



Office of the Inspector General
United States Department of Justice

Statement of Glenn A. Fine
Inspector General, U.S. Department of Justice

before the

House Committee on Foreign Affairs
Subcommittee on International Organizations,
Human Rights, and Oversight

concerning

The Role of the FBI at Guantanamo Bay

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Mr. Chairman, Ranking Member Rohrabacher, and Members of the Subcommittee:

Thank you for inviting me to testify about the Office of the Inspector General's (OIG) recent report on the Federal Bureau of Investigation's (FBI) involvement in and observations of detainee interrogations in Guantanamo Bay, Afghanistan, and Iraq.

In line with the invitation from the Committee and the topic of this hearing, I will focus my testimony today on the FBI's involvement in and observations of detainee interrogations at the military's Guantanamo Bay facility. However, at the outset I think it is important to summarize the full scope of our investigation.

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

In general, the OIG's review covered the time period from 2001 to 2004. The OIG team investigating these issues developed and distributed a detailed survey to over 1,000 FBI employees who were deployed overseas to one of the military zones during these 4 years. Among other things, the OIG survey sought information regarding observations or knowledge of specifically listed interview or interrogation techniques and other types of detainee treatment, and whether the FBI employees had reported such incidents to their FBI supervisors or others.

The OIG team interviewed over 230 witnesses and reviewed more than 500,000 documents. We selected many of these witnesses on the basis of survey responses indicating that the respondent had information relevant to our review. Other witnesses were selected on the basis of their positions or responsibilities within the FBI or DOJ. In addition, our team made two trips to Guantanamo to tour the detention facilities, review documents, and interview witnesses, including five detainees. We also interviewed one released detainee by telephone.

Our review focused on the activities and observations of FBI employees in facilities under the control of the Department of Defense (DOD). With limited exceptions, we were not able to investigate the conduct or observations of FBI agents regarding detainees held at Central Intelligence Agency (CIA) facilities. During the course of our review we also learned that in January 2003 the CIA Inspector General had initiated a special review of the CIA terrorist detention and interrogation program. Therefore, our review focused mainly on the conduct and observations of the FBI employees related to detainee interviews in military facilities.

However, our investigation did examine the FBI's involvement with the CIA in the interrogation of a high-value detainee, Abu Zubaydah, at an overseas location shortly after his capture, and the subsequent deliberations within the FBI regarding the participation of FBI agents in joint interrogations with agencies that did not follow FBI interview policies. Our investigation also examined the dispute between the FBI and the Department of Defense regarding the treatment of another high value detainee, Muhammad Al-Qahtani, who was held at Guantanamo.

In addition, it is important to note that our investigation relied heavily on the testimony and observations of the FBI and DOJ witnesses. While we reviewed the findings from several prior reports prepared by the military that examined the issue of detainee treatment at Abu Ghraib and in the military zones, we did not attempt to make an ultimate determination regarding any alleged misconduct by non-FBI personnel or whether military or CIA interrogators violated their own agencies' policies. The OIG did not have access to all the outside agency witnesses, such as DOD or CIA personnel, and such a determination would also have exceeded the OIG's jurisdiction.

In general, when conducting this investigation we received good cooperation from the FBI as well as other intelligence agencies, particularly the DOD. However, as we noted in the report, we were denied access by the CIA to Abu Zubaydah, which we believe hindered our investigation.

In October 2006, when we completed a draft of this report, consistent with our normal practice we provided a copy of the report to the FBI, the DOJ, the DOD, and the CIA for a factual accuracy and classification and sensitivity review. We received timely responses from the FBI, DOJ, and the CIA on these reviews. However, the Department of Defense took many months to provide the results of its review. Eventually, however, we received the DOD's comments on classification, and we redacted from the public version of the report any information the agencies concluded was classified. We have provided the full versions of the report to Congress.

In the remainder of my testimony, I will summarize our major findings with respect to detainee interrogation practices at Guantanamo.

FBI and DOD Interrogation Policies

Our investigation determined that FBI deployments to Guantanamo peaked at approximately 30 employees at any one time between 2001 and the end of 2004, the period covered by the OIG review. In total, more than 500 FBI employees served at Guantanamo during this period.

We found that the FBI's consistent position regarding detainee interrogation techniques has been that the most effective way to obtain accurate information from a subject is to use rapport building. FBI policies prohibit the use of coercion, abuse, or threats in custodial interviews.

However, FBI agents in Guantanamo and other military zones were faced with interrogators from other agencies who used more aggressive interrogation techniques. The FBI ultimately decided that it would not participate in joint interrogations of detainees with other agencies in which techniques not allowed by the FBI were used.

Our investigation found that the vast majority of the FBI agents deployed in Guantanamo and the other military zones continued to adhere to FBI policies and separated themselves from other agencies' interrogators who were using non-FBI-approved techniques. In only a few instances did FBI agents use techniques that would not normally be permitted in the United States or participate in interrogations during which such techniques were used by others.

In our report, we discuss that when detainee interrogations began at Guantanamo in January 2002, military interrogation policies allowed the use of methods that, depending on the manner of their use, might not be permitted under FBI policies. In addition, the specific DOD-approved interrogation methods changed over time. In December 2002, the Secretary of Defense

explicitly approved several additional techniques for use on detainees at Guantanamo, including stress positions for a maximum of 4 hours, isolation, deprivation of light and auditory stimuli, hooding, 20-hour interrogations, removal of clothing, and exploiting a detainee's individual phobias (such as fear of dogs). Some of these techniques had already been used at Guantanamo by that time.

In January 2003, the Secretary of Defense rescinded his approval of these techniques, and in April 2003 promulgated revised guidance approving 24 techniques for use at Guantanamo, which included dietary manipulation, environmental manipulation, sleep adjustment, and isolation.

In September 2006, the U.S. Army issued Field Manual 2-22.3, which is applicable in all of the military zones and which places much greater emphasis on rapport-based interrogation techniques similar to those endorsed by the FBI. It also identifies several prohibited actions, including nudity, sexual acts or poses, beatings, water boarding, use of military dogs, and deprivation of food or water.

FBI policies prior to the September 11 terrorist attacks required FBI agents to report to FBI Headquarters any incidents of misconduct or improper performance by other FBI employees. However, the duty of FBI employees to report on the activities of non-FBI government employees was limited to criminal behavior by other personnel. We found that the FBI did not issue any policies prior to May 2004 imposing an obligation on FBI employees to report abuse or mistreatment of detainees by non-FBI government employees falling short of a crime. Our review concluded that the FBI was slow to provide guidance to its agents on several issues raised by the FBI's participation in detainee interrogations. We found the FBI did not provide sufficient guidance on how to respond when confronted with military interrogators who used harsh interrogation techniques that might be considered coercive or might violate DOD interrogation policies.

Interrogations of “High-Value Detainees”

Our investigation examined the evolution of FBI policies and guidance regarding its agents' involvement with detainee interrogations. In particular, the OIG report examined the interrogation of Abu Zubaydah, a “high-value detainee” held by the CIA. Zubaydah had been wounded when he was captured in the spring of 2002, and two FBI agents were assigned to assist the CIA in obtaining intelligence from him. The FBI agents conducted the initial interviews of Zubaydah, assisting in his care and developing rapport with him. However, when CIA interrogators arrived at the site they assumed control of the interrogation. The FBI agents observed the CIA use classified techniques that

undoubtedly would not be permitted under FBI interview policies. While the CIA has since acknowledged water boarding Zubaydah, we did not find evidence that the FBI agents witnessed this. However, at the time, one of the FBI agents expressed strong concerns about the techniques he did witness to senior officials in the FBI's Counterterrorism Division.

This agent's reports led to discussions at FBI Headquarters, with the DOJ, and with the CIA about the FBI's role in joint interrogations with other agencies. Ultimately, these discussions resulted in the determination by FBI Director Robert Mueller in approximately August 2002 that the FBI would not participate in joint interrogations of detainees with other agencies in which harsh or extreme techniques not allowed by the FBI would be employed.

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

The FBI agents saw military interrogators use increasingly harsh and demeaning techniques, such as menacing Al-Qahtani with a snarling dog during his interrogation. FBI agents also objected when the military announced a phased plan which included keeping Al-Qahtani awake during continuous 20-hour interviews every day for an indefinite period.

The friction between FBI officials and the military over the interrogation plans for Al-Qahtani increased, with the FBI advocating a long-term rapport-based strategy and the military insisting on a different, more aggressive approach. As a result of the interrogations of Al-Qahtani and other detainees at Guantanamo, several FBI agents raised concerns with DOD and FBI Headquarters. The concerns related to: (1) the legality and effectiveness of DOD techniques, (2) the impact of these techniques on the future prosecution of detainees in court or before military commissions, and (3) the potential problems that public exposure of these techniques would create for the FBI as an agency and FBI agents individually.

Despite the FBI's objections, the military proceeded with its interrogation plan for Al-Qahtani. According to several military reviews of detainee

treatment, as well as other military records, the techniques used on Al-Qahtani during this time period included:

- Tying a dog leash to the detainee's chain, walking him around the room, and leading him through a series of dog tricks
- Repeatedly pouring water on his head
- Stress positions
- 20-hour interrogations
- Stripping him naked in the presence of a female
- Holding him down while a female interrogator straddled the detainee without placing weight on him
- Women's underwear placed over his head and a bra placed over his clothing
- A female interrogator massaging his back and neck region over his clothing
- Describing his mother and sister to him as whores
- Showing him pictures of scantily clothed women
- Discussing his repressed homosexual tendencies in his presence
- A male interrogator dancing with him
- Telling him that people would tell other detainees that he got aroused when male guards searched him
- Forced physical training
- Instructing him to pray to an idol shrine

One of the DOD's later military reviews, the Schmidt-Furlow Report, concluded that many of these techniques were authorized under military policies in effect at the time. However, other techniques used on Al-Qahtani by the military during this time period were deemed by the Schmidt-Furlow Report to be "unauthorized" at the time they were employed. Although one FBI agent learned from a member of the military that Al-Qahtani was hospitalized during this time frame for hypothermia, we found no other evidence that FBI or DOJ employees were aware that the specific techniques described above were used on Al-Qahtani during this period or that they participated in these interrogation techniques.

We determined that some of the FBI agents' concerns regarding DOD interrogation techniques at Guantanamo were communicated by the FBI to senior officials in the DOJ Criminal Division and ultimately to the Attorney General. The DOJ senior officials we interviewed generally said they recalled that the primary concern expressed about the Guantanamo interrogations was that DOD techniques and interrogators were ineffective at developing actionable intelligence.

We were unable to determine definitively whether the concerns of the FBI and DOJ about DOD interrogation techniques were ever addressed by any of the federal government's inter-agency structures created for resolving disputes about antiterrorism issues. Several senior DOJ Criminal Division officials told us that they raised concerns about particular DOD detainee practices in 2003 with the National Security Council. Several witnesses also told us that they believed that Attorney General Ashcroft spoke with the National Security Council or the DOD about these concerns, but we could not confirm this because former Attorney General Ashcroft declined to be interviewed for this review.

However, we found no evidence that the FBI's concerns influenced DOD interrogation policies. Ultimately, the DOD made the decisions regarding what interrogation techniques would be used by military interrogators at Guantanamo, because Guantanamo was a DOD facility and the FBI was there in a support capacity.

During our review FBI witnesses almost uniformly told us that they strongly favored non-coercive rapport-based interview techniques to the harsher techniques being used on Al-Qahtani. However, we also found that one proposal was advanced by certain officials from the FBI and DOJ in late 2002 to subject Al-Qahtani to interrogation techniques of the sort that had previously been used by the CIA on Zubaydah and another detainee. We found a draft letter with this proposal that was prepared for the National Security Council. Two DOJ and FBI officials involved with this proposal told us that the rationale for this proposal was to bring more effective interrogation techniques to bear on Al-Qahtani than the ineffective interrogation techniques that the military had been using on him up to that time.

We determined that some officials in DOJ and the FBI were aware of the harsh techniques that had been used or approved for use by the CIA on Zubaydah. However, the particular DOJ and FBI officials involved in the proposal for Al-Qahtani told us that they did not learn what specific techniques had been used on Zubaydah until much later, and that they based their recommendation regarding the proposal for Al-Qahtani on the fact that such techniques had been effective at obtaining useful information from Zubaydah.

We determined that ultimately the DOD opposed the proposal and it was never implemented. However, we concluded that the proposal was inconsistent with the FBI Director's determination that the FBI would not be involved in harsh or coercive interrogations, and we believe that senior FBI officials would not have supported the proposal had it reached them. Moreover, we were troubled that FBI and DOJ officials would advocate for an interrogation plan without knowing what interrogation techniques the plan entailed.

FBI Observations Regarding Detainee Treatment at Guantanamo Bay

Our report also describes the results of our survey of FBI employees who served at Guantanamo. The survey sought information about whether FBI agents observed or heard about approximately 40 separate aggressive interrogation techniques, including such techniques as using water to create the sense of drowning (water boarding), using military dogs to frighten detainees, and mistreating the Koran.

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

The most commonly reported technique used by non-FBI interrogators on detainees at Guantanamo was sleep deprivation or disruption. "Sleep adjustment" was explicitly approved for use by the military at Guantanamo under the policy approved by the Secretary of Defense in April 2003. Numerous FBI agents told the OIG that they witnessed the military's use of a regimen known as the "frequent flyer program" to disrupt detainees' sleep in an effort to lessen their resistance to questioning and to undermine cell block relationships among detainees.

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

Prolonged short-shackling, in which a detainee's hands were shackled close to his feet to prevent him from standing or sitting comfortably, was another of the most frequently reported techniques observed by FBI agents at Guantanamo. This technique was sometimes used in conjunction with holding detainees in rooms where the temperature was very cold or very hot in order to break the detainees' resolve.

A DOD investigation, discussed in the Church Report, described the practice of short-shackling prisoners as a “stress position.” Stress positions were prohibited at Guantanamo under DOD policy beginning in January 2003. However, these FBI agents’ observations confirm that prolonged shortshackling continued at Guantanamo for at least a year after the revised DOD policy took effect.

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

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

We examined how the reports from FBI agents regarding detainee treatment at Guantanamo were handled by the FBI. In addition to the reports relating to Al-Qahtani described above, we found that early FBI concerns about detainee short-shackling were raised with the military command at Guantanamo in June 2002. However, FBI agents continued to observe the use of short-shackling as a military interrogation technique as late as February 2004.

Reports to FBI Headquarters about these techniques led to the instructions that FBI agents should stand clear of non-FBI techniques. As time passed, however, other reports from FBI agents to their On-Scene Commanders regarding military conduct were not elevated within the FBI chain of command because the On-Scene Commanders understood that the conduct in question was permitted under DOD policy.

FBI Training and Guidance to its Employees Regarding Detainee Interrogation Issues

We also examined the training that FBI agents received regarding issues of detainee interrogation and detainee abuse or mistreatment in connection with their deployments to the military zones. A large majority of agents who completed their deployments prior to the May 2004 – when the FBI issued written guidance on FBI agent’s conduct in detainee interrogations – reported

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

We examined the guidance that the FBI provided to its employees on detainee interrogations. We found that the FBI initially did not issue specific guidance to its agents about acceptable interrogation techniques when they were first deployed to conduct interrogations in the military zones. Most of the FBI's written policies regarding permissible interrogation techniques for its agents or for its agents' conduct in collaborative or foreign interviews were developed prior to the September 11 attacks. Although general FBI policies prohibited FBI agents from utilizing coercive interview techniques, no policy had ever been issued to address the question of what FBI agents should do if they witnessed non-FBI interrogators using coercive or abusive techniques.

Eventually, following the Abu Ghraib disclosures in April 2004, on May 19, 2004, the FBI issued an official policy stating that FBI personnel may not participate in any treatment or use any interrogation technique that violates FBI policies, regardless of whether the co-interrogators are in compliance with their own guidelines. The policy also stated that if an FBI employee knows or suspects that non-FBI personnel have abused or are abusing or mistreating a detainee, the FBI employee must report the incident to the FBI On-Scene Commander.

Almost immediately after the FBI's May 2004 policy was issued, several FBI employees raised concerns about it. Among other things, the FBI On-Scene Commander in Iraq told FBI Headquarters that the policy did not draw an adequate line between conduct that is "abusive" and techniques such as stress positions, sleep management, stripping, or loud music that, while seemingly harsh, may have been permissible under orders or policies applicable to non-FBI interrogators.

In late May 2004, the FBI General Counsel stated in an e-mail to the FBI Director that, in response to their questions, agents were instructed that the intent of the policy was for agents to report conduct that they knew or suspected was beyond the authorization of the person doing the harsh interrogation. Agents told us, however, that they often did not know what techniques were permitted under military policies.

In sum, we concluded that while the FBI provided some guidance to its agents about conduct in the military zones, FBI Headquarters did not provide

timely guidance or fully respond to repeated requests from its agents in the military zones for additional guidance regarding their participation in detainee interrogations.

Allegations of Misconduct by FBI Agents

We also investigated several specific allegations that particular FBI agents participated in abuse of detainees in connection with interrogations in the military zones. Some of these allegations were referred to us by the FBI, while others came to our attention during the course of our review. We describe in detail our findings regarding these allegations in Chapter 11 of the report.

In general, we did not substantiate these allegations. We found that the vast majority of FBI agents in the military zones understood that existing FBI policies prohibiting coercive interrogation tactics continued to apply in the military zones and that they should not engage in conduct overseas that would not be permitted under FBI policy in the United States. As noted above, the FBI decided in 2002 to continue to apply FBI interrogation policies to the detainees in the military zones. We found that most FBI agents adhered to the FBI's traditional interview strategies in the military zones and avoided participating in the interrogation techniques that the military employed.

Conclusion

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

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

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

However, in sum, while the FBI could have provided clearer guidance earlier and pressed harder its concerns about detainee abuse by other agencies, we believe it should be credited for generally avoiding participation in detainee abuse.

That concludes my testimony, and I would be pleased to answer any questions.