

STATEMENT FOR THE RECORD

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**BEFORE THE
HOUSE PERMANENT SELECT COMMITTEE ON INTELLIGENCE
JULY 14, 2004**

Testimony of Valerie Caproni,
General Counsel, Federal Bureau of Investigation,
before the House Permanent Select Committee on Intelligence
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Good morning, Mr. Chairman, Congresswoman Harman and members of the Committee. I am honored to appear here today to address the policies and guidelines that govern FBI taking statements from individuals detained outside the United States who are believed to have information relating to terrorism.

The FBI has been deploying agents worldwide for a number of years, although the number of deployed employees has risen sharply since September 11, 2001. As we understand the nature of the hearing today, it is to focus on the guidelines for interrogations and interviews of individuals who are believed to possess information relevant to the war on terror. Accordingly, I will not be discussing the normal rules that would govern an agent who, for example, needed to interview someone living in London in connection with a white collar investigation being conducted in New York.

In connection with the fight against terrorism, the FBI has agents all over the world, but those deployed in Afghanistan, Iraq and Guantanamo Bay are most relevant to this hearing. All FBI Agents receive significant training regarding the

FBI's policies and guidelines governing the taking of statements from individuals. This training begins with the FBI's new agent curriculum at the FBI Academy and continues by way of periodic updates through mandated annual legal training. Additionally, each agent is provided a copy of the Legal Handbook for Special Agents, which contains a comprehensive summary of the legal principles and policies that apply to investigative activities, including those governing the taking of statements. This resource is available in both electronic and hard copy format.

The Legal Handbook for Special Agents states, "[i]t is the policy of the FBI that no attempt be made to obtain a statement by force, threats or promises." See 7-2.1. Although a person's status determines the type and extent of due process rights afforded under the Constitution, it is FBI policy that no interrogation of any individual, regardless of status, shall be conducted using coercive practices to extract information. Among the techniques that are not allowed, therefore, regardless of whether the interviewee is a US citizen or an unlawful combatant taken into custody on the battlefield of Afghanistan, are physical abuse or the threat of such abuse to the person being interrogated or to any third party, or the imposition of severe physical or environmental conditions.

From the time they enter the FBI Academy, our agents are taught that statements, including confessions, obtained in the United States or abroad, must be

voluntary and must be obtained consistent with the Fifth and Sixth Amendments to the Constitution. Although these basic principles have been taught for years because they are the foundation for insuring that the results of an interview will be admitted into evidence in federal court, in most respects they are just as important when the sole goal of the interview is to gain intelligence -- not evidence for use at trial.

Although there are multiple schools of thought in terms of the best way to obtain information from recalcitrant or hostile individuals, over years of experience the FBI has found that the best way to obtain accurate information when conducting interviews and interrogations is to use rapport building techniques. Whether we are interviewing suspected pedophiles, terrorists or anything in between, our experience has shown that treating an interviewee with respect is most likely to result in a successful interview or interrogation, even if it sometimes takes longer than we might like.

In short, both because we believe it is the most efficacious way of obtaining valuable information and because it maximizes the likelihood that any resulting statement will be admissible in court, the FBI does not use harsh interview or interrogation techniques, whether the interview is conducted within the United States or outside the United States.

The only significant difference between the policies that govern our interviews within the United States and those that govern activities outside the United States involves the issue of advice of rights. Within the United States, as a matter of general policy all custodial interrogations begin with the interviewee being advised of his or her rights, including the right to remain silent and the right to consult with an attorney. The FBI, with the concurrence of the Department of Justice, has advised personnel conducting interviews of individuals in custody or otherwise detained in Iraq, Guantanamo Bay and Afghanistan, for the purpose of gaining valuable intelligence, to dispense with providing those interviewees with the sorts of warnings normally provided to protect Fifth Amendment rights of persons interviewed in the United States in criminal matters where either Fifth or Sixth Amendment rights have attached. Dispensing with the requirement that the interviewee be provided with an Advice of Rights in no way alters the fundamental principle and tenet of FBI policy that interviewees may not be coerced or threatened into providing a statement.

With respect to the specific deployments to Iraq, Guantanamo Bay and Afghanistan, FBI personnel departing for such duty are briefed by representatives from various programs on a variety of issues, including the legal principles and policy guidelines which apply to the taking of statements. The FBI has advised

FBI personnel, and personnel under FBI supervision deploying to these areas, that with the exception of the requirement that interviewees be given an Advice of Rights, all persons interviewed by FBI personnel must be treated in accordance with FBI policy at all times.

In light of the abuses that occurred at the Abu Ghraib prison, in a memorandum to all employees (which will also be included in the materials all employees receive before being deployed to Afghanistan, Iraq and Guantanamo), we recently memorialized the advice that had previously been orally conveyed to employees deploying overseas regarding FBI policy related to the interrogations. That memorandum emphasized that FBI personnel may not obtain statements by the use of force, threats, physical abuse, threats of such abuse or severe physical conditions. Furthermore, the communication instructed FBI personnel participating in interrogations with non-FBI personnel to at all times comply with FBI policy and guidelines for the treatment of interviewees. The memorandum makes clear that FBI personnel shall not participate in any treatment or use any interrogation technique that is in violation of FBI guidelines, regardless of whether the co-interrogator is in compliance with his or her own guidelines. If a co-interrogator is complying with the rules of his or her agency but is not in compliance with FBI policies and guidelines, FBI personnel may not participate in the interrogation and

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must remove themselves from the situation.

This communication added a reporting requirement for instances of known or suspected abuse or mistreatment of individuals. If an FBI employee knows of or suspects any abuse or mistreatment of an individual being interrogated by non-FBI personnel, the FBI employee must report the incident to the FBI on-scene commander, who shall report the situation to the appropriate FBI official in the chain of command. The FBI chain of command will then ensure that the incident is reported to the other individual's chain of command so that appropriate steps can be taken.

I am pleased to respond to any questions you may have.