



Office of the Inspector General
United States Department of Justice

ANALYSIS OF THE RESPONSE BY THE
FEDERAL BUREAU OF PRISONS TO
RECOMMENDATIONS IN THE OIG'S
DECEMBER 2003 REPORT ON
THE ABUSE OF SEPTEMBER 11 DETAINEES
AT THE METROPOLITAN DETENTION CENTER
IN BROOKLYN, NEW YORK

March 2004

**ANALYSIS OF THE RESPONSE BY THE FEDERAL BUREAU OF PRISONS
TO RECOMMENDATIONS IN THE OIG'S DECEMBER 2003 REPORT ON
THE ABUSE OF SEPTEMBER 11 DETAINEES AT THE
METROPOLITAN DETENTION CENTER IN BROOKLYN, NEW YORK**

I. INTRODUCTION

This analysis by the Office of the Inspector General (OIG) evaluates the Federal Bureau of Prisons' (BOP) response to the recommendations contained in the OIG's report entitled "Supplemental Report on September 11 Detainees' Allegations of Abuse at the Metropolitan Detention Center in Brooklyn, New York." (MDC Report). The OIG supplemental report, issued on December 18, 2003, examined allegations that some correctional officers in the Metropolitan Detention Center (MDC) in Brooklyn, New York, physically and verbally abused aliens who were detained on immigration charges and held in connection with the investigation of the terrorist attacks of September 11, 2001. In our MDC Report, we described the evidence of that abuse, concluded that the evidence substantiated allegations of abuse, and recommended that the BOP discipline certain MDC correctional officers.

In our report, we also described systemic problems in how the MDC handled the September 11 detainees. We made a series of recommendations to the BOP to address those systemic problems, which we concluded would improve the BOP's ability to prepare for and respond to future emergencies involving detainees, as well as improve its routine handling of inmates.

On February 25, 2004, the BOP submitted its response to these systemic recommendations (*see* Appendix). The OIG has analyzed the BOP's response to each of the recommendations and we have concluded that, in general, the BOP has taken reasonable and responsible steps to implement the recommendations. Many of the BOP's actions appropriately address the concerns underlying the recommendations. However, as we describe below, a few of the BOP's responses do not sufficiently address the recommendations and the core concerns underlying them.

In the following sections, the OIG analyzes the BOP's response to each of the report's recommendations. For each recommendation, we reproduce below:

- 1) the OIG's original recommendation;
- 2) the BOP's response; and
- 3) the OIG's analysis of the response.

Consistent with our normal practice, when specific action has been taken on a recommendation to fully address the issues raised by the recommendation, we consider the recommendation to be closed.

Moreover, we recognize that the effectiveness of the BOP's response to these recommendations depends on how the new policies and practices are actually implemented, particularly if an emergency such as a terrorist attack occurs again. But, as we discuss below, we believe that the BOP's written response is a positive step towards addressing the OIG's recommendations.

II. RECOMMENATIONS

Recommendation 1

Status: Open

OIG Recommendation

During our investigation, we encountered a significant variance of opinion among MDC staff members regarding what restraint and escorting techniques were appropriate for compliant and noncompliant inmates. We recommend that the BOP provide clear, specific guidance for BOP staff members on what restraint and escorting techniques are and are not appropriate. This guidance could take the form of written policy and demonstrations or examples given during training. The guidance should address techniques at issue in this investigation, including placing inmates' faces against the wall, stepping on inmates' leg restraint chains, and using pain compliance methods on inmates' hands and arms.

BOP Response

The BOP agrees with this recommendation. The BOP will continue its efforts to train Bureau staff regarding the proper use of restraints and escort techniques. As has been the practice for several years, Bureau staff receive their initial training regarding the application of restraints and escort techniques during an intensive 120-hour Introductory Correctional Training course at the Staff Training Academy in Glynnco, Georgia. Staff are also trained in confrontation avoidance, use of force team techniques, and use of chemical agents. BOP staff are and have always been trained to apply restraints only for appropriate purposes and in appropriate ways.

The BOP's Program Statement (PS) 3420.09, Standards of Employee Conduct, dated February 5, 1999, states: "An employee may not use brutality, physical violence, or intimidation towards inmates, or use any force beyond that which is reasonably necessary to subdue an inmate." Bureau staff are

issued this program statement upon entry to their position and sign a document indicating their receipt. Additionally, any time a change is made to this program statement, Bureau staff are reissued the program statement and sign a similar statement as to their receipt.

In April 2004, I [BOP Director Harley Lappin] will personally provide a video to all CEOs wherein issues of staff conduct, professionalism, and a zero tolerance for abuse will be discussed. This video will be viewed by all BOP staff.

The Bureau's Use of Force Training has always been a mandatory core topic provided during Annual Refresher Training for all BOP staff. This year, we are adding a mandatory core topic for Escorting Restrained/Non-Restrained Inmates for presentation during Annual Refresher Training for all BOP staff. Additionally, we will enhance this training to specifically address what restraint and escort techniques are and are not appropriate.

Finally, a team of NER Office staff will conduct training at MDC Brooklyn February 27, 2004, through April 9, 2004, regarding the appropriate application of restraints and proper escort procedures. (Attachment 1)

OIG Analysis

We believe the BOP's response addresses most of the concerns underlying our recommendation.

During our investigation, we encountered a wide variety of opinions among MDC staff members regarding what restraint and escorting techniques were appropriate for compliant and noncompliant inmates. For example, when asked whether bending an inmate's hand forward toward the arm was appropriate, some officers said that the technique was appropriate only with non-compliant inmates, others told us that it was never appropriate, and a few stated that it was a standard procedure for compliant inmates.

We also questioned the senior BOP official who has been responsible since 2000 for training new BOP officers on restraint and escort techniques about certain techniques that we had observed officers using in MDC videotapes. When we showed the official examples of officers bending compliant detainees' wrists during escorts, he stated that the technique was not appropriate under the circumstances presented in the videotapes and was not part of the new officer training program.

We agree with the BOP's proposal to add as a mandatory core topic "Escorting Restrained/Non-Restrained Inmates" for presentation during the

annual refresher training for all BOP staff, including enhanced training on specific escort techniques that are and are not appropriate. From the BOP's description, however, it is unclear whether the training presentation will cover the issues addressed in the OIG Report, including twisting an inmate's wrist or fingers, stepping on an inmate's ankle chains, placing an inmate's head against the wall, and pulling up on an inmate's cuffed arms. As referred to in the report, MDC officers had varying and conflicting opinions concerning when, if at all, these techniques were appropriate. To close this recommendation, please provide by June 1, 2004, a copy of the training program that addresses the appropriateness of the specific escort techniques that were identified in the OIG's MDC Report.

Recommendation 2
Status: Closed

OIG Recommendation

We found that the MDC regularly audiotaped detainees' meetings with their attorneys, in violation of 28 C.F.R. § 543.13(e) and BOP policy. We recommend that BOP management take immediate steps to educate its staff on the law prohibiting, except in specific limited circumstances, the audio monitoring of communications between inmates and their attorneys.

BOP Response

The BOP agrees with this recommendation. BOP PS 5267.07, Visiting Regulations, which has been in existence for several years and updated on April 14, 2003, states: "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."

BOP PS 1315.07, Legal Activities, Inmate, dated November 5, 1999, also states: "Staff may not subject visits between an attorney and an inmate to auditory supervision."

A memorandum was issued by our General Counsel on January 28, 2004, to all CEOs outlining the Federal regulations and BOP policy concerning the audio monitoring of attorney visits. (Attachment 2)

OIG Analysis

The BOP General Counsel's January 28, 2004, memorandum states that BOP Chief Executive Officers must ensure that their staff is aware that subjecting inmate attorney-client visits to auditory supervision or recording is prohibited by federal regulations and BOP policy. In addition, the memorandum states that, to the extent practicable, attorney-client visits for pretrial and sentenced inmates are to occur in private conference rooms. We believe this addresses our recommendation and therefore consider this recommendation closed.

Recommendation 3
Status: Closed

OIG Recommendation

While the staff members denied verbally abusing the detainees, we found evidence of staff members making threats to detainees and engaging in conduct that was demeaning to the detainees. We recommend that the BOP and MDC management counsel MDC staff members concerning language that is abusive and inappropriate and remind them of the BOP policy concerning verbal abuse.

BOP Response

The BOP agrees with this recommendation. As stated in the BOP's response to recommendation #1, employees may not use brutality, physical violence, or intimidation towards inmates, or use any force beyond that which is reasonably necessary to subdue an inmate. BOP PS 3420.09, Standards of Employee Conduct, dated February 5, 1999, states: "An employee may not use profane, obscene, or otherwise abusive language when communicating with inmates, fellow employees or others. Employees shall conduct themselves in a manner which will not be demeaning to inmates, fellow employees, or others." As previously stated, Bureau staff are issued this program statement upon entry to their positions and sign a document indicating their receipt. Additionally, any time that a change is made to this program statement, Bureau staff are reissued the program statement and sign a similar statement as to their receipt.

As previously stated, NER Office staff will conduct training at MDC Brooklyn February 27, 2004, through April 9, 2004, regarding the BOP's Code of Conduct and policy concerning verbal abuse toward inmates.

OIG Analysis

We have reviewed the BOP's training program and believe it is responsive to our recommendation. We therefore consider this recommendation closed.

Recommendation 4

Status: Open

OIG Recommendation

Because specific officers were not pre-assigned to escort detainees to and from the ADMAX SHU, the lieutenants in charge of escorts used available staff from throughout the institution for the escort teams. Several lieutenants told us that the lack of designated teams contributed to the potential for abuse on escorts. Likewise, while specific staff members were assigned to the ADMAX SHU, we observed on videotapes that staff members from all over the institution, including staff members who had little or no experience handling inmates, were on the ADMAX SHU and had physical contact with the detainees. We recommend that institutions select and train experienced officers to handle high security and sensitive inmates, enforce the policy that a comprehensive log of duty officers and a log for visitors be maintained on the unit, and restrict access to the unit to the assigned staff members, absent exigent circumstances. MDC staff members advised us that officer logs, visitor logs, and restrictions on access to the unit were in place for the ADMAX SHU, but the videotapes showed that the procedures were not followed.

BOP Response

The BOP partially agrees with this recommendation. All BOP institutional staff members are trained in the professional management of inmates. The BOP does not believe it is appropriate to maintain a special cadre of officers to handle high security and sensitive inmates. In fact, we believe such specialization can lead to divisions between staff, create communication barriers between staff and inmates, and even promote the types of problematic behavior identified by the OIG. We believe the BOP philosophy that all staff are trained and qualified to work any correctional post when necessary is appropriate and sound correctional practice. As mentioned in the OIG's report, MDC staff were working under difficult conditions. Only a small percentage of MDC staff did not act professionally or follow BOP policy in their treatment of the detainees. However, this is not a reflection on BOP policy, procedure, or practice and does not reflect on the hundreds of MDC Brooklyn staff who maintained their professional demeanor and conduct with the detainees during this difficult time.

BOP PS 5270.07, Inmate Discipline and Special Housing Units, states: "All persons visiting the unit will sign a separate log, giving time and date of visit." BOP program review guidelines for Correctional Services also require examiners to review special housing unit logs to ensure compliance with BOP policy. I have asked our program review staff to notify the appropriate regional director of any deficiencies noted regarding special housing unit operations.

We believe restricting access to select staff in the special housing unit creates barriers between staff and inmates. Staff visibility and interaction with inmates who are separated from the general population for various reasons are tools that we believe minimize disruptive behavior on the part of inmates housed in the unit. We strongly encourage all staff with specific responsibilities for inmates, such as education, medical, psychology, religious services, and other appropriate staff who may not be assigned to the unit, to conduct periodic visits in order to promptly address inmate concerns. We are convinced this interaction promotes good inmate/staff communication, as well as increased security and safety within the unit. We further believe maintaining an "open" unit benefits both staff and inmates.

OIG Analysis

The BOP's response partially addresses the concerns underlying our recommendation. The BOP states that its program review staff will notify the Northeast Regional Director of some MDC staff members' failure to follow BOP policy by signing the special housing unit log when they entered the ADMAX SHU. That is responsive to a portion of the recommendation. To close this portion of the recommendation, please provide us with a copy of this notification by June 1, 2004. Also, please inform us of what steps the Northeast Regional Director has taken to ensure that this policy is strictly followed in the future.

The BOP also states that it believes it would be inappropriate to select and designate a team of experienced officers to handle high security and sensitive inmates. Moreover, the BOP states that restricting access to select staff in the special housing unit creates barriers between staff and inmates that could compromise security and safety within the unit.

During our investigation, MDC lieutenants and officers told us that the officers assigned to the ADMAX SHU were selected because of their experience and professionalism. They also told us that the BOP chose to limit access to the detainees to these specific officers so that professionalism would be maintained at all times during a highly emotional period. In addition, several lieutenants told us that if the BOP had assigned specific officers to escort detainees to and from the ADMAX SHU – much like it assigned specific officers

to the ADMAX SHU – then a significant amount of the physical and verbal abuse that occurred when the detainees arrived at the MDC would have been prevented.

The BOP response states that only a small percentage of MDC staff acted unprofessionally, while hundreds of MDC staff maintained their professionalism with the detainees. In fact, the small percentage of MDC staff who acted unprofessionally constituted a significant percentage of those who had regular contact with the detainees. In this instance, officers' training in the professional management of inmates did not prevent abuse.

We recognize that pre-selecting and training a cadre of officers to escort high security and sensitive inmates is not the only way to prevent abuse. However, according to the MDC lieutenants we interviewed, this approach was preferable for escorting special interest detainees in and out of the MDC. We believe the BOP should carefully consider this option in special circumstances, such as occurred after September 11. To close this recommendation, we request the BOP carefully consider this and other potential solutions to the concerns underlying the recommendation, and provide us its response by June 1, 2004.

Recommendation 5

Status: Open

OIG Recommendation

By requiring that all detainees' movements be videotaped and installing cameras in each ADMAX SHU cell, BOP and MDC officials took steps to help deter abuse of September 11 detainees and to refute unfounded allegations of abuse. Once the MDC began videotaping all detainee movements, incidents and allegations of physical and verbal abuse significantly decreased. We therefore recommend that the BOP analyze and consider implementing a policy to videotape movements of sensitive or high-security inmates as soon as they arrive at institutions.

BOP Response

The BOP agrees with the intent of this recommendation; however, it is not practical to impose as a routine requirement. The recently issued BOP PS 5272.01, Management of Select Inmates During National Security Emergencies, affords the Assistant Director, Correctional Programs Division, the authority to determine what circumstances warrant videotaping routine inmate movement outside of an inmate's cell. The Assistant Director, Correctional Programs Division, will determine when videotaping is necessary

and will issue specific written guidelines and procedures to the affected institutions. Additionally, Central Office correctional services staff will conduct an initial on-site review of the implementation and execution of videotape procedures at each institution. As a reminder, the requirements set forth in this program statement will take effect and involve select inmates in the event of a national emergency.

OIG Analysis

We understand the practical limitations of implementing a BOP-wide policy on videotaping inmates, and our recommendation was not suggesting this should be a routine requirement. Instead, we recommended that the BOP consider implementing a policy that requires videotaping upon arrival a narrow class of inmates who would be potential targets of abuse, such as suspects in a mass terrorist attack.

The OIG investigation demonstrated that the lack of a policy on videotaping detainees upon arrival at the MDC was a contributing factor to the abuse that occurred. Several officers and most of the detainees that we interviewed observed that the abuse declined sharply with the introduction of videotaping. Moreover, according to memoranda that instituted the policy of videotaping all movements of detainees at the MDC, the justification given was to curtail false allegations of abuse.

In the absence of an established policy for when videotaping of sensitive or high-security inmates should occur, and by leaving it to a case-by-case determination of the Assistant Director of the BOP's Correctional Programs Division, we believe that it will be less likely that videotaping will be initiated when inmates first arrive at the institution, which was when most of the abuse at the MDC occurred, based on our investigation.

Under the BOP's proposal, videotaping would occur only after the BOP's Assistant Director of the Correction Programs Division determined that circumstances warranted videotaping inmate movement and issued guidelines to the affected institution. This process may delay the initiation of videotaping inmates who would be potential targets of abuse.

To close this recommendation, by June 1, 2004, we request that the BOP reconsider creating a policy that would provide specific guidance on under what circumstances videotaping of certain inmates should occur.

Recommendation 6

Status: Open

OIG Recommendation

We found evidence indicating that many of the strip searches conducted on the ADMAX SHU were filmed in their entirety and frequently showed the detainees naked. The strip searches also did not afford the detainees much privacy, leaving them exposed to female officers who were in the vicinity. In addition, the policy for strip searching detainees on the ADMAX SHU was applied inconsistently, many of the strip searches appeared to be unnecessary, and a few appeared to be intended to punish the detainees. For example, many detainees were strip searched after attorney and social visits, even though these visits were in no-contact rooms separated by thick glass, the detainees were restrained, and the visits were filmed.

We believe that the BOP should develop a national policy regarding the videotaping of strip searches. We also believe MDC management should provide inmates with some degree of privacy when conducting these strip searches, to the extent that security is not compromised.

In addition, MDC staff members complained to us and to each other off-camera of inadequate resources on the ADMAX SHU to handle the large number of detainees. Because a strip search involves three or four officers, the BOP should review its policies of requiring strip searches for circumstances where it would be impossible for an inmate to have obtained contraband, such as after no-contact attorney or social visits, unless the specific circumstances warrant suspicion.

BOP Response

The BOP agrees with this recommendation. The BOP policy on visual searches (strip searches), PS 5521.05, Searches of Housing Units and Inmate Work Areas, stipulates "Staff may conduct a visual search when there is reasonable belief that contraband may be concealed on the person or a good opportunity for concealment has occurred." A new policy regarding video surveillance procedures and techniques, including a section addressing the videotaping of visual searches, has been drafted and is currently undergoing review. It is anticipated it will be signed by the Director by May 1, 2004.

In addition, as previously referenced, NER Office staff will conduct training at MDC Brooklyn that specifically addresses inmate privacy during visual searches.

Finally, as recommended by the OIG, we reviewed our policy on strip searches. Our policy requires visual searches of all inmates participating in the visitation program. Due to unique circumstances surrounding inmate visitation, we believe sound correctional practice dictates the continuation of these searches to ensure the safety and security of staff and inmates. The reality of non-contact visiting is that while the inmate does not have contact with the visitor, the opportunity to obtain contraband does exist both in the visiting area and while the inmate is being moved to and from the visiting area.

OIG Analysis

The BOP agrees with the need for a policy on videotaping visual or strip searches. To close this part of the recommendation, please provide the OIG the section of the BOP's policy addressing videotaping of visual searches.

With respect to visual searches being conducted after non-contact visits, the BOP stated that its policy requires visual searches of all inmates participating in the visitation program. Based on our investigation, we found that there was not a consistent practice in the MDC's ADMAX SHU among the officers concerning visual searches following visitation, and that all detainees were not usually searched. Moreover, several officers stated that the reason the attorney visits were conducted on the same floor as the ADMAX SHU was to obviate the need to perform visual searches.

Furthermore, several detainees stated to us that they elected not to have visits with their attorneys or families because they felt humiliated being strip-searched. These detainees told us that they viewed strip searches before and after visits as intentional punishment to discourage them from visiting with their attorneys or families.

In its response, the BOP asserted that the "reality of noncontact visiting" was that the inmate has "an opportunity to obtain contraband. . . in the visiting area and while the inmate is being moved to and from the visiting area." We observed in the videotapes that the detainees in the ADMAX SHU were always in wrist and ankle restraints, and escorted closely by at least three officers from their cells to the non-contact visiting rooms. Moreover, the detainees often were restrained while in the visiting rooms.

As we indicated in our recommendation, several officers complained to us (and to each other on videotapes) of inadequate staff on the ADMAX SHU to handle the number of detainees. We suggest that in the ADMAX SHU context, where the inmates are fully restrained and escorted to and from the non-contact rooms, that the BOP consider giving the lieutenants discretion not to conduct visual searches of fully restrained inmates after non-contact visits

where the circumstances do not warrant suspicion. For example, a quick search of the non-contact visiting room before and after the visit may be effective and take less time than the more resource-intensive strip search of an inmate, which the videotapes showed involved three officers and a camera operator.

We request that the BOP reconsider its policy requiring visual searches after all non-contact visits. In the context of the ADMAX SHU environment and procedures requiring escorts of fully-restrained inmates, such a rigid policy may not be required. To close this recommendation, we request the BOP consider this policy carefully and provide us its response by June 1, 2004.

Recommendation 7

Status: Open

OIG Recommendation

We found evidence that some MDC medical personnel failed to ask detainees how they were injured or to examine detainees who alleged they were injured. We recommend MDC and BOP management reinforce to health services personnel that they should ask inmates how they were injured, examine inmates' alleged injuries, and record their findings in the medical records.

BOP Response

The BOP agrees with this recommendation. The NER Health Services Administrator conducted training at MDC Brooklyn February 17-18, 2004. This training addressed health services policy and procedures regarding appropriate follow-up on all inmate injuries. (Attachment 3)

OIG Analysis

We believe the BOP's response partially addresses the concerns we discussed in our report. The BOP response stated that it had provided training to refresh MDC medical staff on health services policy and procedures and completing an Inmate Injury Assessment and Follow-up form. In our MDC Report, we found that medical staff frequently did not complete this form in evaluating detainees. We also found that in the instances when the form was completed, medical staff usually did not complete the sections regarding the detainee's statement as to how the injury occurred. Moreover, we found that sometimes the medical staff did not even ask the detainees how the injury occurred.

We do not believe that refresher training alone will guarantee that medical staff will ask inmates how their injuries occurred or will ensure that inmates' responses are adequately documented in their medical records. To close this recommendation, we suggest the BOP reformat BP-362(60), "Inmate Injury Assessment and Followup," so that the entry box for #9 "Subjective" requires the inmate's statement as to how the injury occurred, instead of being combined with the symptoms of the inmate. The title for the new box could be changed to "Cause of Injury," and another box could be created for "Symptoms of Injury." This change would focus the medical staff on the need to record the inmate's description of what caused the injury, which was often lacking from BOP records in the past.



U.S. Department of Justice

Federal Bureau of Prisons

Office of the Director

Washington, DC 20334

February 25, 2004

MEMORANDUM FOR GLENN A. FINE, INSPECTOR GENERAL

Appendix

FROM:

Harley G. Lappin
Harley G. Lappin, Director
Federal Bureau of Prisons

SUBJECT:

Response to the Office of Inspector General's
(OIG) Report: Supplemental Report on September 11
Detainees' Allegations of Abuse at the
Metropolitan Detention Center in
Brooklyn, New York

The Bureau of Prisons (BOP) appreciates the opportunity to respond to the recommendations from the OIG's report entitled Supplemental Report on September 11 Detainees' Allegations of Abuse at the Metropolitan Detention Center in Brooklyn, New York. A separate response will be prepared to address Appendix A.

We take the report very seriously and appreciate the recommendations. As mentioned in the OIG's report, MDC staff were working under difficult conditions. Only a small percentage of MDC staff did not act professionally or follow BOP policy in their treatment of the detainees. However, this is not a reflection on BOP policy, procedure, or practice and does not reflect on the hundreds of MDC Brooklyn staff who maintained their professional demeanor and conduct with the detainees during this difficult time. The Bureau of Prisons' staff have a longstanding reputation of being extremely competent, professional, and dedicated to the service of their country.

The Northeast Region (NER) Office staff will be involved in training and monitoring the progress of implementing the recommendations at MDC Brooklyn. The new NER Regional Director, Scott Dodrill, will be personally involved in ensuring corrective action is taken as recommended in your report. We believe this response will adequately address all of the OIG's concerns.

Please find the Bureau's response to the recommendations below:

Recommendation #1: We recommend that the BOP provide clear, specific guidance for BOP staff members on what restraint and escorting techniques are and are not appropriate. This guidance could take the form of written policy and demonstrations or examples given during training. The guidance should address techniques at issue in this investigation, including placing inmates' faces against the wall, stepping on inmates' leg restraint chains, and using pain compliance methods on inmates' hands and arms.

Response: The BOP agrees with this recommendation. The BOP will continue its efforts to train Bureau staff regarding the proper use of restraints and escort techniques. As has been the practice for several years, Bureau staff receive their initial training regarding the application of restraints and escort techniques during an intensive 120-hour Introductory Correctional Training course at the Staff Training Academy in Glynco, Georgia. Staff are also trained in confrontation avoidance, use of force team techniques, and use of chemical agents. BOP staff are and have always been trained to apply restraints only for appropriate purposes and in appropriate ways.

The BOP's Program Statement (PS) 3420.09, Standards of Employee Conduct, dated February 5, 1999, states: "An employee may not use brutality, physical violence, or intimidation towards inmates, or use any force beyond that which is reasonably necessary to subdue an inmate." Bureau staff are issued this program statement upon entry to their position and sign a document indicating their receipt. Additionally, any time a change is made to this program statement, Bureau staff are reissued the program statement and sign a similar statement as to their receipt.

In April 2004, I will personally provide a video to all CEOs wherein issues of staff conduct, professionalism, and a zero tolerance for abuse will be discussed. This video will be viewed by all BOP staff.

The Bureau's Use of Force Training has always been a mandatory core topic provided during Annual Refresher Training for all BOP staff. This year, we are adding a mandatory core topic for Escorting Restrained/Non-Restrained Inmates for presentation during Annual Refresher Training for all BOP staff. Additionally, we will enhance this training to specifically address what restraint and escort techniques are and are not appropriate.

Finally, a team of NER Office staff will conduct training at MDC Brooklyn February 27, 2004, through April 9, 2004, regarding the appropriate application of restraints and proper escort procedures. (Attachment 1)

Recommendation #2: We recommend that BOP management take immediate steps to educate its staff on the law prohibiting, except in specific limited circumstances, the audio monitoring of communications between inmates and their attorneys.

Response: The BOP agrees with this recommendation. BOP PS 5267.07, Visiting Regulations, which has been in existence for several years and updated on April 14, 2003, states: "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."

BOP PS 1315.07, Legal Activities, Inmate, dated November 5, 1999, also states: "Staff may not subject visits between an attorney and an inmate to auditory supervision."

A memorandum was issued by our General Counsel on January 28, 2004, to all CEOs outlining the Federal regulations and BOP policy concerning the audio monitoring of attorney visits. (Attachment 2)

Recommendation #3: We recommend that the BOP and MDC management counsel MDC staff members concerning language that is abusive and inappropriate and remind them of the BOP policy concerning verbal abuse.

Response: The BOP agrees with this recommendation. As stated in the BOP's response to recommendation #1, employees may not use brutality, physical violence, or intimidation towards inmates, or use any force beyond that which is reasonably necessary to subdue an inmate. BOP PS 3420.09, Standards of Employee Conduct, dated February 5, 1999, states: "An employee may not use profane, obscene, or otherwise abusive language when communicating with inmates, fellow employees or others. Employees shall conduct themselves in a manner which will not be demeaning to inmates, fellow employees, or others." As previously stated, Bureau staff are issued this program statement upon entry to their positions and sign a document indicating their receipt. Additionally, any time that a change is made to this program statement, Bureau

staff are reissued the program statement and sign a similar statement as to their receipt.

As previously stated, NER Office staff will conduct training at MDC Brooklyn February 27, 2004, through April 9, 2004, regarding the BOP's Code of Conduct and policy concerning verbal abuse toward inmates. (Attachment 1)

Recommendation #4: We recommend that institutions select and train experienced officers to handle high security and sensitive inmates, enforce the policy that a comprehensive log of duty officers and a log for visitors be maintained on the unit, and restrict access to the unit to the assigned staff members, absent exigent circumstances.

Response: The BOP partially agrees with this recommendation. All BOP institutional staff members are trained in the professional management of inmates. The BOP does not believe it is appropriate to maintain a special cadre of officers to handle high security and sensitive inmates. In fact, we believe such specialization can lead to divisions between staff, create communication barriers between staff and inmates, and even promote the types of problematic behavior identified by the OIG. We believe the BOP philosophy that all staff are trained and qualified to work any correctional post when necessary is appropriate and sound correctional practice. As mentioned in the OIG's report, MDC staff were working under difficult conditions. Only a small percentage of MDC staff did not act professionally or follow BOP policy in their treatment of the detainees. However, this is not a reflection on BOP policy, procedure, or practice and does not reflect on the hundreds of MDC Brooklyn staff who maintained their professional demeanor and conduct with the detainees during this difficult time.

BOP PS 5270.07, Inmate Discipline and Special Housing Units, states: "All persons visiting the unit will sign a separate log, giving time and date of visit." BOP program review guidelines for Correctional Services also require examiners to review special housing unit logs to ensure compliance with BOP policy. I have asked our program review staff to notify the appropriate regional director of any deficiencies noted regarding special housing unit operations.

We believe restricting access to select staff in the special housing unit creates barriers between staff and inmates. Staff visibility and interaction with inmates who are separated from the general population for various reasons are tools that we believe minimize disruptive behavior on the part of inmates

housed in the unit. We strongly encourage all staff with specific responsibilities for inmates, such as education, medical, psychology, religious services, and other appropriate staff who may not be assigned to the unit, to conduct periodic visits in order to promptly address inmate concerns. We are convinced this interaction promotes good inmate/staff communication, as well as increased security and safety within the unit. We further believe maintaining an "open" unit benefits both staff and inmates.

Recommendation #5: We recommend that the BOP analyze and consider implementing a policy to videotape movements of sensitive or high-security inmates as soon as they arrive at institutions.

Response: The BOP agrees with the intent of this recommendation; however, it is not practical to impose as a routine requirement. The recently issued BOP PS 5272.01, Management of Select Inmates During National Security Emergencies, affords the Assistant Director, Correctional Programs Division, the authority to determine what circumstances warrant videotaping routine inmate movement outside of an inmate's cell. The Assistant Director, Correctional Programs Division, will determine when videotaping is necessary and will issue specific written guidelines and procedures to the affected institutions. Additionally, Central Office correctional services staff will conduct an initial on-site review of the implementation and execution of videotape procedures at each institution. As a reminder, the requirements set forth in this program statement will take effect and involve select inmates in the event of a national emergency.

Recommendation #6: We believe that the BOP should develop a national policy regarding the videotaping of strip searches. We also believe MDC management should provide inmates with some degree of privacy when conducting these strip searches, to the extent that security is not compromised.

In addition, MDC staff members complained to us and to each other off-camera of inadequate resources on the ADMAX SHU to handle the large number of detainees. Because a strip search involves three or four officers, the BOP should review its policies of requiring strip searches for circumstances where it would be impossible for an inmate to have obtained contraband, such as after no-contact attorney or social visits, unless the specific circumstances warrant suspicion.

Response: The BOP agrees with this recommendation. The BOP policy on visual searches (strip searches), PS 5521.05, Searches

of Housing Units and Inmate Work Areas, stipulates "Staff may conduct a visual search when there is reasonable belief that contraband may be concealed on the person or a good opportunity for concealment has occurred." A new policy regarding video surveillance procedures and techniques, including a section addressing the videotaping of visual searches, has been drafted and is currently undergoing review. It is anticipated it will be signed by the Director by May 1, 2004.

In addition, as previously referenced, NER Office staff will conduct training at MDC Brooklyn which specifically addresses inmate privacy during visual searches.

Finally, as recommended by the OIG, we reviewed our policy on strip searches. Our policy requires visual searches of all inmates participating in the visitation program. Due to unique circumstances surrounding inmate visitation, we believe sound correctional practice dictates the continuation of these searches to ensure the safety and security of staff and inmates. The reality of noncontact visiting is that while the inmate does not have contact with the visitor, the opportunity to obtain contraband does exist both in the visiting area and while the inmate is being moved to and from the visiting area.

Recommendation #7: We recommend MDC and BOP management reinforce to health services personnel that they should ask inmates how they were injured, examine inmates' alleged injuries, and record their findings in the medical records.

Response: The BOP agrees with this recommendation. The NER Health Services Administrator conducted training at MDC Brooklyn February 17-18, 2004. This training addressed health services policy and procedures regarding appropriate follow-up on all inmate injuries. (Attachment 3)

If you have any questions regarding this response, please contact Michael W. Garrett, Senior Deputy Assistant Director, Program Review Division, at (202) 616-2099.

Attachments