

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 12-07-2009 BY 65179 DMH/mjs

Caproni, Valerie E. (OGC) (FBI)

From: Caproni, Valerie E. (OGC) (FBI)
Sent: Tuesday, October 12, 2004 9:02 AM
To: [redacted] (OGC) (FBI)
Subject: RE: battlefield advice

b6
b7C

UNCLASSIFIED
NON-RECORD

Thanks.

-----Original Message-----
From: [redacted] (OGC) (FBI)
Sent: Tuesday, October 12, 2004 9:00 AM
To: Caproni, Valerie E. (OGC) (FBI)
Subject: RE: battlefield advice

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UNCLASSIFIED
NON-RECORD

Valerie, As per [redacted] is now working on these matters. I will call [redacted] and offer assistance if needed. I was out on Friday.

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b7C

-----Original Message-----
From: Caproni, Valerie E. (OGC) (FBI)
Sent: Friday, October 08, 2004 11:17 AM
To: [redacted] (OGC) (FBI)
Cc: [redacted] (OGC) (FBI); THOMAS, JULIE F. (OGC) (FBI)
Subject: battlefield advice

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UNCLASSIFIED
NON-RECORD

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[redacted]

[Large redacted area]

b5

See what you can come up with, pls.

FBI024121CBT

VC

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**OFFICE of INSPECTOR GENERAL'S
REVIEW of
DETAINEE ISSUES**

***FBI RESPONSE MATERIAL
DOJ'S OIG REQUEST of FEBRUARY 18, 2005***

ALL DOCUMENTS RELATED TO ANY LAW, REGULATION, RULE, POLICY, PROCEDURE, MANUAL, GUIDELINE, MEMORANDUM, ELECTRONIC COMMUNICATION, OR SIMILAR ITEM REGARDING FBI EMPLOYEES' RESPONSIBILITY TO REPORT VIOLATIONS OR POSSIBLE VIOLATIONS OF LAW OR POLICY, OR MISTREATMENT OR ABUSE OF DETAINEES, INCLUDING ANY COMMUNICATION OF SUCH RESPONSIBILITY TO FBI EMPLOYEES SERVING IN VENUES CONTROLLED BY THE U. S. MILITARY SINCE SEPTEMBER 12, 2001. PLEASE INCLUDE ALL DOCUMENTS RELATED TO THE ATTACHED ELECTRONIC COMMUNICATIONS DATED MAY 12, 2004, AND MAY 5, 2004, INCLUDING EARLIER DRAFTS, COMMENTS ON DRAFTS, OR RELATED DOCUMENTS.

FBI TRACKING # OIG-REQ 02-18-05 -PART 11
[PACKET #2- FBI BATE STAMP 0000007-0000030]
{PREVIOUSLY PRODUCED within OGC PACKETS}

"DESIGNATED SENSITIVE MATERIAL"

**DOJ'S OFFICE OF INSPECTOR GENERAL'S
COPY**

OIG'S REVIEW of FBI DETAINEE ISSUES PROJECT
DOJ'S OIG REQUEST of FEBRUARY 18, 2005

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FBI TRACKING # : OIG -REQ 02/18/05 -PART 11

PACKET: #2

{PREVIOUSLY PRODUCED under OGC PACKETS}

{JUNE 1, 2005}

DATE	TYPE of DOCUMENT	SUBJECT	TOTAL PAGES	BATE STAMP #s
05/12/04	OGC EC	HUMANE TREATMENT OF PRISONERS	4	007-010
05/12/04	OGC EC	TREATMENT OF PRISONERS AND DETAINEES	3	011-013
05/19/04	OGC EC	TREATMENT OF PRISONERS AND DETAINEES	3	014-016
05/26/04	CTD EC	TREATMENT OF PRISONERS AND DETAINEES	3	017-019
07/14/04	TESTIMONY	TESTIMONY OF VALERIE CAPRONI, GENERAL COUNSEL, FEDERAL BUREAU OF INVESTIGATION	6	020-025
08/25/04	NOTES	COPY OF HANDWRITTEN NOTES FROM GEBHARDT'S NOTEBOOK	1	026
12/15/04	OGC EC	TREATMENT OF PRISONERS AND DETAINEES	4	027-030
TOTAL PAGES			24	

(Rev. 01-31-2003)

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DATE 12-07-2009 BY 65179 DMH/mjs

FEDERAL BUREAU OF INVESTIGATION

FBI024138CBT

OIG-REQ 02/18/05-PART 11

FBI0000007

To: All Divisions From: General Counsel
Re: (U) 66F-HQ-A1258990, 05/12/2004

Precedence: PRIORITY

Date: 05/12/2004

To: All Divisions

Attn: ADIC

From: General Counsel

Contact:

b2
b6
b7C

Approved By: Pistole John S
Bald Gary M
Harrington T J
Caproni Valerie E

Drafted By:

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b7C

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

Title: (U) Humane Treatment of Prisoners

Synopsis: (U) To provide guidance to all FBI personnel regarding humane treatment of prisoners and reporting requirements for observed prisoner abuse or mistreatment of persons being interrogated or human rights violations. These guidelines supplement existing FBI policy that has consistently provided for humane treatment during FBI interrogations.

Details: (U) FBI personnel come into contact with prisoners in a variety of situations, domestically and internationally, for the purposes of investigation, or interrogation. Detained persons with whom the FBI comes into contact are entitled to varying levels of procedural rights dependent upon their situation or category of detention. However, each person detained is entitled, without question, to humane treatment.

Applicability: (U) All FBI personnel and personnel under FBI supervision are to follow FBI and DOJ rules, regulations, and guidelines for the treatment of prisoners, detainees or persons being interrogated or questioned. This shall apply both in domestic or overseas situations; it shall apply whether or not the person is in custody, and shall apply to all situations when the person being detained or questioned is in FBI custody or in the custody or control of other U.S. government entities,

FBI024139CBT

To: All Divisions From: General Counsel
Re: (U) 66F-HQ-A125()0, 05/12/2004

Department of Defense personnel, U.S. civilians or in the custody or control of foreign nationals.

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)

Humane Treatment: (U) Persons detained by the U.S. Government may be held under different classifications or status, for example, enemy prisoner of war (EPW) or illegal enemy combatant (EC). The type of status a person is accorded will determine the type and extent of due process rights accorded, such as right to counsel or advisement of rights. Regardless of status, all persons detained by FBI personnel, or interrogated or interviewed by FBI personnel will be treated humanely at all times. It is the policy of the FBI that all FBI detentions, interrogations or questioning of persons conducted domestically or overseas, regardless of the status of the person detained, shall comply with standards for humane treatment as set forth by the Geneva Convention III, August 12, 1949, and annexes.

Geneva Convention III (GIII). (U) GIII provides that all detained persons shall be treated humanely, and prohibits "outrage upon personal dignity, in particular, humiliating and degrading treatment." Article 3. The use of coercion or physical and mental torture to secure information of any kind is prohibited. Article 17. Additionally, persons who refuse to answer questions may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind. *Id.* Moreover, persons detained must also be provided with proper food, water, clothing, showers, sanitary conditions and medical attention during their detention. See *id.* at Articles 25-30.

Illegal Enemy Combatant: (U) Presidential Order, November 13, 2001 requires that ECs be treated humanely, afforded adequate food, drinking water, shelter, clothing, and medical treatment. The fact that ECs similar to the detainees held at Guantanamo Bay, Cuba may not enjoy certain procedural rights does not provide a basis for inhumane treatment. Persons detained as illegal enemy combatants shall be treated humanely at all times.

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 persons or entities shall at all times comply with FBI policy for the humane treatment of persons detained. FBI personnel shall not participate in any treatment or interrogation that is in violation of these guidelines regardless of the fact that the co-interrogator may be in compliance with their own guidelines.

Reporting of Violations: (U) Any known violation of these guidelines must be reported to FBI headquarters, Office of the General Counsel.

LEADS:

Set Lead 1

To: All Divisions From: General Counsel
Re: (U) 66F-HQ-A125() 0, 05/12/2004

COUNTERTERRORISM

AT WASHINGTON, DC

(U) To be distributed to all CTD personnel

Set Lead 2

OFFICE OF THE GENERAL COUNSEL

AT WASHINGTON, DC

(U) OGC shall provide training with regard to the within policies.

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FBI TRACKING # OIG-REQ 02-18-05 -PART 11

[PACKET #3- FBI BATE STAMP 0000031-0000095]

{NEW RESEARCH & GC V. CAPRONI MATERIAL}

"DESIGNATED SENSITIVE MATERIAL"

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OIG'S REVIEW of FBI DETAINEE ISSUES PROJECT

DOJ'S OIG REQUEST of FEBRUARY 18, 2005

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FBI TRACKING # : OIG -REQ 02/18/05 -PART 11

PACKET: #3

{NEW RESEARCH & GC V. CAPRONI MATERIAL}

{JUNE 1, 2005}

DATE	TYPE of DOCUMENT	SUBJECT	TOTAL PAGES	BATE STAMP #s
NO DATE	LETTER {DRAFT}	DIRECTOR MUELLER to SENATORS ?	4	031-034
NO DATE	RESPONSES	RESPONSE to A THROUGH G	3	035-037
NO DATE	GUIDELINES	PENALTY GUIDELINES	16	038-053
1/03/94	DIRECTOR AT	STANDARDS OF CONDUCT; DISCIPLINARY MATTERS	3	054-056
11/18/99	MANUAL SECTION {MAOP}	DISCIPLINARY MATTERS {SECTION 13-1 thru 13-9}	10	057-066
05/13/03	MANUAL SECTION {MIOG}	INVESTIGATIVE AUTHORITY AND RESPONSIBILITY {SECTION 1-1 thru 1-4}	26	067-092
JUNE 1994	HANDBOOK	LEGAL HANDBOOK FOR SPECIAL AGENTS-SECTION 7 "CONFESSIONS AND INTERROGATIONS}	3	093-095
TOTAL PAGES			65	

FEDERAL BUREAU OF INVESTIGATION
PENALTY GUIDELINES

The Penalty Guidelines are used in assessing the appropriate penalties for common types of misconduct. While the Guidelines do not specifically name every possible offense, they do provide the general categories of misconduct for which employees may be disciplined. The absence of a specific regulation covering an act does not mean that such an act is condoned, permissible, or would not result in disciplinary action. These Guidelines supercede all previously published tables, listings, and applicable policies regarding disciplinary offenses.

Purpose and Progressive Nature of Discipline: Disciplinary penalties are imposed to correct behavior and teach the employee and others that certain actions are inappropriate for an employee of the FBI. Discipline also serves to enforce the expected high standards of conduct for the Bureau. Although not specifically reflected in the Guidelines, discipline is usually progressive in nature and, therefore, subsequent misconduct is treated with increasing severity. However, while the concept of progressive discipline is appropriate for most types of infractions, some offenses (such as theft or lack of candor) are so egregious that a single instance is sufficient to warrant removal.

Factors Considered When Determining a Penalty: Many factors are considered in determining the penalty to impose, including the nature of the misconduct and its consequences, as well as the position and record of the employee. Of particular importance are the mitigating and/or aggravating factors in each case. Aggravating factors which apply to all offense categories include supervisory or high-grade status, prior disciplinary record, prior warning/advisement not to commit the misconduct, media attention or public awareness, repetitive misconduct in a single case, and failure to report. Mitigating factors common to all categories include self reporting, efforts to remedy the wrongdoing, acknowledgment of wrongdoing, limited employee experience, and a long period of unblemished service. At times, a consideration that is mitigating in one case may be aggravating in another. For example, limited employee experience may tend to ameliorate an employee's conduct in many instances, but may aggravate it in cases involving multiple instances of misconduct during a short tenure. In some cases, the aggravating and mitigating factors will warrant selecting a penalty at the upper or lower range, or even outside the range of penalties provided.

Other matters formally considered by OPR prior to disciplinary action being imposed in serious cases of misconduct (those involving a likely penalty of dismissal, demotion, or suspension of more than 14 days) are the "Douglas Factors." Not all of these factors are pertinent in every case. Selection of an appropriate penalty must thus involve a balancing of the *relevant* considerations. The "Douglas Factors" are:

1. The nature and seriousness of the offense, and its relation to the employee's duties, position and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
2. the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
3. the employee's past disciplinary record;
4. the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;

5. the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties;
6. consistency of the penalty with those imposed upon other employees for the same or similar offenses;
7. consistency of the penalty with any applicable agency table of penalties;
8. the notoriety of the offense or its impact upon the reputation of the agency;
9. the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
10. potential for the employee's rehabilitation;
11. mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment or bad faith, malice or provocation on the part of others involved in the matter; and
12. the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Explanation of the Penalty Guidelines

Offenses: The Penalty Guidelines are (like the Offense Table) arranged into five separate categories of offenses, which are *Investigative Misconduct*, *Integrity/Ethical Misconduct*, *Property Related Misconduct*, *Illegal/Criminal Conduct*, and *General Misconduct*. Within each category, the offenses are listed in alphabetical order.

Investigative Misconduct: Misconduct associated with the investigative process, to include misconduct involving assets, informants, and Cooperating Witnesses. Also includes investigative deficiencies, including the improper handling of documents and property; and misconduct during judicial proceedings.

Ethical/Integrity Misconduct: Includes falsification and lack of candor/lying. Also includes the misuse of position; failure to cooperate in, and obstruction of, an OPR inquiry; and the violation of ethics regulations and guidelines.

Property Related Misconduct: Offenses pertaining to the loss of government property, including thefts of property due to employee negligence in safeguarding the property; the damage, destruction, or improper disposal of government property; the misuse of government property, such as computers and motor vehicles; and the misuse of government credit cards. Also encompasses unauthorized access to government property, to include databases.

