Precedence: PRIORITY  
Date: 01/10/2007

To: Counterterrorism  
Attn: General Counsel  
Attn:

From: Office of the General Counsel  
National Security Law Branch  
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Case ID #: (Pending) -

Title: (U) FBI Interviews of High Value Detainees (HVD) at Guantanamo Bay, Cuba (GTMO).

Synopsis: (U) The following procedures are guidance for FBI personnel conducting interviews of the HVDs detained at GTMO for intelligence and evidence for potential Military Commission proceedings.

Details:

1. Persons who will conduct the interviews.

   (U) Interviews of the HVDs will be conducted jointly by the FBI and the Department of Defense (DoD) Criminal Investigation Task Force (CITF) agents who are subject matter experts on the detainee. No agent who has previously interviewed a detainee(s) will conduct an interview of that same detainee(s). An interview team should consist of two to three agents with one agent designated as a note-taker. Additional agents may observe the interview.

2. Preparation for the interview
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(U) All classified materials to be used during a detainee interview will be reviewed by the appropriate agency for authorization to use the information in an interview. Agents should discuss their interview strategy with the assigned DoD/DOJ prosecutor prior to the interview to identify areas of questioning necessary to meet the elements of the military commission offense.

(U) No statement made by a detainee while that detainee was in the custody of an intelligence agency, or any evidence obtained as a result of such statement, will be used in an interview unless approved in advance by the assigned prosecutor and the appropriate intelligence agencies.

3. Background Information

(U) Interviewing agents may be provided background briefings on the detainees. The agents will also be given limited access to CIA databases containing intelligence reports that were previously disseminated to the intelligence community (i.e., TDs, TDXs, CIRs). Review of these materials will be at the discretion of the interviewing agent in preparation of the interview.

4. Conduct of the Interview

(U) Other than advisement of Miranda, interviews of the detainees are subject to the same rules that govern FBI agents who conduct custodial interviews in the United States. To that end, interviewing agents may not threaten or coerce the detainees. The agents conducting the interview should identify themselves using their true names (they may choose to use their first names only) and their organizations.

(U) Although interviewing agents are not required to advise the detainee of the Miranda warnings, the agent should determine that the detainee is willing to voluntarily answer questions.

(U) The interviewing agents should ensure that the detainee is aware of the changed circumstances of the detainee’s custody. The interviewing agents may, for example: (1) tell the detainee that the agents do not work for and are independent of any organization that previously held the detainee, (2) tell the detainee that he will not be returning to the control of the any of his previous custodians, or (3) remind the detainee of the fact that they met with the ICRC.

(U) If the detainee asks for an attorney, the agent should inform the detainee that, since he has not been charged with a crime by the military, the detainee does not have the right to speak to an
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attorney and there is no attorney immediately available for consultation. The agent should also inform the detainee that if the detainee is charged with an offense, at that time the detainee will be entitled to consult with an attorney.

(U) If the detainee asks whether he is being or will be charged with a crime, the agent should tell the detainee that the agent does not make that decision.

(U) If the detainee asks whether his statements can be used against him at a future proceeding, the agent should inform the detainee that such use of his statement is a possibility.

(U) If the detainee asks whether any prior statements can be used against the detainee at a criminal proceeding, the agent should tell the detainee that decision will be made by the court if he is charged with a crime.

(U) If the detainee asks whether there are any benefits to be obtained by cooperating with the agent, the agent should tell the detainee that the agent can provide no benefits to the detainee but will bring the detainee's cooperation to the attention of the prosecutors.

(U) If authorized by DoD, the agents may provide the detainee with beverages, snack foods, etc. The provision of beverages, etc. and the timing and duration of breaks should be documented.

5. Legal Support

(U) Prosecutors from the Office of Military Commissions (OMC), the Department of Justice (DOJ) and FBI's NSLB will be present in GTMO and available for immediate consultation, legal assistance and advice.

6. Documenting the Interview

(U) The interviewing agent should document the interview in an FBI letterhead memorandum (LHM) prepared on a CIA-supplied laptop. There will be a "thumb drive" memory chip for each detainee. The draft LHM will be electronically transmitted to the CIA for classification review. The agent's notes will also be pouch back to the CIA for classification review. The CIA will appropriately

1 (U) Allegations of misconduct will not be included in this LHM. See Section 7, below.
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mark the LHM of the substantive interview and the agent's notes. The CIA will provide a properly marked copy of the LHM to the FBI as soon as practicable. CITF agents will not prepare separate documentation.

7. Documenting Compartmented Information including Allegations of Mistreatment

(U) During the interview process, a detainee may provide the agents with information concerning the interrogation techniques previously used on him and his detention locations. Such information, even though coming from a detainee, is deemed by the CIA to be national security information. If the CIA determines that compartmented information is contained in the LHM, the interviewing agent should create a separate LHM. The newly prepared LHM will contain the compartmented information while the first LHM will contain all other information obtained during the interview.2

(U) If the detainee alleges misconduct related to his detention and/or techniques used during interrogations prior to his arrival at GTMO, those allegations should be documented in an FBI LHM prepared on a CIA-supplied laptop on a daily basis. These LHMs will be electronically transmitted and/or pouch back to the Washington, DC area for review and action deemed appropriate by the Department of Justice. A copy of these LHMs will also be delivered to the DOJ attorney present at GTMO. Please note, once a particular allegation from a particular detainee has been documented, it need not be documented again if the detainee repeats the allegation, unless there are new details that were not conveyed in the initial report.

(U) If the detainee alleges misconduct regarding a DoD employee, that portion of the LHM should be reported through CITF channels for appropriate referrals.

8. Setting Leads

2 (U) If more than one document is created from the information obtained during the interview, each document MUST include an explicit cross-reference to the other document (i.e., substantive information and information concerning mistreatment).
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(U) FBI agents may set leads based on the interviews after consultation with OMC and/or DOJ and attorneys from the appropriate intelligence agency.
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LEAD(s):
Set Lead 1: (Action)

COUNTERTERRORISM
AT ITOS 1
(U) Distribute to and brief all Special Agents who will be conducting the interviews on the outlined procedures.

Set Lead 2: (Action)

COUNTERTERRORISM
AT GUANTANAMO BAY, CUBA
(U) Distribute to and brief all Special Agents who will be conducting the interviews on the outlined procedures.

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