CHINESE INTERROGATION VS. CONGRESSIONAL OVERSIGHT: THE UIGHURS AT GUANTANAMO

HEARING

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL ORGANIZATIONS, HUMAN RIGHTS AND OVERSIGHT

OF THE

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HOUSE OF REPRESENTATIVES

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CHINESE INTERROGATION VS. CONGRESSIONAL OVERSIGHT: THE UIGHURS AT GUANTANAMO

THURSDAY, JULY 16, 2009

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

The subcommittee met, pursuant to notice, at 10:13 a.m. in room 2172, Rayburn House Office Building, Hon. William Delahunt (chairman of the subcommittee) presiding.

Mr. DELAHUNT. This hearing will come to order. First let me welcome the vice chair of the Subcommittee on Oversight, Mr. Carnahan, sitting to my right.

And we are joined by two colleagues, Congressman Jim Moran from Virginia, who serves on the Appropriations Committee and has an interest in this particular issue and is a senior member of that committee. We are also joined by our colleague from the Armed Services Committee who chairs the relevant subcommittee of that particular body, Mr. Abercrombie of Hawaii. Welcome to both of you gentlemen.

And of course I am joined by my good friend from California, the ranking member of this committee, Mr. Rohrabacher. We also want to welcome his new aide, Mr. Manyon, who is pinch hitting for Paul Berkowitz, who will return sometime in August I understand.

This is the third hearing that this committee has held on the plight of the Uighurs both in China and those 22 Uighurs formerly and currently detained at Guantanamo Bay. For those who are unfamiliar, the Uighurs are a Muslim minority that live in northwestern China. For years they have been persecuted and oppressed by the Communist Chinese regime.

It came to the committee's attention that in September 2002, Communist Chinese agents were welcomed to Guantanamo Bay for a period of between 7 and 10 days for the purpose of interrogating the group of 22 Uighurs.

It is important to note that in anticipation of the arrival of the Chinese delegation, the Inspector General of the Department of Justice here in Washington reported that American forces softened up the Uighurs detainees by routinely waking them up at 15 minute intervals the night before.

It is the committee's intention to provide a venue, whether here in Washington or elsewhere, for these men who have fled Com-

munist Chinese persecution to come forward and testify so that our colleagues and the American people can have an opportunity to hear them firsthand without filter and make their own judgments. Until that happens, the committee has been provided with statements through their counsel from three former Uighur detainees who are now currently residing in Albania and Bermuda.

I have reviewed these statements and find them profoundly disturbing, and I believe that the American people will share those sentiments. I ask unanimous consent to enter their testimony into the records of the committee.

[No response.]

Mr. DELAHUNT. Hearing no objection, it is so ordered.

[The information referred to follows:]

BINGHAM

Written Testimony of Former Uighur Detainees
Abu Bakker Qassim, Khalil Mamut and Ablikim Turahun

Before the

HOUSE COMMITTEE ON FOREIGN AFFAIRS
SUBCOMMITTEE ON INTERNATIONAL ORGANIZATIONS, HUMAN RIGHTS, AND OVERSIGHT

Hearing on

Chinese Interrogation vs. Congressional Oversight: The Uighurs at Guantanamo

July 16, 2009

Statement of Client Abu Bakker Qassim[1]

I would like to provide you with a detailed story of how the Chinese Communists went to Guantanamo.

Sometime in October 2002, Chinese security personnel came to Guantanamo. A few months before their arrival, the U.S. military had informed us that the Chinese would come. When we said that the U.S. had promised us to keep our identity confidential and asked how come the Chinese were coming, they responded that everything about us would be kept confidential, Chinese would be there only to have a discussion with their citizens in accordance to the international law, we could choose to speak or not to speak, they would observe the meeting from distance and we should not be worried about it.

Those Uyghurs who were brought to the Chinese before me did not speak a word even after eight to nine hours of Chinese interrogation. The Chinese did not give them food or

[1] Mr. Qassim was imprisoned at Guantanamo Bay beginning in mid-2002. In March 2005, a Combatant Status Review Tribunal determined that Mr. Qassim was not an enemy combatant. The U.S. government nevertheless continued to imprison him for another fourteen months, until May 2006, when he was sent to Albania one day before the U.S. Court of Appeals for the D.C. Circuit was to hear oral argument in his case. *See Qassim v. Bush*, 466 F.3d 1073, 1074 (D.C. Cir. 2006). Mr. Qassim currently resides in Tirana, Albania.

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Hong Kong
London
Los Angeles
New York
Orange County
San Francisco
Santa Monica
Silicon Valley
Tokyo
Washington

Bingham McCutchen LLP

water; they kept the Uyghurs sitting in a cold room for a long time; they used certain tactics and forcefully took pictures of them. After learning this, I decided to openly talk to them because I had a bladder control problem and I could not stand sitting in a cold room for a long period.

They brought me out around evening time and started their interrogation. When I told them my full name and that I was from East Turkestan, two Chinese policemen stood up from their seats and said that there was no such country. I said to them I fully knew an existence of such country though they did not know it well. I further expressed to them how they had been oppressing Uyghurs for the last 60 years. I also told them that I would not go back to China.

They tactically said that they were there to bring me back to China; and they would force me to confess after arriving in Urumqi if I refused to confess about my terrorist activities.

I said that then I would rather talk after they brought me to Urumqi. They started an ideological work. They spoke good Uyghur. There were two Uyghurs and three Chinese.

I spoke up frankly. I told them I applied for a political asylum according to the international law and I would never go back. I stopped the conversation by saying that they could do whatever they want to bring me back.

Those Chinese told some Uyghur detainees that the Americans had asked them to bring us back because they could not afford us due to their declining economy. They also told some other Uyghurs that the Americans were hard to understand and how naïve to allow praying and fasting while fighting terrorism.

When some Uyghur detainees refused to give their names, the Chinese interrogators said that the Americans they trusted had already provided them with their photos, full names and addresses. They also showed the Ugyhurs the materials that were given by Americans.

When we were first interrogated at the Kandahar prison, we told the Americans that we would tell them everything if they would keep our materials confidential. They promised not to give our materials to the Chinese, or to hand us over to Chinese.

After I refused to answer any more questions, the Chinese interrogators failed to proceed further. They brought out their camera to take a picture. I refused to be photographed. One Chinese interrogator went outside and brought in two American soldiers. These two soldiers held me tight and the Chinese forcefully took a picture of me.

I had never thought that American soldiers would work with Chinese and treat us like this. Then I was locked up in a cold dark steel prison cell for five days. I was released to a regular prison cell after the Chinese left. During the five days when I was in the cold dark cell, while thinking about the Chinese's harsh treatments towards us in an U.S. prison, I felt sick with the American soldiers.

After the Chinese had left, during an interrogation, I asked the interrogators why they released all of out materials to the Chinese even though they promised to keep our information confidential; the Chinese could now randomly oppress our family members.

The interrogators did not feel a bit ashamed about it. They apologized by saying that someone in Washington gave our materials to the Chinese.

Since then, I started suspecting my trust with the American soldiers in Guantanamo because of their awful images that belong to a nation claiming to spread democracy around the world. According to what I know, soldiers of a nation represent their nation's reputation. Looking at its soldiers, anyone should be able to make a judgment about a country.

Through an interpreter, I told some soldiers that we were not America's enemies; they were America's enemies instead since they broke the law and oppressed us randomly.

This is one part of the stories regarding the Chinese oppression while they were in Guantanamo. You may contact me if there is anything that is not clear.

Statement of Client Khalil Mamut[2]

I was taken to Cuba in 2002, on 10th June. I stayed in Kilo block cell number 28. In the beginning of the Autumn of 2002, a delegation from China, representing the Chinese Government arrived. It was afternoon when I was informed by one of the MPs that I was to get ready for an appointment. I was later escorted by two military soldiers to the interrogation room. Once I arrived there, two men came in. One was from the American Government, and the other was from the Chinese Communist Government. The American spoke in Chinese, saying I am from the American Government, and we have an agreement with the Chinese Government, therefore we have allowed them to come here to interrogate you. The Uighur man translated the American man's instructions into our language. After the introduction, they departed. Following their departure, two different men arrived. One looked Uighur, and the other Chinese.

Once they arrived, they began their interrogation process, asking where are you from, what is your address. I refused to answer any of their questions, because I was informed by the Americans that I did not have to answer any of their questions, as they have not been provided with any information, and have not seen my file. They abused me by telling me that they would take me by force when I returned to China, and that I would be beaten, and eventually killed. I informed them that I do not wish to go back to China. Then they became angrier, and they attempted to take my picture, I refused to allow them to do this. However, they were eventually able to take some pictures as I was shackled and chained. Then the two men ordered the American soldiers to take me to another room. Once I arrived at this new location, the air conditioning unit was turned on to full blast, and I was left in this room for seven straight hours. The room became extremely cold. In this room I once again had shackles on my feet, with my hand also chained. In the evening I was returned to my cell.

On the second. day two soldiers came and took me back to the interrogation room. When I arrived, there were again two men. One was a Uighur, and the other was Chinese. They once again started to interrogate me, asking for my address, and again I did not answer their questions. They informed me that they will take me back to China by force, and once I arrived I would be tortured, and beaten. If I was to return to China on my own,

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[2] The U.S. military cleared Mr. Mamut for release in 2005. It formally conceded that he was not an enemy combatant in September 2008. The following month, a U.S. District Court Judge found that his imprisonment—like that of every other Uighur man at Guantanamo—was illegal. In re Guantanamo Bay Detainee Litigation, 581 F. Supp. 2d 33 ("Because the Constitution prohibits indefinite detention without just cause, this court rules that the government's continued detention of the petitioners is unlawful."), *overruled on other grounds sub nom Kiyemba v. Obama*, 555 F.3d 1022 (D.C. Cir. 2009), *petition for certiorari filed*, 77 U.S.L.W. 1623 (U.S. Apr. 14, 2009) (currently pending). Mr. Mamut was imprisoned at Guantanamo Bay until June 11, 2009, when he was released to Bermuda.

they would inform the general of my decision, and once I arrived there "I would be allowed to be free." (Really not so.) If I refused to return to China, I would face a military court, which would mean that I would stay in prison for a very long time. I told them that I do not want to go back to China, and I do not want China. After this they called the MPs, and instructed them to tighten the chains and take me to another room. I was taken by the MPs to this other room were I found another Chinese man that I had not seen before. This man began to mentally abuse me by telling me that the uncomfortable position I was in was my punishment. In addition, he turned the air conditioner on to very high, and I remained in this room for 7 hours. I almost collapsed because it was so very cold. My hands and feet were swollen, as a result of the chain being tightened earlier. In the late evening I was returned to my cell.

Statement of Client Ablikim Turahun[3]

I was taken to Cuba on 3 May, 2002. Once I arrived, I was placed in Hotel Block. After a few months, a delegation arrived from the Chinese Government, during the first part of October, 2002. One day in the afternoon, one of the MPs arrived to inform me that I have an appointment right now, and that I should get ready. Two American soldiers arrived to take me to the interrogation room. Once I arrived in the room, two men entered. One was from the American Government, and the other was from the Chinese Government. The American man started to speak in Chinese language, saying I am from the American Government, I have to inform you before hand, that we have a agreement with the Chinese Government to allow the Chinese to interrogate you. The other man from China translated what the American said, into the Uighur language. After a while they departed, and two different men from China arrived. One of them was Uighur, and the other was Chinese. Both men attempted to interrogate me, but I refused to speak to them, as the Americans had informed us prior that we do not have to speak to the Chinese if we didn't want to speak them, as they have not been provided with any information on us. They attempted to take my picture; however, I did not agree to this. They called for American soldiers and ordered them to hold me, so that my picture could be taken. The soldiers grabbed me, pulling my beard, pressing on my throat, twisting my hands behind my back, and as a result my picture was taken by force. The air conditioner in the room was placed on high, making the room very cold. I was left in this room for six hours. As a result of the room being so very cold, I felt somewhat frozen at times. After this six hour period, I was placed in a isolation room that was made of metal, and measured 6' x 8'. There I remained for 20 days in isolation. The room was so very cold, and dark. I was not able to see daylight, or any other person. During the 20 days, it was very difficult to sleep, because I was not given any blankets or sheets by which to cover myself in this isolation room. I spent those days suffering. I requested to speak to the Uighur interpreter so that he could translate to the guard commander. I wanted to speak to the commander asking him why have I been placed here. The commander replied that it was not his decision, but that of the Chinese delegation who instructed that I should be

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[3] Mr. Turahun was the petitioner in the lead Detainee Treatment Action case, *Parhat v. Gates*, No. 06-1397 (D.C. Cir.). At a time when his and every other *habeas* case was stayed, Mr. Turahun moved for summary determination under the DTA that he had not been properly classified as an "enemy combatant" even under the U.S. Department of Defense's ("DoD") overbroad definition of that term. After extensive briefing and oral argument, the D.C. Circuit unanimously held for Mr. Turahun. The court vacated his classification as an "enemy combatant" because it was neither supported by reliable evidence, nor consistent with DoD regulations governing the Combatant Status Review Tribunal ("CSRT") process. *Parhat v. Gates*, 532 F.3d 834 (D.C. Cir. 2008). The Court ordered the government to "release [Turahun], to transfer him, or to expeditiously convene a new CSRT." *Id.* at 851. Although the government subsequently waived its re-CSRT option, and conceded that Mr. Turahun was not an enemy combatant, it imprisoned him for another year, until releasing him to Bermuda on June 11, 2009.

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put in isolation. Following this, the interpreter and guard commander departed. I remained there for the remainder of my 20 days. During this time my ears became blocked, and I was unable to hear. This was as a result of the extreme cold. I demanded to see a doctor, but no one honored my request. However, although I was refused the first time, I continued to ask if I could see a doctor. After two months, I was taken to see a doctor, after which I received medical attention, and there was some recovery of my hearing.

Mr. DELAHUNT. The Chinese delegation interrogated each of the 22 Uighurs. All 22 told consistent stories of intimidation and threats by these Communist agents. They also reported that their files, which included their real names and that of their families back in China, were turned over to the Chinese by American personnel.

Imagine the fear of these men for their families as the Communist Chinese Government routinely targets not only dissidents, but also their family members. We have heard before from Ms. Kadeer, who was nominated three times for a Nobel Peace Prize, who was the target of the Chinese Communist Government, who after she left, her two sons were incarcerated and still are.

To meet our oversight responsibilities, the ranking member and myself requested permission from the Bush Administration to fly to Guantanamo to meet with those very same Uighur men that the Chinese had full, unfettered access to. Our request was denied, and we never received a satisfactory explanation for why our visit was refused.

The Department of Defense, however, provided a statement to Fox News, which I will now read into the record and you can see on the Floor to my right. This was the statement as reported by Fox News:

> "We have permitted many countries from which these detainees are from to visit 1] to see that they are being treated humanely and 2] to help us understand who they are and to provide us with insight and information about the detainees. Foreign nationals are permitted to come in. They help us understand who these people are and what they are involved in, and that includes official delegations from their country of origin.
>
> "But Congressmen, the general public, media are not permitted to question detainees. It can only be done in an official capacity, and no Congressman can interrogate or question detainees because it is not part of their oversight responsibility."

That was the statement that was secured by Fox News.

Well, let me first address the issue of oversight responsibility. I want to be very clear. There was no congressional oversight during the Bush-Cheney Administration. It simply didn't exist. As former Senator Chuck Hagel stated, the Bush-Cheney Administration treated Congress as a constitutional nuisance. Well, that is not going to happen any longer.

I reject any suggestion that the Executive can define what constitutes congressional oversight. It is not the prerogative of the Executive to determine the role of the first branch of government. I am confident that this position is shared by most, if not all, of my colleagues in the House.

Things have changed. This is the new Congress, and we have a new President. And I want to acknowledge that the Department of Defense representative is present. I could speculate that if this was prior to January 20 of this year our invitation to testify would have been simply ignored as it was in the past, so we are glad you are here, Mr. Liotta.

This committee intends to vigorously exercise the oversight responsibility explicitly tasked to it by the House of Representatives not for purposes of confrontation or with intention to embarrass, but to ensure that we do not make the mistakes or repeat them that have been made in the past on any issue and to ensure that a thorough policy review can be made available to our colleagues.

So as I said, I am pleased to welcome Mr. Liotta here today so we can explore the policy of the Department of Defense to permit governments like Communist China to interrogate detainees in United States custody.

I would point out that this issue is particularly prescient in light of the recent events in the Uighur Autonomous Region over the course of the past several weeks. The atrocities now taking place in China are only further evidence of the oppression and persecution of the Uighur people.

As the 2008 Human Rights Report published by our own State Department confirms, the recent events in the Uighur Autonomous Region are not new or novel to the Uighur people. Human rights violations against the Uighurs have been meticulously documented by our own State Department and the Commission on International Religious Freedom, yet the Department of Defense, led by then Secretary of Defense Donald Rumsfeld, welcomed a Communist Chinese delegation to Guantanamo in September 2002 and gave them full access to a minority which they have relentlessly persecuted.

It is our purpose to determine why the Pentagon made this choice because in light of what we know about the Communist Chinese relationship with the Uighurs, their stated explanation makes no sense to me. Can we really believe that the Communist Chinese regime cared if the Uighurs were being treated humanely? I realize this incident occurred in 2002. The question now is, is this policy still in effect? Has it been changed? Is it being reassessed by the Obama Administration?

Let us remember the words of our first President, George Washington, who once wrote that he hoped that America, and these are his words, "might become a safe and agreeable asylum to the virtuous and persecuted part of mankind, to whatever nation they might belong." Well, by allowing the Chinese Communists into our detention facility we became other than something than a safe and agreeable asylum.

Last June, Mr. Rohrabacher and myself sent a letter to the Bush Administration requesting that the Uighurs then at Guantanamo be promptly paroled into the United States. In the near future, I,

and I am sure he will join me, will be sending a similar letter that I hope many of our colleagues will join in to President Obama calling on him and his Administration to parole and resettle at least some of the Uighurs at Guantanamo into the United States.

As was stated at our first hearing by former Deputy Assistant Secretary of State for East Asian and Pacific Affairs who was intimately involved during the Bush Administration with the issues attendant to Guantanamo, and this was Secretary Shriver and these were his words: The situation of the Uighurs can be described as nothing short of tragic, and these men were wrongly imprisoned.

It is now time, I would suggest, to seize this opportunity to fulfill Washington's dream and once again become a safe and agreeable asylum for the virtuous and persecuted part of mankind.

Now let me turn to my friend and ranking member, Mr. Rohrabacher, for any statements he may care to make. Dana?

Mr. ROHRABACHER. Thank you very much, Mr. Chairman. Before we get into this hearing, I think it is important for me personally to note that I am not now, nor have I ever been, opposed to Guantanamo as a holding spot for terrorist suspects during the war with Radical Islam.

I think that it was and is a logical location, and I disagree with the idea that terrorist prisoners especially in a wartime situation, which we face now with Radical Islam having declared war on the United States, having slaughtered thousands of our people, that I find I also disagree with the idea that everyone picked up in that situation deserves the same rights as American citizens do here at home during criminal investigations. So right off the bat let me note that.

Let me also go even further that unlike many, most of my colleagues, I do not even oppose enhanced interrogation of prisoners taken during this war with Radical Islam. If indeed physical force is used against a prisoner that we are certain and it ends up saving the lives of thousands of Americans, I would expect that our protectors use enhanced interrogation, physical force, to save the lives of my family and American families throughout our country.

I know there are others who disagree with this, and I remember we had a hearing and there was a back and forth on this very issue and I suggested to those people who were screaming at me from the audience that I would hope that their families are the ones that would bear the burden of the consequences if that policy is adopted.

I would suggest that each and every one of us has to examine our hearts and say okay, will we really let our mothers and fathers and our children be slaughtered because we will not use physical force on someone like Khalid Sheikh Mohammed, who was the mastermind of 9/11.

So with that preface so that people know that I am not a bleeding heart liberal or anything like that——

Mr. ABERCROMBIE. Mr. Chairman?

Mr. DELAHUNT. Like you have never been accused of that.

Mr. ABERCROMBIE. Mr. Chairman?

Mr. DELAHUNT. Yes, Mr. Abercrombie?

Mr. ABERCROMBIE. I don't think there is any danger of that.

Mr. ROHRABACHER. Well, with that said, let me then get into the subject of today's hearing.

If indeed you hold the positions that I hold, I think it is incumbent upon those of us who believe that those are the standards that we need to operate on during a wartime situation where again thousands of our own private citizens have been slaughtered and we have an enemy that is willing to slaughter even more if they had a chance.

We realize that we have that standard of behavior and relationship to that threat. If you believe in that standard of behavior, it behooves those of us who advocate it to be committed to truth and committed to honesty and to understand when you have a standard like that that you must be so careful about your analyzing what the truth of any situation is that you are willing to admit mistakes and correct them.

In this case what we have is a mistake that our Government made during this war with Radical Islam. We offered what? We offered $5,000 a head for people in Afghanistan to turn in people that were suspicious and then immediately took these Uighurs who were turned in for $5,000 a head who were not captured on the battlefield but instead were living in a village away from the battlefield, people that never participated in combat against the United States, and we took them to Guantanamo.

It was a mistake to begin with to do that and perhaps even a worse mistake that once the interrogations happened and from what we have gleaned from information already is that once interrogations happened even the interrogators realized these were not hard core Radical Islamicists who hate America. We should have admitted the mistake at that moment and corrected it. Somebody was covering up their mistake and their mistake in judgment.

So if we are to succeed, I think we have to have a tough standard, and if we are to be honest and if we are to be a country of integrity we must make sure that we are brutally honest about mistakes that are made within those standards.

So first of all, I would like to express my personal and deep sadness and regret and apologies to the Uighurs who were treated inhumanely and thoughtlessly by our Government in being turned over to Chinese interrogators working for a dictatorship that oppresses their people.

I believe, and I am sure that my chairman believes this as well, that it should be the highest priority of this subcommittee to find out exactly who were the American officials that agreed to this interrogation, and we need perhaps to have an understanding why after the initial interrogations before the Chinese got there that we proceeded to do something like this.

We need to know who the American officials who made these decisions were, and again if we are going to have a high standard that we have or a tough standard while we are fighting this war with Radical Islam we need to make sure that those making the decisions are held accountable for those decisions and insist on a high standard of honesty and truth.

That is why I was one of the few Republicans that voted in favor of having interrogations of prisoners, of all prisoners, to be

videotaped because you then have proof of exactly—you have honesty. You have truth verified.

I don't think we have any apologies of, as I say, using enhanced interrogation and having it videotaped if you have someone who is involved with a conspiracy to murder our people, but we have a lot to apologize about if we are just acting basically like an unruly mob rather than an organized effort of government to protect our citizens.

We have a right to understand because we are not an unruly mob. There are people who make decisions in positions of authority. We need to know who those people were in terms of making this decision that the Uighurs would be interrogated by Communist Chinese intelligence agents.

I can only imagine how the Uighurs felt when American soldiers, people who they had actually looked to with great hope. Their only hope of the Uighurs were that America would stand true to its principles of liberty, we believe that human rights, that people are granted rights, all people are granted rights.

You can only imagine the Uighurs understood this. They know that is what America believes, and then you have American soldiers tasked with the job of holding them down while the Chinese are interrogating them and holding them in place so the Chinese can take pictures of them and extract information about their families.

I want to know who was to blame for that decision, who takes credit for that decision. We do know that the soldiers themselves were following orders, and I would suggest to the Uighur community they should not lose faith in the average American and the Americans who are in uniform who reflect our values as a people.

They were following their orders, but those orders originated from officials in Washington, and I believe those officials should not be holding the job that they hold. They should be held accountable for this important decision.

So that is number one. Let us remember that the decisions of our public officials in regard to the Uighurs has some relationship to the decisions that our Government has been taking about China for the last 30 and 40 years, especially the last 20 years.

China has been since Tiananmen Square a country that has not been evolving into democracy, but has instead been a country that is run by a gang of murderous thugs who have been holding power with actually a more contracting grip on their people and the freedoms of their people for 20 years.

Before Tiananmen Square, opening up relations and trying to have more trade and more interaction with a country like this was all right because they were going in the right direction. They were opening up.

Well, the same officials that made the decision about the Uighurs and permitting Chinese agents, intelligence agents, in to question them are the same type of officials who have been guiding American policy with this vicious dictatorship for the last 20 years, and that policy is coming back now to hurt the American people dramatically both economically, but also throughout the world we see the Chinese Government allying itself with again the other thugs in the world who control their people and do not permit their peo-

ple the freedoms that we believe are inherently rights of all human beings.

So we need to know right now who are responsible for these policies, and we are going to focus specifically on the Uighurs, but I want to make sure everybody knows that does relate to an overall policy with China.

With that said, I look forward to this hearing. I want to thank my chairman for his diligence on this issue, and I am very, very proud to serve as his ranking member.

Mr. DELAHUNT. Thank you, Dana.

I am going to call on Mr. Moran if he cares to make a statement.

Mr. MORAN. Thanks very much, Mr. Chairman. You in your opening remarks mentioned the fact that I am on Defense Appropriations, and in that role the chair of the Defense Appropriations Committee assigned me several years ago actually to take on the issue of Guantanamo, to go down, visit the facility, talk to personnel, come up with a policy recommendation for the committee that is required to fund Guantanamo and to explain to the full committee why it is that we would be providing the money for what purpose.

I did so. On each of the occasions I went to Guantanamo with Pentagon personnel we were denied any access to the prisoners. Basically we were treated to a dog and pony show, although the second time it became far less comfortable for the Guantanamo personnel than the first time as I knew what to expect.

But this revelation that Chinese Communist intelligence agents were granted access to the prisoners after the prisoners had been told by our people that all their personal information would be held confidential is a direct violation of the policy that I was told we would be pursuing, that we would be complying with, but it is also immoral to have done that, knowing the way that the Chinese Communist Government treats dissidents.

When we get into questions I am going to want to know the disposition of the families of these Uighur detainees since we put them in direct jeopardy by releasing personal information of those families.

We know that in the last month about 200 Uighurs have been executed by the Chinese Communist Government, and it seems to me since we were directly involved in putting them into that position of vulnerability that we need to know what the exact status of those families is.

The analogy with Afghanistan is striking to me. In one case, because it was in our interest to help people who were in many cases deeply religious and thus deeply opposed to the Soviet Communist Government, we armed them, gave them training and all the support we could. And here in this case we have been on the other side, the side of Communist dictatorship in assisting them in repressing people who were primarily looking for religious freedom within their country of origin, so I think there are some inconsistencies in policy.

Mr. Chairman, it is entirely appropriate that you have this hearing, and I trust that it is going to lead to a dramatic transformation in the policy that you have exposed, so I thank you, Mr. Chairman, for having the hearing.

Mr. DELAHUNT. Thank you, Mr. Moran.

Congressman Ted Poe of Texas?

Mr. POE. Thank you, Mr. Chairman. I appreciate you holding this hearing.

I too have been to Guantanamo Bay prison. Being a former judge I have seen a lot of prisons and have sent people to prison on frequent occasions. I, like the other members, wanted to interact more with the people that were there, and of course that was forbidden. You could not do that. And then lo and behold, some foreign country, China, who has a horrible record of the way it treats its own people, has access to prisoners that are held in an American prison facility.

Now, that strikes me as very odd why we would let some foreign country come in and interrogate basically our prisoners and give them access to them and let them interrogate them for their own intelligence reasons and not allow even Members of Congress to get close to those prisoners and certainly not ask them any questions.

Like the ranking member, I don't trust the Chinese. I know they are our economic partners and we can't talk bad about them because they own so much of American debt and may even end up controlling our economy, but they treat their people in a very rough manner, and American policy should not allow foreign governments to come into our prisons and interrogate anybody. It is none of their business. After all, they are our prisoners.

I will yield back.

Mr. DELAHUNT. Yes. I thank the gentleman. I want to point out and I would commend to him reviewing the statements that were made by those three former detainees. I think it is important to read that.

You weren't here, Congressman Poe, when I indicated that it is the intention of the committee to provide a venue, whether here in Washington or elsewhere, maybe via video link—I am not sure—where we, Members of Congress, can hear directly without a filter, without commentary these men so that we can make judgments and that the American people can make judgments because much has been said about the Uighurs by those I daresay who are ill informed and who have done a disservice not just to the Uighurs, but to what America stands for.

As I said, it is my belief, and I believe it is shared by Mr. Rohrabacher. These men fled Communist persecution. I daresay if they were Tibetans they would be sitting here in this audience in front of us today. While I disagree with so much with my ranking member, I applaud his courage and his absolute perseverance to ascertain what the truth is because that is what America is about.

It is the responsibility of this committee and other oversight committees in Congress to do what we can working with the respective departments and agencies in the executive branch so that we can ascertain what policies exist and, more importantly, how they are being implemented. I hope that we are turning the page.

With that, let me see if the gentleman from Hawaii wishes to make a statement. He doesn't.

Well, then let us proceed with our first panel, who is by himself, but he is here, which is a step forward. Mr. Alan Liotta is the principal director of detainee affairs for the Department of Defense.

Mr. Liotta, welcome. I am happy that you are here, and please proceed with your testimony.

STATEMENT OF MR. ALAN LIOTTA, PRINCIPAL DIRECTOR, DETAINEE AFFAIRS, DEPARTMENT OF DEFENSE

Mr. LIOTTA. Thank you, and good morning, Mr. Chairman, members of the subcommittee. I appreciate the opportunity to discuss the Department of Defense's detention operations at Guantanamo Bay.

To address the subcommittee's concerns, I would like to speak briefly about the Department's policy of access to detainees at Guantanamo, as well as the issue and challenges of such visits. At the outset, I would like to note that we currently hold fewer than 230 detainees at Guantanamo, less than a third of the total number ever detained there.

With regard to our detention operations at Guantanamo, it is undoubtedly the most transparent military detention center anywhere in the world. Within the Department, we have worked diligently to establish a state-of-the-art facility that provides safe, humane, transparent and legal custody for each detainee.

We have allowed numerous media outlets and human rights groups access to the facilities to observe proceedings and to participate in camp tours. We have also brought senior foreign officials to Guantanamo to better understand detention operations.

These visits continue, and we facilitate as much access as logistically possible to the media and these other groups to ensure transparency and accountability in our operations. Over the past 7 years we have brought 52 U.S. Senators, 168 Representatives and 300 staff members to Guantanamo on official congressional delegations.

Mr. DELAHUNT. Mr. Liotta, let me, and I respectfully want to—I don't mean to interrupt you, but I want to ask you if those 52 Senators, those Members of the House and those staffers ever were allowed to interview any of the detainees at the facility?

Mr. LIOTTA. They were not, Mr. Chairman, for reasons which I will explain.

Mr. DELAHUNT. Okay. Thank you. Thank you.

Mr. LIOTTA. I have personally escorted more than a dozen of these trips. Through these visits, as well as through congressional testimony and briefings, we have provided our respective oversight committees, as well as other dedicated and interested Congressmen and Senators, a look into our operations.

In every case, the visitors have expressed their appreciation for the tremendous and outstanding work our young men and women in uniform are doing in the most arduous of circumstances. It is extremely stressful duty, yet these young soldiers, sailors, airmen, marines and coast guardsmen do it with pride and excellence every single day.

To ensure the safe and humane operations of all Department of Defense detention facilities and to comply with our obligations under international law, it is the policy of the Department of Defense to limit access to detainees under our legal control. This is not simply for detainees in Guantanamo, but for those we also hold in Iraq and Afghanistan as well.

We do this for three principal reasons: First and foremost, to ensure the safety of the detainees and U.S. personnel; Second, to shield detainees from public curiosity to remain consistent with the Geneva Conventions; and, third, to avoid complications with ongoing litigation in U.S. courts.

Without question, the single greatest reason to limit access to detainees is to provide for their personal safety, as well as that of the guards and the military personnel who interact with them on a daily basis.

It is not unique to Guantanamo that every interaction a detainee has with an individual from outside the camp affects not only that detainee, but all those who live in the same camp with him. The arrival of individuals from outside the camp changes the mood, the demeanor and the overall temperament of a camp, in turn affecting the security dynamics within that camp.

Second, our international law principles warrant that we limit access to detainees in our custody and control. The Third and Fourth Geneva Conventions contemplate that nation states shield detainees from the public eye and protect them from public curiosity. The facilities at Guantanamo provide safe and secure living conditions, and the Department of Defense has determined that we simply will not permit a deliberate departure from the principles of the Geneva Conventions.

Finally, as the subcommittee is well aware, almost every detainee at Guantanamo is involved in some sort of litigation. Allowing broad access to detainees would potentially complicate and prolong these litigation proceedings by raising questions about the presence of detainee counsel at interviews and the possibility of calling members of congressional delegations as witnesses in the litigation.

I do not wish to leave the subcommittee the impression, however, that detainees are left alone and without contact. To the contrary, the Department of Defense recognizes the unique and primary role of the International Committee of the Red Cross to have unfettered access to detainees under our control and custody at Guantanamo, as well as in our theater detention facilities in Iraq and Afghanistan.

Under the Geneva Conventions, nation states are required to give officials from the ICRC access to detainees. Accordingly, the United States grants the ICRC full access to all detainees interned at Department of Defense theater detention facilities.

The ICRC conducts regular interviews with detainees to ensure proper treatment and to facilitate communication with their families. Our relationship with the ICRC is a productive one and we greatly value their observations, insights and recommendations. Senior Department officials meet regularly with the ICRC to discus our detention operations and policies and to address their concerns in a constructive and confidential dialogue at all levels of the chain of command.

Our commitment to the ICRC to keep our dialogue with them confidential requires that we handle all communication between our Government and the ICRC as classified, but to ensure effective congressional oversight, as well as access to ICRC observations and

recommendations, the Department provides regular briefings to Congress on at least a quarterly basis.

During these briefings, the Department shares the entire collection of correspondence exchanged between our Government and their organization to provide insight into the full breadth and scope of the Department's relationship and communications with the ICRC. In this way we are able to ensure that we meet our international obligation to maintain the ICRC's relationship with those in our custody, while also providing Congress access to the same information so they can exercise effective oversight.

Depending on the circumstances, there are some occasions when we will allow a foreign government access to a detainee if that country is considering accepting the transfer of the detainee for resettlement in their country. This is an exception to policy and is approved on a case-by-case basis.

Similarly, some of the detainees at Guantanamo have committed crimes in their homelands or other countries, or they can be crucial witnesses in the trials of other terrorists. In such instances, foreign governments have made and continue to make requests to interview a specific detainee to assist in law enforcement actions. If a foreign government requests a law enforcement visit with a detainee, the Department evaluates each request on a case-by-case basis to determine whether to grant such access.

Finally, the United States Government has in the past requested a foreign government's assistance in helping to determine the identity of an individual we have captured or for intelligence information they have about his terrorist links and activity. Such foreign requests for access on these grounds are extremely infrequent.

In addition, some foreign governments may request access to a detainee to assist them in their own efforts to gain intelligence to assist them in identifying and aborting potential terrorist plots in their countries. When we receive such requests, however, they are assessed on their individual merits and in consultation with other appropriate U.S. Government departments and agencies to determine whether such access should be granted.

I would like to stress to the subcommittee that in each of the set of circumstances I have described above when a decision to grant access to foreign law enforcement and/or intelligence officials is made it has been and currently remains longstanding Department policy that visiting foreign officials must agree that they will abide by all DoD policies, rules and regulations.

This is codified in Department of Defense Directive 3115.09 and remains our policy in all of our military detention facilities worldwide. Additionally, in all of the above-noted cases, the foreign governments who are allowed access are members of their nation's executive branch.

Finally, I would be remiss if I did not stress that the Department also allows legal counsel access to their clients at Guantanamo. The Department goes to extraordinary lengths to facilitate attorney visits with their clients in detention facilities and to hold productive and privileged meetings with their clients in an environment that ensures the safety of the detainee, the counsel and government and military personnel. In 2008, JTF-Guantanamo facilitated more than 1,800 legal visits and phone calls.

To conclude, Mr. Chairman, our detention policies ensure that detainees under the control of the Department of Defense anywhere in the world are cared for humanely and in complete compliance with our obligations under the laws of armed conflict, applicable U.S. law and binding international treaties.

I am proud of our outstanding service members who serve at Guantanamo, in Afghanistan and in Iraq who are committed to ensuring that our detention mission is carried out in a safe, humane, legal and transparent manner while balancing the needs of operational security. They deserve our gratitude.

This concludes my statement, Mr. Chairman. I would like to thank you and the subcommittee for the subcommittee's time and attention to this important topic. As the subcommittee's time permits, I am prepared to respond to members' questions.

[The prepared statement of Mr. Liotta follows:]

Prepared Statement for the Record of
Jay Alan Liotta
Principal Director, Office of Detainee Policy
United States Department of Defense
(Embargoed for public release until July 16, 2009)

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to discuss the Department of Defense's detention operations at Guantanamo Bay. To address the Subcommittee's concerns, I would like to speak briefly about the Department's policy of access to detainees at Guantanamo, as well as the issues and challenges of such visits.

At the outset, I would like to note that we currently hold fewer than 230 detainees at Guantanamo—less than a third of the total number ever detained there.

With regard to our detention operations at Guantanamo, it is undoubtedly the most transparent military detention center anywhere in the world. Within the Department, we have worked diligently to establish a state-of-the art facility that provides safe, humane, transparent, and legal custody for each detainee. We have allowed numerous media outlets and human rights groups access to the facilities to observe proceedings and to participate in camp tours. We have also brought senior foreign officials to Guantanamo to better understand detention operations. These visits continue, and we facilitate as much access as logistically possible to the media and these other groups, to ensure transparency and accountability in our operations.

Over the past seven years we have brought 52 US Senators, 168 Representatives, and 300 staff members to Guantanamo on official Congressional Delegations. I have personally escorted more than a dozen of these trips. Through these visits as well as congressional testimony and briefings, we have provided our respective oversight committees, as well as other dedicated and interested Congressman and Senators, an unfettered look into our operations. In every case, the visitors have expressed their appreciation for the tremendous and outstanding work our young men and women in uniform are doing in the most arduous of circumstances. It is extremely stressful duty, yet these young Soldiers, Sailors, Airmen, Marines, and Coast Guardsmen do it with pride and excellence every single day.

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--Second, to shield detainees from "public curiosity" to remain consistent with the Geneva Conventions; and,

--Third, to avoid complications with ongoing litigation in US courts.

Without question, the single greatest reason to limit access to detainees is to provide for their personal safety, as well as that of the guards and other military personnel who interact with them on a daily basis. It is not unique to Guantanamo that every interaction a detainee has with an individual from outside the camp affects not only that detainee, but all those who live in the same camp with him. The arrival of individuals from outside the camp changes the mood, the demeanor, and the overall temperament of a camp, in turn affecting the security dynamics within the camp.

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I do not wish to leave the Committee the impression, however, that detainees are left alone and without contact. To the contrary, the Department of Defense recognizes the unique and primary role of the International Committee of the Red Cross (ICRC) to have unfettered access to detainees under our control and custody at Guantanamo, as well as in our theater detention facilities in Iraq and Afghanistan. Under the Geneva Conventions, nation states are required to give officials from the ICRC access to detainees. Accordingly, the United States grants the ICRC full access to all detainees interned at Department of Defense theater detention facilities. The ICRC conducts regular interviews with detainees to ensure proper treatment and to facilitate communication with their families. Our relationship with the ICRC is a productive one, and we greatly value their observations, insights, and recommendations. Senior Department officials meet regularly with the ICRC to discuss our detention operations and policies, and to address their concerns in a constructive and confidential dialogue at all levels of the chain-of-command.

Our commitment to the ICRC to keep our dialogue with them confidential requires that we handle all communication between our government and the ICRC as classified, but to ensure effective Congressional oversight—as well as access to ICRC observations and recommendations—the Department provides regular briefings to Congress on at least a quarterly basis. During these briefings, the Department shares the entire collection of correspondence exchanged between our organizations to provide insight into the full breadth and scope of the Department's relationship and communications with the ICRC. In this way we are able to

ensure that we meet our international obligation to maintain the ICRC's relationship with those in our custody while also providing Congress access to this same information so they can exercise effective oversight.

Depending on the circumstances, there are some occasions when we allow a foreign government access to a detainee if that country is considering accepting the transfer of the detainee for resettlement in their country. This is an exception to policy and is approved on a case-by-case basis.

Similarly, some of the detainees at Guantanamo have committed crimes in their homelands or other countries, or they can be crucial witnesses in the trials of other terrorists. In such instances, foreign governments have made, and continue to make, requests to interview a specific detainee to assist in law enforcement actions. If a foreign government requests a law enforcement visit with a detainee, the Department evaluates each request on a case-by-case basis to determine whether to grant such access.

Finally, the US Government has in the past requested a foreign government's assistance in helping to determine the identity of an individual we have captured, or for intelligence information they have about his terrorist links and activity. Such foreign requests for access on these grounds are extremely infrequent.

In addition, some foreign governments may request access to a detainee to assist them in their own efforts to gain intelligence to assist them in identifying and aborting potential terrorist plots in their countries. When we receive them, however, they are assessed on their individual merits in consultation with other appropriate US Government Departments and agencies, to determine whether such access should be granted.

I would like to stress to the Committee, that in each of the set of circumstances I described above, when a decision to grant access to foreign law enforcement and/or intelligence officials, it has been—and currently remains—longstanding Department policy that visiting foreign officials must agree that they will abide by all DOD policies, rules, and procedures. This is codified in DOD Directive 3115.09 and remains our policy in all of our military detention facilities worldwide. Additionally, in all of the above-noted cases, the foreign government officials who are allowed access are members of their nations' executive branch.

Finally, I would be remiss if I did not stress that DOD also allows legal counsel access to their clients at Guantanamo. . The Department goes to extraordinary lengths to facilitate attorney visits to their clients in detention facilities and to hold productive—and privileged—meetings with their clients in an environment that ensures the safety of the detainee, the counsel, and government and military personnel. In 2008, JTF-Guantanamo facilitated more than 1,800 legal visits and phone calls.

To conclude, our detention policies ensure that detainees under the control of the Department of Defense, anywhere in the world, are cared for humanely and in complete compliance with our obligations under the laws of armed conflict, applicable US law, and binding international treaties. I am proud of our outstanding service members who serve at Guantanamo, in Afghanistan, and in Iraq who are committed to ensuring that our detention mission is carried out in a safe, humane, legal, and transparent manner, while balancing the needs of operational security. They deserve our gratitude.

This concludes my statement. Mr. Chairman, I would like to thank you, and the Subcommittee, for the Subcommittee's time and attention to this important topic. As the Subcommittee's time permits, I am prepared to respond to Members' questions.

Mr. DELAHUNT. Thank you very much, Mr. Liotta.

I know he has a number of commitments, and I am going to go first to the chairman of the Subcommittee on Land and Air Forces of the House Armed Services Committee, Mr. Abercrombie, for questions that he might want to post.

Mr. Abercrombie?

Mr. ABERCROMBIE. Thank you very much, Mr. Chairman. I thank the other members for their indulgence.

Mr. Liotta, aloha to you. Mr. Liotta, by way of full disclosure to you for the questions, I am a former probation officer, several years, including work at San Quentin Prison. I am also familiar with prisons. I have handled everything from traffic tickets to murder as an officer of the court, both making recommendations and supervising recommendations about probation and sentencing and supervision of felons.

That is where I find the testimony a bit strange. Please forgive me. It is nothing personal, but could you just give me very briefly your background in law enforcement, if there is any?

Mr. LIOTTA. I am a current government official, Congressman. I have no background in law enforcement.

Mr. ABERCROMBIE. Okay. That doesn't mean that you are not capable in this respect of giving definitive testimony.

In other words, do you direct this at Guantanamo—that is what I am trying to get at actually—or are you the chief administrative individual? It says principal director, Office of Detainee Policy. Is that located here in Washington with the Department of Defense?

Mr. LIOTTA. Yes, sir. It is at the Pentagon. I work for the Under Secretary of Defense for Policy, Ms. Michelle Flournoy, in the Office of Detainee Policy.

Mr. ABERCROMBIE. And when did you start your position?

Mr. LIOTTA. I assumed the position in July 2004 when the office was created.

Mr. ABERCROMBIE. Okay. Very good. So then you have the background. I mean the history. You embodied the history then in your testimony.

Mr. LIOTTA. Not of the entire history of its existence, but since that point.

Mr. ABERCROMBIE. Since that point.

Mr. LIOTTA. Since that point. Yes, sir.

Mr. ABERCROMBIE. Yes. Thank you very much. In that context then I am a little concerned, the context I just outlined from my own background. Separate and apart from the question of the Geneva Conventions, which I was under the impression we said did not necessarily apply at Guantanamo—perhaps that can be explored a little bit later. I don't want to abuse my time.

But what did strike me here is on page 2 of your testimony, your third point with regard to the reasons that you set forth for the policies. Third, to avoid complications with ongoing litigation in U.S. courts.

Again going to my own personal experience, I don't understand how it is possible then to allow access of foreign governments to these prisoners before they have been tried by us. I understand completely the idea that you have enunciated very clearly about the possibility of other governments having an interest in terrorism

within their borders, possible crimes of one kind or another under the laws of those nations that may have an interest in these individuals.

But you yourself indicate in your testimony that the possibility if Members of Congress had been able to interview any of these people, for example, that they could be called as witnesses in litigation. Couldn't members of a foreign nation's intelligence operations or law enforcement operations then be called as witnesses if we then prosecuted someone in our courts?

Mr. LIOTTA. Yes, Mr. Congressman. First I would like to emphasize that the detainees that we hold at Guantanamo are being held under the law of armed conflict, which is different than criminal and the criminal proceedings associated with that.

But I would have to say that in terms of the litigation questions and the——

Mr. ABERCROMBIE. I understand that, Mr. Liotta. Honestly, I do. I am just referring to your testimony. You are saying one of the reasons Members of Congress could not interview or have a conversation with prisoners there is because they could be possibly called as witnesses in litigation.

If that is the case, if you allow prior to prosecution of these detainees members of a foreign government's intelligence operation or law enforcement operation to interview them and interrogate them, couldn't they be then called by legal counsel as witnesses in a prosecution engaged in by the United States?

Mr. LIOTTA. That would be under the purview of the Department of Justice, and I would not be qualified to respond to that specifically, sir. I am not an attorney, and those cases in litigation and the requirements are all handled by——

Mr. ABERCROMBIE. Again, I don't want to be argumentative with you, but this is your testimony. It is not mine. You are saying that Members of Congress——

Well, did the Department of Justice say Members of Congress couldn't do this interview? I am not quite sure. How is it possible for Members of Congress to be involved in litigation if they had been involved with an interrogation or an interview with a detainee?

Why wouldn't the same principle apply then to those who have done that from a foreign government?

Mr. LIOTTA. I would defer to the Department of Justice on that.

Mr. ABERCROMBIE. Okay.

Mr. LIOTTA. I would simply note that as I said at the outset of my testimony, I wanted to identify some of the challenges.

Mr. ABERCROMBIE. You see where I think the difficulties here are?

Mr. LIOTTA. I am sorry?

Mr. ABERCROMBIE. I am very familiar with chain of custody, with chain of custody in terms of evidence. I am very familiar with it.

If you allow a third party to come in, I can't imagine—I can't imagine—in any other prosecution, and you are talking about armed conflict here, so even more important because you are talking about possible war crimes and so on.

I can't imagine in an American court system you would allow a third party to come in and interrogate somebody absent attorneys,

by the way, and not have that destroy the capacity for having a trial that wouldn't be subject to a request for dismissal. I just wonder. What is the rationale behind it?

Mr. LIOTTA. Congressman, I understand the question, but again I would have to defer to the Department of Justice, which is the——

Mr. ABERCROMBIE. So do you have a memo or something from the Department of Justice indicating that this procedure, these set of procedures, is agreed to by the Attorney General?

Mr. LIOTTA. The Department of Justice is familiar with the policy. Yes, sir.

Mr. ABERCROMBIE. Well, that is not what I asked. Do you have something in writing from the Department of Justice that says allowing access to foreign governments by their intelligence officials or law enforcement officials is warranted or agreed to or will not in any way damage the capacity of the United States to prosecute detainees?

Mr. LIOTTA. I would defer to the Department of Justice on that language, sir.

Mr. ABERCROMBIE. Okay. You say here law enforcement visits are done on a case-by-case basis. Has any government been turned down?

Mr. LIOTTA. Yes, sir.

Mr. ABERCROMBIE. For what reason?

Mr. LIOTTA. I cannot get into that in an open hearing, but I have offered to the subcommittee a classified briefing that can provide the details of the countries that have asked for visits, those that have been accepted, those that have been denied.

Mr. ABERCROMBIE. Okay. You say that they are assessed on their individual merits in consultation with appropriate U.S. Government departments and agencies. Do you consult with the Department of Justice?

Mr. LIOTTA. We do, sir.

Mr. ABERCROMBIE. And what other agencies?

Mr. LIOTTA. A wide variety of agencies, sir. The Department of State might be consulted. The intelligence community members might be consulted. It would depend on the nature of the request, sir.

Mr. ABERCROMBIE. And who does this determination in these agencies? Is there your equivalent somewhere in these agencies?

Mr. LIOTTA. There is, sir. Most of the agencies have an equivalent. Yes, sir. Someone is responsible for detainees at Guantanamo.

Mr. ABERCROMBIE. And none of them have indicated that they are fearful that if you allow this kind of thing that it could interfere with the capacity to have a successful prosecution should you feel one is warranted?

Mr. LIOTTA. I believe the other agencies would also defer to the Department of Justice on that point, sir.

Mr. ABERCROMBIE. Okay. Just a couple more questions. You say that foreign law enforcement and intelligence officials will abide by all DoD policies, rules and procedures.

What process do you engage in to make sure that these people are familiar with DoD Directive 3115.09, and what do you do to determine that they will follow up?

Mr. LIOTTA. There are briefings ahead of time. Sessions are monitored, and they would be interrupted if there was a violation.

Mr. ABERCROMBIE. Interrupted by who?

Mr. LIOTTA. By the United States side.

Mr. ABERCROMBIE. And who is the United States side?

Mr. LIOTTA. It would depend on the defense. If it was at Guantanamo, it would be the guard force that was involved.

Mr. ABERCROMBIE. The guard force?

Mr. LIOTTA. Yes, sir.

Mr. ABERCROMBIE. Are you talking about troops?

Mr. LIOTTA. Or the SJA, the legal counsel down there. It would depend.

Mr. ABERCROMBIE. Okay. The legal counsel for the DoD?

Mr. LIOTTA. Yes, sir. For the Joint Task Force.

Mr. ABERCROMBIE. Yes. Now, in these interrogations that take place is legal counsel provided to the detainee?

Mr. LIOTTA. Again, sir, I have offered a classified briefing, and I would be happy to discuss the parameters and how these meetings are conducted in a classified session.

Mr. ABERCROMBIE. I don't want to be argumentative, but I am not quite sure. I don't think my question is a classified question.

Do you mean whether or not the detainees have legal counsel during an interrogation by a foreign national, that is classified?

Mr. LIOTTA. I would prefer to provide that information in a classified briefing, sir, as part of the comprehensive briefing program. Yes, sir.

Mr. ABERCROMBIE. Excuse me, Mr. Liotta. I know what you would prefer to do, but that is not the question I asked.

I have some difficulty. Is it a classified element as to whether or not—let me rephrase it. How is it possible to be classified in nature, the answer to the question of whether or not the detainee has his or her legal counsel available during the interrogation by a foreign national?

The reason I ask that question, again not to be provocative, is that you have raised in your testimony the possibility that a Member of Congress even talking to someone, that that could obviate the capacity to pursue a successful prosecution and so legal counsel would be available. As I understand it, legal counsel was available at Nuremberg.

The fact that they are detainees under the armed combat provisions doesn't obviate the necessity of having legal counsel available if a third party was making interrogation.

Mr. LIOTTA. If I could, I would like to clarify. I don't believe that I said that it would complicate the prosecutions.

I said it would complicate litigation proceedings, which there are a wide variety of that—habeas counsel proceedings, lots of other kinds of proceedings—outside of straight prosecutions.

Mr. ABERCROMBIE. Yes.

Mr. LIOTTA. It is the concern that it would complicate those types of proceedings. That it could potentially complicate those proceedings is one of the three concerns that I listed.

Mr. ABERCROMBIE. That is what I want to know. Was legal counsel available to the detainees if they were going to be subject to third party interrogation?

Mr. LIOTTA. Again, sir, I would defer that to a classified briefing.

Mr. ABERCROMBIE. Okay. I don't think it is classified information, but if you don't want to do it, we will get it. I will leave that up to the chairman.

I just want to quote to you on page 3, "Finally, I would be remiss if I did not stress that DoD also allows legal counsel access to their clients at Guantanamo."

I will ask you once again. Did these detainees who were interviewed, whether it was by the Chinese or anybody else, have legal counsel at Guantanamo during these interrogations? I am raising the question because I am reading your testimony, not because I am trying to look to put you in a difficult position.

I am trying to understand whether I have a clear understanding of what I believe to be the clear implications of your testimony.

Mr. LIOTTA. Yes, sir. I understand. And I apologize if my answer is not clear, and I would clarify this for you.

In the testimony that you just read, my reference to legal counsel is in reference to their cases involving habeas litigation, those that are being prosecuted through military commissions, and other examples where there would be legal counsel involved along those grounds. That is what I was referring to in that statement.

That statement and reference to legal counsel there had nothing to do with the other part of access and whether or not counsel were involved with that, which again I would ask to defer.

Mr. ABERCROMBIE. So you separate that kind of litigation, say a habeas corpus hearing? You separate that and perhaps the necessity or the desirability of having legal counsel present from the interrogation situation of a foreign national?

Mr. LIOTTA. In that comment that you read I was referring strictly to the habeas litigation and the court proceedings that would be involved that way. Yes, sir.

Mr. ABERCROMBIE. All right. Finally then, from my perspective if that is the case do you have something from the Department of Justice and/or some other authority to make such a separation?

Mr. LIOTTA. I don't believe it is a separation, sir. It is strictly that the testimony was referring to one aspect of legal counsel's participation and their work with the detainees at Guantanamo.

Mr. ABERCROMBIE. Well, I am sorry. I am not sure I understood what you just said. Could you repeat it to me?

Mr. LIOTTA. You phrased your question, if I understood it correctly, in terms of a separation, and I am simply saying that I was not referring to a separation in my testimony.

I was only referring to the aspect of the counsels' ability to have access to their clients for the legal proceedings for which their clients are involved in, such as habeas corpus proceedings, litigation or if there are other cases they have brought suit against the Defense Department or the U.S. Government.

Mr. ABERCROMBIE. Then maybe my question wasn't clear. Do you have something in writing from competent authority that tells you that in the circumstances of a foreign national interrogating one of the detainees that the admonition that you just cited to have legal counsel available for habeas corpus proceedings or some other proceeding need not be observed?

Mr. LIOTTA. I am sorry, sir. Could you repeat the last part of that?

Mr. ABERCROMBIE. Yes. In other words, do you have something in writing that says where you are required to have legal counsel for a litigation proceeding like a habeas corpus proceeding you don't have to have counsel for the detainee if it is a circumstance involving an intelligence agent or a law enforcement agent from a foreign power coming to make the interview?

Mr. LIOTTA. There is nothing that I am aware of on that, sir, but I would again defer to the Department of Justice as to whether there is such a distinction that has been made.

Mr. ABERCROMBIE. Well, then I guess it forces me into another question though before I conclude. Does the Department of Justice have observers there or something?

If you have to refer to the Department of Justice over and over again and you have supervisors there at one level or another, either troops or officers stationed at Guantanamo, do they have access to and are there Justice Department personnel there to advise them as to what they can do and not do?

Mr. LIOTTA. During their habeas visits?

Mr. ABERCROMBIE. At Guantanamo.

Mr. LIOTTA. Yes, sir. But, Mr. Congressman, there are many different types of activities that occur there. In terms of legal counsel, there are not Department of Justice officials there when lawyers meet with their clients. Those are privileged meetings between the clients and——

Mr. ABERCROMBIE. No, no. I am talking to give you advice or those over whom you have authority.

You say you defer to the Department of Justice in answer to my questions again and again and again. Is the Department of Justice actively involved then in the day-to-day supervision of what can take place and not take place in this context of third party foreign nationals interviewing prisoners?

Mr. LIOTTA. The Department of Justice is not day-to-day involved in our operational activities. They do provide advice and counsel to us in their role.

With regards to the advice and counsel they provided in terms of access by foreign officials for intelligence briefings, again, sir, I would defer to a classified presentation for that.

Mr. ABERCROMBIE. Thank you. Mr. Chairman, thank you for your indulgence. My observation——

Mr. DELAHUNT. Thank you, Mr. Abercrombie. As I listened to your questions and I reflect for a moment, I am going to ask you to consult with the chair of the full committee about a series of hearings at the subcommittee level that are joint in nature.

And I would ask Mr. Moran and I see in the audience and I welcome to the dais our dear friend from California, Ms. Eshoo, who is a senior member of the Intelligence Committee.

Now, I know the Executive always prefers to have classified briefings. You know, I think the American people have a right without compromising national security to understand what happened at Guantanamo, particularly in the case of the Uighurs. Let us keep it focused, exclusively focused on the information that has

emerged since their release and the information that we have been able to secure.

With all due respect, we are always being invited to classify briefings. Let me tell you, there is a sense among Members on both sides of the aisle that if the Executive or a particular department is able to secure the consent of Members of Congress to a classified briefing wow. We know that that information cannot be disseminated publicly.

There is a balance here that has to be achieved because we need to have an informed American public to understand our policies and how they are implemented. One of our great strengths as a republic in our constitutional system is to, as the ranking member has said, acknowledge our errors and where we ran afoul so that we can make the necessary changes.

I daresay that is the best message that the United States can send to the rest of the world. We are not afraid, and we have a system of checks and balances that will always allow the truth to emerge.

Mr. ABERCROMBIE. Mr. Chairman? Mr. Chairman?

Mr. DELAHUNT. Mr. Abercrombie?

Mr. ABERCROMBIE. If you would just indulge me a follow up as a result?

Mr. DELAHUNT. Please.

Mr. ABERCROMBIE. And I appreciate again the other members.

The reason is I have, Mr. Liotta, if you will trust me on this, and we will make a copy available to you. I have a copy of an official response from the Office of the Attorney General, the U.S. Department of Justice, dated July 7, 2009, addressed to John Conyers, the chairman of the Committee on the Judiciary, with a copy to Lamar Smith, who is their ranking member, as Mr. Rohrabacher is here, on the Judiciary, in response to questions.

On page 14 of the document from Ronald Wyche, the Assistant Attorney General, on questions submitted by Mr. Delahunt there is a reference by Mr. Delahunt—do you have that in front of you now?

Mr. LIOTTA. Yes, sir.

Mr. ABERCROMBIE. Page 14. Could you look at page 14? A question is asked by Mr. Delahunt with regard to agents from China allowed to visit the Uighur detainees. The response by the Assistant Attorney General on behalf of the Department of Justice is, "The Inspector General's Office stands by the accuracy of its report," the report which is referred to in the question.

The relevant part for me here in the context of the question I asked you is, "The Department of Justice does not control visitor access to Guantanamo Naval Base or access for interrogation purposes to detainees in the Department of Defense custody. Such access is controlled by the Department of Defense."

The second question then again is answered in explanation of why Chinese agents are granted more access than congressional delegation. "The Department of Justice does not control visitor access to Guantanamo Bay Naval Base. Such access is controlled by the Department of Defense."

So if your answer to me is you defer to the Department of Justice, the Department of Justice has said in writing that it does not

either control access to Guantanamo Bay detainees, and for interrogation purposes access with regard to those custody it does not control it. It is controlled by the Department of Defense.

So again I must ask you. Have you explored in any way in writing from some competent authority whether or not you are actually possibly jeopardizing successful prosecution of detainees by the United States by allowing third party interrogations before that prosecution has been successfully completed?

Mr. LIOTTA. Mr. Congressman, this is the first time that I have seen this testimony just handed to me, so I don't have the context.

Mr. ABERCROMBIE. Yes. I understand that.

Mr. LIOTTA. I take it at face value what was responded here.

Mr. ABERCROMBIE. Me too. I just saw it myself.

Mr. LIOTTA. Yes, sir. But as I read this as what has been presented to me, I mean, it is a statement of fact by the Department of Justice that the Department of Defense controls access, which is the point of my testimony to highlight for you the policy of that access and how it is derived and the limitations on that policy that is there.

So I don't believe the statement of facts as presented by the Department of Justice response to the subcommittee chairman's questions are inaccurate. I think they are factual statements that are accurate, which is the Department of Defense controls that access, and I outlined that in my testimony.

Mr. ABERCROMBIE. Yes. I understand that. I am asking for the policy behind it. Do you understand that you may be jeopardizing the successful prosecution of terrorists?

Mr. LIOTTA. And again, sir, for questions of prosecution and what would constitute a successful prosecution or what may jeopardize that——

Mr. ABERCROMBIE. Okay.

Mr. LIOTTA [continuing]. I would defer to the attorneys at the Department of Justice.

Mr. ABERCROMBIE. Thank you, Mr. Chairman.

Mr. DELAHUNT. Thank you, Mr. Abercrombie.

I am going to go to the ranking member, but if he would indulge me just for 1 minute?

You indicated that requests by third countries on occasion have been denied.

Mr. LIOTTA. Yes, Mr. Chairman.

Mr. DELAHUNT. It is clear that in the case of the Communist Chinese Government that request was not denied. Is that an accurate statement?

Mr. LIOTTA. As I indicated in my response, Mr. Chairman, I will not be able to talk about any particular country's request and whether it was granted or denied in an unclassified forum, but I am more than happy to provide detailed information on all the countries to the subcommittee in a——

Mr. DELAHUNT. I am not going to press you on that today.

Mr. LIOTTA. Yes, sir.

Mr. DELAHUNT. But I think it is safe to say, given all of the information that has emerged, that the request of the Chinese Government for access to the Uighur detainees was granted by the govern-

ment, by the Department of Defense or by somebody we don't know.

I guess what I am offering to you is after today to go back to your superiors and inform them that we want an answer to that question in a public setting such as this. I am not going to press you today, but we want to know that answer.

I guess I will expand on that somewhat by saying that we want to know if the request came from the Chinese or was it an offer that was without a request that was provided by the United States Government or one of its departments because I think to say that the response to that answer should be in a classified setting is absurd.

Again, I know you are here and I know you have to return to the Department, but we are going to demand that answer, and I think that I can secure the concurrence of——

Mr. MORAN. Absolutely, Mr. Chairman.

Mr. DELAHUNT. The concurrence of the House Armed Services Committee, the Appropriations Committee, and I will inquire from the lady from California, the Intelligence Committee.

To suggest that that has to be done in a classified briefing is unacceptable to those four committees and I daresay to the United States Congress because that is laughable. Again, I don't mean to direct this at you personally, but we want answers. The American people deserve answers.

One more question, and then I am going to defer if I can. We talked about a policy. Is there anything written down about guidance or a policy as it relates to letting the Chinese or anyone in to interrogate detainees at Guantanamo?

Mr. LIOTTA. Mr. Chairman, first I will commit to you that I will bring the committee's request back with me to the Department——

Mr. DELAHUNT. Thank you.

Mr. LIOTTA [continuing]. And the passion behind the request as well.

And then in response to the second question on whether there is anything written, again I would say, sir, that I can explain in more detail and would be happy to go over rules, procedures, all those things as of right now in a classified setting.

Mr. DELAHUNT. Okay. But I guess I can infer that there is something in writing?

Mr. LIOTTA. Affirmative. Yes, sir, there is.

Mr. DELAHUNT. Thank you. I yield to the gentleman.

Mr. ROHRABACHER. Thank you, Mr. Chairman, and congratulations, Mr. Liotta, for your courage in coming here today and being willing to be interrogated by a panel like this. I notice that you are sitting there by yourself, and so I admire that.

Let me just note that your comments about——

Mr. ABERCROMBIE. Mr. Chairman, Mr. Rohrabacher knows what it is like to be by himself.

Mr. ROHRABACHER. Thanks for reminding me. Your comments about the hard work and the diligence and the gratitude that we owe our personnel who have served in Guantanamo and people like yourself who have been given certain authority and responsibility to handle a very hard part of this war against Radical Islam.

I mean, this is an extraordinarily difficult part of that overall operation that protects the American people, and those soldiers that have been at Guantanamo and those people who have conducted interrogations and yourself and others who have been engaged in this, I think that we owe a great debt of gratitude to you for being able to take on a job, just like being able to come here today, so thank you for that.

With that said, that doesn't mean that those of us who have concerns may totally disagree with the policy that you as soldiers and you as employees of our Government have had to implement and so today I would say that you have done your job as well as could ever be expected in defending what I consider to be an indefensible policy.

That doesn't mean that you are wrong. That means the policy is wrong, but maybe you have done a good job in defending the policy because that is your job. So with that said, let me just ask a few questions about policy here.

So it is our policy, it is our Government's policy, that information that is received from these interrogations that we are talking about with the Uighurs and others is classified, is not available to the American people and to their elected Representatives outside of a secret criteria of which we can learn the knowledge? Is that right?

Mr. LIOTTA. Under the current policy, that is correct, sir.

Mr. ROHRABACHER. Okay. So doesn't it sound a bit absurd that people who are elected in a democratic government to represent the people and the interests of the people and the people themselves are unable to have access to information because it is classified and secret information, but it is information that we have given to the intelligence agents of a dictatorship that hates the United States of America?

Do you get what I mean? Chinese Communists, government officials and their agents have information and we can't? Would you think that is a bit absurd?

Mr. LIOTTA. Sir, I understand the frustration with that. As I said, I am limited. I cannot single out just the Chinese, but in all aspects of this policy.

I would be happy to provide information about that in a classified setting, recognizing the frustrations that the committee has expressed with that.

Mr. ROHRABACHER. Okay.

Mr. LIOTTA. But again, sir, I would add to that that we are and we remain in a war, and the information flow when a foreign delegation visits isn't just one way. It is also the other way.

Mr. ROHRABACHER. So we can trust the Communist Chinese intelligence agents, but we can't trust that information would be available to the American people because those intelligence agents must have the interest of the American people at heart as compared to elected officials by the American people?

You get the absurdity of it. All right. Fine. It is your job to argue your case, and you have argued your case well.

As I say, I think there are some things that are very disturbing about the actual position. Not disturbing about you, not disturbing about the men who conducted the interrogations, not disturbing about our military personnel. Disturbing about the policy and those

who actually set that policy. I am assuming that you did not set policy and that you are a person who is here and it is your job to explain policy.

Mr. LIOTTA. The policy regarding access was established long before I came to this position, sir.

Mr. ROHRABACHER. Okay. Well, let me ask you this. So the International Red Cross Committee has total access to prisoners.

By the way, in the International Committee of the Red Cross, the ICRC, is there any person in that group that is an elected official?

Mr. LIOTTA. To be honest, sir, I am not sure of the makeup of the ICRC and where their role is, but I don't believe so.

Mr. ROHRABACHER. Yes. It is made up of people who are appointed by someone else, a private organization or an international body, but not made up of anyone who represents people.

You know, there is a fundamental difference between our country and other governments and agencies. In our country the power rests with the electorate, with the people of the country, but it seems that now you are saying the rules of the game that are policies that we are talking about would say that those people who are elected to represent the people of the United States have no rights in this particular area as compared to a group of unelected foreigners.

Mr. LIOTTA. That was not the point I was making when I referred to the ICRC. I was simply referring to our obligations under the international preferences as they are recognized.

Mr. ROHRABACHER. Right. But as you see it——

Mr. LIOTTA. But I see your point. Yes, sir.

Mr. ROHRABACHER. As you see, the policy is a group of unelected foreigners have more rights to oversee the implementation of American military personnel, foreign policy, dealings with this conflict, than do the elected Representatives of the people of the United States.

Mr. LIOTTA. Sir, respectfully I would have to disagree that they have more rights. The Congress has been very prolific over time in providing us——

Mr. ROHRABACHER. Well, you have told us that they have absolute access and we have no access, so I would say that that is giving them more authority than we have, but we will leave that for the record as well.

Again, this is not a reflection on you and it is not a reflection on the people who are actually having to carry out the orders that are based on the policies that we have asserted, that we have developed for our country.

Let me note that I do not believe that it is necessary to have counsel available, legal counsel available, during interrogations of terrorist prisoners who are picked up on a battlefield. I don't think that is necessary. I disagree with my colleagues on that. I don't think that in wartime situations you have to go by the criminal justice rules of American citizens. I just want to make sure that is in the record.

Let me ask you about this policy and about the things that we have said. Again, I echo my chairman's concern about always trying to get things into classified briefings, which then for the public that doesn't know knows that once we have a classified briefing

even if we know 98 percent of what has been told us, then there are controls on what we can say and what the American public can know or what our opinions are of certain aspects because at that point we can be accused of releasing classified information that maybe everybody else knows anyway.

Male VOICE. Like the Chinese ones are going.

Mr. ROHRABACHER. Like the Chinese Communist intelligence agents.

Mr. LIOTTA. Sir, I sympathize with that position.

Mr. ROHRABACHER. Yes. And let me also again reiterate I actually did not know over all these years that those U.S. Senators and Representatives that went to Guantanamo did not have access to the prisoners themselves to even ask them a question. I did not know that.

I would say that had I known that, I would have paid a lot more attention to the complaints of my Democrat and liberal colleagues about Guantanamo if I had known that we as a body, as the elected Representatives of the American people, did not have access to those prisoners to hear something that they might want to tell us.

Had we had access, perhaps this incident today with the Uighurs could have been corrected a long time ago.

Mr. DELAHUNT. Would my friend yield a moment?

Mr. ROHRABACHER. Yes.

Mr. DELAHUNT. I wanted to state as a matter of record that our request was supported by all of the Uighur detainees. Their counsel had consulted with them. Their legal counsel had consulted with them. Legal counsel reported back to the committee that they were able to secure whatever waiver was necessary because those men that according to a Bush Administration official, Assistant Secretary Shriver, had been wrongly imprisoned.

Again, I want to note for the record that I respect his testimony before this committee for that admission and that acknowledgement, but I daresay that those men, those Uighurs who were interrogated, intimidated and threatened by Chinese Communist security agents, did not give their consent and were not willing, but felt coerced to be interviewed by the agents of that repressive regime.

With that I thank the gentleman for yielding.

Mr. ROHRABACHER. Again, had we had access I can imagine that if we had been down there and one of these Uighur prisoners would have through an interpreter told us, a Member of Congress, by the way, we love America and we just came over here to learn how to fight the repression that our people suffer from the Communist Chinese Government, that would have been enough to trigger.

At least if anybody would have told me that, that would have triggered a situation where we could have corrected this wrong a long time ago, but instead they have had to suffer years because of a lack of ability to talk, to have communication with elected Representatives.

It says here the Third and Fourth Geneva Conventions contemplate that a nation state should shield detainees from the public eye to protect them from public curiosity. You are using that as the basis for a denial of access to the elected Representatives of this government.

Is that what the Defense Department believes is what elected government is all about, public curiosity?

Mr. LIOTTA. No, sir.

Mr. ROHRABACHER. Okay. I didn't think so. I would suggest that is not a very good argument, but I understand you had to make every argument that you could.

Now let us go to the policy. What I would suggest is if you cannot answer these questions I would suggest that you answer them in writing to us if you can. I wouldn't expect that you would be able to right off the top of your head be able to come up with all these answers.

But who were the Chinese interrogators? Were they intelligence people, or were they members of the Consul General's Office or something here or embassy staff in Washington?

Mr. LIOTTA. Again, Congressman, with regard to whether they were Chinese interrogators or anyone else, I cannot talk in an unclassified hearing about the specific instances.

Mr. ROHRABACHER. Okay. So the Chinese Communist intelligence agents can know, but the American people can't know.

I think it is the American people's right to know things like that. We have to keep secrets from our enemies. I understand that totally, but why do we have to keep secrets from the American people that our enemies obviously know about? So we will see.

We will go into how far we will allow the Intelligence Committee briefing to be classified rather than try to get the people——

Mr. DELAHUNT. Again if my friend would yield? I do want to consult with Ms. Eshoo and Mr. Moran and Mr. Abercrombie and members of those because these questions are the same questions I think we all have.

Mr. ROHRABACHER. Right.

Mr. DELAHUNT. But I want to persist in being very clear that I cannot understand why the answers to these questions should be in a classified brief.

Mr. ROHRABACHER. Right. Considering the——

Mr. DELAHUNT. I concur, and I think my colleagues do——

Mr. ROHRABACHER. Yes.

Mr. DELAHUNT [continuing]. That these answers, and, Mr. Liotta, it shouldn't be you that provides those answers. Clearly when this policy was affected it was Secretary Rumsfeld.

You know, we should extend him an invitation to come before this committee to explain that policy, and I think we have to extend an invitation to whether it is Secretary Gates or whomever from the Obama Administration.

Are they changing this policy? Are they going to continue this policy or are they in the process of reassessing this policy, because I don't think it has the support of the United States House of Representatives.

Mr. ROHRABACHER. Reclaiming my time, you say that it was monitored. Were these Chinese personnel ever alone with the Uighurs without American supervision? You say it was monitored. Was it always monitored, or was there a time when they were alone?

Mr. LIOTTA. I regret that I would not be able to answer that specific question in an unclassified setting, sir.

Mr. ROHRABACHER. All right. All right. And I guess all of these other questions that I have—I will submit a list of questions. Rather than taking up time now, I will submit a list of questions to you about this, and they will be specific questions. Just rather than take up the time of the hearing, we will just do this.

Let me just end this, my segment of this, by saying that I think that again we are in a war with Radical Islam, and I do acknowledge that we owe such a debt of gratitude for people down there.

I don't want this ever to be thinking this in some way besmirches the people who are down there guarding the gates so to speak and involving themselves in the interrogation of prisoners, which is a very incredible responsibility at a time like this when we know that prisoners could be deeply involved in conspiracies.

You know, we found out from Ramzi Yousef. I remember that when we captured his laptop in the Philippines that there was a list of targets. One of the lists was Disneyland. They were going to have poison gas and kill thousands of families at Disneyland. Now, that is the kind of enemy we are up against. I understand that. I take it extraordinarily seriously.

Obviously mistakes will be made in trying to prosecute such a war. We have to admit it when those mistakes are made and be brutally honest with ourselves and our people. We shouldn't be keeping secrets from our people that our enemies know because our people need to support the policies of this conflict.

I have one last note, and that is Ramzi Yousef. I have had a request from the last Administration to see him in Federal prison. I was denied. Mr. Chairman, I am being denied and all of us are being denied the same access that was denied during the last Administration and George Bush. What a horrible man, a horrible President.

Those very same restrictions are now on us and are now being reaffirmed in today's testimony by this Administration. I was against it then, and I am against it now. This is a bipartisan demand that the rights of the legislative branch of government be respected.

Thank you.

Mr. DELAHUNT. I thank my friend. I am going to——

Mr. LIOTTA. Mr. Chairman, may I interrupt for 1 second?

Mr. DELAHUNT. I am sorry.

Mr. LIOTTA. I just wanted to respond to the ranking member that had to leave.

Mr. DELAHUNT. Sure.

Mr. LIOTTA. I just wanted to say, sir, thank you for your comments in support of the men and women there.

I had the privilege to escort Mr. Berkowitz on a trip down to Guantanamo, and he made the point of your support for them when he was there. It was greatly appreciated. Thank you, sir.

Mr. DELAHUNT. I thank you, Mr. Liotta.

I am going to go to Congressman Moran since he has been waiting here patiently. I will not inquire. We have 13 minutes left, and I would like to be able to conclude with Mr. Liotta.

Our second illustrious panel is going to have to wait for approximately an hour. You could go down to the fine dining at the Rayburn basement, but we are eager to hear from you.

Mr. Moran?

Mr. MORAN. Thank you very much, Mr. Chairman. In reference to my good friend from California's remarks though with regard to Ramzi Yousef, I know he would agree it is somewhat irrelevant to the situation of the Uighurs since both the Bush and Obama Administrations have stated for the record that they do not constitute any threat to United States citizens, and that is what we are talking about today.

Now, Mr. Chairman, is there not an obligation on the part of witnesses to respond to questions as accurately and as fully as possible? We used to have their hand and say that. We don't do that anymore, but certainly witnesses understand that to be the case.

Mr. DELAHUNT. Of course they do.

Mr. MORAN. Now, if a witness is deliberately evasive, chooses not to answer a question or obviously answers a question untruthfully, can they not be held in contempt of Congress?

Mr. DELAHUNT. That is my understanding.

Mr. MORAN. All right. Now, Mr. Liotta, let me ask you because in listening to the chairman, Mr. Abercrombie and Mr. Rohrabacher my frustration continues to mount.

We all know—maybe not everybody in this room, but certainly on this part of the dais—and you know very well because you are employing this tactic that in order not to answer a question you can suggest it be provided in classified form.

That is not acceptable. There is no classification of that answer. This is a manipulative, evasive tactic that you are employing. We have no requirement to accept that.

Now, you have been asked directly were the Uighur detainees afforded legal representation during the interrogation by Chinese Communist agents. Yes or no?

Mr. LIOTTA. Sir, I regret that I cannot respond in——

Mr. MORAN. Yes or no, Mr. Liotta? We are responsible to represent the interests of the American people. You are responsible to respond accurately and fully. I am not going to accept that.

You know there is no classification of that answer. You know you don't want to answer it and so you are suggesting that this is somehow classified. It is not classified. There is no legal requirement, no authority, no instruction to you that this is classified information.

You are using an evasive tactic. I want to know what the answer is. Were they afforded legal counsel? Yes or no?

Mr. LIOTTA. Sir, I regret I cannot talk about the specifics of any visit for foreign——

Mr. MORAN. Who says you can't talk about it?

Mr. LIOTTA. Under the current policy, sir.

Mr. MORAN. Whose policy is that?

Mr. LIOTTA. Department of Defense classified policy.

Mr. MORAN. Who made the policy specifically?

Mr. LIOTTA. I don't know specifically. I can get you the information. It was established before I came to my position, sir.

Mr. MORAN. You have been in since July 2004. I want to know and you need to provide us now where you get this information.

Let me tell you. You know, there are some tools we have as well, and one of them is to eliminate funding for various offices to get

a point across. Now, I understand that Ms. Flournoy is a very nice person. I have read about her policy and so on, but maybe it is time to get this to her attention.

Why she is retaining someone that has been instrumental in sustaining a policy that has done more damage to our reputation and has provided more potency to the propaganda of the enemy than perhaps any other single policy, and that is our policy with regard to Guantanamo. Why you are still in your position since July 2004 is beyond me, so it brings into question her judgment.

Now, we are going to mark up the Defense appropriations bill, and unless we get a full and accurate answer now I intend to offer an amendment to defund that office, and we will go as high as we need to do. It will give me an opportunity. Whether I insist that it be included in the bill or not, it will certainly give me an opportunity to explain to the entire Appropriations Committee and in front of television cameras why this is necessary.

Now understanding the consequences of your response, do you still maintain that that is the appropriate response?

Mr. LIOTTA. Yes, sir, I do.

Mr. DELAHUNT. Is this a defensible policy to allow Chinese intelligence Communist agents to interrogate people under our control who we have recognized are no threat to the United States without legal counsel, to allow them to do that, not to allow United States Members of Congress access to them and then to provide personal information with regard to their families?

This is a defensible policy on the part of the Department of Defense and you are prepared to defend that policy?

Mr. LIOTTA. That is the policy that exists today. Yes, sir.

Mr. MORAN. That is the policy that exists today. Thank you. I wanted you to be on the record on that.

One more point. Do you know what the disposition is of the families whose identities you revealed to these Chinese Communist agents in China? Do you know whether they have been executed or not?

Mr. LIOTTA. Without reference to whether the Chinese visit occurred, which I can't refer to in this meeting, sir, I do not know their disposition of the families.

I do know that we have established phone calls for the Uighurs on a regular basis so they can call back to their families, and they have done so successfully.

Mr. MORAN. Do you know whether they are still alive since there have been almost 200 Uighurs executed by the Communist Chinese Government in the last 2 to 3 weeks?

Mr. LIOTTA. I do not know the specific dispositions of their family members with regard to——

Mr. MORAN. Do you think it is any responsibility of the Federal Government since you revealed that information to the Chinese Government?

Mr. LIOTTA. I don't understand the question, sir.

Mr. MORAN. Well, do you think we have any responsibility or culpability as to the welfare of those families since we revealed personal information as to who their families are?

Mr. LIOTTA. I cannot respond to questions that deal with whether or not a Chinese visit occurred, but I will say that we have as the

Department of Defense undertaken and successfully been able to achieve phone calls between the detainees and their families so that they can stay in contact with them.

Mr. MORAN. Mr. Chairman, again we have made note of this, but the idea that the reasons for not allowing Members of Congress to have communication directly with detainees is concern for the safety of the detainees.

Now, you allowed intelligence agents of a foreign country to interrogate them, but you are concerned about their safety and that is why you don't allow United States Members of Congress.

You are concerned about public curiosity. As Mr. Rohrabacher suggested, apparently you are implying we would be seeing them out of some public curiosity.

And then the third reason is to avoid complications with ongoing litigation in U.S. courts. Is there any litigation with regard to these Uighurs who have been determined by the Bush and Obama Administrations not to be any threat to the United States citizens?

Mr. LIOTTA. There has been litigation. Yes, sir.

Mr. MORAN. With regard to these Uighur detainees, is there ongoing litigation in U.S. courts, reading from your testimony?

Mr. LIOTTA. I would defer to the Department of Justice on the status of the ongoing litigation.

Mr. MORAN. Defer to the Department of Justice, and the Department of Justice says they defer to you.

Mr. LIOTTA. Sir, I am deferring solely on the aspects of whether there is ongoing litigation with them.

Mr. MORAN. Mr. Chairman, this witness, while it has been informative to us to see how evasive the executive branch's policy is, has been singularly uncooperative and uninformative and evasive.

I would hope that we would communicate that to Secretary Gates of the Department of Defense. To take up 2 hours of our time and not to directly answer any of the relevant questions I think is an absolute insult to the United States Congress.

Mr. DELAHUNT. I thank the gentleman for his line of inquiry.

Mr. Liotta, I understand that this is a difficult moment for you. I have no doubt that you have received instructions. I also have no doubt that you have seen the passion and the conviction of members who have participated in this phase of the hearing.

I think there is a lot to learn in terms of the Executive's view of where we have been in the past in terms of this specific policy, and I daresay that it cuts across all of the relevant committees, between Foreign Affairs, Appropriations, the Committee on the Armed Services and the Intelligence Committee.

Again, you find yourself in a very awkward situation, and I understand that and I respect that. At the same time, I know that you will return and report to your superiors about the passion with which members have spoken on this issue.

It is of grave concern to us. It truly is because it is my belief and that of Mr. Rohrabacher that much of what has been said about the Uighurs, those that were detained, is false, is inaccurate, that they are not terrorists, and to deny them simply on that label the right to resettle in this country is a wrong that is a stain on our national honor and our history as articulated by the words I quoted from George Washington.

I hope that you go back to your superiors, and I know that the Administration is working on a plan and a policy in terms of closing Guantanamo. While we ask other nations to take detainees, the fact that we will not at this point in time it would appear accept some detainees is unacceptable. Is unacceptable.

Americans will understand if they hear the truth. If they know that these 22 men were innocent, were, as Secretary Shriver said, wrongly imprisoned and that their story is a tragedy they would welcome them, as Washington would.

Rather than simply listen to pundits and those who want to secure political advantage by fear mongering, let us just do the right thing in this matter. That is the message I want you to take back to the executive branch.

Congresswoman Eshoo and Mr. Carnahan, do you have anything to add?

Mr. ESHOO. Mr. Chairman, I would just like to thank you for your legislative courtesy in inviting me to this hearing. It has been instructive.

What I also want to extend to you is the full hand of cooperation of the House Intelligence Committee should you need it. I think the whole question of what is classified, why it was classified, has really not been established very well, at least not in terms of what I have heard, with all due respect to the witness.

I think it would be very important to understand (A) who actually employed the statute to classified and the reason for it, which I don't think has been established here.

Mr. DELAHUNT. Correct.

Mr. ESHOO. And how we allow foreign intelligence services into our operations; of all foreign intelligence services the PRC.

We have done a lot of work with foreign countries. I just left an Italian delegation who works with the United States so cooperatively.

I am not aware of a great and high level of cooperation with the PRC intelligence services and the United States of America, so why we would entrust them to be in charge of U.S. detainees is a huge question.

Mr. DELAHUNT. And subsequently label them as terrorists, a minority that we have prosecuted, and we accept their information at least in part and put the label of terrorist on these men whom, as Secretary Shriver said, were wrongfully imprisoned and now some would incite the fears that American people legitimately have and deny them the right to be paroled into the United States while we ask other nations to take them. That is not our America.

Mr. ESHOO. Thank you, Mr. Chairman.

Mr. DELAHUNT. Mr. Carnahan?

Mr. ESHOO. Thank you, Mr. Chairman.

Mr. CARNAHAN. I know we have votes, but I just want to add my thanks to you, Mr. Chairman, to our colleagues from other committees in this Congress.

I think the witness and those watching this understand just how serious the Members of Congress take this and how we need to get to the bottom of this and find a solution.

Thank you, Mr. Chairman.

Mr. DELAHUNT. Thank you, Mr. Carnahan.

Mr. Liotta, thank you. Thanks for the forbearance, the courage. You can bring the message back. I want you to know that I know how difficult your task is, and I respect you for it. You are excused.

We shall return in about 1 hour and look forward to the testimony from the other three witnesses.

[Recess.]

Mr. DELAHUNT. The committee will come to order again. Let me express my apologies and my gratitude for your indulgence.

This is an important panel. I have read your testimony, and I think it is important that as we build a record of what occurred with the 22 Uighurs I think it is important that those who may be viewing this, whether it is C–SPAN or some other outlet, and clearly the committee will have a transcript available. I really do mean it when I say that your written statements were apropos, very informative, and I believe we are beginning to peel the skin off this onion.

It is painstaking at times, but clearly I can tell from the conversations with my colleagues that interest is emerging not only in terms of the treatment of the Uighurs and the fact that they were wrongly imprisoned—and, as Secretary Shriver said, their story is a tragic one—but also the issue of classification and government secrecy. There is a growing concern on the part of Members of Congress. I wish that concern had arrived at an earlier date. Maybe we wouldn't be here today.

But in any event, let me introduce for the record our second panel. The first witness will be Jason Pinney. He is an attorney with Bingham McCutchen in Boston. He, along with a team of lawyers from that firm, represent a number of former and current Uighur detainees at Guantanamo on a pro bono basis.

I want to recognize in the audience Susan Baker Manning, who also has made a magnificent contribution to the rule of law.

His billable work—I don't know whether he has time for billable work, but when he is earning his living he focuses on general, commercial and securities litigation. He regularly advises clients on a number of business matters, including class actions, shareholder suits and securities arbitration. He is a graduate of Union College and attended Boston College Law School where I graduated from as well a few years before you did, Jason.

I am also very pleased once again to welcome my friend, Bruce Fein, as a panelist. He is a nationally and internationally renowned constitutional lawyer, scholar and writer, served as both Associate Deputy Attorney General for the Justice Department and General Counsel for the Federal Communications Commission under President Reagan. He later served as legal advisor to then Congressman Dick Cheney on the Joint Committee on Covert Arms Sales to Iran.

Mr. Fein is the founding partner of Bruce Fein & Associates and is currently writing a sequel to his recent book, Constitutional Peril.

Finally, I am happy to welcome Tom Parker of Amnesty International. He is the policy director for tourism, counter-terrorism and human rights at Amnesty. He was previously executive director of the Iran Human Rights Documentation Center in New Haven, Connecticut, and has worked extensively during the past 5

years as a consultant on post conflict justice issues for clients such as USAID and the MacArthur Foundation.

In 2003 to 2004, he served with the Coalition Provisional Authority in Iraq as the head of the Crimes Against Humanity Investigation Unit. He spent 4 years as a war crimes investigator with the International Criminal Tribunal for the former Yugoslavia and 6 years as a counterterrorist official with the British Government. He holds degrees from the London School of Economics, the University of Leiden and Brown.

It is a pleasure to welcome such a distinguished group of witnesses, and why don't we proceed first with Mr. Pinney?

Mr. PINNEY. Thank you, Mr. Chairman.

Mr. DELAHUNT. Jason, can you make sure you hit that?

Mr. PINNEY. Yes. There we go. Thank you, Mr. Chairman. May it please the subcommittee, though.

Mr. Fein I believe has a time commitment of concern, so if we could defer to him I think that would accommodate the schedule.

Mr. DELAHUNT. Thank you for your courtesy.

Bruce?

Mr. FEIN. I have to leave at 2:35 or something like that. Maybe it won't be necessary to curtail the full explication.

STATEMENT OF BRUCE FEIN, ESQ., PRINCIPAL, THE LITCHFIELD GROUP

Mr. FEIN. I want to address the points that I made in my written testimony that I guess have been submitted to the record because I think the Uighurs are a symptom rather than an aberration here of what has gone wrong with the United States not only post 9/11, but previously.

The oversight function of Congress has been crippled. It is not just the lack of access for interviews, the withholding of information that should be reported to the Intelligence Committees, the invocation of state secrets, repeatedly keeping Congress in the dark, so there are no checks and balances.

What I would like to do in my oral testimony here is to explain what I think can be institutional remedies to ensure that not only will we uncover what exactly happened with regard to the Uighurs. How did the Chinese Community security services get access? Who gave them access? Was it in exchange for a deal that the Chinese Communists would not veto our U.N. Security Council proposal to invade Iraq or otherwise?

Those things linger, and I think I would suggest that the Congress consider the power of the purse as being really the juggernaut that enables them to get access to anything they want. For instance, what about, Mr. Chairman, access to detainees to interview?

If you passed a law that simply said no monies of the United States shall be expended to detain any person at Guantanamo Bay who is withheld from an interview with a Member of Congress, that then ends the issue of whether or not they can withhold permission for you to visit. If they do, they cannot then detain that individual anymore. Put the Administration in the position of saying we have let go the worst of the worst because we don't trust your elected officials to interview these people.

That is the kind of muscular effort that in my earlier years in Washington I saw exercised. For instance, the 1970s when there was complaints about the CIA's covert operations in Angola. The Congress simply passed a statute. There is no money for the CIA to fund any covert operations in Angola, and that was the end of the matter. So that is one thing that I think is exceptionally important.

Also, I think that it was the testimony today by the witness for the Defense Department that I think reveals this psychology of Executive supremacy that is so dangerous to our institutions, the checks and balances to the ability to know what is going on, to suggest there may be wrongdoing or need for change not only because of the individuals involved, but because what we do also sets a precedent for what the other countries may do to our prisoners, our detainees, if we are captured and we don't want to give license to having happen to our American citizens what we may be doing to detainees from other countries.

But let us look and see what the considerations that the Defense Department officials said in forming their decision whether to grant access for an interview or otherwise. First he says to ensure the safety of the detainees. Well, remember it is up to the Congress to decide what is the relative tradeoff between the need for openness and access in order to detect abuses and what the risk to the detainee.

It is also somewhat odd that they would identify this as a consideration since by exposing the Uighurs to the Chinese security services they were creating a danger to the detainee and the family, not the other way around. So this is rather an Orwellian concept that only had credibility because the individual claimed classified information prevented him from answering directly what was done and what kind of information was given to the security services from the People's Republic of China.

Now, the second consideration is to shield detainees from public curiosity to remain consistent with the Geneva Conventions. Now, I guess it is laudatory that now there seems to be a newfound scrupulousness toward compliance with the Geneva Conventions when before it didn't apply at all. Common Article I didn't prevent torture or inhumane, degrading treatment of detainees.

But again, this comes back to the question of which branch of government makes this policy. There is assumption that the executive branch decides anything and you then are beholden to whatever they decide. The Congress of the United States decides whether or not that privacy interest justifies withholding sunshine, and we know that sunshine is the best disinfectant. That was a phrase Louis Brandeis fashioned well over a century ago.

But this suggestion that it is up to the executive branch to make that tradeoff totally misconceives the Constitution of the United States. And then it says there is a third consideration here, and this relates to litigation. Well, we need to decide whether or not access would impair our ability to defend particular interests in litigation.

There were two kinds of litigation that were mentioned this morning, Mr. Chairman. One was habeas corpus proceedings. Well, you will recall that habeas corpus was resisted and denied, anyone

at Guantanamo Bay, until the U.S. Supreme Court's decision in the Boumediene case, which was a year ago.

So this policy as crafted in 2002, 2003, were years before habeas corpus was available and was over the dead bodies of the Defense Department, not something that they welcomed in any event.

Now, the second category of cases that he was referring to was military commissions. Now, military commissions are tried by military personnel. He was insinuating the Department of Justice tries those cases, but that is wrong.

Now, there have been a grand total of three out of all the detainees, three military commission trials, and the vast majority of those at Guantanamo Bay the Administration has said are not going to be headed for military commission. I think the high water mark of the number who might be tried was going to be 20.

So how does that apply to all the others who are not subject to any conceivable military commission trial? It just shows that this seemed like a concocted argument. In any event, it is up to the Congress of the United States to decide what risks you will have to litigation that are a tradeoff for the openness that you want in order to prevent abuses.

Congress has done that with the Intelligence Secrets Act, which decides what kind of information has to be disclosed to the defendant if you are going to have a trial and if you withhold others which will end up in an ending of the prosecution because that denies the individual a fair trial.

But I think Congress has to step up to the plate here. It is not going to be good enough just on can this individual get waivers, get them to tell you in public what happened to the Uighurs. There will be a second group of Uighurs in another 2 or 3 weeks' time unless institutionally you have access.

Just the threat, just the knowledge down there in Guantanamo that Mr. Delahunt can come down and look and interview these people at any time, that will have an enormous deterrent effect before anything happens whatsoever.

It was President Reagan who said trust, but verify, and that is something that was needed not only with regard to the Soviet Union at the time, but all branches of government. What I found most disturbing about the Defense Department is that they view the Congress of the American people as their enemy, their adversary in this process.

I remember Robert Jackson, the Associate Justice, writing in the Youngstown Sheet & Tube case the Constitution certainly anticipates a separation of power, a diffusion of power, but also some kind of integration, some kind of comity, because the fact is if you have that attitude of an enemy or an adversary or relationship between the branches the whole system will shut down.

There would be an ability, for example, of the Congress to totally enfeeble the Executive. Just don't appropriate any money. If you want to shut down the White House, the Patorian guards, say there is only money for the President's salary. Nothing else.

That obviously contradicts the whole purpose of having a separate branch of government, just like it would be the ability of the President to say we are going to shut down the Judiciary. Do you know why? I won't nominate anybody to fill vacancies. Then there

can't be a Judiciary. So there has to be some kind of comity and understanding that you have to work in some sense together as an integrated whole if the whole system is going to work

I would be delighted to amplify on these particular proposals, but I want to underscore my view. You have to change the whole structural way in which we conduct our operations openly if we are going to prevent these abuses.

Transparency should be the rule. There should be a huge hurdle to deny transparency. Right now it is the opposite. The rule is secrecy, and it is like we make an exception to give you knowledge.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Fein follows:]

STATEMENT OF BRUCE FEIN

RE: CHINESE INTERROGATION VS. CONGRESSIONAL OVERSIGHT: THE UIGURS AT GUANTANAMO

BEFORE THE HOUSE COMMITTEE ON FOREIGN RELATIONS

JULY 16, 2009

Dear Mr. Chairman and Members of the Committee:

I am pleased to share my views on the authority of Members of Congress to interview Guantanamo Bay detainees for the purpose of detecting government interrogation or other abuses, enacting remedial legislation, for example, criminally punishing certain interrogation techniques, or casting sunshine on the conditions of detention for the sake of educating the public. Sunshine is the best disinfectant.

Congress is empowered to insure access for all its Members to Guantanmo Bay detainees for interviews by enacting an appropriations bill declaring as follows: "No monies of the United States shall be expended to detain any persons at Guantanmo Bay who is not made available for interviews to any requesting Member of Congress to obtain information relevant to disclosing executive branch abuses or maladministration, legislation, or the informing function of Congress." I would recommend the enactment of such a statute. It would clearly pass constitutional muster. Congress has routinely employed the power of the purse in furtherance of legitimate legislative objectives. For instance, the Clark Amendment enacted in 1975 clipped CIA covert operations in Angola. The various Boland amendments in the 1980s invoked appropriations bills to restrain executive branch efforts to overthrow Nicaragua's Sandinista regime. At present, Congress could require the release of all Guantanmo Bay detainees by enacting a law which declares: "No monies of the United States may be expended to detain any individual at Guantanamo Bay."

Congressional committees, like the House Foreign Relations Committee, are also empowered to subpoenas to individuals in the custody of the executive branch to testify in

public or for private interviews in furtherance of a legitimate legislative objective. Thus, Guantanamo Bay detainees could be subpoenaed by the Committee for public testimony or interviews. Even if the executive branch worried that the subpoenas might make its interrogation of the detainees less effective, the Constitution confers supremacy on the legislative oversight function. The President's various tools for faithfully executing the laws or protecting the nation from invasion or destruction are 100 percent dependent on congressional legislation. A prominent example is the congressional authority to grant immunity to witnesses—even if the immunity impedes or frustrates a federal prosecution. Ditto for congressional authority to pass amnesty legislation for war crimes or other violations of law as affirmed by the Supreme Court in *The Laura* (1885).

Without supporting legislation or sister official legislative authority, however, an individual Member does not have inherent authority to insist on access to executive branch facilities or persons in executive branch custody beyond that enjoyed by the general public. The Supreme Court has held that the First Amendment is not tantamount to a Freedom of Information Act in *Houchins v. KQED* (1978). That does not mean that comity among co-equal branches would not dictate the Pentagon's accommodating a Member's request to interview a Guantanmo Bay or other detainees in the custody of the United States. A separation of powers does not mean one branch treating the other as the enemy. As Justice Robert Jackson remarked in *Youngstown Sheet & Tube v. Sawyer* (1952): "The actual art of governing under our Constitution does not, and cannot, conform to judicial definitions of the power of any of its branches based on isolated clauses, or even single Articles torn from context. While the Constitution diffuses power the better to secure liberty, it also contemplates that practice will

integrate the dispersed powers into a workable government. It enjoins upon its branches separateness but interdependence, autonomy but reciprocity."

The Pentagon's spokesman scoffed in response to a Member's request to interview Uighur detainees at Guantanamo Bay that "no congressman can interrogate or question detainees because it is not part of their oversight responsibilities." That arrogant response betrays an attitude of executive supremacy at war with the Constitution's checks and balances that has found expression in a spiraling number of arenas since 9/11. Neither the Pentagon nor even the President of the United States can delimit or define the legislative responsibilities of Congress. Correspondingly, Congress cannot define the executive powers of the President, for instance, declaring that the President cannot veto legislation enacted unanimously by the House and Senate. But Congress does enjoy authority to regulate the exercise of executive power through the Necessary and Proper Clause of Article I, section 8, clause 18.

In sum, the Constitution crowns Congress with ample power to insure that every Member possess an absolute right to access to detainees in United States custody for the purpose of interviewing in search of evidence of executive branch wrongdoing or crimes, the need for remedial legislation, or oversight for the purpose of education or deterrence. There is not a crumb of constitutional authority behind the Pentagon's assertion that congressional interviewing of Guantanmo Bay detainees is beyond the legislative writ of Article I.

Mr. DELAHUNT. Thank you, Mr. Fein. You echo my own sentiments.

I would suggest, and we will go to Mr. Pinney in 30 seconds, that is more than just simply structural, but I think what has evolved, and let me be very clear, under the Bush-Cheney Administration is this penchant for lack of transparency and secrecy not just in issues such as this, but on every single issue.

The head of the National Archives—I forget his name; I am sure you know it—commented on the overclassification of government documents. It is cultural, you know. And I have great hope that the Obama Administration will begin to erode that curtain of secrecy.

Clearly there are remnants of that culture that are still very much embedded into the mindset, if you will, of many in the executive branch, but I think you probably observed today the fact that the lack of transparency and overclassification is a festering sore for many in the first branch of government.

As you and I have discussed, I think it is really important that we begin to restore the appropriate role of the U.S. Congress in our constitutional scheme. So we will continue to move in that direction, and I am aware that it is going to be an effort of long duration and tedious and at times frustrating, but I can't agree more.

Jason?

STATEMENT OF JASON PINNEY, ESQ., COUNSEL TO UIGHUR DETAINEES, BINGHAM MCCUTCHEN, LLP

Mr. PINNEY. Thank you, Mr. Chairman. At this point I would like to read my written testimony into the record.

My name is Jason Pinney, and I am an attorney with Bingham McCutchen in Boston, Massachusetts. First I would like to begin by thanking the subcommittee for holding these hearings concerning the continuing detention of the Uighurs at Guantanamo.

Although these men have long been cleared of any wrongdoing, it is unclear why they were ever labeled as enemy combatants in the first place. As Justice Brandeis famously remarked and as Mr. Fein just reminded us, sunlight is the best of disinfectants.

For the past 4 years I have been part of a team at Bingham McCutchen that has represented on a pro bono basis as many as 11 of the 22 Uighurs imprisoned at Guantanamo. None of these men are enemy combatants, and there has never been any justification for holding them.

Thirteen Uighurs are still imprisoned at Guantanamo today. They remain there this afternoon. They remain there because no country, including our own, has the courage to stand up to the Chinese and offer them refuge.

The problem, however, goes far beyond our failure to resettle these men. An objective look at the evidence reveals that our country imprisoned the Uighurs as part of a quid pro quo with China.

China, as Mr. Fein mentioned, is one of the five countries on the United Nations Security Council. In 2002 and 2003, we needed China's support in order to invade Iraq. In exchange for Chinese acquiescence in our war plans, we agreed, among other things, to label the Uighurs as terrorists and to house then at Guantanamo.

What is more, we agreed to provide the Chinese with special and unprecedented access to the Uighur men. In September 2002, we

allowed a delegation from the Communist Chinese Government to travel to Guantanamo and interrogate the Uighurs imprisoned there. The interrogations lasted for days.

Mr. DELAHUNT. Mr. Pinney, let me interrupt you for a moment.

At any time did any representative of the U.S. Government contact you or any other attorney, counsel to any of these Uighurs, if you know, seeking your consent that Chinese Communist agents interview your clients?

Mr. PINNEY. No, we were never contacted, nor, as you heard from the gentleman from the Department of Defense this morning, do they even confirm that the Chinese visited our clients at Guantanamo.

Mr. DELAHUNT. But your clients have informed you that in fact their interrogation back in September 2002 in fact occurred?

Mr. PINNEY. That is correct. In addition, we have uncovered other government documents that have confirmed the visit, so we have absolutely no doubt that the visit occurred.

Mr. DELAHUNT. Thank you. Proceed.

Mr. PINNEY. No representative from the United States was present during these interrogations. In the history of our republic, I cannot think of another example where a Communist country was invited to interrogate unsupervised prisoners of the United States in a United States detention facility.

Despite our best efforts as counsel, no one has been permitted to meet with our clients at Guantanamo. The United Nations has been barred from meeting with the Uighurs. So have several human rights groups. The press has been denied permission to speak with the men or to publish pictures of their faces.

Even members of this subcommittee, as you well know, Mr. Chairman, have been denied access to the Uighurs despite the permission of counsel and the desire of our clients to meet with you. It makes no difference that they are innocent men. The answer has always been the same. No contact has been allowed.

The exception to this rule is the Chinese visit in September 2002. At that time our country permitted a delegation from the People's Republic of China to travel to Guantanamo and interrogate all 22 Uighurs held at the prison. Prior to the interrogations, the Americans, as you said earlier, Mr. Chairman, softened up the men by denying them sleep and in some cases food.

Our Government also provided the Chinese interrogators with copies of the Uighurs' files, personal files with family information, despite prior assurances to the men that the information would never be shared with their Chinese oppressors.

Mr. DELAHUNT. Let me interrupt you there. Your testimony is today that you were told by clients that you represented that they had been reassured that information regarding their family and their identity would not be shared with the Communist Chinese intel agents? Am I repeating what your testimony is accurately?

Mr. PINNEY. That is correct, Mr. Chairman. When our clients were picked up it was very important to them, given the prior conduct of the Chinese regime to do harm to family members of political dissidents. It was very important to them to keep that information confidential.

They agreed to share that information with our military on the condition that it was not shared with the Chinese. That promise was broken in September 2002.

Mr. DELAHUNT. In fact, they had fled their homeland because they feared persecution by the Chinese Communist regime. Is that what you have been informed by your clients?

Mr. PINNEY. That is correct. Many of our clients fled Chinese oppression that began in the late 1990s and continues to this past July 4 holiday.

Mr. DELAHUNT. Please proceed.

Mr. PINNEY. Many of our clients have said that these interrogations were the hardest thing they had to endure during their 7 years of incarceration at Guantanamo.

The Chinese made threats against their family and threats against the men themselves. Each of the Uighurs was told that he would be sent back to China and imprisoned or worse. The men were petrified what would happen to themselves and their family members if the Chinese carried out on their threats.

They were also subjected to stress techniques such as forced sitting for many hours in a cold room, hands bound together, legs shackled to the floor. Some of this mistreatment appears to have been administered by United States military personnel at the instruction of the Chinese.

All of this would not be possible without the support and cooperation of the United States. Military personnel went as far as forcefully holding up my clients' heads by the hair and by the beard so that the Chinese could take their picture.

Statements from our clients' Combatant Status Review Tribunal transcripts exemplify the Uighurs' experiences at the hands of the Communist Chinese interrogators. Remarkably, these CSRT statements were all made in response to direct questions from Tribunal panel members.

Sometimes it was the first question that these Tribunal panel members asked during our clients' hearings. It appears that some of the military officers at least were concerned about this Chinese visit way back in 2004 when these hearings were held.

There are several examples from the CSRT transcripts that I can cite. I would like to share one with you today, and then I would like to talk a little about some statements that my clients made just recently and we have submitted into this subcommittee's record.

Salahidin Abdulahat, who is one of my clients now in Bermuda, described to his Combatant Status Review Tribunal how he was forcefully interrogated, threatened and deprived of sleep and food by the Chinese delegation. Furthermore, he described how, "There was an American person representing the President's house," who threatened to send him back to China if he did not cooperate with the Chinese delegation.

He said that the Chinese "took our picture forcefully and recorded our voices and threatened to hit us and do other things." He pleaded with the CSRT panel to "not let those things happen to us again because it would hurt us really bad."

Most of the Uighurs refused to cooperate with the Chinese interrogators in September 2002. As punishment, the Americans put all

but two of them in solitary confinement for up to 20 days. No light, no air, no human contact.

I asked three of my clients prior to testifying here today to describe their interrogation experiences in greater detail. Abu Bakker Qassim, who is now in Albania, Ablikim Turahun, who is now in Bermuda, and Khalil Mamut, who is also in Bermuda, have all submitted written statements to the subcommittee. I would like to take a brief moment to highlight a few excerpts from these statements.

First is from the statement of Mr. Qassim. Mr. Qassim was released into Albania in 2006 along with four other Uighurs. Picking up in the middle:

> "After I refused to answer any more questions, the Chinese interrogators failed to proceed further. They brought out their camera to take a picture. I refused to be photographed. One Chinese interrogator went outside and brought in two American soldiers. These two soldiers held me tight, and the Chinese forcefully took a picture of me. I had never thought that American soldiers would work with Chinese and treat us like this.
>
> "Then I was locked in a cold, dark steel prison cell for 5 days. I was released to a regular prison cell after the Chinese left. During the 5 days when I was in the cold, dark cell, while thinking about the Chinese harsh treatment toward us in a U.S. prison, I felt sick with the American soldiers.
>
> "After the Chinese had left, during an interrogation I asked the interrogators why they released all of our materials to the Chinese, even though they had promised to keep our information confidential. The Chinese could now randomly oppress our family members. The interrogators did not feel a bit ashamed about it. They apologized by saying that someone in Washington had given our materials to the Chinese."

Now, Mr. Chairman, I would like to read a brief excerpt from the statement of Khalil Mamut:

> "In the beginning of autumn of 2002, a delegation from China representing the Chinese Government arrived. It was afternoon when I was informed by one of the MPs that I was to get ready for an appointment. I was later escorted by two military soldiers to the interrogation room.
>
> "Once I arrived there, two men came in. One was from the American Government, and the other was from the Communist Chinese Government. The American spoke Chinese, saying I am from the American Government, and we have an agreement with the Chinese Government. Therefore, we have allowed them to come here to interrogate you. The Uighur man translated the American man's instructions into our language.
>
> "After the introduction, the Americans departed. Following their departure, two different men arrived. One looked Uighur and the other Chinese. They abused me by telling me that they would take me by force when I returned to China and I would be beaten and eventually killed. I informed them that I do not wish to go back to China. Then they became even angrier, and they attempted to take my picture. I refused to allow them to

do this. However, they were eventually able to take some pictures as I was shackled and chained.

"Then the two men ordered the American soldiers to take me to another room. Once I arrived at this new location the air conditioning unit was turned onto full blast and I was left in this room for 7 straight hours. The room became extremely cold. In this room I once again had shackles on my feet with my hands also chained. In the evening I was returned to my cell."

Mr. Chairman, if I could one more brief statement from——

Mr. DELAHUNT. Mr. Pinney, let me ask you a question on that last recitation. It was the Chinese Communist agents that instructed the American military personnel to take your client to another room?

Mr. PINNEY. That is correct. Mr. Chairman, there is a report issued by the FBI last year that confirms that American military personnel operated under the instruction of the Chinese in abusing our clients during this visit.

Mr. DELAHUNT. Thank you. Proceed.

Mr. PINNEY. Finally, I would like to read a brief excerpt from the statement of Mr. Turahun:

"They called for American soldiers and ordered them to hold me so that my picture could be taken. The soldiers grabbed me, pulled my beard, pressing my throat, twisting my hands behind my back, and as a result my picture was taken by force.

"The air conditioner in the room was placed on high, making the room very cold. I was left in this room for 6 hours. As a result of the room being so very cold, I felt somewhat frozen at times.

"After this 6 hour period I was placed in an isolation room that was made of metal and measured six feet by eight feet. There I remained for 20 days in isolation. The room was so very cold and dark. I was not able to see daylight or another person. During the 20 days it was very difficult to sleep because I was not given any blankets or sheets by which to cover myself in this isolation room. I spent those days suffering.

"I requested to speak to the Uighur interpreter so that he could translate to the guard commander. I wanted to speak to the commander, asking him why I had been placed here. The commander replied that it was not his decision, but that of the Chinese delegation, who instructed that I should be put in isolation. Following this the interpreter and guard commander departed."

Mr. Chairman, to allow the Chinese in to interrogate the Uighurs is not like allowing the British, for example, to meet with their citizens at Guantanamo. England is an American ally. It is a democracy that promotes liberty and, most importantly, it does not have a long and well recorded history of torturing and oppressing its Muslim citizens.

China has an abysmal human rights record generally and when it comes to the Uighurs specifically, everything from forced abortions to torture to execution for ideological dissent. The subcommittee has already heard testimony on these abuses.

Moreover, it has been widely acknowledged that the Chinese have used the so-called war on terror as a pretext for abusing the Uighurs. Our own State Department has concluded that, and I quote:

> "The Chinese Government used the international war on terror as a justification for cracking down harshly on suspected Uighur separatists expressing peaceful political dissent on independent Muslim leaders. Uighurs were executed and sentenced to long prison terms during the years on charges of separatism."

In allowing the Chinese to interrogate the Uighurs then, Mr. Chairman, we by extension aided in the persecution of these men.

To more fully understand the significance of the Chinese visit to Guantanamo it must be viewed in context. When the pieces of the puzzle are put together it appears that our country, as Mr. Fein suggested earlier, made a deal with China. As part of the deal we agreed to label the men as terrorists. In exchange, the Chinese agreed not to oppose our invasion of Iraq.

In my written testimony I have included a detailed chronology. I would just like to pick a few points from this. (1) After 9/11, the Chinese Government announced their intent to encourage the international community to view these East Turkistan organizations as terrorist organizations.

On December 6, 2001, the United States refused to label the East Turkistan Movement as a terrorist organization. Francis Taylor made the following statement: "The U.S. has not designated or considers the East Turkistan organization as a terrorist organization." That was December 6, 2001.

On August 26, 2002, after Deputy Secretary of State Richard Armitage met with senior Chinese officials in Beijing to discuss the invasion of Iraq, he immediately announced from Beijing that a group called the "East Turkistan Islamic Movement" will be placed on the State Department's list of terrorist organizations.

The next month, Mr. Chairman, a Chinese delegation was allowed to visit our clients in Guantanamo and forcefully interrogate them over a period of 10 days. The next month the Chinese President at the time, President Zemin, traveled to Texas to meet with our own President, George W. Bush. Two months later, an FBI report confirmed that the Uighurs were being used as a pawn in order to gain support from the Chinese for our invasion of Iraq.

This is a quote from an unnamed FBI agent in an FBI report dated December 2002:

> "U.S. officials are considering whether to return the Uighurs to the Chinese, possibly to gain support for the anticipated U.S. action in the Middle East. The Uighur detainees at Guantanamo are convinced that they would be immediately executed if they are returned to China."

And the last item I would like to point out from the chronology is a May 2008 FBI report that I referenced earlier. This is the report, from our perspective, that confirms the Chinese visit to Guantanamo. A Department of Justice report confirms that "several

Uighur detainees were subjected to sleep deprivation or disruption while being interrogated at Camp X-Ray by Chinese officials."

And as one agent noted, "The treatment of the Uighur detainees was either carried out by the Chinese interrogators themselves or," Mr. Chairman, "was carried out by U.S. military personnel at the behest of the Chinese interrogators."

So what does this all mean? I think it means that our country sacrificed a small, oppressed minority in order to win the support of the Communist Chinese Government for our invasion of Iraq. In doing so, America turned its back on the values and freedoms that serve as the bedrock of our republic. We should have been offering to help the Uighurs in their struggle against the oppression. Instead we sacrificed them to advance our own interests.

I think we can do better. We have the strength and character as a nation to stand up to countries that persecute their citizens and smother liberty. We are strong enough to withstand the Chinese pressure. We are capable of doing the right thing.

According to the Chinese, the lonely man who confronted a tank in Tiananmen Square 20 years ago is a terrorist. So is the Dalai Lama. So is Rebiya Kadeer and so is the old Uighur woman armed only with a cane—she needs to walk—who stood alone against the Chinese Army in Urumqi less than 2 weeks ago, and yet our own Government has yielded to this Chinese propaganda not just in 2002, but also, Mr. Chairman, in 2009.

I am sad to say that many Members of this Congress embraced the lies when they lobbied against the release of the Uighurs, our clients and others, into the United States earlier this year. Four of these Uighurs, as we have mentioned, are free men in Bermuda today. They are peaceful and law abiding.

But, as unimaginable as it is to say, 13 of their Uighur brothers, brave dissidents from the leading Communist power, long cleared by the American military, both the Bush and Obama Administrations and by several U.S. courts, these men remain prisoners of the propaganda machine that has beguiled two Presidents, the Congress and the American people.

Mr. Chairman, thank you for this opportunity to speak with you and the members of the subcommittee, and thank you for your diligent efforts to uncover the truth behind the imprisonment of the Uighurs at Guantanamo.

[The prepared statement of Mr. Pinney follows:]

BINGHAM

Testimony of Jason Pinney

Before the

HOUSE COMMITTEE ON FOREIGN AFFAIRS
SUBCOMMITTEE ON INTERNATIONAL ORGANIZATIONS, HUMAN RIGHTS, AND OVERSIGHT

Hearing on

Chinese Interrogation vs. Congressional Oversight: The Uighurs at Guantanamo

July 16, 2009

Opening Remarks

Good morning Chairman Delahunt, Ranking Member Rohrabacher, and all other members of the Subcommittee. My name is Jason Pinney, and I am an attorney with Bingham McCutchen in Boston, Massachusetts. I want to begin by thanking the Subcommittee for holding these hearings concerning the continuing detention of the Uighurs at Guantanamo. Although these men have long been cleared of any wrongdoing, it is unclear why they were ever labeled as enemy combatants in the first place. As Justice Brandeis famously remarked, "sunlight is the best of disinfectants."

For the past four years, I have been part of a team at Bingham McCutchen that has represented — on a *pro bono* basis — as many as eleven of the twenty-two Uighur men at Guantanamo. None of these men are enemy combatants, and there has never been any justification for holding them. Thirteen Uighurs are still imprisoned at Guantanamo today. They remain there because no country — including our own — has the courage to stand up to the Chinese and offer them refuge.[1]

The problem, however, goes far beyond our failure to resettle these men. An objective look at the evidence reveals that our country imprisoned the Uighurs as part of *quid pro*

[1] Three countries have had the courage to accept Uighurs from Guantanamo. On May 5, 2006, Albania accepted five Uighur detainees. One of the men was able to make his way from Albania to Sweden, and earlier this year was granted asylum in that country. On June 11, 2009, Bermuda resettled four more Guantanamo Uighurs.

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quo with China. China is one of the five countries on the United Nations Security Counsel. In 2002 and 2003, we needed China's support to invade Iraq. In exchange for Chinese acquiescence in our war plans, we agreed, among other things, to label the Uighurs as terrorists and house them at Guantanamo.

What's more, we agreed to provide the Chinese with special and unprecedented access to the Uighur men. In September of 2002, we allowed a delegation from the Communist Chinese government to travel to Guantanamo and interrogate the Uighurs imprisoned there. The interrogations lasted for days. Our clients were forced into cells, alone, with the Chinese. No representative from the United States was present during these interrogations. In the history of our republic, I cannot think of another example where a Communist country was invited in to interrogate, unsupervised, prisoners in a United States detention facility.

The September 2002 Visit

Despite our best efforts, no one has been permitted to meet with our clients. The United Nations has been barred from meeting with the Uighurs. So have several human rights groups. The press has been denied permission to speak with the men, or to publish their pictures. Even the members of this Subcommittee have been denied access to the Uighurs, despite the blessing of counsel. It makes no difference that they are innocent men. The answer has always been the same. No contact has been allowed.

The exception to this rule? The Communist Chinese government.

In September of 2002, our country permitted a delegation from the People's Republic of China to travel to Guantanamo and interrogate all twenty-two Uighurs held at the prison. Prior to the interrogations, the Americans "softened up" the men by denying them sleep and in some cases food. Our government also provided the Chinese interrogators with copies of the Uighurs' files, including detailed information on their families, despite previous assurances to the men that their information would not be shared with their Chinese oppressors. The men were left alone with the Chinese in an interrogation room for several hours. No member of the US military was present.

Many of our clients have said that these interrogations were the hardest thing they had to endure during their seven years at Guantanamo. The Chinese made threats against family, and against the men themselves. Each of the Uighurs was told that he would be sent back to China and imprisoned, or worse. The men were petrified of what would happen to themselves and their family members if the Chinese carried out on their threats. They were also subjected to stress techniques such as forced sitting for many hours in a cold room, bound and shackled. Some of this mistreatment appears to have been administered at the instruction of the Chinese.

All of this would not be possible without the support and cooperation of the United States. Military personnel went as far as forcefully holding up my clients' heads by the hair and beard so that the Chinese could take their picture.

Statements from our clients' Combatant Status Review Tribunal ("CSRT") transcripts exemplify the Uighur experiences at the hands of Communist Chinese interrogators. Remarkably, these CSRT statements were all made in response to direct questions from tribunal panel members. Sometimes, it was the first question that was asked. It appears that some military officers were concerned that the Chinese were allowed to interrogate the men.

- Salahidin Abdulahat (now in Bermuda) described to his Combatant Status Review Tribunal ("CSRT") panel how he was forcibly interrogated, threatened, and deprived of sleep and food by the Chinese delegation. Furthermore, he described how "there was on American person . . . representing the president's house" who threatened to send him back to China if he did not cooperate with the delegation. He said that the Chinese "took our picture forcefully and recorded our voices and threatened to hit us and do other things." He pleaded with his CSRT panel "to not let those things happen again to us [because] it would hurt us really bad."

- Sabir Osman (still in Guantanamo) echoed these remarks. He said that the Chinese made threats against him, and told him that the American government had already agreed to turn him over to China. He also described a conversation with an MP in which "[t]he MP came in and said that they had orders from higher up and we have to hold you by your neck and they will take your picture."

- Ablikim Turahun (now in Bermuda) said that he was told if he agreed to return to China he would only be in prison for three to four years. The Chinese baited him by telling him that he could be with his family afterwards. Mr. Turahun knew the risks of believing the Chinese. He chose to stay in Guantanamo.

- Adel Abdul Hakim (now in Sweden) was told that he was "lucky" to be in Guantanamo; if they took him back to a Chinese jail, he would be "finished."

Most of the Uighurs refused to cooperate with the Chinese interrogators. As punishment, the Americans put all but two of them in solitary confinement for up to twenty days. No light, no air, no human contact.

I asked three of my clients to describe their interrogation experiences in greater detail: Abu Baker Qassim (Albania), Ablikim Turahun (Bermuda) and Kheleel Mamut. (Bermuda). I have attached copies of their statements. I would like to take a brief moment to read a few excerpts from these statements.

The Fox in the Henhouse

To allow China in to interrogate the Uighurs is not like allowing the British in to meet with their citizens at Guantanamo. England is an American ally. It is a democracy that promotes liberty. And, most importantly, it does not have a long history of torturing and oppressing its Muslim citizens.

China has an abysmal human rights record generally, and when it comes to the Uighurs, specifically. Everything from forced abortions to torture to executions for ideological dissent. This Subcommittee has already heard testimony on these abuses. Moreover, it has been widely acknowledged that the Chinese have used the so-called war-on-terror as a pre-text for abusing the Uighurs. Our own Department of State has concluded that:

> The [Chinese] Government used the international war on terror as a justification for cracking down harshly on suspected Uighur separatists expressing peaceful political dissent and on independent Muslim religious leaders. . . . Uighurs were executed and sentenced to long prison terms during the year on charges of separatism.

In allowing the Chinese in to interrogate the Uighurs, we, by extension, aided in the persecution of the Uighurs.

The Deal with China

To more fully understand the significance of the Chinese visit to Guantanamo, it must be viewed in context. When the pieces of the puzzle are put together, it appears that our country made a deal with China. As part of the deal, we agreed to label the men as terrorists. In exchange, the Chinese agreed not to oppose our invasion of Iraq. The following chronology helps bring things into focus.

October 11, 2001	China launches a campaign to label Uighurs as terrorists. As "a victim of international terrorism," China hopes that its "efforts to fight against **East Turkestan terrorist forces** [will] become a part of the international efforts and should also win support and understanding." — *Chinese Foreign Ministry Spokesman*
December 6, 2001	In response, The U.S. refused to label the East Turkistan movement a terrorist organization. "[T]he U.S. has **not designated** or considers the East Turkistan organization as a terrorist organization." — *U.S. State Department Coordinator for Counter-terrorism Francis X. Taylor*
December, 2001	A group of eighteen Uighurs are captured together in Pakistan and sold to U.S. forces for $5,000 a head. Four other Uighur men are separately captured and also sold to the U.S. for a bounty. All are later sent to Guantanamo.
February 1, 2002	China continues to oppress the Uighurs in the name of the war-on-terror. China instructs local authorities to crack down on Uighur "separatist techniques" including "forms of infiltration and sabotage **carried out in the ideological sphere** by ethnic separatist forces." — *Xinjiang Party Secretary*

May-June, 2002	The Uighurs are transferred to Guantanamo.
August 26, 2002	U.S. Deputy Secretary of State Richard Armitage meets with senior Chinese officials in Beijing to discuss the invasion of Iraq and immediately announces that a group called the "East Turkistan Islamic Movement" ("ETIM") will be placed on the State Department's list of terrorist organizations.
September, 2002	A Chinese delegation visits Guantanamo and interrogates twenty-two Uighur prisoners.
October 25, 2002	Chinese President Jiang Zemin travels to Texas to meet with President Bush to discuss the war in Iraq.
December, 2002	An FBI report confirms that the Uighurs are being used to gain Chinese support for the war in Iraq. "US officials [are] considering whether to return the Uighurs to the Chinese, possibly **to gain support for the anticipated US action in the Middle East**. The Uighur detainees at GTMO [are] convinced that they would be immediately executed if they were returned to China." — FBI Agent (*name redacted*)
January 14, 2003	China intensifies it oppression of the Uighurs. "Xinjiang will always keep up the intensity of its crackdown on **ethnic separatist forces** and deal them **devastating blows** without showing any mercy." — *Statement of Xinjiang Party Secretary Wang Lequan*
May 25, 2004	Amnesty International reports on the Chinese Guantanamo visit, including allegations that "**the detainees were subjected to intimidation and threats, and to 'stress and duress' techniques such as environmental manipulation, forced sitting for many hours, and sleep deprivation, some of which is alleged to have been on the instruction of the Chinese delegation**." The report calls for the Uighurs not to be repatriated to China.
May 27, 2004	China denies the report stating: "Abuse is . . . strictly forbidden by Chinese law, so how could we carry out this kind of act in other countries?" "Such accusations by Amnesty International are totally groundless." — *Chinese Foreign Ministry Spokesman Liu Jianchao*
August 12, 2004	Colin Powell confirms that the Uighurs are not going back to China. "The Uighurs are a difficult problem . . . and we are trying to resolve all issues with respect to all detainees at Guantánamo. The Uighurs are not going back to China." — *Secretary of State Colin Powell*

May, 2008	A Department of Justice report confirms that "several Uighur detainees were subjected to sleep deprivation or disruption while being interrogated at Camp X-Ray by Chinese officials." As one FBI agent noted, "the treatment of the Uighur detainees was either carried out by the Chinese interrogators or **was carried out by U.S. military personnel at the behest of the Chinese interrogators**."

Abandoning our Principles

So what does all of this mean? I think it means that our country sacrificed a small oppressed minority in order to win the support of the Communist Chinese government for our invasion of Iraq. In doing so, America turned its back on the values and freedoms that serve as the bedrock of our republic. We should have been offering to help the Uighurs in their struggle against oppression. Instead, we sacrificed them to advance our own interests.

I think we can do better. We have the strength and character as a nation to stand up to countries that persecute their citizens and smother liberty. We are strong enough to withstand Chinese pressure. We are capable of doing the right thing.

According to the Chinese, the lonely man who confronted a tank in Tiananmen Square is a terrorist. So is the Dalai Lama. So is Rebiya Kadeer. So is the old Uighur woman, armed only with the cane she needs to walk, who stood alone against the Chinese army in the streets of Urumchi earlier this month.

And yet our own government yielded to this propaganda. Not just in 2002 — but in 2009. I am sad to say that many members of this Congress embraced the lies when they lobbied against the release of Uighurs in the United States earlier this year. Four of these Uighurs are free men in Bermuda today. They are peaceful and law abiding — ask any Bermudian. But as unimaginable as it is to say, thirteen of their brothers — brave dissidents from the world's leading Communist power, long cleared by the American military, both the Bush and Obama administrations, and by the U.S. courts — remain prisoners of a propaganda machine that has beguiled two Presidents, the Congress, and the American people.

Closing Remarks

Thank you for this opportunity to speak with you, and thank you for your diligent efforts to uncover the truth behind the imprisonment of the Uighurs at Guantanamo.

Mr. DELAHUNT. Thank you, Mr. Pinney. Let me just note that the Obama Administration of course is designing a plan in terms of dealing with those who have been cleared for release, and I hope they have an opportunity to read the words of George Washington and to examine the transcripts of these hearings that we have held and offer to the remaining Uighurs an opportunity to resettle in the United States so that we can reclaim our moral authority despite what has occurred in the past.

Mr. FEIN. If I could interject, Mr. Chairman? You remember the Congress passed the Military Commissions Act of 2006, a quite disgraceful statute, but it was a statute.

I would suggest that Congress may want to consider stealing a march on time on the Obama Administration. By statute you clearly have authority to dictate those Uighur detainees come to the United States of America. It could be one of the Congress' finest hours.

You don't need to wait. You didn't wait on the Military Commissions Act. You don't need to wait now.

Mr. DELAHUNT. Thank you, Mr. Fein.

Mr. Parker, you are our cleanup hitter, so to speak.

Mr. PARKER. I only wish I knew what that meant.

Mr. DELAHUNT. It is a term we use in Red Sox Nation. You probably have not heard that. Well, I am sure you have heard the term Red Sox Nation.

Mr. PARKER. Red Sox Nation I have. Having lived in New Haven, Connecticut, I have heard of this team they call Red Sox.

STATEMENT OF MR. TOM PARKER, POLICY DIRECTOR, COUNTER-TERRORISM AND HUMAN RIGHTS, AMNESTY INTERNATIONAL USA

Mr. PARKER. Mr. Chairman, thank you very much for the opportunity to testify here today. It is an honor to address the subcommittee on such an important issue and to share my organization's thoughts on the plight of the Uighurs and the implications for an effective national security policy.

I would like to address several points in my testimony: The nature of human rights conditions in Xinjiang Uighur Autonomous Region, the security situation there, and the interrogation of Uighur detainees at the Guantanamo Bay detention facility.

Amnesty International views with sadness and great concern the recent ethnic violence in Xinjiang, which has been one of the worst outbreaks of violence in China in recent years. Violence has once again placed this region in the headlines, but the causes and human rights conditions that underlie these riots have been developing for decades, both from the fundamental conditions that exist in the region and the policies and programs and reactions of the central and local government in the XUAR.

The recent violence is not an isolated event, but part of a wider story. In 1955, the People's Republic of China established the Xinjiang Uighur Autonomous Region in recognition of the Uighurs' predominance in the region, a status that according to the Chinese constitution entitles ethnic minorities to organs of self-government in order to exercise autonomy.

According to the latest Chinese census, in 2000 there were more than 18 million people living in the Autonomous Region, of whom 47 percent are Uighurs, 40 percent Han Chinese and 12 percent from other ethnic groups. The Han Chinese population has increased significantly from an estimated 6 percent in 1949 due to central government policies that include providing financial incentives for Han Chinese to migrate to the region.

This sustained influx of Han Chinese migrants into the region has contributed to the destruction of local customs and, together with employment discrimination, has fueled discontent and ethnic tension.

On paper, Islam is one of the official religions of China and people are accorded special privileges because of their cultural background, but in reality the government has pursued a policy of undercutting the Uighurs' cultural, linguistic and religious life.

According to one of our organization's reports, in 2009 the authorities still maintain a tight control of the mosques and religious clergy, intervening in the appointment of local imams, stationing police within and outside mosques and closely monitoring all religious activities.

Government employees in the Autonomous Region, including teachers, police officers, state enterprise workers and civil servants, risk losing their jobs if they engage in religious activity.

Chinese authorities have also put many obstacles in the way of Uighurs attempting to make the pilgrimage to Mecca, the Hajj, which is a requirement for all practicing Muslims. Children under the age of 18 are not allowed to enter mosques or receive any sort of religious education. Many young Uighurs are afraid that if they do enter a mosque that they will be expelled from school.

A supposedly bilingual education system in fact actually makes Mandarin the sole language of instruction and is steadily undermining the foundations of Uighur culture.

The post-Mao era in the 1980s liberalized policy throughout China, allowing citizens greater freedom, including some freedom of religion and expression, and strengthened legal protections. However, since the mid 1990s Uighurs have experienced a sharp reversal in this policy as authorities have embarked on a very aggressive campaign against what have been termed the three evils: Terrorism, separatism and religious extremism.

As a result, increased numbers of Uighurs have been subjected to arbitrary arrests, unfair trials and torture, and their economic, social and cultural rights have been slowly eroded. This has worsened since 9/11 as the authorities have cast Uighur discontent within the framework of international terrorism. Most academics and other observers consider these claims to be unsubstantiated.

In 2008, the authorities used a series of violent incidents allegedly carried out by Uighur separatist groups as a pretext for launching a sweeping crackdown population in the Xinjiang Autonomous Region. According to the official media, almost 1,300 people were arrested in 2008 on state security charges that included terrorism, separatism and religious extremism and 1,154 were formally charged and faced trials or administered punishments.

On August 14 last year, Wang Lequan, the Communist Party Secretary of the Autonomous Region, announced a life and death

struggle, his words, against Uighur separatism. Currently there are thousands of Uighur political prisoners imprisoned in China without charge or trial or after unfair trials. Torture is commonplace, and statements extracted through torture are used to convict Uighurs, including convicting them of the death penalty.

Coercive methods reportedly used by the Chinese public security agents include physical beatings, prodding people with electric shock batons, the insertion of needles under fingernails and the use of stress positions.

Shahir Ali is a young Uighur or was a young Uighur political activist who fled from China to Nepal in 2000. He was forcibly returned to China by the Nepalese authorities in 2002. He was tried and sentenced to death in 2003 for the crimes of separatism, organizing and leading a terrorist organization and the illegal manufacture, trading and possession of weapons and explosives.

The evidence was presented in a secret case. None of this evidence has ever been made public, but there is no independent information to suggest that Ali was involved in terrorist activities of any nature.

His circumstances are broadly similar, we would suggest, to those of the Uighurs currently held in Guantanamo, and one might reasonably expect that if they were returned to China they would share Ali's fate.

Mr. DELAHUNT. Mr. Parker, are you aware of a statement by the former Speaker of the House of Representatives, Mr. Gingrich?

Mr. PARKER. You would have to elaborate further, sir.

Mr. DELAHUNT. Well, recently, within the past several months, he made the statement that the Uighurs are not an American problem and they should be sent back to China.

Would you care to make a comment on that particular statement?

Mr. PARKER. Well, if you send them back to China you could quite literally be signing their death warrant.

Mr. DELAHUNT. In your opinion, and I would solicit comments from our other two panelists, if the United States should send them back to China, if they followed the wishes of Mr. Gingrich, would it violate domestic law and would it contradict our treaty obligations under the Convention Against Torture?

Mr. PARKER. With two distinguished legal colleagues on the panel, I won't talk about American law, but the principle of nonrefoulement is an international custom or international principle which states you do not return people to face torture or inhumane or degrading treatment, so, yes, it would be a violation of international law.

Mr. FEIN. It would be a violation of United States law as well. It is one of the reasons why we haven't sent the Uighurs back to China.

In fact, the State Department has publicly stated that they fear that they would be tortured or killed, so that is the official position of the United States Government as well.

Mr. DELAHUNT. Then I would obviously conclude that Mr. Gingrich was ignorant of the realities affecting the Uighurs and was unaware of the treaty obligations, as well as domestic law.

You can continue to proceed, Mr. Parker.

Mr. PARKER. It is against this underlying set of conditions that we have to view the current situation for the Uighur detainees still at Guantanamo. No other group of prisoners was so clearly wrongly apprehended and detained, reportedly sold to United States forces for a bounty of $5,000 per person after they fled from the village that they were living in in Afghanistan.

Soon after they were picked up in 2002, our own intelligence and security personnel concluded that they posed no threat to the United States. However, from the outset ill treatment was a predictable part of a detention regime operated away from independent judicial oversight, and the Uighur detainees were not spared abuse.

In May 2004, Amnesty International broke the story of the access of Chinese Government officials to these detainees in Guantanamo in 2002 and that American military personnel had assisted in the preparation of these individuals for interview by the Chinese authorities.

In the years since then and in the absence of judicial oversight, the indefinite and isolating nature of the detentions at Guantanamo has remained cruel, inhumane and degrading. In February 2007, for example, Uighur detainee Ali Mohammed was being held in isolation in Camp Six, a super max prison one might call it, for at least 22 hours a day. He never sees direct sunlight and has no access to fresh air.

During his 2 hours per day of recreational time, which on alternating days is in the middle of the night, Ali is placed in a cage where he can sometimes see other prisoners, but is punished if he tries to touch or greet them. He is compelled to complain to get clean clothes. He is denied privacy when he uses the toilet. Female guards can watch him using the toilet. His food and drinks are always cold. He eats every meal alone.

Like all Guantanamo prisoners, he is not allowed any visitors other than occasional trips by counsel and the Red Cross. He is not allowed to make phone calls. As the Supreme Court recently affirmed, even convicted murderers cannot be made to endure conditions like this without first providing them with the benefit of due process.

The physical and psychological well-being of detainees kept in such conditions has long been of concern. The treatment of the Uighurs has illustrated the pursuit of unaffected Executive power that has characterized the USA's conduct in the war on terror and led to systematic human rights violations, including arbitrary detention, torture and other ill treatment.

Resolving their situation should mark not only a new start for these men, but also a full recognition by the United States of its obligation to ensure that anyone whose rights under international law have been violated in U.S. custody has access to effective remedy.

Remedy for the Uighur detainees arbitrarily detained in violation of international human rights law is long overdue. The legal concept of remedy as enshrined in the International Covenant on Civil and Political Rights, of which the United States is both a signatory and historically a strong supporter, includes not only the restoration of liberty but also reparation.

Four Uighur former Guantanamo inmates are now in Bermuda, four in Albania and one in Sweden. But consider for a moment what those men have lost. They have lost 7 years of their lives. Quite apart from the personal deprivation of liberty, that is also 7 years of lost earning potential, one-fifth of a working life. Their families too have been without their primary bread winner all of that time.

Furthermore, what kind of future do they have to look forward to? They certainly haven't had the opportunity to learn or develop a trade while in detention, nor are they returning to a society they know well. Some may not even speak the local language.

And however idyllic Bermuda may appear in press photographs, it is a world away from the central Asia steppe the Uighurs are used to. A refugee center in Albania certainly lacks any appeal whatsoever.

Some released inmates may be grappling with medical or mental health problems. We know five inmates have committed suicide in the detention facility in Guantanamo since it opened.

In March this year, the Department of Defense has reported that 34 inmates were on hunger strike. Such figures give some insight into the harrowing nature of the detainees' experiences, yet no provision has been made to support their rehabilitation.

A recent study of the post release lives of 62 former Guantanamo inmates compiled by Professors Eric Stover and Laurel Fletcher of UC-Berkeley found that two out of every three former detainees reported psychological problems resulting from their confinement. Only six of those 62 have been able to find permanent jobs. Some are actually indigent and destitute.

Releasing inmates cleared for release such as the Uighurs is not in and of itself enough. We have a moral and legal obligation to aid the reintegration of former inmates back into society. These men have been convicted of no crime, and in our system that means they are innocent. No ifs. No buts.

Innocent men wrongly held for 7 years have a right to compensation, yet we understand some detainees have even been asked by camp authorities at Guantanamo to sign a waiver that they will not seek redress as a condition extracted under duress for their release. How low have we sunk?

The Obama Administration cannot simply shove cleared detainees out of the gates of Camp Delta and forget about them. The United States must take responsibility for rebuilding lives it has ruined. If simple decency is not reason enough, consider also that Guantanamo stigma means that former detainees with no other source of support have little choice but to turn to radical mosques and extremist networks for help.

It is in our interest to help these individuals make a fresh start. Indeed, our very security may even depend on it. In the pursuit of any conflict there are always mistakes and always casualties, but it is incumbent on us to act honorably, to tell the truth and to freely acknowledge our mistakes.

In the long, sorry saga of the detention facility at Guantanamo Bay, no cases are more deserving of our sympathy and our apologies than the Uighurs both for the length of their detention and the

manner of their treatment. These men have never posed any genuine or meaningful threat to the United States of America.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Parker follows:]

STATEMENT OF

TOM PARKER

POLICY DIRECTOR, TERRORISM, COUNTERTERRORISM AND HUMAN RIGHTS

AMNESTY INTERNATIONAL USA

BEFORE THE HOUSE COMMITTEE ON FOREIGN AFFAIRS

SUBCOMMITTEE ON INTERNATIONAL ORGANIZATIONS, HUMAN RIGHTS, AND OVERSIGHT

UNITED STATES HOUSE OF REPRESENTATIVES

DELIVERED ON JULY 16, 2009

Mr. Chairman, Members of the Subcommittee, Thank you for the opportunity to testify here today, It is an honor to address this Subcommittee on such an important issue and to share my thoughts on the plight of the Uighurs and the implications for an effective national security policy. I would like to address several points in my testimony this morning. The nature human rights conditions in the Xinjiang Uighur Autonomous Region or the XUAR, the security situation there, and the interrogation of suspects at GTMO by Chinese authorities.

Amnesty views with sadness and grave concern the recent ethnic violence in Xinjiang, which has been one of the worst outbreaks of violence in China in decades. Violence has once again placed this region in the headlines, but the causes and human rights conditions that underlie these riots have been developing for decades, both in the fundamental conditions that exist in the region, and in policies and programs and reactions of the central and local government in the XUAR.

The recent violence is not an isolated event, but part of the wider story. In 1955, the People's Republic of China established the Xinjiang Uighur Autonomous Region (XUAR), in recognition of the Uighurs' predominance in the region, a status which according to the Chinese Constitution entitles ethnic minorities to organs of self-government in order to exercise autonomy. According to the latest Chinese census in 2000, there are more than 18 million people living in the XUAR, of whom 47 per cent are Uighurs, 40 per cent are Han Chinese and 12 per cent are other ethnic groups, including Kazakhs,

Kyrgyzs, Tatars, Uzbeks and Tajiks. The Han Chinese population has increased significantly from an estimated 6 per cent in 1949 due to central government policies that include providing financial incentives to Han Chinese who migrate to the region. This sustained influx of Han Chinese migrants into the region, are destroying customs and, together with employment discrimination, fuelling discontent and ethnic tensions.

On paper Islam is one of the official religions of China and the people are accorded special privileges because of their cultural background, in reality the government has pursued a policy of undercutting the Uighurs cultural, linguistic and religious life. According to an Amnesty report in 2009, the authorities maintain tight control over mosques and religious clergy, intervening in the appointment of local imams, stationing police within and outside mosques, and closely monitoring all religious activities. Government employees in the XUAR, including teachers, police officers, state enterprise workers and civil servants risk losing their jobs if they engage in religious activity. Chinese authorities have also put many obstacles in the way of Uighurs attempting to make the pilgrimage to Mecca, known as the Hajj, which is a requirement for all practicing Muslims. Children under the age of 18 are not allowed to enter mosques or to receive any sort of religious education. Many young Uighurs are afraid that if they do enter a mosque, or are found to be praying at home, they will be expelled from school. A supposedly bilingual education policy has instead effectively made Mandarin the sole language of instruction, and is stealthy undermining the foundations of Uighur culture.

The post-Mao era in the 1980s liberalized policies throughout China allowing citizens greater freedom, including freedom of religion and expression, and strengthened legal protections. However, since the mid to late 1990s, Uighurs experienced a sharp reversal in policy, as authorities embarked on an aggressive campaign against the "three evils": "terrorism, separatism and religious extremism". As a result, increased numbers of Uighurs have been subjected to arbitrary arrests, unfair trials and torture, and their economic, social and cultural rights have been slowly eroded. This has worsened post 911 as the authorities cast Uighur discontent within the framework of international terrorism. Academics and other observers consider these claims unsubstantiated.

In 2008, the authorities used a series of violent incidents, allegedly carried out by Uighur separatist groups, as a pretext for launching a sweeping crackdown on the Uighur population in the XUAR. According to official media, almost 1,300 people were arrested in 2008 on state security charges that included terrorism, separatism and religious extremism, and 1,154 were formally charged and faced trials or administrative punishments. On August 14th, Wang Lequan, Communist Party Secretary of the XUAR, announced a "life and death" struggle against Uighur "separatism".

Currently there are thousands of Uighur political prisoners; imprisoned without charge or trial or after unfair trials. Torture is common and statements extracted through torture are used to convict Uighurs including subjecting them to the death penalty. The coercive methods reportedly used by Chinese Public Security agents include physical beatings, prodding with electricshock batons, the insertion of needles under the fingernails and the use of stress positions.

Uighurs are imprisoned for peaceful political activities and persecuted for their religious and ethnic background. Uighurs who have been returned to China from other countries face imprisonment, torture and execution. It is against this underlying set of conditions that we have to view the current situation for the Uighur detainees at Guantanamo. No other group of prisoners were so clearly wrongly apprehended and detained - reportedly sold to the US by Pakistani forces, after they fled from Afghanistan. Soon after they were picked up in 2002 it was realized that they posed no threat to the United States.

From the outset, ill-treatment was a predictable part of a detention regime operated away from independent judicial oversight, and the Uighur detainees were not spared such abuse. In May 2004, Amnesty International alleged that agents of the Chinese government had been in Guantánamo in 2002 and had participated in the ill-treatment of Uighur detainees, including by sleep deprivation, threats and environmental manipulation.

The US government never directly responded to the allegations, but a May 2008 report of the Office of the Inspector General of the US Justice Department revealed that an agent of the Federal Bureau of Investigation had reported that "several Uighur detainees were subjected to sleep deprivation or disruption while being interrogated at Camp X-Ray by Chinese officials prior to April 2002". One of the detainees had alleged that "the night before his interrogation by Chinese officials, he was awakened at 15-minute intervals the entire night and into the next day". The Inspector General's report stated that "some Chinese officials visited GTMO and were granted access to these detainees for interrogation purposes". The Uighur detainees told the Combatant Status Review Tribunals in late 2004 and early 2005 that they had been ill-treated by members of the Chinese delegation. In the District Court hearing on 21 August 2008 cited above, Judge Ricardo Urbina indicated his concern that "there have been a number of situations that have arisen with respect to the interrogation of the Uighurs which appear to run contrary to what these people were assured would happen; one of which was having a Chinese interrogator when these people were told no Chinese interrogator would participate in interrogation".

For the years since then, in the absence of judicial oversight, the indefinite and isolating nature of the detentions at Guantánamo has remained cruel, inhuman and degrading. In February 2007, for example, Uighur detainee Ali Mohammed (aka Anvar Hassan) was being "held in isolation in Camp 6, a 'super-max' prison, at least 22 hours a day. He never sees direct sunlight and has no access to fresh air. During his two hours per day of 'recreational time (which on alternating days, is in the middle of the night), Ali is placed in a cage where he can sometimes see other prisoners but is punished if he tries to touch or greet them. He is compelled to complain to get clean clothes. He is denied privacy when he uses the toilet; even female guards can see him. His food and drinks are always cold. He eats every meal alone. Like all Guantánamo prisoners, he is not allowed any visitors other than occasional trips by counsel and the Red Cross, and he is not allowed to make phone calls. As [the US Supreme] Court recently affirmed,
even convicted murderers cannot be made to endure conditions like these without first providing them the benefit of due process".

The physical and psychological well-being of detainees kept in such conditions has long been of concern. The treatment of the Uighurs has illustrated the pursuit of unfettered executive power that has characterized the USA's conduct in the "war on terror" and led to systematic human right violations, including arbitrary detention torture and other ill-treatment. Resolving their situation should mark not only a new start for these men, but also full recognition by the USA of its obligation to ensure that anyone whose rights under international law have been violated in US custody has access to effective remedy. Remedy for the Uighur detainees – arbitrarily detained in violation of international human rights law – is long overdue. Remedy includes reparation, one aspect of which is restitution. The latter should, whenever possible, restore the victim to the original situation before the violation occurred, including the restoration of liberty.

Four Uighur former Guantanamo inmates are now in Bermuda, four in Albania and one, Adel Abdu Al-Hakim, in Sweden. Consider for a moment what the men recently released have lost. They have lost seven years of their lives. Quite apart from the personal deprivation of liberty that is also seven years of lost earning potential - one fifth of a working life. Their families too have been without their primary breadwinner all this time.

Furthermore, what kind of future do they have to look forward to? They certainly haven't had the opportunity to learn or develop a trade while in detention, nor are many of them returning to a society they know well. Some may not even speak the local language. However idyllic Bermuda may appear in press photographs, it is a world away from the Central Asian steppe the Uighurs are used to. A refugee center in Albania surely lacks any appeal whatsoever.

Some released inmates may be grappling with medical or mental health problems. We know five inmates have committed suicide since the detention facility in Guantanamo opened and in March this year the Department of Defense reported that 34 inmates were on hunger strike. Such figures give some

insight into the harrowing nature of the detainees' experiences - yet no provision has been made to support their rehabilitation.

A recent study of the post-release lives of 62 former GTMO inmates compiled by Professors Eric Stover and Laurel Fletcher of UC Berkeley found that two out of every three former detainees reported psychological problems resulting from their confinement. Only six had been able to find permanent jobs. Some are indigent and destitute.

Releasing inmates cleared for release, such the Uighurs, is not in and of itself enough. We have a moral and legal obligation to aid the reintegration of former inmates back into society. These men have been convicted of no crime. In our system that means they are innocent. No ifs or buts.

Innocent men wrongly held for seven years have a right to compensation yet we understand some detainees have even been asked by the Camp authorities to sign a waiver stating that they will not seek redress as a condition of their release.

How low we have sunk. The Obama administration can't simply shove cleared detainees out the gates of Camp Delta and forget about them. The United States must take responsibility for rebuilding lives it has ruined.

If simple decency is not reason enough, consider also that "Guantanamo stigma" means that former detainees with no other source of support have little choice but to turn to radical mosques and extremist networks for help. It is in our interests to help these individuals make a fresh start. Indeed our very security may depend on it.

In the pursuit of any conflict there are always mistakes and always casualties, but it is incumbent on us to act honorably, to tell the truth, and to freely acknowledge our mistakes. In the long and sorry saga of the detention facility at Guantanamo Bay, no cases are more deserving of our sympathy and our apologies

than the Uighurs, both for the length of their detention and the manner of their treatment, and who have never posed any genuine or meaningful threat to the United States.

Mr. DELAHUNT. Thank you, Mr. Parker.

I am sure you heard the remarks by my colleague, Mr. Rohrabacher, where he extended his apologies, his personal apologies, to the Uighurs, and I would hope, Mr. Pinney, that you would convey back to your clients that America is getting it right.

Mr. PINNEY. Of course, Mr. Chairman.

Mr. DELAHUNT. I know Mr. Fein has another obligation, and I know you have been waiting a long time.

I think it was you, Mr. Pinney, that made the distinction between allowing say British, United Kingdom or better yet Irish; Irish security agents in to conduct interviews as opposed to those nations that have an abysmal human rights record.

Information has come to my attention that the security apparatus of Uzbekistan has been allowed to visit detainees from Uzbek, and the only way to describe the leader of Uzbekistan, Mr. Karimov, is that he is the thug of Tashkent and has massacred thousands of innocent people who were protesting against the repressive nature of his government.

I think you said it very well. Where are we and isn't it time, and I do hope that this is the case, that the Obama Administration is doing a full reassessment of this I think horrific policy that results in human rights violators free and unfettered access to detainees. There is no gain. There is only disdain, if you will, for the U.S. that comes from this.

But I guess I would pose a question to you. Has Amnesty or anybody reflected and thought about a policy that would meet the standards of the human rights community so that interviews done appropriately and done in a fashion that is reflective of our values could be conducted by agents of foreign governments?

Mr. PARKER. Well, our standard basically is we should be using the criminal justice system to detain people that we suspect of terrorism, and there are legal instruments that allow foreign countries to request access to people in detention.

Lettre rogatoire, for example. As a law enforcement or a former law enforcement official myself, I have often applied to foreign governments for access to talk to both witnesses and detainees, and it is done through normal judicial mechanisms and that serves perfectly well.

Mr. FEIN. But because we do still have a President that says there is a category of persons who are not criminals but we will retain for some reason, for the Congress of the United States simply having a presumption of nonaccess by any foreign intelligence security service unless the President makes a waiver and certifies that that intelligence service satisfies certain human rights standards so that the burden of proof is on the President.

The President has to disclose it and share it with Congress. At least it is a statement out of this Congress that the norm is no, you can't share it and no one will be out there who is outside the

United States unless the President certifies that there is not going to be abuse basically.

I come back to Congress has got to assert itself. It is not just the Obama Administration.

Mr. DELAHUNT. You are really making us the first branch of government.

Mr. FEIN. It is the first branch. That is what I read about in the Constitution. It is the very first article, and that was authority under the necessary and proper clause. You can regulate any execution of any executive power whatsoever.

Mr. DELAHUNT. Mr. Pinney?

Mr. PINNEY. Mr. Chairman, from the legal cases we have had, we have had the ability to work with the Administration in resettling one detainee to Saudi Arabia in 2006 and of course with the four men that went to Bermuda in 2009, and we were able to coordinate the logistics behind that in a way that was fair, open and approved by the court.

Just to come back to a comment you said earlier, China has a terrible human rights record, but it is not just that they have a terrible human rights record. It is that they have a record that our Department of State has documented for years and years about these particular individuals.

They have a record of abusing and oppressing and executing and torturing unfairly the Uighurs and we let those men in to talk to them in 2002, so it goes beyond really what could ever be considered a fair process.

Mr. PARKER. Could I add one thing as well? It is incumbent upon me as the Amnesty representative to point out it is not just a foreign problem. It is also how we treat individuals at Guantanamo Bay. It is not just foreigners coming in and doing this. American service personnel have been complicit in the mistreatment of detainees.

I am not aware if the Angard of Shekinah has ever sent anybody to Cuba, whether there has ever been an Irish detainee in Cuba, but the British Government certainly has sent security service officers there, and there is currently a metropolitan police investigation into the activities of those officers not simply because of what they may have done themselves, but what they were associated with by working with American service personnel.

So this is not an issue just about Chinese access. This is an issue about how we treat detainees in our power period.

Mr. DELAHUNT. Gentlemen, thank you. It has been a most informative hearing. Your testimony was excellent. It has been a long day.

I have a request. Well, let me make the request. There has I thought been an exceedingly inciteful opinion piece by David Keene, who I usually don't agree with, but it relates to this particular issue.

If there is no objection, and hearing none, I am going to enter this into the record of the committee. It has a number of good things to say about Mr. Rohrabacher, and I hope I don't hurt his political career by saying that they are true in this particular case.

But in any event, the opinion piece by Mr. Keene, who happens to be the chairman of the American Conservative Union, will be entered into the record.

[The information referred to follows:]

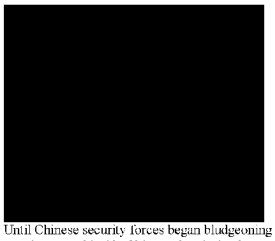
THE HILL

The Uighur dilemma

By David Keene - 07/13/09 12:26 PM ET

My good friends Dana Rohrabacher and Newt Gingrich are arguing, albeit at long distance, over the guilt and potential fate of some of the prisoners still being held at Guantánamo Bay, Cuba. Rohrabacher believes the Uighur prisoners still at Guantánamo aren't terrorists at all, while Newt is convinced they are just too dangerous to be released.

I admire both men but, though they differ on few issues, usually find myself agreeing with Newt rather than Dana on those few. However, this time the evidence (or lack thereof) suggests that it is Dana who has the best of the argument.



Until Chinese security forces began bludgeoning Uighurs during protests that turned into riots in western China, few Americans had heard of these people trapped inside China and enduring long-term persecution, job discrimination and a campaign by Beijing to destroy their ancient culture. The Uighurs are Muslims who, like the Dalai Lama's Tibetan followers, would rather govern themselves than take orders from their less-than-friendly communist overseers.

The only Uighurs most Americans had heard of at all were the 17 being held at Guantánamo as "enemy combatants" captured on Afghan battlefields in the opening days of the war on terror. It turns out they weren't captured on the battlefield at all, but apprehended or perhaps kidnapped by Afghan tribesmen who delivered them to U.S. forces in return for bounties we were paying at the time for the capture of known terrorists.

We shipped these Uighurs off to Guantánamo, though we now admit there was never any evidence suggesting they bore us ill will or participated in the battle being waged at the time. It turns out their beef was with Beijing, not Washington. Like the Tibetans who enjoy a better press here, the Uighurs have been under constant assault from the Chinese. Some want independence for their ancestral home, while others seek better treatment from the communist regime.

Objections to even the most cursory review of the charges justifying the incarceration of these and other "enemy combatants" at Guantánamo were dismissed on the grounds that those held there were "the worst of the worst." These were men, we were told, who were simply too dangerous to be released so long as the war on terrorism raged.

Newt certainly subscribes to this view. Though some argue in light of the evidence that while this was true of some detainees it wasn't and isn't true of all, Newt seems to believe that no mistakes were made. He goes further, in fact, in arguing that regardless of whether the Uighurs we bought in 2002 were after us or not, they were trained by the East Turkestan Islamic Movement (ETIM) and are therefore incredibly dangerous customers. The prisoners themselves deny this, arguing that they'd never even heard of the organization until they arrived at Guantánamo.

The Chinese want them back. If they get them back, torture them and ultimately execute them, Beijing will have demonstrated rather powerfully to the Uighurs and other minorities that it does them no good to look to the West for support now or ever again. It turns out that we, in our constant effort to please our Chinese creditors, actually contemplated shipping them home but ultimately decided the televised executions that might follow wouldn't go over well here.

The problem stems from the fact that after Sept. 11, U.S. officials essentially decided that to avoid dealing with the contention that "one man's terrorists are another's freedom fighters," we would take the position that anyone fighting or offering armed resistance to an incumbent government anywhere would or could, for U.S. purposes, be classified as a terrorist. This delighted despots everywhere, but nowhere more than in Beijing. Chinese authorities immediately asked that Uighurs resisting Beijing be classified as terrorists, and the U.S. complied.

The result was that the Uighurs ended up at Guantánamo and we now have no idea what to do with them. We can't send them home, and most nations don't want them because then they will become targets of Beijing's ire. Having managed to convince not just Newt but millions of Americans that there are no innocents at Guantánamo, we can't release them here in spite of the fact that "the worst of the worst" weren't distinguishable from the hapless and the innocent and have turned out to be mere pawns in a game they never agreed to play.

Keene, chairman of the American Conservative Union, can be reached at Keenecacu@aol.com.

Source:
http://thehill.com/opinion/columnists/david-keene/50091-the-uighur-dilemma

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Mr. DELAHUNT. And I should note too that genuine conservatives are informing themselves about this particular issue and are speaking out and I think are reinforcing those conservative values that have traditionally been a worthy reflection of what America is about.

I applaud them for doing that because there are some in the Minority party that see a political opportunity here, but those people, their behavior will be noted and the people like David Keene and Dana Rohrabacher and others that don't come to mind right now, they will be the ones who will speak to principle.

In the end, history will respect them because I think we are making progress. I think we have a long road to go, but you have helped us along that road today.

So, gentlemen, thank you. We are adjourned.

[Whereupon, at 2:26 p.m., the subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

SUBCOMMITTEE HEARING NOTICE
COMMITTEE ON FOREIGN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

SUBCOMMITTEE ON
INTERNATIONAL ORGANIZATIONS, HUMAN RIGHTS AND OVERSIGHT

William D. Delahunt (D-MA), Chairman

July 14, 2009

TO: MEMBERS OF THE COMMITTEE ON FOREIGN AFFAIRS

You are respectfully requested to attend the following OPEN hearing of the Subcommittee on International Organizations, Human Rights and Oversight, to be held in Room 2172 of the Rayburn House Office Building:

DATE: Thursday, July 16, 2009

TIME: 10:00 a.m.

SUBJECT: Chinese Interrogation vs. Congressional Oversight: The Uighurs at Guantanamo

WITNESSES:

Panel I
Mr. Alan Liotta
Principal Director, Detainee Affairs
Department of Defense

Panel II
Jason Pinney, Esq.
Counsel to Uighur Detainees
Bingham McCutchen, LLP

Bruce Fein, Esq.
Principal
The Litchfield Group

Mr. Tom Parker
Policy Director, Counter-Terrorism and Human Rights
Amnesty International USA

By Direction of the Chairman

The Committee on Foreign Affairs seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202/225-5021 at least four business days in advance of the event, whenever practicable. Questions with regard to special accommodations in general (including availability of Committee materials in alternative formats and assistive listening devices) may be directed to the Committee as noted above

COMMITTEE ON FOREIGN AFFAIRS

MINUTES OF SUBCOMMITTEE ON *IOHRO* MEETING

Day *Thursday* Date *07/16/2009* Room *2172 RHOB*

Starting Time *10:13 A.M.* Ending Time *2:25 P.M.*

Recesses *Y* (*12:03* to *1:22*)

Presiding Member(s) *Bill Delahunt*

CHECK ALL OF THE FOLLOWING THAT APPLY:

Open Session ☑
Executive (closed) Session ☐
Televised ☑
Electronically Recorded (taped) ☑
Stenographic Record ☑

TITLE OF HEARING or BILLS FOR MARKUP: *(Include bill number(s) and title(s) of legislation.)*

Chinese Interrogation vs Congressional Oversight: The Uighurs at Guantanamo

SUBCOMMITTEE MEMBERS PRESENT:

Bill Delahunt, Russ Carnahan, Dana Rohrabacher and Ted Poe

NON-SUBCOMMITTEE MEMBERS PRESENT: *(Mark with an * if they are not Members of HIRC.)*

Jim Moran, Neil Abercrombie* and Anna G. Eshoo**

HEARING WITNESSES: Same as meeting notice attached? Yes ☑ No ☐
(If "no", please list below and include title, agency, department, or organization.)

STATEMENTS FOR THE RECORD: *(List any statements submitted for the record.)*

ACTIONS TAKEN DURING THE MARKUP: *(Attach copies of legislation and amendments.)*

RECORDED VOTES TAKEN (FOR MARKUP): *(Attach final vote tally sheet listing each member.)*

Subject	Yeas	Nays	Present	Not Voting

TIME SCHEDULED TO RECONVENE _____
or
TIME ADJOURNED _____

Subcommittee Staff Director