

Testimony of

Hon. Glenn Fine

June 10, 2008

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Inspector General, U.S. Department of Justice

before the
Senate Committee on the Judiciary
concerning
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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.