• The removal of all comfort items (including religious items)
• Switching the detainee’s diet from hot meals to Meals, Ready-to-Eat (MRE) (American military field rations)
• Removal of clothing
• Forced grooming (shaving of facial hair, etc.)
• The use of a detainee’s individual phobias (such as fear of dogs) to induce stress
• The use of mild, non-injurious physical contact such as grabbing, poking in the chest with the finger, and light pushing.

Church Report at 4-5, 116-7.

On January 15, 2003, however, the Secretary of Defense rescinded his approval of all of the techniques he had approved in December 2002; except the first three (yelling, multiple interrogators, and false identity). Church Report at 5, 118-121. According to the Church Report, this decision was made in response to concerns raised by the General Counsel of the Department of the Navy and others. Id. at 120. The Secretary of Defense then obtained recommendations from a working group he established to assess interrogation techniques for use in the war on terror. On April 16, 2003, he promulgated guidance (the April 2003 GTMO Policy) approving 24 techniques for use at GTMO, most of which were taken from or closely resembled those in Field Manual 34-52. The April 2003 GTMO Policy also approved the following additional techniques:

• Mutt and Jeff – using a team consisting of a friendly and a harsh interrogator (i.e. “good cop/bad cop”).
• Change of Scenery Down – placing detainee in a less comfortable setting (not a substantial change in environmental quality).
• Dietary Manipulation – changing detainee’s diet (no deprivation of food or water).
• Environmental Manipulation – creating moderate discomfort such as by adjusting temperature or introducing unpleasant smell (avoid injury to detainee; detainee accompanied at all times).
• Sleep Adjustment – adjusting the sleeping times of the detainee (not “sleep deprivation”).
• False Flag – convincing detainee that the interrogator is from a country other than the U.S.
• Isolation – isolating the detainee from other detainees while complying with basic standard of treatment.

Church Report at 137-39.

The April 2003 GTMO Policy specified conditions for the use of these techniques, including the requirement that the techniques be used as part of a specific interrogation plan with appropriate supervision, limits on duration, and the availability of medical personnel. Church Report at 140. It also required an advance determination of military necessity from the SOUTHCOM Commander and notice to the Secretary of Defense for the use of techniques called Incentive/Removal of Incentive, Pride and Ego-Down, Mutt and Jeff, and Isolation. Id.

The April 2003 GTMO Policy continued in effect for GTMO until September 2006, when the U.S. Army issued Field Manual 2-22.3, discussed below in part E of this Section.

C. DOD Policies Relating to Afghanistan

According to the Church Report, from October 2001 until January 2003 the only official guidance regarding military detainee interrogation techniques in effect in Afghanistan was that contained in Field Manual 34-52, which is described above. Church Report at 186.

On January 24, 2003, an Assistant Staff Judge Advocate sent a memorandum to CENTCOM that described the interrogation techniques being used in Afghanistan and recommended that that these techniques be approved as official policy. The memorandum listed many techniques similar to those approved under the December 2002 GTMO Policy. The memorandum divided the techniques into “battlefield” techniques and techniques being used at the Bagram Collection Point. The listed techniques included:

**Battlefield Techniques**

- [Redacted]
In addition, the January 2003 memorandum requested approval for several additional battlefield techniques:

According to the *Church Report*, neither CENTCOM nor the Joint Staff responded to the January 2003 memorandum, and the Combined Joint Task Force legal staff concluded that the techniques then in use were unobjectionable to military superiors and could be considered an approved policy for Afghanistan. *Church Report* at 201.
In February 2003, after a military investigation into two detainee deaths at the Bagram Collection Point in December 2002, [Redacted] issued several changes to approved interrogation tactics:

Church Report at 203-04.

In March 2004, the military issued a new policy for Afghanistan interrogations (the “March 2004 Afghanistan Policy”), which was based on the prior Afghanistan policies and the April 2003 GTMO Policy. The March 2004 Afghanistan Policy added dietary manipulation, environmental manipulation, and “false flag” to the list of approved techniques, and relaxed the prior prohibitions on using “safety positions” as an incentive for cooperation. Church Report at 205-09.

In June 2004, in the aftermath of the Abu Ghraib disclosures, the military in Afghanistan adopted the same policy that was issued for Iraq on May 13, 2004 (discussed in the next section). Church Report at 209-11.

D. DOD Policies Relating to Iraq

For the first few months of the war in Iraq, beginning in March 2003, military interrogators were governed by Field Manual 34-52, described in Section B above. Lieutenant General Ricardo Sanchez issued the first CJTF-7 Interrogation and Counter-Resistance Policy on September 14, 2003, describing 29 specific permissible interrogation techniques (the “September 2003 Iraq Policy”). Church Report at 257, 263-264.
Church Report at 265.

The September 2003 Iraq Policy also required that military interrogators obtain approval from the Commander of CJTF-7 for the use of certain techniques on enemy prisoners of war. Church Report at 265.

On October 12, 2003, the Commander of CJTF-7 issued a revised Interrogation and Counter-Resistance Policy (the “October 2003 Iraq Policy”). Church Report at 268. This policy superseded the September 2003 Iraq Policy and removed 12 of the techniques that had been approved in it, including “Sleep Adjustment,” “Sleep Management,” “Presence of Military Working Dogs,” and “Stress Positions.” Nevertheless, the October 2003 Iraq Policy included a “General Safeguard” that “should military working dogs be present during interrogations, they will be muzzled and under the control of the handler at all times . . .” Church Report at 257, 267-269. Like its predecessor, the October 2003 Iraq Policy required Commander approval for techniques not specifically listed. The policy was limited in application to interrogations of “security detainees,” thereby excluding enemy prisoners of war and criminal detainees. According to the Church Report, however, the policy contained no specific guidance to assist soldiers in making the practical determination as to how standards of treatment varied for each category of detainee. Church Report at 268.

On May 13, 2004, CJTF-7 adopted a new Interrogation and Counter Resistance Policy for Iraq, which was issued in the wake of the Abu Ghraib abuse revelations. The list of approved techniques did not change from the October 2003 Iraq Policy, but the revision further specified that “under no circumstances” would requests for the use of “sleep management, stress positions, change of scenery, diet manipulation, environment manipulation, or sensory deprivation . . . be approved.” Church Report at 270. In January 2005, the military adopted an interrogation policy for Iraq which, according to the Church Report, approved only those techniques listed in Field Manual 34-52 and which provided additional safeguards, prohibitions, and clarifications. It added explicit prohibitions against the removal of clothing and the use or presence of military working dogs during interrogations. Id. at 271.
E. Recent Changes to DOD Policy

In September 2006, the U.S. Army issued Field Manual 2-22.3 regarding Human Intelligence Collector Operations. This manual responded to the mandate of the Detainee Treatment Act, which was enacted in December 2005, for a uniform standard for treatment of detainees under DOD custody. *Id.* at 5-74. Field Manual 2-22.3 reiterated and elaborated on many of the techniques listed in its predecessor, Field Manual 34-52, but placed much greater emphasis on rapport-based interrogation techniques similar to those endorsed by the FBI. It also identified several prohibited actions, including:

- Nudity, or sexual acts or poses
- Hooding or duct-tape over the detainee's eyes
- Beatings, shock, burns, or other pain
- Waterboarding
- Using military working dogs in interrogations
- Inducing hypothermia or heat injury
- Mock executions
- Deprivation of food, water, or medical care

*Id.* at 5-75. Field Manual 2-22.3 also placed detailed controls on the use of the technique of "separation," which is the isolation of detainees from other detainees. *Id.* at 8-71.

However, Field Manual 2-22.3 was not in effect during any part of the period that was the focus of the OIG's review.

III. Reasons for the Differences Between the FBI and Military Approaches to Interviews

Several witnesses explained the reasons for the differences between the interview philosophies of the FBI and the military, which resulted in the dramatically different interview policies adopted by each organization during the period of this review and eventually led to a dispute between the FBI and the DOD over the interrogation of a high value detainee.

FBI witnesses and documents described the rationale for the non-coercive rapport-based techniques traditionally used by the FBI in combination with purposeful and incremental manipulation of a detainee's environment and perceptions. As explained by FBI agents and described in FBI documents, these techniques are designed to obtain reliable cooperation
on a long-term basis, even from individuals who have been repeatedly interviewed and may have become cynical of any offers of early release or special consideration. FBI agents told us that the FBI’s approach, coupled with a strong substantive knowledge of al Qaeda, had produced extensive useful information in pre-September 11 terrorism investigations and were also successful in the post-September 11 context. Many FBI witnesses also stated that they believed that FBI agents had skills and expertise that would enable them to make a significant contribution to the government’s overseas intelligence gathering mission.

FBI agents and documents indicated that the FBI understood that the more aggressive or coercive techniques used by military intelligence were originally designed for short-term use in a combat environment with recently captured individuals, where the immediate retrieval of tactical intelligence is critical for force protection. Some military techniques were based on methods used in military training known as SERE (Survival, Evasion, Resistance, and Escape), which prepares U.S. soldiers and airmen on methods to resist interrogation. For example, a former FBI Section Chief in CTD asserted that the military’s view was: “You have your way and we have our way. You have the luxury of time; we have force protection and need info fast.”

Department of Justice officials also told the OIG that they agreed with the FBI’s viewpoint regarding the best approach to take with the detainees. For example, David Nahmias, Counsel to the Assistant Attorney General for the Criminal Division, stated that this view, which was “shared strongly by those of us in the Criminal Division and . . . in the Department generally,” was that the FBI’s approach to detainees had been very successful with terrorism subjects in criminal cases. This approach, according to Nahmias, is to establish a rapport, treat the people with respect, and try to make them into long-term strategic sources of information “in the way we flip bad guys all the time.” Nahmias told the OIG the he understood that the military’s aggressive approach was rooted in military intelligence training designed to obtain time-sensitive battlefield information, but that these techniques do not work in the long run. Similarly, David Ayres, Chief of Staff to Attorney General Ashcroft, told the OIG that DOJ’s view was that long-term cooperation leads to better cooperation and leads to better protection of the country. 

DOJ witnesses told us that from the outset, there was an operating viewpoint dictated at a very high level that this was a military situation and

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40 Several witnesses told us that the dispute over the best approach was exacerbated by the fact that the DOD interrogators were often inexperienced and not particularly well trained about al-Qaeda.
the military approach should prevail, in part because the military controlled the detainees and locations. As detailed in Chapter Five, this dispute came to a head during the interrogation of a particular high value detainee at GTMO.
CHAPTER FOUR
THE EARLY DEVELOPMENT OF FBI POLICIES REGARDING
DETAINEE INTERVIEWS AND INTERROGATIONS

In this chapter we describe the early development of the FBI’s policies governing the conduct of its agents who participated in interviews or interrogations in foreign military zones. This process began in 2002, when FBI Director Mueller decided that the FBI would not participate in interrogations involving aggressive techniques that were approved for other agencies in military zones. The issue came to a head when the FBI sought to participate in the interrogation of a high value detainee, Abu Zubaydah, who was under the control of the CIA.

I. The Interrogation of Abu Zubaydah

The first major incident involving the use of aggressive interrogation techniques on a detainee that was reported to senior executives at FBI Headquarters was the case of a detainee known as Abu Zubaydah. Zubaydah was suspected of being a principal al Qaeda operational commander. In late March 2002, he was captured in Faisalabad, Pakistan. There was a gunfight during the arrest operation and Zubaydah was severely wounded. He was then taken to a secret CIA facility for medical treatment and interrogation.

Initially, the FBI and the CIA planned a joint effort to obtain intelligence from Zubaydah regarding potential future terrorist attacks. The FBI selected SSAs Gibson and Thomas to travel to the CIA facility to interview Zubaydah.\textsuperscript{41} Gibson and Thomas were selected for the assignment because they were familiar with al-Qaeda and the Zubaydah investigation, were skilled interviewers, and spoke Arabic.

A. FBI Agents Interview Zubaydah and Report to FBI Headquarters on CIA Techniques

Gibson and Thomas were instructed by their FBI supervisor, Charles Frahm (Acting Deputy Assistant Director for the section that later became the Counterterrorism Division), that the CIA was in charge of the Zubaydah matter and that the FBI agents were there to provide assistance. Frahm told the agents that Zubaydah was not to be given any \textit{Miranda} warnings. Frahm told the OIG that he instructed Thomas and Gibson to leave the

\textsuperscript{41} Thomas and Gibson are pseudonyms.
facility and call Headquarters if the CIA began using techniques that gave the agents discomfort.

Gibson said that he and Thomas initially took the lead in interviewing Zubaydah at the CIA facility because the CIA interrogators were not at the scene when Zubaydah arrived. Gibson said he used relationship-building techniques with Zubaydah and succeeded in getting Zubaydah to admit his identity. When Zubaydah’s medical condition became grave, he was taken to a hospital and Gibson assisted in giving him care, even to the point of cleaning him up after bowel movements. Gibson told us he continued interviewing Zubaydah in the hospital, and Zubaydah identified a photograph of Khalid Sheik Muhammad as “Muktar,” the mastermind of the September 11 attacks.

Within a few days, CIA personnel assumed control over the interviews, although they asked Gibson and Thomas to observe and assist. Gibson told the OIG that the CIA interrogators said Zubaydah was only providing “throw-away information” and that they needed to diminish his capacity to resist.

Thomas described for the OIG the techniques that he saw the CIA interrogators use on Zubaydah after they took control of the interrogation. Thomas said he raised objections to these techniques to the CIA and told the CIA it was “borderline torture.” He stated that Zubaydah was responding to the FBI’s rapport-based approach before the CIA assumed control over the interrogation, but became uncooperative after being subjected to the CIA’s techniques.

During his interview with the OIG, Gibson did not express as much concern about the techniques used by the CIA as Thomas did. Gibson stated, however, that during the period he was working with the CIA.
that the CIA personnel assured him that the procedures being used on Zubaydah had been approved “at the highest levels” and that Gibson would not get in any trouble.

Thomas communicated his concerns about the CIA’s methods to FBI Counterterrorism Assistant Director Pasquale D’Amuro by telephone. D’Amuro and Thomas told the OIG that D’Amuro ultimately gave the instruction that Thomas and Gibson should come home and not participate in the CIA interrogation. However, Gibson and Thomas provided the OIG differing accounts of the circumstances of their departure from the CIA facility where Zubaydah was being interrogated. Thomas stated that D’Amuro instructed the agents to leave the facility immediately and that he complied.

However, Gibson said he was not immediately ordered to leave the facility. Gibson said that he remained at the CIA facility until some time in early June 2002, several weeks after Thomas left, and that he continued to work with the CIA and participate in interviewing Zubaydah. Gibson stated that he kept Frahm informed of his activities with the CIA by means of several telephone calls, which Frahm confirmed. Gibson stated the final decision regarding whether the FBI would continue to participate in the Zubaydah interrogations was not made until after Gibson returned to the United States for a meeting about Zubaydah.

Gibson stated that after he returned to the United States he told D’Amuro that he did not have a “moral objection” to being present for the CIA techniques because the CIA was acting professionally and Gibson himself had undergone comparable harsh interrogation techniques as part of U.S. Army Survival, Evasion, Resistance, and Escape (SERE) training. Gibson said that after a meeting with the CIA, D’Amuro told him that he would not be returning to the Zubaydah interview.

B. FBI Assistant Director D’Amuro Meets with DOJ Officials Regarding the Zubaydah Interrogation

D’Amuro said he discussed the Zubaydah matter with Director Mueller and later met with Michael Chertoff (then the Assistant Attorney General for the Criminal Division), Alice Fisher (at the time the Deputy Assistant Attorney General for the Criminal Division), and possibly David Kelley (who was then the First Assistant U.S. Attorney for the Southern
District of New York), in Chertoff’s office in the Justice Department.
D’Amuro said his purpose was to discuss how the FBI could “add value” by
participating in the interviews of “highvalue detainees” because the FBI
already knew the subjects so well. D’Amuro told the OIG that during the
meeting he learned that the CIA had obtained a legal opinion from DOJ that
certain techniques could legally be used, including ____. D’Amuro stated that Chertoff and Fisher
made it clear that the CIA had requested the legal opinion from Attorney
General Ashcroft.

Based on DOJ and CIA documents, we believe that the meeting that
D’Amuro described took place in approximately late July or August 2002.
DOJ documents indicated that the CIA requested an opinion from the DOJ
Office of Legal Counsel (OLC) regarding the proposed use of

Fisher told the OIG that it is possible that she attended a meeting in
Chertoff’s office with Kelley, D’Amuro, and Chertoff, which concerned who
would take the lead (FBI versus another agency) on the interviews of a high
value detainee. However, she said she had no specific recollection of such a
meeting. Fisher also stated that she did not recall discussing with the FBI
specific techniques for use with detainees. Fisher said she vaguely
remembered a meeting with then FBI General Counsel Kenneth Wainstein
in which they discussed the FBI not being present at CIA interrogations,
and she stated that the meeting would have related to interrogation tactics,
but she said she did not recall any specific techniques being discussed.43
Wainstein, who joined the FBI in July 2002, told us he recalled a number of
discussions relating to the issue of FBI participation in CIA interrogations,

43 Fisher stated that at some point she became aware that the CIA requested advice
regarding specific interrogation techniques, and that OLC had conducted a legal analysis.
She also said she was aware of two OLC memoranda on that topic, but they did not relate
to the FBI. Fisher also told the OIG that Chertoff was very clear that the Criminal Division
was not giving advice on which interrogation techniques were permissible and was not
“signing off” in advance on any techniques.
but he did not recall this issue arising in connection with a particular detainee.

Kelley told the OIG that he had numerous conversations with Fisher, Nahmias, and other DOJ attorneys about topics relating to the September 11 investigation, but that he could not recall any specific meetings or conversations regarding the interrogation methods to be used on high value detainees. Kelley stated that D'Amuro was present during one or more of these discussions.

Chertoff told us that he could not recall specific conversations about Zubaydah, but that he did generally recall discussions about whether the FBI could preserve the admissibility of detainee statements by interviewing detainees some period after other agencies had completed their interrogations using non-FBI techniques. Chertoff also told us that he did not think this approach would successfully prevent the statement from being “tainted” by any prior enhanced interview techniques.

C. D'Amuro Meets with the FBI Director, Who Decides that the FBI Will Not Participate

D'Amuro told the OIG that after his meeting at Chertoff’s office he met with Director Mueller and recommended that the FBI not get involved in interviews in which aggressive interrogation techniques were being used. He stated that his exact words to Mueller were “we don’t do that,” and that someday the FBI would be called to testify and he wanted to be able to say that the FBI did not participate in this type of activity. D'Amuro said that the Director agreed with his recommendation that the FBI should not participate in interviews in which these techniques were used. Based on D'Amuro’s description of events and the dates of contemporaneous documents relating to the CIA’s request for a legal opinion from the OLC, we believe that D'Amuro’s meeting with Mueller took place in approximately August 2002. This time frame is also consistent with Gibson’s recollection that the final decision regarding whether the FBI would participate in the Zubaydah interrogations occurred some time after Gibson left the location where Zubaydah was being held and returned to the United States in June 2002.

D'Amuro gave several reasons to the OIG for his recommendation that the FBI refrain from participating in the use of these techniques. First, he said he felt that these techniques were not as effective for developing accurate information as the FBI’s rapport-based approach, which he stated had previously been used successfully to get cooperation from al-Qaeda members. He explained that the FBI did not believe these techniques would provide the intelligence it needed and the FBI’s proven techniques would. He said the individuals being interrogated came from parts of the world
where much worse interview techniques were used, and they expected the United States to use these harsh techniques. As a result, D'Amuro did not think the techniques would be effective in obtaining accurate information. He said what the detainees did not expect was to be treated as human beings. He said the FBI had successfully obtained information through cooperation without the use of "aggressive" techniques. D'Amuro said that when the interrogator knows the subject matter, vets the information, and catches an interviewee when he lies, the interrogator can eventually get him to tell the truth. In contrast, if "aggressive" techniques are used long enough, detainees will start saying things they think the interrogator wants to hear just to get them to stop.

Second, D'Amuro told the OIG that the use of the aggressive techniques failed to take into account an "end game." D'Amuro stated that even a military tribunal would require some standard for admissibility of evidence. Obtaining information by way of "aggressive" techniques would not only jeopardize the government's ability to use the information against the detainees, but also might have a negative impact on the agents' ability to testify in future proceedings. D'Amuro also stated that using the techniques complicated the FBI's ability to develop sources.

Third, D'Amuro stated that in addition to being ineffective and shortsighted, using these techniques was wrong and helped al-Qaeda in spreading negative views of the United States. In contrast, D'Amuro noted, the East Africa bombing trials were public for all the world to see. He said they were conducted legally and above board and the world saw that the defendants killed not only Americans but also innocent Muslims. D'Amuro said he took some criticism from FBI agents who wanted to participate in interviews involving "aggressive" techniques, but he felt strongly that they should not participate, and the Director agreed.

Andrew Arena, the Section Chief of the FBI's International Terrorism Operations Section 1 (ITOS-1), confirmed that D'Amuro argued against the use of aggressive procedures. Arena told the OIG that he attended a meeting involving Mueller, D'Amuro, and other FBI employees in 2002 regarding the FBI's participation in aggressive interrogation techniques. Arena stated that the issue arose when FBI agents became aware that another government agency was using specific techniques on high value detainees. Arena stated that there were discussions within the FBI regarding "should we also go down that track?" Arena told the OIG that during the meeting D'Amuro predicted that the FBI would have to testify before Congress some day and that the FBI should be able to say that it did not participate. Arena said he was present when Director Mueller stated
that the FBI was not going to get involved with other agencies in using these techniques at any location.\footnote{Arena stated that FBI Deputy Director Bruce Gebhardt also attended this meeting. Gebhardt told us he did not recall specific discussions regarding the use of non-FBI interview methods but stated that neither he nor the Director would have ever allowed agents to use such techniques.}

We interviewed Director Mueller, who recalled that the FBI wanted to interrogate someone held by the CIA because the FBI's agents were knowledgeable about the detainee from prior investigations. Director Mueller told us he did not know what techniques the CIA would be using but that he understood they would go beyond techniques that FBI agents were authorized to use. He stated that he and D'Amuro discussed the fact that the FBI could not control the interrogation, and they decided that the FBI would not participate under these circumstances. Director Mueller told the OIG that although his decision initially did not contemplate other detainee interrogations, it was carried forward as a bright-line rule when the issue arose again.

Director Mueller's former Chief of Staff, Daniel Levin, told the OIG that in the context of the Zubaydah interrogation, he attended a meeting at the National Security Council (NSC) at which CIA techniques were discussed. Levin stated that a DOJ Office of Legal Counsel (OLC) attorney gave advice at the meeting about the legality of CIA interrogation techniques. Levin stated that in connection with this meeting, or immediately after it, FBI Director Mueller decided that FBI agents would not participate in interrogations involving techniques the FBI did not normally use in the United States, even though OLC had determined such techniques were legal. Levin stated he agreed with this decision because FBI agents were not trained to use such techniques, using such techniques might create problems for FBI agents who needed to testify in court, and other agencies were available to do it.

D'Amuro also described another meeting after the Zubaydah incident among himself, Director Mueller, a CIA agent, and CIA Director George Tenet. D'Amuro said that during this meeting, an effort was made to find a solution that would permit the FBI to interview detainees in CIA custody. D'Amuro proposed that the FBI be permitted to interview the detainees first, before the CIA would use its "special techniques." D'Amuro said that the FBI recognized that it would have a "taint problem" if the FBI conducted its interviews after the CIA had used the more aggressive techniques. However, no agreement was reached with the CIA at that time. Director Mueller told us that he did not specifically recall such a meeting, but that such a
discussion may have happened in connection with some lower-level detainees.

II. Subsequent Decisions Regarding FBI Involvement with High Value Detainees

The issue of whether the FBI would participate in interviews in which other agencies used non-FBI interrogation techniques arose again repeatedly, as new high value detainees were captured. For example, D'Amuro said that the FBI wanted to participate in the interrogations of these detainees because its agents had been investigating them for a long time and had a lot of knowledge and experience that would be useful in gaining information from the detainees. Each time, however, the result was the same: the FBI decided that it would not participate.

We determined that the issue arose again in late 2002 and early 2003, in connection with efforts to gain access to Ramzi Binalshibh. Binalshibh was captured in September 2002. According to the Assistant Chief for the FBI’s Counterterrorism Operational Response Section (CTORS), he and several agents, including Thomas, traveled to a CIA-controlled facility to conduct a joint interview of Binalshibh with the CIA.

According to the notes of FBI General Counsel Valerie Caproni, Deputy Assistant Director T.J. Harrington told her that the FBI agents who went to the CIA site saw Binalshibh during the interview. The matter indicates that a “bright line rule” against FBI participation in or assistance to interrogations in which other investigators used non-FBI techniques was not fully established or followed as of September 2002. FBI agents assisted others to question during a period when he was being subjected to interrogation techniques that the FBI agents would not be allowed to use. According to former FBI General
Counsel Wainstein, the FBI ultimately decided that its agents could not interview detainees without a “clean break” from other agencies’ use of non-FBI techniques. Wainstein told us he thought this conclusion was reached in 2003.

As discussed in subsequent chapters of this report, the FBI continued to wrestle with interpreting the mandate not to “participate” in interrogations involving non-FBI techniques, particularly with respect to the circumstances under which FBI agents wanted to interview detainees who had previously been subjected to coercive interrogations by other agencies. The disagreements between the FBI and the military focused in particular on the treatment of another high value detainee, Muhammad Ma’ana Al-Qahtani, which we describe in the next chapter.
CHAPTER FIVE
FBI CONCERNS ABOUT MILITARY INTERROGATION AT GUANTANAMO BAY

In this chapter we describe the response of the FBI and DOJ to the military’s interrogation of Muhammad Ma’ana Al-Qahtani at GTMO in 2002 and 2003. Al-Qahtani is a Saudi Arabian national who was allegedly sent to the United States to be one of the September 11, 2001, hijackers. The Al-Qahtani interrogation became the focus of a major disagreement between FBI agents and the military regarding interrogation techniques. As detailed below, FBI agents at GTMO became concerned that the DOD’s approach was ineffective and possibly illegal, that they would complicate or preclude any effort to prosecute Al-Qahtani, and that the agents’ exposure to these techniques would create problems for the agents and the FBI in the future. We determined that some of these concerns reached senior officials at the FBI and DOJ. However, these officials focused primarily on the issue of whether the DOD’s techniques were effective at obtaining intelligence from Al-Qahtani and other detainees. Ultimately, the military prevailed in the inter agency dispute resolution process and the military’s methods were pursued over DOJ’s objections. We also determined that at one point officials from the FBI and DOJ participated in developing a proposal to for interrogation using techniques of the sort that had been used on Abu Zubaydah and . This proposal was never finalized or acted upon.

In this chapter we also describe how the FBI handled reports regarding the alleged mistreatment of another high value detainee, Mohamedou Ould Slahi (#760). Some of the FBI agents’ concerns about treatment of this detainee were communicated to senior officials at DOJ.

I. Background on Al-Qahtani

Al-Qahtani was captured by Pakistani forces on December 15, 2001, while trying to enter Pakistan from Afghanistan. He was turned over to U.S. custody, and on February 13, 2002, was transferred to GTMO. When Camp Delta was set up at GTMO in April 2002, Al-Qahtani was moved there along with the rest of the detainee population, as described in more detail in Chapter Two.

45 Church Report at 115. Al-Qahtani has also been known as: Mohammed Ma’ana Ahmed Al-Qatani, Muhammad Mani’ Ahmed Al-Shal-ian Al-Qahtani, and Mohammad Al-Kahtani.
Records provided to the OIG indicate that Al-Qahtani was interviewed by the FBI and the DOD four or five times between February and June of 2002. In these interviews, he provided basic biographical information and a "cover story" that he had traveled to Afghanistan to buy and sell falcons. One military interrogator described him as "obtuse and confrontational" and another noted that he "refuses to give any traceable detail for any part of his story." During this time the military and the FBI did not suspect that Al-Qahtani was directly linked to the September 11 plot.

II. Discovery of Al-Qahtani's Links to September 11

During the investigation after the September 11 plot, the Immigration and Naturalization Service (INS) determined that a person who fit the pattern of some of the September 11 hijackers had been denied entry at the Orlando, Florida, airport as he attempted to enter the United States in August 2001. In July 2002, the FBI identified Al-Qahtani from fingerprint records as the person who had been turned away by the INS. The FBI also determined that hijacker Mohammed Atta's calling card was used at a pay phone in the Orlando airport to call a September 11 financier at precisely the time Al-Qahtani was being detained by the INS.

On July 15, 2002, FBI Headquarters provided this information to FBI agents in GTMO, who in turn provided it to the military. The MLDU Unit Chief told us the information about Al-Qahtani’s connection to September 11 was briefed to Attorney General Ashcroft and President Bush.

The MLDU Unit Chief told the OIG that after Al-Qahtani’s link to the September 11 attacks was discovered, he learned from David Nahmias, Counsel to the Assistant Attorney General for the Criminal Division, that someone had made a determination that “not one single [detainee] will see the inside of a courtroom in the United States.” The Unit Chief stated that Nahmias told him that after information about the potential intelligence

46 Al-Qahtani was denied entry to the United States by a U.S. Customs and Border Protection officer who was suspicious because Al-Qahtani spoke no English and when questioned by Customs officials became defensive and evasive in his responses. In addition, Al-Qahtani had no return ticket, no credit cards, and less than $3,000 in cash. Al-Qahtani was “excluded” from the U.S. and put on a return flight to the United Kingdom and eventually back to his original departure city of Dubai. Before Al-Qahtani was excluded from the U.S., he was photographed and electronically fingerprinted by an INS Inspector who entered this data into an INS database.

47 The link between Al-Qahtani and the September 11 attacks was confirmed after Khalid Shaikh Mohammed, who has been described as the mastermind of the September 11 attacks, was captured on March 1, 2003, and started providing intelligence. Khalid Shaikh Mohammed was transferred from CIA custody to the U.S. military base at Guantanamo Bay in 2006.
value of Al-Qahtani had been briefed to the White House and possibly the National Security Council, the answer came back that there was no interest in prosecuting Al-Qahtani in a U.S. court at that time.

Nahmias told the OIG he could not specifically recall telling the FBI Unit Chief that a decision had been made that Al-Qahtani would not be prosecuted in an Article III court, but he noted that, at that time, DOJ was in the midst of difficulties in the Zacarias Moussaoui case and DOJ thought that the military commissions would be an effective way to handle these detainees. Nahmias added that he did not think he advocated for Al-Qahtani to be brought to the United States to be tried. He said that it would have been difficult to prosecute Al-Qahtani in the United States because the decision had been made much earlier not to give Miranda warnings to detainees, which would have precluded the admissibility of any detainee statements in an Article III court.

Bruce Swartz, Deputy Attorney General for the Criminal Division, told the OIG that he consistently took the position that detainees should be tried in Article III courts, but that he was not aware of how Al-Qahtani had been interrogated until publication of a TIME magazine article about it in June 2005. Swartz said he understood that the Criminal Division initially thought there was a possibility of prosecuting Al-Qahtani in an Article III court for his role in the September 11 attacks, and that Nahmias argued in favor of that, but Swartz later heard Nahmias make comments to the effect that “we won’t be able to use him [in an Article III proceeding].”

Former Assistant Attorney General Michael Chertoff told the OIG that there was discussion of bringing Al-Qahtani to the United States to be tried in an Article III court. He said the ultimate decision on that question would not have been made by the Attorney General alone. According to Chertoff, it would have been decided at a higher level. As a general matter, he said those kinds of issues would be resolved at the National Security Council (NSC) level, though he said that he does not have any specific recollection of discussion of this issue at the NSC.

Former Deputy Assistant Attorney General Alice Fisher, FBI Director Robert Mueller, and Deputy Attorney General Larry Thompson all said they could not recall any specific discussion as to whether Al-Qahtani would be prosecuted in an Article III court. Former Attorney General Ashcroft declined to be interviewed by the OIG for this review.
III. FBI Interviews of Al-Qahtani: August 2002

Special Agent Demeter was the case agent for GTMO from February 2002 until April 2003. Demeter told the OIG that once the FBI learned of the connection between Al-Qahtani and the September 11 attacks, the FBI sought to take the lead in interviewing him. The FBI’s argument for seeking the lead was that the FBI had discovered and initially investigated the connection between Al-Qahtani and the September 11 attacks, and the FBI was leading the investigation into the attacks. Demeter said the person in charge of the DOD’s Criminal Investigative Task Force (CITF) gave the FBI access to Al-Qahtani.

After learning in mid-July 2002 of Al-Qahtani’s connection to the September 11 attacks, the military moved Al-Qahtani to a cell in Camp Delta. Over the course of the next week, Al-Qahtani was interviewed daily by FBI and military personnel. He first denied ever traveling to the United States, but when confronted with evidence of his trip to Florida he claimed he came to the United States to sell used cars. He continued to maintain the same cover story in subsequent interviews. On July 27, he was transferred to the Maximum Security Facility at Camp Delta to minimize influence and social support from other detainees.

Demeter told the OIG that, at this point, he requested that FBI Special Agent Thomas interview Al-Qahtani, because Thomas was in Demeter’s view the FBI’s “strongest interviewer.” According to one of the first FBI On-Scene Commanders (OSC) at GTMO, Thomas had already obtained confessions from several detainees at GTMO and Major General Dunlavey, the Commander of Joint Task Force 170, called him “a national treasure.”

After his initial interviews of Al-Qahtani, Thomas recommended that Al-Qahtani be moved to a more remote location at GTMO so that he would not get social support from the other detainees in resisting the interviewers’ questions. Demeter said that sending someone to isolation is not normally employed by law enforcement agencies because of concerns about the voluntariness of any subsequent statements. However, Demeter stated that isolation can be a very effective technique, and that in this instance the government’s interest in getting the information outweighed any potential concerns of voluntariness. Demeter said the FBI agents reported the recommendation up their chain of command, through the MLDU Unit Chief,

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48 Demeter is a pseudonym.

49 Thomas is a pseudonym. Thomas was one of the agents who also interviewed Zubaydah, as described in Chapters Four and Eleven.
and that he obtained the necessary approvals from senior officials above the Unit Chief. Demeter told us that the military had to approve the transfer because the military controlled GTMO.

On August 8, 2002, Al-Qahtani was transported via military ambulance from his cell in Camp Delta to the Navy Brig in GTMO. Thomas continued to interview Al-Qahtani after he was moved to the Brig. Demeter said that Thomas urged the guards at the Brig to refrain from speaking with Al-Qahtani to increase his isolation. He stated that the guards covered their faces or ordered Al-Qahtani to face away when they were present to further isolate Al-Qahtani from human contact.

The OIG interviewed Al-Qahtani at GTMO on February 27, 2007. Al-Qahtani told the OIG that the Brig was “the worst place I was taken to.” He said he did not know when to pray because the window was covered up and he could not tell what time of day it was. In addition, he said that he did not know the direction of Mecca. Al-Qahtani told the OIG that the entire time he was at the Brig the guards covered their faces when they dealt with him. He also said he was not allowed any recreation, and while he was allowed into the hallway outside his cell, he never saw the sun. Al-Qahtani said the lights in his cell were left on continuously for the entire time he was there, which he said was half a year. Al-Qahtani also described the Brig as very, very cold. He said he sometimes had a mattress, but if the interrogators did not like his answers, they would take things like that away.

Al-Qahtani described an FBI agent who spoke Arabic. This was Thomas. Al-Qahtani said Thomas had “some sense of humanity.” According to Al-Qahtani, Thomas never used aggression or physical violence on him. According to Al-Qahtani, Thomas said things such as “you will find yourself in a difficult situation if you don’t talk to me” and “if you’re not going to talk now, you will talk in the future.” When asked if he took this as a “warning or a threat,” Al-Qahtani replied that it was “a little bit of both.”

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50 As described in Chapter Two, the Navy Brig is located on the grounds of the U.S. Naval base at GTMO, separate from the detainee camps. Before Al-Qahtani was moved to the Navy Brig, the FBI set up a closed-circuit television so that the FBI could monitor him.

51 We note that severe isolation of the type used on Al-Qahtani for interrogation purposes rather than as a disciplinary or security measure would likely be considered to be coercive and contrary to FBI policies for custodial interviews in the United States. The same may be true of the actual or implied threats that Thomas made, as described later in this chapter. However, these incidents took place very close to the time concerns about the Zubaydah interrogation were being raised within the FBI, as described in Chapter Four. It is clear that the Director’s instruction had not yet been communicated to Thomas or those in his chain of command that approved Al-Qahtani’s isolation.
Al-Qahtani told the OIG that he had been removed from his cell by force, prior to being taken to the Brig. He said the day after the move to the Brig, Thomas came and sat next to him and said something like “this is your place until you change your story.” Al-Qahtani said he did not recall meeting with anyone from the FBI at the Brig other than Thomas and one civilian who took his picture and fingerprints. However, FBI records and witnesses indicate that Al-Qahtani was interviewed by several different FBI agents during the period when he was confined in the Brig, including Thomas, Demeter and members of the FBI’s Behavioral Analysis Unit.

As additional intelligence entities learned about the connection between Al-Qahtani and the September 11 attacks, interest in the information he might provide increased. Demeter said that within 2 weeks of confirmation of Al-Qahtani’s role, the military decided they “wanted a piece of Al-Qahtani” but the FBI had “beat them to the punch” and was taking the lead on the interviews. According to Demeter, the military began pressing the FBI for results. Demeter said that Thomas’s view at this point was that the FBI’s interview approach would take a long time to work, given Al-Qahtani’s mindset.

After the FBI had been interviewing Al-Qahtani at the Brig for approximately 30 days, Demeter said, the military told the FBI to “step aside” and took over. According to Demeter, the military’s decision to pursue a more aggressive approach was the “beginning of a real schism” between the FBI and the military regarding detainee interrogation techniques.

IV. FBI Supervisory Special Agents Foy and Lyle Observe Military Interrogations of Al-Qahtani: Early October 2002

After the military determined that it would take the lead on the Al-Qahtani interrogations, a military intelligence “special projects” team put together a proposed interrogation plan. During this time, the FBI continued to attempt to influence his interrogation. From September 13, 2002, until October 29, 2002, FBI SSAs Foy and Lyle from the Behavioral Analysis Unit (BAU) were deployed to GTMO to provide behavioral analysis of detainees to help develop interview strategies. On September 30, 2002, Foy e-mailed his superiors at the BAU about the latest military intelligence plan for Al-Qahtani, which included moving him from the Brig to Camp Delta for a short stay to see if he would cooperate, followed by transferring him to Camp X-Ray for an indefinite period of 20-hour interviews. Foy’s e-mail stated that when he asked for guidance from the MLDU Unit Chief, the Unit

52 Lyle and Foy are pseudonyms.
Chief told him that as long as there was no “torture” involved, he could participate in the interrogations. The Unit Chief told the OIG that he did not recall this exchange, but that it could have occurred.

The next day Foy e-mailed the MLDU Unit Chief that he and Lyle would only “observe” the Camp Delta portion and the first 6 hours at Camp X-Ray. In addition, Foy recommended that if FBI Headquarters were to send FBI employees to GTMO to question Al-Qahtani, the FBI interviewers should wait at least a week after military intelligence had completed their interrogation.

On October 3, 2002, Foy and Lyle observed the Al-Qahtani interrogations. After interviewing Qahtani for a few hours at Camp Delta – where he continued to refuse to cooperate – the military moved him to a plywood hut in Camp X-Ray. Al-Qahtani was interrogated by another military interrogation team from October 3 until the early morning hours of October 4. Lyle said Al-Qahtani was “aggressively” interrogated and that the military interrogators yelled and screamed at him. Foy told the OIG that the plan was to “keep him up until he broke.” Foy said he did not know if that ultimately is what happened, because he and Lyle stopped observing the process. Foy stated in an e-mail to The FBI Unit Chief and the OSC at GTMO the next morning that an FBI approach to Al-Qahtani the following week would not be worthwhile “due to the current mental/physical status of the detainee.”

Foy and Lyle returned to Camp X-Ray in the late afternoon of October 4 to continue their observations. Lyle told the OIG that one of the interrogators, a Marine Captain, had been interrogating Al-Qahtani by yelling at him and calling him names. Lyle stated that the Captain got up on the table in the room to yell at Al-Qahtani in a more intimidating fashion, at which point he squatted over a Koran that had been provided to Al-Qahtani. This action incensed Al-Qahtani, who lunged toward the Captain and the Koran. Al-Qahtani was quickly subdued by the military guards in the room. Foy gave a similar account of this incident. He stated that he and Lyle heard a commotion coming from the interview room where the Marine Captain and another military interrogator were interviewing Al-Qahtani. Foy said that it appeared that the Captain and the other interrogator were playing “good cop, bad cop.”

53 Foy told the OIG that the technique being used was sleep deprivation, not sleep disruption, because the military interrogators were keeping him awake rather than letting him fall asleep and then waking him up. Foy said they used bright lights and music to keep him awake.

54 Foy and Lyle gave consistent accounts of this incident to the FBI Inspection Division in September 2004. Foy stated that the Koran incident took place on October 4, (Cont’d.)
Lyle and Foy also described an incident the next day in which a guard received a signal to bring a working dog into the interrogation room where Al-Qahtani was being interrogated. Lyle said that the use of dogs as an interrogation tool was exclusively the military’s idea, based on their belief that Arabs feared dogs because they viewed dogs as unclean. Lyle said that the guard handling the dog first agitated the dog outside the interrogation room, and then brought the dog into the room close to Al-Qahtani. Lyle said that the dog barked, growled, and snarled at Al-Qahtani in very close proximity to him, but was never allowed to have contact with him. Foy gave a similar account of the incident, and told the OIG that he and Lyle were not comfortable with the situation with the dog so they left the interrogation.

On October 8, 2002, Foy e-mailed the GTMO On-Scene Commander and the MLDU Unit Chief to describe other “techniques” used on Al-Qahtani, including sleep deprivation, loud music, bright lights, and “body placement discomfort.” Foy reported that the technique had “negative” results and that Al-Qahtani remained “as fervent as ever” in not cooperating. Foy stated in the e-mail that Al-Qahtani was “down to 100 pounds” and that military intelligence personnel planned to initiate another phase in the interrogation in the coming weekend.

Although “aggressive” techniques had already been used on Al-Qahtani, it was not until October 11, 2002, that Major General Dunlavey, the Commander of Joint Task Force 170, requested that the Commander of SOUTHCOM approve 19 counter-resistance techniques that were not specifically listed in Field Manual 34-52. Schmidt-Furlow Report at 5. Those counter-resistance techniques were listed in three categories. Category I

2002. Also, the Schmidt-Furlow Report described an incident in December 2002 similar to the incident described by Lyle and Foy, in which an interrogator “squatted down in front of [Al-Qahtani] in an aggressive manner and unintentionally squatted over the detainee’s Koran.”

Lyle and Foy provided consistent accounts of this incident to FBI Inspection Division interviewers in September 2004. The Schmidt-Furlow Report also found that a military working dog was used in connection with the interrogation of Al-Qahtani on one or two occasions in October to November 2002.

Al-Qahtani told the OIG that during one interrogation at Camp X-Ray, a dog with a soldier was in the room with him. He said the soldier did not order the dog to attack Al-Qahtani. Rather, he said the dog was used as a tool to intimidate him during interrogation. Al-Qahtani said that the dog tried to bite him but it was restrained by its handler. Al-Qahtani added that the dog was walked around the interrogation room and the handler let the dog get very close to him and it was barking and growling the whole time.

In commenting on a draft of this report, the DOD stated that Foy’s comment regarding Al-Qahtani’s weight was irrelevant because it did not provide his beginning weight. However, the OIG did not receive information about Al-Qahtani’s initial weight.
included strategies such as yelling and deception. Category II included stress positions (maximum of 4 hours), deprivation of light, removal of clothing, and using individual phobias (such as fear of dogs) to induce stress. Category III included “use of scenarios designed to convince the detainee that death or severely painful consequences are imminent for him and/or his family” and “use of a wet towel and dripping water to induce the misperception of suffocation.” Church Report at 111. Along with the list of techniques, Dunlavey provided SOUTHCOM two memoranda he received from the Staff Judge Advocate stating that the proposed strategies “do not violate applicable federal law.”

V. The FBI’s MLDU Unit Chief and DOJ Counsel Nahmias Visit GTMO: October 15 to 18, 2002

Friction between the FBI and the military intelligence entities over the best way to handle the Al-Qahtani interrogations increased during October and November 2002. During that time, the FBI’s MLDU Unit Chief and Counsel to the Assistant Attorney General for the Criminal Division David Nahmias traveled together to GTMO for a visit during October 15 to 18, 2002.

According to Nahmias, at some point prior to his trip to GTMO, the DOD claimed to have “broken” Al-Qahtani and gotten him to cooperate. Nahmias told the OIG that he learned that Al-Qahtani had been interrogated for many hours and blurted out the name Mohammed Atta, which the DOD interrogators considered a breakthrough. The reaction of the FBI’s Behavioral Science people, according to Nahmias, was that Al-Qahtani was just giving the interrogators what they wanted so that they would let him eat or go to the bathroom.

Nahmias stated that when he was at GTMO, Al-Qahtani was being held in isolation and the interrogators were getting no information whatsoever from him. Nahmias stated that the DOD was using “aggressive” techniques and there was a “heated debate” with the FBI and CITF on one side and military intelligence on the other about what to do with Al-

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58 Schmidt-Furlow Report, Exhibit 14. According to the Church Report, on October 25, 2002, the SOUTHCOM Commander, General Hill, sought Secretary of Defense approval for the use of “additional techniques beyond those specifically listed in PM 34-52.” In the SOUTHCOM Commander’s request, he stated that he believed the Category I and II techniques are “legal and humane,” but that he was unsure regarding Category III. As noted below, Secretary Rumsfeld gave formal approval for some of the techniques on December 2, 2002.
Qahtani. Nahmias said the FBI wanted to talk to Al-Qaeda during this period but the DOD refused.

The MLDU Unit Chief told the OIG that during this visit to GTMO he participated in a video-teleconference discussing Al-Qaeda's interrogation plan. The other participants in the teleconference included Nahmias, Major General Geoffrey Miller (the new Commander of JTF-GTMO), the Lieutenant Colonel who was in charge of the GTMO interrogations at that time, the Chief CITF Psychologist, and a representative of the CIA. The Unit Chief stated that DOD personnel at the Pentagon were also on the call. During the teleconference, the Unit Chief said, the Lieutenant Colonel presented the DOD's plan to use aggressive interrogation techniques. According to the FBI Unit Chief, the Lieutenant Colonel gave an explanation of all the information the DOD had obtained from Al-Qaeda using aggressive interrogation practices. At that point the FBI Unit Chief said he spoke up and said "look, everything you've gotten thus far is what the FBI gave you on Al-Qaeda from its paper investigation." The Unit Chief said the conversation became heated. According to the Unit Chief, the Chief CITF Psychologist and Nahmias agreed that the information the Lieutenant Colonel presented had been provided by the FBI and that the Lieutenant Colonel's suggested interrogation methods were not effective and were not providing positive intelligence. The Unit Chief stated that the meeting ended because of the controversy. The Unit Chief said he did not believe the legality of the DOD techniques was discussed during the teleconference.

Although he did not describe the specific conference call mentioned above, Nahmias told the OIG that plans for the Al-Qaeda interrogation were discussed at meetings which included the FBI, the military at GTMO, military officials at the Pentagon, and others. He told the OIG that it was the general view of the FBI, DOJ and CITF that the proposed plan would not work and that the military were "completely ineffective in getting any kind of intelligence out of [Al-Qaeda]."

VI. **FBI Continues Objecting to the Al-Qaeda Interrogation Plans: November 2002**

From late October to mid-December 2002, a new set of FBI BAU agents, SSA Brett and SSA McMahon, were stationed at GTMO. During

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59 As noted in Chapter Two, CITF conducts interrogations in order to gather evidence for the military commission process and possible war crimes prosecutions. The law enforcement groups that make up the CITF are the Naval Criminal Investigative Service (NCIS), the Army Criminal Investigation Command (CID) and the Air Force Office of Special Investigations (OSI).
this period, the FBI and CITF continued to object to the approach military intelligence officials sought to take with Al-Qahtani.

On November 12, 2002, General Hill orally approved the use of Category I and II techniques on Al-Qahtani. The next day, he approved an interrogation plan for Al-Qahtani against the FBI’s objections. The plan described 20-hour interrogation sessions, followed by 4-hour rest periods. It stated that Al-Qahtani had been “segregated with minimal human contact” for several months, and that this appeared to be having an effect on his mental state. The plan stated that “iit is believed that with an intense interrogation cycle where he is not allowed to speak and is then suddenly allowed to speak, he may tell all.” The plan called for Al-Qahtani’s head and beard to be shaved, “for psychological and hygiene purposes.” In addition, the plan stated that if he was uncooperative, he would be placed in stress positions and blindfolded. The plan further stated that the blinding and the presence of dogs had been approved by the Commanding General.

Another portion of the plan called for telling Al-Qahtani about how the “rules have changed” since September 11. The plan contained a description of four different “phases” for the interrogation, which would begin on November 15, 2002. If a phase was unsuccessful within the time allotted, then the interrogation would move to the next phase. The phases were described in the military’s interrogation plan as follows:

- Phase I: the military would permit the FBI access to Al-Qahtani until November 22. The FBI would present him with a “window of opportunity” to cooperate, and the FBI would explain that this was his “last chance” before he was returned to the military. After that, interrogators would increase the pressure on Al-Qahtani while preventing him from speaking for one week, so that when he was presented with the opportunity to talk, he would “provide his whole story.”

- Phase II: the military would place a government translator with Al-Qahtani. The translator would act and be treated as like a detainee, and he would engage Al-Qahtani in conversation and ask targeted specific questions to extract the sought-after information.

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60 Brett and McMahon are pseudonyms.

61 We reviewed several versions of the Al-Qahtani interrogation plan and we have been unable to determine which one was actually approved. The elements described above appear in all versions, however, including the version attached as an exhibit to the Schmidt-Furlow Report.
• Phase III: The plan referred to "Level III techniques." (This appears to be a reference to the techniques listed in the October 11, 2002, memorandum in which Major General Dunlavey requested that the Commander of SOUTHCOM approve 19 counter-resistance techniques that were not specifically listed in Field Manual 34-52). SERE and other counter interrogation resistance training techniques would be employed.\(^{62}\)

• Phase IV: Al-Qahtani would be sent "off Island" either temporarily or permanently to "either Jordan, Egypt or another third country to allow those countries to employ interrogation techniques that will enable them to obtain the requisite information." FBI agents McMahon and Brett examined the military intelligence interrogation plan and concluded that it was deeply flawed. For example, in connection with the strategy of preventing Al-Qahtani from speaking for a week in the hope that he would then "tell all," the agents noted that they were aware of no such recognized interrogation technique. In a report to FBI Headquarters, they stated: "It is our information that this interrogation technique was recommended by . . . an ARMY Linguist, who claims to have a number of years of 'Agency' experience. Other than the word of this linguist there has been no data proffered which justifies the use of this technique." With respect to Phase IV, the agents stated simply, "Unless this plan is modified to exclude aspects that have not been approved for FBI personnel, we cannot be a signatory on this plan."\(^{63}\)

The CITF officials at GTMO raised similar objections to the military intelligence plan. A memorandum from the CITF legal advisor to the Commander of JTF-GTMO, dated November 15, 2002, stated that CITF had raised "formal legal objections" to the plan, and asserted that the SOUTHCOM Command's approval could not be considered authoritative given that the matter was "currently under legal review" by the DOD General Counsel's Office. With respect to Phase IV, this memorandum stated that the plan "implies that third country nationals . . . could be used

\(^{62}\) As noted in Chapter Three, SERE (Survival, Evasion, Resistance, and Escape) is a training program which prepares U.S. soldiers and airmen on methods to resist interrogation. SERE techniques include dietary manipulation, use of nudity, sleep deprivation, and waterboarding.

\(^{63}\) However, as detailed in Section VII of this chapter, some FBI and DOJ officials did advocate **** during this period. As detailed in footnote 71, there were significant differences between this proposal and the military's plan.
to convey threats to person or family or inflict harm” contrary to the Convention Against Torture.

Similarly, in a November 14, 2002, e-mail from the Commander of CITF to Major General Miller, the Commander expressed his strong objections to the use of Category III and some Category II techniques and stated his opinion that they would be largely ineffective, would have “serious negative material and legal effects” on the investigation, and that the use of such techniques could “open any military members up for potential criminal charges.” The Commander also stated that the DOD General Counsel’s office has “instructed DOJ that any plan with #63 will be a DOD plan, since DOD [law enforcement] and Intell have the lead.” The Commander then proposed the creation of a “joint working group” through which CITF, JTF-GTMO, FBI and CIA would all participate in the development of a detailed interrogation plan for Al-Qaeda.

Brett and McMahon also attended an “interrogation strategy session” in mid-November at which military intelligence officials discussed aspects of the interview of Al-Qaeda in great detail, including the “questionable” techniques which were of concern to Brett and McMahon. According to the FBI, Brett and McMahon had concerns not only about the proposed techniques, but also about the “glee” with which the would-be participants discussed their respective roles in carrying out these techniques and the “utter lack of sophistication” and “circus-like atmosphere” within this interrogation strategy session.

An FBI/CITF plan prepared in consultation with Brett and McMahon, in contrast, emphasized a long-term rapport-building interrogation approach. Under this plan, Al-Qaeda would have contact with only one interviewer. The plan proposed “periodic stressors” such as removing comfort items, with the expectation that Al-Qaeda would look to the

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64 FBI e-mails also discussed a “hybrid” plan that apparently combined elements of the military intelligence’s plan with elements of the FBI/CITF plan, and was created to fulfill a request by General Miller for the FBI and military intelligence to “determine if there is any middle ground” between their two approaches. McMahon opposed the idea of blessing the hybrid plan, because, according to the OSC, it essentially contained “rapport building” for 5-7 days (in “phase I”), then reverted to the military intelligence plan for “phase II.” Brett suggested that the FBI give its “blessing” to the hybrid plan because it was the “lesser of two evils.” Brett thought that military intelligence would likely immediately institute their original plan for Al-Qaeda if the FBI did not give its “blessing” to the hybrid plan. Brett hoped that instituting the hybrid plan would put off the harsh treatment of Al-Qaeda for at least a week during which time the FBI and CITF could work toward changing the future plans for this detainee. Both Brett and McMahon adamantly objected to the remaining phases of the hybrid plan after phase I. The OIG was not able to obtain a copy of the hybrid plan.
interviewer for help, thereby increasing the interviewer's status. The FBI also recommended the introduction of "visual stimuli" designed to invoke sympathy and weaken his sense of loyalty to al-Qaeda associates.

Major General Miller met with Brett, McMahon, Demeter, and the FBI OSC to discuss the plans for interrogating Al-Qahtani. McMahon told the OIG that although Miller acknowledged positive aspects of the rapport-based approach, Miller favored military intelligence's interrogation methods. According to McMahon, the FBI's arguments against the coercive techniques were met with "considerable skepticism and resistance by senior [military intelligence] officials in GTMO."

According to Demeter, Major General Miller wanted to take a much more aggressive approach with Al-Qahtani than advocated by the FBI. Demeter said that Miller used military phrases such as "relentless" and "sustained attack" to describe the military's proposed approach. Demeter told the OIG that he argued with Miller that by using proven law enforcement interview tactics such as rationalizing the conduct along with the subject, joining the subject in projecting blame for the conduct on others, or minimizing the severity of the conduct with the subject, the barriers to confession are reduced and cooperation becomes more likely. Demeter told the OIG that these tactics may sound "touchy-feely" or "counterintuitive," but they had been very successful with hard core criminals in the past. Demeter said he explained to Miller that, when dealing with a person who believes that his suffering will be rewarded by God, causing more suffering is not effective in the long term. Demeter said he told Miller that the aggressive approach would simply create an additional obstacle, because the interrogator would still have to get the subject to confess to something that may not be in his best interest, and the interrogator would also have to overcome the detainee's personal animosity. Despite Demeter's arguments, however, the military decided that its aggressive approach had a greater chance of success, and DOD interrogators began using harsher techniques on Al-Qahtani.

In mid-November, 2002, FBI agents at GTMO continued their efforts to influence the military's Al-Qahtani interrogation plan, without success. On November 20, at Miller's instruction, the FBI met with JTF-GTMO staff in an effort to find some "common ground." Military intelligence presented its plan and the FBI objected based on concerns regarding efficacy, coercion, and possible illegality. Brett told the OIG that it became apparent to him that the military could not agree to a plan that did not include the application of SERE techniques and a phase which involved sending Al-
Qahtani to a third country where he could be tortured to get information, two things the FBI would not agree to do.

The FBI offered its alternative plan which used rapport-based techniques and military intelligence and JTF-GTMO staff members agreed to revise their plan by incorporating some of the FBI’s techniques. The FBI personnel present said the revised plan would have to be reviewed and approved by FBI Headquarters and BAU before the FBI could agree to pursue the plan. Military intelligence officials at GTMO did not advise the FBI that a revised plan would be presented to the General the next day. Nonetheless, according to McMahon, the FBI’s MLDU Unit Chief, and the OSC, during a video teleconference the next day at which the interrogation of Al-Qahtani was discussed, the same Lieutenant Colonel who had falsely claimed in the October 2002 teleconference that the DOD had obtained information from Al-Qahtani using aggressive methods (as described above) “blatantly misled the Pentagon into believing that the BAU endorsed [military intelligence]’s aggressive and controversial Interrogation Plan.” The OSC stated that one of the FBI agents in attendance wanted the OSC to interrupt the Lieutenant Colonel to correct the record during the teleconference, but the OSC said he chose not to do so because he did not want to embarrass General Miller and he wanted to address the matter with the Lieutenant Colonel privately. The next day, the OSC sent a letter to Major General Miller to correct the Lieutenant Colonel’s misrepresentation.66

In addition to raising concerns to military officials, Brett and McMahon sought assistance and guidance from FBI Headquarters. FBI Assistant General Counsel Spike Bowman told the OIG that in late 2002 he requested that the concerns about interrogation techniques raised by McMahon and Brett be documented in a written report for him to use in raising concerns to the DOD. Six months later, on May 30, 2003, McMahon received the necessary approvals for this EC and transmitted it to Bowman, the FBI’s MLDU Chief, and the Acting CTORS Section Chief.67 Bowman’s actions in connection with this EC are discussed later in this chapter.

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66 Sometime in early December, the FBI’s MLDU Unit Chief traveled to GTMO and participated in a teleconference with Pentagon officials in which he challenged military intelligence’s assertion that the FBI had endorsed military intelligence’s interrogation techniques.

67 Brett told the OIG the delay was due, in part, to the controversial nature of the EC. Brett said that he believed the controversy centered around the fact that the FBI were guests of the military at GTMO and that this EC was actually telling the military that they should not be doing what they were doing because their tactics were both ineffective and possibly illegal.
VII. Proposal To _ Al-Qahtani To Be Interrogated Using an Alternative Debriefing Model of the Sort Used on Zubaydah

We also determined that at one point during the controversy regarding the interrogation of Al-Qahtani, U.S. government officials, including officials from the FBI and DOJ, advanced a proposal to _ . At least some DOJ and FBI officials understood that this proposal involved subjecting Al-Qahtani to interrogation using the same _ used on Zubaydah, although these officials told the OIG that they did not know specifically what interrogation techniques would be involved.

The OIG obtained a draft document describing such a proposal during this investigation. The only two officials we interviewed who told us they were familiar with the document were David Nahmias (then Counsel to the Assistant Attorney General for the Criminal Division at DOJ) and an FBI agent who was the Unit Chief for the Military Liaison and Detainee Unit (MLDU) at the time the document was drafted. The Unit Chief said it was written to solicit assistance _ in dealing with Al-Qahtani. Nahmias told the OIG that the document was a draft of a letter to be sent by the Attorney General to the National Security Council.

Nahmias stated that he is certain that the document was drafted by the FBI – either by the FBI Unit Chief or someone in MLDU. The “header” information on the document reflects that it was printed from Nahmias’ FBI computer. The FBI Unit Chief said the FBI provided the facts in the document, but that someone at DOJ may have reformatted them into a draft. None of the other witnesses the OIG interviewed about this issue could identify the author.

The document described the connection between Al-Qahtani and the September 11 attacks, and stated that preliminary interrogations had led to “some success” with Al-Qahtani. The draft further stated:

There has been significant discussion regarding the relative safety and comfort of the detainee facilities at GTMO. Among the issues discussed is the lack of a multi-tiered system of physical holding areas which could employ varying degrees of privilege and interaction with others. It is the collective opinion of FBI investigators, FBI Behavioral Analysis Unit (BAU), and the Department of Defense (DOD) Criminal Investigative Task Force (CITF) that this environment has created complacency in [AL-QAHTANI].

It is firmly believed that AL-QATANI traveled to the U.S. in 2001 for the purposes of committing or supporting a terrorist act. It
is further believed that AL-QATANI possesses critical intelligence regarding the identification of individuals also involved in planning, supporting, or committing terrorist acts against U.S. interests. Although some progress has been made with AL-QATANI at GTMO, being used with subjects including ABU ZABAIDA could greatly enhance his productivity.

The FBIHQ GTMO Task Force has discussed the following proposed strategy with representatives of the Department of Justice (DOJ), FBI investigators, FBI-BAU, and with DOD-OASD (SOLIC). Further debriefings of AL-QATANI at GTMO are unlikely to result in actionable intelligence. As long as AL-QATANI remains in law enforcement or military custody, he does not at this time pose a continued threat to U.S. interests.

To improve the productivity of further intelligence exploitation, AL-QATANI should be debriefed by highly knowledgeable personnel, and disseminations regarding the results of these debriefings would be released to the appropriate U.S. intelligence entities expeditiously.

The document is undated, and neither Nahmias nor the FBI Unit Chief could recall exactly when it was drafted, although both agreed that it was probably created in the fall of 2002 or early in 2003.68

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68 The document refers to the interrogations of Binalshibh, who was not captured until September 11, 2002. The document makes no mention of Khalid Sheikh Mohammed’s interrogation, which began after his capture on March 1, 2003. Therefore, the OIG believes this document was created between October 2002 and March 2003. The MLDU Unit Chief estimated that the document was written in mid-November 2002. In addition, a November 14, 2002, e-mail from the Commander of the Criminal Investigative Task Force (CITF) to Major General Miller (discussed below) appears to make a reference to this proposal.
Nahmias provided to the OIG contemporaneous notes and other documents from this period that contain several general references to a plan being actively pursued to change the circumstances of Al-Qahtani’s interrogation. Although these documents describe a plan for Al-Qahtani that involved [redacted], they do not specifically discuss what techniques would be used to interrogate Al-Qahtani and there is no specific reference in the notes to [redacted] or to methods used with any other detainee, including Zubaydah. Nahmias’ notes from a meeting with the FBI Unit Chief on September 27, 2002, state that the FBI Unit Chief met with a Principal Deputy Assistant Secretary of Defense and with [redacted] regarding the proposal to [redacted]. The notes also indicate that the DOD’s Criminal Investigation Task Force (CITF) (Fort Belvoir) was “on board” with the proposal. In an October 2002 e-mail to DOD officials with a copy to Alice Fisher, Nahmias stated that the FBI Unit Chief had recently met with an official from CITF in Fort Belvoir regarding the proposal for Al-Qahtani. The e-mail stated: “I also advised [the FBI Unit Chief] that the write-up of the proposal should be discussed by us first....” We believe that the reference to a “write-up of the proposal” concerns some version of the draft letter quoted above.

An e-mail dated November 14, 2002, sent by the Commander of CITF to Major General Miller, makes an apparent reference to the proposed strategy [redacted]. In the e-mail the Commander stated: “There has been repeated discussion by several agencies that they wanted to take [Al-Qahtani] to another location to try other techniques to get him to talk . . . FBI in particular has made several requests thru DOJ to allow them to execute a plan whereby #63 would be taken to alternate locations . . . So far, DOD had refused approval until both JTF-GTMO and CITF both agree. What you need to know is that apparently, several times it has been represented that we at CITF HAVE agreed to this plan, but in fact we have not done so . . . .” Although the e-mail refers to the use of “other techniques” with Al-Qahtani, the e-mail does not specify the techniques or directly connect them to the techniques that had previously been used on Zubaydah.

It appears that in early 2003 DOJ formally raised the issue of the Al-Qahtani interrogations at the NSC. Nahmias provided the OIG with an agenda for a January 8, 2003, NSC meeting, including an attachment entitled “Detainee Issues (1/8/03)” which stated:

Interrogations of Al Qatani in Afghanistan and at GTMO have produced little information. Since September, his interrogations have been conducted by [Defense Intelligence Agency]. Since late September, FBI, DOJ, [redacted], and some elements of DOD have been proposing [redacted]
Very recent and unevaluated reports suggest that he may now be providing intelligence; if so, [redacted] may not be appropriate.

Other than the draft letter itself, the contemporaneous documents provided to the OIG do not make reference to [redacted] or to Zubaydah and therefore do not reveal which if any of the participants was aware of the specific interrogation methods that were involved. They do, however, establish that a proposal [redacted] was actively pursued by certain officials from DOJ and the FBI in late 2002 and early 2003.

As detailed in Chapter Four, the interrogations of Zubaydah [redacted] included interrogation techniques that cannot be characterized as “rapport-based” and that clearly would never have been permitted for FBI agents in the United States under any FBI policy. Indeed, when the FBI originally learned about some of the techniques that had been used or approved for use on Zubaydah, Director Mueller gave instructions that FBI agents should not participate in any interrogations in which such techniques would be used. In addition, the CIA has acknowledged that Zubaydah was waterboarded, although there is no evidence that FBI agents observed or were aware of this conduct at the time. Although the proposal as described in the draft letter did not include direct FBI participation in the implementation of alternative debriefing models of the sort that were used with Zubaydah, advocating that others use such an approach with Al-Qaeda appears to conflict with the spirit if not the letter of Director Mueller's instructions.

However, both the FBI Unit Chief and Nahmias told the OIG that although they advocated for the plan described in the draft letter, they did not know specifically what techniques had been used on Zubaydah. Nahmias’s contemporaneous notes relating to the proposal to [redacted] do not reflect any discussion of particular techniques to be used with Al-Qahtani. Both the FBI Unit Chief and Nahmias told the OIG that their belief that [redacted] approach would greatly enhance Al-Qahtani’s productivity was based not on any familiarity with the specific interrogation techniques that had been used on Zubaydah, but instead on the quality of the intelligence the CIA was providing to the FBI and DOJ from high value detainees in CIA custody.

Given the statements by the FBI Unit Chief and Nahmias that they did not know what the [redacted] entailed, the OIG sought to determine what they thought would happen to Al-Qahtani under the proposal [redacted]. The FBI Unit Chief said he wanted Al-Qahtani to be in an environment [redacted] with native Arabic speakers, where he would be “drinking tea” instead of eating “MREs.”
and where he would let his guard down. The Unit Chief said he believed only

69 He said he thought the techniques the military wanted to use on Al-Qaeda at GTMO might preclude trying Al-Qaeda in court or in a tribunal and would produce statements that would be “suspect, at best.”

Similarly, Nahmias said that he presumed [REDACTED] was legal, but said he did not know the details of the program and did not see the authorizing memoranda (which are discussed in Chapter Four of this report). Nahmias told the OIG that he did not think that the proposal in the draft letter involved waterboarding Al-Qaeda. Nahmias said he believed [REDACTED] interrogation practices than the FBI, but he had never even heard of the term “waterboarding” at that time.

He stated that he believed the [REDACTED] said the military’s interrogation model was largely to scream at the detainees, [REDACTED]

Nahmias also told the OIG that conditions at GTMO were not promoting successful interrogations of Al-Qaeda. He said that at GTMO there was no way to “separate” someone, so people who had been cooperative prior to their arrival became uncooperative when mixed in with the general detainee population. He said there was no system of rewards or protection for those who cooperated or penalties for those who did not.

Nahmias told the OIG that Al-Qaeda had “shut down” after the DOD took over the interrogations, and the DOD’s tactics were “completely ineffective.” He also stated that at the time the letter was drafted the military had stopped interrogating Al-Qaeda due to legal issues over whether military

69 The evidence regarding what the FBI Unit Chief knew about CIA techniques at the time is limited. The Unit Chief stated he did not know what techniques the CIA used on Zubaydah [REDACTED] at the time of the proposal for Al-Qaeda. One FBI agent told us that in late 2001 or early 2002 he told the Unit Chief about visiting a [REDACTED]. The FBI agent said he did not witness any torture at the facility, [REDACTED]

The FBI agent said [REDACTED] told him to avoid the facility in the future unless he wanted to be subpoenaed by a congressional committee to testify. The agent said he described this experience to the FBI Unit Chief. However, the Unit Chief told us he did not recall hearing about this incident from the FBI agent. We also note that the FBI Unit Chief reported to Arena and D’Amuro, who were aware of at least some of the techniques the CIA employed on Zubaydah. However, Arena told us he could not recall if the Unit Chief was involved in the discussions he had about the CIA’s use [REDACTED] on Zubaydah.
orders were being accurately followed. Nahmias also stated that he had “significant concerns” that the DOD was not “accurately reporting what they were getting.”

We also attempted to determine the extent to which the proposal for Al-Qahtani described in the draft letter was known to other officials in the FBI and DOJ. The FBI MLDU Unit Chief told the OIG that the proposal in the draft letter was briefed and discussed with his chain of command, and that approval of the FBI Director and the Attorney General ultimately would have been required to put this proposal into effect. However, the other FBI officials we interviewed told us they had not seen the draft letter and had not heard of the proposal described in it.

The OIG asked ITOS-1 Section Chief Andrew Arena about the draft letter because his section of the Counterterrorism Division had responsibility for intelligence issues relating to GTMO. Arena told the OIG that he had never seen the document before the OIG provided it to him and he was unaware of any proposal for Al-Qahtani along the lines described in the draft letter. In addition, Arena said he was “shocked” to learn that any officials from the FBI and DOJ ever advocated for such a measure. Arena said he believes the referred to in the draft proposal refers to the the CIA was using on Zubaydah. He said that in discussions with the FBI the DOD would often cite a DOJ legal opinion, which Arena had not seen, that said However, Arena could not recall if the FBI MLDU Unit Chief was ever involved in discussions about the CIA’s use of such techniques.

Pasquale D’Amuro was the Assistant Director for CTD and was promoted to Executive Assistant Director in November 2002, near the time this draft proposal was prepared. D’Amuro told us that he never saw the document before his OIG interview and never heard of a proposal to for employment of an alternative debriefing model of the sort that had been approved for use by the CIA on Zubaydah. D’Amuro stated that he would have opposed such a strategy because he believed that FBI interview techniques were superior at developing reliable information. D’Amuro told us he could not recall having any discussions with the FBI Unit Chief regarding strategies for obtaining information from Al-Qahtani.70

70 The OIG also attempted to interview former Counterterrorism Division Assistant Director Larry Mefford regarding this proposal. Mefford was in the FBI Unit Chief’s chain of (Cont’d.)
FBI Director Mueller told the OIG that the proposal regarding Al-Qahtani described in the draft letter was never discussed with him and never reached him. He said he did not know the circumstances under which the document was written. Similarly, Mueller's Chief of Staff at the time, Daniel Levin, told us that he did not recall seeing the draft letter, although he vaguely recalled discussion of

We also sought to determine whether the proposal was discussed within DOJ. Nahmias stated that a proposal to was discussed in the informal working group (described in Chapter Two) which included Nahmias or Fisher from the DOJ Criminal Division, a member of the DOJ Office of Legal Counsel, someone from the DOD Office of the General Counsel, and . However, Nahmias told the OIG that these discussions did not address the idea that the techniques that had been used on Zubaydah would be used on Al-Qahtani. Fisher confirmed that the case of Al-Qahtani was discussed at these informal meetings, but she and Nahmias said that the topics of mistreatment, abuse, and voluntariness were not discussed in connection with Al-Qahtani. Fisher told the OIG that she does not recall ever seeing the draft letter and she does not recall discussing the strategy described in it. Fisher said she had a vague recollection that there might have been a discussion with the CIA about whether . However, Fisher said she does not believe it was within the Criminal Division's jurisdiction to "sign off" on something like that. Fisher said she does not believe anyone thought it was a good idea and that she does not believe that it was done.

Nahmias told the OIG that the draft letter was created as a means for the Attorney General or the Assistant Attorney General to suggest that if the command, but had left the FBI by the time the OIG became aware of the draft letter. We were not able to obtain an interview with Mefford.

We also note that Phase IV of the military's plan for Al-Qahtani, described in detail earlier in this chapter, proposed sending him "off Island" either temporarily or permanently to "either Jordan, Egypt or another third country to allow those countries to employ interrogation techniques that will enable them to obtain the requisite information." Some witnesses, however, were only able to recall a proposal to send Al-Qahtani and were not able to recall further details, so it was not possible for the OIG to determine in those instances whether the witnesses' recollection related to the military's plan or to the draft letter described here.
FBI could not interrogate Al-Qahtani that he should be... Nahmias said he thought the DOJ officials involved in the development of the general strategy to... may have included Assistant Attorney General Chertoff, Deputy Attorney General Thompson, Attorney General Ashcroft, and his Chief of Staff David Ayres. Nahmias told the OIG, however, that his discussions with these people related to a general strategy for Al-Qahtani, did not include sharing the draft letter, and did not address the specific concept that interrogation techniques of the type used on Zubaydah would be used on Al-Qahtani.

Assistant Attorney General Chertoff told the OIG that he does not recall any specific discussion of... Chertoff said he did not recall whether he had specific knowledge at that point of the specific techniques used on Zubaydah... However, he said it would not surprise him if, given Al-Qahtani’s perceived value, there was some discussion as to whether

In contrast, he said, the information obtained by the DOD was not very good. He also said he understood that while a detainee was at GTMO, the DOD controlled who would have access to that detainee and the FBI might be allowed to participate, but only as a guest. Thompson and Ayres both told the OIG that they did not recall the draft letter or any proposal to... for interrogation using...

Nahmias stated that he is not aware that a final version of the letter ever reached Attorney General Ashcroft, but that he believed that the Attorney General was aware of the concerns about Al-Qahtani and was aware that the general strategy to change the circumstances of Al-Qahtani’s interrogation was being considered. As previously noted, former Attorney General Ashcroft declined to be interviewed for this review.

The OIG also interviewed the Chief of the BAU unit primarily responsible for sending FBI agents to GTMO regarding the draft letter,

72 Deputy Assistant Attorney General Swartz told the OIG that neither the draft letter nor the proposal outlined in it were discussed with him at the time, and that he was unaware of such a proposal prior to being questioned by the OIG.
because the draft letter states specifically that the proposed strategy had been discussed with representatives of the FBI-BAU. The BAU Chief told the OIG that he had never seen the proposal contained in the draft letter and would not have supported such a proposal had he been consulted about it. He said the BAU advocated exclusively for a long-term rapport-building approach by a qualified interviewer, and he believed such an approach could be effective in gathering intelligence from detainees at GTMO. He said he suspects the methods used with Zubaydah as referred to in the draft consisted of techniques that the BAU would not support.

As noted above, the FBI Unit Chief and Nahmias said they did not know what techniques the CIA had used on Zubaydah. We attempted to determine the extent to which other officials in the FBI and DOJ had information about such techniques at the time of the draft letter, even if they were not aware of the specific proposal to use such techniques with Al-Qahtani. We found that by the time the draft letter proposing transfer of Al-Qahtani was written, some other counterterrorism officials at the FBI were aware that the CIA’s interrogation methods included techniques. Agents with whom the FBI Unit Chief worked as head of the GTMO Task Force and officials in his chain of command at the FBI were aware that techniques had been used on Zubaydah that involved treatment that did not remotely resemble the rapport-based approach embodied in FBI policy. At the time of this proposal, Special Agents Thomas and Gibson, ITOS-1 Section Chief Andrew Arena, FBI Counterterrorism Assistant Director D’Amuro, and others at the FBI had learned about some of the types of techniques that had been used or proposed for use by the CIA on Zubaydah, as described in Chapter Four. In addition, the Assistant Chief of the FBI’s Counterterrorism Operational Response Section (CTORS) (of which MLDU was a unit) and Special Agent Thomas told us that. However, none of these FBI officials told the OIG that they were aware of any proposal to use the same techniques with Al-Qahtani.

There is also some evidence that some officials in the DOJ Criminal Division were aware of some of the techniques involved in the CIA’s in the fall of 2002. D’Amuro stated that he had attended a meeting with Chertoff, Fisher, and others in which he learned that the CIA had obtained a legal opinion from the DOJ that certain techniques could legally be used. Chertoff and Fisher told us they did not recall this meeting. Chertoff told the OIG that he was aware that the CIA had requested DOJ approval for certain interrogation techniques and that the CIA had obtained a general opinion from the OLC relating to its interrogations. Chertoff said that the Criminal
Division was asked to provide an “advance declination” in connection with
the CIA’s use of some techniques, but that he had refused to provide it. In
testimony before the U.S. Senate on February 2, 2005, Chertoff stated that
he was asked to review a draft of an OLC memorandum that eventually
became the August 1, 2002, OLC memorandum regarding “Standards of
Conduct for Interrogation,” which is sometimes referred to as the “Yoo
memorandum.” Chertoff stated in his Senate testimony and his OIG
interview that at least some of the CIA “techniques” were described to him at
the time.

Nahmias said that Al-Qahtani because the strategy was “overtaken by events.” As detailed below, in the spring of 2003 Al-Qahtani began to provide significant amounts of intelligence and he has subsequently remained at GTMO. Although Al-Qahtani we are not aware of any CIA being used with him. In addition, by mid-December 2003 the FBI was provided sporadic access to Al-Qahtani and the FBI has interrogated him on multiple occasions since then.

It is important to note that the plan to for interrogation using an did not come to fruition. We also note, however, that advocacy of a plan that included the use of an approach such as the one used on Zubaydah was not consistent with the Director’s determination that the FBI should not participate in interrogations in which non-FBI techniques would be used.

We did not find sufficient evidence to conclude that the FBI Unit Chief or Nahmias knew specifically what techniques had been used on Zubaydah at the time they advanced this proposal. We found it troubling, however, that officials in the FBI and DOJ would advocate for using the interrogation approach that was employed with Zubaydah without knowing what techniques that approach included. We do not believe that this proposal would have been approved by the other FBI officials in the FBI Unit Chief’s chain of command who were aware of the nature of these techniques during the time frame the proposal was drafted and who also were aware of Director Mueller’s determination that the FBI should have no part in such techniques.

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73 This general opinion did not describe any specific interrogation techniques, but did include an examination of “possible defenses that would negate any claim that certain interrogation methods violate the statute” prohibiting torture. A separate DOJ opinion issued the same day stated that the specific techniques approved for use on Zubaydah included waterboarding.
VIII. The Military Proceeds with the Interrogation of Al-Qahtani, Over FBI Objections

Despite the FBI objections, the military proceeded with its interrogation plan for Al-Qahtani. Between November 23, 2002, and January 15, 2003, Al-Qahtani was interrogated by a “special projects” team of military intelligence personnel. We believe that during this period Phase II and Phase III of the interrogation plan were executed without the involvement of the FBI or DOJ.

Special Agent Demeter told the OIG that the military employed Phase II of the plan (placing a government translator with Al-Qahtani who would act like a detainee and would engage Al-Qahtani in conversation) briefly, but it was unsuccessful. It appears that the military then moved on to Phase III (use of the 19 counter-resistance techniques listed in Major General Dunlavey’s October 11, 2002, memorandum).

According to the Schmidt-Furlow and Church Reports, as well as other military records, the techniques used on Al-Qahtani during this time period included:

- Tying a dog leash to 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
- Forced shaving for hygienic and psychological purposes
- 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 bra placed over his clothing
- 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
- 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 idol shrine
• Adjusting the air conditioner to make him uncomfortable

The Schmidt-Furlow Report concluded that many of these techniques were authorized under the military’s Field Manual 34-52, *Intelligence Interrogation*, which we describe in Chapter Three of this report. *Schmidt/Furlow Report* at 20. For example, according to the *Schmidt-Furlow Report*, holding Al-Qaeda down while a female interrogator straddled the detainee was determined to be within the scope of the “Futility” technique (an act used to highlight the futility of the detainee’s situation). *Id.* at 16-17. Other techniques used on Al-Qaeda by the military during this time period, such as use of cold temperature to make the detainee uncomfortable, were deemed by the *Schmidt-Furlow Report* to be “unauthorized” at the time they were employed. *Id.* at 18.

As noted in Chapter Three, on December 2, 2002, Defense Secretary Rumsfeld formally approved a new policy for GTMO (the “December 2002 Policy”) listing additional counter resistance techniques that were not specifically listed in Field Manual 34-52. The new policy specifically approved several of the techniques that had been or were being employed on Al-Qaeda, including stress positions, 20-hour interrogations, forced nudity, and military working dogs. *Church Report* at 4-5, 116-7.

In early December 2002, Al-Qaeda was hospitalized as a result of the DOD interrogations. Demeter told the OIG that a U.S. Navy nurse informed him that Al-Qaeda had been admitted to the base hospital for hypothermia. During a daily staff meeting, Demeter inquired about this incident, and the Lieutenant Colonel who was in charge of GTMO interrogations at that time stated that Al-Qaeda had not been diagnosed with hypothermia, but rather low blood pressure along with low body core temperature.74 Apart from FBI’s knowledge of this incident, we have no evidence that members of the FBI or DOJ were aware that the specific techniques described above were used on Al-Qaeda during this time frame.

74 In commenting on a draft of this report, the DOD stated that “[a] footnote from review of the medical records ... would lend credibility to either the agent’s or the lieutenant colonel’s comments.” However, the DOD did not provide a copy of the referenced records.
IX. Concerns about the Interrogation of Al-Qahtani and Other Detainees Are Elevated at FBI Headquarters

During late 2002, several FBI agents attempted to raise their concerns about the interrogation techniques the DOD was using on Al-Qahtani with FBI Headquarters and requested guidance for agents exposed to such interrogation activities.

On November 22, 2002, after having returned from GTMO, FBI BAU SSA Lyle sent an e-mail to the Chief Division Counsel in the front office of the Critical Incident Response Group (of which the BAU is one unit) requesting documentation of the military’s authority to engage in “extraordinary” interrogation techniques and inquiring whether there were any orders providing authority or guidance to FBI agents exposed to such techniques. The Chief Division Counsel responded that, absent human rights violations “such as physical torture, rape, starvation and murder,” the authority of the military to engage in such techniques was not the FBI’s concern, but that FBI agents should not be “involved in” such interrogations. Lyle raised the issue of agents being “exposed” to such techniques utilized by others and suggested the development of written guidelines from the FBI’s General Counsel. The Chief Division Counsel responded that he was not concerned about FBI agents witnessing such techniques as long as they did not participate, because the techniques were “apparently lawful” for the military. The Chief Division Counsel also emphasized during his interview with the OIG that Judge Advocate General Corps officers were present at GTMO. He told the OIG that the fact that the techniques continued to be employed led him to conclude that they were lawful. However, he said he advised the FBI agents that if they were uncomfortable in such a situation, then they should leave.

Also on November 22, 2002, Foy wrote an EC to senior officials at the FBI, including CTD Deputy Assistant Director John Pistole, ITOS-1 Section Chief Andrew Arena, and the MLDU Unit Chief, providing his observations and recommendations regarding the FBI mission in GTMO. Foy told the OIG that the Unit Chief had instructed him to draft the EC during the MLDU Unit Chiefs visit to GTMO in October 2002. Among other things, the EC stated:

[Military Intelligence] interrogators are routinely utilizing non-law enforcement tactics in their interview tactics. NCAVC personnel witnessed sleep deprivation, duct tape on an individual’s mouth, loud music, bright lights, and growling dogs in the [Military Intelligence] detainee interview process.

The use of these tactics put FBI personnel in a tenuous situation that will perhaps necessitate FBI representatives being utilized as defense witnesses in future judicial proceedings.
against a Detainee. Additionally, the aforementioned tactics may preclude law enforcement from successfully obtaining valuable intelligence from these Detainees in future interview scenarios. 75

Foy's EC was reviewed by the BAU Chief before it was finalized. Foy told the OIG that there was no response from anyone who received the EC, and that he had no other discussions with the MLDU Unit Chief about the EC. The BAU Chief said he did not recall ever seeing any response to Foy's EC.

The MLDU Unit Chief told the OIG that he raised the issues described in Foy's November 22, 2002, EC with ITOS-1 Section Chief Arena, and Arena said the FBI should stay away from the kinds of techniques Foy described. Arena told the OIG he did not recall receiving the EC. However, he said the general issues raised in the EC were brought to the attention of the FBI Office of the General Counsel (OGC). He also said that he spoke with his superiors about the fact that the military intended to use SERE techniques on Al-Qahtani. Arena said he assumed his superiors raised these issues up to Director Mueller.

CTD Deputy Assistant Director Pistole told the OIG that although he did not specifically recall Foy's EC, at some point he became aware of the DOD techniques described in the EC, such as the use of growling dogs. Pistole told the OIG that he recognized that the FBI needed to provide clear guidance so that agents did not become a party to or a beneficiary of these techniques. However, he said he did not recall asking for an assessment or requesting any recommendations to address the matters raised in the EC.

We determined that reports regarding the treatment of other detainees at GTMO were also elevated to MLDU in 2002 and 2003. An SSA who was temporarily detailed to this unit during 2002 told us that the MLDU Unit Chief or another agent in the unit received reports of military interrogation techniques such as yelling at the detainees and throwing objects in the interrogation rooms such as chairs or other small pieces of furniture. An agent who served two rotations as OSC at GTMO in 2002 and 2003 stated that he was aware that techniques such as sleep deprivation, shackling, stress positions, and cold temperatures were being used at GTMO and that he sent e-mails to the MLDU Unit Chief to let him know what was going on. The Unit Chief confirmed to the OIG that he received reports from agents at GTMO regarding their concerns about various techniques the military was

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75 The EC, which does not mention Al-Qahtani by name, covers a broader range of mistreatment allegations and GTMO-related management issues than those presented by the dispute over the Al-Qahtani interrogations.
using. The Unit Chief said he recalled hearing about sleep deprivation, a female interrogator exposing her breast to a detainee, and an interrogator rubbing vegetable oil on a detainee while telling him it was "pig's oil." The Unit Chief stated that he relayed any such reports to his superiors (CTORS Section Chief Frankie Battle and CTD DAD T.J. Harrington).

Some of the agents' concerns reached the FBI's OGC. In late November 2002, Special Agent Brett wrote a legal analysis of the interrogation techniques being proposed for use by the military, and forwarded it to Spike Bowman, head of the National Security Law Branch in the OGC. In his analysis, Brett stated that hooing, use of phobias (such as fear of dogs) to induce stress, use of "scenarios designed to convince the detainee that death or severely painful consequences are imminent," exposure to cold weather or water, and waterboarding may violate the Torture Statute, 18 U.S.C. § 2340. Brett also stated that the technique of sending a detainee to "Jordan or Egypt or another third country to allow those countries to employ interrogation techniques that will enable them to obtain the requisite information" was a "per se" violation of the Torture Statute if done with the intent that the third country would use techniques that violate the Torture Statute. Brett's memorandum stated that even "discussing any plan which includes this category could be seen as a conspiracy to violate [the Torture Statute]." Brett included an urgent request for guidance regarding these issues.

In early December 2002, the Chief Division Counsel of the CIRG forwarded several documents to Bowman, including Brett's legal analysis. Bowman responded:

I do not feel that the FBI should be perceived to approve this and continue to believe that a [Behavioral Analysis Program] evaluation is needed – both to aid in documenting an FBI position and to help FBI policy-makers in evaluating this situation.

I concur that we can't control what the military is doing, but we need to stand well clear of it and get as much information as possible to [CTD Assistant Director] D'Amuro, [Deputy Director] Gebhardt and [Director] Mueller as soon as possible. . . .

The Chief Division Counsel for CIRG stated that he forwarded Bowman's advice to members of the CIRG.

Bowman told the OIG he may have talked to CTD Assistant Director D'Amuro, FBI Deputy Director Gebhardt, and FBI General Counsel.
Wainstein about these concerns.76 However, none of these officials could specifically recall being told any details regarding DOD techniques during this period. Wainstein told the OIG that he did not recall any specific discussions about the effectiveness of military interviews at GTMO until after the Abu Ghraib prison scandal broke in May 2004. D'Amuro said he did not recall BAU agents communicating concerns about DOD techniques or any discussion with Bowman about this subject. However, he told the OIG that he learned at some point that the military was using aggressive techniques at GTMO, and that the FBI had reiterated its instruction to agents that they should not participate in such techniques. Gebhardt said he recalled Bowman or CTD Deputy Assistant Director Harrington bringing these issues to his attention, though he was not sure when this occurred. He said he did not recall the specific techniques in question or any specific instructions being given to FBI agents as a result.

Director Mueller told the OIG that, in general, he did not recall being aware of a dispute between the military and the FBI over interrogation techniques at GTMO prior to the spring of 2004, after the Abu Ghraib disclosures.77 He said he did not recall seeing either the November 2002 EC written by Foy or the May 2003 EC written by McMahon (described below in Section XIV). He also said he had no discussions with military officials about these issues, and he was unaware of any FBI input on DOD interrogation protocols apart from input that might have been given at GTMO by FBI personnel working there. With respect to Al-Qahtani specifically, Director Mueller said he had no recollection of weighing in on how he should be handled.

X. Concerns Regarding Interrogations of Al-Qahtani and Others Are Elevated by the FBI to the DOJ Criminal Division

We determined that the FBI's concerns about the DOD's approach reached high levels in the DOJ Criminal Division during 2002 and 2003. The issue was initially reported by the MLDU Unit Chief to Criminal Division

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76 Bowman also told the OIG that he thought he could influence the military by bringing these issues directly to his counterparts in the DOD Office of General Counsel. His efforts in that regard came several months later, however, and are described in Section XIV of this chapter.

77 We also interviewed Daniel Levin, Director Mueller's former Chief of Staff. Levin left the FBI in September 2002, before many of the agents' concerns about the Al-Qahtani interrogations had been raised with Headquarters. However, he said he was aware of general concerns regarding the effectiveness of the techniques the DOD and others were using at GTMO. He stated that the FBI's assessment was that the detainee interviews at GTMO were not eliciting much useful information, and this led to a debate about whether there was a better way to handle these detainees.