

of whether military interrogators violated their own agencies' policies is outside the jurisdiction and expertise of the DOJ OIG. Moreover, we did not attempt to determine whether military witnesses would dispute the accuracy of reports made to the OIG by FBI employees. An investigation of this scope would have been beyond our jurisdiction and our available resources.

However, in this report, we identify potentially applicable DOD policies in each discussion of a particular technique reported by FBI agents based on the description of those policies supplied in the *Church Report* or the *Schmidt-Furlow Report*. For comparative purposes, we also indicate whether prior investigations found instances of conduct similar to that reported by the FBI agents.

V. Organization of the OIG Report

This OIG report is organized into 12 chapters. Chapter One contains this Introduction. Chapter Two provides background information relevant to the issues addressed later in this report. It describes how the FBI became involved in the military zones as a result of its changing emphasis on preventing terrorism in the wake of the September 11 terrorist attacks. Chapter Two also describes the organizational structure of FBI Headquarters with respect to international terrorism and detainee operations. It also discusses other DOJ entities involved in overseas detainee issues, as well as inter-agency entities and agreements relevant to this OIG investigation. In the last part of Chapter Two, we discuss each of the three zones (GTMO, Afghanistan, and Iraq), including a brief review of military detainee operations, a discussion of the FBI's missions and deployments within the zone, a discussion of the FBI's organizational structure as it related to the zone, and a detailed description of FBI interview activities in cooperation with the military within the zone.

Chapter Three provides background information regarding the pre-existing interrogation policies of the FBI prior to the September 11 attacks. These policies, which prohibit the use of coercive interrogation techniques, are based on constitutional considerations regarding the voluntariness of custodial confessions and the FBI's position, from years of law enforcement experience, that rapport-based interview techniques are the most effective and yield the most reliable information. In Chapter Three, we also address the various interrogation policies that the DOD adopted for use in the military zones, and we explain reasons for the dramatic differences between the FBI's interrogation policies and those issued by the military for use in military zones overseas.

Chapter Four examines the FBI's initial deliberations regarding how its agents should conduct themselves in the context of the FBI's new

terrorism prevention function overseas, and its unfamiliar role of being subordinate to other agencies that controlled most detainees in the military zones. These deliberations began in 2002 when the FBI sought to assist in the interrogation of certain high value detainees in the custody of other agencies. FBI Director Robert S. Mueller III decided that the FBI would not participate in interrogations involving aggressive techniques that were approved for other agencies in the military zones.

Chapter Five examines the dispute between the FBI and the DOD relating to Muhammad Al-Qahtani, a detainee held at GTMO who is widely believed to have been an additional hijacker in the September 11 conspiracy but who was prevented from entering the United States by immigration officials at the airport in Orlando, Florida. We examine the treatment of this detainee in detail because his interrogation became a focal point for tension between the divergent interrogation models followed by the FBI and the military. The dispute regarding the interrogation strategy for Al-Qahtani, which was elevated to senior officials in the FBI and DOJ, was ultimately resolved in favor of DOD's interrogation approach.

In Chapter Six, we examine the FBI's response to the Abu Ghraib disclosures in the spring of 2004. We discuss the development of the FBI's formal written policy addressing agent conduct with respect to detainees in GTMO, Afghanistan, and Iraq: an Electronic Communication (EC) issued by the FBI Office of General Counsel on May 19, 2004 (the "FBI's May 2004 Detainee Policy"). Chapter Six also examines how the FBI addressed the concerns raised by agents in the field after the policy was promulgated. These concerns related to whether the FBI agents would be deemed to have "participated" in coercive interrogation techniques used by other agencies by their presence alone, and the circumstances under which FBI agents would be required to report interrogation tactics used by other agencies. We also describe the internal investigations that the FBI conducted following the Abu Ghraib disclosures.

In Chapter Seven we examine the communication of FBI policies to agents who were deployed to the military zones. First, we describe the FBI's early efforts to provide training or guidance to its agents regarding how they should address detainee issues, including the question of what action they should take in response to witnessing the use of aggressive interrogation techniques by other agencies. Second, we describe the expanded training programs that the FBI developed for agents deployed to the military zones after the Abu Ghraib disclosures and the issuance of the FBI's May 2004 Detainee Policy.

Chapters Eight, Nine, and Ten detail the results of the OIG's investigation into what FBI agents saw, heard about, and reported with respect to detainee mistreatment in GTMO, Afghanistan, and Iraq. Each of

these chapters follows the same organization. The responses to the OIG's survey are summarized in tabular form. We then describe the FBI agents' observations regarding specific techniques, with particular attention to the harshest techniques and those techniques most commonly observed in the particular military zone. In the last part of each of these chapters, we examine the disposition of reports by FBI agents to their superiors or to military personnel regarding their concerns about detainee treatment.

In Chapter Eleven we discuss our investigation of eight separate allegations that FBI agents in the military zones were involved in detainee abuse or mistreatment. While some of the allegations we investigated were made by detainees, others allegations came from other FBI agents, in most instances in response to the OIG's survey.

Chapter Twelve presents the OIG's conclusions and recommendations regarding the FBI's involvement in detainee interrogations in the military zones.

CHAPTER TWO FACTUAL BACKGROUND

In this chapter we provide background information regarding the FBI's activities in overseas military zones. In Part I we explain how the FBI became involved in the military zones as a result of its changing emphasis on preventing terrorism in the wake of the September 11 attacks. In Part II we describe the FBI Headquarters organizational structure with respect to international terrorism and detainee operations. In Part III we describe other DOJ entities involved in overseas detainee issues, and in Part IV we describe inter-agency entities and agreements relevant to this OIG investigation. In Part V we describe each of the three zones (GTMO, Afghanistan, and Iraq), including a brief review of military detainee operations, a discussion of the FBI's missions and deployments within the zone, a discussion of the FBI's organizational structure as it related to the zone, and a detailed description of FBI interview activities in cooperation with the military within the zone.

I. The Changing Role of the FBI After September 11

The FBI is the nation's lead domestic agency for the collection of foreign counterintelligence information, which includes information relating to international terrorist activities.¹⁶ Since September 11, the Attorney General and the FBI Director have elevated counterterrorism and the prevention of future terrorist attacks against United States interests as the top priority of the DOJ and the FBI. In response to the attacks, Attorney General Ashcroft directed all DOJ components to focus their efforts on disrupting any additional terrorist threats. The Attorney General summarized the Department's new mandate in a speech he gave on October 25, 2001, in which he said: "Our single objective is to prevent terrorist attacks by taking suspected terrorists off the street." This caused a dramatic shift in the focus of the Department of Justice, including the FBI. Former Deputy Attorney General Larry Thompson described this change to the OIG as a huge paradigm shift within DOJ from prosecution to prevention. Similarly, other high-level DOJ and FBI officials told us that after September 11, they worked to transform the FBI into an organization that would prevent attacks as opposed to react to attacks.

¹⁶ The authority for the FBI's broad mission to act at the nation's lead domestic intelligence agency is set forth most clearly in Presidential Executive Order 12333, implemented on December 4, 1981.

Part of the transformation of DOJ and the FBI focused on increasing information sharing within DOJ and the FBI and among all the entities involved in the collection of intelligence relating to terrorist activities.¹⁷ Previously, the FBI's overseas presence was primarily carried out by its legal attaches (LEGAT), who were assigned to U.S. Embassies around the world and who facilitated and supported the FBI's investigative interests in the overseas arena that pertained to threats against the United States. While the LEGAT system remains in place, after September 11 the FBI sought to place significant numbers of agents directly in zones outside the United States where first-hand intelligence relating to potential domestic terrorism threats could be gathered.¹⁸ In particular, the FBI began sending agents to Afghanistan, Guantanamo, and Iraq. While the activities of the agents assigned to GTMO were directed for a short time by FBI field offices, the responsibility for these overseas assignments quickly shifted to officials at FBI Headquarters. In the next section, we describe the FBI Headquarters entities relevant to international terrorism generally, and FBI agent assignments to overseas military zones in particular.

II. FBI Headquarters Organizational Structure for Military Zones

To assess FBI observations of detainee treatment and how concerns regarding detainee treatment made their way from line FBI agents up the FBI chain of command, it is important to understand the various FBI

¹⁷ One effect of September 11 and the FBI's change in emphasis was the dissolution of divisions between the "intelligence" and "criminal investigative" functions. Prior to the September 11 attacks, procedural restrictions – known informally as the "wall" – were created to separate intelligence and criminal investigations. These restrictions were created in response to concerns that if intelligence investigators consulted with prosecutors about intelligence information or provided intelligence information to criminal investigators, this interaction could affect the prosecution of a case by allowing defense counsel to argue that the government had misused its authority to conduct surveillance under the Foreign Intelligence Surveillance Act (FISA). Although information could be "passed over the wall" – shared with criminal investigators – this occurred subject to defined procedures. In late 2001 and 2002, the passage of the USA PATRIOT Act, the issuance of new guidelines on intelligence sharing by the Attorney General, and a ruling by the Foreign Intelligence Surveillance Court of Review combined to dismantle the "wall." In its ruling, the FISA Court of Review wrote, "[E]ffective counterintelligence, we have learned, requires the wholehearted cooperation of all the government's personnel who can be brought to the task." *In Re Sealed Case*, 310 F.3d 717, 743 (2002).

¹⁸ The FBI's merging of the intelligence and criminal investigative functions stands in contrast to the military, which continues to have separate entities for its law enforcement functions and its intelligence function, as we describe in Section IV.B.1 of this chapter.

Headquarters entities responsible for counterterrorism, intelligence collection, and detainee issues.¹⁹

A. Counterterrorism Division

In 1999, the FBI created a separate Counterterrorism Division (CTD). At FBI Headquarters, CTD has been responsible for the deployments of personnel and the management of information to and from Afghanistan, Iraq and GTMO.²⁰ In addition, the number of agents assigned to counterterrorism nearly tripled between 1995 and 2002. Within CTD, various entities had jurisdiction over, or management responsibility for, the collection of terrorism-related counterintelligence information and the agents collecting such information in Afghanistan, and Iraq. The primary components within CTD with such responsibilities were the International Terrorism Operations Sections (ITOS-1 and ITOS-2), and the Counterterrorism Operational Response Section (CTORS). The Assistant Director for CTD reports to the Executive Assistant Director for Counterintelligence and Counterterrorism, who reports to the FBI Director.

1. International Terrorism Operations Sections

One of the four major components of the FBI's CTD is the International Terrorism Operations Section (ITOS), which is responsible for overseeing the FBI's international terrorism investigation, including both criminal and intelligence investigations. The mission of the ITOS is to prevent terrorist acts before they occur, and to mount an effective investigative response to any terrorist attacks with the goal of prosecuting those responsible. ITOS responsibilities are divided between ITOS-1 and ITOS-2. With respect to the matters covered in this report, ITOS-1 played an important role. In this regard, the focus of ITOS-1 has been operational matters relating to Afghanistan and al-Qaeda within the United States. ITOS-1 distributed information being sent back from FBI agents in Afghanistan to the relevant FBI field offices, and similarly forwarded requests by field offices to agents deployed overseas for further investigation. ITOS-2, on the other hand, had "oversight responsibility for all FBI counterterrorism operations in Iraq" including the handling of intelligence gathered there, as well as for all other terrorism matters elsewhere. The Section Chief for ITOS-1 reports to a Deputy Assistant Director (Deputy AD) in CTD, who in turn reports to the AD for CTD.

¹⁹ Appendix B contains organizational charts for DOJ, the FBI, and the Counterterrorism Division of the FBI.

²⁰ Six different Assistant Directors were in charge of CTD in the slightly greater than three-year period covered by this report – from late 2001 to the end of 2004.

2. Counterterrorism Operations Response Section

The Counterterrorism Operations Response Section (CTORS) was created in January 2003 as part of the FBI's reorganization and expansion in counterterrorism efforts. CTORS now includes the Military and Liaison Detainee Unit (MLDU), the Fly Team, and the FBI Headquarters portion of the Joint Terrorism Task Force (JTTF). The Section Chief of CTORS reports to the Deputy AD for Operational Support, who reports to the AD for CTD.

a. Military Liaison and Detainee Unit

The agents who are sent on these overseas assignments are overseen, for the duration of the assignment, by the Military Liaison and Detainee Unit (MLDU) (initially called the GTMO Task Force). Since its inception, the MLDU has focused largely on logistics and training.²¹ It was originally formed as an ad hoc task force within the FBI's CTD in late 2002 or early 2003 "to oversee the newly created FBI mission in Afghanistan." MLDU's duties were been expanded to support agents deployed to Iraq, and it has been responsible for the FBI's operations in GTMO as well. MLDU now has liaison personnel with all of the major military combatant commands – Northern Command, Central Command, and Southern Command. The Unit Chief for MLDU reports to the CTORS Section Chief.

b. Fly Team

The "Fly Team" was originally established as part of the FBI's counterterrorism effort on June 1, 2002. This unit's functions include serving as the FBI's first rapid responders with investigative capabilities whenever there is an incident overseas, such as the London terrorist bombings in July 2005. The Fly Team's duties include assessing what the FBI can contribute to such situations and recommending to FBI management what resources should be directed to these incidents. The Fly Team has roughly 30 investigators, many of whom have been deployed for detainee interviews and other duties in Afghanistan and Iraq several times. Many Fly Team members were formerly in the military and therefore operated more easily in the battlefield environment. For these reasons, they are often paired up for deployments in military zones with agents from field offices. The Unit Chief for the Fly Team reports to the CTORS Section Chief.

c. Joint Terrorism Task Forces

The Joint Terrorism Task Forces (JTTF) are squads within FBI field offices that focus primarily on addressing and preventing terrorism threats.

²¹ At the end of 2002 or beginning of 2003, the GTMO Task Force became the MLDU.

JTTFs include members from other federal, state, and local law enforcement agencies, including local police departments. Before the September 11 attacks there were 35 JTTFs nationwide. As of March 2005 there were 103. The National Joint Terrorism Task Force (NJTTF) is a unit within CTORS that was created to support JTTFs and to enhance communication and cooperation among federal, state, and local government agencies by providing for coordination of terrorism intelligence collection activities. Later in this report, we discuss a limited number of instances involving the participation of non-FBI JTTF members in detainee interrogations. The Unit Chief for the NJTTF reports to the CTORS Section Chief.

B. Critical Incident Response Group

The Critical Incident Response Group (CIRG) facilitates the FBI's rapid response to, and management of, crisis incidents. The CIRG includes a Crisis Negotiation Unit, an Aviation and Surveillance Operations Section, and a Hostage Rescue Team (HRT). Throughout the period covered by our review, HRT has contributed a number of agents for FBI force protection purposes in both Afghanistan and Iraq.

The National Center for the Analysis of Violent Crime (NCAVC) is another branch of the CIRG that has played a significant role in the military zones. The mission of the NCAVC is to combine investigative, operational support functions, research, and training in order to provide assistance to federal, state, local and foreign law enforcement agencies investigating unusual or repetitive violent crimes. The NCAVC is composed of three Behavioral Analysis Units and a Violent Crime Apprehension Program Unit. Agents from Behavioral Analysis Unit number 1 (BAU-1), which focuses on terrorism threats, were sent to GTMO to provide behavioral based investigative and operational support. The CIRG also has a Chief Division Counsel who provides legal guidance to the group, and who reports to the CIRG SAC. The CIRG SAC reports to the Executive Assistant Director for Law Enforcement Services, who reports to the FBI Director's Office.

C. Office of General Counsel

The FBI Office of the General Counsel provided staff to GTMO and responded to detainee related inquiries from other FBI divisions, including inquiries coming from agents assigned to GTMO, Afghanistan, and Iraq. The Office of the General Counsel also assisted in developing policy and preparing FBI Officials for congressional hearings. At GTMO an Associate General Counsel provided legal advice. The General Counsel reports to the Director of the FBI.

III. Other DOJ Entities Involved in Overseas Detainee Matters

In addition to the FBI, other offices within DOJ were involved with overseas detainee issues discussed in this report. The Deputy Attorney General and his staff advised and assisted the Attorney General in providing overall supervision and direction to all organizational units of DOJ, including the FBI. As part of those duties, the Deputy Attorney General and members of his office participated in intra and inter agency meetings at which detainee-related issues were discussed. The FBI reports to the Deputy Attorney General and the Attorney General.

In addition, DOJ's Criminal Division exercises general supervision over the Department's enforcement of all federal criminal laws not specifically assigned to other divisions. Included within the jurisdiction of the Criminal Division are all criminal terrorism cases. The Criminal Division is led by an Assistant Attorney General. Members of the Assistant Attorney General's staff helped supervise and coordinate international terrorism investigations. In that role, they collected information from the FBI and U.S. Attorneys' offices and shared it with the DOD, the CIA, and the White House. Other members of the Assistant Attorney General's staff oversee the Criminal Division office that handles all criminal foreign policy of the United States, including liaison with the Department of State and the National Security Council (NSC). The Criminal Division receives criminal referrals from the FBI. The Criminal Division was the entity responsible for oversight of federal criminal matters relating to terrorism and acted as the primary liaison to the FBI's Military Liaison and Detainee Unit (MLDU).²²

The DOJ Office of Legal Counsel (OLC) assists the Attorney General in his function as legal advisor to the President and all executive branch agencies. The Office drafts the legal opinions of the Attorney General and provides its own written opinions and oral advice in response to requests from the Counsel to the President, various agencies of the executive branch, and offices within DOJ. During the years covered by this report, OLC generated written opinions and advice relating to certain detainee issues.

IV. Inter-Agency Entities and Agreements Relating to Detainee Matters

A. The Policy Coordinating Committee

Officials from DOJ and the NSC told the OIG that many inter agency discussions on a variety of overseas detainee matters, such as developing

²² The National Security Division of DOJ is now the entity responsible for oversight of criminal matters relating to terrorism.

processes for sorting detainees and later for the repatriation or release of detainees, took place in a Policy Coordinating Committee. The Policy Coordinating Committee for detainee issues was led by a National Security Council (NSC) staff member, and was composed of representatives from DOJ, the Department of State (DOS) (including members of the DOS Office of the Legal Advisor), the DOD (General Counsel's Office and sometimes others from the Joint Chiefs), and Central Intelligence Agency (CIA). A Deputy Assistant Attorney General in the Criminal Division was the official DOJ point of contact for the PCC, and others from the Criminal Division, the Deputy Attorney General's Office, and the FBI attended at various times.

By late 2001 or early 2002, there were regular (sometimes weekly) PCC video conferences or meetings on detainee issues that were chaired by the NSC legal advisor. Issues that could not be resolved at the PCC could be "bumped up" to the "Deputies" meeting, which was attended by the Deputy Attorney General or his designee (such as Patrick Philbin, the Associate Deputy Attorney General for Intelligence/National Security). If a resolution still could not be reached, an issue could be raised to the "Principals" meeting, which included the Attorney General or his designee.

Counsel to the Assistant Attorney General for the Criminal Division, David Nahmias, said that separate from the PCC meetings, a group of individuals reviewed enemy combatant or potential enemy combatant cases to evaluate the government's options on how to proceed. Nahmias and Deputy Assistant Attorney General for the Criminal Division Alice Fisher both described an informal working group, formed after the Jose Padilla case arose, which included representatives from DOJ's Criminal Division and OLC, as well as representatives of the CIA and the DOD.²³ The group was intended to promote inter agency coordination on certain detainee matters. The role of DOJ at these meetings, according to Nahmias, was to share information about people domestically who, in theory, could be enemy combatants, and to see who were being held as enemy combatants who potentially might be prosecuted. He told the OIG that the CIA representative considered intelligence aspects of these cases, and the DOD considered military aspects.

²³ Jose Padilla was arrested by the FBI when he entered the United States on May 8, 2002, based on a federal material witness warrant. The President declared Padilla an enemy combatant, and Padilla was transferred to military custody in June 2002. He was subsequently transferred to DOJ custody and was convicted of conspiracy to murder, kidnap and maim individuals in a foreign country, conspiracy to provide material support to terrorists, and providing material support to terrorists on August 16, 2007.

B. Inter-Agency Memorandums of Understanding

There are several Memoranda of Understanding (MOU) between the FBI or DOJ and other government agencies that are relevant to detainee abuse issues or otherwise relevant to this review.

In 1984 DOJ and the DOD entered into an MOU relating to the investigation and prosecution of criminal matters over which the two Departments have jurisdiction. The 1984 MOU provides that most crimes taking place on a "military installation" will be investigated by the DOD. When such a crime is committed by a person subject to the Uniform Code of Military Justice, the DOD will also prosecute the matter. With respect to "significant cases in which an individual subject/victim is other than a military member or dependent thereof," the DOD must provide notice of the matter to DOJ. Witnesses and documents indicate that pursuant to this 1984 MOU, the DOD has assumed jurisdiction over the investigation of potential crimes relating to detainee abuse at DOD facilities in the military zones.

In 1995, DOJ entered into an MOU with several intelligence agencies, including the DOD and the CIA. This MOU requires each employee of an intelligence agency to report to the agency's General Counsel or Inspector General any facts or circumstances that reasonably indicate that an employee of an intelligence agency has committed a crime. If the subject of the allegation is an employee of a different intelligence agency than the person making the report, the General Counsel of the accusing person's agency must notify the General Counsel of the accused employee's agency. The General Counsel of the accused employee's agency must then conduct a preliminary investigation of the matter. If the inquiry reveals a reasonable basis for the allegations, and the crime falls within certain specified violations of federal criminal law (including crimes involving intentional infliction or threat of serious physical harm and crimes likely to affect the national security, defense, or foreign relations of the United States), the General Counsel must report the matter to DOJ. The MOU also requires employees of intelligence agencies to report to their General Counsel any violations of specified crimes by persons who are not employees of any intelligence agency (such as civilian contractors), and these crimes must also be reported to the DOJ.

In 2003, the FBI and the CIA entered into an MOU concerning the detailing of FBI agents to the CIA to assist in debriefing certain high value detainees at "sensitive CIA debriefing sites." The MOU primarily addresses how information obtained by FBI agents detailed to such sites will be used and protected. The FBI agreed to observe strict need-to-know principles and limit knowledge of the existence of the MOU. This MOU did not address

standards for detainee interrogations or how detainee abuse allegations would be handled.

In late 2004, the FBI entered into an MOU with the DOD Criminal Investigative Task Force (CITF). As detailed below, CITF is the military's law enforcement arm with responsibility for gathering evidence for the military commission process and possible war crimes prosecutions. The FBI's MOU with CITF primarily addresses information sharing between the agencies in the performance of law enforcement functions (not intelligence). It does not address detainee treatment standards or reporting of detainee abuse allegations.

We are not aware of the existence of any MOU between the FBI or DOJ and the DOD or the CIA relating to standards for interrogation of detainees in DOD or CIA custody.

V. Background Regarding the FBI's Role in the Military Zones

In this section we provide background regarding the FBI's activities in each of the three military zones discussed in this report. FBI operations began in Afghanistan in late 2001, shortly before the FBI began sending agents to GTMO. The FBI sent its first deployment of agents to Iraq in March 2003.

A. Afghanistan

The United States invaded Afghanistan in October 2001 in order to remove the Taliban government from power, capture or kill al-Qaeda personnel responsible for the September 11 attacks, and destroy or diminish al-Qaeda's ability to mount further terrorist attacks.

1. Military Operations and Detention Facilities

The DOD conducted U.S. military operations in Afghanistan under the DOD's Central Command (CENTCOM). Beginning in May 2002, senior command in the military theater was vested in Combined Joint Task Force 180 (CJTF-180), later redesignated CJTF-76. *Church Report* at 6-7, 180-183. The military's primary bases were located near the cities of Bagram in the north and Kandahar in the south. *Church Report* at 181-83. As operations in Afghanistan progressed, the military established several forward operating bases, sometimes called firebases, in remote areas around the country to support units operating in the field. These bases were operated by DOD Special Operations Forces or conventional forces. *Church Report* at 184. Several firebases were operated jointly by the military and the CIA.

According to the *Church Report*, over 30,000 U.S. military personnel were serving in Afghanistan as of August 2004, and U.S. forces had detained, beyond individuals questioned in an initial screening process, roughly 2,000 persons since late 2001. *Church Report* at 233.

We briefly summarize here the evolution of military detention facilities in Afghanistan, a topic described in detail at pages 180-186 of the *Church Report*. Beginning in May 2002, a U.S. military facility in Bagram

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The military had custody and control over the detainees throughout Afghanistan, and FBI agents were required to arrange access to the detainees through military police and military intelligence personnel.

2. The FBI's Mission

In September or October 2001, prior to the invasion of Afghanistan, FBI agents met with CENTCOM to discuss the military's and the FBI's knowledge about al-Qaeda. Shortly thereafter, the military requested the assistance of the FBI in Afghanistan. In December 2001, the FBI sent the first group of eight agents to Kandahar, Afghanistan. According to the Team Leader for this group, this deployment of FBI agents into a theater of war working side by side with the military was unprecedented.²⁴ In addition, as a result of the Afghanistan deployment and the deployment to GTMO in January 2002, the FBI had personnel at "both ends of the pipeline" for counterterrorism information.²⁵

The FBI mission in Afghanistan evolved over time. Initially, the primary focus was interviews of al-Qaeda and Taliban detainees captured by coalition forces and review of captured documents. FBI agents understood from the outset that they would likely be interviewing detainees together with U.S. military or CIA personnel. In addition, FBI agents assisted the military with "sensitive site exploitation" missions, which involved the collection of time-sensitive information at selected priority targets, such as

²⁴ Similarly, an FBI Supervisory Special Agent deployed in Iraq told us that FBI agents had not been deployed to a combat zone since World War II.

²⁵ The *Church Report* stated that CENTCOM forces in Afghanistan first transferred detainees to GTMO on January 7, 2002. *Church Report* at 182-183.

caves and homes that had been vacated by al-Qaeda personnel during coalition attacks.

In February 2004, based on a DOD request, the FBI expanded its contingent in Afghanistan and positioned investigators with more forward deployed military units to assist in the collection of intelligence. In June 2004, the FBI Counterterrorism Division (CTD) sent a team to Afghanistan to assess the role of FBI personnel in that country.²⁶ As a result of that assessment, the FBI CTD issued an Electronic Communication (EC) that clarified the FBI's primary mission in Afghanistan as "the collection of actionable threat intelligence which may have a possible nexus to the United States, its citizens and interests." The EC identified the following priorities within this mission, including:

Interviewing detainees or Persons Under Custody (PUC) and other individuals of interest at the detainee collection points and other smaller facilities, using rapport-based strategies, to obtain actionable intelligence in the war on terrorism.

Participating in "Sensitive Site Exploitations" and "forward staged interrogations" [REDACTED], with an emphasis on collecting strategic intelligence with a nexus to the United States. Establishing a liaison with all coalition forces to ensure the collection and appropriate communication of information with a nexus to the United States. Supporting the [REDACTED] in Afghanistan with FBI technical and forensic assets. Supporting specialized joint FBI-CIA operations at [REDACTED]. Providing training to the Government of Afghanistan.

3. FBI Deployments

Based on the results of the OIG survey and other information, we estimated that between 200 and 250 FBI agents served in Afghanistan between late 2001 and the end of 2004. An FBI Deputy OSC stated that the FBI personnel in Afghanistan "were there as a force multiplier, but it was the [military's] show." Between late 2001 and the end of 2004, the number of FBI personnel deployed in Afghanistan at any one time ranged between 10 and 25. These totals included agents who conducted interviews as well as other FBI personnel who did not have detainee interview responsibilities,

²⁶ This assessment followed several incidents in which FBI agents were involved in ambushes or other violent actions. Because of these incidents, FBI participation in sensitive site exploitations was temporarily suspended.

such as Hostage Rescue Team (HRT) personnel, bomb technicians, and technically trained agents.

FBI agents who served in Afghanistan volunteered from FBI field offices. FBI Headquarters personnel said they tried to recruit agents who had previously served in the military or had special weapons and tactics (SWAT) team experience. Sometime in 2004, the FBI increased the length of these assignments from 60 days to 90 days for agents. Between December 2001 and April 2002, the tenure for OSCs in Afghanistan varied between one and two months. Thereafter, most of the OSCs served in Afghanistan for 90-day rotations.

FBI agents were deployed to [REDACTED]

FBI personnel in Afghanistan depended upon the military for transportation, translators, supplies, housing, and protection.

4. Organizational Structure of the FBI in Afghanistan

During much of the period covered by our review, the rotations of FBI agents deployed to Afghanistan were supervised by an experienced agent serving as the On-Scene Commander (OSC). Thirteen agents served as the FBI's OSC in Afghanistan at various times during the period covered by this review. CTD established the position of Deputy OSC in Afghanistan in early 2004, and six agents served in that position through the end of 2004. However, for most of 2002 and all of 2003, the FBI did not have any OSC present in Afghanistan, and the FBI's Afghanistan operations were managed from the New York Field Office or, beginning in June 2002, from FBI Headquarters in Washington. In mid-2003, a senior agent was present in Afghanistan.

OSCs and Deputy OSCs in Afghanistan and elsewhere served as the direct representatives of FBI Headquarters. They assigned and supervised the deployed personnel, served as points of contact and liaison with military and intelligence personnel, kept FBI Headquarters informed about the agents' work, the logistics issues, and the military personnel with whom they were working, and arranged for the transfer of information, leads, and requests to and from U.S. FBI offices and the military. To varying degrees, OSCs and Deputy OSCs also participated in detainee interviews as time and other duties permitted.

The FBI OSCs in Afghanistan supervised the preparation of Daily Situation Reports that were transmitted to FBI Headquarters. The OSCs

and Deputy OSCs also maintained daily contact with FBI Headquarters by satellite telephone.

5. FBI Activities in Afghanistan

FBI agents' activities in Afghanistan consisted primarily of detainee interviews, participation in military sensitive site exploitations (comparable to domestic execution of search warrants and crime scene processing), collection of detainee biometric information, and traditional FBI criminal investigation work as a result of bombings against U.S. citizens or facilities.²⁷ Because the primary focus of this report is detainee interrogations, we describe the FBI's interview/interrogation activities in more detail below. The FBI's other activities in Afghanistan are summarized in the second part of this subsection.

a. Detainee Interviews by FBI Agents

Most of the detainee interviews conducted by the FBI in Afghanistan took place at military facilities, such as the detainee collection facilities at Bagram and Kandahar. Due to the small number of FBI personnel in Afghanistan, it was not possible for them to interview all of the detainees that came through U.S. military facilities. Several agents told us that FBI personnel focused their efforts primarily on Arabic-speakers and al-Qaeda personnel, rather than the Afghan locals such as the Taliban. As a result, FBI agents had contact with only a small percentage of the detainees who were interrogated in Afghanistan by military personnel.

The number of detainees each FBI agent interviewed while in Afghanistan also appears to have been small, often fewer than 20 detainees during an agent's deployment. Agents frequently interviewed the same detainee several times. In addition, many FBI agents also briefly interviewed "Persons Under Control" (PUC). (According to the *Church Report*, all captured persons were initially considered PUCs. If they satisfied screening criteria set by the Secretary of Defense, they became "detainees." *Church Report* at 191-192.)

The FBI Daily Situation Reports from May through December 2004 (which were the only Situation Reports produced to the OIG) indicated that during that 8 month period the total number of FBI custodial detainee interviews was 681 and the total number of field interviews of PUCs was 303.

²⁷ The written work product from those deployed generally consisted of interview FD-302s or ECs, After-Action Reports for sensitive site exploitations, and Daily Situation Reports.

The FBI determined who it wanted to interview by various methods, such

[REDACTED]

FBI interviews of detainees, at least at Kandahar from late 2001 into early 2002, were conducted in the same tents and rooms used by the military interrogators. We were told that before the FBI could conduct its lengthier detainee interviews, military interrogators completed their priority interrogations to obtain time-sensitive tactical battlefield intelligence. For the FBI interviews, detainees were brought in by the Military Police, and sat down with the FBI agents at a table with folding chairs. Some detainees were brought in hooded or blindfolded, depending on their level of compliance or security risk, and most detainees were restrained with hand shackles. According to an after-action memorandum from a former OSC to FBI Headquarters dated March 5, 2002, during the early months of FBI deployments in Afghanistan, agents in Kandahar “were limited” in their ability to conduct “in depth interviews due to limitations with translators, lack of available intelligence, space restrictions, and prioritization of interviews to the military.”

[REDACTED]

As explained in Chapter One, we are not addressing FBI activities at these sites.

b. Joint Interviews with Military Investigators

FBI agents often worked jointly with military personnel in Afghanistan in planning, preparing for, and conducting detainee interviews, particularly until mid-2004. Of the roughly 200 agents who served in Afghanistan and responded to the OIG survey, 86 stated that they jointly interviewed detainees with military or intelligence agency personnel.

Other agents told us that FBI agents only conducted interviews with other FBI agents. Some agents told us they avoided joint interviews because they knew the military was operating under different rules. The FBI OSC in Afghanistan in the spring of 2004 told us that as of approximately April 2004, the military would not invite FBI personnel in to interviews in which they thought there would be a conflict between FBI rules and military rules. He stated that if there was a joint interview, it was understood from the start what the FBI could and could not do. However, the evidence indicates that the FBI's practice of conducting joint interviews with other agencies continued at least occasionally after April 2004. Other information indicates that military observers were often present during FBI interviews in Afghanistan.

c. Other FBI Activities in Afghanistan

Substantial FBI resources were also devoted to other aspects of its counterterrorism mission, such as participation in military "sensitive site exploitations" and the collection of detainee biometric data.

[REDACTED]

FBI participation in sensitive site exploitations began during the first rotation of agents at the request of a [REDACTED]

[REDACTED]

The FBI also collected and disseminated to other agencies detainee biometric information such as fingerprints, DNA samples, and standard

identification photographs. As groups of detainees were captured on battlefields throughout Afghanistan and brought to detention facilities, FBI agents worked with military personnel in the initial fingerprinting, DNA sample collection, and photographing of the detainees. This work was done largely by FBI Criminal Justice Information Services Division (CJIS) personnel at various locations in Afghanistan. [REDACTED]

The FBI also conducted traditional criminal investigations of bombings and other crimes against American citizens, companies, and facilities in Afghanistan. For example, an FBI agent told us that in September 2004 he interviewed several detainees in Kabul who were in the custody of the Afghan National Directorate of Security, in connection with the bombing of the Dyncorp building in which three Americans were killed.

B. Guantanamo Bay, Cuba

1. Military Operations and Detention Facilities

In October 2001, soon after the start of the United States' military operations in Afghanistan following the September 11 attacks, the United States began detaining suspected al-Qaeda operatives and Taliban fighters. The President declared these detainees "illegal enemy combatants" and the United States decided to detain them at the U.S. Naval base at Guantanamo Bay, Cuba. *Church Report* at 99. After receiving the order to establish detention operations at GTMO, the military was directed to have detention facilities up and running within 96 hours.

The first planeload of 20 detainees arrived at GTMO on January 11, 2002, less than 5 days after the order was given to build a detention facility to house 100 captured enemy combatants. *Church Report* at 99. According to FBI documents, agents from the FBI and the DOD Criminal Investigative Task Force (CITF) began formally interviewing detainees on February 4, 2002.

a. GTMO Camps

(1) Camp X-Ray

The first camp to house detainees was called Camp X-Ray. Camp X-Ray was the site of an old detention facility that had housed Haitian refugees. Cells at Camp X-Ray were temporary 8 foot by 8 foot by 10 foot units constructed of chain-link fencing. The cells did not have solid walls; the military used tarps to keep out the sun and rain. Detainees slept on 4-inch thick mattresses on cement slabs. The roof of each cell was

constructed of metal and wood. Portable toilets and showers were available for the detainees outside of their individual cells. The interrogation rooms were also very primitive, although the walls were plywood rather than chain link. Camp X-Ray was used to house detainees for 3 months until more permanent detention facilities could be built.

(2) Camp Delta

Construction on Camp Delta began almost immediately after Camp X-Ray was completed. Detainees were moved to Camp Delta starting on April 28-29, 2002. Camp X-Ray was closed when the last detainees moved out.

Camp Delta consists of multiple detainee cell blocks or "camps" numbered consecutively in the order in which they were built. Detainees are assigned to the camps based on an assessment of their cooperation or potential for violence.

Camps I through III house detainees considered to be less compliant than the most cooperative detainees at GTMO. The living conditions at these three camps are almost identical. The individual cells or detention units are 8 feet long, 6 feet 8 inches wide, and 8 feet tall and are constructed of metal mesh material on a solid steel frame and a metal roof. Each unit has its own floor-style flush toilet, a metal bed frame raised off the floor, and a sink and faucet with running water. There are two recreation yards and four showers per block. Exhaust fans mounted in the ceiling ventilate the cell blocks.

Camp IV houses the more compliant and cooperative detainees at GTMO. Camp IV received its first detainees in February 2003. The detainees live in communal living areas that resemble dormitories. The camp has a common recreational area to which the detainees have access 7 to 9 hours a day.

Camps V and VI house detainees who are considered to be the most dangerous detainees at GTMO and those that have the most valuable intelligence. Camp V is a 2-story maximum security complex made of concrete and steel designed to hold 100 detainees. Completed in May 2004, it was modeled after the Miami Correctional Facility in Bunker Hill, Indiana. The camp is composed of five wings. Each cell is 7 feet six inches long and 12 feet 10 inches wide and is made of cast cement containing a cement formed bed, stainless steel sink, toilet, and window. The cells have cement floors. Camp V has its own interrogation facilities, which are two rooms per floor with video and audio capability that can be monitored from a central control room. *Church Report* at 103. Camp VI, the most recent addition to Camp Delta, is another concrete and steel structure modeled after a jail in

Lenawee County, Michigan, designed to hold approximately 200 detainees. It was initially planned as a medium security facility for GTMO, but was later modified to be a maximum security facility.

Camp Delta also includes a 20-bed hospital dedicated to providing medical care to the detainees. It has an outpatient clinic, two operating tables, a dental clinic, a physical rehabilitation area, and quarantine chambers for contagious arrivals.



(3) Other GTMO Facilities

Camps Echo and Iguana are located just outside Camp Delta. *Church Report* at 103. Camp Echo is a small camp that houses detainees who have been segregated from the general detainee population for a variety of reasons, such as disciplinary issues, meetings with counsel, or preparation for departure from GTMO. Each wooden building in the camp has two cells. A cinder block wall separates the cells. Each cell has a toilet, a sink, and a bed. A shower is adjacent to each cell. Outside each cell is an area for a guard to sit or for use during an interrogation.

Camp Iguana was originally designed as a lower security detention facility to hold a small number of juvenile detainees believed to be under the age of 16. Camp Iguana is now generally used to house detainees who are no longer deemed to be enemy combatants, or who are awaiting transfer to their home country.

The Navy Brig, a small detention facility at GTMO outside the camps described above, that has been used to house detainees for various purposes, such as disciplinary reasons or for special interrogations. A control center located at the end of the communal living area operates all doors and cells within the facility and two rows of metal segregation cells. A cell is approximately 6 feet long, 8 feet wide and 8 feet tall. Each cell has a window located on the cell door facing the communal living area. The control center has a view of all cell doors and all detention areas.

b. GTMO Organizational Structure

The United States Southern Command (SOUTHCOM), located in Miami, Florida, is one of nine unified Combatant Commands in the

Department of Defense. It is responsible for providing contingency planning, operations, and security cooperation for Central and South America, the Caribbean, Cuba and the Bahamas, and their territorial waters, as well as the force protection of U.S. military resources at these locations. SOUTHCOM is also responsible for ensuring the defense of the Panama Canal and the canal region. GTMO falls within the jurisdiction of the SOUTHCOM.

According to the *Church Report*, the command organization at GTMO “evolved significantly over time.” *Church Report* at 103. The original organization had separate chains of command for intelligence operations (JTF-170) and detention operations (JTF-160). *Id.* at 104. These two separate joint task forces created a bifurcated chain of command that, according to the *Church Report*, impeded cooperation between the military intelligence and military police units responsible for GTMO. *Id.* These separate chains of command were combined on November 4, 2002, and were re-designated JTF-GTMO. *Id.* at 104-05. JTF-GTMO is responsible both for operating the detainee detention facility at GTMO and for conducting interrogations to collect intelligence in support of the United States’ efforts to combat terrorism. Major General Geoffrey Miller was appointed on November 4, 2002, to lead this new joint task force. *Id.* at 105. He was succeeded by Brigadier General Jay Hood.²⁸

JTF-GTMO is composed of three groups, each of which reports to the JTF-GTMO commander and deputy commander, who in turn report to the commander of SOUTHCOM. The Joint Detention Operations Group (JDOG) includes six military police companies and is responsible for security at the various camps. The Joint Interrogation Group (JIG), discussed in more detail below, is responsible for the collection and dissemination of intelligence from all the detainees in the custody of the DOD at GTMO. The Joint Medical Group (JMG) is responsible for the detainee hospital.

The JIG combines military intelligence elements to pursue its interrogation mission. According to the *Church Report*, the centerpiece of the JIG is the Interrogation Control Element, which coordinates and supervises the efforts of the military intelligence interrogators, analysts, linguists, and civilian contract personnel who work on interrogations. *Church Report* at 105. The collection of intelligence at GTMO is pursued primarily through detainee interrogations, but also through [REDACTED]. The Interrogation Control Element at GTMO includes members of the Defense Intelligence Agency (DIA). Throughout this report, members of the DIA, Defense

²⁸ As of October 2007 the current Commander of JTF-GTMO is Rear Admiral Mark H. Buzby.

HUMINT Service, and other military intelligence gathering entities will be referred to as “military intelligence.” The JIG at GTMO also included a “Special Projects” team that focused on detainees believed to be of high value.

The interrogation operations at GTMO included some entities that did not fall within the Interrogation Control Element, including the FBI and the DOD Criminal Investigative Task Force (CITF). Unlike the FBI, in which intelligence gathering and criminal investigative functions are now merged, the military has kept its law enforcement groups separate from its intelligence collection groups. 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). CITF conducts interrogations in order to gather evidence for the military commission process and possible war crimes prosecutions. *Church Report* at 107.

2. The FBI’s Mission

In a December 2001 Electronic Communication (EC), FBI Headquarters directed the Miami Field Office to coordinate with the U.S. military and establish an FBI presence on the U.S. Naval base at GTMO. According to the EC, the Miami Field Office was to [REDACTED]

On January 7, 2002, the first FBI agents arrived at GTMO. This first group of agents consisted of one Supervisory Special Agent (SSA), one Assistant Special Agent in Charge (ASAC), and two Special Agents (SA) from the Miami Field Office. These agents were assigned to [REDACTED]. When they arrived there were only cells at Camp X-Ray that were left over from the Haitian refugee operation of many years past. Navy personnel were building more chain link cells to house the incoming detainees whose arrival was imminent. [REDACTED]

²⁹ On January 11, 2002, the first plane load of 20 detainees arrived at GTMO. *Church Report* at 99.

FBI Director Mueller told the OIG that he visited GTMO in early 2002. He said he then decided to reorganize how the FBI managed its operations at GTMO because it appeared that a much larger FBI component would be

²⁹ As it turns out, [REDACTED]. The failure to obtain useable intelligence was primarily due to [REDACTED].

participating in the FBI's mission there than previously anticipated. He also stated that to better manage GTMO staffing and oversight, the FBI's activities should be handled from FBI Headquarters. The entity established to do that, as described above, was first called the GTMO Task Force and was later named the Military Liaison and Detainee Unit (MLDU). Director Mueller said he was told at that time that the FBI was working closely with the military.

3. FBI Deployments

Between January 2002 and December 2004 over 400 FBI agents were deployed to GTMO. Approximately half of these agents were assigned to conduct detainee interviews. Others were sent to GTMO to fulfill roles relating to detainee interviews, such as behavioral analysis of detainees, that could be used to develop interview strategies, translation of detainee interviews, and photographing or fingerprinting of detainees for identification purposes. The remainder were sent to GTMO in more general support roles such as administrative support, computer support, [REDACTED].

FBI personnel in GTMO primarily used FBI-supplied equipment and transportation, but sometimes relied on military equipment when FBI equipment was unavailable. The housing used by the FBI was supplied by the military and was at first very limited, which in turn limited the number of FBI personnel who could be on the island at any given time.

4. FBI Organizational Structure at GTMO

As noted above, the first group of FBI agents sent to GTMO consisted of one SSA, one ASAC, and at least two technically trained agents from the Miami Field Office. Shortly thereafter, the SSA and his replacements began to act as the FBI's "On-Scene Commanders" (OSC). From January 2002 to August 2003, the FBI assigned 16 different temporary OSCs, some of whom served multiple deployments. These OSCs were deployed to GTMO on temporary duty assignments for terms ranging from 2 to 6 weeks. By August 19, 2003, the FBI created a longer-term position at GTMO for the OSC, and from that point on the OSCs have served for terms of up to 2 years.

The FBI generally assigns a "case agent" to each of its major investigations. The Miami Field Office assigned a case agent to coordinate all GTMO-related investigative activities. Although, as noted above, responsibility was subsequently transferred to FBI Headquarters, this case agent initially assigned by the Miami Field Office remained assigned to GTMO for over a year in that position. This case agent told the OIG that the FBI's chain of command was not as clear cut on GTMO as it would be back

in the United States. He said there was a high turnover of agents and temporary supervisors at GTMO, and that personnel worked long days on many different tasks. He said that this atmosphere did not lend itself to a regimented system in which everything was done in “lockstep” with SAC authority.

In March 2002, the FBI contingent at GTMO had grown to approximately 25-30 people on the island at any given time, and the number of FBI personnel remained relatively constant until approximately September 2003, when it dropped to approximately a dozen people.

By August 2004, the FBI had sent a representative from its General Counsel’s office to work at GTMO and provide legal assistance to FBI personnel at GTMO. The first legal advisor served at GTMO for nearly 3 years.

5. FBI Activities at GTMO

a. Detainee Interviews by FBI Agents

FBI documents reflect that FBI agents, along with agents from the CITF (in some cases) and military intelligence (in other cases), began formally interviewing detainees on February 4, 2002. The FBI’s first GTMO case agent told the OIG that early on the interview process at GTMO was not very systematic or organized. He said the process was driven by the limited space available for interviews and that each agency assigned to GTMO vigorously competed for that space. He said FBI agents generally were given very short notice of when they would get a 4-hour block for interview time. It was up to each agent to determine which detainee was most important to interview when space became available. In addition, due to the high turnover in OSCs noted above, FBI interviewing practices varied widely. Some OSCs permitted agents to conduct joint interviews with the military and others instructed agents only to conduct interviews with other FBI agents.

Initially, the FBI separated the detainees at GTMO by “activities” or “themes.” This system soon became cumbersome and inefficient because the military was categorizing the detainees geographically. Accordingly, the FBI’s initial system was eventually abandoned and the FBI adopted the military’s system of separating the detainees by geographic region. Later, the FBI agents who were sent to GTMO to conduct detainee interviews were divided into two groups, one for detainees from Saudi Arabia and the Gulf States, the other for detainees from North Africa, Europe, and Central Asia. Each of these two groups was led by an SSA and was staffed by FBI special agents and intelligence analysts.

Early on, the military and intelligence components at GTMO were, according to FBI officials, unclear as to what the FBI's role at GTMO would be. Art Cummings, Section Chief of CTORS and later ITOS-1, was sent to GTMO by FBI headquarters to address some of the initial start-up issues, and he served as GTMO's fifth OSC. He told the OIG that when he first arrived, the Commander of JTF-170, Major General Dunlavey, and the military's intelligence task force thought the FBI was there "to put handcuffs on people." Cummings said he explained to Dunlavey and his Executive Officer that the FBI were experts in conducting adversarial interviews and getting people to talk to them when it is not in their interest to do so. According to Cummings, Dunlavey seemed surprised when Cummings explained that the FBI could offer this service at GTMO. The original FBI case agent for GTMO also said that early on the military and CIA at GTMO were worried that the FBI was going to "gum up the works" by "collecting evidence" instead of just collecting intelligence in order to stop the next terrorist attack. Cummings said that initially there was no disagreement with the military about interview techniques. He also said that during this period most interviews were done separately. However, if a detainee was very important for both groups then the interview would be conducted jointly.

In May 2002, the military and the FBI adopted the "Tiger Team" concept for interrogating detainees. According to the first GTMO case agent, these teams consisted of an FBI agent, an analyst, a contract linguist, two CITF investigators, and a military intelligence interrogator.³⁰ He said that the Tiger Teams continued for about the next 4 or 5 months. Each Tiger Team conducted two detainee debriefings a day. There were several reports from each debriefing because each agency participating in an interview produced a report. The first GTMO case agent said that in his opinion the Tiger Teams were successful, from the FBI's perspective, mainly because the FBI agents were usually the most experienced members of the team. Therefore, he said, most Tiger Teams were essentially being run by the FBI agent on the team. However, the FBI withdrew from participation in the Tiger Teams in the fall of 2002 after disagreements arose between the FBI and military intelligence over interrogation tactics. Several FBI agents told the OIG that while they continued to have a good relationship with CITF, their relationship with the military intelligence entities greatly deteriorated over the course of time, primarily due to the FBI's opposition to the military intelligence approach to interrogating detainees. This conflict is addressed in detail later in this report.

³⁰ An FBI On-Scene Commander said that the CIA was invited but rarely came because they were upset with how the detainees were assigned to the teams. According to the OSC, there were detainees of interest to the CIA that were off limits to the Tiger Teams.

b. Other FBI Activities in GTMO

As noted above, the first FBI agents sent to GTMO in January 2002 were assigned to [REDACTED]. It was only after February 4, 2002, that FBI agents began to participate in interviews. In addition, from 2002 - 2004, the FBI sent agents to GTMO to take fingerprints and photographs of detainees.

C. Iraq

In late March 2003, the United States and other coalition military forces invaded Iraq. Within a few weeks, these coalition forces defeated the Iraqi military, deposed Saddam Hussein and his government, and established the Coalition Provisional Authority (CPA) in Baghdad. On June 28, 2004, responsibility and authority for governing Iraq was formally transferred to the Iraqi interim government, while coalition forces continued to support Iraqi security and reconstruction.

1. Military and CIA Operations and Detention Facilities

As in Afghanistan, the U.S. Central Command (CENTCOM) was responsible for military operations in Iraq. Beginning in May 2003, Combined Joint Task Force Seven (CJTF-7) assumed responsibility for coalition military operations. In June 2003, CENTCOM transferred the title and authority of CJTF-7 to the U.S. Army V Corps. *Church Report* at 243, 249-250.

Operations in Iraq resulted in the capture of large numbers of “enemy prisoners of war” (EPW) and civilian detainees. One of CJTF-7’s missions was to interrogate detainees for intelligence relevant to the Iraqi insurgency and other matters. *Church Report* at 250. The *Church Report* described the evolution of military detention facilities in Iraq at length.

We determined that FBI agents conducted interviews at the following facilities in Iraq, which are described in greater detail in Section 5.a. below:

- The Abu Ghraib prison, which was the primary civilian detention facility in Iraq.
- [REDACTED]
- [REDACTED]

- [REDACTED]
- Camp Ashraf, a facility operated by the [REDACTED] near the Iranian border to house captured members of the Mujahedin-E-Khalq (MEK), an anti-Iranian paramilitary group.
- Other locations.

2. The FBI's Mission in Iraq

On February 10, 2003, FBI Director Mueller signed Operations Order 1015, which stated that the FBI's mission in Iraq was to "deploy a task-organized exploitation unit to fully exploit all Iraqi Intelligence Service (IIS) sites and personnel for information regarding planned terrorist attacks in the United States, or against U.S. personnel or interests outside the Iraq theater of operations (ITO), and to gather intelligence related to other matters of U.S. national security." In furtherance of this mission, the order authorized the FBI to conduct operations in Iraq with the military and other U.S. government intelligence agencies. Operations Order 1015 described CTD's "plan for integration of FBI assets with" the military and the CIA in Iraq once U.S. ground combat forces had secured areas and facilities in Iraq, and to collect and interview or analyze Iraqi Intelligence Service personnel, documents, and electronic media.

The FBI's primary objective in Iraq was collection and analysis of information to help protect against terrorist threats in the United States and protect U.S. personnel or interests overseas, rather than waiting for the military and other agencies to pass on such information to the FBI. The FBI was particularly concerned about terrorist sleeper cells within the United States, and believed that information from Iraq could be relevant to uncovering those cells. More specifically, CTD stated in a January 2004 briefing packet for agents that the mission of the FBI's Baghdad Operations Center was to "take deliberate and carefully planned actions to protect the United States against terrorist attack and espionage activity by engaging in intelligence gathering activities, including high value detainee interviews, document exploitation, biometric processing and other activities as directed."

The FBI also supported Coalition Provisional Authority (CPA) efforts to address terrorist acts within Iraq, including the processing of bombing and other crime scenes, and to share intelligence information with other U.S. agencies and military units. The FBI's objectives in Iraq also included the investigation of Saddam Hussein and his personnel for crimes against the Iraqi people.

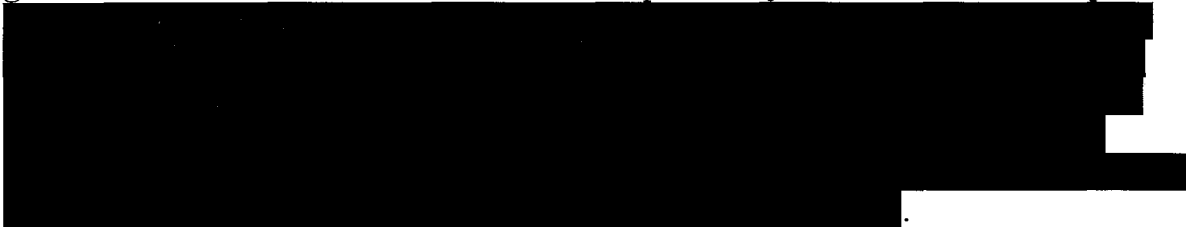
3. FBI Deployments to Iraq

FBI agents who served in Iraq volunteered from FBI field offices. In 2004, the FBI increased the length of the assignments for agents deployed to Iraq from 60 days to 90 days. The FBI also increased the tenure for On-Scene Commanders (OSC) in Iraq from 3 to 6 months as of January 2004, and their Deputies served for at least 90 days.

The number of FBI personnel deployed to Iraq increased significantly during 2003 and throughout 2004. The FBI Daily Situation Reports indicate that between 13 and 24 FBI personnel, including technical personnel and analysts, worked in Iraq at any given time between June and August 2003, and that between 23 and 44 FBI personnel worked there at any given time from September through December 2003. From January through December 2004, the number of FBI personnel in Iraq usually ranged between 50 and 60.

Most FBI personnel deployed to Iraq worked in the FBI's Baghdad Operations Center (BOC), which was located first within the Baghdad International Airport complex, and starting in mid-2004 within the Green Zone downtown.

FBI agents and interpreters conducted detainee interviews and gathered detainee biometric information primarily at the Abu Ghraib prison,



4. Organizational Structure of the FBI in Iraq

The FBI agents deployed to Iraq were supervised by an FBI On-Scene Commander (OSC). Between March 2003 and the end of 2004; eight FBI OSCs and five Deputy OSCs served in Iraq. We interviewed most of the OSCs and Deputy OSCs who served in Iraq during 2003 and 2004.

As in Afghanistan and GTMO, the FBI in Iraq had a subordinate and dependent role to the military. Several agents told us that FBI personnel considered themselves guests of the military, who established the rules to be followed there by other U.S. agencies. The FBI also depended upon the military in Iraq for critical services and materials, such as protection, transportation, housing, and food. All detainees in Iraq were in the custody and control of the U.S. military. The FBI was not designated as the lead agency for any purpose in Iraq, and the scope of the FBI's activities in those

zones, including its access to detainees, was at the discretion of the military or the CIA.

5. FBI Activities in Iraq

During the early stages of the Iraq conflict, from March through July 2003, FBI agents were deployed to Kuwait and Iraq to focus on the collection, analysis, and exploitation of documents collected from many former Iraqi Intelligence Service sites in Iraq. We found no evidence that, during this early period, any of these FBI personnel interacted with detainees or worked at military sites where they were held.

After this early period in 2003, the other primary FBI counterterrorism activities in Iraq included: (1) detainee interviews; (2) the collection of biometric information from detainees; and (3) participation in a limited number of military sensitive site exploitation missions. FBI agents have also devoted significant time and resources to conventional criminal investigations of bombings, murders, and kidnappings involving American citizens in Iraq.

a. Detainee Interviews by FBI Agents.

FBI agents in Iraq generally focused their interview efforts on al-Qaeda personnel, foreign fighters, and detainees who had also been in Afghanistan. These groups together constituted only a small part of the detainee population. As a result, FBI agents interviewed only a small percentage of the detainees in the custody of the military at its various detention facilities. The *Church Report* stated that between March 2003 and March 2005, over 50,000 detainees were held in Iraq. *Church Report* at 292-302.

Many of the FBI agents told us they interviewed only a small number of detainees – sometimes 10 or fewer – during their deployment to Iraq. FBI agents at [REDACTED]

[REDACTED]. FBI documents give a sense of the volume of interviews that the agents conducted in Iraq. In July 2004, the FBI reported in a classified statement for the record to a congressional committee that between January and March 2004 FBI agents in Iraq [REDACTED]. The FBI Situation Reports in late 2004 indicate that FBI agents conducted [REDACTED] interviews in October and [REDACTED] interviews in November 2004 at the various military facilities in Iraq.

The nature of FBI agent activities and interactions with military personnel varied with the different military detention and interrogation

facilities in Iraq. These are described below for each of the major Iraq facilities.

Abu Ghraib Prison. The Abu Ghraib prison was selected by the Coalition Provisional Authority as the primary civilian detention facility in Iraq, despite its Saddam-era history and poor condition, when the CJTF-7 commander concluded there were no other suitable facilities available. *Church Report* at 248. Detention operations began at Abu Ghraib in approximately September 2003, and the prisoner population there, including criminals, insurgents, and detainees with potential intelligence value, soon grew to an estimated 4,000 to 5,000. *Id.* at 248, 250. As of January 2004, over 7,000 detainees were held there in September 2004, Abu Ghraib held approximately 3,000 detainees, a number which held steady as of February 2005. *Id.*; *The Washington Post* 2/21/05 at A1, A22.

Abu Ghraib consisted of three sections: the main compound and prison building from the Saddam Hussein era; a make-shift concertina-wire detention area in the interior courtyard; and facilities within the courtyard walls for interviews by FBI and other non-military personnel, comprising two or three tents and at other times two trailers. One former OSC described Abu Ghraib as dismal, run down, medieval, and “grossly understaffed.” Another agent who conducted interviews there stated that the situation was “borderline chaotic,” and that the prison was understaffed and frequently attacked by insurgents.

FBI interviews of detainees at Abu Ghraib began in September 2003. Our review found that FBI agents seldom interviewed detainees within the main stone prison building at Abu Ghraib, and seldom went into that building for other reasons. Instead, FBI personnel conducted most of their detainee interviews in the military tents or trailers within the larger prison compound.

FBI Agents made arrangements with military personnel for access to detainees for interviews. Military guards delivered handcuffed detainees to the FBI and returned them to their cells after the interview. Typically, two FBI agents conducted the interview with an interpreter. One FBI agent who served at Abu Ghraib in 2003 stated that the military officer assigned to the particular prisoner was always required to be present and observe the FBI interview.

According to an FBI agent who served at Abu Ghraib in November 2003, FBI agents who wanted to conduct interviews were instructed by Military Police (MP) personnel regarding detainee interview procedures, and were given a form to read and sign in which the agents acknowledged that certain interrogation techniques were permissible, others were not, and still others required command level approval before they could be used.

However, the FBI agent said that this form “was of no importance to me because I had no intention of using any of [the listed techniques].” He stated that the only interrogation techniques that he recalled being described on the form were leaving lights on and sleep deprivation.

Another FBI agent stated that in 2004 the military described permissible interrogation practices in a standard printed form of not more than one or two pages that military intelligence personnel at Abu Ghraib gave agents to review and sign. She stated that there was nothing on the form that surprised her as being allowed for use by the military, but there were a number of techniques that the FBI does not use. The form identified the techniques with labels such as “Fear Up” or “Ego Down,” and the practices on the form related to sleep deprivation, diet manipulation, and intimidation tactics³¹.

Several FBI agents told us that, for the security and safety of FBI personnel, they did not work or stay at Abu Ghraib at night, but left at the end of each day to go back to the FBI’s Baghdad Operations Center. An FBI OSC said that he established this policy because Abu Ghraib was being mortared every night by insurgents, and Improvised Explosive Devices (IED) were found nearby every morning. As a result, FBI personnel did not go to Abu Ghraib until mid-morning, and left well before dark.

The abuse of prisoners by military personnel at the Abu Ghraib prison has been the subject of several investigations, including the Taguba and Jones investigations, the Church Commission, and the Schlesinger Panel.³² Press reports and prior investigations have indicated that many of the detainee abuses at Abu Ghraib occurred inside the main stone prison at night. As detailed in Chapter Ten, FBI agents told us they observed some aggressive or abusive conduct at Abu Ghraib, but with a few exceptions they said they generally did not observe or otherwise learn about conduct as extreme or abusive as that described in the published reports. The fact that FBI agents worked at the prison in the daytime and conducted interviews outside of the detention areas in the prison is the likely reason that the agents did not observe this more extreme conduct.

³¹ A third agent told us about the use of such a form at the [REDACTED] (discussed in the next section) in early 2004.

³² VADM A.T. Church, III, *Review of Department of Defense Detention Operations and Detainee Interrogation Techniques* (March 2005); 2004 US Army, LTG Anthony R. Jones, *Investigation of Intelligence Activities at Abu Ghraib*, AR 15-6; Honorable James R. Schlesinger, *Final Report of the Independent Panel to Review DoD Detention Operations* (August 2004); MG Antonio M. Taguba, *Article 15-6 Investigation of the 800th Military Police Brigade* (2004).

[REDACTED]

[REDACTED]

FBI agents began interviewing detainees, assisting military interrogators, and receiving assistance from military personnel at [REDACTED] in the fall of 2003, and by mid-2004 FBI agents were working in [REDACTED]. The decision to send FBI personnel to work with [REDACTED] later in 2004 stemmed from the conclusion that interviewing agents would be best positioned there to obtain information that was fresher and more useful than what they were obtaining at Abu Ghraib. According to a former Deputy OSC, however, he met with the [REDACTED] commander in the spring of 2004 in connection with the decision to involve FBI agents, and told him that the FBI could not and would not participate in interviews in which techniques or tactics beyond those permitted for FBI agents were used. According to the Deputy OSC, the commander told him this would not be a problem.

Another FBI agent told us that the military used a form at the [REDACTED] detainee interrogation facility that was similar to the form used at Abu Ghraib. The agent told us that before he was allowed to enter the [REDACTED] in the first half of 2004, the military required him to sign a pre-printed form indicating that this was a classified facility and that the types of methods used to gather information from detainees included the use of [REDACTED].

33 [REDACTED]

From the time the military moved ██████████ in mid-2004 through the end of the year, the FBI deployed between 8 and 14 FBI personnel at ██████████ at any one time. The FBI contingent working at ██████████ included agents, language specialists, a Computer Analysis and Response Team (CART) examiner, a reports officer, a Criminal Justice Information Systems Division (CJIS) biometric processing technician, and a supervisor.

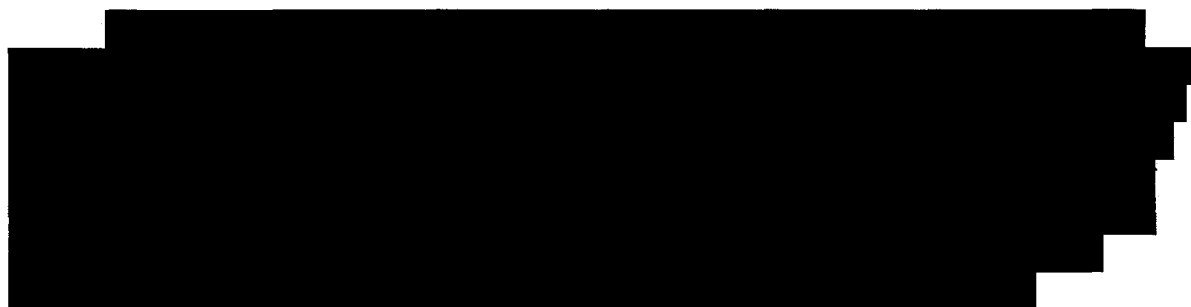
██████████, agents would sometimes wait until the detainees were sent to ██████████ or Abu Ghraib, before interviewing the detainees at those facilities. As elsewhere in Iraq, FBI agents who worked at ██████████ considered themselves as visitors or “guests” on ██████████ “turf.” They said they were instructed by the FBI to conduct themselves as FBI agents in detainee interviews and otherwise.

FBI agents also told us that the military commanders were always present at ██████████, were actively engaged to ensure that control was maintained over the detainees, guards, and interrogators, and participated in the twice-daily shift-change staff meetings. FBI personnel participated in the 24-hour per day operations at the facility, which were divided into two 12-hour shifts seven days per week.

██████████ After the ██████████, the detainees were made available to FBI personnel. The FBI focused on selected detainees believed to have some U.S. connection or information regarding potential terrorism threats to the United States, such as friends or family living in the ██████████. Beginning in 2004, the FBI agents’ work expanded to include assistance to the military in debriefing detainees for locally useful military information ██████████.

██████████ *Church Report* at 249. Between July and September 2003, for example, FBI agents conducted one or two interviews of such detainees per week at ██████████. An OSC told us that the military brought in and set up air-conditioned trailers, which were used for various purposes at ██████████, such as housing, offices, mess

hall, and detainee interview rooms. The FBI primarily sought to interview detainees who had been members of the Iraqi intelligence services, particularly those who may have traveled to the United States. The military also asked for FBI assistance in questioning former Iraqi political leaders held there. In general, the military personnel escorted the detainees to the trailers and back to their cells after the interviews were completed.



The *Church Report* stated that the U.S. military assumed responsibility for the detention facility at [REDACTED] in April 2003. *Church Report* at 249. The March 2004 *Taguba Report* of the military's investigation of the 800th Military Police Brigade mentioned allegations of detainee abuses, including abuses by four soldiers at [REDACTED] in May 2003, but did not describe the alleged incidents. *Taguba Report* at 6, 7.

The bulk of the FBI's work at [REDACTED] related to collecting detainee biometric data. However, FBI agents also conducted a significant number of detainee interviews at the camp. A team of FBI agents was first deployed there during the first half of 2004 and conducted approximately 120 detainee interviews during that period. During the second half of 2004, other FBI personnel traveled to [REDACTED] for short periods to interview specific detainees.

Camp Ashraf. Camp Ashraf, which is located in eastern Iraq near the Iranian border, was operated by [REDACTED]. As of early 2005, the camp housed approximately 3,800 members of the Mujahedin-E-Khalq (MEK), an anti-Iranian paramilitary group designated as a terrorist organization by the State Department in 1997. *Church Report* at 249. The MEK members held there were Iraqi defectors who had been allied with Saddam Hussein in an effort to overthrow the current Iranian government.

FBI personnel told us that the FBI started interviewing MEK personnel at this camp sometime during the fall of 2003. In 2004, FBI agents continued to interview detainees there to support potential criminal cases in the US. During 2004, between 10 and 17 FBI personnel worked at Camp Ashraf at any one time. In addition, between November 2003 to January 2004, FBI personnel biometrically processed some 3,600 MEK detainees there.

Mosul and Other Iraqi Cities. The FBI's counterterrorism operations in Iraq included detainee interviews during the period of September 2003 through March 2004 in and around the northern Iraqi city of Mosul. The FBI contingent in Mosul varied from seven to nine people. Their work included assistance to military intelligence and Iraqi personnel with detainee interrogations. FBI agents also went to Fallujah and Ramadi during this period to gather information and documents from high value targets after they were captured by the military and the Iraqi police.

b. Joint Interviews with Military Investigators

Many FBI agents who served in Iraq told the OIG that they worked jointly with military personnel in planning, preparing for, and conducting detainee interviews, particularly in 2003. Of the approximately 275 FBI personnel who served in Iraq and responded to the OIG survey, 125 stated that they jointly interviewed detainees with military or intelligence agency personnel. In some of these cases, however, the non-FBI participant was a contract interpreter or was merely observing the interview rather than participating in it.

The practice of conducting joint interviews with other agencies appears to have been more common in the early part of the Iraq conflict than in later years. A former Deputy OSC told us that in late 2003 and early 2004 it was not unusual for both FBI and military personnel to question a detainee together, and several other agents described conducting joint interviews during this period at various detention facilities.

As 2004 progressed, however, it appears that FBI agents teamed up with each other as much as possible for detainee interviews.³⁴ A former OSC told us that in the first half of 2004, his agents generally did not jointly interview detainees with military personnel, and that to the extent that they did the FBI agent controlled the interview and FBI rules were followed. Some agents stated that they never jointly interviewed detainees with military interrogators in the second half of 2004. Moreover, another former OSC told the OIG that during his work in Iraq between July 2004 and January 2005, the general rule for FBI personnel was that all FBI interviews were to be done with a team of two FBI agents in the room at all times.

An FBI supervisor at ██████ told us that he established guidelines for detainee interviews at the facility with guidance from the OSC and FBI Headquarters, including the rule that the interviews were to be conducted

³⁴ This evolution in practice may have been related to the Abu Ghraib disclosures in April 2004 and the issuance of the FBI's May 2004 Detainee Policy, which reiterated that agents should not participate in interrogations involving techniques not approved under FBI policies (see Chapter Six).

by teams of two FBI agents only, ending a practice of joint interviews with the military at the facility. However, one of the Deputy OSCs during the second half of 2004 told us that at [REDACTED] it was not unusual for FBI agents to be teamed up with military interrogators for particular interviews of detainees, and that he was not aware of any policy that FBI agents had to work only with other agents.

[REDACTED]

Other FBI agents said they worked in close coordination with the military. For example, one FBI agent told us that he conducted joint interviews with a military analyst who sat in and took notes, and that the military analyst would make suggestions to the FBI agent for further questioning based on his experience in Afghanistan and his understanding of the information needed. The FBI agent also stated that there was a military interrogator who was assigned to interview the same detainee. The military interrogator would interview this detainee during the day while the FBI agent interviewed the detainee at night. In between shifts, the two would share the information they had received and develop strategies for further questioning of the detainee.

Another FBI agent noted that in Mosul there was no established prison, and FBI agents deployed there conducted more joint interviews of detainees with military interrogators than elsewhere in Iraq.

c. Other FBI Activities in Iraq

The FBI also devoted significant resources in Iraq to collecting biometric data from large numbers of detainees, and conducting a small number of military sensitive site exploitations.

The FBI's CJIS agents collected biometric information from more than 8,000 detainees in Iraq during the latter part of 2003 through the end of 2004.³⁵ For example, in September through December 2003, CJIS agents fingerprinted, photographed, and collected DNA from approximately 2,000 detainees at Abu Ghraib, [REDACTED], Mosul, and other

³⁵ At Abu Ghraib Prison, CJIS personnel did not process the detainees inside any of the interior brick and mortar structures, but instead worked in tents within the walled prison compound.

locations. The FBI also participated in military sensitive site exploitations in Iraq, but to a much lesser extent than in Afghanistan.

In addition to counterterrorism work, the FBI allocated substantial resources during 2003 and 2004 to criminal field investigations of bombings and murders in Baghdad and other locations. FBI resources were also focused in large measure on the recovery and analysis of Improvised Explosive Devices (IED) and vehicle borne IEDs. This FBI activity included extensive work on the bombings of the Jordanian and Turkish Embassies, the Red Cross and United Nations buildings, and the mosque in an Najaf, as well as several high-profile murder investigations of U.S. or CPA personnel.

CHAPTER THREE

BACKGROUND REGARDING INTERROGATION POLICIES

In this chapter we describe the interview policies of the FBI and the interrogation policies adopted by the military for questioning detainees. These policies, and the tensions between them, provide essential context for the rest of this report. First, we describe the FBI's policies for conducting custodial interviews that were in place when the FBI began participating in the questioning of detainees in military zones. These policies were based in large part on constitutional requirements of voluntariness and legal admissibility of witness statements in subsequent prosecutions, together with the FBI's belief that rapport-based interview techniques are the most reliable and effective means of obtaining accurate information. Second, we summarize the vastly different interrogation policies adopted by the Department of Defense (DOD) for use in the military zones. The DOD policies approved many methods that were prohibited for use by FBI agents under FBI policies.

I. Pre-existing FBI Policies and Practices

Most of the FBI's written policies regarding permissible interview techniques for agents and for agent conduct in collaborative or foreign interviews were developed prior to the September 11 attacks. When these policies were drafted, they reflected the FBI's primary focus on domestic law enforcement, which emphasized obtaining information for use in investigating and prosecuting crimes. These policies are designed to assure that witness statements meet legal and constitutional requirements of voluntariness so that they are admissible in court and do not undermine the admissibility of any other evidence developed in the investigation as a result of the witness interview.

However, constitutional and evidentiary considerations were not the only rationales for the FBI's prohibition on the use of coercive interview techniques. On various occasions, the FBI has asserted its belief that the most effective way to obtain accurate information is to use rapport-building techniques in interviews.

A. FBI Interview/Interrogation Techniques

The FBI's interrogation policies are set forth in the FBI's Legal Handbook for Special Agents ("the LHBSA" or "the Handbook"), the Manual of Investigative Operations and Guidelines (MIOG), and the Manual of

Administrative and Operational Procedures (MAOP).³⁶ Section 7 of the Handbook relates to “Confessions and Interrogations.” Section 7-1 of the Handbook states: “The most important limitations on the admissibility of an accused’s incriminating statements are the requirements that they be voluntary; that they be obtained without the government resorting to outrageous behavior; and that they be obtained without violating the accused’s right to remain silent or to have a lawyer present.” Section 7-2 states: “A conviction based on an involuntary statement, without regard to its truth or falsity, is a denial of the accused’s right to due process of law. A coerced confession will undermine the legitimacy of a conviction.” Section 7-2.1 of the Handbook states, among other things, that “[i]t is the policy of the FBI that no attempt be made to obtain a statement by force, threats, or promises.”

The Handbook discusses the factors affecting judicial assessments of voluntariness, including: (a) notification of charges; (b) age, intelligence, and experience of the accused; (c) physical condition of the accused; (d) physical abuse, threats of abuse, use of weapons, number of officers present; (e) threats and psychological pressure; (f) privation: food, sleep, medication; (g) isolation, incommunicado interrogation; (h) duration of questioning; (i) trickery, ruse, deception; (j) advice of rights; and (k) promises of leniency or other inducements. The Handbook notes that courts use a “totality of circumstances” test when determining the voluntariness of a witness’s statement, and that the presence of any one or more of the factors mentioned above will not necessarily render a statement involuntary. LHBSA at 7-2.2. FBI training materials also focus on the “totality of the circumstances” standard and give examples of circumstances under which courts have held that confessions are coercive and

³⁶ Although some FBI agents told us that they conduct “interviews” rather than “interrogations,” several FBI policies use the latter term. An FBI Unit Chief described the distinction: “An interview is the process of obtaining information from an individual willing to provide information about themselves or others. An interview is also usually the first step prior to moving to an interrogation phase with someone believed to be unwilling to provide accurate or truthful details about information they have. When the interview is done immediately prior to an interrogation it is used to obtain the information the person is readily willing to provide, biographical info and ‘their version of events,’ and is used to build rapport and identify themes that can be used during the interrogation. The interrogation phase is the process used to obtain the information that the person does not want to provide for any number of reasons. . . . The interrogation phase will typically involve the interrogator accusing, directly or indirectly, the interrogee of something, such as withholding information or having provided false information.” FBI training materials make a similar distinction. E.g. FBI Law Enforcement Communication Unit, “Interviewing and Interrogation” (10/14/04) at 72. However, the FBI and DOD policies discussed in this section regarding the use of potentially coercive techniques do not distinguish between the interview and interrogation phases with respect to preserving the voluntariness of a statement. In this report, we generally do not distinguish between interviews and interrogations for purposes of discussing compliance with FBI or DOD policies.

inadmissible, including: a confession made to avoid a credible threat of physical violence; a confession induced by an explicit promise of leniency; and a confession induced by misleading the subject to believe that failure to confess will result in adverse consequences for others.³⁷

In general, prior to a custodial interrogation in a criminal investigation, an accused individual is entitled to be warned of his constitutional rights, typically by receiving a *Miranda* warning. LHBSA 7-3.1. If, after being advised of his rights, a suspect in custody indicates that he wishes to remain silent or that he wants an attorney, all interrogation must cease at that time. LHBSA 7-2.1(1). Section 7-15 of the Handbook states: “Persons interviewed by Agents while in police custody in a foreign country must be given the usual warning of rights under American Federal law as fully as possible.”

The FBI’s MAOP also describes the importance of FBI agents not engaging in certain activities when conducting investigative activities, including foreign counterintelligence. MAOP Part 1, Section 1-4. The MAOP states that “[n]o brutality, physical violence, duress or intimidation of individuals by our employees will be countenanced....” MAOP, Part 1, Section 1-4(4). The MAOP also stresses that “[a]s member of a federal investigative agency, FBI employees must at all times zealously guard and defend the rights and liberties guaranteed to all individuals by the constitution.” MAOP, Part 1, Section 1-4(2). According to the MAOP, violations of these policies must be reported to FBI Headquarters. MAOP, Part 1, Section 1-4(5); see also MAOP, Part 1, Section 13-1(2) (“It is imperative that any information pertaining to allegations of misconduct or improper performance of duty coming to the attention of any Bureau employee be promptly and fully reported to FBIHQ.”)

Although the FBI’s involvement in intelligence gathering functions expanded significantly after the September 11 attacks, the FBI often participated in intelligence-gathering activities before that date. Before the September 11 terrorist attacks and the change in FBI priorities, the FBI had not established a different set of procedures for interviews or interrogations for situations where no prosecution in U.S. courts was contemplated.

B. Working with Other Agencies

Prior to the September 11 attacks, the FBI had policies in place for working with other government agencies, both domestic and foreign, in joint

³⁷ A. Louis DiPietro, “Lies, Promises, or Threats – The Voluntariness of Confessions,” reprinted in FBI Academy training manual “Interviewing and Interrogation” (10/14/2004) at 92-96.

or cooperative investigations. However, the FBI's work with the military in GTMO, Afghanistan, and Iraq raised issues regarding which agency's interrogation policies would apply, and how the FBI would work with personnel from other agencies operating under different interrogation rules.

1. FBI Interaction with Other Domestic Law Enforcement Agencies

The FBI has extensive experience working jointly with other federal, state, and local law enforcement agencies. FBI agents often conduct joint interviews in the normal course of their duties. FBI agents told us that they are trained to always adhere to FBI protocols, not to other agencies' rules with respect to interview policies or evidence collection.

Yet, the FBI's experience working with other domestic agencies provided limited precedent for the FBI's work with the military overseas on detainee interviews. In past cases, the other agencies were usually other law enforcement organizations (such as state or local police) that were also focused on prosecuting crimes in domestic courts and were subject to similar concerns about voluntariness that drive the FBI's established interrogation policies. Typically, there was not a major conflict between the policies and practices of these agencies and those of the FBI. Moreover, in most cases prior to September 11 the FBI was the lead agency and therefore positioned to direct which interrogation policies would apply.

After the September 11 attacks, the FBI's mission expanded to include working jointly with the military frequently. This mission gave rise to circumstances in which (1) entities other than the FBI were the lead agencies and had custody of the witnesses, (2) prosecution of crimes was not necessarily the primary goal of the interrogations, and (3) the evidentiary rules of U.S. Article III courts did not necessarily apply.

2. FBI Interaction with Agencies of Foreign Governments

Even prior to the September 11 attacks, FBI investigations required agents to work abroad. For example, the FBI regularly investigated terrorist attacks that occurred abroad but that involved U.S. targets. These activities required the FBI to cooperate with or assist the law enforcement agencies of foreign governments. The FBI has an extensive system of Legal Attachés (LEGAT) stationed in U.S. embassies to coordinate FBI work in foreign countries.

FBI policy states: "Agents have no jurisdiction in foreign countries, hence, cannot exercise the power of arrest, search or seizure in such places." LHBSA 3-11; see also MIOG, Part 2, Sections 1-2.3.3 and 23-8.2(3)(a). The FBI's Legal Handbook further states that agents cannot

participate in interviews with prisoners except in places of incarceration and in the presence of foreign authorities. It also states, “Agents are not to participate in any unauthorized or unlawful actions even though invited to do so by a cooperating foreign officer.” *Id.*

In some cases, the FBI worked with agencies of foreign governments that were governed by a different set of rules for interrogations. In such cases, for example, an FBI agent might observe a foreign agent using a technique in a foreign interrogation that was lawful for the foreign agent but that would be prohibited for an FBI agent. This scenario provides a potential analogy for the issue of FBI cooperation with U.S. military investigators conducting interrogations using techniques permitted by the military but not by the FBI.

As detailed in Chapter Six of this Report, on May 19, 2004, the FBI issued a policy specifically relating to the treatment of prisoners and detainees (the “FBI’s May 2004 Detainee Policy”). The Policy includes the following statement, which the FBI’s Office of General Counsel characterized not as a new policy but rather as “reaffirm[ing] prior FBI policy”:

FBI personnel who participate in interrogations with non-FBI personnel . . . shall at all times comply with FBI policy for the treatment of persons detained. FBI personnel shall not participate in any treatment or use any interrogation technique that is in violation of these guidelines regardless of whether the co-interrogator is in compliance with his or her own guidelines. If a co-interrogator is complying with the rules of his or her agency, but is not in compliance with FBI rules, FBI personnel may not participate in the interrogation and must remove themselves from the situation. (Emphasis in original.)

However, we did not find any pre-September 11 FBI written policies specifically addressing the scenario of FBI agents working with agencies of foreign governments who were governed by a different set of rules for interrogations, or that defined what constitutes “participation” in an interrogation controlled by another entity.

C. FBI Duty to Report

Another set of FBI policies in place prior to the September 11 attacks that are potentially applicable to the FBI’s activities in GTMO, Afghanistan, and Iraq related to the duty of FBI personnel to report allegations of misconduct by FBI employees and other government employees. The FBI’s MAOP requires FBI agents to report allegations of misconduct by FBI employees to FBI Headquarters:

As the government's primary investigative service . . . [i]t is imperative that any information pertaining to allegations of misconduct or improper performance of duty coming to the attention of any Bureau employee be promptly and fully reported to FBIHQ, and it is the continuing responsibility of Bureau officials to see to it that the employees under their supervision are properly indoctrinated regarding this requirement so that they not only will fully understand it, but will comply with it.

MAOP Part 1, Section 13-1 (1) and 13-1(2). Part 1, Section 263-2 of the MIOG provides similar guidance, stating that all allegations of "criminality or serious misconduct" on the part of FBI employees must be reported to FBI Headquarters.

The Legal Handbook for Special Agents specifically addresses the obligation of agents to report misconduct during witness interviews. The Handbook's Policy for Confessions and Interrogations states:

If, during an interview with a witness, suspect, or subject, questions are raised by such persons or if anything transpires which gives reasonable grounds to believe that subsequently such questions or incident may be used by someone in an effort to place an Agent or the FBI in an unfavorable light, an electronic communication regarding such questions or incident should be immediately prepared for the SAC. The SAC is responsible for promptly advising FBIHQ and the USA of such questions or incident and FBIHQ must be promptly informed of all developments. LHBSA 7-2.1(2).

Thus, the duty of an FBI employee to report on activities of other FBI employees goes beyond reports of criminal conduct. This duty includes an obligation to report on misconduct, improper performance, and events that may reasonably be used to place an agent or the FBI in an "unfavorable light."

In contrast, prior to the issuance of the FBI's May 2004 Detainee Policy, the duty of an FBI employee to report on the activities of non-FBI government personnel was limited to criminal behavior. This limited duty arose not from any FBI policy, but from federal law, which requires all government employees, including those of the FBI, to report criminal behavior by any government employees, including employees of the DOD, to the Department of Justice. See 28 U.S.C. § 535. We did not find any FBI policy prior to May 2004 imposing an obligation on FBI employees to report misconduct by non-FBI government employees falling short of a crime, such as conduct that might violate other agencies' own interrogation policies.

II. Department of Defense Interrogation Policies

In this Section we provide a brief summary of the detainee interrogation policies adopted by the Department of Defense (DOD) after the September 11 attacks for prisoners and detainees.³⁸ These policies are relevant to the OIG's review for several reasons. First, the tension between DOD policies and the FBI's interview policies was an important factor in the FBI's efforts to provide workable guidance for its agents in the military zones. FBI agents in the military zones faced difficulties as a result of the stark differences between the FBI's conventional law enforcement techniques and the more aggressive interrogation techniques of military and intelligence agencies.

Second, a significant portion of our review was directed at determining what information FBI agents acquired during their deployments in the military zones regarding the treatment of detainees by *any* U.S. government personnel, not just by FBI agents themselves. The vast majority of the incidents that the FBI agents reported to us involved the conduct of interrogators from the DOD and the CIA. However, interrogators from other agencies were governed by their own agencies' interrogation policies, not the policies of the FBI.

It is generally beyond the jurisdiction of the OIG and the scope of this investigation to make determinations regarding whether particular conduct by non-FBI interrogators violated their agencies' policies. However, as detailed in Chapter Six, beginning in May 2004 FBI policy required FBI agents to report to their superiors any incidents of known or suspected abuse or mistreatment of detainees by other agencies' interrogators. As explained in Chapter Six, some FBI agents were told that, under this policy, they should report any interrogation technique that the agent believed was outside the legal authority of the interrogator. Under this interpretation, FBI agents would need to have some familiarity with other agencies' policies in order to comply with the FBI's policy.

Third, FBI agents in the military zones had a unique opportunity to observe the conduct of other agencies' interrogators. The public allegations of detainee abuse at the Abu Ghraib prison, GTMO, and other detention facilities mainly related to the conduct of non-FBI personnel. Therefore, while we do not make determinations regarding whether the conduct of other agency personnel reported to us by FBI agents violated their agencies'

³⁸ As detailed in subsequent chapters, some of the interrogation techniques that caused the most concern to the FBI were used by the CIA, not the military. However, as stated in Chapter One, our review generally did not cover activities at facilities used by the CIA. Moreover, the vast majority of FBI agent observations discussed in this report relate to DOD interrogations.

policies, we refer in this report to potentially applicable policies of other agencies.

However, it is important to note that we did not review all DOD policies regarding interrogation of detainees. Our summary of the interrogation policies of DOD is based primarily on information contained in the *Church Report*.

A. Legal Background: the Geneva Conventions, the Convention Against Torture, and Related Statutes

The legal background for DOD policies regarding the interrogation of detainees includes the United States' obligations under the Geneva Convention (III) Relative to the Treatment of Prisoners of War, 6 U.S.T. 3316, and the Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 6 U.S.T. 3516 (collectively "the Geneva Conventions").³⁹ Additional relevant authorities include the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, 23 I.L.M. 1027, and the Torture Statute, 18 U.S.C. § 2340. The applicability of these authorities to various categories of detainees, as well as the meaning of "torture" as the word is used in these authorities, have been the subject of extensive debate and controversy. It is beyond the scope of this report to address these legal issues. Rather, we briefly summarize these authorities to provide context for the more specific DOD interrogation policies that are relevant to our review.

In general, the Geneva Conventions require that enemy prisoners of war and certain captured civilians be treated humanely at all times. The Geneva Conventions also prohibit the use of physical or mental torture, or other forms of coercion, to obtain information from prisoners of war, and prohibit the use of physical or moral coercion to obtain information from protected civilians. The provision known as "Common Article 3" protects detainees from cruel treatment, torture, and outrages upon personal dignity, "in particular, humiliating and degrading treatment." The War Crimes Act, 18 U.S.C. § 2441, criminalizes under U.S. law certain breaches of the Geneva Conventions, including breaches of Common Article 3.

On February 7, 2002, President Bush issued a memorandum declaring that none of the provisions of the Geneva Conventions apply to members of al Qaeda in Afghanistan or elsewhere. The memorandum also stated that members of the Taliban are "unlawful combatants" and do not qualify as prisoners of war entitled to the stronger protections of the Geneva

³⁹ The Geneva Conventions also include Geneva I and II, which relate to treatment of the wounded and sick in armed forces in the field or at sea.

Conventions. However, the President stated that al Qaeda and Taliban detainees were to be treated “humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva.” *Church Report* at 187.

The United States also has obligations under the Convention Against Torture. The Convention Against Torture defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person” for certain purposes. The United States conditioned its ratification of the treaty on an understanding that in order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain or suffering, and that mental pain or suffering refers to prolonged mental harm from:

- (1) the intentional infliction or threatened infliction of severe physical pain or suffering;
- (2) the administration or threatened administration of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality;
- (3) the threat of imminent death; or
- (4) the threat that another person will be imminently subjected to death, severe physical pain or suffering, or the administration of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality.

The Convention Against Torture also prohibits cruel, inhuman, or degrading treatment or punishment. However, the Bush Administration has taken the position that the Convention Against Torture does not apply to alien detainees held outside of the United States.

The Torture Statute, 18 U.S.C. § 2340, prohibits torture outside the United States. Its definition of torture tracks the language of the U.S. understanding on which the Convention Against Torture was ratified, summarized above. Citing a DOJ Office of Legal Counsel Opinion (6 Op. OLC 236 (1982)), the DOD has stated that GTMO is within the special maritime and territorial jurisdiction of the United States, and, as such, is not “outside of the United States” for purposes of the Torture Statute. Therefore, according to this interpretation, the Torture Statute applies in Afghanistan and Iraq but does not apply in GTMO.

On December 30, 2005, the President signed into law the Detainee Treatment Act, Pub L. No. 109-148. Section 1002 of the Detainee Treatment Act established the U.S. Army Field Manual as a uniform standard for detainee treatment and interrogation techniques available for use on detainees in DOD custody. Section 1003 provided for a global

prohibition on the use of cruel, inhuman, or degrading treatment on all persons in the custody or effective control of the U.S. government. This provision responded to the Administration's argument that the Convention Against Torture did not apply to alien detainees held outside U.S. territory.

In July 2006, the Administration announced that, pursuant to the Supreme Court's decision in *Hamdan v. Rumsfeld*, 126 S.Ct. 2749 (2006), the U.S. government would henceforth apply Common Article 3 of the Geneva Conventions to all detainees.

B. DOD Interrogation Policies Relating to GTMO

When interrogations began at GTMO in January 2002, military interrogators relied on Army Field Manual 34-52, *Intelligence Interrogation*, for guidance as to permissible interrogation techniques. Field Manual 34-52 listed the following techniques as permissible:

- Direct questioning.
- Incentive – use of luxury items to reward cooperation, with the implication that the items will be withheld for failure to cooperate. No withholding of any basic human need such as food or medicine.
- Emotional Love – playing on detainee's emotional attachments to create a psychological burden that might be relieved through cooperation.
- Emotional Hate – playing on detainee's emotional hate, such as desire for revenge.
- Fear Up (Harsh) – exploiting a detainee's pre-existing fears, including behaving in an overpowering manner with a loud and threatening voice.
- Fear Up (Mild) – using a calm, rational approach to exploit the detainee's pre-existing fears.
- Fear Down – the detainee is soothed and calmed to build rapport.
- Pride and Ego-Up – use of flattery to prompt cooperation.
- Pride and Ego-Down – goading the detainee by challenging his loyalty, intelligence, etc., to induce the detainee to provide information disproving the interrogator.
- Futility – rationally persuading the detainee that it is futile to resist questioning.

- We Know All – convince the detainee that the interrogator is all-knowing and resistance to questioning is pointless.
- File and Dossier – preparing a decoy dossier that convinces the detainee that everything is already known, so resistance is pointless.
- Establish Your Identity – insist that the detainee is someone else to induce him to reveal information to clear himself.
- Repetition – induce the detainee to break the monotony by answering.
- Rapid Fire – questioning in rapid succession, without permitting detainee to answer.
- Silent – staring at detainee for extended period to induce nervousness.
- Change of Scene – engaging the detainee in a different environment to ease his apprehension or catch him with his guard down.

Church Report at 35-37, 107.

On December 2, 2002, in response to a request from the Commander of the intelligence task force at GTMO for approval of additional counter-resistance techniques not specifically listed in Field Manual 34-52, the Secretary of Defense approved the following techniques for use at GTMO:

- Yelling
- Use of multiple interrogators
- Deceiving the detainee by having the interrogator present a false identity
- Stress positions (“like standing”) for a maximum of four hours
- The use of falsified documents or reports
- Isolation for up to 30 days, with any extensions beyond the 30 days requiring approval from the JTF-GTMO Commander
- Interrogation of the detainee in an environment other than the standard interrogation booth
- Deprivation of light and auditory stimuli
- The use of a hood placed over the detainee’s head during transportation and questioning
- The use of 20-hour interrogations