

**CITY ON THE HILL OR PRISON ON THE BAY?
PART III: GUANTANAMO—THE ROLE
OF THE FBI**

HEARING
BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL
ORGANIZATIONS, HUMAN RIGHTS, AND OVERSIGHT
OF THE
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HOUSE OF REPRESENTATIVES
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**CITY ON THE HILL OR PRISON ON THE BAY?
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FBI**

WEDNESDAY, JUNE 4, 2008

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INTERNATIONAL ORGANIZATIONS,
HUMAN RIGHTS, AND OVERSIGHT,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:07 a.m. in room 2172, Rayburn House Office Building, Hon. William D. Delahunt (chairman of the subcommittee) presiding.

Mr. DELAHUNT. The hearing will come to order.

Welcome to our hearing, Mr. Fine.

Today, we continue our examination of the operation of the detention facility at Guantanamo and how its operation has influenced the perception of the United States by the international community and the resulting consequences for American national security and our foreign policy objectives.

Years after Secretary Rumsfeld described the Guantanamo detainees as the worst of the worst, I think we can now conclude after our prior hearings, and as one of our prior witnesses stated more accurately, many of those detainees can be described as the unluckiest of the unlucky.

I think it is important to understand that a majority of the detainees were seized by Afghans and Pakistanis as a result of the bounty system. Only 5 percent of the inmates at Guantanamo during its operation were captured by American forces.

Now the fact that mistakes are made in the fog of war is understandable; and, as in any human endeavor, they are to be expected. But what is an historical American trait is that once they are discovered we acknowledge them and address them; and, if need be, we design a system that allows redress, that embraces the rule of law in full measure and that shows the world that American justice is not afraid of the truth but rather seeks the truth, however embarrassing that may be.

However, no admission that mistakes were made is forthcoming from this White House, but that appears to be the rule, not the exception.

In response to the Supreme Court's decision in *Hamdi*, they compounded their mistakes by establishing a review process at Guantanamo that makes a mockery of the respect by Americans for the rule of law. That process is known as the Combatant Status Re-

view Tribunal (CSRT). As we heard in testimony before from those that were involved—and I am thinking right now of Lieutenant Colonel Abraham—they were a sham. They were nothing more than to legitimize the administration's position.

But that wasn't the only thing ignored. America's adherence to the rule of law and American values were ignored. The treatment of these detainees, both in Guantanamo and elsewhere, is not what we expect. Today, we are going to explore in greater detail what that treatment was and who authorized it.

We heard testimony from attorneys at previous hearings about the cruel treatment to which their clients were subjected. But now, with the newly released report from the Justice Department's Inspector General on the role of the FBI in interrogations at Guantanamo and elsewhere, we now know that sleep deprivation, exposing detainees to extreme temperature or loud music and short-shackling in stress positions were fairly common occurrences at Guantanamo.

To the credit of the FBI, the majority of its agents wanted nothing to do with such practices; and there were several high-level FBI officials that spoke out against these perceived abuses. Kudos to those individuals and the Bureau.

But what is important about this report is not just that it confirms that abuse did in fact occur but that it was sanctioned at the highest levels of government. How else do we explain that when the FBI took their concerns to the National Security Council and, as the report states, nothing happened? How else do we explain when Attorney General Ashcroft himself apparently raised the issue with Secretary of State Rice in her capacity as National Security Adviser nothing changed? Why did the complaints of even the Attorney General fall on deaf ears?

One senior FBI official, Spike Bowman, wrote in a 2003 e-mail about the interrogation of the detainees as follows: "Beyond any doubt, what they are doing, and I don't know the extent of it, would be unlawful were they enemy prisoners of war."

It would be unlawful if they were enemy prisoners of war, but who is on the receiving end of the mistreatment? The vast majority at Guantanamo aren't the so-called high-value detainees. These, the administration asserts, aren't entitled to POW status. And, as I said earlier, the vast majority of these men appeared to have been turned over to the United States in exchange for money; and many of them had nothing to do with the armed conflict or terrorist activities.

So if treating POWs this horribly would be unlawful, what about treating innocent people this way? And some, like the Uighurs, a prosecuted minority in China, have already been acknowledged by the administration to be innocent, but that hasn't stopped the military from labeling the Uighurs as enemy combatants and subjecting them to extreme temperatures as well as to the practice known as the "frequent flyer program." That is when you wake up someone every 15 minutes the night before being interrogated.

And that wasn't even the worst. We let the Chinese secret police interrogate the Uighurs. We permitted secret police from China to come to Guantanamo and question these individuals, whose only crime was they wanted to be free of Chinese totalitarianism.

Let be clear as to what is at stake here. It is not simply the damage to individuals and families. It is not just about their pain and suffering. But Guantanamo has single-handedly dealt a blow to our image in the world that will take decades to address, and the consequences to our national security are serious.

The State Department's own Advisory Group on Public Diplomacy for the Arab and Islamic World concluded that hostility toward the United States makes achieving our policy goals far more difficult. And the damage isn't just simply limited to the Islamic world and to the Middle East. Because, as a 2005 GAO report concluded, a poor reputation seriously undermines our ability to pursue our foreign policy objectives across the field and erodes our national security.

So it is well past time to deal with mistakes, and I am sure today's hearing will further clarify what we have to do to address these mistakes.

Now let me turn to the ranking member and my colleague from California, Mr. Rohrabacher.

Mr. ROHRABACHER. Thank you very much, Mr. Chairman.

I certainly have my areas of disagreement, and I have some areas of agreement with the chairman.

Let me note that, yes, some of the detainees in Guantanamo and some of the other people who have been involved in rendition, some of them have been unlucky in that in a conflict situation where there are terrorist networks in the world that are conspiring to murder thousands of innocent civilians, in the effort to combat those terrorist cells and stop, prevent their actions which would result in thousands of innocent lives being lost, they have been caught up and they have been unjustly treated. There are some unlucky people like that. In every war in the history of the United States and in every war in the history of humankind, we have had those kinds of unlucky people. Every single war.

We have people who were civilians and caught up between armies; and, as I mentioned on a number of occasions, the large number of Frenchmen that the United States military forces killed in order to soften the defenses before we landed in Normandy, those numbers of Frenchmen I understand exceeded the number of Frenchmen who had been killed by the German occupation forces in the 4 years of German occupation.

Did that mean in any way did that cast a pall on our efforts to land in Normandy or what we say now? Or do we go back to Normandy and do our Presidents hang their heads in shame and visit the memorials to those innocent civilians? No. No, we don't. Because in human endeavors you take a look and you do your very best, human beings do their very best, whether soldiers or intelligence agents, and try to do their best and realizing in doing their best there will be some innocent people who do not deserve to have misfortune cast upon them and find themselves in horrible situations.

In situations like this, America should be brutally frank and truthful. That to me is the answer. The answer is not closing down Gitmo or not invading Normandy or calling off rendition or trying to end the efforts that we are making to intervene in the plans of terrorists to blow up targets in various parts of the Western World.

No, we should just—if we intercede and we capture a wrong person or a wrong person is hurt, we should admit it and compensation should be offered and we should go the extra mile to try to make sure that we are being honest with ourselves.

The testimony that has come out of these hearings suggests to me we have not been that brutally frank and honest about those who have been caught up in this way, the unlucky ones, as you might say.

There are also, however, let us note, that the unlucky ones aren't the only ones we are talking about. We are also talking about them as part of an entire situation where there are some others who aren't unlucky at all. They are the worst of the worst. They are the terrorists who, yes, are engaged and still engaged in a conspiracy in order to terrorize the Western World, and especially the people of the United States, by slaughtering thousands upon thousands of our people if they get that chance.

Our efforts and what we talk about in Guantanamo and rendition and the efforts of our intelligence apparatus since 9/11 have been designed to fight this as a war. The difference between a war and the difference between a police and criminal justice action is that, yes, we expect that anyone charged with a crime and picked up in a criminal justice matter has certain rights, because the criminal justice system is designed to function after an act has been committed to find the truth.

What we have been doing since 9/11, and justifiably so, is trying to act in order to prevent a criminal action of terrorism from taking place. Those are two fundamentally different approaches that you take at different times.

I would suggest that we admit our mistakes, but we also understand that we need to protect our people and the people of the Western World from seeing thousands of their people slaughtered by, as I say, a criminal conspiracy that is very well-financed that still has the intention of terrorizing us by slaughtering our civilian populations.

Now, let us note that we keep hearing about Gitmo and the problems we will hear about today, from what I have gleaned from our hearings, that many of the abuses that happened early on, especially early on, happened in terms of unacceptable techniques of interrogation, that these unacceptable interrogation techniques were basically the byproduct of reservists, military reservists, by and large. Although some intelligence operatives were there, we will hear from our witness whether or not we are talking about military personnel and especially reserve military personnel who were serving at Gitmo. So if that is the case, which is a suggestion I made before, that would indicate we should be having people here from the Devon facility in Massachusetts come here and tell us about the training that is being given these people.

As we know, and as I have stated, from your own State we have had reservists. These are not sadists. These are normal Americans who have been activated in the Reserves and put in these situations. Maybe they are not being trained well. Let's get to the bottom of that.

The idea of the calling for the closing of Gitmo or a general condemnation of the way we have handled this, this is a very difficult

challenge of trying to find information about terrorist acts before they happen so we can protect our people. This is a very difficult and serious challenge for our people to do. I am not saying that there haven't been mistakes made, and we should admit those. But, by and large, I suggest we have done a good job.

The thing we have not done a good job in is admitting mistakes were made.

In terms of the Uighurs, and I agree with you 100 percent, that allowing any interrogation by a totalitarian country of these people, especially China, is ridiculous. Maybe we should take the Uighurs into the United States. But I would also suggest that our allies who continue to nitpick and backbite us every step of the way, as they have in every conflict that I can read about since World War II, maybe they should have stepped up, instead of criticizing us, and taken a few of these prisoners that are the unlucky ones and take them there in their own countries, which they have not. All they have done is just criticized the United States.

I am looking forward to the testimony today. I have learned a lot.

Thank you, Mr. Chairman.

Mr. DELAHUNT. I thank the gentleman. I agree with him in part, and disagree with him, as we know.

Does the gentleman from Arizona wish to make an opening statement?

Mr. FLAKE. No, Mr. Chairman.

Mr. DELAHUNT. I think I am going to read into the record, because I think it is important when we talk about closing Gitmo, that there is a broad consensus among those who disagree with my position vehemently on a number of issues; and we are anticipating at a hearing tomorrow a gentleman who headed the Osama bin Laden apprehension unit, Mr. Scheuer; and a statement that he made in response to a question that I posed I think is rather fascinating.

On Frontline I indicated to him that I had heard he had made a statement that agency officers would prefer to see these people, the detainees at Guantanamo, treated as POWs; and his response was, the point of fact is that POW is the best status you can give these people. "Throw them in a stockade, let the Red Cross bring them cookies, let them write their mama," et cetera, et cetera.

And I think it is important to understand we now have two candidates for the Presidency that agree with Secretary Gates and others that Guantanamo should be closed because it has become a symbol to the rest of the world and that symbol does not help the United States in terms of protecting ourselves from acts of terrorism and, at its very essence, enhance our national security.

So this isn't just simply about closing Guantanamo as a physical facility but understanding that we are hurting, and I think it is universally recognized. And what was interesting in Mr. Fine's report, I read a statement from an FBI agent that said, it is hurting, it is enhancing, if you will, or becoming a symbol which generates additional terrorists for this country to deal with and for them to address.

Having taken that liberty, let me now introduce Mr. Fine, who is our sole witness today and whom I have had an opportunity in

my capacity as a member of the Judiciary Committee to hear from on several occasions.

He was confirmed by the United States Senate as the Inspector General for the Department of Justice on December 15, 2000. He has worked for the Department of Justice of the Office of the Inspector General since January, 1995. Initially, he was the Special Counsel to the Inspector General.

Before joining the Office of the Inspector General, Mr. Fine was an attorney specializing in labor and employment law in a law firm in Washington, DC.

That is quite a change of direction, Mr. Fine.

He served as an Assistant U.S. Attorney in the Washington, DC, district. He prosecuted more than 35 criminal jury trials, handled numerous grand jury investigations, and has argued cases in the U.S. Court of Appeals. He graduated magna cum laude from Harvard with a degree in economics; and, probably most importantly, he was co-captain of the Harvard varsity basketball team and was drafted by the San Antonio Spurs of the National Basketball Association.

As an ardent Celtics fan, I was hoping the Spurs would have prevailed in the Western Conference, because I think we match up best with them, but that is a whole other hearing.

In any event, Mr. Fine, let me compliment you publicly in terms of the quality of the work that you have done and the contribution that you have made to this country. I have the utmost degree of confidence, having had the opportunity to observe you and your staff and the quality of work that you have performed. So please proceed with your statement.

STATEMENT OF THE HONORABLE GLENN A. FINE, INSPECTOR GENERAL, U.S. DEPARTMENT OF JUSTICE

Mr. FINE. Thank you, very much, Mr. Chairman, for the kind introduction.

Mr. Chairman, Ranking Member Rohrabacher and members of the subcommittee. Thank you for inviting me to testify about the Office of the Inspector General's report on the FBI's involvement in and observations of detainee interrogations in Guantanamo Bay, Afghanistan, and Iraq.

As part of our investigation, the OIG team surveyed over 1,000 FBI employees who were deployed overseas to one of these military zones from 2001 through 2004. In addition, the team interviewed more than 230 witnesses and reviewed more than .5 million pages of documents. Our team also made two trips to Guantanamo.

I would first like to thank the OIG team for their outstanding work, including Dan Beckhard, Catherine Sheehan Bruno, Joseph Symcak, and Chris Degnan, who are here today.

Our investigation focused on the observations of FBI employees and facilities under the control of the Department of Defense. With limited exceptions, we were not able to investigate the observation of FBI employees regarding detainees held at CIA facilities. However, our investigation did examine the FBI's involvement with the CIA and the interrogation of a high-value detainee, Abu Zubaydah. It is important to note that our investigation relied heavily on the testimony of FBI and Department of Justice witnesses.

We reviewed the findings from several reports prepared by the military, but we did not attempt to make ultimate determinations whether any alleged misconduct was committed by military or CIA personnel, or whether they did or did not violate their own agency's interrogation policies.

In my testimony this morning, in line with the request of this committee and the topic of the hearing, I will focus on our report's findings regarding Guantanamo.

FBI deployments to Guantanamo peaked at approximately 30 employees at any one time between 2001 and 2004. In total, more than 500 FBI employees served at Guantanamo during this period. We found that these FBI agents encountered interrogators from other agencies who used aggressive interrogation techniques.

The FBI ultimately decided that it would not participate in joint interrogations of detainees with other agencies in which techniques not allowed by the FBI were used. This policy was established as a result of the interrogation of Abu Zubaydah, who was captured in Pakistan in March, 2002, and interrogated at a CIA facility.

We determined that FBI agents observed the CIA use techniques that undoubtedly would not be permitted under FBI interview policies. The CIA has since acknowledged waterboarding Zubaydah, but we did not find evidence that FBI agents witnessed this. However, at the time, one of the FBI agents expressed strong concerns about techniques he did witness to senior officials in the FBI's Counterterrorism Division. This agent's report led to discussions at FBI headquarters and with the Department of Justice and others about the FBI's role in joint interrogations with other agencies.

Ultimately, FBI Director Mueller decided in August, 2002, that the FBI would not participate in joint interrogations of detainees in which harsh or extreme techniques not allowed by the FBI would be employed.

Later in 2002, the friction between the FBI and the military increased regarding the interrogation of Mohammad al-Qahtani at Guantanamo. The FBI agents saw military interrogators use harsh and demeaning techniques. The FBI continued to advocate a long-term, rapport-based strategy, while the military insisted on a different, more aggressive approach.

Between November, 2002, and January, 2003, the military used numerous aggressive techniques on al-Qahtani, including attaching a leash to him and making him perform dog tricks, placing him in stress positions, forcing him to be nude in front of a female, placing woman's underwear on him and over his clothing, and instructing him to pray to an idol shrine.

FBI and DOJ officials did not learn about all these techniques used on al-Qahtani until later. However, in December, 2002, an FBI agent learned that al-Qahtani was hospitalized briefly for what the military told the FBI was low blood pressure and low core body temperature.

Several FBI agents raised concerns with the DoD and FBI headquarters about Al-Qahtani's interrogation related to, one, the legality and effectiveness of DoD techniques; two, the impact of these techniques on future prosecutions in court or before military commissions; and, three, the potential problems that public exposure of these techniques would create.

We determined that some of the FBI agents' concerns regarding DoD interrogations at Guantanamo were communicated by the FBI to senior officials in the Department of Justice's Criminal Division and ultimately to the Attorney General. We were unable to determine definitively whether the concerns of the FBI and Department of Justice about DoD interrogation techniques were ever addressed by any of the Federal Government's interagency groups that resolve disputes about anti-terrorism issues. However, several senior DOJ officials told us that the Department of Justice raised concerns about particular DoD practices in 2003 with the National Security Council and the Department of Defense. We found no evidence that these concerns influenced DoD interrogation policies.

Ultimately, the DoD made the decisions regarding what interrogation techniques would be used by military interrogators at Guantanamo because Guantanamo was a DoD facility and the FBI was there in a support capacity.

Our report also describes the result of our survey of FBI employees who served at Guantanamo. The majority of FBI employees responded to our survey that they never saw or heard about any of the specific interrogation techniques listed in our survey. However, over 200 FBI agents said they had observed or heard about military interrogators using a variety of harsh techniques on detainees. These techniques generally were not comparable to the most egregious abuses that were observed at the Abu Ghraib prison in Iraq. Moreover, it appears that some, but not all, of these techniques were authorized under military policies in effect at Guantanamo.

The most common reported technique used by non-FBI interrogators at Guantanamo was sleep deprivation or disruption. Numerous FBI agents told the OIG that they witnessed the military's use of what became known as the "frequent flyer program" to disrupt detainees' sleep in an effort to lessen their resistance to questioning.

Prolonged short-shackling, in which a detainee's hands were shackled close to his feet, was another of the most frequently reported techniques observed by FBI agents at Guantanamo. This technique was sometimes used in conjunction with holding detainees in rooms where the temperature was very hot or very cold.

FBI agents also reported the use of isolation at Guantanamo, sometimes for periods of 30 days or more. A few FBI agents reported other harsh or unusual techniques which, although small in number, became notorious because of their nature. They included using a growling military dog to intimidate a detainee during an interrogation, twisting a detainee's thumbs back, using a female interrogator to touch or provoke a detainee in a sexual manner, wrapping a detainee's head in duct tape, and exposing a detainee to pornography.

As part of our review, we also examined the training that FBI agents receive regarding issues of detainee interrogation. Most agents who completed their deployment prior to May 2004 reported they did not receive any training, instruction, or guidance concerning FBI or other agency standards of conduct relating to detainees.

Eventually, in May, 2004, following the Abu Ghraib disclosures the preceding month, the FBI issued written guidance stating that FBI personnel may not participate in interrogation techniques that

violate FBI policies, regardless of whether the co-interrogators were in compliance with their own policies.

Almost immediately after the May, 2004, policy was issued, however, several FBI employees raised concerns and questions about it, which we found were not directly answered. We concluded that while the FBI provided some guidance to its agents about conduct in the military zones, FBI headquarters did not provide timely guidance or fully respond to requests from its agents for additional guidance.

We also investigated several specific allegations that FBI agents participated in abuse of detainees in connection with interrogations in the military zones. In general, we did not substantiate these allegations. We found that most FBI agents adhered to the FBI's traditional interview strategies in the military zones.

In conclusion, we believe that while the FBI could have provided clearer guidance earlier and could have pressed harder its concerns about detainee abuse by other agencies, the FBI should be credited for its conduct and professionalism and for generally avoiding participation in detainee abuse.

That concludes my testimony, and I would be pleased to answer any questions.

Mr. DELAHUNT. Thank you, Mr. Fine.

[The prepared statement of Mr. Fine follows:]

PREPARED STATEMENT OF THE HONORABLE GLENN A. FINE, INSPECTOR GENERAL,
U.S. DEPARTMENT OF JUSTICE

Mr. Chairman, Ranking Member Rohrabacher, and Members of the Subcommittee:

Thank you for inviting me to testify about the Office of the Inspector General's (OIG) recent report on the Federal Bureau of Investigation's (FBI) involvement in and observations of detainee interrogations in Guantanamo Bay, Afghanistan, and Iraq.

In line with the invitation from the Committee and the topic of this hearing, I will focus my testimony today on the FBI's involvement in and observations of detainee interrogations at the military's Guantanamo Bay facility. However, at the outset I think it is important to summarize the full scope of our investigation.

The OIG investigation focused on whether FBI agents witnessed incidents of detainee abuse in the military zones, whether FBI employees reported any such abuse to their supervisors or others, and how those reports were handled by the FBI and the Department of Justice (DOJ). In addition, the OIG examined whether FBI employees participated in any incident of detainee abuse. The FBI referred several specific allegations relating to FBI agents for investigation by the OIG. In other cases, the OIG initiated an investigation of particular FBI employees on the basis of information that the OIG developed during the course of our review. Our investigation also examined the development and adequacy of the policies, guidance, and training that the FBI provided to the agents it deployed to the military zones.

In general, the OIG's review covered the time period from 2001 to 2004. The OIG team investigating these issues developed and distributed a detailed survey to over 1,000 FBI employees who were deployed overseas to one of the military zones during these 4 years. Among other things, the OIG survey sought information regarding observations or knowledge of specifically listed interview or interrogation techniques and other types of detainee treatment, and whether the FBI employees had reported such incidents to their FBI supervisors or others.

The OIG team interviewed over 230 witnesses and reviewed more than 500,000 documents. We selected many of these witnesses on the basis of survey responses indicating that the respondent had information relevant to our review. Other witnesses were selected on the basis of their positions or responsibilities within the FBI or DOJ. In addition, our team made two trips to Guantanamo to tour the detention facilities, review documents, and interview witnesses, including five detainees. We also interviewed one released detainee by telephone.

Our review focused on the activities and observations of FBI employees in facilities under the control of the Department of Defense (DOD). With limited exceptions, we were not able to investigate the conduct or observations of FBI agents regarding detainees held at Central Intelligence Agency (CIA) facilities. During the course of our review we also learned that in January 2003 the CIA Inspector General had initiated a special review of the CIA terrorist detention and interrogation program. Therefore, our review focused mainly on the conduct and observations of the FBI employees related to detainee interviews in military facilities.

However, our investigation did examine the FBI's involvement with the CIA in the interrogation of a high-value detainee, Abu Zubaydah, at an overseas location shortly after his capture, and the subsequent deliberations within the FBI regarding the participation of FBI agents in joint interrogations with agencies that did not follow FBI interview policies. Our investigation also examined the dispute between the FBI and the Department of Defense regarding the treatment of another high value detainee, Muhammad Al-Qahtani, who was held at Guantanamo.

In addition, it is important to note that our investigation relied heavily on the testimony and observations of the FBI and DOJ witnesses. While we reviewed the findings from several prior reports prepared by the military that examined the issue of detainee treatment at Abu Ghraib and in the military zones, we did not attempt to make an ultimate determination regarding any alleged misconduct by non-FBI personnel or whether military or CIA interrogators violated their own agencies' policies. The OIG did not have access to all the outside agency witnesses, such as DOD or CIA personnel, and such a determination would also have exceeded the OIG's jurisdiction.

In general, when conducting this investigation we received good cooperation from the FBI as well as other intelligence agencies, particularly the DOD. However, as we noted in the report, we were denied access by the CIA to Abu Zubaydah, which we believe hindered our investigation.

In October 2006, when we completed a draft of this report, consistent with our normal practice we provided a copy of the report to the FBI, the DOJ, the DOD, and the CIA for a factual accuracy and classification and sensitivity review. We received timely responses from the FBI, DOJ, and the CIA on these reviews. However, the Department of Defense took many months to provide the results of its review. Eventually, however, we received the DOD's comments on classification, and we redacted from the public version of the report any information the agencies concluded was classified. We have provided the full versions of the report to Congress.

In the remainder of my testimony, I will summarize our major findings with respect to detainee interrogation practices at Guantanamo.

FBI AND DOD INTERROGATION POLICIES

Our investigation determined that FBI deployments to Guantanamo peaked at approximately 30 employees at any one time between 2001 and the end of 2004, the period covered by the OIG review. In total, more than 500 FBI employees served at Guantanamo during this period.

We found that the FBI's consistent position regarding detainee interrogation techniques has been that the most effective way to obtain accurate information from a subject is to use rapport building. FBI policies prohibit the use of coercion, abuse, or threats in custodial interviews.

However, FBI agents in Guantanamo and other military zones were faced with interrogators from other agencies who used more aggressive interrogation techniques. The FBI ultimately decided that it would not participate in joint interrogations of detainees with other agencies in which techniques not allowed by the FBI were used.

Our investigation found that the vast majority of the FBI agents deployed in Guantanamo and the other military zones continued to adhere to FBI policies and separated themselves from other agencies' interrogators who were using non-FBI-approved techniques. In only a few instances did FBI agents use techniques that would not normally be permitted in the United States or participate in interrogations during which such techniques were used by others.

In our report, we discuss that when detainee interrogations began at Guantanamo in January 2002, military interrogation policies allowed the use of methods that, depending on the manner of their use, might not be permitted under FBI policies. In addition, the specific DOD-approved interrogation methods changed over time. In December 2002, the Secretary of Defense explicitly approved several additional techniques for use on detainees at Guantanamo, including stress positions for a maximum of 4 hours, isolation, deprivation of light and auditory stimuli, hooding, 20-hour interrogations, removal of clothing, and exploiting a detainee's individual pho-

bias (such as fear of dogs). Some of these techniques had already been used at Guantanamo by that time.

In January 2003, the Secretary of Defense rescinded his approval of these techniques, and in April 2003 promulgated revised guidance approving 24 techniques for use at Guantanamo, which included dietary manipulation, environmental manipulation, sleep adjustment, and isolation.

In September 2006, the U.S. Army issued Field Manual 2-22.3, which is applicable in all of the military zones and which places much greater emphasis on rapport-based interrogation techniques similar to those endorsed by the FBI. It also identifies several prohibited actions, including nudity, sexual acts or poses, beatings, water boarding, use of military dogs, and deprivation of food or water.

FBI policies prior to the September 11 terrorist attacks required FBI agents to report to FBI Headquarters any incidents of misconduct or improper performance by other FBI employees. However, the duty of FBI employees to report on the activities of non-FBI government employees was limited to criminal behavior by other personnel. We found that the FBI did not issue any policies prior to May 2004 imposing an obligation on FBI employees to report abuse or mistreatment of detainees by non-FBI government employees falling short of a crime. Our review concluded that the FBI was slow to provide guidance to its agents on several issues raised by the FBI's participation in detainee interrogations. We found the FBI did not provide sufficient guidance on how to respond when confronted with military interrogators who used harsh interrogation techniques that might be considered coercive or might violate DOD interrogation policies.

INTERROGATIONS OF "HIGH-VALUE DETAINEES"

Our investigation examined the evolution of FBI policies and guidance regarding its agents' involvement with detainee interrogations. In particular, the OIG report examined the interrogation of Abu Zubaydah, a "high-value detainee" held by the CIA. Zubaydah had been wounded when he was captured in the spring of 2002, and two FBI agents were assigned to assist the CIA in obtaining intelligence from him. The FBI agents conducted the initial interviews of Zubaydah, assisting in his care and developing rapport with him. However, when CIA interrogators arrived at the site they assumed control of the interrogation. The FBI agents observed the CIA use classified techniques that undoubtedly would not be permitted under FBI interview policies. While the CIA has since acknowledged water boarding Zubaydah, we did not find evidence that the FBI agents witnessed this. However, at the time, one of the FBI agents expressed strong concerns about the techniques he did witness to senior officials in the FBI's Counterterrorism Division.

This agent's reports led to discussions at FBI Headquarters, with the DOJ, and with the CIA about the FBI's role in joint interrogations with other agencies. Ultimately, these discussions resulted in the determination by FBI Director Robert Mueller in approximately August 2002 that the FBI would not participate in joint interrogations of detainees with other agencies in which harsh or extreme techniques not allowed by the FBI would be employed.

Later in 2002, FBI agents assigned to Guantanamo began raising additional concerns to FBI Headquarters regarding harsh interrogation techniques being used by the military. These concerns were focused particularly on the treatment of Muhammad Al-Qahtani, who had unsuccessfully attempted to enter the United States shortly before the September 11 attacks and who allegedly was sent to be an additional hijacker. After his capture and transfer to Guantanamo Bay, Al-Qahtani resisted initial FBI attempts to interview him. In September 2002, the military assumed control over his interrogation, although behavioral specialists from the FBI continued to observe and provide advice.

The FBI agents saw military interrogators use increasingly harsh and demeaning techniques, such as menacing Al-Qahtani with a snarling dog during his interrogation. FBI agents also objected when the military announced a phased plan which included keeping Al-Qahtani awake during continuous 20-hour interviews every day for an indefinite period.

The friction between FBI officials and the military over the interrogation plans for Al-Qahtani increased, with the FBI advocating a long-term rapport-based strategy and the military insisting on a different, more aggressive approach. As a result of the interrogations of Al-Qahtani and other detainees at Guantanamo, several FBI agents raised concerns with DOD and FBI Headquarters. The concerns related to: (1) the legality and effectiveness of DOD techniques, (2) the impact of these techniques on the future prosecution of detainees in court or before military commissions, and (3) the potential problems that public exposure of these techniques would create for the FBI as an agency and FBI agents individually.

Despite the FBI's objections, the military proceeded with its interrogation plan for Al-Qahtani. According to several military reviews of detainee treatment, as well as other military records, the techniques used on Al-Qahtani during this time period included:

- Tying a dog leash to the detainee's chain, walking him around the room, and leading him through a series of dog tricks
- Repeatedly pouring water on his head
- Stress positions
- 20-hour interrogations
- Stripping him naked in the presence of a female
- Holding him down while a female interrogator straddled the detainee without placing weight on him
- Women's underwear placed over his head and a bra placed over his clothing
- A female interrogator massaging his back and neck region over his clothing
- Describing his mother and sister to him as whores
- Showing him pictures of scantily clothed women
- Discussing his repressed homosexual tendencies in his presence
- A male interrogator dancing with him
- Telling him that people would tell other detainees that he got aroused when male guards searched him
- Forced physical training
- Instructing him to pray to an idol shrine

One of the DOD's later military reviews, the Schmidt-Furlow Report, concluded that many of these techniques were authorized under military policies in effect at the time. However, other techniques used on Al-Qahtani by the military during this time period were deemed by the Schmidt-Furlow Report to be "unauthorized" at the time they were employed. Although one FBI agent learned from a member of the military that Al-Qahtani was hospitalized during this time frame for hypothermia, we found no other evidence that FBI or DOJ employees were aware that the specific techniques described above were used on Al-Qahtani during this period or that they participated in these interrogation techniques.

We determined that some of the FBI agents' concerns regarding DOD interrogation techniques at Guantanamo were communicated by the FBI to senior officials in the DOJ Criminal Division and ultimately to the Attorney General. The DOJ senior officials we interviewed generally said they recalled that the primary concern expressed about the Guantanamo interrogations was that DOD techniques and interrogators were ineffective at developing actionable intelligence.

We were unable to determine definitively whether the concerns of the FBI and DOJ about DOD interrogation techniques were ever addressed by any of the federal government's inter-agency structures created for resolving disputes about antiterrorism issues. Several senior DOJ Criminal Division officials told us that they raised concerns about particular DOD detainee practices in 2003 with the National Security Council. Several witnesses also told us that they believed that Attorney General Ashcroft spoke with the National Security Council or the DOD about these concerns, but we could not confirm this because former Attorney General Ashcroft declined to be interviewed for this review.

However, we found no evidence that the FBI's concerns influenced DOD interrogation policies. Ultimately, the DOD made the decisions regarding what interrogation techniques would be used by military interrogators at Guantanamo, because Guantanamo was a DOD facility and the FBI was there in a support capacity.

During our review FBI witnesses almost uniformly told us that they strongly favored non-coercive rapport-based interview techniques to the harsher techniques being used on Al-Qahtani. However, we also found that one proposal was advanced by certain officials from the FBI and DOJ in late 2002 to subject Al-Qahtani to interrogation techniques of the sort that had previously been used by the CIA on Zubaydah and another detainee. We found a draft letter with this proposal that was prepared for the National Security Council. Two DOJ and FBI officials involved with this proposal told us that the rationale for this proposal was to bring more effective interrogation techniques to bear on Al-Qahtani than the ineffective interrogation techniques that the military had been using on him up to that time.

We determined that some officials in DOJ and the FBI were aware of the harsh techniques that had been used or approved for use by the CIA on Zubaydah. However, the particular DOJ and FBI officials involved in the proposal for Al-Qahtani

told us that they did not learn what specific techniques had been used on Zubaydah until much later, and that they based their recommendation regarding the proposal for Al-Qahtani on the fact that such techniques had been effective at obtaining useful information from Zubaydah.

We determined that ultimately the DOD opposed the proposal and it was never implemented. However, we concluded that the proposal was inconsistent with the FBI Director's determination that the FBI would not be involved in harsh or coercive interrogations, and we believe that senior FBI officials would not have supported the proposal had it reached them. Moreover, we were troubled that FBI and DOJ officials would advocate for an interrogation plan without knowing what interrogation techniques the plan entailed.

FBI OBSERVATIONS REGARDING DETAINEE TREATMENT AT GUANTANAMO BAY

Our report also describes the results of our survey of FBI employees who served at Guantanamo. The survey sought information about whether FBI agents observed or heard about approximately 40 separate aggressive interrogation techniques, including such techniques as using water to create the sense of drowning (water boarding), using military dogs to frighten detainees, and mistreating the Koran.

A majority of FBI employees who served at Guantanamo reported in response to our survey that they never saw or heard about any of the specific aggressive interrogation techniques listed in our survey. However, over 200 FBI agents said they had observed or heard about military interrogators using a variety of harsh interrogation techniques on detainees. These techniques generally were not comparable to the most egregious abuses that were observed at Abu Ghraib prison in Iraq. Moreover, it appears that some but not all of these harsh interrogation techniques were authorized under military policies in effect at Guantanamo.

The most commonly reported technique used by non-FBI interrogators on detainees at Guantanamo was sleep deprivation or disruption. "Sleep adjustment" was explicitly approved for use by the military at Guantanamo under the policy approved by the Secretary of Defense in April 2003. Numerous FBI agents told the OIG that they witnessed the military's use of a regimen known as the "frequent flyer program" to disrupt detainees' sleep in an effort to lessen their resistance to questioning and to undermine cell block relationships among detainees.

Other FBI agents described observing military interrogators use a variety of techniques to keep detainees awake or otherwise wear down their resistance. Many FBI agents told the OIG that they witnessed or heard about the military's use of bright flashing strobe lights on detainees, sometimes in conjunction with loud rock music. Other agents described the use of extreme temperatures on detainees.

Prolonged short-shackling, in which a detainee's hands were shackled close to his feet to prevent him from standing or sitting comfortably, was another of the most frequently reported techniques observed by FBI agents at Guantanamo. This technique was sometimes used in conjunction with holding detainees in rooms where the temperature was very cold or very hot in order to break the detainees' resolve.

A DOD investigation, discussed in the Church Report, described the practice of short-shackling prisoners as a "stress position." Stress positions were prohibited at Guantanamo under DOD policy beginning in January 2003. However, these FBI agents' observations confirm that prolonged shortshackling continued at Guantanamo for at least a year after the revised DOD policy took effect.

Many FBI agents reported the use of isolation at Guantanamo, sometimes for periods of 30 days or more. In some cases, isolation was used to prevent detainees from coordinating their responses to interrogators. It was also used to deprive detainees of human contact as a means of reducing their resistance to interrogation.

In addition, a few FBI agents reported other harsh or unusual interrogation techniques used by the military at Guantanamo. These incidents tended to be small in number, but they became notorious because of their nature. They included using a growling military dog to intimidate a detainee during an interrogation, twisting a detainee's thumbs back, using a female interrogator to touch or provoke a detainee in a sexual manner, wrapping a detainee's head in duct tape, and exposing a detainee to pornography.

We examined how the reports from FBI agents regarding detainee treatment at Guantanamo were handled by the FBI. In addition to the reports relating to Al-Qahtani described above, we found that early FBI concerns about detainee short-shackling were raised with the military command at Guantanamo in June 2002. However, FBI agents continued to observe the use of short-shackling as a military interrogation technique as late as February 2004.

Reports to FBI Headquarters about these techniques led to the instructions that FBI agents should stand clear of non-FBI techniques. As time passed, however,

other reports from FBI agents to their On-Scene Commanders regarding military conduct were not elevated within the FBI chain of command because the On-Scene Commanders understood that the conduct in question was permitted under DOD policy.

FBI TRAINING AND GUIDANCE TO ITS EMPLOYEES REGARDING DETAINEE INTERROGATION ISSUES

We also examined the training that FBI agents received regarding issues of detainee interrogation and detainee abuse or mistreatment in connection with their deployments to the military zones. A large majority of agents who completed their deployments prior to the May 2004—when the FBI issued written guidance on FBI agent's conduct in detainee interrogations—reported in the OIG survey that they did not receive any training, instruction, or guidance concerning FBI or other agency standards of conduct relating to detainees prior to or during their deployment. Most of the FBI agents who reported receiving training regarding detainee mistreatment issues said they received it orally from their On-Scene Commander or other FBI agents after they arrived at the military zone.

We examined the guidance that the FBI provided to its employees on detainee interrogations. We found that the FBI initially did not issue specific guidance to its agents about acceptable interrogation techniques when they were first deployed to conduct interrogations in the military zones. Most of the FBI's written policies regarding permissible interrogation techniques for its agents or for its agents' conduct in collaborative or foreign interviews were developed prior to the September 11 attacks. Although general FBI policies prohibited FBI agents from utilizing coercive interview techniques, no policy had ever been issued to address the question of what FBI agents should do if they witnessed non-FBI interrogators using coercive or abusive techniques.

Eventually, following the Abu Ghraib disclosures in April 2004, on May 19, 2004, the FBI issued an official policy stating that FBI personnel may not participate in any treatment or use any interrogation technique that violates FBI policies, regardless of whether the co-interrogators are in compliance with their own guidelines. The policy also stated that if an FBI employee knows or suspects that non-FBI personnel have abused or are abusing or mistreating a detainee, the FBI employee must report the incident to the FBI On-Scene Commander.

Almost immediately after the FBI's May 2004 policy was issued, several FBI employees raised concerns about it. Among other things, the FBI On-Scene Commander in Iraq told FBI Headquarters that the policy did not draw an adequate line between conduct that is "abusive" and techniques such as stress positions, sleep management, stripping, or loud music that, while seemingly harsh, may have been permissible under orders or policies applicable to non-FBI interrogators.

In late May 2004, the FBI General Counsel stated in an e-mail to the FBI Director that, in response to their questions, agents were instructed that the intent of the policy was for agents to report conduct that they knew or suspected was beyond the authorization of the person doing the harsh interrogation. Agents told us, however, that they often did not know what techniques were permitted under military policies.

In sum, we concluded that while the FBI provided some guidance to its agents about conduct in the military zones, FBI Headquarters did not provide timely guidance or fully respond to repeated requests from its agents in the military zones for additional guidance regarding their participation in detainee interrogations.

ALLEGATIONS OF MISCONDUCT BY FBI AGENTS

We also investigated several specific allegations that particular FBI agents participated in abuse of detainees in connection with interrogations in the military zones. Some of these allegations were referred to us by the FBI, while others came to our attention during the course of our review. We describe in detail our findings regarding these allegations in Chapter 11 of the report.

In general, we did not substantiate these allegations. We found that the vast majority of FBI agents in the military zones understood that existing FBI policies prohibiting coercive interrogation tactics continued to apply in the military zones and that they should not engage in conduct overseas that would not be permitted under FBI policy in the United States. As noted above, the FBI decided in 2002 to continue to apply FBI interrogation policies to the detainees in the military zones. We found that most FBI agents adhered to the FBI's traditional interview strategies in the military zones and avoided participating in the interrogation techniques that the military employed.

CONCLUSION

The FBI deployed agents to military zones after the September 11 attacks in large part because of its expertise in conducting custodial interviews and in furtherance of its expanded counterterrorism mission. The FBI has had a long history of success in custodial interrogations using non-coercive, rapport-based interview techniques developed for the law enforcement context. Some FBI agents deployed to Guantanamo experienced disputes with the DOD, which used more aggressive interrogation techniques. These disputes placed FBI agents in difficult situations at Guantanamo and in the military zones. However, apart from raising concerns about the DOD's techniques, the FBI had little leverage to change DOD policy.

Our investigation found that the vast majority of the FBI agents deployed in the military zones dealt with these issues by separating themselves from other interrogators who used non-FBI techniques and by continuing to adhere to FBI policies. In only a few instances did FBI agents use or participate in interrogations using techniques that would not be permitted under FBI policy in the United States.

The FBI decided in the summer of 2002 that it would not participate in joint interrogations of detainees with other agencies in which techniques not allowed by the FBI were used. However, the FBI did not issue formal written guidance about detainee treatment to its agents until May 2004, shortly after the Abu Ghraib abuses became public. We believe that the FBI should have recognized earlier the issues raised by the FBI's participating with the military in detainee interrogations in the military zones and should have moved more quickly to provide clearer guidance to its agents on these issues.

However, in sum, while the FBI could have provided clearer guidance earlier and pressed harder its concerns about detainee abuse by other agencies, we believe it should be credited for generally avoiding participation in detainee abuse.

That concludes my testimony, and I would be pleased to answer any questions.

Mr. DELAHUNT. I am going to attempt to be brief on the first round, because I want Mr. Flake, who frequents these hearings on a regular basis and oftentimes has to listen to myself and Mr. Rohrabacher go on and on and on, I want to give him an opportunity to ask questions.

When I read the report, I noted that the FBI had opened a war crimes file. Is that an accurate representation of what is in the report?

Mr. FINE. Briefly, in the early years there were a number of temporary on-scene commanders who were sent down to Guantanamo from various field offices. One of the on-scene commanders advised the agents who were hearing allegations of abuse to open up what he called a war crimes file with a WC prefix to it. The agents did document several allegations of abuse in that fashion, with a WC prefix in a file, but early on the FBI headquarters, and we heard anecdotally the Department of Defense, said they shouldn't do that, and they should simply document the allegations of abuse in a typical fashion, which was to write it up in a FBI 302 interview report. So there are a few allegations entered in what they called the war crimes file, but that was only very briefly, and that ended very quickly.

Mr. DELAHUNT. Do we know who ordered the closing of that category?

Mr. FINE. We think it was FBI headquarters. The head of the military liaison of the detention unit at the time said that is not the way we need to document that, and asked to do it in a different way.

Mr. DELAHUNT. But a supervisor within the FBI recommended the opening of that file to FBI field agents at Guantanamo?

Mr. FINE. One of the temporary on-scene commanders who was at Guantanamo did that.

As we point out in the report, in the early years there was a succession of very temporary on-scene commanders who went there for short periods of time. In the period that we reviewed, there were 16 on-scene commanders. Eventually, they decided to have a permanent on-scene commander.

Mr. DELAHUNT. Is it fair to state that that individual felt a level of concern that the behavior that was reported to him very well could have constituted a war crime?

Mr. FINE. I don't know if he was making a legal judgment that this was a war crime. I think what he was doing is saying we are receiving allegations that are very concerning to us, troubling to us, things that we don't do. We want to make sure that it is documented. So that's why he suggested it.

Mr. DELAHUNT. But, in any event, he was disturbed by it.

Mr. FINE. Yes.

Mr. DELAHUNT. The report also found that American military interrogators apparently collaborated with security agents from the Government of China, and the collaboration implicated the disruption of sleep for the Uighurs prior to their interrogation by the agents of the Communist Chinese Government?

Mr. FINE. Yes. We were informed by the FBI agents that the Chinese Government sent people to interview, interrogate the Uighurs; and the night before that interrogation was to occur the Uighurs were woken up every 15 minutes so they couldn't sleep, to put them in a position to be interrogated by the Chinese Government.

Mr. DELAHUNT. Did they draw the conclusion that we had American military personnel collaborating, doing this to, if you will, soften up the Uighurs for examination by Chinese Communist agents?

Mr. FINE. They reported this was the technique that was used, what they called the "frequent flyer program," to put the Uighurs in a position to be interrogated by the Chinese Government. So they reported that to us.

Mr. DELAHUNT. Are you aware of any other collaboration between security agents from other nations and the personnel at Guantanamo?

Mr. FINE. I am not sure of the answer to that question, but I can get back to you, Mr. Delahunt.

Mr. DELAHUNT. In a prior hearing we heard from an attorney representing an individual by the name of Jabaroff, an Uzbek who was interrogated by the Uzbekistan security agents, Uzbekistan not being known for its respect for human rights and, in fact, according to the Department of State reports, practiced torture systematically, including boiling people alive. Have you heard anything relative to Uzbekistan security agents interviewing detainees at the facility at Guantanamo?

Mr. FINE. Mr. Delahunt, this was not one that was reported to us by the FBI. That does not mean it did or did not occur. We provided what was reported by the FBI.

Mr. DELAHUNT. I was going to yield the balance of my time to Mr. Flake, but I see he is not with us right now, but I am sure he will return shortly.

The first footnote in the executive summary of your report indicates that the Department of Defense took a rather lengthy time

getting back to you on classification issues. Can you amplify on that? Because I have a real serious problem about the use of classification throughout our Government during the course of the past 7 years.

Mr. FINE. Yes. We completed a draft of this report in October 2007. Consistent with our normal practice, we provided it to the agencies involved for their comment: Is there anything factually inaccurate and for their classification and sensitivity review. We provided it to the Department of Justice, the FBI, the CIA, and the Department of Defense, and we received timely responses from those agencies, except from the Department of Defense.

The Department of Defense did not respond to us. We kept pressing for that. They said, we are almost done, almost done. And in January, almost 3 months later, they said we can't do it because there are no paragraph markings on it, which was apparent from the beginning when we gave it to them, and also we were asking them for what was classified in terms of Department of Defense issues.

Eventually, a new entity, the Under Secretary of Defense for Counterintelligence and Security, got involved; and we also got the Department of Defense Inspector General involved. And they eventually gave it to someone new, and they did provide classification. Even then, it was not a full classification marking initially. We went back and forth with them and eventually got their classification comments.

The eventual classification comments, we didn't have problems with. It was after 6 months we got it. But the delay was very concerning to us. They did not initially, in our view, make a good-faith effort to provide classification markings on it. Other agencies had. The CIA did it very quickly, the FBI did it in a timely fashion, and the Department of Defense didn't. That was part of the reason for the delay in the release of the report.

Mr. DELAHUNT. I have a series of questions that I want to pose, but let me turn to my colleague from California.

Mr. ROHRABACHER. Thank you very much.

Mr. Fine, you have been with the FBI for how many years?

Mr. FINE. I have been with the Department of Justice since 1995. So that is 13 years on this round. Prior to that, I was an Assistant United States Attorney for 3½ years.

Mr. ROHRABACHER. In 1996, you became the Director of the Special Investigations in a review unit of the Office of the Inspector General, Department of Justice?

Mr. FINE. Yes.

Mr. ROHRABACHER. There were a lot of things going on during that time period. I was wondering, did you have anything to do—were you aware of the policy at that time that was instituted during the Clinton administration that erected the wall between the FBI and with intelligence—with America's foreign intelligence and the Defense Department during that time?

Mr. FINE. I can't say when I first became aware of that, but we did do a report after the September 11 attacks which goes over the wall and how it was erected.

Mr. ROHRABACHER. Do you think that wall contributed to the fact that 9/11 happened? Was that lack of the ability of people to co-

operate with one another, the FBI with the CIA or the Defense Department, was that something that actually perhaps in some way perhaps contributed to this incredible crime that happened on 9/11?

Mr. FINE. I think the wall was a problem in that it prevented the sharing of information between agencies of the Federal Government, yes.

Mr. ROHRABACHER. Right. You were aware of that wall at that time?

Mr. FINE. I believe I was aware of the legal issue.

Mr. ROHRABACHER. Did someone from the Justice Department—did any of you protest that and say this makes no sense that we don't have American law enforcement officials being able to benefit from the intelligence of our overseas operatives?

Mr. FINE. In our office protest?

Mr. ROHRABACHER. Was there any type of internal protest of that?

Mr. FINE. There were concerns about the wall during that period of time, which we describe in our report on September 11 intelligence information describing what some people thought about the wall and changes in the wall and the concerns about the wall.

Mr. ROHRABACHER. And I have read on several occasions that this is not something that perhaps has been proven, but I think it was the Defense Department that had the Able Danger Project, and it is suggested that the names of a number of the hijackers were actually on a list of terrorists—people who were known to be parts of terrorist operations, and these names were of people now residing in the United States, and four of them ended up being 9/11 hijackers and that that information was not permitted to be given to the FBI; is that right?

Mr. FINE. I am not sure about the Able Danger Project, but in our report we do talk about how the CIA had information about several of the hijackers who were in California at the time, and it was not provided to the FBI. And only later, only a few weeks before the September 11 attacks, was the information shared with the FBI and only in a cursory fashion. And the FBI did not look for those terrorists, those hijackers, in a concentrated fashion. They only gave it limited resources in the New York field office; and there were missed opportunities, we found, to try to find those hijackers.

Mr. ROHRABACHER. Right. The person you selected to highlight what you considered to be mistreatment or unacceptable treatment during the interrogation of Mohammad al-Qahtani—aren't there indications he was supposed to be in on it? Isn't he the 20th hijacker?

Mr. FINE. Yes, there is some information that he was going to be involved, and he was stopped prior to the September 11 attacks by an INS agent.

Mr. ROHRABACHER. So we are talking about this man—this was a man who was actually probably a participant in the conspiracy that caused the death of 3,000 Americans; and, in fact, this man, when they conspired together, the goal wasn't 3,000 Americans, the goal was 50,000 Americans to be slaughtered, right?

Mr. FINE. He was involved with the preparations for the attack.

Mr. ROHRABACHER. So here is a guy who participated in the conspiracy, and now we have him in custody, and you are suggesting

that the behavior of—what—putting panties on his head in order to try to confuse him and to pressure him, that is unacceptable interrogation technique for a man who was involved in a conspiracy to kill tens of thousands of Americans?

Mr. FINE. What we are saying is what was reported by the FBI, a number of concerns about that. It was not simply putting panties on his head, but the course of interrogation was both abusive and, in their view, ineffective.

Mr. ROHRABACHER. Well let's go through some of those other abusive things. So panties on the head. What were some of the others?

Mr. FINE. Sleep deprivation, snarling dogs.

Mr. ROHRABACHER. Sleep deprivation, snarling dogs. What else now? They showed him Playboy magazines while he was standing naked or something like that? We are not even talking about really—well, maybe this would be—maybe putting panties on somebody's head would be considered torture by somebody.

Mr. FINE. On page 6 of my written statement, we described things used on al-Qahtani, including tying a dog leash to his chain, walking him around the room, and leading him through a series of dog tricks. Repeatedly pouring water on his head. Stress positions.

Mr. ROHRABACHER. They were using humiliating tactics on the part of the interrogator, right?

Mr. FINE. What the FBI and others considered abusive tactics and ineffective tactics.

Mr. ROHRABACHER. The people who were engaged in this humiliation and which some people would call torture—you said there was a female interrogator. Who were these people? Who were the interrogators? Were they reservists? Were they military personnel? You said that the reservist unit—you mentioned a lot of these people had no training. Who was involved in that?

Mr. FINE. We didn't investigate who the military personnel were. We believe it was military intelligence. I don't know the answer to your question, whether it was reservists.

Mr. ROHRABACHER. It may have been people who were not trained?

Mr. FINE. We were told they were very inexperienced people, yes. And that the techniques had been suggested by either a linguist or a translator or inexperienced military personnel who were conducting it.

Mr. ROHRABACHER. Because many of the things that you are suggesting here were just so unacceptable to this man who was conspiring to kill tens of thousands of American civilians. They seem more like pranks, hazing pranks from some fraternity, than some well-thought-out policy of how to torture someone and get information from them.

I mean, okay, describing his mother and sister as whores, that is certainly not a nice thing to do. I tell you when most people hear the word "torture" which has been bandied around here, I don't believe they think of it holding a growling dog near somebody.

It is one thing to have the growling dog eating someone's leg or arm, which is absolute torture. Simply to have a growling dog around or putting panties on someone's head or discussing—telling him he had repressed homosexual tendencies in his presence, I'm

sorry, these are acts of humiliation. But I am not quite certain when you are dealing with a man who has been involved in a conspiracy to kill tens of thousands and may well have known information—and is it possible this man could have known information about other parts of the conspiracy—this was just 1 year after 9/11—that we didn't know about and maybe he had information? Maybe there was another attack that was aimed at tens of thousands of lives?

Mr. FINE. It is certainly possible that he had intelligence that was to be obtained.

Mr. ROHRABACHER. So when we are talking about this position that the FBI—this moral stand that the FBI took on this, it was basically to say that a man who might have information that could lead us to prevent an attack that would cost the lives of tens of thousands of Americans, that we should not be—we should never think that it is acceptable to put panties on his head or try to humiliate him verbally in order to get him to break his will. That is not an acceptable interrogation, even if it is going to save the lives of all of these other people in the end?

Mr. FINE. What the FBI said that they objected to for a variety of reasons: (1) it was not effective in obtaining intelligence. The FBI had a long-standing ability and skills in obtaining intelligence from people who didn't want to give it to them, whether domestic or al-Qaeda, that it was not necessarily—

Mr. ROHRABACHER. Do you include waterboarding in that? Does the FBI include waterboarding? That is not an effective technique?

Mr. FINE. The FBI does not do waterboarding.

Mr. ROHRABACHER. I understand that. You are judging other agency's interrogation.

Mr. FINE. The FBI was concerned about inaccurate information.

Mr. ROHRABACHER. With waterboarding, we know waterboarding was used three times, once with Khalid Sheikh Mohammad. Here is a man who actually planned—we understand he planned 9/11. He was part of who sent this other guy out. I understand waterboarding, and it has been said that waterboarding broke his will, and he actually then exposed a lot of intelligence information.

Mr. DELAHUNT. If my friend would yield, you have made that statement at previous hearings; and I have always responded by saying that you have made that statement, but it does not appear to be corroborated by any evidence whatsoever. And I think repeating that allegation, one has to seek, you know, an opportunity, as I just did, to be very clear. If you have more information that Khalid Sheikh Mohammed, as a result of waterboarding, produced actionable intelligence that saved thousands of lives, I would like to see it.

Mr. ROHRABACHER. Reclaiming my time, let me put that question in another way. Do we know if Khalid Sheikh Mohammad—from your looking at, overseeing what these interrogations got, was there any useful information received from him?

Mr. FINE. Congressman Rohrabacher, we did not look at what the CIA did and what they were able to obtain from various detainees. Our review was on the military.

Mr. ROHRABACHER. Waterboarding in and of itself, we actually put all of our special forces troops through waterboarding, do we not?

Mr. FINE. I guess it depends on what you mean by “waterboarding.”

Mr. ROHRABACHER. It is my understanding that our own people are trained and have to go through this; and so—a certain level of it—could we say, well, are we torturing our own people? I would suggest that there is a difference between torture and putting panties on people’s heads and saying and trying to humiliate them and make them disoriented so they might give information.

The FBI did not, according to what you are saying, did not officially protest when we had the wall erected prior to 9/11 between the FBI and foreign intelligence sources. As far as you know, there was no official protest that the FBI had then; and afterwards now the FBI is, however, protesting the interrogation techniques that were used on this man and others were not consistent with what the FBI did within their sphere, which is basically the sphere of influence or the sphere of authority argument that was used before 9/11 as well, I might add. There is a difference between what the FBI can do domestically and what it can do in cooperation with our foreign intelligence operations.

Mr. FINE. Well, I think there were people in the FBI who were concerned about the wall prior to September 11 and did raise concerns about it.

With regard to their sphere of influence and what happened after 9/11, after 9/11 the FBI did change their priorities and what they were doing. It was not simply a criminal investigative entity that was going to investigate attacks after they occurred. They were attempting to get intelligence, actionable intelligence, and prevent future attacks, and they completely changed their priorities.

Mr. ROHRABACHER. Except when it came down to putting panties on the head of some guy who was actually engaged in the conspiracy to kill all these Americans, the FBI again decided that they were holier than thou.

Mr. FINE. I wouldn’t describe it that way. I would say that they believed that their techniques were effective and could and did obtain actionable intelligence.

They also were concerned about the use of information in the end game, what happened when the information was obtained. And they were also concerned about how this would—the images that this would create for the United States and for them; and they were also concerned that people who they had, terrorists from that part of the world, were expecting and used to these kinds of tactics.

Mr. ROHRABACHER. I have never interrogated someone, either a criminal which the FBI has to deal with with criminals domestically, nor have I interrogated someone who is a foreign enemy—unless, of course, we include the people who sit on that side of the table. And I won’t ask you to wear anything on your head.

So I don’t know what is effective and what is not. I do see here things that seem to be fraternity boy pranks and hazing pranks. They might be unacceptable, but they certainly don’t fit into the category of torture, which is the word which has been bandied around here. So I don’t know what is effective and what is not, but

I would hope that—I would think there are some things that are effective in getting information from a terrorist who is actually part of a conspiracy to kill a lot of people and willing to kill a lot of people. There is a difference between what you would do with an American criminal that the FBI has to deal with all of the time in terms of domestic crime.

Mr. FINE. Well, a couple things. One, they deal with more than criminals now post-September 11th. And I also would note on page 119 of our report we discuss the analysis of the Al-Qahtani case that was written by military interrogators and analysts after he had provided information. And they did not say that the application of these harsh techniques was a factor in his providing the information. They provided other factors, like his failing a polygraph that he was shocked about, his perception that he was betrayed by other al-Qaeda members, his not being asked for information, interrogators ceased seeing him and he wanted that attention, and he also wanted to be returned home. So the military's own analysis afterwards did not point to the harsh techniques as being a factor in his providing information.

Mr. ROHRABACHER. Again, if we are going to be making a decision as to what is effective and what is not effective, I would certainly not put myself in a place to judge that. But I would judge whether or not these—obviously, we were not prepared for 9/11, and for a number of reasons, and whether or not these type of activities that took place reflect so poorly on the United States we should shut down Guantanamo, et cetera, and apologize to the world that we were actually doing something like that, perhaps it wasn't effective and shouldn't have been done, but after 9/11 and during that time period when the war had just started, I think that we needed to—we weren't ready and had all the standards we needed. So with that said, thank you very much, Mr. Chairman.

Mr. DELAHUNT. I thank the gentleman. And I think he raises an interesting issue. And for a moment, let's put aside the moral issue. Let's put aside the possible violations of American domestic law and international conventions to which we are a party, the Convention Against Torture being the most obvious. I would commend the gentleman to review the opinions of professionals as to whether torture works, if that is really what we are talking about. Or is that the point that the gentleman wishes to make? I would note, and I believe this is in your report, Mr. Fine, that Pasquale D'Amuro, who was the FBI's top counterterrorism officer, had this to say about physical pressure. This isn't about panties on the head. This is about physical pressure and waterboarding and other techniques that apparently were utilized at Guantanamo. And there is evidence to that effect without any rebuttal whatsoever. And he believed: "That physical pressure was less effective than traditional noncoercive methods, that it would taint any future prosecution"—in other words, would jeopardize a future prosecution of an individual—"and that it was wrong." This is Mr. D'Amuro's statement, and helped al-Qaeda in spreading negative views of the United States. Now, am I accurately quoting Mr. D'Amuro—

Mr. FINE. Yes.

Mr. DELAHUNT [continuing]. From your report?

Mr. FINE. Yes, those are the concerns he raised as head of the counterterrorism division.

Mr. DELAHUNT. And I take it he was an individual of considerable experience?

Mr. FINE. Yes, he was.

Mr. DELAHUNT. And had success time and time again?

Mr. FINE. We didn't look at his record, but I am sure his record was a stellar one to allow him to rise to that level.

Mr. DELAHUNT. Are you familiar with Lieutenant General Kimmons, the Army deputy chief of staff for intelligence?

Mr. FINE. No.

Mr. DELAHUNT. Well, let me read what he had to say in terms of whether torture works. This is on September 6th of 2006:

“No good intelligence is going to come from abusive practices. I think history tells us that. I think the empirical evidence of the last 5 years, hard years, tells us that. And moreover, any piece of intelligence which is obtained under duress, through the use of abusive techniques, would be of questionable credibility. In addition, it would do more harm than good when it inevitably became known that the abusive practices were used. And we cannot afford to go there.”

In my prior career, Mr. Fine, I served as the district attorney, the state's attorney up in the greater Boston area. I supervised many interrogations. I want to assure you that we didn't use torture. But at the same time, the FBI approach, the professional approach, not the cowboy approach, and not the approach that utilized so-called enhanced techniques, were far more successful in accomplishing what we wanted to accomplish, which was to secure intelligence and simultaneously prosecute those that were responsible for criminal violations.

We had a hearing where a Colonel Kleinman, who was the director of the Air Force Intelligence Service, and did the training for professional interrogators, had this to say. A notable example of this, and he is referring to the kind of techniques that have been alluded to in your report, and in my comments and that of Mr. Rohrabacher's, a notable example of this emerges during discussions surrounding the so-called ticking bomb scenario. As the parties argue the legal and moral implications of using coercive methods to extract information that according to the scenario would save thousands of lives, there is an erroneous presupposition both sides seem to be willing to accept: That coercion is ultimately an effective means of obtaining reliable intelligence information. This conclusion, in my professional opinion, is unequivocally false. It doesn't work. And maybe at some point, if we have some time, the ranking member and myself can have a hearing, bring the professionals in with the question being posed, does it work? Does torture work? Put aside the moral and the legal implications. It does not work. And we suffer as a result. And Mr. D'Amuro, I would dare say, in his comment about it fostering recruits for al-Qaeda, is the far more likely outcome of what has occurred in terms of the degrading treatment of detainees. This is about our national security. This is not about simply doing the right thing. It is about protecting America. That is what it is about as much as it is in terms

of living according to our values and complying with those values. If you will bear with me for a moment.

Mr. ROHRABACHER. Maybe if the chairman would yield for a moment?

Mr. DELAHUNT. I will yield.

Mr. ROHRABACHER. Let me just note, and I think the chairman's idea of bringing some people in who actually have been engaged in this type of activity, interrogation as a means of obtaining information, that might be a very useful hearing as long as we had both sides presented, of course.

Mr. DELAHUNT. You find the torturers.

Mr. ROHRABACHER. He is always willing to make sure both sides are included. I do want to suggest that in the public's mind, torture is at a different level than aggressive interrogation. And I don't know if the public would agree that torture would be that any or even a few of the items used against this man, who was a conspirator in the 9/11 attack on the World Trade Center, whether or not these were actually, by ordinary people's definition of torture, whether or not actually stripping him naked or making him wear women's underwear on his head, whether or not—most people when they think of torture are thinking in terms of cutting somebody's finger off or putting them through great physical pain rather than just great psychological, let's say, pressure rather than physical pain.

So I am not sure how effective what techniques are. It would seem to me that there are people responsible for obtaining information as best as they could over the years since World War II, and they have—they have probably trained people, or at least talked to our people in terms of what is the most effective way of doing it. I personally doubt that treating a member of a terrorist cell in the same way you treat an American citizen who is suspected of a criminal act is the way to get the information from that terrorist, member of the terrorist cell.

And I would just say being nice may work with American criminals and suspects. Being nice may get information. I really doubt whether being nice to someone who is engaged in a conspiracy to slaughter thousands of lives, which is what this Al-Qahtani guy was, whether being nice is going to get the information from him. Would you say that you have to treat someone who is part of a terrorist cell differently than you do a criminal suspect?

Mr. FINE. No, I wouldn't say that. And I think there are different procedures and rights available to domestic citizens than people captured on the battlefield or elsewhere. I don't think the FBI was advocating treating them nice. I think they were advocating using the traditional techniques that they had developed and used in various ways and with various peoples, ranging from domestic criminals to al-Qaeda, who they were in the process of interrogating and getting information from. I would also note that—

Mr. ROHRABACHER. Would you tell me some of those techniques that have been successful? I mean, we have been talking about them. I mean what are those techniques? I mean, if it is not being nice to them, what is it?

Mr. FINE. It is more a rapport-based thing, and not treating them in an inhumane fashion, and also giving them opportunities

to provide information and better their situation, finding out what is important to them. A whole variety of techniques that the FBI has used to try to get information in very adversarial settings. And I would also note that what is interesting, and what we actually point out is after—in later years, after the Detainee Treatment Act, which was passed in December 2005, the Army changed its policies. The Army's current field manual emphasizes the rapport-based interrogation techniques that are similar to those that are endorsed by the FBI. And the Army's current field manual, which is currently applicable, identifies prohibited actions, which include many of these. So the Army itself has moved toward these techniques. But, you know, the—this was not a review of all the different techniques and the effectiveness of this. What we were doing is reporting what the experienced agents of the FBI told us and what their concerns were.

Mr. ROHRABACHER. Thank you.

Mr. DELAHUNT. You know, can you amplify your findings in more detail relative to the communications between senior Department of Justice officials and the National Security Council about the interrogation techniques?

Mr. FINE. I can amplify a little bit. There were people from the Department of Justice's criminal division, for example, who had contact with the National Security Council legal adviser, who raised concerns—

Mr. DELAHUNT. Who is the national security legal adviser?

Mr. FINE. It is—

Mr. DELAHUNT. If you know.

Mr. FINE. I don't know who it is now.

Mr. DELAHUNT. Who was it at the time?

Mr. FINE. John Bellinger.

Mr. DELAHUNT. John Bellinger?

Mr. FINE. Yes. Who actually told us he did contact the military and was told it is being handled, we have got it covered. The National Security Council did not—

Mr. DELAHUNT. This is Mr. Bellinger?

Mr. FINE. Yes, Mr. Bellinger.

Mr. DELAHUNT. In his interview with you—

Mr. FINE. We spoke to Mr. Bellinger.

Mr. DELAHUNT. And Mr. Bellinger indicated to you that he inquired or communicated with the military?

Mr. FINE. Yes.

Mr. DELAHUNT. And their response?

Mr. FINE. It was not resolved in favor of the FBI. It was a Department of Defense facility, and therefore, the Department of Defense had control over the interrogation techniques that were ongoing. You know, he did take steps, from what we understand, but I think it is also true that not much changed as a result of his attempts. We also heard that—and we weren't able to interview him—but we heard from others that former Attorney General Ashcroft raised this with the National Security Council and the DoD, raised it particularly in the context of Al-Qahtani and the effectiveness of the interrogation techniques on Al-Qahtani.

Mr. DELAHUNT. Mr. Fine, can you repeat that? It was the effectiveness. I want to assuage any concerns that Mr. Rohrabacher

might have. We are talking about not CAT violations or moral implications, but we are talking about effectiveness.

Mr. FINE. Yes, the Department of Justice, particularly the senior levels, remembered this as an effectiveness issue, whether they were effectively getting information from Al-Qahtani. They were not impressed with the Department of Defense's efforts and information obtained, and raised effectiveness issues. Now, we were not able to interview Attorney General Ashcroft.

Mr. DELAHUNT. Why?

Mr. FINE. He declined our requests for an interview. We were told by people who reported to him and others that he had done this, but it was not clear that any changes were made.

Mr. DELAHUNT. Did he provide an explanation for his declination of an interview?

Mr. FINE. He told us that he thought we had gotten sufficient information from others in the review, and that there is not much that he could add. And we also read that his spokesman, after we had issued our report, said that some of the conversations that he had would be privileged. But he declined our request to be interviewed.

Mr. DELAHUNT. Does the Attorney General sit, as a matter of course, as a principal on the National Security Council?

Mr. FINE. I don't know.

Mr. DELAHUNT. So-called principal?

Mr. FINE. I don't know the exact structure of it, but I know he has contact with the National Security Council. There is also what is called a principals committee that gets together to iron out differences. There is a deputies committee that gets together. There is a policy coordinating committee that gets together.

Mr. DELAHUNT. Who is on the principals committee, if you know?

Mr. FINE. I don't know the exact makeup, but I assume it is principals of all the major cabinet agencies that are involved with counterterrorism issues.

Mr. DELAHUNT. Do you have any information as to whether these issues were brought to the attention of the principals committee of the National Security Council?

Mr. FINE. We don't have any information on that. In fact, it was not clear to us that it had been brought in the formal agenda of those meetings. If there were any conversations and contacts, we were informed they would probably be on the side and among individuals. But again, we didn't and weren't able to investigate that. Our review of what was happening in the Department of Justice and the FBI, not at other branches of government, including at the White House.

Mr. DELAHUNT. Are you familiar with the ABC report of April 9th regarding the role of the principals committee?

Mr. FINE. No.

Mr. DELAHUNT. No? Okay. Well, if you are unfamiliar with it you are unfamiliar with it. On the principals committee obviously serves the Secretary of State, the National Security Adviser, Secretary of Treasury, Secretary of Defense. Did the Inspector General's effort in this regard make any effort to interview those individuals?

Mr. FINE. No. We, as I stated, we focused our attention on what the FBI did, what the Department of Justice did. But how those issues were handled by other entities, including the principals committee, was beyond our jurisdiction, and we did not do that.

Mr. DELAHUNT. In your report, I think it is page 115, it states that “the head of the Department of Justice criminal division, Nahmias, said that he did not know in detail what former Attorney General Ashcroft did with the concerns brought to him about the Qahtani allegations, but said that he was fairly confident that the military’s handling of Al-Qahtani was raised by DOJ officials at the principals or deputies committee meeting about Guantanamo.” Nahmias also told your office that Attorney General Ashcroft spoke with someone at the NSC, most likely National Security Adviser Condoleezza Rice, about DOJ’s concerns about the approach that DoD was taking to the Qahtani interrogations. Again, that is page 115. You know, in terms of the interview of Mr. Nahmias, was there any follow-up in terms of the statements that I just read to you?

Mr. FINE. Well, we did interview Mr. Nahmias. He was the counsel to the assistant Attorney General for the criminal division. So he is not the assistant Attorney General. He provided this information. This was obviously hearsay information. We did ask others. We asked Mr. Chertoff, we asked Alice Fisher, we asked other counsels in that office. We asked Deputy Attorney General Thompson, who didn’t remember this being raised.

Mr. DELAHUNT. What did Ms. Fisher and Mr. Chertoff have to say?

Mr. FINE. They remember it being raised as a question of effectiveness, whether this was effective. Now, Ms. Fisher did not have a strong recollection of this. And Mr. Chertoff believes—I think he stated he believes it was raised. But they were not the ones who were at these meetings. Mr. Ashcroft and Mr. Thompson were the ones.

Mr. DELAHUNT. So neither Mr. Chertoff nor Ms. Fisher were present when these issues would have been discussed? Am I accurate in that statement?

Mr. FINE. Unless they were sitting in for somebody at a particular meeting. They were not on the principals committee or the deputies committee. There is what is called the policy coordinating committee, but I don’t think they were on that as well.

Mr. DELAHUNT. On page 116, your report states that a DOJ criminal division official, a gentleman by the name of Swartz, also told us that he recalled discussing interrogation issues in meetings at the NSC-chaired PCC. That is the principals.

Mr. FINE. No, that is policy coordinating committee.

Mr. DELAHUNT. I am sorry, policy coordinating. He said he raised the ineffective and wrongheaded practice of the military interrogations at Gitmo, and it was a continuing theme of these PCC meetings. He, meaning Mr. Swartz, said that from Guantanamo’s inception, he took the position within DOJ and in interagency meetings that Guantanamo was doing grave damage to the United States’ position internationally, and in particular, with regard to law enforcement and the rule of law. Clearly, he was interviewed, Mr. Swartz?

Mr. FINE. Yes.

Mr. DELAHUNT. I am sorry?

Mr. FINE. No.

Mr. DELAHUNT. And he expressed his concerns and his positions within DOJ to his superiors, who would be?

Mr. FINE. His superiors would be—he was the deputy assistant Attorney General in the criminal division, so the assistant Attorney General for the criminal division and up through the chain of command. Mr. Swartz did tell us, and I think he did raise these concerns from an early stage, and pressed these concerns, not in connection with necessarily a particular Guantanamo detainee, but in terms of the practices in general.

Mr. DELAHUNT. I would ask you your policy—I am just reminded by counsel—generally regarding the treatment of privileged information. For example, in the case of where there is outstanding litigation, I find myself, and I know that my ranking member is in agreement with me on this, and this has spanned, I am sure, multiple administrations, but I find it of particular focus with this administration, the lack of information presented to oversight committees in Congress of information that ought to be part of our deliberations and concern. Can you amplify on your experiences?

Mr. FINE. Certainly. We also believe strongly that information should be provided to the committee, and that we should push to provide it to the committee. Our typical practice, as I mentioned earlier, is to finish a report, provide it to the department, ask them for their comments, whether it is factually inaccurate, tell us anything that is inaccurate about it, and also is there anything too sensitive for public release. We don't simply accept what they say. We have seen a lot of times where they said, well, that is too sensitive, that is classified, and then we will look and in another forum they have publicly released it. I have been in situations where the FBI told me you can't say that, that is classified. I said okay.

And then a week later, an FBI employee will come up and say the same thing. And I say to myself why can't we say it if they can? So we push very hard on that. On the other hand, if it is classified, if it is too sensitive for public release, we redact it. If there is ongoing civil litigation, that, in my view, should not prevent it from coming to the Congress. That is a fact, and we push hard to provide that information to the oversight committees who have a role in it.

Ultimately, the Attorney General has the ultimate call because he, by virtue of section 8E of the Inspector General Act, can prevent us from releasing a report or information in a report, but it hasn't gotten to that. Only one time back in 1998 there was a temporary delay of a report, but we have always pushed hard for releasing information and the Department has generally cooperated.

Mr. DELAHUNT. And I applaud that. But I have to say, and this is not just restricted to the Department of Justice, it is throughout the executive branch, is the order of magnitude of classification and then declassification and then reclassification is of profound concern. I believe myself that it is dangerous in terms of a democracy. I have seen exactly what you just articulated happen time and time again, not just on these kinds of issues. But it is my own belief that

the classification process has become a tool, if you will, for the avoidance of embarrassment. And that is not what we ought to be about, whether it be a Republican or a Democratic administration.

Clearly, we will have a new President come January 2009. And I have—I can—if I happen to be sitting here in January 2009, I intend to continue to pursue all of these same issues that we have reviewed over the course of the past 2 years. So that delay is not going to avoid the disclosure of information that is appropriately the province of the American people in this institution in terms of the exercise of our responsibility to conduct oversight. And how can you conduct oversight when you don't have that information available?

And I don't know what the alternative is. But for the executive to be the ultimate determining body to decide what is to be kept from Congress, what is to be kept from the American people does not bode well. Because I think it is the inclination of any—it is human nature to attempt to avoid embarrassment. And let me just leave it like that. Maybe we need an independent board to conduct classification as opposed to those who might be embarrassed if information were released into the public domain. Any comment?

Mr. FINE. It is an important issue. I don't know if I want to propose a solution. But I do see that happening. And it is not a science. A lot of times FBI will give a report to one person and they will say this is classified, and then the FBI will give it to another person and different amounts are classified. So it is not a precise science. And we push for explanations to make sure that it is not being used as a way to avoid embarrassment. And I think generally, in our case, we have been pretty successful.

Mr. DELAHUNT. Thank you, Mr. Fine.

Mr. ROHRABACHER. A few minor questions here. We just voted a few weeks ago, I guess 2 weeks ago now, on an amendment that would require that interrogation of prisoners be videotaped. And I noticed that the chairman and I both voted for that particular amendment. And I agreed with the chairman that transparency and full disclosure is really—has to be a high priority for all of us in government. And whether or not I disagree with you or him or anybody else, let's have a full discussion and let's be honest about where we stand. And the trouble is there are a lot of people that are not being honest, of course, and not being forthright about what their positions are. Does the Justice Department or do you personally support the requirement that would have all interrogation of prisoners on videotape?

Mr. FINE. Well, first let me be clear, I don't speak on behalf of the Justice Department. I am the Inspector General there. I think it is something to be considered. I know that we have looked at it in our context. When we do interviews, I think it is helpful to have an audiotape of it. Then there is no dispute about what was said.

Mr. ROHRABACHER. Do you require all of your interviews to be audio taped?

Mr. FINE. We don't require all of them, but we encourage that major significant interviews, particularly of subjects or major witnesses, to be taped. We have benefited from that. We avoid disputes about what was said. The witness will say I said it one way. Well, if we have it in a 302 that is an issue. So I think—

Mr. ROHRABACHER. Right. So you personally would not oppose an effort by Congress that would—because I was leading to that actually—

Mr. FINE. Okay.

Mr. ROHRABACHER [continuing]. To what policy we should have domestically as well—you would not oppose a policy that insisted that Federal inspectors or investigators or whatever branch of government should have to at least audiotape all of the interviews that they do?

Mr. FINE. I guess I would have to look at the precise proposal, whether in all cases, in all situations, and the cost of that, and are they always transcribed. But I think it is something we are moving towards, and I think it is a good thing that we move toward that.

Mr. ROHRABACHER. All right. That is about as much as I am going to get out of you today on this. But I just say for the record I am in favor of any investigators for any level of government at any agency, when they are conducting official investigations that can be used as evidence, that should be taped, at least audio taped, and files should be kept. And let me note that in Democrat and Republican administrations the prosecutors of this country have fought that every step. And I, again, repeat the chairman and I did vote that all, at least intelligence interrogations and Defense Department interrogations be videotaped, and I supported that.

Let me ask you this: Your report indicates that at times the FBI was effective in using rapport building, being nice for a lack of a better way of saying nice, to certain suspects—not suspects, terrorist folks, alleged terrorists, many of whom were terrorists.

Mr. DELAHUNT. Many of whom were not.

Mr. ROHRABACHER. And some of whom were not. But you have managed to say that you found that as effective in getting information from them as compared to the harsher techniques that were being used by other agencies. Could you tell me whether or not you think that that might have something to do—there is an old good cop/bad cop routine, but if nobody is playing the bad cop, is the good cop going to still get the information?

Mr. FINE. I think that it is not solely being nice. And I am not saying you, you know, treat them completely deferentially. But what I am saying is that the FBI believed that its techniques, which were a variety of techniques, were much more effective than the techniques that the inexperienced military intelligence were using.

Mr. ROHRABACHER. Of course. Of course. There is no doubt about that. And let me just note we have to—again, when people are trying to figure out what the heck we are talking about here, let us be aware that a terrorist who has been involved in a conspiracy that would take his life in the process of—while involved in a conspiracy that would, at the same time, be murdering, again, tens of thousands of people, and we have that kind of conspiracy still going on in the world today, that that terrorist who is giving up his life as part of the operation is far different in the way you can deal with them than in dealing with suspected criminals here in the United States. Suspected criminal here in the United States wants to do his time and get out. You can negotiate time with him. You

know, his life is not over. This other guy was willing to give his life in a millisecond in order to kill all these people.

Mr. FINE. I think that is a fair point, Congressman Rohrabacher. But I would also say that these FBI agents are not simply nice guys. These are tough, hardened, FBI agents who want the information, who are not there to treat these people with kid gloves, but are interested in getting actionable intelligence from them, just the way they are interested in getting information from domestic people. And they have gotten information from these tough al-Qaeda terrorists.

Mr. ROHRABACHER. All right. We heard testimony here that several Members of Congress went to Guantanamo, were not permitted to talk to prisoners. Is it your knowledge that Members of Congress who are visiting the facilities at Guantanamo and other type areas are not permitted to talk to prisoners? Is that what you are finding?

Mr. FINE. I don't know what the current situation is. We were permitted to talk to several detainees, except for one, Abu Zubaydah, who the CIA prevented us from talking to, we think unreasonably and unnecessarily. And we described that in footnote 4 of our report. We did look at whether there were sort of staged interviews for Members of Congress who—

Mr. ROHRABACHER. What did you find?

Mr. FINE. We did not find that.

Mr. ROHRABACHER. You did not find that. And did you find that Members of Congress were, if they made requests to talk to prisoners, were denied those requests?

Mr. FINE. I am not sure that we know that or asked that. You would probably know that.

Mr. ROHRABACHER. We have several Members of Congress claiming that, and I just want to make sure that that is verified one way or the other on the other end of it.

Mr. FINE. Yes.

Mr. ROHRABACHER. And do you know if Members of Congress are restricted from talking to Federal prisoners?

Mr. FINE. Do I know whether they are restricted from talking? I think it probably would depend on the circumstances, which prisoner we are talking about.

Mr. ROHRABACHER. Well, there has been a number of prisoners that I have attempted to talk to over the years and been denied. And one, for example, is Ramzi Yousef, who is in Federal lockup in Colorado. And do you think that is—I am being justifiably denied access to this prisoner?

Mr. FINE. I would have to know more of the circumstances about that case.

Mr. ROHRABACHER. How about the circumstances being that a senior Member of Congress, who is a ranking member in an investigative subcommittee whose job it is to oversee these types of things maybe has a request? Maybe that is one detail that is an important part of the request rather than a random Member of Congress.

Mr. FINE. That is an important circumstance that I would consider. But I assume there are other circumstances, too, such as the reasons why, what the current situation of Yousef is, what they are

trying to obtain from Yousef. I would really have to know more about it. But you raise one circumstance that should be factored in.

Mr. ROHRABACHER. I would request that you personally look into that. And with that said, Mr. Chairman—

Mr. DELAHUNT. You didn't think you were going to get another task.

Mr. FINE. I almost left here without another task.

Mr. ROHRABACHER. Well, thank you very much. And Mr. Chairman, the testimony today I think has been enlightening. I think we have, again, had a very fruitful discussion. And I appreciate the witness. You were very forthcoming. And you talked to the points that were being made. And I appreciate that very much.

Mr. FINE. Thank you.

Mr. DELAHUNT. And let me conclude by making some observations. I don't want Mr. Rohrabacher to have the last word in terms of his portrayal of FBI agents as nice guys. He would leave, or one could infer that his view is that they are holding hands with terrorists.

Mr. ROHRABACHER. Singing Kumbaya.

Mr. DELAHUNT. Singing Kumbaya. That I can assure him is a distorted view of what the reality is. The FBI agents and other professionals who know what they are doing use so-called rapport building techniques to elicit information, whether it be a criminal prosecution, whether it be securing of intelligence to protect the United States. Any prison is not a nice place. I have been in many of them myself as a district attorney, not as a resident. And I think it is very, very important, as I read your report, to make the distinction that not only were there legal and moral concerns that were expressed by FBI agents to their superiors, and those concerns obviously were carried up to a different level. And maybe we will have a hearing to determine who at the higher echelon had access to that information. But to put that aside, all of those concerns for a moment; this isn't about a popularity contest. This is about doing the smart thing, not the dumb thing that leads nowhere and leads to wild goose chases all over the world and deters us, the United States, from dealing with intelligence and evidence that leads to a good conclusion.

But again, to go back to the issue of the Communist Chinese agents waking detainees such as the Uighurs to soften them up for the interrogation in which it was reported to us they were threatened, and they have now been cleared for release, and we have no—and they have nowhere to go. How many times did that happen? That I daresay is a stain on our national honor. It never had to occur. And that is the tragedy of Guantanamo, along with the implications for the innocent people there. Not for the terrorists that are there. But let's remember that there have been 750 detainees that have been released, released.

Mr. ROHRABACHER. Mr. Chairman?

Mr. DELAHUNT. Yes.

Mr. ROHRABACHER. Would you yield for one moment?

Mr. DELAHUNT. I knew you would ask that.

Mr. ROHRABACHER. Because we agree on the injustices that were done to the Uighurs, and we also agree that if mistakes were made that the United States should be forthcoming and admit those mis-

takes, make retribution, would the chairman consider a joint letter between yourself and myself to the powers that be that would indicate that we believe that the Uighurs who have been kept in captivity and treated thus unfairly, and thus exposed to this horrible dictatorship, Chinese dictatorship coming in and basically utilizing the situation that we created to further the interests of that Communist dictatorship in China? Would you consider signing a letter with me to the powers that be suggesting that these Uighurs be permitted to come to the United States?

Mr. DELAHUNT. Yes, I would. And I should inform the gentleman that I have already sent letters regarding other detainees who have not been released. But let me reiterate my request to you in this public forum, that you and I and other members of this subcommittee should go to Guantanamo, not with a request to interview detainees, but with the purpose of interviewing detainees so that we can shed more light on what the truth is. We should never, as Members of the first branch of government, be denied access when it is appropriate and when we are looking at it.

With all due respect to the Inspector General and his fine staff, if they have access, then clearly there ought not even to be a question as to whether we have access to those interviews, which could even be more illuminating as far as the reality of Guantanamo. And with that—

Mr. ROHRABACHER. One last thing. Then for the record, the chairman and I are joining together and calling on our Government to let the Uighurs, who are prisoners being held unjustly by Federal authorities, to let them come to the United States as a means of just bringing this episode to a close. And we would call on our Government to do so forthwith, and would hope that we also, if indeed it looks like they have been unjustly treated, that we offer some compensation as well as an apology.

Mr. DELAHUNT. I concur. And let's get that letter drafted. I think, you know, the reality is that you certainly will have more access to the powers that be than I will. So I think both our signatures are important. And we ought to send that letter to Secretary Gates, who, by the way, I think is a man of great integrity.

Mr. ROHRABACHER. With that said, let me note that I am happy to send that letter with you, but I, in no way, will ever apologize that someone put panties on the head of this 9/11 terrorist and treated him without respect. That man should have no respect. Thank you very much.

Mr. DELAHUNT. We are adjourned.

[Whereupon, at 11:51 a.m., the subcommittee was adjourned.]

