



**U.S. Department of Justice**

Office of Legislative Affairs

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Office of the Assistant Attorney General

*Washington, D.C. 20530*

July 20, 2004

The Honorable John Conyers, Jr.  
Ranking Member  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Congressman Conyers:

This responds to your letter dated February 9, 2004, to the Attorney General regarding aspects of the Office of the Inspector General's (OIG) reports pertaining to the treatment of aliens held on immigration charges, in connection with the investigation of the September 11, 2001, terrorist attacks. In your letter, you asked why the Federal Bureau of Investigation (FBI) did not interview complainant-detainees or the subjects of the complaints after the detainees were deported. You also asked for information relating to the Federal Bureau of Prisons' (BOP) failure to provide videotapes that were requested by the OIG, the Civil Rights Division, and the United States Attorney's Office for the Eastern District of New York (EDNY). Finally, you requested information regarding BOP's monitoring of conversations between the detainees and their counsel. We have made appropriate inquiries of the relevant Department of Justice components in our effort to answer your inquiries, and we apologize for the delay in responding.

As you know, in the days following the attacks of September 11, 2001, the FBI initiated the massive PENTTBOM ("Pentagon & Twin Towers Bombing") investigation, which focused on identifying the terrorists who perpetrated the attacks and those who might have aided them. The FBI, working with other agencies, sought to prevent follow-up attacks in this country and against U.S. interests abroad. In addition, the FBI was responsible for investigating a large number of "backlash crimes" – bias-motivated offenses committed in response to the terrorist attacks.

The Honorable John Conyers, Jr.  
Page Two

Inevitably, significant portions of the PENTTBOM and backlash investigations fell on the New York Division of the FBI, the division that had the responsibility for investigating allegations of excessive force arising out of the Metropolitan Detention Center (MDC).

OIG began investigating allegations of mistreatment and abuse of the detainees as early as November 2001. As OIG described in its reports, it conducted a comprehensive inquiry into the conditions under which the detainees were housed and the manner in which they were treated. The inquiry was wide-ranging and included interviews of detainees, correctional officers, and others who may have witnessed incidents described in the complaints. Although the OIG investigation resulted in recommendations to the BOP to correct aspects of its practices, the Department of Justice's Civil Rights Division and EDNY determined that the investigation did not produce information sufficient to warrant criminal prosecution of any BOP personnel.

Your letter referred to four investigations, described by the June 2003, OIG report, in which the FBI opened investigations into later allegations by other MDC detainees and in which the complainants were deported before they were interviewed by the FBI. As you may be aware, those four allegations were first made months after the initiation of the OIG investigation, in some cases on the eve of deportation. While it is unfortunate that those detainees were not located and interviewed prior to deportation, their complaints did not involve prosecutable violations in any event. First, the complaints involved either minimal or no demonstrable injuries. Second, as noted above, the complaints were raised significantly after the violations allegedly occurred. Under these circumstances, there was very little likelihood that civil rights charges could have been successfully prosecuted. Therefore, once the detainees had been deported, our limited resources dictated that we forego the difficult prospect of locating the deported aliens in their countries of origin, coordinating with those countries, and managing the logistics of interviewing the deported aliens in their countries of origin for these types of alleged violations.

You have also asked us to explain the reason why the subjects in these four matters were not interviewed by the FBI. In general, the Department's decision to close a matter without requesting an interview of a subject, where one has been identified, frequently rests on a determination that the matter was not otherwise prosecutable. Here, two of the matters described in the OIG report did not have identified subjects. In the other two matters referenced in the report, interviews of the subjects by criminal investigators were unwarranted because the allegations did not establish prosecutable violations due to the unavailability of the complainants.

The Honorable John Conyers, Jr.  
Page Three

This determination was especially justified in light of the extensive investigation conducted contemporaneously by OIG. OIG was better placed to obtain useful information from correctional officers because of their ability to compel interviews from the subjects through administrative tools. As such, the decision to refrain from pursuing FBI-conducted subject interviews, which would have required the subjects to voluntarily participate, was reasonable and appropriate.

Your letter also requested information regarding 1) BOP's failure to provide videotapes that depicted the handling of detainees at the MDC, requested by several investigating components; and 2) instances in which BOP recorded conversations between detainees and their counsel. The discrepancy between the BOP's original response - that the relevant tapes had been destroyed as a matter of routine retention policy - and the actual retention of several tapes within the MDC appears to be the result of poor organization and accountability for tracking large numbers of tapes. However, no evidence of intentional misconduct has been uncovered. Further, BOP is now revising its policies on videotape retention in these circumstances to avoid repetition of the confusion that occurred in this case.

Similarly, BOP has acknowledged that they did not follow their own regulations regarding audio-taping conferences between attorneys and inmates. According to BOP's Visiting Regulations,

Staff may not subject visits between an attorney and an inmate to auditory supervision. To the extent practicable, attorney visits, for both pretrial and sentenced inmates, are to take place in a private conference room . . . Occasionally, a situation may arise when a private area or conference room is not available, and the attorney does not wish to meet in a regular visiting room. When this occurs, the attorney may reschedule the visit.

In addition, the Bureau of Prisons' General Counsel issued a memorandum on January 28, 2004, to all Chief Executive Officers directing them to remind staff that regulations and policy prohibit auditory supervision of inmates' visits with their attorneys.

We trust that these responses adequately address your concerns. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,



William E. Moschella  
Assistant Attorney General