

United States Senate Committee on the Judiciary

Hearing June 10, 2008

**"--Hearing Suspended Because Of Objection On Senate Floor--
Coercive Interrogation Techniques: Do They Work, Are They Reliable, and What Did the
FBI Know About Them?"**

Senate Judiciary Committee
Full Committee

DATE: June 10, 2008

TIME: 09:30 AM

ROOM: Dirksen-226

OFFICIAL HEARING NOTICE / WITNESS LIST:

--Hearing Suspended Because Of Objection On Senate Floor--

June 9, 2008

**NOTICE OF COMMITTEE HEARING
TIME CHANGE TO 9:30 a.m.**

The hearing on "Coercive Interrogation Techniques: Do They Work, Are They Reliable, and What Did the FBI Know About Them?" scheduled by the Senate Committee on the Judiciary for Tuesday, June 10, 2008 in the Senate Dirksen Office Building, Room 226 will begin at 9:30 a.m. rather than the previously scheduled time of 10:00 a.m.

Senator Feinstein will preside.

By order of the Chairman

Witness List

Hearing before the
Senate Judiciary Committee

on

"Coercive Interrogation Techniques: Do They Work, Are They Reliable, and What Did the FBI Know About Them?"

Tuesday, June 10, 2008
Dirksen Senate Office Building Room 226
10:00 a.m.

Panel I:

The Honorable Glenn A. Fine
Inspector General
Department of Justice
Washington, DC

Valerie Caproni
General Counsel
Federal Bureau of Investigation
Washington, DC

Panel II:

Jack Cloonan
Former FBI Special Agent
West Caldwell, NJ

Philippe Sands QC
Professor of Law and Director of the Centre of International Courts and Tribunals
University College London

Philip B. Heymann
James Barr Ames Professor of Law
Harvard Law School
Cambridge, MA

Testimony

United States Senate Committee on the Judiciary

--Hearing Suspended Because Of Objection On Senate Floor--

Coercive Interrogation Techniques: Do They Work, Are They Reliable, and What Did the FBI Know About Them?

June 10, 2008

Hon. Glenn Fine

Statement of Glenn A. Fine
Inspector General, U.S. Department of Justice
before the
Senate Committee on the Judiciary
concerning
Detainee Interrogation Techniques

June 10, 2008

Madame Chairwoman, Ranking Member Specter, and Members of the Judiciary Committee:

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.

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. 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.

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 interrogation techniques and 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 pages of documents. 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. However, our investigation did examine the FBI's involvement with the CIA in the interrogation of one 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 other agencies. Our investigation also examined the dispute between the FBI and the DOD regarding the treatment of another high value detainee, Muhammad Al-Qahtani, who was held at Guantanamo.

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 military or CIA personnel, or whether they did, or did not, violate their own agencies' interrogation 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 October 2007, 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 information the agencies considered classified. We have provided the full versions of the report to Congress.

In my testimony, I will summarize our major findings with respect to the FBI's involvement in and observations of detainee interrogations.

I will also focus on the FBI's decision not to participate in joint interrogations of detainees with other agencies in which techniques not allowed by the FBI were used.

FBI and DOD Detainee Interrogation Policies

Most of the FBI's written policies regarding permissible interview techniques for agents and for agent conduct in collaborative or foreign interviews were developed prior to the September 11 terrorist attacks. When these policies were drafted, they reflected the FBI's primary focus on domestic law enforcement, which emphasized obtaining information for use in investigating and prosecuting crimes. These policies are designed to assure that witness statements meet legal and constitutional requirements of voluntariness so that they are admissible in court and do not undermine the admissibility of any other evidence developed in the investigation as a result of the witness interview.

However, constitutional and evidentiary considerations were not the only rationales for the FBI's prohibition on the use of coercive interview techniques. On numerous occasions, the FBI has stated its belief that the most effective way to obtain accurate information for both evidentiary and intelligence purposes is to use rapport-building techniques in interviews.

The FBI's interrogation policies are set forth in the FBI's Legal Handbook for Special Agents, the Manual of Investigative Operations and Guidelines (MIOG), and the Manual of Administrative and Operational Procedures (MAOP). For example, Section 7-2.1 of the Handbook states, among other things, that "[i]t is the policy of the FBI that no attempt be made to obtain a statement by force, threats, or promises."

The FBI's MAOP also describes the importance of FBI agents not engaging in certain activities when conducting investigative activities, including foreign counterintelligence. The MAOP states that "[n]o brutality, physical violence, duress or intimidation of individuals by our employees will be countenanced...."

Our investigation found that the vast majority of the FBI agents deployed to the military zones in Guantanamo, Iraq, and Afghanistan 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 in the military zones allowed the use of methods that, depending on the manner of their use, might not be permitted under FBI policies. Such methods included, at various times, sleep disruption, prolonged isolation, stress positions, and military dogs. Military policies changed over time and were different for Guantanamo, Afghanistan, and Iraq. In December 2005, the Detainee Treatment Act established the U.S. Army Field Manual as the uniform standard for detainee treatment in DOD custody. In September 2006 the DOD revised the U.S. Army Field Manual and adopted U.S. Army Field Manual 2-22.3 as a uniform interrogation policy for all services and military zones. The new Field Manual places much greater emphasis on rapport-based interrogation techniques similar to those endorsed by the FBI, and it identifies several prohibited techniques such as nudity, waterboarding, and mock executions. However, Field Manual 2-22.3 was not in effect during any part of the period that was the focus of the OIG's review.

Differences Between the FBI and Military Approaches to Interrogations

FBI witnesses and documents described the rationale for its non-coercive rapport-based techniques traditionally used by the FBI in combination with purposeful and incremental manipulation of a detainee's environment and perceptions. As explained by FBI agents and described in FBI documents, these techniques are designed to obtain reliable cooperation on a long-term basis.

FBI agents told us that the FBI's approach, coupled with a strong substantive knowledge of al Qaeda, had produced extensive useful information in both pre-September 11 terrorism

investigations as well as in the post-September 11 context. Many FBI witnesses also stated that they believed that FBI agents had skills and expertise that would enable them to make a significant contribution to the government's overseas intelligence gathering mission.

The FBI understood that the more aggressive or coercive techniques used by military intelligence were originally designed for short-term use in a combat environment with recently captured individuals where the immediate retrieval of tactical intelligence is critical for force protection. Some military techniques were based on methods used in military training known as SERE (Survival, Evasion, Resistance, and Escape), which is intended to prepare the U.S. military on methods to resist interrogation.

DOJ officials also told the OIG that they agreed with the FBI's viewpoint regarding the best approach to take with the detainees. For example, David Nahmias, Counsel to the Assistant Attorney General for the Criminal Division, stated that this view, which was "shared strongly by those of us in the Criminal Division and . . . in the Department generally," was that the FBI's approach to detainees had been very successful with terrorism subjects. This approach, according to Nahmias, is to establish a rapport, treat the people with respect, and try to make them into long-term strategic sources of information "in the way we flip bad guys all the time." Nahmias told the OIG that the military's aggressive approach was rooted in military intelligence training designed to obtain time-sensitive battlefield information, but that these techniques do not work in the long run.

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. His interrogation, and the FBI's response to it, led to the decision that the FBI would not participate with other agencies when they used interrogation techniques not followed by the FBI.

Zubaydah was captured in Pakistan in March 2002, and was taken to a CIA facility. Two FBI agents who were familiar with al-Qaeda and the Zubaydah investigation, who were skilled interviewers, and who spoke Arabic were assigned to assist the CIA in interviewing Zubaydah. 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, in August of 2002 the head of the FBI's Counterterrorism Division, Assistant Director Pasquale D'Amuro, recommended that the FBI not participate in joint interrogations of detainees with other agencies in which harsh or extreme techniques not allowed by the FBI would be employed. FBI Director

Robert Mueller agreed.

D'Amuro gave several reasons to the OIG for his recommendation. First, he said he felt that these techniques were not as effective for developing accurate information as the FBI's rapport-based approach, which he stated had previously been used successfully to obtain cooperation from al-Qaeda members. He explained that the FBI did not believe these harsh techniques would provide the intelligence the FBI needed and that the FBI's proven techniques would. He also said the individuals being interrogated came from parts of the world where much worse interview techniques were used, and they expected the United States to use these harsh techniques. As a result, D'Amuro did not think the techniques would be effective in obtaining accurate information. He said what the detainees did not expect was to be treated as human beings. He also said the FBI had successfully obtained information without the use of aggressive techniques. D'Amuro said that if aggressive techniques are used long enough, detainees will start saying things they think the interrogator wants to hear just to get them to stop.

Second, D'Amuro told the OIG that the use of the aggressive techniques failed to take into account an "end game." D'Amuro stated that even a military tribunal would require some standard for admissibility of evidence. Obtaining information by way of aggressive techniques would not only jeopardize the government's ability to use the information against the detainees, but also might have a negative impact on the agents' ability to testify in future proceedings.

Third, D'Amuro stated that, in addition, using these techniques was wrong and helped al-Qaeda in spreading negative views of the United States.

We found that after the FBI's decision not to participate in the use of these techniques, later in 2002 FBI agents assigned to Guantanamo began raising concerns to FBI Headquarters focused particularly on the interrogation of Muhammad Al-Qahtani. Al-Qahtani had unsuccessfully attempted to enter the United States shortly before the September 11 attacks, allegedly to be an additional hijacker. After he was captured in Pakistan and transferred 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, preventing him from speaking for a week, and using very harsh techniques of the sort used for training U.S. military special forces to resist interrogation. The plan also included an option for sending Al-Qahtani to another country to employ its interrogation techniques to obtain information from him.

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 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, without the FBI's participation or observation. 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 stress positions, 20-hour interrogations, tying a dog leash to his chain and leading him through a series of dog tricks, stripping him naked in the presence of a female, repeatedly pouring water on his head, and instructing him to pray to an idol shrine.

One of the DOD's later military reviews, the Schmidt-Furlow Report, concluded that many of the techniques that the DOD used on Al-Qahtani were authorized under military policies in effect at the time. However, that report concluded that other techniques used on Al-Qahtani by the military during this time period were "unauthorized" at the time they were employed. Although we found no evidence that the FBI was aware of the specific techniques used by the military during this period, one FBI agent learned from a member of the military that Al-Qahtani was hospitalized during this time frame for what the military said was low blood pressure along with low body core temperature.

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 the 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.

David Ayres, Chief of Staff to former Attorney General Ashcroft, told us that the dispute between the DOJ and the FBI on one side and elements of the military on the other was the subject of "ongoing, longstanding, trench warfare in the interagency discussions." Similarly, David Nahmias, a counsel in the Criminal Division, described the issue of detainee interrogation approaches as "an ongoing fight," which "DOD always won . . . because they controlled the locations and they had ultimate control, which we acknowledged, of the [detainees]."

While 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, we did find one proposal that was advanced by certain officials from the FBI and the 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 the 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 two 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 in the proposal for Al-Qahtani on the fact that such techniques had been effective at obtaining useful information from Zubaydah.

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 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 May 2004 – when the FBI issued written guidance on FBI agents' 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.

We also 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 should report the incident to the FBI On-Scene Commander.

Almost immediately after the FBI's May 2004 policy was issued, however, 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.

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.

FBI Observations Regarding Detainee Treatment

Our report also describes the results of our survey of FBI employees who served at Guantanamo and in Afghanistan and Iraq. 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.

In Iraq, FBI agents served at Abu Ghraib and other detention facilities. Most of the FBI employees reported to the OIG that they never observed potentially abusive treatment of detainees in Iraq or heard about it from detainees or other witnesses. Overall, of the 267 survey respondents who served in Iraq between March 2003 and the end of 2004, 188 stated that they neither observed nor heard about any of the kinds of detainee treatment described in the survey.

Several FBI agents said they observed detainees deprived of clothing. Other frequently reported techniques identified by FBI agents as used by military personnel in Iraq included sleep deprivation or interruption, loud music and bright lights, isolation of detainees, and hooding or blindfolding during interrogations. FBI employees also reported the use of stress positions, prolonged shackling, and forced exercise in Iraq. In addition, several FBI agents told the OIG that they became aware of unregistered "ghost detainees" at Abu Ghraib whose presence was not reflected in official DOD records.

Although several FBI agents had been deployed to the Abu Ghraib prison in Iraq, they told us

that they did not witness the extreme conduct that occurred at that facility in late 2003 and that was publicly reported in April 2004. The FBI agents explained that they typically worked outside of the main prison building where the abuses occurred, and they did not have access to the facility at night when much of the abuse took place.

In Afghanistan, most of the FBI employees we contacted reported that they never observed or heard about any potentially abusive treatment of detainees. Overall, most of the 172 FBI agents who responded to our survey and who served in Afghanistan between late 2001 and the end of 2004, stated that they neither observed nor heard about any of the kinds of detainee treatment described in the survey. We received similar reports during our interviews with agents who had served in Afghanistan. A few FBI agents sent to Afghanistan reported that they observed or heard about various rough or aggressive treatment of detainees by military interrogators, including harsh or prolonged use of shackles or restraints, coercive use of stress positions, deprivation of clothing, and sleep deprivation by means of frequent awakenings, loud music, or lights.

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 experienced disputes with the DOD, which used more aggressive interrogation techniques. These disputes placed FBI agents in difficult situations in the military zones. However, apart from raising concerns about the DOD's techniques, the FBI had little leverage to change DOD policy.

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.

Nevertheless, 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 sum, 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 generally avoiding participation in detainee abuse.

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

Testimony

United States Senate Committee on the Judiciary

--Hearing Suspended Because Of Objection On Senate Floor--

Coercive Interrogation Techniques: Do They Work, Are They Reliable, and What Did the FBI Know About Them?

June 10, 2008

Valerie Caproni

Statement of
Valerie E. Caproni
General Counsel
Federal Bureau of Investigation
Before the Committee on the Judiciary
United States Senate
Hearing on
"Coercive Interrogation Techniques:
Do They Work, Are They Reliable,
and What Did the FBI Know About Them?"

June 10, 2008

Good morning Madame Chairwoman, Ranking Member Specter, and Members of the Committee. It is my pleasure to appear before you today to discuss with the Committee the Inspector General's report - "A Review of the FBI's involvement in and Observations of Detainee Interrogations in Guantanamo Bay, Afghanistan, and Iraq." The FBI is pleased that the Office of the Inspector General (IG) credited the FBI for its "...conduct and professionalism in the military zones of Guantanamo Bay, Afghanistan, and Iraq."

The primary mission of the FBI is to lead law enforcement and domestic intelligence efforts to protect the United States and its interests from terrorism. FBI intelligence derived from Iraq, Afghanistan and Guantanamo Bay has led to numerous investigations to identify and disrupt terrorist threats in the United States and has provided important intelligence in ongoing investigations. We were also pleased to see the conclusion of the IG 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." The IG credited the FBI for deciding in 2002 to continue to apply FBI interrogation policies to the detainees in the military zones. The report found that "most FBI agents adhered to the FBI's traditional rapport based interview strategies in the military zones..." The IG also "found no instances in which an FBI agent participated in clear detainee abuse of the kind that some

military interrogators used at Abu Ghraib prison." The IG credited "the good judgment of the agents deployed to the military zones as well as guidance that some FBI supervisors provided."

Consistent with the FBI's long history of success in custodial interrogations, FBI policy is to employ the same non-coercive, rapport-based interview techniques when interviewing detainees encountered in military zones that we employ in every aspect of our mission, whether in the United States or abroad. As the IG's report emphasizes, the FBI chose not to participate with other government agencies in joint interrogations in which techniques not allowed by the FBI in the United States were used. When confronted with the question whether the FBI should join agencies using more aggressive interviewing techniques, FBI Director Mueller decided that the FBI would not do so. As the IG report notes: "...the FBI has consistently stated its belief that the most effective way to obtain accurate information is to use rapport-building techniques in interviews."

The IG found that FBI employees, for the most part, sought to resolve any concern that they had with the interrogation techniques used by other agencies by either reporting them to their supervisors or by working directly with the other agencies.

As the IG report notes, after the Abu Ghraib disclosures, the FBI issued written policy which reaffirmed existing FBI policy and reminded FBI agents that they were prohibited from using coercive or abusive techniques. The policy directed agents that they were not to participate in any treatment or interrogation technique that is in violation of FBI guidelines and that FBI agents were required to report any incident in which a detainee was either abused or mistreated. The policy relied on the education, training and experience of the FBI agents to have a sufficient understanding of the words "abuse" and "mistreatment" and to use the same sound judgment required to make such determinations while executing their duties domestically.

All allegations of detainee mistreatment during the course of interrogations were reviewed by FBI Headquarters and referred to the appropriate agency for investigation.

Conclusion

In short, FBI agents performed admirably in a war-zone environment unfamiliar to many of them. The FBI will continue to use rapport-building techniques when conducting interviews in the military zones. Additionally, as Director Mueller has stated, "The FBI will continue to provide comprehensive training and pre-deployment preparation to our agents and other employees who may be assigned to military zone. These individuals perform a vital function in dangerous environments in order to fulfill the FBI's post-9/11 mission to develop intelligence and prevent terrorist attacks."

I appreciate the opportunity to appear before the Committee, and look forward to your questions. Thank you.

Testimony

United States Senate Committee on the Judiciary

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Coercive Interrogation Techniques: Do They Work, Are They Reliable, and What Did the FBI Know About Them?

June 10, 2008

John Cloonan

“Coercive Interrogation Techniques: Do They Work, Are They Reliable, and What did the FBI Know About Them?”

Opening Comments by John E. Cloonan, Retired FBI Special Agent

June 10, 2008

Senator Leahy and distinguished members of the Committee. Good morning and thank you for the opportunity to testify about coercive interrogation techniques, their effectiveness, the reliability of the information obtained in this way and the FBI's knowledge of these matters. It is my belief, based on a 27 year career as a Special Agent and interviews with hundreds of subjects in custodial settings, including members of al Qaeda, that the use of coercive interrogation techniques is not effective. The alternative approach, sometimes referred to as “rapport building” is more effective, efficient and reliable. Scientists, psychiatrists, psychologists, law enforcement and intelligence agents, all of whom have studied both approaches, have come to the same conclusion The CIA's own training manual advises its agents that heavy-handed techniques can impair a subject's ability to accurately recall information and, at worst, produce apathy and complete withdrawal.

I have personally used the rapport building approach successfully with al Qaeda members and other terrorists who were detained by US authorities. The information elicited led to numerous indictments, successful prosecutions and actionable intelligence which was then disseminated to the CIA and the NSA and others. This approach, which the FBI practices, is effective, lawful and consistent with the principles of due process - And in addition to its intelligence gathering potential, it can do nothing but improve our image in the eyes of the world community.

A skilled interrogator, using elicitation techniques and understanding the end game, will serve the public's safety and our national security. The ultimate outcomes might be gathering evidence to support a prosecution or obtaining actionable intelligence to prevent a terrorist attack. I accept the argument that coercion will obtain a certain kind of information. I do not, however, accept the argument that sleep deprivation, sensory deprivation, head slapping, isolation, temperature extremes, stress positions, water boarding and the like will produce accurate information. An

interrogation using rapport building obtains more reliable information and changes the relationship between the interrogator and the subject. Once a bond is formed between the two, the latter takes the investigator on a journey of discovery and sheds light on the darkest, most closely held secrets of an organization like al Qaeda. US intelligence and law enforcement agents seldom get the chance to interrogate al Qaeda subject matter experts like Khalid Sheikh Mohammed, Ramzi Bin Al-Shib, Jamal Ahmed Al-Fadel, L'houssaine Kertchtou, Ali Abelseoud Mohamed and Ibhk Sheikh Al-Libi and these opportunities are too precious to waste. I am convinced by my experience that the rapport building approach is the way to go in these circumstances.

As the conversion from antagonist to ally takes hold within the process and the recalcitrant subject begins to cooperate, the interrogator assumes the role of caretaker. He or she can then shape the conversation, listen intently for inconsistencies and finally save untold man hours (or woman) chasing after false leads. Critics of rapport building often say that the enemy we face today (the radical Islamist who is ready and willing to die for Allah) requires a more aggressive approach. They frame the debate by injecting the “ticking bomb” scenario. They suggest that there is no time to break bread with these killers. In fact, there are those who believe that the 9/11 attacks occurred because we treated terrorism as a law enforcement issue. This was not the case. In the months before the attacks, the “chatter” suggested that “something big” was imminent, but neither the law enforcement or intelligence community has an agent who knew what al Qaeda intended to do on that fateful day. The rapport building approach used on an al Qaeda might have helped to address this frightening and dangerous reality.

I participated in many interviews with suspected al Qaeda members where actionable, reliable information was obtained. It was used in the successful prosecutions of al Qaeda operatives who murdered American citizens. The image of former al Qaeda operatives testifying under oath in District Court and repudiating Bin Laden and al Qaeda and its ideology of hate sent a powerful message to citizens of America and the world. Showcasing that message had an immediate impact. It highlighted the fact that Bin Laden and al Qaeda are vulnerable and it effectively answered those who believe in his omnipotence, America’s weakness and the hypocrisy of her leaders.

Bin Laden and his advisors often refer to US intelligence and law enforcement agents as “blood” people. They mean simply this: we, according to Bin Laden, use torture to extract information. Bin Laden has theorized that the most loyal al Qaeda sympathizer will break within 72 hours and give up operational information. Therefore, he has kept operational details about impending attacks strictly compartmentalized. In other words, those in the know or with a need to know were limited to a few trusted followers. My experiences and those of my former FBI colleagues would certainly support this conclusion.

The majority of jihadists detained post 9/11 were clueless when it came to al Qaeda’s operational plans, and I don’t believe many of the detainees posed a direct threat to the US or were confidants of Bin Laden or Ayman Zawahiri. A heavy-handed approach with these detainees was unlikely to generate any useful intelligence, and it served to validate Bin Laden’s take on American and our intelligence gathering propensities.

Of course, obtaining reliable information from jihadist foot soldiers in Afghanistan and Iraq is

vital to protect our troops, who are in harm's way. But even on the battlefield and under exigent circumstances, rapport building is more effective in gaining information for force protection in my opinion. Enhanced and coercive interrogation techniques are ineffective even under extreme circumstances. I've spoken to a number of FBI agent's who were seconded to Gitmo as interrogator's. In confidence, they told me the vast majority of detainees questioned under these stressful conditions were of little or no value as sources of useful intelligence.

Information is power, and the lack of reliable human intelligence assets, who are capable of telling us what al Qaeda is up to, is the greatest challenge facing US law enforcement and intelligence communities faces. Technological assets, like signals intelligence, targeted wire-tapping and computer exploitation have pre-empted some terrorist attacks, and we are all grateful for that. I submit, however, that the most effective countermeasure to the threat posed by al Qaeda and like-minded groups is and always will be the apostate who chooses to cooperate, and, if your pardon the expression "spills the beans." Gaining the cooperation of an al Qaeda member is a formidable task, but it is not impossible. I've witnessed al Qaeda members, who pledged "bayat" to Bin Laden, cross the threshold and cooperate with the FBI because they were treated humanely, understood what due process was about and were literally seduced by our legal system, as strange as that might sound.

I am reminded of a conversation I had with an aide to Bin Laden. He told me al Qaeda believes in the "sleeping dog" theory. The Sheik is very patient and the brothers will wait for as long as it takes for the dog to nod off before they attack. I believe we cannot relax our vigilance in the hope that Bin Laden will forget. There are 3 questions I would like this committee to ponder. Has the use of coercive interrogation techniques lessened Al Qaeda's thirst for revenge against the US? Have these methods helped to recruit a new generation of jihadist martyrs? Has the use of coercive interrogation produced the reliable information its proponents claim for it? I would suggest that the answers are "no", "yes" and "no". Based on my experience in talking to al Qaeda members, I am persuaded that revenge, in the form of a catastrophic attack on the homeland, is coming, that a new generation of jihadist martyrs, motivated in part by the images from Abu Ghraib, is, as we speak, planning to kill American and that nothing gleaned from the use of coercive interrogation techniques will be of any significant use in the forestalling this calamitous eventuality.

Torture degrades our image abroad and complicates our working relationships with foreign law enforcement and intelligence agencies. If I were the director of marketing for al Qaeda and intent on replenishing the ranks of jihadists. I know what my first piece of marketing collateral would be. It would be a blast e-mail with an attachment. The attachment would contain a picture of Private England (sp) pointing at the stacked, naked bodies of the detainees at Abu Ghraib. The picture screams out for revenge and the day of reckoning will come. The consequences of coercive intelligence gathering will not evaporate with time.

I am hopeful that this committee will use its oversight responsibility judiciously and try to move the debate in the direction of the prohibition of coercive interrogation techniques. This debate is a crucial one, and I know each member of the committee understands that. The decisions you make will have a far-reaching impact on our national security.

Proponents of the “ticking bomb” scenario seek to forestall discussions on interrogation techniques by ratcheting up the intensity of the debate to “panic mode”. There simply is no time to talk with a terrorist who might have information about an impending attack. Lives are at stake, and the clock is ticking, so it just makes sense to do whatever it takes to get the information. Experienced interrogators do not buy this scenario. They know that a committed terrorist caught in this conundrum will seek to throw his interrogator off the track or use it to his propaganda advantage. “ Go ahead and kill me, God is great.” Neither the “ticking bomb” scenario nor the idea of a torture warrant makes sense to me.

To the best of my recollection, the first time I learned that coercive interrogation techniques were being used on detainees was in November, 2001 at Bagram Air Base in Afghanistan. One case I'm personally aware of involved Ibh Sheikh Al-Libi, the emir of an al-Qaeda training camp in Afghanistan. The FBI agents on the scene were prepared to accord Al-Libi the due process rights he might expect as an American citizen. The agents concluded after questioning that he would be a high value and cooperative source of information as well as a potential witness in the trials of Richard Reid and Zacharias Massouai (sic). Before the agents could proceed, a robust debate ensued between the FBI and the CIA. The CIA prevailed, and Al-Libi was rendered to parts unknown, possibly Egypt. I don't know the exact nature of the information his interrogation produced, but it is common knowledge that he has since recanted all that he said. I feel that a very significant opportunity to utilize the rapport building approach was missed.

Without compromising delicate investigations, I can tell you that the FBI has amassed a considerable amount of reliable information on al Qaeda using rapport building. I won't attempt a full recounting in the interest of brevity, but here are a few salient examples. I personally learned that al Qaeda tried unsuccessfully to obtain fissionable material in 1993 and that they experimented with chemical and biological agents. I also became aware of how they selected targets and conducted surveillance on them. I learned of their intention to use airplanes as weapons before this became a deadly reality. These interrogations also yielded information about al Qaeda's finances, recruiting methods, the location of camps, the links between al-Qaeda and Hezbollah, Bin Laden's security detail and the identities of other al-Qaeda members who were subsequently indicted in absentia and remain on the FBI's most wanted list. I am convinced of the efficacy of rapport building interrogation techniques by these and other experiences. Ladies and gentlemen of the committee, let me say that my heart tells me that torture and all forms of excessive coercion are inhumane and un-American, and my experience tells me that they just don't work.

With that, I conclude my comments and welcome your questions.

Testimony

United States Senate Committee on the Judiciary

--Hearing Suspended Because Of Objection On Senate Floor--

Coercive Interrogation Techniques: Do They Work, Are They Reliable, and What Did the FBI Know About Them?

June 10, 2008

Philippe Sands

INTRODUCTORY STATEMENT of

PHILIPPE SANDS QC

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UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

Hearing on: Coercive Interrogation Techniques: Do They Work,
Are they Reliable, And What Did the FBI Know About Them

JUNE 10, 2008, 10 a.m.

Chairman, Honourable Members of the Committee, it is my privilege and honour to appear before this Committee. As Professor of Law at the University of London, and as a practising member of the English Bar, it may be said that I appear before you as something of an outsider. I hope you will bear in mind that I am from a country that is friend and ally, that shares this country's abiding respect for the rule of law, and that has had its own long, painful experiences dealing with the real threat of terror. I have come to know America well over more than two decades, since I was a visiting scholar at Harvard Law School, then teaching at Boston College Law School and New York University Law School. I am married to an American. I am proud of the fact that my three children share American and British nationality.

A few weeks ago I published an article in Vanity Fair, The Green Light (attached) and my new book Torture Team: the Rumsfeld Memo and the Betrayal of American Values. These tell an unhappy story: the circumstances in which the US military was allowed to abandon President Lincoln's famous disposition of 1863, that "military necessity does not admit of cruelty". This Committee will be familiar with those events: it was a focus of the judicial confirmation hearings for William J Haynes II in July 2006. You will recall that on December 2nd, 2002, on the recommendation of Mr Haynes, Secretary Rumsfeld authorised the use of new, aggressive

techniques of interrogation on Guantanamo Detainee 063. It is now a famous memo, the one in which he wrote: "I stand for 8-10 hours a day. Why is standing limited to 4 hours?"

My book tells the story of that memo. The circumstances in which it came to be written, relied on and rescinded, and how the techniques migrated. It is a snapshot of the subject of this hearing. To write the book I journeyed around America, meeting with many of the people who were directly involved. I met a great number, and was treated with a respect and hospitality for which I remain very grateful. Over hundreds of hours I conversed or debated with, amongst others, the combatant commander and his lawyer at Guantanamo (Major General Dunlavey and Lieutenant Colonel Beaver); the Commander of US Southern Command (General Hill); the Chairman of the Joint Chiefs of Staff (General Myers); the Undersecretary of Defense (Mr Feith); the General Counsel of the Navy (Mr Mora); and the Deputy Assistant Attorney General at DoJ (Mr Yoo). I met twice with Mr Haynes who, along with the Vice President's Counsel, Mr Addington, took a central role on the key decisions. I also met twice with Spike Bowman, an FBI Deputy General Counsel who received complaints from Guantanamo and took them to the DoD. From these and many other exchanges I pieced together what I believe to be a truer account than that which has been presented by the Administration. In particular, I learnt that in the case on which I focused – a snapshot – the aggressive techniques of interrogation selected for use on Detainee 063 came from the top down, not from the bottom up; that they did not produce reliable information, or indeed any meaningful intelligence; and that they were opposed by the FBI.

My account is that of the Report recently published by the Inspector General at the DOJ, although I go further on some points of detail. I learnt that the concerns of FBI personnel at Guantanamo were communicated directly to Mr Haynes' office, in telephone conversations in November and December 2002 between Mr Bowman and, first, Mr Bob Dietz; second, Mr Dan Dell'Orto (who was then Mr Haynes' Deputy and is now his Acting successor); and third, Mr Haynes himself. Mr Bowman told me it was "a very short conversation, he did not want to talk about it all, he just stiff-armed me". You can find a full account at pages 136-146 of the British edition of my book (pp. 112-121 of the US edition, attached). My conclusion, taking into account my conversations with Mr Haynes, is that he was able to adopt that approach because by then – contrary to the impression he sought to create when he appeared before this Committee – he had knowledge of the contents of the DOJ legal memos written by Jay Bybee and John Yoo on 1 August 2002.

On the basis of these conversations I believe that the Administration has spun a false narrative. It claims that the impetus for the new interrogation techniques came from the bottom-up. That is not true: the abuse was a result of pressures driven from the highest levels of government. It claims the so-called Torture Memo of 1 August 2002 had no connection with policies adopted by the Administration: that too is false, as the memo provided cover for Mr Haynes. It claims that in its actions it simply followed the law. To the contrary, the Administration consciously sought legal advice to set aside international constraints on detainee interrogations, without apparently turning its mind to the consequences of its actions. In this regard, the position adopted by the Pentagon's head of policy at the time, Mr Feith, appears most striking.

As result, Common Article 3 of the Geneva Conventions was violated, along with provisions of the 1984 Convention prohibiting Torture. The spectre of war crimes was raised by US Supreme

Court Justice Anthony Kennedy, in the 2006 judgment in *Hamdan v Rumsfeld*. That judgment corrected the illegality of President Bush's determination that none of the detainees at Guantanamo had any rights under Geneva.

Chairman, Honourable Members of the Committee, this is an unhappy story. It points to the early and direct involvement of those at the highest levels of government, often through their lawyers. When he appeared before this Committee in July 2006, Mr Haynes did not share with you that his involvement (and that of Secretary Rumsfeld) began well before that stated in the official version. He did not tell you that in September 2002 he had visited Guantanamo, together with Mr Gonzales and Mr Addington, and discussed interrogations. This is a story not only of abuse and crime opposed by the FBI, but also of cover-up.

Chairman, for what purpose was this done? The Administration claims that coercive interrogation of Detainee 063 produced meaningful information. That is not what I was told by those I interviewed. The coercive interrogations were illegal, did not work, have undermined moral authority, have migrated, have served as a recruiting tool for those who seek to do harm to the US, and have made it more difficult for allies to transfer detainees and cooperate in other ways. They have resulted in the very opposite of what was intended, contributing to an extension of the conflict and endangering the national security they were meant to protect. On May 14 last the Pentagon announced charges against Detainee 063 were dropped. He is, apparently, unprosecutable.

These unhappy consequences mirror Britain's experience in using similar techniques against the IRA in the early 1970's, widely believed to have extended the conflict. The five techniques were soon abandoned, but not before great damage was done. They have never been picked up again. Across the political spectrum in Britain there exists a unanimous belief that such techniques are wrong and can never be justified. Coercive interrogation, aggression and torture must never be institutionalised: once the door is open it is difficult to close. That is why, with the greatest respect, we have turned our back firmly against the institutionalisation of coercive interrogation that appears to have been recommended by Professor Heymann in his 2004 Report. It is why we are so strongly opposed to the related idea of torture warrants, as floated by Professor Dershowitz, an idea which, as I describe in my book, directly undermined the efforts of those who opposed the abuse at Guantanamo.

In conclusion, I can put it no better than George Kennan, the great American diplomat. In 1947 he wrote a telex that issued this warning in relation to a perceived Soviet threat: "[W]e must have courage and self-confidence to cling to our own methods and conceptions of human society. [T]he greatest danger that can befall us ... is that we shall allow ourselves to become like those with whom we are coping." Chairman, Honourable Members of the Committee, no country has done more to promote the international rule of law than the United States. Uncovering the truth is a first step in restoring this country's necessary leadership role; in undoing the damage caused; and in providing a secure, sustainable and effective basis for responding to what is a real threat of terrorism.

I thank you for allowing me the opportunity to make this introductory statement.

ATTACHMENTS

[1] THE GREEN LIGHT, by Philippe Sands
VANITY FAIR, MAY 2008

[2] TORTURE TEAM: RUMSFELD'S MEMO AND THE
BETRAYAL OF AMERICAN VALUES [2008, PALGRAVE MACMILLAN]
Frontispiece and pages 112-121

Testimony

United States Senate Committee on the Judiciary

--Hearing Suspended Because Of Objection On Senate Floor--

Coercive Interrogation Techniques: Do They Work, Are They Reliable, and What Did the FBI Know About Them?

June 10, 2008

Philip Heymann

Testimony for the Senate Judiciary Committee
June 10, 2008

“Coercive Interrogation Techniques:
Do They Work, Are They Reliable, and What Did the FBI Know About Them?”

Testimony of Professor Philip B. Heymann*

Madam Chairwoman, Members of the Committee:

I think I can be most helpful today by addressing, as precisely as I can, the six questions that have most concerned this committee. Raised by the discovery that we have been engaged in interrogation practices that we have long condemned, the questions are about what should be permissible and what is wise in the way of interrogation practices.

I think it is clarifying to break the questions into two groups: (1) four about interrogation practices that may amount to torture; and (2) two questions about the more likely coercive successors to any such practices -- practices that are not torture but may be illegal as cruel, inhuman, and degrading practices prohibited by the Detainee Treatment Act of 2005. Finally, I will address what legislation is needed.

A. Four Questions About Torture

1. Is the prohibition against torture absolute or does the prohibition depend upon the need for the information and the harms that information may prevent?

The prohibition of torture -- in the Convention Against Torture (“CAT”) and in the statute passed in 1994 by Congress to enforce that convention – is an absolute prohibition of certain, defined conduct, whatever the situation or exigency. The conduct is defined in the Convention Against Torture to forbid “any act by which severe pain or suffering ... is intentionally inflicted on a person”. Article 2 of the convention then says “no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political stability, or any other public

emergency may be invoked as a justification of torture." Adhering to the convention, the Senate stated its understanding of what should constitute severe mental, as opposed to physical, pain or suffering prohibited by Article 1 but it stated no objection to the unqualified obligation to avoid torture which Article 2 demanded. This issue does not seem to be contested. In its second periodic report to the Committee Against Torture, our government stated on May 6, 2005 "The United States is unequivocally opposed to the use and practice of torture ... No circumstances ... may be invoked as justification for or defense to committing torture." (As we shall see, there is a strong but contested argument that exigencies and dangers may be considered in assessing what lesser forms of coercion are prohibited by Article 16 and U.S. statutes as "cruel, inhuman, and degrading.").

What constitutes severe physical suffering is the subject of some dispute, at the margins. Any U.S. interpretation that departed very sharply from the understanding of our closest allies would be equivalent to our renouncing the treaty as far as they were concerned. An interpretation that concluded that waterboarding is not intended to inflict the severe physical suffering on which it relies as an interrogation technique would be outside the limits of plausible interpretation.

2. Should the United States renounce its obligations under several international conventions in order to be able to defend ourselves by torture in extreme circumstances?

The short answer is "no". The reason is that the case for torture being an advantageous, much less critical, way of getting information from a suspect is unproven and weak, while the costs of reserving a right to engage in torture are real, demonstrated, and large. And so would be the costs of withdrawing from the convention against torture and other international conventions prohibiting it.

Let me very quickly detail some of the costs of preserving a "right" to torture, even in extreme emergencies. It is easiest to list them in terms of some of the groups that would pay the price.

- Those against whom torture is used who are, or turn out to be, innocent of any terrorist activity.
- Our military and civilians whose safety is at risk of reciprocal behavior by other countries.
- All of us who need the cooperation of foreign allies who have frequently decided to withhold cooperation in handling suspects because of fear of our use of torture.
- Anyone threatened by the creation of new pools of potential terrorists recruited by their sense of injustice such as followed the release of the photos from Abu Ghraib.
- The interrogators asked to participate in torture and the organizations charged with employing torture in the face of public rejection of that technique.
- Those whose political support any President needs in times of national danger and whose pride in their nation and support of its policies depend on their beliefs in the traditional decency of American practices.

- The citizens of undemocratic states whose subjection to torture has previously been lessened by their governments' fear of western reaction -- a reaction which is made impossible if we accept the same practices when the government considers them necessary.

None of these groups are affiliated with terrorism. Each of them would pay a heavy price for abandoning out commitment to avoid torture.

These costs could only be justified by quite certain and substantial benefits from withdrawing from our various obligations under international conventions to avoid torture or, alternatively, from ignoring our obligations either publicly or secretly. The benefits of keeping torture available as a tool of foreign policy or war for use in dire circumstances are, instead, rare, uncertain, and undocumented. There are, of course, undocumented claims of valuable information obtained by torture, but there is no record of how frequently we have been misled by the tortured suspects, nor has there been any effort to show that the information could not have been obtained in other ways. Supporters of torture in dire circumstances refer to the possibility of a ticking bomb situation where they allege that only the speed of torture would help. Opponents of torture point out that we have never had an occasion where the ticking bomb applies and that the likelihood that torture would be useful on that occasion is small. Let me briefly review the arguments in terms of the menu of information-gathering techniques.

Information-gathering about terrorist threats begins with a tip from an observer or a general suspicion about an organization that may be planning attacks or about a particular plan. By far the most important, as well as the first, decision our intelligence agencies have to make is whether to gather information about the organization or plan by covert techniques or to rely on overt techniques whose cost is to allow the members of the organization to know that they are being investigated. The British have relied primarily on covert techniques with notable success.

The covert techniques we can use to gather information without tipping off the organization include human surveillance, technologically enhanced physical surveillance, various forms of electronic surveillance, secret agents and informants, undercover offers, secret intelligence searches, and review of records with or without computerized data mining. These techniques have two vast advantages: they produce reliable and accurate information because the suspects do not know that information is being gathered about them; and they produce information in real-time, allowing us to act at once, not only after several hours or days of interrogation during which the terrorist group knows to hide its operation and to change its plans. In contrast, overt techniques such as interrogation allow the terrorist group to know, rather promptly, that one of its members has been captured and is being interrogated. Using that information, the group will take steps to retreat to backup plans as substitutes for whatever plan was under way and to make it more difficult for us to disable the other members of the organization.

Even in the cases where we should be paying the high price of alerting the group by moving quickly to detention and interrogation of a suspect, the benefits of torture or other forms of highly coercive interrogation are widely disputed. Coercion is likely to elicit a statement, but frequently one that is false. Any accurate information furnished can therefore only be detected by time-consuming verification. It was this disadvantage of unreliability that first caused our Supreme Court to forbid the use of coerced confessions. The problem is most severe when

dealing with a carefully planned operation; for the plan is likely to include a cover story that is hard to unravel in any short period of time. The information furnished is likely to be narrow as well as unreliable. A tortured suspect is unlikely to reveal matters about which we did not know to ask; nothing will be volunteered. In sum, as the new Army Field Manual of September, 2006, states, torture "is a poor technique that yields unreliable results, may damage subsequent collection efforts, and can induce the source to say what he thinks the HUMINT collector wants to hear." (at 5-21)

Unreliability and narrowness of torture-induced statements have led highly trained questioners to turn to any of a number of alternative techniques. The FBI has had notable success in investigating the embassy bombings in 1998 by developing a mutually supportive relationship between the suspect and the agent. As Inspector General Fine's report documents, this is plainly the preferred practice of the FBI. A similar technique was embraced by Hanns Scharff, the very successful Luftwaffe interrogator of allied pilots in World War II (*The Interrogator*, by Raymond Toliver). Some of our allies have used deception about the privacy of induced conversations while an individual is detained; or they have gathered enough information to make the suspect believe that he is simply confirming what is already known, leaving him with little reason to bear the dangers and costs of silence. A number of interrogators consider it to be crucial to create resentment or suspicion of his former colleagues, believing that loyalty is the major barrier to cooperation. Prosecutors rely for intelligence primarily upon offers of reduced periods of detention. In forbidding coercion, the U.S. Supreme Court recognized that coercive interrogation was a tempting shortcut replacing more reliable and sophisticated ways of investigating.

Pressed with this argument, the supporters of maintaining a willingness to use torture turned quickly to the example of the ticking bomb placed in a major population center. They point out that many of the interrogation techniques listed above require more time than torture requires. Even in this case the benefits of torture are greatly exaggerated. We often have the wrong person. We may have the right person but the information he has may be inadequate to prevent the event. He may deceive us in a costly way or delay us long enough for the other conspirators to make alternative plans. Even under the pressure of torture, he may fall back to a cover story that was chosen to be not only false but also difficult to disprove.

Perhaps most important, since 9/11, we have not had a ticking bomb case – a case where we can identify a guilty suspect who we firmly believe has information that is urgently needed to save lives and where we have no other covert or overt way of obtaining that information in time. Abandoning the international obligations we have solemnly accepted at the costs I have described seems a very bad trade to preserve the mere possibility of using torture in a situation unlikely to ever arise.

3. What should a President do if he finds he is really facing a ticking bomb situation where the conditions I have just described are met?

He has three alternatives. He can, somewhat like Lincoln at the time of the Civil War, announce that he is going to disobey a law that prevents him from taking the steps essential to save many lives in an emergency; and that it is not possible to go to Congress to change the law in time to avoid a disaster. Alternatively, he can obey the torture statute and our treaty obligations, but

perhaps at the cost of many lives. Citizens will differ on their preferences between the first and the second. I would prefer the first as long as the President's actions are transparent and he accepts the political, if not legal, risks of violating the law in a situation that is unexpected and is highly unlikely to occur. The third option – to act secretly on the basis of classified, implausible legal opinions – is surely the worst because it invites a broad spread of unaccountable mistreatment and invites widespread fears of what is suspected but cannot be known.

4. Do the President's options depend on whether we are at war in a way that triggers the President's commander-in-chief powers?

No. The heart of the issue has nothing in particular to do with war or terrorism. The question is what we want the President to do in the face of unanticipated emergencies. Most nations grant their chief executive extraordinary powers to deal with grave emergencies. Our constitution does not have emergency powers, but that does not avoid the problem. The emergency may be the flooding of New Orleans, the sudden arrival of a lethal flu, an earthquake like that China has just experienced, or any of a number of events that the Congress can hardly have anticipated in limiting the powers the President is authorized to execute. In each of these situations, which have nothing to do with armed conflict, the President also has to decide whether to exceed his authority in order to save lives. The decision is the same.

B. Two Questions About Highly Coercive Interrogation Short of Torture

The following questions arise legally under the prohibition of cruel, inhuman, and degrading treatment found in Article 16 of the Conventions Against Torture (CAT) and made applicable to all American interrogators by the Detainee Treatment Act of 2005 (as well as Common Article 3 of the Geneva Conventions).

5. Is the prohibition of cruel, inhuman, and degrading treatment absolute or does our reservation make relevant the harms the interrogation may prevent?

The prohibition of cruel, inhuman, and degrading treatment found in Article 16 of the Convention Against Torture (CAT) was accepted by the Senate only with the reservation that, to qualify, any such treatment would have to violate the 5th, 8th, or 14th amendment to the Constitution of the United States. The Detainee Act now prohibits any interrogation that violates Article 16 as interpreted with our reservation. It is supported by the President's executive order interpreting Common Article 3 of the Geneva Conventions. Although it is not clear that other nations interpret the scope of this prohibition as variable with the danger and depending upon the importance of the information to save lives, there are certainly arguments to that effect for the United States.

The provision of the 5th, 8th, or 14th amendments that seems most applicable to interrogation with the object of gathering intelligence (and not producing any usable confession) is the "due process" prohibition of investigative activities that "shock the conscience" under the 5th and 14th amendments. That provision was most recently construed by the Supreme Court in *Chavez v. Martinez* 538 U.S. 760 (2003). In deciding whether damages should be paid to an individual who was interrogated while in great pain, having been shot by a police officer, the court split a

number of ways. Still, much in the opinion suggests that it may not shock the conscience to continue interrogation in such circumstances if the police have "legitimate reasons, borne of exigency ... [such as] locating the victim of a kidnapping, ascertaining the whereabouts of a dangerous assailant or accomplice, or determining whether there is a rogue police officer" (Kennedy, J.) There is also no provision forbidding exceptions applicable to Article 16 of CAT – no provision analogous to the prohibition in Article 2 of any emergency exceptions to the prohibition of torture. Finally, the very broad word "degrading" is perfectly sensible in dealing with interrogations in familiar circumstances but is so inclusive that it suggests that many people would expect exceptions to be made if lives were at stake.

6. How does the 1994 statutory prohibition of torture relate to the 2005 statutory prohibition of cruel, inhuman, and degrading treatment?

If questions arise as to the propriety of a form of interrogation, the first question to be asked is whether it is torture. If it is, it is absolutely forbidden, without any legal exception. Many believe waterboarding fits in this category.

If the administration argues that something it proposes is not the intentional infliction of severe physical pain or suffering (i.e., "torture"), it will still have to satisfy the Congress that the interrogation technique is not "cruel, inhuman, or degrading" under the Detainee Act of 2005. Because these words are very broad and quite vague -- and might well encompass most of the contested techniques that were used frequently in Guantanamo, Abu Ghraib, or Baghram as described by I.G. Fine – it was wise for the Congress to require in §6(c)3 of the Military Commanders Act that:

The President shall take actions to ensure compliance [with the prohibition of cruel, inhuman, and degrading treatment], including through the establishment of administrative rules and procedures.

Besides arguing that what was done would not, even in a routine case, be considered cruel, inhuman, or degrading under our reservation to CAT because it did not "shock the conscience", an administration defending the use of techniques that others claim are "degrading" or "cruel" would have available to it an argument from exigency – that, applying the "shock the conscience" test, the Supreme Court would tolerate their use, to save lives under analogous emergency circumstances, for example by a local police department.

Whether such techniques will really help deal with an urgent terrorist danger is also widely disputed. For example, during the early days of battling the IRA, some British officials argued that such methods obtained important information. Frank Steele, a former British intelligence officer, disagreed: "In practical terms, the additional useful information they produced was ... minimal."

C. Should the Congress Attempt to Give More Specific Meaning to the Very Vague Terms "Cruel, Inhuman, and Degrading" or "Shock the Conscience" and, If So, How?

In 2005, Juliette Kayyem (now Massachusetts State Undersecretary for Homeland Security) and

I proposed the following in our book “Protecting Liberty in an Age of Terror”:

The Attorney General shall recommend and the President shall promulgate and provide to the Senate and House Judiciary, Intelligence, and Armed Services Committees, guidelines stating which specific highly coercive interrogation techniques are authorized...these guidelines shall address the duration and repetition of use of a particular technique and the effect of combining several different techniques together. The Attorney General shall brief appropriate committees of both houses of congress upon request, and no less frequently than every six months, as to which highly coercive interrogation techniques are presently being utilized by federal officials or those acting on their behalf.

This is not the only possibility. Let me try to list them all.

1. The Congress itself or the Administration with oversight by Congress could develop a list of:
 - a. Permitted forms of interrogation, or
 - b. Forbidden techniques
2. All or some part of that list could be classified and made available only to appropriate committees of the Congress.
3. Congress could, in addition and more broadly, provide for judicial review, by either a federal district court or the FISA court, of claims by an individual who believes his interrogation violated the due process, “shock the conscience” test.

Under the Military Commissions Act, the Congress adopted the option of directing the President to develop administrative rules and procedures for any form of coercive interrogation that might violate the “shock the conscience” standard it had mandated.

It is hard to overstate the importance of the Congress acting in one of these ways. The debates about coercive interrogation in the days to come are likely to focus on a number of the steps described by I.G. Fine, as observed by FBI agents, including: solitary confinement; hooding, prolonged standing; stress positions, sleep deprivation, and a variety of other things that do not constitute “torture” but have been considered as cruel, inhuman, or degrading by our European allies and many Americans. The FBI, the CIA, and the DOD are presently operating under three quite different sets of limits. (The FBI, like the British in recent decades, applies familiar law enforcement standards.) The Congress should provide guidance on what it considers appropriate, in light of American traditions and pride, in this realm of highly coercive interrogation.

Statutes now require every agency to comply, at a minimum, with the prohibition of interrogation techniques that “shock the conscience”. But this was not to be a personal judgment of the President. Congress and federal courts should have an opportunity to express their judgments on what is consistent with the traditions of America and its closest democratic allies. That is not only required for democratic decision and essential to foreign alliances; it is also the most plausible way to give meaning to the Senate’s and the Supreme Court’s prohibition of what shocks the conscience of the American people.

Congress must give guidance as to what is permissible in the absence of the highly unlikely “ticking bomb”. We have as a nation rejected torture, but we lack definition of what else is forbidden as a general, American practice. That lack is one of the major complaints of the FBI agents described by I.G. Fine. They are right.

Statement

United States Senate Committee on the Judiciary

--Hearing Suspended Because Of Objection On Senate Floor--

Coercive Interrogation Techniques: Do They Work, Are They Reliable, and What Did the FBI Know About Them?

June 10, 2008

The Honorable Patrick Leahy
United States Senator, Vermont

Statement of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On "Coercive Interrogation Techniques: Do They Work, Are They Reliable, and What Did the FBI Know About Them?"
June 10, 2008

I thank Senator Feinstein for chairing this important hearing. For more than six years this administration has made a mess of this nation's policies for dealing with detainees. Their treatment of detainees has been a stain on this country, and our reputation will reflect it for many years to come. The dysfunctional military commission system put on display last week is just one glaring example of those failures. Even 9/11 victims and their families have been ignored in that process, and last week, I wrote to Attorney General Mukasey after hearing reports that the victims' families were excluded from the arraignments of the 9/11 perpetrators. I urged him to ensure that the 9/11 victims are treated with respect and dignity, and are provided adequate access to the proceedings, as they would be if the government had chosen to proceed in our established court system.

The government's use of abusive interrogation practices, which is the subject of today's hearing, is another sad example of the failure of detainee policy. No one, either in the United States or in the international community, will forget the chilling images from Abu Ghraib. We have since heard of similar practices at the Guantanamo Bay Detention facility and at other facilities overseas. Inspector General Glenn Fine's report is perhaps the most thorough narrative yet of the cruel and aggressive interrogation techniques our government employed at Guantanamo Bay. The report raises alarming questions about the behavior of government agencies, including the Department of Defense.

I asked Director Mueller in March when he was before this Committee about the FBI interrogation practices in counterterrorism. He testified that the FBI follows proscriptions against coercive interrogations. The Inspector General's report appears to confirm this, finding that agents at the FBI generally have adhered to FBI policy in their treatment of detainees at Guantanamo Bay, and in Iraq and Afghanistan. Alarming, however, the report also chronicles abuses that FBI agents witnessed.

I am concerned that it took so many years for this Committee to hear about those reports of abuse. I and others on this Committee have been pursuing documents and information about abusive interrogation by our government since before the Abu Ghraib scandal. I asked Director Mueller years ago about what he knew of these techniques. I wish he had been more forthcoming then – it might have assisted the Congress in investigating allegations of abuse sooner.

One of the great tragedies of this issue is that the coercive techniques this administration was so determined to use are in fact not more effective. As we will learn today from our witness panel, rapport-building techniques are the most effective means of obtaining reliable information from radical terrorists, like members of Al Qaeda. The FBI has amassed considerable information from Al Qaeda suspects that has proven to be more accurate and reliable than the information obtained through exclusively coercive techniques.

The FBI's interrogations yielded information about Al Qaeda's finances, recruiting methods, location of training camps, and the identities of many of the operatives we are still hunting today. None of this information required torture or harsh interrogation techniques; in fact, such harsh techniques may have failed to produce such successes. As we all know, when you are in pain, you will say anything to stop that pain, whether it is true or not. The last things an interrogation should yield are false leads, which waste time and resources.

In addition, a cooperative subject is the most valuable way to obtain high value intelligence. The witnesses' written testimony for today's hearing provides vivid examples of this fact. As a former prosecutor, I know first-hand that the most valuable information you can receive from any suspect is through complete and full cooperation. That will only come through non-coercive interrogations, not through abuse.

Too often those who would have us use torture or other harsh interrogation techniques say it cannot be ruled out because in the post 9/11 world, you may need to get information quickly from a suspect to save lives, or even to prevent another catastrophic attack. But as today's witnesses will make clear, this is just not so. Experienced interrogators, like 27-year veteran FBI Special Agent Jack Cloonan will tell us that this "ticking bomb" scenario is a red herring. A committed terrorist will use those situations to his advantage either to provide interrogators false information or simply to act in defiance, hoping to become a martyr. The ticking time bomb scenario is not taken seriously by experienced interrogators, and cannot and should not be used to justify illegal acts or torture.

I am grateful to our witnesses for appearing at today's hearing. I am confident their testimony will increase our knowledge and understanding of these important issues.

Statement

United States Senate Committee on the Judiciary

--Hearing Suspended Because Of Objection On Senate Floor--

Coercive Interrogation Techniques: Do They Work, Are They Reliable, and What Did the FBI Know About Them?

June 10, 2008

The Honorable Russ Feingold
United States Senator, Wisconsin

Statement of U.S. Senator Russ Feingold

Senate Judiciary Committee

Hearing on "Coercive Interrogation Techniques: Do They Work, Are They Reliable, and What Did the FBI Know About Them?"

June 10, 2008

Madam Chairman, thank you for holding this hearing.

I want to start by commending the Justice Department Office of Inspector General for its thorough, thoughtful report documenting FBI observations of and participation in the U.S. government's interrogations of detainees at Guantanamo Bay, in Iraq and in Afghanistan.

And I want to commend the FBI agents who recognized that the kinds of abusive interrogation practices they witnessed other agencies employing were wrong – and just as important, ineffective. It is a testament to the professionalism and the courage of those FBI agents that, even in the months after September 11 and when they were under great pressure to disregard their high standards of behavior, they stood their ground and stuck to the policies that they have long employed to keep Americans safe, and reported what they witnessed to their superiors.

The FBI's leadership also deserves credit for deciding unequivocally in 2002 that FBI agents would not participate in interrogations that used abusive techniques that violated longstanding FBI rules. The FBI's policy has been not to use undue coercion in its interrogations but instead to use "rapport-building" techniques, which the FBI has found are "the most effective way to obtain accurate information," according to the Inspector General.

But this report is not all good news for the FBI. For too long, FBI leadership left agents in the field with no formal guidance on what to do when they witnessed other agencies conducting abusive interrogations. It took more than two years for the FBI to provide its agents with a specific policy on how to work in military zones. And the Inspector General concluded that the FBI still has not provided agents in the field with adequate guidance about when the FBI can interview detainees who have been subjected to more aggressive techniques by other agencies, and when FBI agents must report incidents of abusive interrogations that they witness.

While I understand that the deployment of FBI agents to military zones is a relatively recent development, that is not an adequate excuse to leave FBI agents without the training and guidance necessary to help ensure humane treatment and effective questioning of detainees in U.S. custody. The FBI should remedy this situation immediately.

I was also disappointed that senior officials at the FBI and Justice Department who learned what military and CIA interrogators were doing did not – or could not – do more to stop it. What this IG report documents about military, and in some instances CIA, interrogation techniques is no longer surprising. But it remains profoundly disturbing. I have consistently opposed the use of these types of abusive techniques on moral, legal and national security grounds. They do not represent who we are as a nation and they do not make America safer. We need to ensure that all government agencies conduct themselves in accordance with our values and the rule of law.

Fortunately, since 2006, all elements of the Department of Defense have followed the interrogation policies laid out in the Army Field Manual. I have strongly supported proposals to require all government agencies – including the CIA – to do the same. We fought World War II and the battles of the Cold War without resorting to legally sanctioned government torture. We can surely defend America now without sacrificing our principles.

Statement

United States Senate Committee on the Judiciary

--Hearing Suspended Because Of Objection On Senate Floor--

Coercive Interrogation Techniques: Do They Work, Are They Reliable, and What Did the FBI Know About Them?

June 10, 2008

The Honorable Dianne Feinstein
United States Senator, California

“Coercive Interrogation Techniques:
Do They Work, Are They Reliable, and What Did the FBI Know About Them?”
Statement of Senator Dianne Feinstein
June 10, 2008

“For me, this is a very important hearing. I serve on the Intelligence Committee, so I am well-aware of enhanced interrogation techniques. The question before us is a very difficult and important subject: Coercive interrogations and torture.

Historically, the United States has been steadfast in its resolve that torture is unnecessary, unreliable, and un-American. Without torture, we succeeded in conflicts that threatened the very existence of our country, including a Civil War, a World War, and numerous other conflicts and enemies.

Despite President Bush’s promise that the United States would fight the war on terror consistent with American values and ‘in the finest traditions of valor,’ the Administration decided, as the Vice President said in 2001, to ‘go to the dark side’ – to use coercive interrogation.

This decision by the Bush Administration has had profound effects.

Cruel, inhuman, and degrading treatment of prisoners under American control violates our Nation’s laws and values. It damages America’s reputation in the world and serves as a recruitment tool for our enemies. Perhaps most importantly, it has also limited our ability to obtain reliable and usable intelligence to help combat the war on terror, prevent additional threats, and bring to justice those who have sought to harm our country.

I have listened to the experts, such as FBI Director Mueller, DIA Director General Maples, and General David Petraeus. All insist that even with hardened terrorists, you get more and better intelligence without resorting to coercive interrogations and torture.

The bottom line is that there are many interrogation techniques that work, even against al Qaeda, without resorting to torture. One of today’s witnesses, former FBI Special Agent Jack Cloonan,

has personally interrogated members of al Qaeda within the confines of the Geneva Conventions and obtained valuable, reliable, and useable intelligence.

Mr. Cloonan was involved in the interrogation of Ibn al-Sheik al-Libi, the first high-profile al Qaeda member captured after September 11th, and Ali Abdul Saud Mohammed, one of Osama Bin Laden's trainers. In both cases, the FBI used non-coercive interrogations to obtain valuable information about al Qaeda. I look forward to Mr. Cloonan's testimony about how the non-coercive interrogation techniques used by the FBI work to provide reliable and useable intelligence.

The FBI has long recognized the unreliability of information obtained from coercion and torture. It has based its belief on years of experience and behavioral science. This hearing will examine how non-coercive interrogation techniques can be used effectively, and why coercive interrogations and torture do not yield reliable and useful intelligence for the most part.

The hearing will also review the recently released Department of Justice Inspector General's report detailing the FBI's knowledge and involvement in the coercive interrogation techniques and torture that occurred in Guantanamo, Afghanistan, and Iraq after September 11, 2001.

Both Senator Specter, our ranking member today, and I have heard the Inspector General report numerous times on the FBI, and let me just say I believe he is a very square shooter and one of our finest Inspector Generals.

To its credit, the FBI was steadfast in its unwillingness to use coercion and torture as a means to obtain information. FBI agents on the ground at Guantanamo and other sites repeatedly voiced concerns about the harsh interrogations being conducted by military and DOD interrogators. In total, over 200 FBI agents raised these concerns. For that, the FBI should be commended.

Questions remain, however, about why FBI leadership wasn't notified more quickly about the agents' concerns at Guantanamo and why formal guidance wasn't provided to FBI agents in the field until May of 2004 – two years after the first complaints were received at FBI Headquarters about coercive interrogations. I hope Mr. Fine and Ms. Caproni, the legal counsel of the FBI, can address those issues.

The FBI should also be credited for raising the alarm to the Department of Defense about what was happening at Guantanamo. We now know that as early as October 2002, FBI agents at Guantanamo alerted Marion Bowman, the FBI's Deputy General Counsel in charge of national security, about coercive interrogations occurring at Guantanamo. On November 27, 2002, an FBI agent at Guantanamo sent a written legal analysis questioning the legality of coercive interrogations and noting that these techniques appeared to violate the U.S. torture statute. In November and December 2002, Mr. Bowman personally contacted officials in the DOD General Counsel's office, including General Counsel Jim Haynes, about the FBI's concerns. According to Mr. Bowman, Haynes claimed he didn't know anything about the coercive interrogation techniques that were occurring at Guantanamo, despite the fact that he recommended on November 27, 2002, that Secretary Rumsfeld formally approve the very techniques that were being used at Guantanamo.

Clearly, there are questions that need to be answered regarding how the interrogation policies at Guantanamo were formulated and authorized. Whether they were from the bottom up, as the Administration has stated, or from the top down, as the evidence is beginning to show. Whose idea was it? Who was consulted? And when complaints were raised about what was happening at Guantanamo, what was done?

Historically, the Bush Administration has argued that the military commanders and JAG lawyers on the ground requested the initial authorization and provided the legal justification to use coercive interrogation techniques against detainees. In June 2006, in testimony before this Committee, then-DOD General Counsel Jim Haynes said that the request to use these harsh interrogation techniques was made by the commanding general at Guantanamo, and that the request 'came with a concurring legal opinion of his Judge Advocate.'

Yet, as time goes by and more facts come out, the Administration's explanation has become increasingly discredited. More and more evidence shows that the decision to use coercive interrogation techniques was made at the highest levels of the Bush Administration.

Just a moment on the timeline:

- On August 1, 2002, the DOJ Office of Legal Counsel completed the so-called Yoo-Bybee memos providing a legal justification for coercive interrogation techniques and torture.
- On September 25 and 26, 2002, DOD General Counsel Haynes, White House Counsel Alberto Gonzalez, and Vice Presidential Counsel David Addington visited Guantanamo and witnessed detainee interrogations.
- On November 23, 2002, Secretary of Defense Rumsfeld verbally authorized harsh interrogations of Mohammed al-Qhatani, a high-value detainee at Guantanamo.
- On November 27, 2002, Haynes recommended that Secretary Rumsfeld formally authorize coercive interrogation techniques at Guantanamo.
- On December 2, 2002, Secretary Rumsfeld approved, in writing, the coercive interrogations at Guantanamo.

Philippe Sands, who is testifying today – and I very much appreciate the fact he has come from London to provide this testimony -- has interviewed many of the Bush Administration officials involved in the authorization to use coercive interrogation techniques at Guantanamo, including former DOD General Counsel Jim Haynes.

He has asked to take the oath, because he wants to be sure that everybody knows he will be telling us the truth as he knows it.

I look forward to hearing what he has learned about how the decision to use coercive interrogations and torture was made in the Bush Administration.

It is absolutely essential that we obtain reliable and useable intelligence to successfully fight the war on terror. I believe it is wrong to use coercive interrogation and torture to try to accomplish that goal. I believe we must stop it, and as a member of the Intelligence Committee I am doing everything I can think of to do just that.

It is also imperative, however, that we examine how complaints about coercive interrogations were handled by the FBI, and how those harsh interrogation techniques were first authorized. I would now, if I might, turn it over to my very distinguished ranking member. I thank you very much for being here.”