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

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[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]

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[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.