

CHAPTER FIVE

FBI CONCERNS ABOUT MILITARY INTERROGATION AT GUANTANAMO BAY

In this chapter we describe the response of the FBI and DOJ to the military's interrogation of Muhammad Ma'ana Al-Qahtani at GTMO in 2002 and 2003. Al-Qahtani is a Saudi Arabian national who was allegedly sent to the United States to be one of the September 11, 2001, hijackers.⁴⁵ The Al-Qahtani interrogation became the focus of a major disagreement between FBI agents and the military regarding interrogation techniques. As detailed below, FBI agents at GTMO became concerned that the DOD's approach was ineffective and possibly illegal, that they would complicate or preclude any effort to prosecute Al-Qahtani, and that the agents' exposure to these techniques would create problems for the agents and the FBI in the future. We determined that some of these concerns reached senior officials at the FBI and DOJ. However, these officials focused primarily on the issue of whether the DOD's techniques were effective at obtaining intelligence from Al-Qahtani and other detainees. Ultimately, the military prevailed in the inter agency dispute resolution process and the military's methods were pursued over DOJ's objections. We also determined that at one point officials from the FBI and DOJ participated in developing a proposal to [REDACTED] for interrogation using techniques of the sort that had been used on Abu Zubaydah and [REDACTED]. This proposal was never finalized or acted upon.

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

I. Background on Al-Qahtani

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

⁴⁵ *Church Report* at 115. Al-Qahtani has also been known as: Mohammed Ma'ana Ahmed Al-Qatani, Muhammad Mani' Ahmed Al-Shal-lan Al-Qahtani, and Mohammad Al-Kahtani.

Records provided to the OIG indicate that Al-Qahtani was interviewed by the FBI and the DOD four or five times between February and June of 2002. In these interviews, he provided basic biographical information and a “cover story” that he had traveled to Afghanistan to buy and sell falcons. One military interrogator described him as “obtuse and confrontational” and another noted that he “refuses to give any traceable detail for any part of his story.” During this time the military and the FBI did not suspect that Al-Qahtani was directly linked to the September 11 plot.

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

During the investigation after the September 11 plot, the Immigration and Naturalization Service (INS) determined that a person who fit the pattern of some of the September 11 hijackers had been denied entry at the Orlando, Florida, airport as he attempted to enter the United States in August 2001. In July 2002, the FBI identified Al-Qahtani from fingerprint records as the person who had been turned away by the INS.⁴⁶ The FBI also determined that hijacker Mohammed Atta’s calling card was used at a pay phone in the Orlando airport to call a September 11 financier at precisely the time Al-Qahtani was being detained by the INS.⁴⁷

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

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

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

⁴⁷ The link between Al-Qahtani and the September 11 attacks was confirmed after Khalid Shaikh Mohammed, who has been described as the mastermind of the September 11 attacks, was captured on March 1, 2003, and started providing intelligence. Khalid Shaikh Mohammed was transferred from CIA custody to the U.S. military base at Guantanamo Bay in 2006.

value of Al-Qahtani had been briefed to the White House and possibly the National Security Counsel, the answer came back that there was no interest in prosecuting Al-Qahtani in a U.S. court at that time.

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

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

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

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

III. FBI Interviews of Al-Qahtani: August 2002

Special Agent Demeter was the case agent for GTMO from February 2002 until April 2003.⁴⁸ Demeter told the OIG that once the FBI learned of the connection between Al-Qahtani and the September 11 attacks, the FBI sought to take the lead in interviewing him. The FBI's argument for seeking the lead was that the FBI had discovered and initially investigated the connection between Al-Qahtani and the September 11 attacks, and the FBI was leading the investigation into the attacks. Demeter said the person in charge of the DOD's Criminal Investigative Task Force (CITF) gave the FBI access to Al-Qahtani.

After learning in mid-July 2002 of Al-Qahtani's connection to the September 11 attacks, the military moved Al-Qahtani to a cell in Camp Delta [REDACTED]

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

Demeter told the OIG that, at this point, he requested that FBI Special Agent Thomas interview Al-Qahtani, because Thomas was in Demeter's view the FBI's "strongest interviewer."⁴⁹ According to one of the first FBI On-Scene Commanders (OSC) at GTMO, Thomas had already obtained confessions from several detainees at GTMO and Major General Dunlavey, the Commander of Joint Task Force 170, called him "a national treasure."

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

⁴⁸ Demeter is a pseudonym.

⁴⁹ Thomas is a pseudonym. Thomas was one of the agents who also interviewed Zubaydah, as described in Chapters Four and Eleven.

and that he obtained the necessary approvals from senior officials above the Unit Chief. Demeter told us that the military had to approve the transfer because the military controlled GTMO.

On August 8, 2002, Al-Qahtani was transported via military ambulance from his cell in Camp Delta to the Navy Brig in GTMO.⁵⁰ Thomas continued to interview Al-Qahtani after he was moved to the Brig. Demeter said that Thomas urged the guards at the Brig to refrain from speaking with Al-Qahtani to increase his isolation. He stated that the guards covered their faces or ordered Al-Qahtani to face away when they were present to further isolate Al-Qahtani from human contact.⁵¹

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

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

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

⁵¹ We note that severe isolation of the type used on Al-Qahtani for interrogation purposes rather than as a disciplinary or security measure would likely be considered to be coercive and contrary to FBI policies for custodial interviews in the United States. The same may be true of the actual or implied threats that Thomas made, as described later in this chapter. However, these incidents took place very close to the time concerns about the Zubaydah interrogation were being raised within the FBI, as described in Chapter Four. It is clear that the Director’s instruction had not yet been communicated to Thomas or those in his chain of command that approved Al-Qahtani’s isolation.

Al-Qahtani told the OIG that he had been removed from his cell by force, prior to being taken to the Brig. He said the day after the move to the Brig, Thomas came and sat next to him and said something like “this is your place until you change your story.” Al-Qahtani said he did not recall meeting with anyone from the FBI at the Brig other than Thomas and one civilian who took his picture and fingerprints. However, FBI records and witnesses indicate that Al-Qahtani was interviewed by several different FBI agents during the period when he was confined in the Brig, including Thomas, Demeter and members of the FBI’s Behavioral Analysis Unit.

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

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

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

After the military determined that it would take the lead on the Al-Qahtani interrogations, a military intelligence “special projects” team put together a proposed interrogation plan. During this time, the FBI continued to attempt to influence his interrogation. From September 13, 2002, until October 29, 2002, FBI SSAs Foy and Lyle from the Behavioral Analysis Unit (BAU) were deployed to GTMO to provide behavioral analysis of detainees to help develop interview strategies.⁵² On September 30, 2002, Foy e-mailed his superiors at the BAU about the latest military intelligence plan for Al-Qahtani, which included moving him from the Brig to Camp Delta for a short stay to see if he would cooperate, followed by transferring him to Camp X-Ray for an indefinite period of 20-hour interviews. Foy’s e-mail stated that when he asked for guidance from the MLDU Unit Chief, the Unit

⁵² Lyle and Foy are pseudonyms.

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

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

On October 3, 2002, Foy and Lyle observed the Al-Qahtani interrogations. After interviewing Qahtani for a few hours at Camp Delta – where he continued to refuse to cooperate – the military moved him to a plywood hut in Camp X-Ray. Al-Qahtani was interrogated by another military interrogation team from October 3 until the early morning hours of October 4. Lyle said Al-Qahtani was “aggressively” interrogated and that the military interrogators yelled and screamed at him. Foy told the OIG that the plan was to “keep him up until he broke.”⁵³ Foy said he did not know if that ultimately is what happened, because he and Lyle stopped observing the process. Foy stated in an e-mail to The FBI Unit Chief and the OSC at GTMO the next morning that an FBI approach to Al-Qahtani the following week would not be worthwhile “due to the current mental/physical status of the detainee.”

Foy and Lyle returned to Camp X-Ray in the late afternoon of October 4 to continue their observations. Lyle told the OIG that one of the interrogators, a Marine Captain, had been interrogating Al-Qahtani by yelling at him and calling him names. Lyle stated that the Captain got up on the table in the room to yell at Al-Qahtani in a more intimidating fashion, at which point he squatted over a Koran that had been provided to Al-Qahtani. This action incensed Al-Qahtani, who lunged toward the Captain and the Koran. Al-Qahtani was quickly subdued by the military guards in the room. Foy gave a similar account of this incident. He stated that he and Lyle heard a commotion coming from the interview room where the Marine Captain and another military interrogator were interviewing Al-Qahtani. Foy said that it appeared that the Captain and the other interrogator were playing “good cop, bad cop.”⁵⁴

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

⁵⁴ Foy and Lyle gave consistent accounts of this incident to the FBI Inspection Division in September 2004. Foy stated that the Koran incident took place on October 4,
(Cont’d.)

Lyle and Foy also described an incident the next day in which a guard received a signal to bring a working dog into the interrogation room where Al-Qahtani was being interrogated. Lyle said that the use of dogs as an interrogation tool was exclusively the military's idea, based on their belief that Arabs feared dogs because they viewed dogs as unclean. Lyle said that the guard handling the dog first agitated the dog outside the interrogation room, and then brought the dog into the room close to Al-Qahtani. Lyle said that the dog barked, growled, and snarled at Al-Qahtani in very close proximity to him, but was never allowed to have contact with him.⁵⁵ Foy gave a similar account of the incident, and told the OIG that he and Lyle were not comfortable with the situation with the dog so they left the interrogation.⁵⁶

On October 8, 2002, Foy e-mailed the GTMO On-Scene Commander and the MLDU Unit Chief to describe other "techniques" used on Al-Qahtani, including sleep deprivation, loud music, bright lights, and "body placement discomfort." Foy reported that the technique had "negative" results and that Al-Qahtani remained "as fervent as ever" in not cooperating. Foy stated in the e-mail that Al-Qahtani was "down to 100 pounds" and that military intelligence personnel planned to initiate another phase in the interrogation in the coming weekend.⁵⁷

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

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

⁵⁵ Lyle and Foy provided consistent accounts of this incident to FBI Inspection Division interviewers in September 2004. The *Schmidt-Furlow Report* also found that a military working dog was used in connection with the interrogation of Al-Qahtani on one or two occasions in October to November 2002.

⁵⁶ Al-Qahtani told the OIG that during one interrogation at Camp X-Ray, a dog with a soldier was in the room with him. He said the soldier did not order the dog to attack Al-Qahtani. Rather, he said the dog was used as a tool to intimidate him during interrogation. Al-Qahtani said that the dog tried to bite him but it was restrained by its handler. Al-Qahtani added that the dog was walked around the interrogation room and the handler let the dog get very close to him and it was barking and growling the whole time.

⁵⁷ In commenting on a draft of this report, the DOD stated that Foy's comment regarding Al-Qahtani's weight was irrelevant because it did not provide his beginning weight. However, the OIG did not receive information about Al-Qahtani's initial weight.

included strategies such as yelling and deception. Category II included stress positions (maximum of 4 hours), deprivation of light, removal of clothing, and using individual phobias (such as fear of dogs) to induce stress. Category III included “use of scenarios designed to convince the detainee that death or severely painful consequences are imminent for him and/or his family” and “use of a wet towel and dripping water to induce the misperception of suffocation.” *Church Report* at 111. Along with the list of techniques, Dunlavey provided SOUTHCOM two memoranda he received from the Staff Judge Advocate stating that the proposed strategies “do not violate applicable federal law.”⁵⁸

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

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

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

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

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

Qahtani.⁵⁹ Nahmias said the FBI wanted to talk to Al-Qahtani during this period but the DOD refused.

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

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

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

From late October to mid-December 2002, a new set of FBI BAU agents, SSA Brett and SSA McMahon, were stationed at GTMO.⁶⁰ During

⁵⁹ As noted in Chapter Two, CITF conducts interrogations in order to gather evidence for the military commission process and possible war crimes prosecutions. The law enforcement groups that make up the CITF are the Naval Criminal Investigative Service (NCIS), the Army Criminal Investigation Command (CID) and the Air Force Office of Special Investigations (OSI).

this period, the FBI and CITF continued to object to the approach military intelligence officials sought to take with Al-Qahtani.

On November 12, 2002, General Hill orally approved the use of Category I and II techniques on Al-Qahtani. The next day, he approved an interrogation plan for Al-Qahtani against the FBI's objections.⁶¹ The plan described 20-hour interrogation sessions, followed by 4-hour rest periods. It stated that Al-Qahtani had been "segregated with minimal human contact" for several months, and that this appeared to be having an effect on his mental state. The plan stated that "[i]t is believed that with an intense interrogation cycle where he is not allowed to speak and is then suddenly allowed to speak, he may tell all." The plan called for Al-Qahtani's head and beard to be shaved, "for psychological and hygiene purposes." In addition, the plan stated that if he was uncooperative, he would be placed in stress positions and blindfolded. The plan further stated that the blindfolding and the presence of dogs had been approved by the Commanding General.

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

- Phase I: the military would permit the FBI access to Al-Qahtani until November 22. The FBI would present him with a "window of opportunity" to cooperate, and the FBI would explain that this was his "last chance" before he was returned to the military. After that, interrogators would increase the pressure on Al-Qahtani while preventing him from speaking for one week, so that when he was presented with the opportunity to talk, he would "provide his whole story."
- Phase II: the military would place a government translator with Al-Qahtani. The translator would act and be treated as like a detainee, and he would engage Al-Qahtani in conversation and ask targeted specific questions to extract the sought-after information.

⁶⁰ Brett and McMahon are pseudonyms.

⁶¹ We reviewed several versions of the Al-Qahtani interrogation plan and we have been unable to determine which one was actually approved. The elements described above appear in all versions, however, including the version attached as an exhibit to the *Schmidt-Furlow Report*.

- Phase III: The plan referred to “Level III techniques.” (This appears to be a reference to the techniques listed in the October 11, 2002, memorandum in which Major General Dunlavey requested that the Commander of SOUTHCOM approve 19 counter-resistance techniques that were not specifically listed in Field Manual 34-52). SERE and other counter interrogation resistance training techniques would be employed.⁶²
- Phase IV: Al-Qahtani would be sent “off Island” either temporarily or permanently to “either Jordan, Egypt or another third country to allow those countries to employ interrogation techniques that will enable them to obtain the requisite information.”

FBI agents McMahon and Brett examined the military intelligence interrogation plan and concluded that it was deeply flawed. For example, in connection with the strategy of preventing Al-Qahtani from speaking for a week in the hope that he would then “tell all,” the agents noted that they were aware of no such recognized interrogation technique. In a report to FBI Headquarters, they stated: “It is our information that this interrogation technique was recommended by . . . an ARMY Linguist, who claims to have a number of years of ‘Agency’ experience. Other than the word of this linguist there has been no data proffered which justifies the use of this technique.” With respect to Phase IV, the agents stated simply, “Unless this plan is modified to exclude aspects that have not been approved for FBI personnel, we cannot be a signatory on this plan.”⁶³

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

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

⁶³ However, as detailed in Section VII of this chapter, some FBI and DOJ officials did advocate [REDACTED] during this period. As detailed in footnote 71, there were significant differences between this proposal and the military’s plan.

to convey threats to person or family or inflict harm” contrary to the Convention Against Torture.

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

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

An FBI/CITF plan prepared in consultation with Brett and McMahon, in contrast, emphasized a long-term rapport-building interrogation approach.⁶⁴ Under this plan, Al-Qahtani would have contact with only one interviewer. The plan proposed “periodic stressors” such as removing comfort items, with the expectation that Al-Qahtani would look to the

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

interviewer for help, thereby increasing the interviewer's status. The FBI also recommended the introduction of "visual stimuli" designed to invoke sympathy and weaken his sense of loyalty to al-Qaeda associates.

Major General Miller met with Brett, McMahon, Demeter, and the FBI OSC to discuss the plans for interrogating Al-Qahtani.⁶⁵ McMahon told the OIG that although Miller acknowledged positive aspects of the rapport-based approach, Miller favored military intelligence's interrogation methods. According to McMahon, the FBI's arguments against the coercive techniques were met with "considerable skepticism and resistance by senior [military intelligence] officials in GTMO."

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

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

⁶⁵ We are not certain of the date of this meeting but we believe it took place in late November or early December 2002.

Qahtani to a third country where he could be tortured to get information, two things the FBI would not agree to do.

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

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

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

⁶⁷ Brett told the OIG the delay was due, in part, to the controversial nature of the EC. Brett said that he believed the controversy centered around the fact that the FBI were guests of the military at GTMO and that this EC was actually telling the military that they should not be doing what they were doing because their tactics were both ineffective and possibly illegal.

VII. Proposal To ██████████ Al-Qahtani To Be Interrogated Using an Alternative Debriefing Model of the Sort Used on Zubaydah

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

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

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

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

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

It is firmly believed that AL-QATANI traveled to the U.S. in 2001 for the purposes of committing or supporting a terrorist act. It

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

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

To improve the productivity of further intelligence exploitation, AL-QATANI should be [REDACTED]

[REDACTED]

AL-QATANI would be debriefed by highly knowledgeable personnel, and disseminations regarding the results of these debriefings would be released to the appropriate U.S. intelligence entities expeditiously. [REDACTED]

[REDACTED]

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

⁶⁸ The document refers to the interrogations of Binalshibh, who was not captured until September 11, 2002. The document makes no mention of Khalid Sheikh Mohammed's interrogation, which began after his capture on March 1, 2003. Therefore, the OIG believes this document was created between October 2002 and March 2003. The MLDU Unit Chief estimated that the document was written in mid-November 2002. In addition, a November 14, 2002, e-mail from the Commander of the Criminal Investigative Task Force (CITF) to Major General Miller (discussed below) appears to make a reference to this proposal.

Nahmias provided to the OIG contemporaneous notes and other documents from this period that contain several general references to a plan being actively pursued to change the circumstances of Al-Qahtani's interrogation. Although these documents describe a plan for Al-Qahtani that involved [REDACTED], they do not specifically discuss what techniques would be used to interrogate Al-Qahtani and there is no specific reference in the notes to [REDACTED] or to methods used with any other detainee, including Zubaydah. Nahmias' notes from a meeting with the FBI Unit Chief on September 27, 2002, state that the FBI Unit Chief met with a Principal Deputy Assistant Secretary of Defense and with [REDACTED] regarding the proposal to [REDACTED]. The notes also indicate that the DOD's Criminal Investigation Task Force (CITF) (Fort Belvoir) was "on board" with the proposal. In an October 2002 e-mail to DOD officials with a copy to Alice Fisher, Nahmias stated that the FBI Unit Chief had recently met with an official from CITF in Fort Belvoir regarding the proposal for Al-Qahtani. The e-mail stated: "I also advised [the FBI Unit Chief] that the write-up of the proposal should be discussed by us first...." We believe that the reference to a "write-up of the proposal" concerns some version of the draft letter quoted above.

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

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

Interrogations of Al Qatani in Afghanistan and at GTMO have produced little information. Since September, his interrogations have been conducted by [Defense Intelligence Agency]. Since late September, FBI, DOJ, [REDACTED], and some elements of DOD have been proposing [REDACTED]

Very recent and unevaluated reports suggest that he may now be providing intelligence; if so, [REDACTED] may not be appropriate.

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

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

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

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

and where he would let his guard down. The Unit Chief said he believed only [REDACTED]

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

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

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

Nahmias also told the OIG that conditions at GTMO were not promoting successful interrogations of Al-Qahtani. He said that at GTMO there was no way to “separate” someone, so people who had been cooperative prior to their arrival became uncooperative when mixed in with the general detainee population. He said there was no system of rewards or protection for those who cooperated or penalties for those who did not. Nahmias told the OIG that Al-Qahtani had “shut down” after the DOD took over the interrogations, and the DOD’s tactics were “completely ineffective.” He also stated that at the time the letter was drafted the military had stopped interrogating Al-Qahtani due to legal issues over whether military

⁶⁹ The evidence regarding what the FBI Unit Chief knew about CIA techniques at the time is limited. The Unit Chief stated he did not know what techniques the CIA used on Zubaydah [REDACTED] at the time of the proposal for Al-Qahtani. One FBI agent told us that in late 2001 or early 2002 he told the Unit Chief about visiting a [REDACTED]. The FBI agent said he did not witness any torture at the facility, [REDACTED]. The FBI agent said [REDACTED] told him to avoid the facility in the future unless he wanted to be subpoenaed by a congressional committee to testify. The agent said he described this experience to the FBI Unit Chief. However, the Unit Chief told us he did not recall hearing about this incident from the FBI agent. We also note that the FBI Unit Chief reported to Arena and D’Amuro, who were aware of at least some of the techniques the CIA employed on Zubaydah. However, Arena told us he could not recall if the Unit Chief was involved in the discussions he had about the CIA’s use [REDACTED] on Zubaydah.

orders were being accurately followed. Nahmias also stated that he had “significant concerns” that the DOD was not “accurately reporting what they were getting.” [REDACTED]

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

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

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

⁷⁰ The OIG also attempted to interview former Counterterrorism Division Assistant Director Larry Mefford regarding this proposal. Mefford was in the FBI Unit Chief’s chain of
(Cont’d.)

FBI Director Mueller told the OIG that the proposal regarding Al-Qahtani described in the draft letter was never discussed with him and never reached him. He said he did not know the circumstances under which the document was written. Similarly, Mueller's Chief of Staff at the time, Daniel Levin, told us that he did not recall seeing the draft letter, although he vaguely recalled discussion of [REDACTED].

We also sought to determine whether the proposal was discussed within DOJ. Nahmias stated that a proposal to [REDACTED] was discussed in the informal working group (described in Chapter Two) which included Nahmias or Fisher from the DOJ Criminal Division, a member of the DOJ Office of Legal Counsel, someone from the DOD Office of the General Counsel, and [REDACTED]. However, Nahmias told the OIG that these discussions did not address the idea that the techniques that had been used on Zubaydah would be used on Al-Qahtani. Fisher confirmed that the case of Al-Qahtani was discussed at these informal meetings, but she and Nahmias said that the topics of mistreatment, abuse, and voluntariness were not discussed in connection with Al-Qahtani. Fisher told the OIG that she does not recall ever seeing the draft letter and she does not recall discussing the strategy described in it. Fisher said she had a vague recollection that there might have been a discussion with the CIA about whether [REDACTED]. However, Fisher said she does not believe it was within the Criminal Division's jurisdiction to "sign off" on something like that. Fisher said she does not believe anyone thought it was a good idea and that she does not believe that it was done.⁷¹

Nahmias told the OIG that the draft letter was created as a means for the Attorney General or the Assistant Attorney General to suggest that if the

command, but had left the FBI by the time the OIG became aware of the draft letter. We were not able to obtain an interview with Mefford.

⁷¹ We also note that Phase IV of the military's plan for Al-Qahtani, described in detail earlier in this chapter, proposed sending him "off Island" either temporarily or permanently to "either Jordan, Egypt or another third country to allow those countries to employ interrogation techniques that will enable them to obtain the requisite information."

[REDACTED] Some witnesses, however, were only able to recall a proposal to send Al-Qahtani [REDACTED] and were not able to recall further details, so it was not possible for the OIG to determine in those instances whether the witnesses' recollection related to the military's plan or to the draft letter described here.

FBI could not interrogate Al-Qahtani that he should be [REDACTED]. Nahmias said he thought the DOJ officials involved in the development of the general strategy to [REDACTED] may have included Assistant Attorney General Chertoff, Deputy Attorney General Thompson, Attorney General Ashcroft, and his Chief of Staff David Ayres.⁷² Nahmias told the OIG, however, that his discussions with these people related to a general strategy for Al-Qahtani, did not include sharing the draft letter, and did not address the specific concept that interrogation techniques of the type used on Zubaydah would be used on Al-Qahtani.

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

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

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

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

⁷² Deputy Assistant Attorney General Swartz told the OIG that neither the draft letter nor the proposal outlined in it were discussed with him at the time, and that he was unaware of such a proposal prior to being questioned by the OIG.

because the draft letter states specifically that the proposed strategy had been discussed with representatives of the FBI-BAU. The BAU Chief told the OIG that he had never seen the proposal contained in the draft letter and would not have supported such a proposal had he been consulted about it. He said the BAU advocated exclusively for a long-term rapport-building approach by a qualified interviewer, and he believed such an approach could be effective in gathering intelligence from detainees at GTMO. He said he suspects the methods used with Zubaydah as referred to in the draft consisted of techniques that the BAU would not support.

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

There is also some evidence that some officials in the DOJ Criminal Division were aware of some of the techniques involved in the CIA's [REDACTED] in the fall of 2002. [REDACTED]

[REDACTED] D'Amuro stated that he had attended a meeting with Chertoff, Fisher, and others in which he learned that the CIA had obtained a legal opinion from the DOJ that certain techniques could legally be used, [REDACTED]. Chertoff and Fisher told us they did not recall this meeting. Chertoff told the OIG that he was aware that the CIA had requested DOJ approval for certain interrogation techniques and that the CIA had obtained a general opinion from the OLC relating to its interrogations. Chertoff said that the Criminal

Division was asked to provide an “advance declination” in connection with the CIA’s use of some techniques, but that he had refused to provide it. In testimony before the U.S. Senate on February 2, 2005, Chertoff stated that he was asked to review a draft of an OLC memorandum that eventually became the August 1, 2002, OLC memorandum regarding “Standards of Conduct for Interrogation,” which is sometimes referred to as the “Yoo memorandum.”⁷³ Chertoff stated in his Senate testimony and his OIG interview that at least some of the CIA “techniques” were described to him at the time.

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

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

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

⁷³ This general opinion did not describe any specific interrogation techniques, but did include an examination of “possible defenses that would negate any claim that certain interrogation methods violate the statute” prohibiting torture. A separate DOJ opinion issued the same day stated that the specific techniques approved for use on Zubaydah included waterboarding, [REDACTED] [REDACTED].

VIII. The Military Proceeds with the Interrogation of Al-Qahtani, Over FBI Objections

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

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

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

- Tying a dog leash to detainee’s chain, walking him around the room and leading him through a series of dog tricks
- Repeatedly pouring water on his head
- Stress positions
- 20-hour interrogations
- Forced shaving for hygienic and psychological purposes
- Stripping him naked in the presence of a female
- Holding him down while a female interrogator straddled the detainee without placing weight on him
- Women’s underwear placed over his head and bra placed over his clothing
- Female interrogator massaging his back and neck region over his clothing
- Describing his mother and sister to him as whores
- Showing him pictures of scantily clothed women
- Discussing his repressed homosexual tendencies in his presence
- Male interrogator dancing with him

- Telling him that people would tell other detainees that he got aroused when male guards searched him
- Forced physical training
- Instructing him to pray to idol shrine
- Adjusting the air conditioner to make him uncomfortable

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

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

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

⁷⁴ In commenting on a draft of this report, the DOD stated that "[a] footnote from review of the medical records . . . would lend credibility to either the agent's or the lieutenant colonel's comments." However, the DOD did not provide a copy of the referenced records.

IX. Concerns about the Interrogation of Al-Qahtani and Other Detainees Are Elevated at FBI Headquarters

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

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

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

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

The use of these tactics put FBI personnel in a tenuous situation that will perhaps necessitate FBI representatives being utilized as defense witnesses in future judicial proceedings

against a Detainee. Additionally, the aforementioned tactics may preclude law enforcement from successfully obtaining valuable intelligence from these Detainees in future interview scenarios.⁷⁵

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

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

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

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

⁷⁵ The EC, which does not mention Al-Qahtani by name, covers a broader range of mistreatment allegations and GTMO-related management issues than those presented by the dispute over the Al-Qahtani interrogations.

using. The Unit Chief said he recalled hearing about sleep deprivation, a female interrogator exposing her breast to a detainee, and an interrogator rubbing vegetable oil on a detainee while telling him it was "pig's oil." The Unit Chief stated that he relayed any such reports to his superiors (CTORS Section Chief Frankie Battle and CTD DAD T.J. Harrington).

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

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

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

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

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

Bowman told the OIG he may have talked to CTD Assistant Director D'Amuro, FBI Deputy Director Gebhardt, and FBI General Counsel

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

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

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

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

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

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

officials during weekly meetings that the Unit Chief later described in an e-mail to CTD DAD T.J. Harrington dated May 10, 2004, as follows:

In my weekly meetings with DOJ we often discussed DoD techniques and how they were not effective or producing Intel that was reliable. Bruce Swartz (SES), Dave Nahmias (SES), Laura Parsky (now SES, GS15 at the time) and Alice Fisher (SES Appointee) all from DOJ Criminal Division attended meetings with FBI. We all agreed DoD tactics were going to be an issue in the military commission cases. I know Mr. Swartz brought this to the attention of DoD OGC.⁷⁸

The MLDU Unit Chief told the OIG that in the course of weekly meetings with David Nahmias, the counsel to the Assistant Attorney General for the Criminal Division, he made Nahmias aware that the military was using aggressive techniques on Al-Qahtani and others at GTMO.⁷⁹ The Unit

⁷⁸ The MLDU Unit Chief later indicated that the he did not intend to imply that Fisher was present during discussions of specific DOD interrogation tactics. In a letter dated July 26, 2005, which was sent in response to a request from the United States Senate Committee on the Judiciary for clarification of this e-mail, Assistant Attorney General William Moschella stated that the "author of the e-mail" (the MLDU Unit Chief) stated that:

He did not have conversations with Ms. Fisher nor does he recall discussions in Ms. Fisher's presence about the treatment of detainees at Guantanamo Bay. He did participate in conversations with Ms. Fisher and other Department and FBI representatives about a specific detainee and that detainee's links to law enforcement efforts. These discussions focused on the information gathered regarding the individual and his associations, but not on his treatment or interrogation.

In the July 26 letter, Moschella stated that:

As set forth in the email, the author [of the e-mail] attended meeting with Department representatives about detainees generally; there was no discussion of DOD techniques at the couple of those meetings that Ms. Fisher attended. Ms. Fisher was not part of the group referenced in the portion of the e-mail regarding DOD tactics as an issue in the military commission cases. He does not recall any conversation with or in the presence of Ms. Fisher regarding interrogation techniques or the treatment of detainees. His conversations with her focused on the particular detainee described above and pre-dated the broader conversations about DOD techniques with other Department representatives.

The MLDU Unit Chief told the OIG that although there may have been some meetings about Al-Qahtani at which Fisher was present, those meetings were focused on discussions about investigative information relating to Al-Qahtani, not interrogation tactics. He said he does not think Fisher knew about particular interrogation tactics used against Al-Qahtani.

⁷⁹ The MLDU Unit Chief said these meetings were primarily for the purpose of keeping DOJ officials informed on intelligence gathered at GTMO, not to discuss detainee treatment.

Chief said he was confident Nahmias was also aware of the details of the observations set out in Foy's EC of November 22, 2002. He told the OIG that he recalled telling Nahmias in October or November 2002 that one of the planned or actual techniques used on Al-Qahtani was simulated drowning.⁸⁰ Nahmias denied that the Unit Chief ever mentioned this technique. In addition, the Unit Chief said he provided Foy's November 22 EC along with Foy's e-mails (described earlier) to Nahmias, and that he may have also given Nahmias a copy of the interrogation plan for Al-Qahtani. Nahmias stated he did not receive this EC from the Unit Chief.

The MLDU Unit Chief told the OIG that Nahmias said the FBI should stay away from this approach, and that he or others at DOJ would raise the issue with their DOD counterparts. He told us he expected Secretary Rumsfeld would have the final say because Al-Qahtani was the DOD's detainee. The Unit Chief said he later asked Nahmias what the DOD's response was, but he told the OIG he could not recall Nahmias' response.

Andrew Arena, the Section Chief of the FBI's International Terrorism Operations Section 1 (ITOS-1) and beginning in March of 2003, the Special Assistant to the Executive Assistant Director for Counterterrorism and Counterintelligence, told the OIG that he also brought FBI concerns about military interrogation approach to the attention of DOJ Criminal Division officials. Arena said that every other week Nahmias, Fisher, and other Criminal Division attorneys attended a meeting Arena held with his FBI unit chiefs. Arena said that he did not recall particular techniques being discussed at these meetings, but that the FBI's general concern that the military's techniques at GTMO would not be effective was discussed. Later in his interview, Arena stated that there were numerous occasions when he had discussions with his chain of command and with attorneys at DOJ regarding allegations or rumors of aggressive techniques being used at GTMO or by the CIA at other locations. He recalled, as an example, discussing the use of humiliation by having a naked detainee being interrogated by a female. Nahmias and Fisher told the OIG they did not receive a report of this nature.

In his OIG interview, Nahmias confirmed that he participated in meetings with the FBI and others about the military's Al-Qahtani interrogation plan. Nahmias said the military had a graduated plan that got more "severe," but he did not think the actual interrogation ever got that far. He said that parts of the plan were "clearly over the top," but he was told that the interrogators would not implement the more severe techniques

⁸⁰ Although Major General Dunlavey requested permission to use the technique of "a wet towel and dripping water to induce the misperception of suffocation" on October 11, 2002, we found no other evidence showing that technique was actually used on Al-Qahtani.

unless everyone “regrouped” for further discussion. He said he could not recall anyone raising concerns about the legality of the military’s techniques.⁸¹ Nahmias also told the OIG that he raised concerns about the DOD’s interrogations approach with the the DOD Office of the General Counsel and with the head of the DOD group that dealt with issues of whether detainees were enemy combatants.

It appears that the MLDU Unit Chief sent Nahmias a copy of a CITF legal advisor’s memorandum dated November 15, 2002, that objected to the Al-Qahtani interrogation plan. Among other things, the memorandum stated that CITF has raised “formal legal objections” to the plan, including that the plan potentially violated the Convention Against Torture. The CITF memorandum also stated that the focus of the questioning of Al-Qahtani related to a “historical event” (his participation in the September 11 attacks) and that the interrogation methods used should be designed to preserve the statements for use in a military commission proceeding. The MLDU Unit Chief told the OIG that he also discussed this memorandum with Nahmias. Nahmias said he had no recollection of this memorandum.⁸²

The FBI’s MLDU Unit Chief also described other incidents at GTMO to officials in the DOJ Criminal Division. For example, Nahmias said that during the summer of 2003 the MLDU Unit Chief told him anecdotal stories about incidents at GTMO such as a female interrogator baring her chest to a detainee, someone using an Israeli flag during an interrogation, and dropping a Koran on the floor. Nahmias told us that he never heard reports of actual physical mistreatment, but that he and the FBI were concerned that the techniques the military was using were stupid, demeaning, and ineffective.

Bruce Swartz the Deputy Assistant Attorney General for the Criminal Division who was responsible for international matters, stated that he and Laura Parsky (then Counsel to Assistant Attorney General Chertoff) were assigned to attend the NSC-led Policy Coordinating Committee (PCC) to deal with international requests regarding detainees. Swartz told the OIG that

⁸¹ Nahmias told the OIG that he did not recall having seen Brett’s Legal Analysis document at the time, but that it was possible he had seen it after the Criminal Division started investigating other alleged detainee abuses.

⁸² Upon reviewing the CITF memo during his OIG interview, Nahmias said the legality concerns are “buried” in the memo, and that he did not recall seeing the discussion of the Convention Against Torture in the memo at the time. Nahmias added that he disagreed with the statement in the memorandum that the focus of the questioning of Al-Qahtani was an “historical event.” Nahmias said that the focus was on gathering intelligence regarding others who posed an ongoing threat and on preventing future planned attacks.

he was never part of any formal meetings with the MLDU Unit Chief or others at the FBI regarding interrogation techniques or plans at GTMO or elsewhere. However, Swartz said he had conversations with the MLDU Unit Chief about the ineffectiveness of DOD interrogations on the way to or from PCC meetings. Swartz recalled the Unit Chief expressing concerns about the military posing as FBI agents and interrogating people in a room with the flag of Israel. According to Swartz, the MLDU Unit Chief was particularly concerned that the military was inefficient at getting valuable intelligence, because the DOD was using inexperienced interrogators.

Parsky also told the OIG that she did not participate in formal meetings with the FBI regarding interrogation techniques.⁸³ Parsky said that the MLDU Unit Chief told her some “offhand anecdotes” about DOD interrogation methods at GTMO, such as a female interrogator who removed her top and rubbed her breasts in the detainee’s face, an interrogator who wrapped himself in an Israeli flag in an interrogation, and an interrogator who rubbed himself with oil that he told the detainee was “pig’s oil.” She said the Unit Chief did not identify any particular detainees in connection with these anecdotes. Parsky stated that these techniques were not criminal but were “disgusting and highly inappropriate” for a U.S. official, and that she described the Unit Chief’s anecdotes to Swartz.

Nahmias told the OIG that he usually briefed Fisher on his meetings about GTMO, and that Fisher certainly knew about the issue of the effectiveness of the military’s interrogation techniques at GTMO. Nahmias said he recalled that Fisher was present during conversations in which the interrogation methods were described in a general way, but that he did not recall discussing specific techniques with Fisher.

Fisher told the OIG that she did not recall discussing detainee treatment or interrogation techniques with the FBI during this time period. Fisher told the OIG that she became aware “at some time” about an issue relating to the FBI’s concerns about the effectiveness of the DOD’s interrogations at GTMO, but she could not recall how or when she learned about these concerns. She said she heard that the FBI was concerned that GTMO was not set up as an effective place to get intelligence information from detainees because there were no incentives available (“carrots”) to induce better cooperation. She also stated that the FBI believed it got cooperation and good intelligence in the 1993 World Trade Center bombing

⁸³ Parsky told the OIG that the May 10 e-mail was incorrect in that she did not participate in weekly meetings in which particular detainees and interrogation techniques were discussed.

case through rapport building, an interview technique that was “tried and true.”⁸⁴

Fisher also told the OIG that she did not learn about allegations of detainee abuse by the military until information about mistreatment at Abu Ghraib became public. Fisher stated that she did not recall discussion of DOD interrogating detainees with techniques of the type that are used in training U.S. Special Forces. She said she recalled learning about the use of such techniques on detainees in a context that had nothing to do with the FBI.⁸⁵

Fisher said she did not recall the FBI MLDU Unit Chief raising these issues nor does she recall being aware of any other interrogation methods or plans for Al-Qahtani.⁸⁶ However, Fisher told the OIG that someone told her (she did not recall who) that there was a strategy to stop interrogating a detainee for 20 or 30 days, and that theoretically once the interrogators went back in the detainee would reveal all the desired information. She said the FBI said such a technique would not work. Fisher did recall, however, hearing that the FBI did not consider DOD interrogations at GTMO to be effective at obtaining useful information because GTMO was not set up to provide incentives for cooperation.

Nahmias said that he and Fisher raised the FBI’s concerns about the ineffectiveness of the military’s interrogations with Chertoff, who was then the Assistant Attorney General for the Criminal Division. Chertoff told the

⁸⁴ We sought to interview former Attorney General Ashcroft about this and other matters, but he declined our request. Larry Thompson, who was Ashcroft’s Deputy Attorney General during 2001-2003, told the OIG that the FBI’s position was that the other agencies do not really know how to conduct interviews, but that FBI agents were trained in it and that this is what they did for a living. Thompson said he recalled getting reports of “clumsy” interrogation by CIA or the military.

⁸⁵ Fisher stated she became aware at some point, she could not say when, that the CIA requested advice regarding the legality of specific interrogation techniques, and that the Office of Legal Counsel worked on that issue. She said she was aware of the “Jay Bybee” memo and another memo on that topic, but they did not relate to the FBI. Fisher also told the OIG that Assistant Attorney General Chertoff was very clear that the Criminal Division was not giving advice on which interrogation techniques were permissible and was not “signing off” on techniques. She said she recalled there was an investigation based on a CIA referral that may have related to detainee treatment or interrogation techniques, and that she became aware of some facts relating to CIA interrogations. She did not say when DOJ received the CIA referral, though she noted that it was sometime “later.” Documents reflect a total of five referrals by the CIA OIG to DOJ. These referrals were made between February 6, 2003 and March 30, 2004.

⁸⁶ As described earlier in this chapter, Fisher told the OIG she had a “vague” recollection that there might have been a discussion [REDACTED] about whether [REDACTED] for this purpose.

OIG that the Criminal Division had an interest in the efficacy of DOD interrogations at GTMO because its prosecutors were looking for “actionable” information. Chertoff said he understood generally that the FBI did not have a high opinion of the skills of the DOD interrogators, though he said he did not have any recollection of the FBI’s view of the military’s Al-Qahtani interrogations. Chertoff said he shared the FBI’s concerns, and that he had a very high opinion of the FBI’s interrogation skills. In contrast, Chertoff said he did not get the sense that the DOD interrogators had significant experience with interrogations outside a battlefield context. However, he said he does not recall anyone suggesting that the DOD was doing something illegal.

XI. Concerns Regarding Efficacy of DOD Interrogations at GTMO Are Raised to the Attorney General

Chertoff and Nahmias told the OIG that general concerns about the efficacy of the DOD’s GTMO interrogations were brought to the attention of Attorney General Ashcroft. Chertoff said these concerns were brought to the attention of Deputy Attorney General Larry Thompson as well. Chertoff said that Thompson and Ashcroft both shared his concern about whether the DOD was doing the best possible job in questioning the GTMO detainees.

Nahmias said that concerns specific to the DOD’s interrogations of Al-Qahtani were brought to the Attorney General’s attention. Nahmias told the OIG that after being briefed, Ashcroft had questions about whether Al-Qahtani was being effectively interrogated. Former Deputy Assistant Attorney General Alice Fisher told the OIG that she does not recall ever seeking Attorney General Ashcroft’s input on what strategy to use with Al-Qahtani. Fisher said she does not know if anyone discussed the Al-Qahtani interrogations with the Attorney General’s office or the Deputy Attorney General’s office.

Nahmias also told the OIG that “pretty much everyone” involved in counterterrorism issues at DOJ, including the senior leadership of the Department, was aware of concerns about the effectiveness of DOD interrogations. He said that concern about ineffectiveness generally, as well as concerns about ineffectiveness of interrogations of specific detainees, were “a repeated issue during my entire time at Justice.”

Former Deputy Attorney General Thompson told the OIG that while there was some friction between the FBI and the DOD, he thought it related mostly to a different detainee, Jose Padilla. While Thompson described the DOD’s techniques as “clumsy,” he said he did not recall specific concerns about Al-Qahtani. He said he had a general recollection of one instance in which the CIA or the military had a plan to leave a detainee alone for a long

period of time with the expectation that the detainee would then open up and begin providing intelligence.

We also interviewed David Ayres, the former Chief of Staff to Attorney General Ashcroft, who stated that as a general matter DOJ did not feel that the quality of the intelligence being collected by the DOD at GTMO was high. Ayres told us that the dispute between DOJ and FBI on one side and elements of the military on the other was the subject of “ongoing, long-standing, trench warfare in the inter agency discussions” between the FBI and the military, including at the Principals Committee, the Deputies Committee, and the line-level. However, Ayres said he did not recall any discussion of what interrogation approach to take with Al-Qahtani.⁸⁷

The OIG received a copy of a memorandum dated November 6, 2002, from Michael Chertoff (then Assistant Attorney General for the Criminal Division) through the Deputy Attorney General to the Attorney General, with a copy to the FBI Director. In the memorandum, Chertoff provided a detailed summary of the Al-Qahtani investigation and efforts to elicit information from Al-Qahtani. With respect to Al-Qahtani’s “Current Status,” he stated:



This memorandum indicates that concerns about the effectiveness of DOD interrogation tactics at GTMO were raised to the Attorney General as early as November 2002.

As noted above, former Attorney General Ashcroft declined our request for an interview.

⁸⁷ Ayres said he did recall inquiring repeatedly about what intelligence Al-Qahtani was providing, and being told that Al-Qahtani was “not talking.”

XII. DOJ Efforts to Address Guantanamo Interrogation Issues in the Inter-Agency Process

The OIG sought to determine what efforts, if any, DOJ officials made to raise concerns about DOD interrogation techniques with officials outside DOJ through the inter-agency process.⁸⁸ Nahmias said that he did not know “in detail” what former Attorney General Ashcroft did with the concerns brought to him about the Al-Qahtani interrogations, but said he was “fairly confident that the military’s handling of Al-Qahtani” was raised by DOJ officials at the Principals or Deputies committee meetings about GTMO. Nahmias also told the OIG that Attorney General Ashcroft spoke with someone at the NSC, most likely National Security Advisor Condoleezza Rice, about DOJ’s concerns about the approach the DOD was taking in the Al-Qahtani interrogations.⁸⁹ Nahmias also said he believed there were meetings, though he was not certain with whom, in which Ashcroft and Chertoff expressed two concerns: first, that Al-Qahtani was a very valuable detainee and DOJ did not think it was getting the intelligence this detainee had; and second, that reported intelligence from Al-Qahtani was not always accurate, either because he may have been lying or because the DOD may not have accurately reported what he said. When asked if anything ever happened as a result of these meetings, Nahmias said that DOJ officials were continually frustrated by their inability to get any changes or make progress with regard to the Al-Qahtani matter.⁹⁰

Parsky, Nahmias, and Swartz all told the OIG that they recalled discussions of DOJ’s concerns about detainee interrogations at GTMO with the legal advisor to the National Security Council. Parsky stated that it was not uncommon for DOJ to raise various issues of concern to the NSC legal advisor, as he had the lead at the PCC. Parsky recalled a conference call with the NSC legal advisor in November 2003 that included herself, Swartz, and Nahmias. Parsky stated that Swartz decided to make the call after Parsky relayed the offhand anecdotes the FBI MLDU Unit Chief had told her about DOD interrogations at GTMO (described in the previous section). She

⁸⁸ As described in Chapter Two, there are structures in place for resolving inter agency issues, including the Policy Coordinating Committee, the “Principals” Committee and the “Deputies” Committee, all chaired by the NSC.

⁸⁹ Nahmias told the OIG that the issue of treatment of people was rarely, if ever, discussed at the Policy Coordinating Committee itself, and he noted that he would not expect to discuss issues such as detainee treatment in such a large group. Nahmias said that DOJ would “weigh in on the FBI’s behalf” on the “margins” of the PCC meetings, when talking to the NSC legal advisor or in talking directly to CIA OGC or DOD OGC representatives.

⁹⁰ Nahmias stated that he also raised these matters with a counterpart at the DOD who headed a group that dealt with detainee issues, though he did not see any changes or progress as a result of his raising these matters.

said that another concern behind the call was the concern that the DOD's interrogation methods were making GTMO detainees unusable in U.S. cases. She said that during the call they discussed the difference between the FBI approach (rapport building) and the confrontational DOD approach (SERE method). In the call, the DOJ participants suggested that the FBI either be in on the interrogations from the beginning with the DOD, or that the FBI start the interrogation process so that if the detainee cooperated the information could be used in a legal proceeding. Parsky said she does not believe the details of the MLDU Unit Chief's anecdotes regarding particular detainee incidents were described to the NSC legal advisor during the call, but that they told the legal advisor that DOD interrogators were doing a terrible job and were doing things that the FBI agents would never do.

Nahmias said that in the latter part of 2003 he told the NSC legal advisor about techniques the MLDU Unit Chief had brought to his attention over time, such as female personnel exposing their breasts and use of "pig oil" on detainees. Nahmias told the NSC legal advisor that they did not know for a fact that these things happened. Nahmias told the OIG that he was not referring these matters as specific incidents or allegations of misconduct, but rather attempting to relate the kinds of stories that were going around about the military's tactics. Nahmias told the OIG that DOJ raised the matter as an "effectiveness" issue, and that he believed the NSC legal advisor shared their concerns regarding effectiveness.

Swartz also told us that he recalled discussing interrogation issues in meetings at the NSC-chaired PCC meetings regarding the return of GTMO detainees. He said that he raised the ineffective and wrongheaded practice of the military interrogations at GTMO as a continuing theme of these PCC meetings. Swartz said that from GTMO's inception he took the position within DOJ and in inter-agency meetings that GTMO was doing grave damage to the United States' position internationally and in particular with regard to law enforcement and the rule of law.⁹¹ However, Swartz stated that he did not raise any reports of abuse of a particular GTMO detainee, because he did not become aware of any such reports until he heard about an alleged helicopter incident (discussed below in Section XV of this chapter).

The DOJ officials who discussed the issue of GTMO interrogations with the NSC legal advisor told us that they generally did not recall learning of any follow-up or change in policy as a result of these discussions. For example, Nahmias told the OIG that he did not hear more about these kinds

⁹¹ Documents provided by Swartz indicate that as a result of media reports, he became concerned about detainees were being subjected to abusive treatment, and that in March 2003 he raised this issue during a PCC meeting.

of concerns until the materials that the FBI released to the ACLU were published in the press. Nahmias described the issue of detainee interrogation approaches as “an ongoing fight.” He said “DOD always won the fight because they controlled the locations and they had ultimate control, which we acknowledged, of the [detainees].”

The OIG also sought to determine whether high-level DOJ officials were aware of efforts to raise concerns about the Al-Qahtani interrogations at inter agency meetings. Fisher said she does not recall if high-level DOJ officials raised the issue outside the DOJ. Assistant Attorney General Chertoff said he believes that, over time, Deputy Attorney General Thompson and Attorney General Ashcroft had discussions with DOD officials about the efficacy of its interrogations, but he said he does not recall the specifics of those discussions and is not aware of the specific outcome. He noted that DOJ also urged the DOD to move forward with the Military Commission process to provide the possibility of plea bargaining as a method of obtaining cooperation, but DOJ had little success.

Director Mueller told the OIG that he had no recollection of a dispute over Al-Qahtani and how he would be interrogated, and he had no recollection of the matter ever being raised at inter agency meetings. Deputy Attorney General Thompson told the OIG he is not aware of discussions of the Al-Qahtani interrogations except discussions internal to DOJ. David Ayres, the former Chief of Staff to the Attorney General, told the OIG he did not recall the Attorney General raising any issue at the Policy Coordinating Committee regarding the interrogation techniques planned for Al-Qahtani. As noted above, former Attorney General Ashcroft declined the OIG’s request for an interview in this matter.

XIII. Al-Qahtani Becomes Fully Cooperative

We determined that some point in early 2003, Al-Qahtani became cooperative with DOD interrogators, although the available evidence does not make clear exactly when or why this happened. According to the *Church Report*, Al-Qahtani’s resistance “began to crumble” after the DOD began the application of “Category II” techniques in the DOD interrogation plan.⁹² *Church Report* at 121. The *Church Report* stated that these interrogations took place between November 23, 2002, and January 15, 2003, and produced “tangible results.” *Id.* In addition, a January 21, 2003, memorandum sent by Major General Miller to the Commander of

⁹² A comparison of the Al-Qahtani interrogation plan with the list of techniques included in “Category II” reflects that the use “Category II” techniques corresponds with Phase III of the plan.

SOUTHCOM stated that the use of the techniques had allowed the military to obtain “significant intelligence of enormous long term operations and strategic value.” *Schmidt/Furlow Report*, Exhibit 66. The memorandum contained examples of “high value” intelligence obtained from Al-Qahtani: he admitted being al-Qaeda and said Bin Laden sent him to the United States in August 2001 for a mission; he described where he obtained a visa to enter the United States; he gave the location of the passport office; and he provided the names of associates and three possible terrorists who could be in the United States. *Id.*

On January 15, 2003, after the General Counsel of the Department of the Navy, Alberto Mora, and others raised concerns about the authorization of aggressive techniques in the DOD’s December 2002 Policy; Secretary Rumsfeld officially rescinded his approval of the Category II techniques and one Category III technique. *Church Report* at 118-121. According to a subsequent memorandum from General Hill to the Chairman of the Joint Chiefs of Staff, when the interrogators suspended use of the Category II techniques, Al-Qahtani reverted to his cover story and the interrogations “became noticeably less effective.” *Church Report* at 121-22.

On January 21, 2003, Major General Miller wrote to the Director of the Joint Chiefs of Staff that the Category II techniques were “essential to mission success” and should be approved for future use (except stress positions, removal of clothing, and use of detainee’s individual phobias to induce stress). *Church Report* at 122. He also stated that “none of the Category III techniques are necessary to accomplish this mission and are not requested.” *Id.* On March 21, 2003, General Hill noted in a memorandum to General Myers, Chairman of the Joint Chiefs, that without the use of the recently rescinded Category II and Category III techniques, “it is likely that these high-value detainees will be capable of holding out indefinitely, depriving the US of valuable intelligence.” *Id.* at 121-22. However, as described below, other evidence indicates that Al-Qahtani did not become fully cooperative until April 2003.

After the approval of Category II and III techniques was rescinded, the military reverted to a less aggressive approach with Al-Qahtani. This included the administration of a polygraph examination on March 31, 2003, which Al-Qahtani had been requesting for over 4 months. After failing to pass the polygraph, according to the military’s “memorandum for record” (MFR), Al-Qahtani’s attitude began to shift dramatically, and he began to inquire about whether he would be able to return to Saudi Arabia if he told the truth.⁹³ The MFR for April 7, 2003, stated that Al-Qahtani “is concerned

⁹³ An MFR (Memorandum For Record) is a military intelligence document that generally summarizes interaction with a detainee. MFRs usually include what types of interrogation methods were used on the detainee and how the detainee reacted to those

(Cont’d.)

with cutting the best deal possible for him, evading US prosecution for his crimes, and avoiding incarceration in Saudi Arabia once he is returned home.” The next day, Al-Qahtani began to describe his knowledge of al-Qaeda in great detail, and the subsequent MFRs reflect that from that point on he provided a significant amount of detailed information about al-Qaeda and its pre-September 11 operations.

An analysis of the Al-Qahtani case written by military interrogators and analysts pointed to a number of factors that contributed to his decision to finally cooperate. According to this analysis, the major factors were:

- **Polygraph.** Al-Qahtani was “shocked” to learn that he had failed the polygraph, and he became very flustered and nervous when confronted with the fact that the examiners detected him employing techniques to counter the polygraph’s accuracy.
- **Perception of betrayal by other al-Qaeda members.** Following the polygraph, he was confronted with the fact that other al-Qaeda members were being apprehended and were providing valuable intelligence. He was both surprised and upset when interrogators used a “kunai” [nickname] with him that he had not told them he had.
- **Segregation and lack of contact with others.** Al-Qahtani was described as a “narcissist” who thrived on being the center of attention. Interrogators ceased seeing him daily and explained they had less and less interest in him because they were getting what they needed from other sources.
- **Incentive of being returned to Saudi Arabia.** Interrogators told him he had no hope of being released or transferred back to Saudi Arabia unless he cooperated and told them all he knew. The analysis stated that Al-Qahtani was hopeful that he would eventually be returned to Saudi Arabia and believed the interrogators would make recommendations in his favor if he was truthful.

The analysis did not cite the application of harsh interrogation techniques prior to January 15, 2003, as a factor in Al-Qahtani’s changed behavior.

methods. MFRs may also include details about the physical treatment of the detainee, such as whether he was offered food or water, bathroom breaks, exercise periods, and sleep. Also, MFRs report any information that the detainee provides pursuant to the interrogator’s questions and the interrogation team’s analysis of the information provided by the detainee, as well as an assessment of the detainee’s truthfulness and level of cooperation.

Al-Qahtani told the OIG that he changed his story because the military tortured him. He said the military engaged in physical torture, but the FBI used psychological torture. However, as noted above, during other parts of Al-Qahtani's interview he described the FBI agent who interviewed him as having "humanity."

On April 16, 2003, more than a week after Al-Qahtani became cooperative, the Secretary of Defense approved 24 "Counter-Resistance Techniques" for use in interrogations of unlawful combatants. *Church Report* at 137. In May 2003, Lieutenant Colonel Moss, the Commander of the JIG/Interrogation Control Element, wrote to Major General Miller that Al-Qahtani had been "fully exploited" and his continued presence at GTMO for questioning was "no longer necessary." However, as of May 2008, Al-Qahtani remains at GTMO and a variety of law enforcement and military intelligence officials have interviewed him during the past few years.

XIV. The May 30, 2003 Electronic Communication

A separate FBI effort to raise the issue of detainee mistreatment with the military took place in June 2003. By that time, the DOD had ceased using its more severe techniques on Al-Qahtani and he had become cooperative, but the individuals who elevated their concerns apparently were not aware of these developments.

As previously noted, in late 2002 FBI Assistant General Counsel Spike Bowman requested that concerns raised by Special Agents McMahon and Brett about interrogation techniques be documented in a written report for him to use in raising concerns to the DOD.⁹⁴ Six months later, on May 30, 2003, McMahon completed this report in the form of an Electronic Communication (EC) and transmitted it to Bowman, the MLDU Unit Chief, and the Acting CTORS Section Chief.

McMahon's EC described in detail the history of the dispute at GTMO between the FBI and military intelligence regarding the comparative merits of rapport-based interview techniques and the aggressive SERE techniques advocated by military intelligence, particularly with respect to Al-Qahtani. The EC referenced 12 attachments relating to the dispute, including SA Brett's legal analysis of the military's interrogation techniques and the BAU's critique of the military interrogation plan for Al-Qahtani. The EC concluded that "it is essential that FBIHQ, DOJ and the DOD provide

⁹⁴ Before joining the FBI, Bowman had a long career with the military. He was an instructor at the Naval War college teaching rules of armed conflict and rules of engagement.

specific guidance to protect agents and to avoid tainting cases which may be referred for prosecution.”

On July 1, 2003, after reviewing McMahon’s EC and interviewing one of the military’s Judge Advocates General (JAG) who had worked with the FBI interrogators in GTMO, Bowman sent an e-mail to CTD Deputy Assistant Director Pistole, Executive Assistant Director D’Amuro, and others, alerting them that the military had been using techniques of “aggressive interrogation,” including “physically striking the detainees, stripping them and pouring cold water on them and leaving them exposed (one got hypothermia), and similar measures.” Bowman opined that: “Beyond any doubt, what they are doing (and I don’t know the extent of it) would be unlawful were these Enemy Prisoners of War (EPW). That they are not so designated cannot be license to do something that you cannot do to an EPW or a criminal prisoner.” Bowman expressed concern that the FBI would be “tarred by the same brush” and sought input on whether the FBI should refer the matter to the DOD Inspector General, stating that “[w]ere I still on active duty, there is no question in my mind that it would be a duty to do so.” He also offered to prepare guidance for FBI agents who are exposed to these aggressive techniques as requested in the McMahon EC.

Neither D’Amuro nor Pistole said they could recall McMahon’s EC or Bowman’s e-mail. Bowman told the OIG that he did not recall any response being sent to McMahon regarding his EC of May 30, 2003.

In addition, Bowman said that once he received the EC, he discussed it with the DOD. Bowman told the OIG that he also contacted the DOD Deputy General Counsel responsible for intelligence issues. Bowman said that the DOD Deputy General Counsel assured him that they knew about the FBI’s concerns and the matter was being handled. A member of the DOD General’s Counsel’s office came to FBI Headquarters approximately one week later to review the EC and its attachments. According to Bowman, the person who reviewed the documents seemed “disturbed” by what he read. Bowman said that when he called to follow up, however, he was unable to obtain any information about what actions the DOD planned to take, if any, in response to the information in the EC. Bowman said he even called the DOD General Counsel to inquire, and the response he received was that the Deputy General Counsel was handling it.

Documents reflect that McMahon’s EC and its attachments were provided to officials at DOJ Headquarters in May 2004, after the Abu Ghraib prison scandal became public. One reason that we believe this EC did not receive much attention in the FBI was that many of the concerns expressed in it had been mooted by events during the months between McMahon’s deployment to GTMO and May 30, 2003. As detailed above, by May 30, 2003, Secretary Rumsfeld had rescinded his approval for the harshest

interrogation techniques, the DOD had ceased using such techniques on Al-Qahtani, and Al-Qahtani had become fully cooperative. However, Bowman apparently was not aware of these developments when he contacted the DOD about the allegations in McMahon's EC.

XV. Concerns Raised Regarding Slahi's Interrogation

The case of Mohamedou Ould Slahi (#760) presents another example in which FBI agents raised concerns through their chain of command about rumors of detainee mistreatment at GTMO. In this case, some of these concerns were communicated to senior officials at DOJ.

Slahi was an al-Qaeda operative who is believed to have recruited several of the September 11 hijackers in Germany. *Church Report* at 159. According to FBI records, Slahi was arrested in Mauritania at the request of the United States, held in Jordan for several months, and then transferred to U.S. custody in Afghanistan (Bagram). He was taken to GTMO in August 2002.

The FBI sought to interview Slahi immediately after he arrived at GTMO. FBI and task force agents interviewed Slahi over the next few months, utilizing rapport-building techniques.⁹⁵ An FBI agent who was assigned to Slahi told us that the military disagreed with the FBI's approach and wanted to use interrogation techniques similar to those employed on Al-Qahtani. One of the FBI's OSCs at GTMO told us that a military contract interrogator was extremely critical of the friendly tenor of the FBI's interview strategy. In late May 2003 the FBI agents who were involved with Slahi left GTMO, and the military assumed control over Slahi's interrogation. One of the FBI agents told us that before he left GTMO he saw a draft of special interrogation plan that the military was preparing for Slahi, and that it was similar to Al-Qahtani's interrogation plan.

According to FBI documents, on July 1, 2003, General Miller signed a request from the Defense Intelligence Agency (DIA) seeking "Special Projects Status" for Slahi and approval of a 90-day special interrogation plan that included "techniques not specified the Secretary of Defense guidance document, 'Counter-Resistance Techniques in the War on Terrorism' dated 16 April 2003." The plan stated that Slahi would be hooded and flown around Guantanamo Bay for one or two hours in a helicopter to persuade him he had been moved out of GTMO to a location where "the rules have changed." According to the *Church Report*, the interrogation plan for Slahi

⁹⁵ Allegations of misconduct by two of these agents are addressed in Section III of Chapter Eleven.

also included isolation, interrogations for up to 20 hours, sensory deprivation, and “sleep adjustment.” *Church Report* at 159. The version of the plan provided to the OIG called for 15-hour interrogations (during which Slahi would be prevented from sleeping) followed by 4 hours of rest, as well as using continuous sound to hinder Slahi’s concentration and establish fear. We did not find any evidence of FBI involvement in the development of this interrogation plan or in the interrogations of Slahi during the summer of 2003.

According to the *Schmidt-Furlow Report*, the military used a masked interrogator called “Mr. X” to interrogate Slahi. *Schmidt-Furlow Report* at 25-26. On August 2, 2003, a different military interrogator posing as a Navy Captain from the White House gave Slahi a fake memorandum from the “Joint Staff, U.S. Army Director for Intelligence,” indicating that because of Slahi’s lack of cooperation, his mother would be apprehended for interrogation by U.S. and Mauritanian authorities, and that if she was uncooperative she might be transferred to GTMO. The letter referred to “the administrative and logistical difficulties her presence would present in this previously all-male prison environment.” The interrogator told Slahi that his family was “in danger if he (760) didn’t cooperate.” *Schmidt-Furlow Report* at 26 and Ex. 72. On August 3, military interrogators told Slahi to “use his imagination to think up the worst possible scenario he could end up in,” that “beatings and physical pain are not the worst thing in the world,” and that unless he began to cooperate, he would “disappear down a dark hole.” *Id.* at 26 and Ex. 75.

Secretary Rumsfeld approved the interrogation plan for Slahi on August 13, 2003. The movement plan for Slahi was amended, however, to utilize a several-hour boat ride rather than a helicopter to deceive Slahi. According to the *Church Report*, on August 25, 2003, Slahi was removed from his cell in Camp Delta, fitted with blackout goggles, and taken on a disorienting boat ride during which he was permitted to hear pre-planned deceptive conversations among other passengers. He was then placed in isolation in Camp Echo. *Church Report* at 160.

The extent to which the harsher elements of the interrogation plan approved by Secretary Rumsfeld for Slahi were ever implemented is not clear to us. The *Church Report* states that the special interrogation plan was implemented in early September 2003 and Slahi soon began providing useful information. *Church Report* at 160. The Special Projects Team Chief stated that “once the [interrogation plan] for 760 was approved in August 2003, we started the [interrogation plan] in earnest.” However, he also stated: “Most of the [plan] was not executed. The only thing we ever did

was the direct approach.”⁹⁶ *Schmidt-Furlow Report* Ex. 20. The *Schmidt-Furlow Report* concluded that the “techniques” in the plan were never implemented because Slahi began to cooperate prior to the approval. *Schmidt-Furlow Report* at 23.

According to military documents, Slahi began cooperating with military interrogators on September 8, 2003, and immediately began providing intelligence. A military report on that date stated that the interrogator told Slahi: “After interrogators are finished with all our questions, only then would his family be returned and Detainee’s overall situation would improve.”

Over a year later, Slahi made allegations to military interrogators that he had been mistreated during the summer of 2003. He made similar allegations in interviews with the OIG.⁹⁷ He alleged that:

- He was left alone in a cold room known as “the freezer,” where guards would prevent him from sleeping by putting ice or cold water on him or making noise;
- He was subjected to sleep deprivation for a period of 70 days by means of prolonged interrogations, strobe lights, threatening music, forced intake of water, and forced standing;
- He was deprived of clothing by a female interrogator;
- Two female interrogators touched him sexually and made sexual statements to him;
- Prior to and during the boat ride incident he was severely beaten; and
- During the boat ride incident he overheard an Egyptian and Jordanian arguing over who would get him.⁹⁸

⁹⁶ Military documents indicate that techniques other than direct questioning were used on Slahi during this period. For example, a memorandum dated July 17, 2003, stated that on July 8, Slahi had been exposed to “variable lighting patterns and rock music, to the tune of Drowning Pool’s ‘Let the Bodies Hit the Floor,’” which kept Slahi “awake and in a state of agitation.” It further stated that on July 17, the interrogators employed a “Fear Up” approach on Slahi in which he was deprived of some clothes and yelled at. *Schmidt-Furlow Report*, Ex. 73.

⁹⁷ The OIG provided a list of questions to Slahi’s U.S. Army assigned interrogator, which she then posed to Slahi. This unusual step was taken at the behest of JTF-GTMO Commander General Hood in an effort to avoid compromising in any way the significant progress that the interrogator had made in obtaining information from Slahi. The OIG was later given permission to interview Slahi directly.

⁹⁸ The only allegation of improper conduct with respect to Slahi that the *Schmidt-Furlow Report* found to be corroborated was the use of threats against Slahi and his family. (Cont’d.)

Schmidt-Furlow Report, Exs. 5 and 6. During Slahi's OIG interview, he stated that he had never been in a helicopter since he has been at GTMO.

We determined that FBI agents became concerned about the potential mistreatment of Slahi in the fall of 2003. In October or November of 2003, a special agent from the Naval Criminal Investigative Service (NCIS) who was assigned to CITF contacted two FBI agents who were on temporary duty assignment to CITF at Fort Belvoir, Virginia. The NCIS agent told the FBI agents that he was concerned that tactics being utilized by the military on Slahi at GTMO would jeopardize the military commission's prosecution of Slahi. He showed the FBI a copy of an e-mail containing a second-hand report that Slahi was pulled off a helicopter at GTMO, was led to believe he was going to be executed, and urinated on himself. The NCIS agent also told the FBI that he had received reports that a military interrogator had displayed a letter to Slahi on State Department letterhead threatening to have Slahi's family taken to Morocco for possible torture, which caused Slahi to "crack."

The FBI agents who received this report then reviewed numerous Memoranda for Record (MFR) regarding Slahi maintained in CITF files, and determined, among other things, that on several occasions in early June 2003 an Army Sergeant on the DIA Special Projects Team at GTMO identified herself to Slahi as FBI SSA "Samantha Martin" in an effort to persuade Slahi to cooperate with interrogators. The FBI agents prepared a draft EC dated November 25, 2003, that summarized the MFRs, with particular emphasis on the threats against Slahi's family. It also described the alleged helicopter incident and the impersonation of an FBI agent by a military interrogator. The draft EC indicated that the military was repeating its techniques on other detainees.

On December 5, 2003, an SSA assigned to the FBI's Military Liaison and Detainee Unit (MLDU) sent an e-mail forwarding the draft EC up the chain of command in the FBI Counterterrorism Division (CTD). His e-mail was addressed to CTD Deputy Assistant Director Gary Bald, CTORS Section Chief Frankie Battle, and ITOS-1 Section Chief Arthur Cummings. The e-mail stated:

The *Schmidt-Furlow Report* concluded that placing Slahi in cold temperatures was an approved technique under DOD's April 2003 GTMO Policy. It found Slahi's claims of having been subjected to sexual behavior could not be corroborated, and that although he was treated for "edema of the lower lip" and a small head laceration, his allegation of having been beaten "very hard all over" during his transfer from Camp Delta to Camp Echo was "not substantiated." *Schmidt-Furlow Report* at 23-27.

MLDU requested this information be documented to protect the FBI. MLDU has had a long standing and documented position against use of some of DOD's interrogation practices, however, we were not aware of these latest techniques until recently.

Of concern, DOD interrogators impersonating Supervisory Special Agents of the FBI told a detainee that the "FBI" could protect him from prosecution. These same interrogation teams then took the detainee on a helicopter ride and threatened to execute him. The detainee was also told by this interrogation team that the detainee's family was detained in Mauritania by the USG and that things would get worse for his family until he cooperated.

These tactics have produced no intelligence of a threat neutralization nature to date and CITF believes that techniques have destroyed any chance of prosecuting this detainee.

If this detainee is ever released or his story made public in any way, DOD interrogators will not be held accountable because these torture techniques were done [by] the "FBI" interrogators. The FBI will [be] left holding the bag before the public.

The draft EC was not immediately finalized and disseminated because there was concern within the FBI regarding whether it was appropriate to document this information and whether it was adequately supported. Special Agent Scott, one of the FBI agents who drafted the EC, told us that the contents of the EC were briefed to Battle, Deputy Assistant Director T.J. Harrington, the MLDU Unit Chief, and an attorney in FBI-OGC.⁹⁹ Scott also discussed the matter with the FBI's OSC at GTMO.

Battle told the OIG that he could not recall how the FBI followed up on the issues in the draft EC. He said he did not recall any communications with Scott or with the MLDU Unit Chief. Harrington told the OIG that he instructed the OSC at GTMO to raise the issues in the EC with the military. He also said he discussed the EC with Bald. Bald and Cummings told the OIG they recalled hearing about an incident in which a detainee was taken up in a helicopter and was threatened to be dropped out. Bald said he thought the matter was referred to the military.

The FBI's OSC at GTMO told us that he did not think the FBI impersonation issue was as serious as Scott and the MLDU Unit Chief were making it out to be. He said they were concerned that if military interrogators tortured Slahi and were impersonating the FBI, then if Slahi were later released he could say that the FBI tortured him. The OSC said

⁹⁹ Scott is a pseudonym.

he did not consider this scenario realistic, and he declined Scott's recommendation that he see General Miller about it immediately. Instead, the OSC discussed the matter with the GTMO Interrogation Control Element Chief, who told the OSC he was not aware that the FBI had not been consulted about the impersonation ruse, and agreed that in the future this type of approach would be strictly coordinated with the FBI.

The OSC also discussed the alleged helicopter incident with military personnel at GTMO. He said he was told that a helicopter was never used in conjunction with the movement of Slahi or in the implementation of the special interrogation plan for him. The Interrogation Control Element Chief told the OSC that they did not use a helicopter because General Miller decided that it was too difficult logistically to pull off, and that too many people on the base would have to know about it to get this done. The MLDU Unit Chief told us that he thought the OSC reported to him that the alleged helicopter incident did not happen.

The FBI's MLDU Unit Chief communicated his concerns about the rumored helicopter incident to Bruce Swartz, Deputy Assistant Attorney General in the DOJ Criminal Division. Swartz said that based on the Unit Chief's description, Swartz did not believe that any FBI agents had witnessed the incident, and he did not ask the Unit Chief to get any more details about it. However, Swartz stated that in his opinion the alleged conduct amounted to torture, and he discussed the incident with Deputy Attorney General Larry Thompson, someone in the FBI General Counsel's office, and a legal advisor to the National Security Council (NSC). Swartz told us that he later learned from the NSC legal advisor that Navy Criminal Investigative Service (NCIS) looked into it and had concluded that no such incident took place. Swartz said it was "unfortunate" that he had chosen to elevate an allegation that had proved to be false, since it suggested that Swartz was "crying wolf" when he continued to raise questions about whether detainees were being treated humanely.

Other senior officials at DOJ told us that they could not recall the allegation about a helicopter incident. Former Deputy Attorney General Larry Thompson told us he did not recall anyone raising an allegation of this nature to him, and he did not recall DOJ raising these types of concerns with the NSC. He said the only thing he remembers along those lines was a proposal to give a detainee the illusion that he was going to be buried alive, but he said a decision was made that DOJ would not permit that. Former Deputy Assistant Attorney General David Nahmias told us he heard about a detainee being taken up in a helicopter by FBI, but was confident that no one ever presented it to him as a fact, because otherwise he would have taken it up the "chain." Former Deputy Assistant Attorney General Alice Fisher said she did not recall an allegation about a detainee being taken on a helicopter ride. Similarly, former Assistant Attorney General Michael

Chertoff told us that he did not remember hearing about such an incident. As detailed above, the concerns about Slahi's treatment were first elevated within the FBI in December 2003, which was after Fisher and Chertoff had left DOJ.

The draft EC prepared by Special Agent Scott identified three concerns about military interrogation tactics: the impersonation of an FBI agent, the helicopter incident, and the use of threats against Slahi's family to induce him to cooperate. The first two issues were addressed relatively easily when the OSC obtained a promise that the impersonation tactic would be coordinated with the FBI, and when it was determined that the helicopter incident never took place. It does not appear that the question of the use of threats against Slahi's family created any significant concerns among senior officials in the FBI, or that the issue ever reached DOJ. We believe that the FBI likely considered this tactic to be within the scope of permissible techniques under military policy. Furthermore, the FBI was generally reluctant to become involved in issues relating to the scope of military policies with respect to tactics (like threats) that did not clearly constitute torture or physical abuse.

XVI. Conclusion

The Al-Qahtani interrogation was the focal point of the dispute between the FBI and the DOD regarding interrogation techniques at GTMO. Several agents who observed the interrogation of Al-Qahtani at GTMO became deeply concerned not only about the efficacy of these techniques, but also about their legality and the complications it would create for FBI agents in the future to be involved in or even witness interrogations where such techniques were used. The agents requested guidance from FBI Headquarters regarding these issues.

We found that as concerns regarding the Al-Qahtani interrogations filtered upward within the FBI and in DOJ, the focus shifted almost exclusively to the question of whether the DOD techniques were effective at obtaining information from the detainee. Officials at all levels of the FBI and DOJ recognized, however, that the DOD ultimately had the final call on the interrogation of Al-Qahtani, who was in military custody at a military facility. Nevertheless, as result of their concerns about the efficacy of DOD interrogations, certain officials in the FBI and DOJ developed a proposal to [REDACTED]. At least some officials understood that under this proposal Al-Qahtani would be subjected to an alternative debriefing model of the sort used on Zubaydah and [REDACTED]. This proposal was never adopted, possibly because other factors led the military to change its interrogation policies in January 2003 and Al-Qahtani began cooperating within weeks thereafter.

Agents also expressed concerns about the military's treatment of Slahi, including rumors that military personnel threatened to throw him out of a helicopter. When senior officials learned that Slahi was never taken up in a helicopter they largely dropped the issue, although questions remained about a boat ride that the military took Slahi on as a ruse.

FBI Headquarters officials responded to the requests from agents for guidance by orally advising agents at GTMO not to be involved in coercive techniques used by the DOD. We found, however, that these instructions did not address several important issues raised by the reported incidents involving Al-Qahtani, Slahi, and other detainees, including: (1) what agents should do if confronted with DOD techniques that would not be permitted under FBI policy; (2) the circumstances under which agents could interview detainees who had previously been interrogated with coercive techniques; or (3) whether and how to report incidents of detainee mistreatment. As explained in Chapter Six, the FBI began confronting these issues more directly after the Abu Ghraib detainee abuse incidents became publicly known in 2004.