FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

To: Counterterrorism

From: CIRG

Behavioral Analysis Unit (BAU)

Attn: A/SC Raymond S. Ney, CTORS

A/OC

WLDU

b6 -1

b7c -1

General Counsel

Attn: Karlon E. Bowman, Senior Counsel for National Security Affairs

Miami

Attn: SAC Hector M. Pesquera; ASA C. Frank Vigniuzzi;

SSA

b6 -1

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Approved By: Wiley Stephen R.

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b6 -1

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Drafted By:

Case ID #: (U) 265A-MM-C991027 (Fending) [O] [O] [O]

Title: (U) GTMO-INTEL

GUANTANAMO BAY, CUBA

00:MIAMI

MAJOR CASE 186

Synopsis: (U) To document BAU assistance and challenges encountered during TDY assignment in Guantanamo Bay (GTMO).

(U) Derived From: G-3

Declassification: X1

Enclosure(s): (U) Enclosed documents provide additional details b6 -1 regarding issues encountered by SSAs and in GTMO: b7c -1

Defer/Consult DCC

DETAINEE-1261

5. (LES) Legal Analysis of Interrogation Techniques by SSA FBI (BAU).


Details: [XX] During the TDY assignments of SSA (10/27/2002-12/06/2002) and SSA (11/07-2002-12/18/2002) to Guantanamo Bay (GTMO), several discussions were held to determine the most effective means of conducting interviews of detainees. These discussions were prompted by the recognition that members of the Defense Intelligence Agency's (DIA) Defense Humint Services (DHS) were being encouraged at times to use aggressive interrogation tactics in GTMO which are of questionable effectiveness and subject to uncertain interpretation based on law and regulation. Not only are these tactics at odds with legally permissible interviewing techniques used by U.S. law enforcement agencies in the United States, but they are being employed by personnel in GTMO who appear to have little, if any, experience eliciting information for judicial purposes. The continued use of these techniques has the potential of negatively impacting future interviews by FBI agents as they attempt to gather intelligence and prepare cases for prosecution.
Referral/Direct

Unfortunately, these arguments were met with considerable skepticism and resistance by senior DHS officials in GTMO, despite several attempts to convince them otherwise. Nonetheless, the DHS have falsely claimed that the BAU has helped to develop and support DHS's interrogation plans.

(U) During their TDY assignment, SSAs and kept the BAU apprised of details of the above controversy. Additionally, they offered interviewing assistance and provided training on interrogation methods to FBI/CITF personnel.

(U) On 12/02/2002, SSA sent several documents via e-mail to Unit Chief BAU, Quantico, who advised he would forward them to Mr. Bowman, Legal Counsel, FRING. These documents included a letter to the JTF-170 Commanding General, Major General (MGEO), J.G. Miller (Encl 3), a U.S. Army Legal Brief on Proposed "Counter-Resistance Strategies" supporting the use of aggressive interrogation techniques (Encl 4), and a "Legal Analysis of Interrogation Techniques" (Encl 5) by SSA.

(U) It is noteworthy that the case agent in GTMO, SA and senior officials from the Criminal Investigative Task Force (CI TF), who have been involved in GTMO since the beginning.
(S) The differences between DHS and FBI interrogation techniques and the potential legal problems which could arise were
discussed with DHS officials. However, they are adamant that their
interrogation strategies are the best ones to use despite a lack of
evidence of their success. The issue regarding the effectiveness of
DHS's techniques was amplified during an awkward teleconference
between GTMO and Pentagon officials. During this teleconference, the
GTMO officer overseeing military interrogations, LCDR USA,
bluntly misled the Pentagon into believing that the BAU
endorsed DHS's aggressive and controversial Interrogation Plan (Encl
6) for [a detainee commonly referred to as]

Prior to this video teleconference, SSA[ ] and[ ] had
discussed with DHS the advantages and rationale regarding the FBI's
interrogation strategy for[ ] (Encl 7), and had made available to
them a written draft of this plan.

(U)[ ] The military and DHS's inaccurate portrayal to the
Pentagon that the BAU had endorsed and, in fact, helped to create
DHS's interrogation plan for[ ] that prompted SSA[ ] and
the FBI on-scene TOY operations supervisor, SSA[ ] to
send a letter (Encl 9) to MGREN MILLER correcting these misstatements
and requesting an opportunity to address the matter with MGREN MILLER
in person. During a subsequent meeting between MGREN MILLER and SSA[ ]
and EAD[ ] details and rationale for
the BAU's interviewing approach were presented. Although MGREN MILLER
acknowledged positive aspects of this approach, it was apparent that
he favored DHS's interrogation methods, despite FBI assertions that
such methods could easily result in the elicitation of unreliable and
legally inadmissible information.

(U)[ ] Subsequent contact with FBI personnel in GTMO has
revealed that MGREN MILLER remains biased in favor of DHS's
interrogation methods, although there is some indication that his
attitude may be shifting slightly following a recent visit by Pentagon
officials.
To: Counterterrorism From: CIRG
Re: (U) 069A-MM-C99102, 05/30/2003

Referral/Consult DOD

b6 -1
b7c -1

[X] SSAs and observed that DHS personnel have an advantage over the FBI as a result of their longer periods of deployment. Currently, DHS personnel are deployed for six months, whereas the FBI on-scene supervisor and interviewing agents are assigned for periods of only 30-45 days. About the time an FBI supervisor or interviewing agent begins to feel comfortable with his/her surroundings and is able to establish meaningful rapport with detainees, he/she must prepare to depart Guantanamo. There are several examples in which DHS personnel have waited the departure of an FBI supervisor before embarking on aggressive, unilateral interrogation plans which they knew would not have been endorsed by the FBI. For this reason, SSA and suggested to Acting Unit Chief (A/UC) that the Guantanamo Task Force consider extending periods of deployment for the on-site FBI supervisor and for some agents assigned to conduct interviews.

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b7c -1,2

(U) SSA discussed the above issues not only with BAU management, but also with A/UC who traveled to Guantanamo in early December. As part of his visit, A/UC participated in a second teleconference between NSC Senior Staff and the Pentagon. During this teleconference, A/UC challenged DHS's assertion that the FBI had endorsed DHS's interrogation techniques. This disclosure surprised Pentagon officials who had been led to believe that the FBI and DHS were working as a team. SSA was present at the Pentagon during this teleconference, advised that he would follow up on this issue by meeting with senior members of the Department of Defense (DOD) Legal Counsel to provide further background on this issue.

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b7c -1,4

(U) Upon their return from Guantanamo, SSAs and briefed the BAU and provided unit members with copies of relevant documents. During this brief, both explained that although they were compelled by timing and circumstances to devote a considerable amount of time to the above policy issues, they were able, nevertheless, to assist agents conducting interviews and provide training to FBI/CTF personnel. Of particular importance were a series of successful interviews which SSA conducted with known as detainees who had stopped talking to interrogators. Utilizing interviewing techniques taught by the BAU, SSA was gradually able to re-establish a dialogue (Enclosure 12) which ultimately led to the detainee's renewed cooperation.
(X) TESAS recognize that issues regarding differences in interrogation techniques may not be encountered by all DNI agents who travel to GTMO. However, considering the constant placement and turnover of personnel there, it is an issue which is likely to surface again. At present, FBI agents and DOD investigators conduct interviews on a daily basis in response to a steady number of criminal and intelligence-related leads. Some of the information gathered from these interviews is likely to be used in military tribunals and, possibly, in federal court. Therefore, it is essential that FBIHQ, DOJ and DOD provide specific guidance to protect agents and to avoid tainting cases which may be referred for prosecution.

DETAINEE-1266
To: Counterterrorism From: CING
Ref: (U) 265A-MM-C99102, 05/30/2003

LEAD(s):

Set Lead 1: (Discretionary)

COUNTERTERRORISM

AT WASHINGTON, D.C.

Set Lead 2: (Discretionary)

GENERAL COUNSEL

AT WASHINGTON, D.C.

Set Lead 3: (Info)

MIAMI

AT MIAMI, FLORIDA

(U) For information only.

cc: SSA BAU-East
GAMO Coordinator

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SECRET/ONCON/NOPRINT

SECRET

DETAINEES-1267