1

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 10-06-2009 BY 65179 DMH/MJS



Detainee Interviews (Abusive Interrogation Issues)

- In late 2002 and continuing into mid-2003, the Behavioral Analysis Unit raised concerns over interrogation tactics being employed by the U.S. Military. As a result an EC dated 5/30/03, was generated summarizing the FBI's continued objections to the use of SERE (Search, Escape, Resistance and Evasion) techniques to interrogate prisoners. This EC is attached and includes a collection of military documents discussing and authorizing the techniques. We are not aware of the FBI participating directly in any SERE interrogations.
- It should be noted that FBI concerns and objections were documented and presented to Major General Geoffery Miller, who oversaw GTMO operations. MG Miller is now in Iraq serving as the commander in charge of the military jails. MG Miller appeared in the New York Time on 5/5/04 defending "coercive and aggressive" interrogation methods.
- FBI operations in Afghanistan, Iraq and GTMO have each been queried and all have reported back that they do not have any direct knowledge of any abusive interrogation techniques being used. Each location was aware of rumors of abuse which have surfaced as a direct result of pending Military investigations into abusive interrogation techniques.
- The FBI has participated in the interview of 204 individuals in Iraq and 747 in GTMO. Our Afghan operation needs additional time to prepare a list of those interviewed in theater. Attached are the lists from GTMO and Iraq.
- A key word search of the Iraq interviews identified one individual alleging abuse by military personnel. In this instance a woman indicated she was hit with a stick and she wanted to talk only to German officials.
- FBI personnel assigned to the Military Tribunal effort involving GTMO detainees has during the review of discovery material seen, on a few rare occasions, documentation of SERE techniques being noted in interviews conducted by Military personnel. In these instances the material was called to the attention of military's Criminal Investigative Task Force (CITF), and Office Military Commissions (OMC) personnel.

001035

Concerning food, which is reportedly a major issue with #63, care will be taken to create the impression that the interviewer is the one who has occasional influence over the kind of food #63 is given.

Additional details of this plan will be tailored specifically to the behavior and cognitive style, eg communication, thinking process, use of deception, of #63 in consultation with the behavioral analysis components with the overall objective of continuing to foster complete dependence and trust as a precursor to the elicitation.

The progress of the interrogation process will be assessed on an ongoing basis. The interrogator will be supported by a team of behavioral consultants who will help to translate the meaning of the detainee's behaviors, communications and activities in and out for the interrogation room. Monitors will include the assessment of the detainee's communications and behavior for the use of deception, avoidance and manipulation to assist in directing inquiry and ensure the validity and reliability of the information elicited via this process.

We have mentioned in several places the role of the guards in this interrogation plan. One of the most valuable contributions that the guards can make during an interrogation would be to become the eyes and ears in between interrogation sessions. It is recommended that the guards who are assigned to #63 be provided specialized training to become attentive to specific patterns of behavior displayed by #63 in between sessions to aid in the ongoing assessment of the interrogation process. Further, it is recommended that a special log be established with the guidance of the interrogator to be available to the interrogator and the behavioral support team. This strategy has been found to be very useful in other high value interrogations.

Finally, Agents from the FBI and CTIF who are most knowledgeable about this case should be used to develop an interrogation matrix that identifies the most critical objectives and leads. At this time, this plan reflects a behavioral approach that will facilitate the necessary relationship and rapport with this detainee needed before we can move onto substantive questioning.

001038

Drafted by FBI (BAU) personnel at Guantanamo Bay with on-site FBI operations supervisor and forwarded to Commanding General, Joint Task Force-170 on 11/22/2002.

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 10-06-2009 BY 65179 DMH/MJS

From: FBI, Guantanamo Bay
Subject: VTC 21 November 2002
To: Major General Miller

The purpose of this correspondence is to bring to the Commanding General's attention concerns the FBI has regarding representations that were made about the FBI's position on the proposed operational approach to ISN US9SA-00063DP (Maad Muhammad al-Khatani) at the 21 November VTC.

At the direction of the Commanding General and in an effort to find some methodological common ground with respect to an Interrogation Plan for detainee 63, the FBI On-site Supervisor and Supervisors from the FBI Behavioral Analysis Unit met with JTF GTMO staff members on the evening of 20 November. During this meeting, DHS presented its draft Interrogation Plan. The FBI voiced misgivings about the overall coercive nature and possible illegality of elements of this plan. The FBI also voiced its strong objections regarding the efficacy of a fear-based approach.

The FBI offered in writing an alternative interrogation approach based on long term rapport-building. This approach was previously discussed extensively between FBI Behavioral experts and DHS and JTF staff members. At the 20 November meeting, DHS and JTF staff members recognized advantages of the FBI's approach, and decided to revise their plan by incorporating some of the FBI's rapport-building aspects. Despite the close working environment of this consultation, JIG and DHS staff never advised FBI personnel that the revised plan would be presented the following day to the Pentagon Office of General Counsel. In fact, the FBI representatives stated clearly to the JIG and DHS representatives that the techniques proposed in the plan must be reviewed and formally approved by FBIHQ and BAU officials prior to any implementation.

Had the JIG advised the FBI of his intentions to present the revised DHS plan to DOD at the 21 November VTC as an FBI/DHS plan, FBI representatives would have strenuously objected. Additionally, although all agencies were aware that the NCIS [redacted] was scheduled to arrive on 21 November for the purpose of evaluating the DHS and FBI plans, the JIG did not solicit [redacted] professional opinion.

b6 -2
b7C -2

This matter is brought to the Commanding General's attention for the purpose of setting an important record straight. The FBI remains committed to supporting the JTF GTMO mission.

001043

Memo to: File
Memo From: SSA [REDACTED]
Subject: Requested attempts to re-establish rapport with detainee #682.

b6 -1
b7C -1

Although detainee #682 had been fairly cooperative in the past, he had completely shut down all communication with the interview team assigned to him since his interview by the CTC on 10/28/02. Detainee #682 is a Saudi Arabian born, 28 year old male who has spent considerable time in the United States as a student. He is well educated and articulate in the English language and is particularly proud of his ability to intellectualize and discuss Islamic issues. In an effort to re-establish rapport with this detainee, and at the request of the interview team, writer engaged in a series of non-investigative rapport building discussions with detainee #682 regarding Islam and its people. It is writer's intention to use this discussion to get the detainee talking again about non-threatening topics which should lead to themes which can be exploited by his interview team in the near future.

Writer met with detainee #682 on 11/02/02, 11/09/02, 11/11/02, 11/17/02 and 11/20/02, and was successful in developing rapport. Writer then transitioned detainee #682 back to the original interview team on 11/22/02. Attached is a summary of the results of these discussions.

001056

Islam is first introduced to children in the family by both parents if they are both present in the home. However, Muslims believe that children are born with the innate knowledge of Allah. Specifically, that there exists only one true "God" and that is Allah. This knowledge is found within the soul of every human being. This belief is supported by a passage in the Qur'an which states that Allah makes a covenant with his servants before they are born. Allah is seen as Just, so Muslims believe that if a person is never exposed to Islam they will not be judged badly but will be excused by Allah. Arab Muslims believe that Westerners have been exposed to Islam but choose to reject Allah's true teachings.

Muslims further believe that Jesus was a Prophet, whose mission was to return the Jewish people to "True Judaism." Mohammed too was a Prophet, whose mission was to return Christians to "True Christianity." They acknowledge that all Prophets come to us with miracles so that they can prove who they are. Moses, Jesus and Mohammed all had their miracles, which are divine interactions with the physical world. Mohammed's greatest miracle was the revelation of the Qur'an. The Qur'an was revealed to Mohammed directly from Allah. The words themselves are sacred. They set out the Sharia Law, which is a comprehensive set of rules governing Islamic living. Thus it is impossible to separate the Islamic faith from everyday life. Sharia Law does not separate right from wrong as much as it delineates Permissible Conduct (Halal) from Impermissible Conduct (Haram).

Sharia law is updated and explained via Fatwas which are specific rulings made by Islamic scholars through a process called Ijtihad. Sharia law is perpetual and infallible. Fatwas are time and circumstance dependant. They give clarification and perspective under circumstances at the time they are made. Some Fatwas are considered unnecessary, such as the Fatwa declaring cigarette smoking harmful and thus against Sharia law. One who follows the Fatwa of an Islamic Scholar who permits Haram and forbids Halal, has elevated that scholar to the position of God. This is strongly forbidden in the Islamic faith. Fatwas have been used at times by self-interested scholars for political reasons. (This is a good argument for not blindly following an Islamic Scholar who issues a Fatwa that is clearly wrong.)

Allah apparently changed his teaching on the consumption of alcohol over time, since Jesus drank wine and early followers of Mohammed did too. During Mohammed's lifetime, an absolute prohibition against alcohol was revealed in Sharia law. However, even this absolute is not absolute. For if you are stranded in the desert and have nothing to drink and come upon a jug of alcohol and there is nothing else to keep you alive, you may drink the alcohol to save your life and get yourself to safety. However, there are two restrictions: You must not desire the alcohol and you must only drink the minimum amount necessary to sustain your life. (This may be a useful analogy to employ when confronted with a detainee who refuses to answer questions that might hurt his brothers on religious grounds. eg.; You need to cooperate to help yourself. As long as you don't

001057

desire to hurt your friends and you tell us only the minimum necessary to get you back home to your family, it is the right thing to do.)

Muslims believe that all Jews and Christians are "Disbelievers." That is, they reject the teachings of the Prophet Mohammed and continue on a divergent path. From the Islamic perspective, Judaism is seen as promoting "an eye for an eye." Whereas Christianity is seen as promoting "turn the other cheek." Muslims believe in the tenet of "an eye for an eye, but it is better for you if you choose to forgive." Thus the Muslim has the choice to seek retribution in kind or to forgive the transgressor.

9/11 has caused a resurgence in the Islamic Faith in the Arab world. Arab Muslims consider the embassy bombings in Africa, the Cole bombing in Yemen and the 9/11 hijackings in the U.S., to be acts of reaction and self-defense and not acts of aggression or violence. They believe that the people of the United States feel "Injured" by these attacks. Liberal Islamic thinkers may believe these attacks were unjustified, but fundamentalists believe the attacks were akin to the U.S. Military dropping atomic bombs on Japan's civilian population during World War II. That is, they were necessary to stop the U.S. from killing Muslims. Arab Muslims believe that the U.S. and Israel are engaged in the killing of Muslims as a matter of policy and fact.

Immediately after 9/11, the Government scholars in Saudi Arabia spoke out against the acts of the hijackers as against Islam. This is because Islam preaches the protection of innocent women and children and non-combatants. However, shortly thereafter, other scholars said these acts were consistent with the Sharia. They based this decision in part on a 500 year old Fatwa which says if the enemy has taken Muslims captive and there is a threat from that enemy, then you can kill the enemy and all of the captives. Under the concept of *Wala*, Muslims are to love and protect all other Muslims. Muslims hate to see Muslims getting killed. On the contrary, *Bara* means that Muslims should not take disbelievers on as intimate friends, however, they must be just and fair to them.

Muslims further believe that the American public has a fundamental lack of understanding of its enemy. That is, they don't take into account that their enemy wants to die. Jihad fighters want to become martyrs. Also, since Usama Bin Laden (UBL) works from cells, he does not need Al-Qaida to wage his war against the U.S. So the recent victory over Al-Qaida and the Taliban in Afghanistan is a hollow victory.

It is obvious from UBL's actions that he wanted to reach the Muslim public. He met with the Mujahideen, he made video tapes and he was interviewed by the press all in an effort to win public approval. Many Saudi Arabians believe UBL was successful in this endeavor. The Saudi public is generally behind UBL. It is not only the extremists who cheer UBL on. He is well liked by middle of the road Muslims.

Saudi Arabia has the largest number of fundamentalist Muslims in the world, and 60% of its population is under the age of 22. It is very easy to manipulate youthful Muslims into fighting the jihad against the U.S. Although it is illegal in Saudi Arabia to

001058

call for a jihad against the U.S., one speech in a mosque could result in 2000 young people joining the jihad. Many of those who went to fight jihad were not fundamentalist Muslims.

Saudi Arabian Muslims believe that if the U.S. continues its military response against Muslims the suicide acts will continue and the situation will evolve into an Israeli/Palestinian conflict, but on a much larger scale. They fear that the U.S. will feel emboldened by the "victory" over the Taliban in Afghanistan in only two months and say we should have done this before. They believe that unlike the Russians who continue to throw soldier after soldier into the fray of a losing battle, the U.S. intelligently withdrew from Somalia and Lebanon. They are dissatisfied with the presence of U.S. troops in Saudi Arabia and blame the current economic problems they face on the presence of these troops. They believe that the U.S. should remove its troops from Saudi Arabia and Afghanistan, and not invade Iraq. In addition, they feel that the U.S. should at least make it appear that they are no longer backing Israel in its use of force against the Palestinians. This may be accomplished by using a Muslim middleman who knows the Religion and culture of Islam. This, they feel, will be the way to end the U.S./Al Qaeda conflict.

Muslims believe that Allah knows all, including the future. They speak about a book in which all things that happen in a man's life are written. They often speak of their fate being in Allah's hands. The Muslim word for fate is "Kadar." They use the word in situations of misfortune, for example when a child is struck by a car and killed. It is said that even the faithful have no control over these things. However, this concept does not wipe out man's free will. That is, man must still take responsibility for his own actions. He must do right instead of wrong and he must do the things necessary to insure cause and effect.

Some Muslim people also want to rationalize away their own negligence as fate. To illustrate this point they speak of a parable told by Mohammed himself in which he sees a man whose camel is wandering off into the desert. Mohammed asks the man if he had tied up the camel and the man replies that he doesn't have to worry about tying up his camel because it is in the hands of Allah. Mohammed replied, no you must first take care of your responsibilities by tying up your camel then you can put it in the hands of Allah. In other words Allah requires that you participate in life by using your God given skills and not simply sitting back and putting life in the hands of Allah. It is only after a Muslim exhausts all of his means, that he can legitimately leave it in the hands of Allah. (Therefore, detainees who invoke the Will of Allah, should be reminded of this parable and encouraged to do what Allah requires, i.e.; what is in their power to save themselves.)

Some of the detainees will invariably say they don't have any control over what happens to them. The concept of tawkul means their lives are in Allah's hands and they rely on Allah to take care of them. (These detainees should be reminded that the test Allah gives them in this life is very difficult and this interview/interrogation process is part of that test. They should participate in the process as Allah requires and take an active role in their lives. This is what their families would expect of them as well.)

001059

After the death of the Prophet Mohammed, the Islamic world was ruled by four successive Khalifas (Islamic leaders who ruled over all Muslims) without division. However, after the murder of the fourth Khalifa, Ali, there was a split among Muslims. They divided into the Sunnis, who remained faithful to the Sharia, and the Shiites, who began praying to Khalifa Ali, and went their separate ways. Some Shiites even worship Khalifa Ali.

Today Sunni Muslims outnumber Shiites and consider them a deviant sect. The Shiites instituted self-punishment rites to express the guilt they felt for failing to protect their fallen Khalifa, Ali. Ayatola Khomeini's followers are Shiites and are considered strict fundamentalists. Like most other Shiites, Khomeini's followers did not fight in the Jihad in Afghanistan.

Like the Hezbollah, most Muslims in Iran and Lebanon are Shiites. These people have never been a direct threat to the U. S. On the other hand, Al-Qaida is made up mainly of Sunnis, who are engaged in a jihad against the U. S.

There are many Qur'anic verses regarding martyrdom. These verses speak of the Heavenly incentives of martyrdom. These incentives are meant to push followers of Islam to resist the fear of death and die in the defense of their faith. Most of the Qur'anic verses calling people to jihad and martyrdom were revealed to Mohammed in the 8 years he spent in Medina. In contrast, most of the verses revealed to Mohammed in the prior 13 years he spent in Mecca were peaceful, calling people to worship one God and spreading ethics.

Mohammed led by example, fighting on the front lines of the first Islamic jihad and getting injured at times. However, his followers did their best to protect him from injury. Mohammed spent 13 years in Mecca, then 8 years in Medina where he established an Islamic army before returning to Mecca and going on to conquer most of the known world.

In 2000, a Saudi Arabian scholar issued a fatwa and a public statement that Palestinian suicide bombers are not acts of Martyrdom. They are simply acts of suicide, which are against Islam. This is believed to have been motivated by the Saudi government. This attempt to quell suicide bombings seems to have backfired because many Islamic Scholars around the world then made televised statements saying the suicide bombings are acts of Martyrdom as long as they are not done out of despair. After 9/11, people in Saudi Arabia were celebrating in the streets because they consider these great acts of Martyrdom.

The Qur'an has many verses which call believers to martyrdom and it apparently does not envision a time for peace. In fact it calls for Muslims to spread Islam until only one religion prevails, the one that praises the true God, Allah. Each believer has the choice to martyr himself or to find another way to fulfill his faith. At this point in time, however, almost all jihad movements are geared toward self-preservation and not toward spreading Islam.

001060

In Islam, Faith and Jihad cannot be separated, however, jihad can be a violent or a non-violent struggle. If a jihad should bring Muslims in conflict with Muslims, the Qur'an says they should try to reconcile. Both sides should exhaust every means in their power before putting the conflict in the hands of Allah. If the conflict is not resolved, the aggressor is seen as wrong and true believers are called to join the side of the oppressed.

001061

FEDERAL BUREAU OF INVESTIGATION

Precedence: PRIORITY

Date: 05/19/2004

To: All Divisions

Attn: ADIC
AD
DAD
SAC
CDC

From: General Counsel

Contact: [Redacted]

Approved By: Pistole John S
Caproni Valerie E VC

b2 -1
b6 -1
b7C -1

Drafted By: [Redacted]

Case ID #: (U) 66F-HQ-A1258990 86

Title: (U) Treatment of Prisoners and Detainees

Synopsis: (U) 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 of existing FBI policy that has consistently provided 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 reporting requirements for known or suspected abuse or mistreatment of detainees.

Details: (U) FBI personnel posted abroad come into contact with detainees in a variety of situations. Persons being detained or otherwise held in the custody of the United States 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.

Applicability: (U) FBI personnel and personnel under FBI supervision deployed in Iraq, Guantanamo Bay, Cuba, Afghanistan or any other foreign location where similar detention and interrogation issues arise are to follow FBI policies and guidelines for the treatment of detainees.

603413

To: All Field Offices From: General Counsel
Re: (U) 66F-EQ-A1258990, 05/19/2004

FBI Policy: (U) "It is the policy of the FBI that no attempt be made to obtain a statement by force, threats, or promises." FBI Legal Handbook for Special Agents, 7-2.1 (1997). A person's status determines the type and extent of due process rights accorded by the FBI, such as right to counsel or advisement of rights. Regardless of status, all persons interrogated or interviewed by FBI personnel must be treated in accordance with FBI policy at all times. It is the policy of the FBI that no interrogation of detainees, regardless of status, shall be conducted using methods which could be interpreted as inherently coercive, such as physical abuse or the threat of such abuse to the person being interrogated or to any third party, or imposing severe physical conditions. See, FBI Legal Handbook Section 7-2.2.

Joint Custody or Interrogation: (U) FBI personnel who participate in interrogations with non-FBI personnel or who participate in interrogations of persons detained jointly by FBI and non-FBI agencies or entities shall at all times comply with FBI policy for the treatment of persons detained. 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.

Reporting of Violations: (U) 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.

003412

To: All Field Offices From: General Counsel
Re: (U) 66F-HQ-A1258990, 05/19/2004

LEADS:

Set Lead 1 (INFO)

ALL RECEIVING OFFICES

(U) Distribute to all personnel.

Set Lead 2 (INFO)

COUNTERTERRORISM

AT WASHINGTON, DC

(U) To be distributed to all FBI personnel who are now, or in the future are, detailed to Iraq, Guantanamo Bay, Cuba, or Afghanistan or other foreign locations in which similar detention and interrogation issues may arise.

♦♦

003415