

A BUSH EO ON TORTURE?

As Keith O reported last night, Jason Leopold found a curious reference in an email that was in the ACLU's FOIA document dumps (there's a reference to it, too, in the DOJ IG Report on torture, starting on page 137). It seems to suggest President Bush signed an Executive Order authorizing "sleep management," the use of dogs, stress positions, environmental management, and sensory deprivation.

Before we hunt for the EO, here's what this document appears to be. In May 2004, in the wake of the Abu Ghraib scandal, the FBI sent out an order requiring that "if an FBI employee knows or suspects non-FBI personnel has abused or is abusing or mistreating a detainee, the FBI employee must report the incident."

In response to that order, the on-scene commander in Baghdad tried to get more direction on what the order meant by "abuse" on May 22. He (or she) wanted to know whether techniques not authorized for FBI personnel—but authorized for others (presumably both intelligence and military personnel)—should be considered. In the FBI commander's understanding, Bush signed an EO some time in the past that authorized abusive techniques.

We are aware that prior to a revision in policy last week, an Executive Order signed by President Bush authorized the following interrogation techniques among others: sleep "management," use of MWDs (military working dogs), "stress positions" such as half squats, "environmental manipulation" such as the use of loud music, sensory deprivation through the use of hoods, etc.

It appears the unit in question may be the Special Mission Unit Task Force, a Special Ops unit conducting high level interrogations. The

SASC Report describes what appears to be a similar set of techniques available for the SMU TF that were changed not long before the FBI commander sent the email. (This section appears on page 222, but there's more discussion of this unit starting on page 158.)

[two lines redacted] Prior to March 2004, however, each operated under a distinct interrogation SOP. On March 26, 2004 the SMU TF implemented a single interrogation policy that covered SMU TF operations in both Iraq and Afghanistan.

The March 26, 2004 SMU SOP authorized 14 "interrogation techniques" not explicitly listed in FM 34-52 [the Army Field Manual], including use of muzzled dogs, "safety positions (during interrogations)," sleep adjustment/management, mild physical contact, isolation, sensory overload, sensory deprivation, and dietary manipulation.

According to the Church Special Focus Team Report, the March 26, 2004 SMU TF SOP included a larger number of interrogation techniques outside of FM 34-52 than the SOPs of any other military organization at the time. 1733 In fact, many of the techniques in that SOP had been abandoned by conventional forces in Afghanistan months earlier, after CENTCOM identified legal concerns with the techniques. 1734 Although the authority in the March SOP to use "muzzled dogs" was rescinded on April 22, 2004, the remainder of the techniques remained authorized until May 6, 2004, when GEN John Abizaid, the CENTCOM Commander, suspended use of all non-FM 34-52 techniques. 1735 The Church Special Focus Team report said the techniques were suspended as a result of detainee abuse at Abu Ghraib. 1736 GEN

Abizaid stated that neither he nor his staff "reviewed or approved" the March 2004 SMU TF SOP "prior to its issuance.

A footnote describes what all these techniques were—and show that they were changed on May 18, which would correlate with the revision in policy the previous week described in the FBI email.

The 14 techniques were the use of military working dogs, safety positions (during interrogations), use of blackened goggles/ear muffs during interrogation, sleep adjustment/sleep management, use of female interrogators, sensory deprivation, sensory overload, change of environment/ environmental manipulation, diet manipulation, use of falsified documents or reports and deception, use of individual fears, use of isolation, fear of long-term incarceration, and mild physical contact. Battlefield Interrogation Team and Temporary Screening Facility Standing Operating Procedures (SOP), Change 2 Dated May 18, 2004.

(Note, the report also describes the SMU TF Commander writing to ask to retain many of these techniques—though that happened the day after the FBI commander wrote the email.)

So this may well be the set of approved techniques the FBI commander described.

But that doesn't tell us how they got approved. The passage clearly shows that General Abizaid at least claimed never to have seen the Standard Operating Procedure this unit was using in interrogations. An earlier passage explains that SMU TF's interrogation techniques came from Rummy's approval of techniques—intended for Gitmo—on December 2, 2002 and adopted by the SMU TF unit via Afghanistan. Still another reference—referring to techniques used in

2003—said Lieutenant General Ricardo Sanchez and Colonel Thomas Pappas "were unaware of what interrogations were authorized" for the unit. Finally, another passage describes how the commander of the unit disdained the notion of approving a summer 2003 version of the unit's interrogation techniques.

[redacted] The July 15, 2003 policy contained the signature block of the SMU TF Commander [redacted] but was unsigned. [redacted] told the Committee that he did not think he ever approved or even saw an interrogation policy. He stated, however, that he was aware that the SMU TF used sleep deprivation, loud music, light control, isolation, "comfort positions," and military working dogs. The SMU Task Force Legal Advisor who served at the facility in July and August 2003 stated that he was sure [redacted] saw the policy, that he asked him to sign it, and that a copy of the policy sat in the Commander's inbox during the Legal Advisor's deployment to the Task Force.

[redacted] The SMU Task Force's Legal Advisor who arrived at the TF facility in late August 2003 likewise said that his predecessor had tried, without success, to get [redacted] to sign the policy. That same Legal Advisor stated that he too tried numerous times, also unsuccessfully, to get the Commander to sign the policy. The Legal Advisor added that it got to the point where he would print out a fresh copy of the policy every night and give it to [redacted] aide. The Legal Advisor said that he knew the Commander had received copies of the policy from his aide, but that he had a habit of "losing" the draft policy. He said that the exercise became "laughable" and eventually, he was forced to raise the issue with the [redacted] legal advisor. In the absence

of [redacted] the Legal Advisor told the Committee that his direction to SMU personnel was that the unsigned SOP applied to SMU TF interrogations.

Now, between the time this mockery occurred and the 2004 incidents referred to by the FBI commander, the abuses of this unit had received significant notice. In particular, Colonel Steven Kleinman—who did a JPRA training session with the unit in September 2003—repeatedly warned unit members they were violating the Geneva Conventions. Ultimately, Kleinman was physically threatened and JPRA was withdrawn.

Lt Col Kleinman referred to the DoD IG report's statement that "friction was developing" as an understatement and said that he felt his life was being threatened at the SMU TF. 1437 He recalled one instance (after he stopped what he believed to be in violation of the Geneva Conventions) in which an SMU TF member told him, while sharpening a knife, to "sleep lightly," noting that they did not "coddle terrorists" at the SMU TF.

And there were a number of other warnings in 2003. Hell, even the CIA had told the unit—very early on—they were getting out of control.

In May 2003, CAPT Dalton, Legal Counsel to the Chairman of the Joint Chiefs of Staff, sent an email to CENTCOM lawyers stating that CIA General Counsel Scott Muller had called Jim Haynes and told him that the techniques used by military interrogators at the SMU TF facility in Iraq were "more aggressive" than techniques used by CIA to interrogate the same detainees.

All of these details tell us that high level commanders should have known what was going on in the unit, and should have known this was

going to be a problem. They should have been concerned enough to make sure these techniques had authorization from somewhere.

But it doesn't explain who had approved the techniques in use in early 2004, described by the FBI commander (according to the email, he or she arrived in Iraq on January 10, 2004). And from the sounds of things, the guys doing the interrogations had told the FBI that President Bush had signed an Executive Order authorizing it.

A review of the EOs signed by Bush prior to this point shows that it is not a discrete EO (2001, 2002, 2003, 2004).

I can think of two possibilities that leaves.

First, it's possible these guys—who are special ops—are just cowboys who don't give a rat's ass whether the torture they're committing is approved or not. No one seems to have cared whether they had signed approval for these things. So maybe these guys told the FBI commander that Bush had approved to shut him up.

It's possible, too, that Bush (or Cheney) simply gave them a written authorization that doesn't formally amount to an EO that would be printed in the Federal Register.

But there's another possibility. As intelligence interrogators (at one point, the SASC report describes them as seeking intelligence information), these guys' activities would fall under EO 12333, the EO that has governed intelligence activities since Reagan. That EO does have several passages on military intelligence activities. And that's an EO we know Bush "modified" without actually changing in writing. If Bush was in there anyway, eliminating restrictions on wiretapping Americans and—potentially—eliminating the prohibition on assassination, then why not pixie dust the EO to allow the special forces to torture, too?

In any case, the abuses committed by this unit

were widely known, yet have not—AFAIK—been prosecuted (and the FBI discussions about the email in the DOJ IG Report show no great alarm at the report). That suggests they had authorization from someone. Was it from Bush?