

THE RULE OF LAW ORAL HISTORY PROJECT

The Reminiscences of

Mark Fallon

Columbia Center for Oral History

Columbia University

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PREFACE

The following oral history is the result of a recorded interview with Mark Fallon conducted by Myron A. Farber on January 26 and January 27, 2012. This interview is part of the Rule of Law Oral History Project.

The reader is asked to bear in mind that s/he is reading a verbatim transcript of the spoken word, rather than written prose.

VJD

Session One

Interviewee: Mark Fallon

Interviewer: Myron A. Farber

Date: January 26, 2012

Q: This is Myron Farber on January 26, 2012, interviewing Mark Fallon, regarding the Guantánamo Bay oral history for Columbia University.

Mark, what is your current position?

Fallon: Currently, I'm an international security consultant and the senior vice president of the Soufan Group.

Q: And the Soufan Group is essentially what?

Fallon: It's an international consulting firm that does a lot of different type of consulting involving violent extremism, terrorism-related and law enforcement-related topics.

Q: And the name "Soufan" is in the title because—?

Fallon: The chief executive officer is Ali [H.] Soufan, a former FBI [Federal Bureau of Investigation] agent whom I worked with for a number of years on a number of different terrorist investigations.

Q: You may recall once having said at some point in your career that there are no secrets, there are only delayed disclosures. Do you recall saying that?

Fallon: Yes, absolutely.

Q: Do you believe that?

Fallon: Yes, I do.

Q: That's why we're going to get beyond any kind of secrets, because this is the time for the delayed disclosures. You were, for many years, associated with the NCIS. Is that correct?

Fallon: Yes, correct; however, I will not be disclosing anything that I believe is classified.

Q: How many years?

Fallon: I just crossed thirty-one years with the U.S. government when I retired, but twenty-seven of those years was as a special agent with NCIS.

Q: NCIS being—?

Fallon: The Naval Criminal Investigative Service.

Q: And you retired when?

Fallon: I retired two years ago from the government. I was actually retired from the Department of Homeland Security, which I transferred to just at the last two years of my career in the federal government.

Q: Right. The NCIS, briefly, as a general rule, does what?

Fallon: The NCIS is the investigative law enforcement, counterintelligence and counterterrorism component of the Department of the Navy. The mission of the NCIS is to conduct investigations and operations in matters of interest to the Department of the Navy, predominately felony level-type crimes, any type of counterintelligence, and any type of terrorism is all under the purview of the NCIS.

Q: Among Navy personnel, outside of Navy personnel, or both?

Fallon: It's both. It's matters of interest to the Department of the Navy. For instance, if a sailor or Marine commits a crime, the NCIS would be the investigative agency to investigate it. If a defense contractor is defrauding the Navy or Marine Corps, it might be the NCIS who is the investigative component. Counterintelligence involving our Navy or Marine Corps forces is a matter for NCIS, as is any counterterrorism. Whether the Navy is the subject or possibly the victim of a crime, it might warrant an NCIS investigation.

Q: Okay. Let me ask you, briefly, to tell me a little bit about your background. May I ask your date of birth?

Fallon: Sure. September 2, 1956.

Q: You grew up, I understand it, in New Jersey.

Fallon: Correct. Hudson County, New Jersey. I'm a native of Harrison, just outside of New York City.

Q: And you went to college in Rhode Island.

Fallon: Correct. Roger Williams College, which is now Roger Williams University.

Q: Tell me a little bit about your career between the time you joined the service, in any capacity, and September 10, 2001.

Fallon: Sure. I was the son of a detective, the commander of the detective bureau in Harrison, New Jersey. My grandfather was a councilman, and had responsibilities as a police commissioner, so I'm a third-generation in law enforcement. My family is a long line of civil servants, so while some people are military families, I came from a law enforcement family. I went to college for criminal justice. The administration of justice was my major, and my goal growing up was to really be an investigator—to be a detective. I considered the New York City

police department, among other things. My father was a big fan of the Port Authority police of New York and New Jersey. He thought that was a very good department. He retired as a deputy chief of police. He encouraged me to go into the federal system. He thought that the federal government offered greater opportunities in the law enforcement field. In 1979, my first sworn federal job was as a Deputy United States Marshal in Newark, New Jersey.

Q: How old were you then? Twenty-three?

Fallon: Twenty-three-ish. Yes, somewhere thereabouts. It was a great job and I enjoyed it. The Marshals Service does more enforcement than investigations, and I still had a passion to be more in the investigative end of the business. I had no military background whatsoever. Actually, other colleagues in federal law enforcement encouraged me to look at NCIS. Some people, particularly in Newark, New Jersey, had worked with NCIS, working on an old-time spy case called Operation Lemonade where NCIS and the FBI interdicted a Russian spy ring. It was prosecuted in Federal District Court in Newark, New Jersey. Within the Marshals Service and some of the other federal law enforcement agencies in the New Jersey/New York area, NCIS had an outstanding reputation. I knew really little about them, but based on the encouragement of colleagues who thought it was a stellar organization, I put in an application, was screened and interviewed, and I started in the New York City office in Brooklyn, New York, in 1981.

Q: Over the next twenty years, you were with NCIS. Can you tell me whether you were involved in any known cases that might be a matter of public record?

Fallon: Sure. Throughout my career I was very fortunate with NCIS. They really have an incredible mission and an incredible organization, so it gave me the opportunity to be involved in a number of investigations and operations, many of which are high-profile, some of which may or may not be. As a young agent, I started in Brooklyn, New York. I worked a lot of drug cases, some undercover operations and other things there. Then I transferred to the Philippines. I had never even been out of the country other than a quick weekend trip to Canada, and I arrived in Manila, in the Philippines, in 1983. It was quite an experience. I was on the out-country drug squad for a few years. In addition, I worked some anti-insurgency issues with the New Peoples Army in the Philippines, which was an insurgent group there looking to overthrow the government. I did a lot of undercover drug work. I traveled undercover throughout Southeast Asia buying drugs, for the Navy, in places like Thailand, Pakistan, and Kenya. I've been to Hong Kong, Singapore, and a myriad of different countries where the fleet would go to, to try to help drive the drug dealers away from the sailors and Marines when they arrived in port.

It was a great learning experience, having been in Subic Bay. I did a lot of protective service operations there. It was just a great learning ground for a young agent with NCIS. I was involved in an espionage case there. There was a sailor named [Michael] Allen who was convicted of selling secrets and other things. As a young agent, it was a great place to work, and an opportunity to get involved in some high-profile things for the Navy and the Marine Corps. When I came back from the Philippines I was assigned to Washington, D.C., and there were a number of cases there that I worked, some of which became high profile. I was the case agent for quite a while on an investigation into a former Navy captain named Dick [Richard] Marcinko,

who was actually the founder of SEAL Team 6. That was quite a high-profile case at the time. Dick Marcinko was eventually convicted in federal court and served time in federal prison.

Q: Convicted of—?

Fallon: There was fraud and other irregularities involving contracts and his behavior.

Q: Is that the SEAL team that killed Osama [bin Laden]?

Fallon: Correct.

Q: And an operation a night or so ago.

Fallon: Yes, in Somalia—a phenomenal unit, just incredible war-fighting capability for the government. At the time I was investigating them in the 1980s, it was still a phenomenal unit, but there were some things that rose to a felony level. It's a matter of public record. He was convicted in Alexandria, Virginia, in federal court there.

That was a high-profile case. Also, when Oliver [L.] North was going through his Iran/Contra hearings, there was some intel that there were threats on his life. At the time, it was reportedly Libyan hit teams, so I was the first team leader who started the protective-service detail on Oliver North. There were some other cases that rose to the high-level interest in the media. Another case was a pretty significant drug dealer named Hillel Daniel Hodes, and that was

Washington Post-kind of front-page news, because he was manufacturing synthetic heroin in the Naval Research Lab. He was actually using a Navy research facility to manufacture synthetic heroin.

Q: Was he in the Navy?

Fallon: He was a civilian research chemist for the Navy. We worked that jointly with the DEA [Drug Enforcement Administration] at the time, and they felt that had that synthetic heroin gotten onto the streets, it would have changed the heroin distribution market on the East Coast.

Q: Did you have involvement in the investigation of the 1993 bombing of the World Trade Center?

Fallon: Yes. That was another case, when I was assigned as the Resident Agent in Charge of NCIS in Philadelphia. NCIS had a cooperating witness [CW], a source—some people might call it an informant, but in NCIS they're called cooperating witnesses. We had a cooperating witness who was actually able to infiltrate the terrorist cell that was specifically looking to blow up the United Nations, the federal building, and the Holland and Lincoln tunnels. They were trying to assassinate Hosni Mubarak during a visit to the United Nations. This is a cell that was operating before the World Trade Center One bombing. We actually interdicted them and apprehended them. It was a joint case with the Joint Terrorism Task Force [JTTF], the FBI, and the NYPD [New York Police Department] up in New York City. We interdicted them as they were mixing the explosives that they had intended to use in the bombings. The NCIS CW eventually went into

the federal witness protection program. He testified against Sheikh [Omar Abdel-] Rahman, and there were about ten terrorists involved in that cell. Actually, the prosecutor was Pat [Patrick J.] Fitzgerald, who is now the U.S. attorney in Chicago. He was the special prosecutor for the investigation of [I. Lewis] Scooter Libby.

We interdicted the terrorist bombings before they occurred, so it was rather significant at the time, but we got very little media coverage outside of New York City because, at the time, the public was focused on the O.J. Simpson trial. Everything was "if it doesn't fit, you must acquit." The American media was really focused on that. In New York City it was a rather impacting case, but I remember the U.S. attorney commenting how interesting it was that outside of New York City, the American public didn't seem to recognize the impact of what we actually interdicted there, in a terrorist attack on our soil there, almost simultaneously with the first bombing of the World Trade Center.

Q: Did you have any involvement in the attacks on the embassies in Africa? Was it in 1998?

Fallon: No, I had no involvement in those investigations whatsoever.

Q: Did you have any involvement in the investigation of the attack on the USS *Cole* in 2000?

Fallon: Yes, absolutely. At the time the USS *Cole* was attacked, I was at NCIS headquarters as the Chief of Counterintelligence Operations, Europe-Africa-Middle East Division. For lack of a better term, the *Cole* was attacked on my watch. That was my area of responsibility. Once the

response occurred to that attack, then an investigation was convened, I became what was called the commander of the USS *Cole* task force. I was the senior NCIS operator, responsible for overseeing the investigative effort, determining resource requirements, looking at disseminating the intelligence and the threat picture. The Navy at the time had sent every ship to sea, so part of the responsibilities we had was to try to determine safe-haven ports so ships could go into port, re-supply, replenish, and actually go back into harbor. At the time, understanding the Al-Qaeda methodology of multiple attacks, we didn't know if additional waves of attacks might be coming our way.

Q: Did you know it was Al-Qaeda?

Fallon: Yes, we certainly suspected that early on. There was actually some intelligence prior to the attack—warnings of small boat attacks. The actual intelligence at the time indicated that it would be in the Mediterranean. That information was actually passed on to the captain and crew of the *Cole*, prior to them transiting the Suez Canal. So there was actually intel of possible small boat attacks prior to the *Cole* being attacked. We did have the intel. Shortly after we initiated the investigation and started gathering evidence, it became quite clear that Al-Qaeda was behind the attack.

Q: Are you saying that you had information that there might be an attack on the *Cole*?

Fallon: Yes, we absolutely had indicators and warnings elevating our concerns of a potential attack. Not specifically on the *Cole*, but more general in nature. We had information that Al-Qaeda, among the things they were planning, to look out for, would be small boat attacks.

Q: *By* small boats, not *on* small boats.

Fallon: Correct, *by* small boats. Prior to this, other than the Tamil Tigers, who utilized small boat attacks as a tactic, the U.S. had not seen this. We had vehicle-borne explosives, truck bombs, car bombs and other things, but we had not seen water-borne explosive devices targeting U.S. flagged vessels prior to the *Cole*.

But yes, we did have some intelligence that we needed to be aware of the potential of small boat attacks prior to the *Cole* being attacked.

Q: You don't feel, in retrospect, that somebody fell down in not applying that intelligence successfully?

Fallon: The *Cole* commission actually looked at this, and they have a public report out. I had been on the Hill, testifying before committees about this and enlightening them about what we knew and when we knew it. Fortunately for NCIS, who did have the intel, it was passed on to the ship. What the *Cole* commission concluded was that while the captain of the ship might not have employed all of the force protection tools within his arsenal to try to prevent the attack, that, had

he done that, based on the rules of engagement at the time, the attack still would have been likely successful.

I don't know if you've ever seen a ship in a foreign harbor, but there is a flurry of small boat activity. Al-Qaeda did their homework, they did good casing, and they understood this. There is normally a lot of small boat activity around a ship, so, at the time, the rules of engagement for allowing that to happen would have still allowed the small boat, with the site picture of the attackers on the *Cole*, to get close enough to actually attack the vessel. Another thing at the time was that the Navy fleet actually seemed to have a false sense of security because it wasn't a normal port visit. Generally, if it was a port visit where they actually went into a port, an NCIS advance team would arrive ahead of that ship. They would coordinate with the country team, with the embassy, with local authorities, and they would try to determine the actual threat picture before a ship got the green light to go into the port. Embassies do not necessarily have the operational experience in the maritime domain that an NCIS agent does, so for the fleet, it's important to have the experience NCIS brings to the table in the port.

With the *Cole*, they actually pulled up to a fuel dolphin in the harbor, so it wasn't actually in a traditional port area. They didn't actually initiate the total type of package that they would have if it went into a port. The Department of the Defense and the Department of the Navy changed a lot of their rules and procedures based on the recommendations of the *Cole* commission.

Q: Did I understand you to say that every time a U.S. ship goes into a port, the NCIS looks to see what the situation is?

Fallon: What the situation is now I'm not sure. But certainly, when I was there, port vulnerability assessments and updated threat assessments were a core part of the mission. There was always a current threat assessment of a port. It's constantly updated, and one of the other results of the *Cole* commission was that in places where NCIS has a resident office, the ability to assess and determine the threat/danger to a ship coming in was greater than the transit area where there might not be a Department of Defense [DOD] presence. Part of the recommendations from the *Cole* commission was that they implement force protection detachments. So now, in places like Yemen and other areas where there's not a permanent Navy or Marine Corps presence, or Air Force or Army presence, but that military forces go to, there will be a force protection detachment whose job is to obtain the site picture from a DOD perspective. From an NCIS perspective, or Navy or Marine Corps perspective, having an NCIS agent there who understands maritime security, who understand the site picture maybe a little differently than your traditional embassy person, or that the FBI might, or that the CIA [Central Intelligence Agency] might—having someone there who is from the Navy or Marine Corps, or from the Army or Air Force, to be able to translate and determine the impact of that, was one of the derivative results of the *Cole* commission reporting. Now there are agents from one of those services throughout the globe where there are transit areas for DOD forces to go through.

Q: I mention the *Cole* in part because I want to discuss [Abd al-Rahim] al-Nashiri a little bit later, or another time. Also, was it during that *Cole* investigation that you came in contact with Ali Soufan?

Fallon: Yes, that was my first dealings with Ali, during the *Cole* investigation. He became the FBI case agent for the *Cole*. Bob [Robert] McFadden was an NCIS agent who became his counterpart within NCIS. It was a joint investigation with both NCIS and the FBI investigating jointly. They were the two co-case agents, or case agents for each respective organization. But that was my first meetings with Ali.

Q: Ali is Arabic-speaking, is he not?

Fallon: Correct. He's from Lebanon—an American citizen but born in Lebanon. He came to the United States, did his high-school years in Pennsylvania and went to college in Pennsylvania.

Q: Okay. Now your position at NCIS on September 10, 2001 was what?

Fallon: At the time I was still the Chief of Counterintelligence Operations for the Europe-Africa-Middle East Division, and I was still the commander of the *Cole* task force at that time. I was still overseeing the efforts on the ground in Yemen. We still had active NCIS and FBI special agents on the ground in Yemen investigating the attack on the *Cole*. Steve Corbett was the NCIS on-scene commander on the ground in Yemen overseeing the NCIS and FBI investigation and reporting back to me.

Q: Where were you, physically, on that day?

Fallon: On September 10 I had just left Dulles Airport. I was en route to the NATO [North Atlantic Treaty Organization] Defense Ministers Conference in Belgium. One of the things that the Navy had me doing was going and giving briefings to foreign governments and foreign navies to try to make them aware of how a terrorist cell can operate. We learned an incredible amount about Al-Qaeda from the *Cole* investigation, so part of the counterterrorism efforts within the Navy was to ensure that our allies—or other places where ships visited ports, were aware of how a terrorist cell could set up—how they operated for the attack on the *Cole*, so that their security forces would be better attuned to preventing an attack. The Director of Counterintelligence for the Department of Defense had asked me if I would go and brief the NATO Defense Ministers Conference on the *Cole* attack, specifically, and I was en route there. I landed in London on September 11 to do a quick briefing of what's called the Joint Analysis Center—the JAC—in Molesworth, England. Then I was going to go on to the NATO Defense Ministers Conference. Of course, I never made it out of London. All the flights were grounded at that point.

Q: Of course, London is five or six hours ahead of New York, and the attack in New York was roughly between 9:00 and 10:00 in the morning—8:30 or 9:00. So it was afternoon where you were when you learned of the attack?

Fallon: Correct. I was actually in my hotel room, which is right close to where the U.S. Embassy is in London, and the Navy building, where the Chief of Navy Forces for Europe was assigned at the time. NCIS had an office there. I was actually unpacking, and the first thing I do when I get to another country is turn the television on. When I saw that the first plane hit the World Trade

Center, the first thing I thought was, "It's a terrorist attack." Growing up in that area, I know that you don't see planes flying in that area.

Q: You saw a replay of the first.

Fallon: Yes. I saw on the news that the first plane had hit the Trade Center; it was before the second plane hit. I immediately went over to the NCIS office to try to look at the classified traffic, to try to see what the information was coming in through classified channels. While I was there doing that, on the television I saw the second plane hit the World Trade Center.

Q: Now you didn't suspect it was a terrorist attack, you knew in your bones, would you say?

Fallon: Yes. My immediate conclusion was that it was a terrorist attack.

Q: Even before the second plane.

Fallon: Absolutely. Having a plane hit the World Trade Center by accident was unfathomable to me. So knowing that New York City was a target and having lived through Trade Center One, having lived through [Operation] Terstop, my conclusion was that we were being attacked. There was a sea change within the Department of the Navy when the *Cole* was attacked. The rest of the country went through that on 9/11, when our country was attacked, but for those of us whose job it was to protect and serve the Navy and Marine Corps, having a sovereign U.S.-flag vessel

attacked was a significant event. If you look at U.S. history, whether it's "Remember the Pueblo" or "Remember the Maine," or whatever ship is attacked, that's an act of war.

We were already on an incredible, heightened state of alert within NCIS based on that, and by all the chatter within the community. Having the responsibility for counterintelligence for that area, we were monitoring a heck of a lot of information and we were all expecting—waiting for—some type of attack, hopefully that we could prevent prior to it happening.

Q: During what time period?

Fallon: This was the time period right up through most of my time in counterintelligence there, in counterterrorism.

Q: I mean, waiting for another attack—are you suggesting that you had some intelligence that there might be a significant attack on American soil before 9/11—in, let's say, the year before 9/11?

Fallon: Well, let's remember that in 1993, we were attacked. So if you're in the security service-type industry and you're monitoring threat warnings, you're always concerned with any attacks. Now, of course, my area of responsibility at the time was the Middle East, Europe, and Africa, and I'd just come out of being the Assistant Special Agent in Charge for Europe, which covered everything from Iceland to the Suez Canal. So I was already highly attuned to a number of

different streams of threat warnings and other things from this geographic area. With law enforcement, you're in Condition Yellow.

So we were in Condition Yellow, always ready for something to happen. So, absolutely, the magnitude of their attack came as a shock to me, but the fact that there was an attack on U.S. soil was not surprising in the least.

Q: Did you know at the time—surely you've learned since—that people like Richard [A.] Clarke, for example, were trying in the months before the 9/11 attack to persuade the administration that there was an imminent attack coming on American soil?

Fallon: Well, sure. I've learned about that subsequent to that. Mr. Clarke was certainly at a different level than I was. I was an operator at the time, and he was a policy maker. Those discussions are certainly above my pay grade. But there was significant concern. Again, the chatter in the intelligence community was rather significant. At the time, people were sensing, based on that—and you're responding to these threads, and some of them are dead leads—but everyone in the community was at a heightened sense that something might be brewing. Nothing specific, as we later learned, but certainly there was a sense that something could happen.

Q: Right. So you were not surprised, but shocked at the magnitude of the thing. Looking back on it, and given your experience and your knowledge gained in all these years at NCIS, were the perpetrators of the attack super-skilled? Were they lucky? What was it that enabled them to bring that off?

Fallon: I don't think they're super-skilled at all. At times, they can actually be bumblers. They're very passionate about what they do. Sometimes, as the 9/11 Commission has reported, maybe we fail to use our imagination very effectively in looking at what they might be able to do, but they just have to be lucky once. As Margaret Thatcher was told about the IRA [Irish Republican Army]—the IRA said, "You have to be lucky all the time. We just have to be lucky once." There was a seam in the fabric of our security, and they exploited it tremendously. Whether that was something that was really in Al-Qaeda's advantage or disadvantage is debatable, because many within the Al-Qaeda realm of participants, many felt that that was the start of the demise of Al-Qaeda, because they knew that the retaliation by the United States would eliminate their safe haven in Afghanistan, which it did.

Everyone was certainly not on board with that level of attack against the United States. Bin Laden certainly was, but a lot of the other membership was not. Many felt it was really the wrong path to take for Al-Qaeda as an organization. Post-9/11, the level of cooperation amongst some of the Middle Eastern countries increased tremendously. We had everyone on our side, helping us, whereas in the past, sometimes you wondered whether the help was whole-hearted or maybe holding back based on their own sovereign issues. After 9/11, the world understood how dangerous Al-Qaeda was, and how they would attack civilians indiscriminately, without regard to the civilian populace—which many in Al-Qaeda were against, and other organizations, too, that might have aligned themselves with them. Jamath-e-Islami was one of these groups that felt that military targets might be legitimate, but civilian targets are not. History will look back on whether that really was a wise move, strategically, for Al-Qaeda. Now, tactically, they killed

three thousand people, so from a body-count perspective, they did what they intended to do. But from a strategic perspective, maybe not so much.

Q: Okay, but if someone like Richard Clarke, who was on the National Security Council and was at a policy-making level, as you say, and you were in operations—there were also people in operations in the FBI who—correct me where I go wrong here. There was a fellow in Minnesota, wasn't there, who wanted to take flying lessons but wasn't interested in learning how to land a plane? There were people who had come in through Los Angeles, I think, from Bali, was it? Or from the Bojinka plot?

Fallon: The Bojinka plot was out of the Philippines, and it was an aircraft plot.

Q: There were people who ended up with the 9/11 hijackers, who had come into the [United] States, and the FBI didn't keep track of them. Isn't that correct?

Fallon: Yes, there were a lot of failures, and the one that sticks out most in my mind was actually derivative of the *Cole* investigation. At the time, we were following the money. To conduct a terrorist attack requires funding—funding for weapons, explosives, for logistics, for recruiting—so one of the things you do when you're investigating terrorists is you follow the funds. The funds will lead you where you might want to go. One of the things that was surprising to us at the time was when we saw funds leaving Yemen. We were trying to track the funding out of Yemen. At the time, we didn't understand that the *Cole* attack was part of a larger attack scheme that involved 9/11 and other things. It was just kind of the first salvo, attacking our country. But

at the time we were trying to follow the funds, and we followed the funds to Kuala Lumpur, and the trail went cold there. We were unable to follow them from there. We had asked our counterparts in the CIA and others to help us out. Once again, this is all part of the 9/11 Commission Report. This is by no means classified. I wouldn't be telling you anything classified. But they failed to share the information with the FBI and the NCIS team investigating the *Cole* attack, that they actually had coverage of this meeting with one of the *Cole* suspects. The agency actually had photographs of the terrorists there in Kuala Lumpur, and that funding eventually wound up back in the United States. It was the 9/11 hijackers that took that funding back. It's suspected it went for flight training and other things. Whether that would have prevented the attack or not, nobody knows, but I certainly would have liked to have seen us have a fighting chance. Had we been able to track those funds back, we would have continued to follow that to see where it went. Of course, it would be speculative, but there was a chance, certainly, had that information been shared, that the investigators pursuing those funds might have been able to interdict the attack before it occurred. Whether, in reality, they could have or not, no one will ever know. But, once again, it would have been nice to have a chance—an opportunity to do so.

Q: Do you still have relatives in Harrison, New Jersey?

Fallon: No one's left there.

Q: No one was there on September 11, 2001.

Fallon: No, I don't believe so.

Q: How many countries would you say you've served in?

Fallon: I couldn't even guess, but probably around fifty.

Q: Before we go on, isn't there a television program called *NCIS*?

Fallon: There are two—*NCIS* and *NCIS: Los Angeles*.

Q: Have you ever seen these?

Fallon: I have, yes.

Q: Are they realistic?

Fallon: Some of it is. Of course, it's Hollywood, but I think a lot of the camaraderie among the agent corps is very realistic. Sometimes they loosely base some of the incidents on real-world cases. They have a technical advisor on the show who's a retired NCIS agent. So some of it is, but I've never yet seen them do a report. [Laughter] I'm waiting for them to sit and do some paperwork on the show.

Q: It's like so many things, even in the movies, where no one ever seems to go to work or spend any significant time at work.

In any event, give me some idea of what you did between September 11 and mid-January of 2002.

Fallon: Sure. Of course, like everyone else, once we were attacked, you wanted to see how you could help. For me, and particularly with NCIS, at the time, I probably had as much experience as anyone investigating terrorists because of my involvement in Terstop, the case on Sheikh Rahman, the *Cole* attack and leading that task force. The first thing NCIS headquarters did was call me and said, "First of all, make sure you pass on any intel there in Europe. Then find a way to get down to CENTCOM [United States Central Command] in Tampa. You've got to ensure that the war fighter is informed of what we know." Everyone knew that we were going to plan an attack. We were going to plan some type of response. The leadership of NCIS and the Navy want to ensure that the Central Command had the benefit of what I knew about Al-Qaeda and what I could share about the *Cole* investigation and terrorists in general—having had that experience base with the Middle East and with Al-Qaeda, specifically. That's what they wanted me to do.

As soon as flights were up and running, I headed into Naples, Italy, which was where the Sixth Fleet was headquartered out of. From there I was on a military aircraft. I was able to take a military aircraft to the Azores. Another military aircraft took me to Norfolk, Virginia, and by then commercial flights were back and running, and I went down to Tampa. I was assigned as special advisor to what's called the J2X shop, which is the fusion area for intelligence. The J2 is the intelligence officer for the Central Command, so what I did there was ensure that the war fighter and those doing the plans for the war—the invasion of Afghanistan—had a good

understanding of the adversary, and we were able to pass on Al-Qaeda safe houses, travel routes, weapons stores—all the information we were gaining in the *Cole* investigation, which was a significant amount of intelligence. It was a treasure trove for our knowledge base on Al-Qaeda, based on the interviews and interrogations we were doing from the *Cole* investigation. We learned so much more about this adversary. My job was to go down and share this information, and help them draft what's called the Counterintelligence Annex to Operation Enduring Freedom, which is the invasion plan of Afghanistan.

I did that for—I don't recall how long it was. It was just prior to the invasion. Then I headed back up to NCIS headquarters. Then the next significant event occurred when General Don [Donald J.] Ryder, who was the commanding general of Army CID—the Army Criminal Investigation Command—the senior general responsible for investigations within the Department of the Army, called Director [David] Brant, the Director of NCIS, and the Commander of Air Force OSI [Office of Special Investigations], his counterpart agencies in those services, and indicated that he had just received a mission that the Army would be the executive agency to investigate Al-Qaeda before something that I had never heard of or considered before—trials before military commissions.

Initially, Director Brant called me to his office and said, "Go down and see what Don Ryder's thinking here. Find out what they're looking to do." So that's what I did. I went down there. There was a meeting, and General Ryder talked about this new authority. In November 2001, the president issued a military order that established that the Department of Defense could conduct military commissions, and that the Department of the Army, which was the executive agency for

war crimes—and this was considered war crimes—so the Army would be the executive agency. When Don Ryder got the mission, he called Director Brant from NCIS, General [L. Eric] Patterson from OSI, and basically said, "I can't do this mission alone. To be successful for the Department of Defense, I'm going to need your combined experience to be able to investigate this." Based on my experience with Terstop and the *Cole*, Director Brant asked me to head down to CID and help them.

Initially, my role was just to try to help them set up this task force. How do you structure a task force to investigate Al-Qaeda? What would the manning be? What would you want it to look like? How would you report your information? Things like that. My first job was to just help them set it up. General Ryder then asked me and Director Brant whether I'd be willing to stay on. Director Brant agreed and I then became the Deputy Commander of the Criminal Investigation Task Force [CITF], with another title of Special Agent in Charge. I was the senior investigator, or the chief investigator, for this new capability within the Department of Defense, to investigate Al-Qaeda, specifically, to try them before military commissions. I did that for over two years.

Q: It ultimately came to be known as the Criminal Investigative Task Force.

Fallon: Yes, the Criminal Investigation Task Force—the CITF.

Q: Right. Now at that time, the United States was—during this formulation period—also attacking Afghanistan, was it not?

Fallon: Correct.

Q: Right, and consequent to the forces going into Afghanistan, detainees there were being gathered. Isn't that correct?

Fallon: Correct.

Q: Did you have any involvement in the apprehension, the examination, or interrogation of any of those people in Afghanistan? I'm speaking before Guantánamo.

Fallon: Not before the CITF was set up. I think it was the end of December or early January when we started the planning for CITF. I think they considered February 3 kind of the day that the CITF was officially established. Of course, in the months prior to that—setting it up, determining your manning, and getting it ready—there was a lot of planning that went into it, but it was February 3 of 2002 that the CITF became an official entity. At that time, once we established the CITF, we then later established a forward-deployed unit in Afghanistan as well as Guantánamo Bay, and then later, one in Iraq.

Q: When did that happen?

Fallon: I don't recall when we first sent people to Afghanistan, but shortly after the task force started, we sent a CITF element to Guantánamo Bay so that we had people to do screening interviews and to start doing interrogations and interviews.

Now one kind of misperception the general public has is that they mix up interrogation and investigation. There were a number of different entities down in Guantánamo Bay. You had the Joint Task Force—or Joint Task Force [JTF] 170, initially—which was a Department of Defense/military task force that did interrogations. They didn't do investigations. All their job was was to do interrogations. You then had the Joint Task Force 160, whose job was to maintain a prison—a detention facility. You had two JTFs down there. Later, those two were combined into one—Joint Task Force GTMO, or Guantánamo Bay—but the CITF was not part of that. The CITF was a separate entity with a separate chain of command. Both of those entities reported to the U.S. Southern Command—SOUTHCOM—out of Miami.

The CITF was an OSD [Office of the Secretary of Defense] SecDef [Secretary of Defense]-level task force reporting to the [DOD] Office of General Counsel, so we were a separate entity down there, not just conducting interrogations, but conducting investigations. An interrogation is just one piece of an investigation. You can conduct an investigation without ever doing an interrogation. The general public usually mixes those two things up. The CITF's mission was broader than just doing the interrogation. It was actually conducting a complete investigation, so some of that might be to ensure that the facts were there so a detainee could be released. Others would be so that the facts were there that might support a military commission prosecution at trial. It might be to gather evidence on other witnesses—witness information—but it was an investigative task force, not just an interrogation task force—if that makes sense.

Q: Well, we will insist that it does make sense.

Now I want to back up again a little bit. You, yourself, had no involvement in the detention or interrogation of detainees in Afghanistan before—well, did you ever?

Fallon: Yes, absolutely. We did after Guantánamo was established. One of the reasons we wanted a forward-deployed element in Afghanistan is we needed someone to run down any leads, but number two was, we found that, contrary to what we were told initially, many of the people at Guantánamo probably didn't belong there. A lot of them weren't hardened terrorists. A lot of them might be Taliban, a lot of them might be foot soldiers, so it wasn't the worst of the worst, or filled with a number of high-value targets. Many of them, we felt, should never have gone to Guantánamo, so part of the reason we established a forward-deployed element in Afghanistan was to do screening interviews to try to cut down on the number of detainees that were sent to Guantánamo who really didn't belong there. If Guantánamo's purpose was to be to exploit the intelligence value of a detainee, or to look at detainees for trial before military commission, we had a number of people there who fell in neither category. Once you were there—we jokingly called it the Hotel California—you could check in but you could never leave.

Q: What was the Hotel California?

Fallon: "Hotel California" is an old Eagles song.

Q: No. Gitmo, you mean?

Fallon: Gitmo. The challenge was that once somebody arrived at Gitmo, to try to gather enough evidence that would ensure that they would be released. That was quite a challenge because any information whatsoever that would tend to look like a detainee might be involved was considered paramount, and it really took quite a lot of convincing to really get someone to be released from Guantánamo. It was much harder once they got there. We felt that better screening—to ensure that the only people who went to Guantánamo were really high-value intelligence targets or were targets for trial—would be in the best interest of the government.

Q: Mark, when are we talking about, when you had this feeling and you sent people to Afghanistan?

Fallon: This was early on. It was ten years ago, so I couldn't tell you exactly.

Q: Gitmo opened in something like January 12 of 2002. It had to be after that, right?

Fallon: Yes, definitely. What we found was that there was so little information on many of the folks who arrived there that it made it very difficult for us, in our minds, to conclude why they would have been sent there originally, if the intention was exploitation for their intelligence value or potential for trial. Many of them, based on the intelligence we received when they arrived, fit neither category.

Q: At that time, when you found that to be the case—you say the CITF reported to the general counsel of the Secretary of Defense?

Fallon: Yes, the Office of General Counsel. We had a dual reporting chain. One was through the Secretary of the Army, but the operational, day-to-day control was under the Office of the General Counsel. They had a principal general counsel for detainee matters. At the time, it was a general counsel named Whit [Paul W.] Cobb [Jr.]. But that was our operational reporting chain, so we were reporting back all of our information back to the Office of the Secretary of Defense, and the Office of General Counsel.

Q: But the Secretary of Defense [Donald H. Rumsfeld] himself and General [Richard B.] Myers, who I think was chairman of the Joint Chiefs at that time—

Fallon: Correct.

Q: —certainly the vice president [Richard B. Cheney], and I daresay the president [George W. Bush] as well—all these people were characterizing the detainees at Guantánamo—and did for some time, for years, in some cases, not days or months—as the worst of the worst, collectively. They used other terms. Richard Myers went so far as to say that these were "people who would gnaw through the hydraulic lines of a plane, to bring it down." This was commonly regarded—this was the position of the highest levels of the government.

Now you're saying that fairly early on, you—and who else?—detected that these people down at Gitmo were not, in large measure, the worst of the worst at all?

Fallon: It became quite clear once we had people actually talk to them—people from the CITF, from the FBI, from any other government agency down there. JTF 170 was the intel component there, but it became clear early on, to everyone, that there needed to be a better screening mechanism so that the detainees who arrived there were the type of people who fit into a category that you could do something with. Trying to look two moves down the road on the chess board—“What are you eventually going to do with these people?”—became a concern. It later evolved into what we call Transfer Review Boards and other things, where we would try to give an assessment back and try to determine how to release folks who don't belong there. For someone who's been in the business, the genuine concern is how many more terrorists might you be creating by detaining people who are known by their families, their tribes, and in their regions that they aren't really terrorists? Might this very process of taking someone who might not be the worst of the worst and putting them into an indefinite detention, and not bringing them to trial, and knowing that they're not exploitable for their intelligence value—how might you be emboldening Al-Qaeda? How might you be assisting with Al-Qaeda's recruitment efforts for other terrorists who might want to attack us?

Again, the concern at the time for me, who has been working counterterrorism for a while, was how do we win the strategic battle, and how do we deny Al-Qaeda the ability to gain funds and to recruit other terrorists to attack us? It's difficult, and Guantánamo became a recruiting tool.

Q: You're saying that it didn't matter to you that at the highest levels of the government, the American people were being told day in and day out that this was a terrific crowd of—I have one of the quotes here—they were "bomb makers," and they were this and that, Rumsfeld was

saying. This didn't concern you? Or you didn't feel that you had some obligation to back that, or to stay with that course?

Fallon: No, absolutely not. One of the things you learn as an NCIS agent is that you have to tell truth to power. One of the things you do early on in your career is you have to tell very, very senior command officials—admirals and generals sometimes—things that they don't like to hear. It's inculcated into the culture of an NCIS agent that your job is to find out the facts and report them. People may not like them. People may not agree with them. People may not agree with your mission to be able to do that. However, that was the mission that we had, so our job was to ensure that our seniors understood what we knew about those folks who were down there. Was it in conflict with the public message that was coming out? Absolutely. Was I shocked at that, having lived in the Beltway before? Absolutely not. [Laughs]

Q: Well, there is a chain of command, isn't there? You're in a chain of command. The president still is the commander in chief. Let me go back. When did you learn that Guantánamo Bay was being chosen as the place, and was that a surprise to you at all?

Fallon: I don't recall when I learned of it, and I don't recall it being a surprise.

Q: It was a Naval base, wasn't it?

Fallon: Yes, it was. Actually, I had been there before. I had been there a few times before. This Joint Task Force 160 is a task force that gets created and then disbands.

Q: That was Rick Baccus's outfit, wasn't it?

Fallon: At one time, sure. Yes.

Q: Their job, really, was to maintain the place.

Fallon: When I first worked with JTF 160 back during the Cuban and Haitian conflict, which is where the U.S. housed a number of Cuban and Haitian refugees, at the time I was a hostage negotiation trainer on an NCIS mobile training team. Our job at the time was to go down to Guantánamo, and we would be training Task Force 160 on how to deal with a hostage or barricaded suspect situation. I had been there before and there was an NCIS office on Guantánamo. I was familiar with the island and I was familiar with the 160 mission because I had worked it before—certainly not with regard to terrorists, or in this capacity, but I am familiar with Guantánamo, and have spent a bit of time down there.

Q: Actually, after 9/11, did you, yourself, go down there? After the creation of the CITF, did you, yourself, go down to Guantánamo?

Fallon: Yes, constantly. The way the CITF was structured was, the headquarters was in Fort Belvoir, Virginia, on an Army base, and that's where the case agents were. That's where we had analysts. We had lawyers. We had behavioral scientists. That's where the investigations were conducted out of.

Q: Was that Colonel [Brittain P.] Mallow's operation?

Fallon: Yes. That was my boss. Britt Mallow was the commander, I was his deputy commander. I was his chief investigator.

Q: Were you still under the reins of David Brant?

Fallon: Yes, I was a detailee. I was an NCIS agent detailed to the CITF to help them initially start to create the task force. Later, I stayed on to help run it.

Q: But you were saying you went down there.

Fallon: We went down there constantly. We would go to Afghanistan, and later Iraq too. We had elements in these forward deployed locations. Let me explain it this way—as an example, there's not an FBI office in a prison. You don't need to be in the prison to do an investigation. Actually, when we determined where the investigative entity should be working out of, we actually decided the D.C. area because of the intelligence community access. That's where the other agencies were. In other words, if you wanted to coordinate with the CIA, they're in Langley, Virginia. If you wanted to coordinate with the FBI, they're in Washington, D.C. If you wanted to talk to the NSA [National Security Agency], they're in Maryland.

None of the intelligence components that we needed to draw this information from to determine whether someone would go to trial or to do the investigation were down at Guantánamo. We had a forward-deployed unit at Guantánamo that would help to screen interviews and help with some of the interrogations, but the task force, in large, was in northern Virginia.

Q: But you went down to Guantánamo yourself.

Fallon: Yes, constantly—to oversee the effort there and to deal with issues. I was down there frequently, and Britt and I would alternate trips there. We were down there—I wouldn't say weekly, but almost. One of us was constantly going down and coming back, maybe on a bi-weekly basis. Same thing with the other CITF elements. We would go to Afghanistan. Later, we would go to Iraq. We were the leaders of the task force, so you had to ensure that things were running and operating.

Q: Were you there when the first detainees were brought in on January 12?

Fallon: No. I was still in Fort Belvoir at the time.

Q: Okay, but you must have seen these photos of people in these orange jump suits with goggles covering their faces, in chains, and that sort of thing. Right?

Fallon: Correct.

Q: Were those pictures surprising to you at all?

Fallon: It actually was a little surprising, having been with the U.S. Marshals Service, having done prisoner transports, knowing how long that flight was, and seeing the sensory deprivation type thing—for safety and security is what you presume it was done for. It was outside of my realm of experience. I'm not a detention guy and I've never done a long transport like that. I have flown on commercial aircraft with prisoners before, so I'm familiar with that process, but I found it unusual.

Q: How about the pictures of the sort of cages that we were put in?

Fallon: Yes, that was actually a little startling.

Q: But you knew what was at Guantánamo and what wasn't at Guantánamo, right?

Fallon: Yes, I did, actually. That was kind of the dilemma that the DOD found itself in at the time.

[END OF SESSION]

VJD

Session Two

Interviewee: Mark Fallon

Interviewer: Myron A. Farber

Date: January 27, 2012

Q: This is Myron Farber on January 27, 2012, continuing the interview with Mark Fallon for Columbia's oral history of Guantánamo Bay detention camp and related matters. This is session two, and I begin it by apologizing for the failure of the equipment at the end of the session yesterday. Hopefully, we'll have better luck today.

Mark, let me clarify a couple of things. You were part of the Criminal Investigation Task Force from roughly the beginning of 2002. Can we say that?

Fallon: Correct. I think we actually started the planning in December, but the beginning of 2002, in January, I was definitely heavily involved in it, and I remained there until May or June 2004, I believe is when I left.

Q: During the time, how often would you say you actually went to Guantánamo or were at Guantánamo?

Fallon: It's hard to say with any accuracy, but it could be approximately once a month or thereabouts. I would travel down there routinely, checking on the agents there and overseeing the operation, or bringing other guests down there to take a look at what was going on.

Q: How many people did you have down there? Did you have anybody who was down there all the time?

Fallon: Yes. We had an element down there at Guantánamo. The task force started off with a complement of somewhere over a hundred personnel. By the time we topped off, before I left, we had over two hundred people on the task force. I don't recall the specific numbers of the folks at the Guantánamo element of the CITF, but it was in the teens. I don't think over twenty, but I could be wrong there.

Q: Have you any idea of roughly how many military interrogators were down there?

Fallon: No. It would be a wild guess on my part. They had significantly more numbers than we had.

Q: The people that CITF had down there, how many of them were civilians? All, or most? How would you characterize them?

Fallon: Probably a majority of them were civilians, because the complements came from NCIS and OSI. NCIS would send predominately all civilians. OSI was probably half, or fifty-fifty civilians. Army CID sent mostly military special agents. We also had analysts down there and other support personnel. Maybe a little more than half might be civilians, just as a guess.

Q: Okay. Once again, can you try to crystallize the difference in training, or capacity, of the military intelligence interrogators as you knew them, and the CITF interrogators?

Fallon: Sure. The best way to describe the difference is, the CITF was comprised of professional, career investigators, folks who, for a career and for a living, worked criminal investigations, counterintelligence and counterterrorism. That's what they did for their livelihood. Most if not all, particularly in the beginning, of the folks who were the complement for JTF 170, or, later, JTF GTMO—they were comprised of reservists who may or may not—mostly did not—have any affiliation with law enforcement, whose training was a much different regiment than a federal law enforcement officer's would be, and whose experience level was basically nil. They came with no meaningful experience that I detected during my time there. Now you may have had one or two who were police officers somewhere or something else, but they were basically younger, enlisted personnel who were trained at Fort Huachuca—a much different type of training philosophy than federal law enforcement officers and special agents go through. There was a distinct difference in both the training they received prior to getting there and particularly the experience base that people had going down there.

To characterize the difference, the CITF and the FBI were down there as full-time, professional law enforcement officers whose job was to do interviews, interrogations, and investigations, as opposed to JTF-GTMO, who had military personnel who were down there on a temporary assignment, and when their reserve time was over, they would go back to their civilian occupation or career. Not that they weren't very dedicated, not that they weren't passionate

enough, and that they didn't try to do their best. There was just quite a distinct difference in the level of training and experience between the different organizations down there.

Q: Okay. Was there a high turnover among those military intelligence people?

Fallon: I don't recall their rotation schedule. At the CITF we had an intentional rotation. I think it was about a ninety-day rotation with NCIS, as an example. We wanted folks to go down, leave, and those same folks would come back during another rotation, so they'd be fresh. One of the things we worried about was burnout, particularly if your mission is predominately interviews and interrogations. We wanted to ensure that our personnel were fresh, and didn't exhibit any signs of burnout or fatigue. Our position, particularly coming from the NCIS side, was to ensure that there was a crisp rotation of personnel in and out of there, where you had some continuity for ninety days. Then the personnel would go home. We actually had three different teams coming in, so, for instance, Team A, B, and C—by the time Team C was done, that same first team—A—would rotate back in there. You would have a significant impact on the detainees themselves because they'd see the same people coming back and trying to pick up where they left off, looking at the transition through other interrogators.

Q: Mark, did you know that, owing to the administration's actions, some critics were already declaring this as a Geneva-free zone? What did that mean? Did you know about that, and what did that mean to you? Were you acquainted with the Geneva Conventions? Did it surprise you that they weren't being applied to the people down here, except on a voluntary basis? As the

president said, they would be treated humanely as a matter of policy but not as a matter of law.

Did you have any thought about that?

Fallon: Yes, I certainly was briefed on both the fact that the Geneva Conventions did not apply there and, also, kind of the rationale why. The way it was explained to us by the superiors that we reported to in the office of the Secretary of Defense was that Al-Qaeda was not a uniformed army. It was not a traditional combatant. It was an asymmetric-type adversary that we had, so their position was that the Geneva Conventions did not apply to those particular detainees. Yet, the President specifically stated that they still would be treated humanely.

I was not a lawyer, and certainly that particular decision was a bit troubling to the military lawyers we had at CITF, who felt that that might be a stretch. From a CITF perspective, our position was that we would treat a detainee no different than any other suspect we had in any investigation—no different we would a U.S. citizen we were investigating. The only caveats were, we were told, that the Miranda warnings—or Article 31B if they were in the military—did not apply, so that rights-waiver piece was not applicable, and that the detainees had no right to a lawyer during questioning.

They still had the right to remain silent. A detainee could choose not to talk with us, and we would have no recourse. We approached it with very little difference than we would approach any other investigation or interview and interrogation. Whether Geneva applied or not, at least to the CITF, there was no operational difference for us. It was all the same.

Q: Okay. Now is it fair to say that the primary mission of the CITF, as opposed to, let's say, JTF 170, was to prepare cases, where warranted, against detainees for prosecution?

Fallon: Absolutely. That was the core mission—to investigate anyone who is or was a member of Al-Qaeda and anyone who aided, abetted, or harbored Al-Qaeda. The prosecutorial arm of this was the Office of Military Commissions. They were the venue of prosecution for CITF investigations.

Q: Exactly. Now do I recall you saying yesterday that when the president signed the order for military commissions, you hadn't heard of military commissions?

Fallon: No. We know vaguely and historically—you've heard of Nuremburg and other things, where there were these tribunals, but it was not within the realm of my experience, from a U.S. federal law enforcement officer, to see any type of commissions applied. It was just not within any training that we had, nor any experience that I had.

Q: Where would people that you were prosecuting, or recommending for prosecution, be prosecuted ordinarily?

Fallon: Sometimes federal district court, and other times military court for courts martial. At times state and local courts, and at other times even foreign courts.

Q: But not military commissions.

Fallon: Not military commissions. Correct.

Q: As you began your work toward seeing whether cases were warranted here, did the fact that it was going to be military commissions make any difference?

Fallon: It made little difference from the investigative perspective. We had some challenges early on, one with a firm decision whether Miranda or Article 31B rights applied. As an investigator, that's what you needed to start with. We wanted to make sure that any statements we obtained would be usable before some kind of prosecutive venue. That was the first hurdle.

The other hurdle we had was, being that this commission process was a new one and some in the JAG community—the Judge Advocate Generals and the military services would argue that courts martial might be a better venue because it was an established procedure with a long history of due process, whereas we did not have that history with military commissions. Some would argue that that might have been a better venue. However, when military commissions were determined to be the way that these detainees would be prosecuted, we did very little different, other than that we had to understand what the crimes would be, and then what the elements of those offenses are. As an investigator, what you're actually investigating are those particular elements to determine whether a suspect either violated, met, or did not meet some threshold that's enumerated in those different elements of a specific offense.

In the beginning, we didn't know what the offenses were because the process was so new. When we got there in January or February to start doing the interviews and interrogations, at first we struggled to try to get a definitive answer—one, do we need to or don't we need to do any type of rights waiver? Number two, what are the specific crimes we're actually investigating with the detainees?

Q: Did you get that straightened out?

Fallon: Eventually it was determined that Miranda, or Article 31B, did not apply in these processes. One of the concerns with the rights waiver was that, had there been a later decision to try the detainees at Gitmo in federal district court, these statements would be invalid. One of the things we did before we actually did interviews—from the CITF perspective, having worked for decades with the FBI and the Joint Terrorism Task Forces and U.S. attorneys—is that we actually had declination letters. Eventually, we had a blanket declination from the Department of Justice for the detainees at Guantánamo, so that we were sure that anything we did would not taint any future type of prosecution that the government might be looking at for detainees.

Q: Okay. Do I recall you saying yesterday that it didn't take you too long to realize that many of the detainees down there—the "bomb throwers captured on the battlefield," as the Secretary of Defense put it—didn't belong there? Is that correct? It didn't take you very long to realize that many of them didn't belong down there?

Fallon: Yes. It was quite apparent early on that a significant number of that population certainly were not what I would consider high-value targets, or targets that might warrant some type of war crime tribunal or commission. If you look back at Nuremberg, which is kind of the basis for what military commissions became, the foot soldiers were not tried. They looked to try the leadership who committed war crimes. I heard a phenomenal talk about this by Bill [William K.] Lietzau, who is the Undersecretary of Defense for Detainee Policy now, and actually was the first chief prosecutor for military commissions. As I've heard him explain in the past, at the end of World War II, both governments would sign a treaty, and the foot soldiers were told, "Okay, we won. It's time to go back to your farms. Your government has surrendered, so go back to doing what you were doing, and we'll go on with this process," and the leadership that committed war crimes was tried.

If you looked at the population in Guantánamo Bay, we had very little of the leadership. Now we had some bad guys there and we worked investigations on those. Some have since been tried. But if you looked at this from a Nuremberg-like perspective, there were a lot of people down there who did not fit the category of someone who you would actually expend a tremendous amount of resource to try to bring to trial before a military commission.

Q: How would you detect whether somebody really didn't belong there, or was maybe even altogether innocent? Or, was just a foot soldier, or altogether innocent of any crime, and just swept up in the confusion of things in Afghanistan and elsewhere? How would you detect that, as opposed to figuring out, "You know, this guy, he acts like he doesn't know anything, but he's probably number three in Al-Qaeda"? You see what I'm getting at?

Fallon: Yes, sure. That's part of the investigative process. But the challenge here, as opposed to, for the lack of a better term, a traditional investigation, is that generally, you have a crime that's committed before you investigate. You normally have a crime scene, and then you're going to work your way out from that. You may develop suspects. Then you start doing your interviews. You collect your evidence. With this case here, you had suspects, and from the onset you had very little information about who they actually were or even why they were at Guantánamo. The process began with what we labeled—maybe jokingly, but it was called "This is your life." Again, we had little concrete information on many or most of the detainees. For every detainee down there, we had to look at a detainee and try to chart a timeline of their life—where they went to school, where they traveled. Did they go to guest houses? What were their different affiliations? We then have to match that with what other detainees or witnesses might be saying. We would then have to look at different types of world events to see whether, when they were in a particular training camp or guest house, might there be some intelligence that would indicate there was other criminal activity going on there? Might there be other high-level Al-Qaeda affiliates that traveled the same routes as them?

The first challenge was determining who we had down there and what they might have done. Then, if they had done something, would that particular event even be a violation of law that would warrant being tried before the military commissions? The challenge was incredible, and that's why I explained yesterday that we really felt that we needed a better screening process in Afghanistan, and later Iraq, because we wanted to stem the flow of bringing people to Guantánamo who, based upon our understanding of what the rationale was for bringing people to

Guantánamo—exploitation of intelligence or trial before military commissions—so many didn't meet that criteria that it seemed that it really warranted a better screening process to stem the flow of people coming to Guantánamo.

Q: Do you know who, in fact, was doing the screening in Afghanistan of the people who were sent to Guantánamo, especially in the first year or two?

Fallon: It would have been somebody on the Central Command—CENTCOM—staff. By the time I was at the CITF, they had already determined a list of who might be coming there. I don't know who specifically—I know later investigations determined that sometimes we sent people there with very limited information. Someone who we might consider an ally from a tribe might just say someone was with Al-Qaeda. The information to actually get someone to Guantánamo, at least in the early days, was generally uncorroborated and usually based on suspicion. It very well could be a rival tribe trying to get rid of competition.

Q: What about rewards that were put out by the U.S. government?

Fallon: Yes, there's been quite a bit of information about bounty for people. That's something that I think is a matter of public record—that that was a reason that we probably had some of our detainees down there.

Q: Right. In other words, they didn't arrive with a file that was stamped with their name, and information about them that you could work on and that sort of thing. They didn't arrive from Afghanistan with that.

Fallon: Very little information when they came. There were screening interviews that were conducted of them, but it was very rudimentary. It was certainly not done by any type of investigative standard that I was involved in, in my experience. It was rather limited and, as I said, uncorroborated information—a lot of times highly speculative in nature.

Q: Now as the months go by now, you're attempting to gather information on these people and to determine whether there is some sort of crime here. Isn't that correct?

Fallon: Correct.

Q: How do you go about doing that in terms of the detainee cooperation or interrogation? How are you doing that? Do you call them in and say, "Mark Fallon, how are you feeling today? Did you blow up Nagasaki?" In other words, how did you actually go about it?

Fallon: The investigative process, interview or interrogation, generally involves some type of rapport-building.

Q: You're speaking as it actually happened.

Fallon: Yes, as it happens. Generally what we found, particularly in the early days, was that many of the detainees were very happy to talk to us. Many of the detainees were, "Hey, what am I doing here? I got swept up. Get me home. Get me to my family." We had quite a bit of information coming out of many of the detainees. Not all. Some refused to talk. Some, whom we called head-hangers, would just sit there and be very unresponsive. That's fine. There's no way to legitimately force someone to talk to you, so if that was the case, the special agents would sit there, release the guy, and try another day. Another day, maybe that individual might feel a little more like talking to us or not. Maybe more time there might have worn on them, so maybe they'd talk. But in the beginning, a majority of them told us quite a bit about themselves. The investigative process then is, can you corroborate that? That's why we had a CITF element in Afghanistan that was tracking down leads from that part of the world. If someone said they went to a guest house somewhere, we would need to corroborate that, obtain additional witness information, and look at intelligence that our sister services or law enforcement agencies might have on an individual or events, depending upon where they traveled to.

Q: All right. So you call in a detainee. You sit them down at a table. Give me the scene.

Fallon: Well, it evolved over time. One of the first challenges the CITF investigators had there was getting the JTF 160 guards to even unshackle the detainee. At the time, they were very fearful that these detainees—they were told they were the worst of the worst, and a lot of what probably contributed to some of what I certainly consider abuses and some might consider torture—I think a lot of that is pop culture. A lot of that is how a society is conditioned on how

these processes work. An interrogation, if you watch television—whether it's James Bond, or Matt Damon, or you pick your crusading super-hero—

Q: Jack Bauer.

Fallon: Jack Bauer. There's always some infliction of some type of pressure or pain that elicits the information that saves the day, and the good guy is always the one who can resist that information, and maybe give misinformation, and that saves the day. In reality, the best interrogators are the people who do the best background information first. They try to learn as much about that detainee as they can. If a detainee was from a farm region, you would see that special agent looking at the pedigree and trying to determine what's grown in that region. Is there a river nearby? Are there fig trees there? They're looking at the topography so that when they got in there in what we called “the booth,” in a room, you had some commonality and some means of discussion things to build a rapport and to gain some type of trust. Remember, we're all human beings. Maybe we come from different countries and different cultures, but we're all born of mothers and fathers. Most of us have children and grandchildren and brothers and sisters. The human condition is unchanged, globally.

What an investigator or an interrogator is trying to do is develop some type of mutual understanding with a detainee, that it is in that detainee's best interest to be cooperative and to actually tell the truth. Again, from an investigative perspective, it's not only to try the guilty, but it's to free the innocents.

Q: All right. What's the atmosphere there at Guantánamo? You mentioned a booth or something. How was this booth set up? Was it in such a way that the guards would bring the detainee in and, as you say, short-shackle him to the floor? As you experienced it, what actually happened? A person comes into the booth. He's seated a table or something?

Fallon: He's seated in a chair. Most times there's a table in there. In the beginning, they were generally shackled to the floor. Again, the first thing the investigators would do was take the handcuffs off and let this person feel relaxed and at ease. Oftentimes we'd drink tea together with the detainee. Many times we'd break bread with the detainees.

Q: In this interrogation room?

Fallon: In the interrogation room. In the beginning, there was a high level of resistance from the guards because this isn't what they were used to. From an investigator's perspective, as a federal agent, this is commonly what you would do. When you brought someone back, you would ensure that did they need to use the restroom? Did they want some water or a cup of coffee? You would generally try to make them at ease. Let's not understate the value of a good memory. Now look at yourself. Look at how difficult it might be to remember something a few years ago. Might it be a little easier to remember if you were more relaxed or at ease, or if someone was putting pressure on you or applying a great amount of stress? Obviously, you want the detainee relaxed. You want to make sure that their memory recall is best because you're trying to elicit information not just about that detainee, but that detainee might be a witness who might be able to cooperate or corroborate other information you have. To get the purest information, it's in the

best interest of the interrogator to have a fresh, relaxed detainee that you can obtain information from.

Q: That's what you tried to arrange?

Fallon: Absolutely.

Q: In that room, would there also be someone from the military intelligence with the CITF agent? At that time, would someone from JTF 170 also be in the room to question that detainee at the same time?

Fallon: In the beginning it was, until we determined that it was counter-productive to actually have them in there. In the first wave of interviews and interrogations that we conducted, the MPs [military police] actually stood in there. They were fearful. They were fearful for our lives. They had heard the same thing that the American public had heard, about detainees gnawing through hydraulic cables on aircraft and being the worst of the worst, so from their perspective, they were looking at it for our safety. From our perspective, we're federal agents. We're used to dealing with bad guys. We're prepared to handle those situations, so we weren't in fear. We deal with this all the time.

Q: Now in that early stage, let's say up through the spring or what have you, as far as you know, were the military intelligence also doing separate interrogations of detainees? During that period, as far as you know, was there anything of what you later came to feel was abuse?

Fallon: Yes. There were a few things that were rather troubling to us. One was that after we split up, when we determined that some type of joint interrogation was counterproductive, based on the different training experience and backgrounds of the interrogators—and it went to where—the CITF and the FBI were interchangeable down there. Same methodology, all federal agents, very similar training, background, and experience base. You could interchange CITF and FBI and you wouldn't know the difference. What we found was occurring at times—oftentimes we would make great progress during an interrogation. We would always provide the intelligence to JTF 170 or JTF GTMO. What we found out later, sometimes after the fact, was that in the middle of the night they were bringing that same detainee in to interrogate them so that they could then get the same information we had, so they could report it out or somehow further exploit it. Then what we found was that the next morning, we would have to go in and re-establish our rapport because now you had a detainee who was rather upset. You had brought them to a certain point of cooperating, but now he was woken up in the middle of the night and his treatment was much harsher and less based on a rapport-based type of approach. You had to rehabilitate that relationship.

We would bring that to their attention and get it stopped, but it was troubling that it would occur frequently. Some other things that were kind of counter-productive to our ability to do our mission was what was called the frequent-flier program, where the military interrogators and the military police, under JTF GTMO, would look to deprive the detainee of sleep. They would wake them up at all hours, shift their cells, move them around, and have this huge fire drill going on where they would be shifted. Again, it would induce fatigue, it would induce anger, and it

would harden resistance when trying to elicit information. It was counter-productive to the elicitation of accurate information. It caused greater resistance and more barriers than any good it did.

Q: Sometime in late March or early April, General Michael [R.] Lehnert of the Marines, who had been the first commandant down there when it was set up as a detention camp for Al-Qaeda, etc., left, and on the intelligence side—not the guards and not the maintenance of the camp—arrived Major General Michael [E.] Dunlavey. Do you remember him, and did his appearance and tenure—which was only until November of 2002—make any difference in terms of the intelligence gathering there?

Fallon: I'm not sure what "make any difference" means. General Dunlavey had an impact there. From a CITF perspective, it was a rather negative impact. It wasn't a positive impact. It wasn't one that helped facilitate the mission of the CITF whatsoever, and it certainly wasn't one that I felt, in that most of us if not all of us in the CITF, felt enhanced the collection of intelligence down there.

Q: What did he do that manifested that?

Fallon: General Dunlavey's approach was much different. I'm told he had some experience from the Vietnam era. I know his most recent background before coming to JTF GTMO was in the signals intelligence community as a reservist. Of course, there's a huge difference between

SIGINT—signals intelligence—and HUMINT, which is human intelligence, which is what we were exploiting down there.

He came in and he had some very ill-conceived notions. He did not understand Al-Qaeda whatsoever. He was totally ignorant of the particular culture we were dealing with. He certainly was totally unaware of the adversary of Al-Qaeda. Of course, the CITF and FBI had been working this target for a decade or so by the time we wound up in Guantánamo, so we tried to give him our best advice and counsel.

Q: You mean the NCIS had been working with—

Fallon: Correct, but at the time, early on, down at Guantánamo, the CITF and the FBI were almost in unison. We shared offices. The supervisors shared an office. There was very little difference. One of the great fortunes that we had there was that the FBI had an incredible experience base with Al-Qaeda from the JTTF in New York. They had a particular squad that was the UBL squad—Usama bin Laden squad—so they had folks who had been working this target for years whom I had worked with in Terstop—the investigation of the Blind Sheik [Omar Abdel-Rahman]—and who we worked with on the *Cole*. You had subject matter experts down there mutually working with the CITF who were, in my opinion, the best and the brightest we had at the time with Al-Qaeda, and, again, going to General Dunlavey and later General [Geoffrey D.] Miller and trying to explain, and trying to help them to understand what this adversary is. "Don't believe the media hype. Don't believe all the stuff that you see or hear. This

isn't Hollywood. We've worked this target for years. We know this target. We've done interviews and interrogations for years. There's a way to exploit this and gain accurate information."

My view is that General Dunlavey confused cooperation with compliance. So did General Miller, when he arrived later. They appeared to be more driven toward getting a detainee to comply with orders rather than actually cooperating and assisting. Some of the things when they ramped it up—when they looked to exploit the fears of detainees and when they later looked at SERE [Survival, Evasion, Resistance, and Escape] tactics—were all things that led to the hardening of resistance, and that made the elicitation of accurate information much more difficult, or in some cases, probably impossible.

Q: Just parenthetically, were you present when David [S.] Addington, Alberto [R.] Gonzales, and other distinguished individuals came to Guantánamo for a briefing on September 26, 2002?

Fallon: Yes. If that's the trip I'm thinking of—there was a trip, and that particular group had been there a few times.

Q: Yes.

Fallon: When they came before, when the SERE tactics were being considered, I was actually sent down there to try to give them an opposing opinion, an opposing view—a subject matter expert's opinion from a CITF perspective, so that they weren't getting the sole view of JTF 170 or JTF GTMO, in the manner in which they felt interrogations should be handled. I was, for the

lack of a better term, "iced out" of any meetings with them. General Dunlavey would not allow me to come into those meetings, but my sole intent and purpose, set there by Britt Mallow and General Ryder, was to go down there and try to get in and give the perspective based on our experience—what we knew about this target and how to work them—so that they didn't get this one-sided view of someone who, in my opinion, had no experience in this area and was actually leading us down the road that was counter-productive to our national interests.

Q: You mentioned a couple of times the word SERE. Just for historical purposes, if you could very briefly recall, what are SERE tactics? What is SERE?

Fallon: SERE is Search, Escape, Resistance and Evasion [Survival, Evasion, Resistance, and Escape], I believe it is. It is a process that we developed—meaning we, the U.S. developed—to try to harden the resistance of our service members by exposing them to harsh-type tactics and techniques so that they would be better able to resist those techniques should an enemy employ those techniques on them, had they been captured.

Q: This was done after Korea, I think.

Fallon: After Korea. There was the water-boarding and abusive, tortuous treatment of our service members there. Part of the process the U.S. had gone through was to do this type of resistance-type training. Shortly after we established the CITF in Fort Belvoir, a lot of people would visit us. This was before I even realized that there was any type of SERE-type event going on at Gitmo. A lot of people would be offering their help and assistance. They knew what the task

force was. Everyone recognized the historic nature of a task force to try Al-Qaeda before military commissions. It was historic. In our history, I think it's a rather major event.

We had a lot of people coming in, saying, "How can we help?" We had a visit from the commanding officer and the executive officer of a SERE unit, someone who does this. It was interesting because they came to me and explained what they did, and they said they wanted help. I very innocently thanked them very much and said, "What you do actually hurts us. What you do is teach people to resist what we do. That doesn't help us. We already know how to interrogate"—never realizing that anyone would actually consider that as a method to try to gain information. I thanked them for coming in and trying to help us, and just kind of dismissed the thought and idea.

Q: Was that Colonel [Morgan] Banks, by any chance?

Fallon: No, it wasn't Colonel Banks.

Q: All right. In other words, SERE and SERE training, if I understand correctly, wasn't applied across the board in the American military. There was some SERE training done, and it was to give some of our service men an idea of what they could face if captured, and how best to resist it.

Fallon: Correct. Precisely.

Q: Okay, so you're saying that they, among others, offered some help, and you replied as you just said. You indicated that around the time that these high-level folks came down from Washington, that there was talk of using SERE tactics at Guantánamo against the detainees?

Fallon: Yes. There was a movement among JTF GTMO, first with JTF 170, that they wanted to water-board detainees. That was their goal. They felt that water-boarding was some type of silver bullet or panacea. They continued to tell us that this technique works, and that it's worked before. We were convinced that it would be ineffective, that it didn't work, and that it wouldn't work. We understood what it was, and we understood that science refutes that the infliction of pain results in the acquisition of accurate information. Our position had been—and we had behavioral scientists working very closely with us and supporting us—that the infliction of pain, duress, or stress might get you information, but misinformation, or bad information, or inaccurate information could be more dangerous than no information whatsoever. There's no evidence that the infliction of pain, stress, or duress results in reliable information, so why anyone would even try to go down that road was troubling to start with.

Q: All right. Do you know that on October 11, 2002, I believe it was, General Dunlavey sent a request for ratcheting up the harsh treatment of the detainees, probably through SOUTHCOM, or on its way to Washington? That was subsequently endorsed by General Geoffrey Miller when he arrived in November and landed on the desk of the Defense Department's general counsel, Jim [W. James] Haynes [II]. Are you familiar with that?

Fallon: Yes, I'm definitely familiar with that entire process.

Q: Okay. Now on October 2, only a week or so after this event from which you were, as you put it, "iced," there was a meeting at Guantánamo, the subject of which was a counter-resistance strategy meeting. There's a memo I have here that I would like to show you that you wrote. You can clarify for me to whom you're writing this. In this memo that you're sending on, you say, "Sam: We need to ensure seniors at OGC," which is what?

Fallon: The Office of General Counsel of the Department of Defense.

Q: "We need to ensure seniors," meaning senior people—

Fallon: Correct.

Q: —"at OGC are aware of the 170," that would be the JTF 170—the intelligence group down there at that time—

Fallon: JTF 170, Correct.

Q: —"aware of the 170 strategies and how it might impact CITF and Commissions," meaning military commissions.

Fallon: That's right.

Q: "This looks like the kinds of stuff congressional hearings are made of." That's all a quote. Then, further, it speaks about "wet towel" treatment.

Fallon: Correct. That's water-boarding.

Q: Exactly. Then you say, at the close, "Someone needs to be considering how history will look back at this." That is very prescient, because that's why I'm here.

I ask you to look at this for a moment, because these minutes became somewhat controversial later. First of all, I should point out that it does say that all questions and comments have been paraphrased in the minutes here, so these are not direct quotes.

Fallon: Correct. This was done by a CITF person, where they're taking notes as best they could and doing so during the meeting.

Q: One of the curious things here is that a Lieutenant Colonel Diane [E.] Beaver, who is well known in Guantánamo history for other things, says here, "We may need to curb the harsher operations while ICRC [International Committee of the Red Cross] is around. It is better not to expose them to any controversial techniques. We must have the support of the DOD." Is she, in effect, saying, there, that "the harsher things we do we have to keep from the eyes of the ICRC"?

Fallon: Correct. The Red Cross. Sure.

Q: That's what you were trying to do down there?

Fallon: That's not what we were trying to do, but, certainly, there was a fear of these techniques being exposed. A few things that we did very well at the CITF was that we trained our personnel very, very well. We did an orientation and a training program with everyone when they came to the CITF. I personally briefed every individual, and there were a few points that I made. One was, "One day, history will look back on our actions. This is a historic event. I know everyone is very upset right now and very angry about being attacked, but someone will be looking back at our actions historically, and just be sure that you're going to be proud, and that your grandchildren will be proud of the actions that you took during this very troubling time in our nation's history." The other thing we told all the CITF personnel was we briefed them on the Nuremburg trials. We said, "In Nuremburg, people were tried for following what they said was an order of their bosses." What we told the CITF was, "Even if I give you an order to do something wrong, you may not follow it. You have an obligation to resist it." We wanted to ensure that our personnel had the utmost integrity and wouldn't fall back on—having looked at, historically, Nuremburg, where people said, "Well, my boss told me to kill these people so I did it," we told our people that was no defense.

Q: In fact, isn't it true that, during this period, when this whole subject of applying harsher techniques came up, Britt Mallow, the commander of the CITF, sent memos down to Guantánamo saying that you not only can't take part in this kind of thing, but you've got to report it if you see it?

Fallon: Absolutely. We felt an affirmative obligation as federal law enforcement officers sworn to protect the Constitution of the United States. We don't swear an allegiance to the Secretary of Defense, we swear it to the Constitution. It's an oath of office that I'm very proud of, and I maintain it to this day. We felt that you couldn't be part of and party to crimes.

Q: But here in this particular thing that I just mentioned, Diane Beaver, a lieutenant colonel, is saying, "We've got to keep this away from the ICRC," and she goes on to say, "Officially, it's not happening. It's not being reported officially. The ICRC is a serious concern." Then there is a paraphrasing of a Jonathan Fredman of the Counterterrorist Center of the CIA, who was attending this meeting, and he says, "The DOJ," meaning the Department of Justice, "has provided much guidance on this issue. The CIA is not held to the same rules as the military. In the past when the ICRC has made a big deal about certain detainees, the DOD"—Department of Defense—"has 'moved' them away from the attention of the ICRC. Upon questioning from the ICRC about their whereabouts, the DOD's response has repeatedly been that the detainee merited no status under the Geneva Convention. The CIA has employed aggressive techniques on less than a handful of suspects so far since 9/11."

What was it exactly that occasioned you to get so excited as to write this memo? Was it the fact that they're talking about water-boarding? Was it the fact that Fredman says something along the lines—supposedly, although he later denied saying it—that, "You're doing it wrong if the detainee dies"? Was it just these minutes that fell into your hands, or perhaps they were distributed to you? Generally, what was going on now?

Fallon: I would say it was the totality of the circumstances. We were in contact multiple times a day with our folks down at Guantánamo. We saw them heading down this path, and as I look at it today, it's no different than when I looked at it then. When you do an assessment of it, it was the water-boarding, which is torture. It's causing suffocation. It would be like putting a plastic bag over someone's head. The purpose of the cloth and the water is to form a seal so that you have the sensation of drowning. I look at it as, if that were done to our service members, would I consider it torture? I sure would. Torture is torture, and if you open that door and say, "Well, Al-Qaeda would do it to us," by us doing it, as a uniformed service, we open the door for other governments to do it to our people because we've just sanctioned it as authorized. From a military perspective, it's dangerous for our troops.

Now I looked at it as the four "I's." When we did an assessment of this I had great legal counsel. One, it's illegal. Number two, it's immoral. Number three, it's ineffective, and number four, it's inconsistent with our values. On no level, whether it's efficacy or tactically, does the application of techniques that you're going to be less transparent with, hide from people, seem appropriate. A lot of the people on the JTF down there felt that, "Well, this is classified. No one will ever know." As I've said many times, there are no secrets, just delayed disclosures. If you look back historically, all these things—and we've done some things as a government in our past that we're not proud of—they'll all come out. Let's understand that up front, and let's behave in a way consistent with our values, consistent with our laws, and consistent with the application of good techniques and processes to obtain accurate information. These techniques appear to be none of that.

Q: Now this particular memo that I mentioned—can you just confirm the fact that you were sending that memo on the bottom, and to whom you were sending it?

Fallon: Sure. This memo that I wrote to emphasize a lot of the things we had discussed was to Sam [W.] McCahon. Sam McCahon was the legal advisor to the CITF—a military Judge Advocate General from the Army who was a legal advisor to Britt and I—our senior lawyer on the task force—who gave us incredible legal advice on this matter, including pulling out for us the Convention Against Torture, the applicable U.S. code, and violations of the Uniform Code of Military Justice by having military personnel do these things like assault, battery, and other things on detainees. We had good legal advice and I personally read the applicable statutes and legal guidance to put my own set of eyes on it. So we knew what was wrong with this from a legal perspective.

The CC on this was Britt Mallow, my boss, the commanding officer of the CITF—the commander. Blaine Thomas was an NCIS agent detailed as the CITF Resident Agent in Charge at Guantánamo Bay. He was the senior agent down there. Scott Johnson, who was a detailee from the Air Force Office of Special Investigations, was the deputy special agent in charge. He was my deputy there, as the number-two special agent on the task force under Britt. It was myself from NCIS, Scott from OSI, and Dave [David A.] Smith. Dave Smith at the time was our chief of plans and policy. Dave later became a colonel, and became the commander of the CITF in later years. That's who's on distribution of me circulating these minutes around. It was to the senior leadership of the CITF to ensure everyone had guidance from me.

Q: At the time you wrote that, had CITF interrogated a detainee named Mohammed al-Qahtani?

Fallon: Yes. CITF and the FBI had talked to al-Qahtani. Actually, we first were able to discern that he was slotted to be one of the 9/11 hijackers.

Q: When did you learn that? You knew that?

Fallon: Yes, we had determined that after he was captured, after he was at Guantánamo. We didn't know it before then. I forget the exact sequence of events, but in doing some of the record checks in the investigation that you do prior to an interview or interrogation, they looked at different things and determined that he actually arrived at Orlando airport and was turned away at the same time that Mohammed Atta, who led the 9/11 hijackers, was there to meet him. We later learned that al-Qahtani's role was one of the muscle hijackers, which meant that he was an enforcer, not a pilot. But he would have been on one of those planes, had he been able to enter the country, and things had gone as they had planned.

Q: Is that something that al-Qahtani volunteered to CITF, or any intelligence authority down there? Or you just picked it up elsewhere?

Fallon: We first learned it just investigating al-Qahtani, before we interviewed and interrogated him. Later, during interrogation, he admitted to that. He made incredible admissions, and part of the strategy—this is what kind of caused JTF 170 and later JTF GTMO to try to go down the road of water-boarding and the aggressive tactics. He gave us information, and later he stopped

giving information. So they felt that they would go in and gain other information by SERE tactics and techniques.

Q: Okay. At some point in that fall of 2002, you and someone—correct me if I go wrong here. Do you know the name Michael Gelles?

Fallon: Oh, I do. Very well.

Q: Who was he, at that time?

Fallon: Mike Gelles was the chief forensic psychologist for NCIS. Dave Brant, the director of NCIS, allowed him to support the CITF and Mike became the head of the CITF Behavioral Science Consulting Team. One of the things that I had employed a number of times during other investigations was a multi-discipline approach. When we set up the CITF, one of the things we wanted to do in our investigative units was ensure that they weren't just special agents. Every unit had investigators and analysts. Each had their own lawyer, and every unit had their own behavioral scientist to give them advice, to give them counsel on human behaviors, and to help determine what might be an effective strategy or not. Mike Gelles was the chief psychologist of the CITF, what we called the BSCT—Behavioral Science Consultation Team.

Q: These teams—often referred to as "Biscuit" teams—they came under a lot of criticism later, didn't they?

Fallon: Well, let me make one thing clear because there are a lot of misconceptions about this. The CITF established the BSCT. The military had no such equivalent or capacity. What you're referring to as—the controversy is that JTF 170 and GTMO saw the effective way that CITF was doing interviews and interrogations and wanted, particularly, Mike Gelles to be detailed to them. Director Brant said, "That's not going to happen. He's a civilian. He works for NCIS. He's on loan to the CITF, and he's not someone you can demand to have assigned to your task force." What JTF 170 then did was, they wanted to replicate that same type of capability, but did it with people who had absolutely no experience as operational psychologists. Mike Gelles was an operational psychologist. There are very few of them within the government. The Secret Service employs some of them. The CIA has operational psychologists, as does NCIS and the Air Force within the OSI. There were none that I know of in the Army prior to the CITF creating the BSCT.

What happened there that was another slippery slope for JTF GTMO is they saw that that was a good capability. They then tried to replicate it by bringing in clinicians who had no forensic background, who had not been operational psychologists, who may have treated people for depression, who may have treated people for family problems and may have done other types of clinical counseling, but had absolutely no experience with the criminal mind and with terrorists or counterintelligence.

So they tried to replicate that, and it often even troubled me that they called it the same name that we did—the BSCT—and we even considered, "Should we call ours something else?" because we

were afraid that one day we would be painted with the same brush, and people would think there was only one BSCT.

Q: And that has happened.

Fallon: It has happened. I'm often in a position of trying to clarify—I don't want to say defend the CITF BSCT—but clarify the different roles, background, experience, and what they did. I was greatly troubled by the JTF GTMO trying to replicate the capacity we had because I knew they were dealing with totally inexperienced personnel who lacked the training in doing this.

Q: Do you know whether the JTF 170 or JTF GTMO BSCT had psychologists or doctors who actually took part in interrogations, and/or advised interrogators on how to interrogate?

Fallon: Yes, absolutely. They did. I know it was a concern at the CITF, among the behavioral scientists we had—the psychologists we had at the CITF—that those people doing that might even be jeopardizing their licenses to practice because it is a prohibitive practice to do so. Our folks were very versed in that, understood that, and I am aware of them even advising the psychologists down there that they needed to back away from being that involved in this. The BSCT from the CITF did not participate in the interrogations. They may have observed them, but they did not do interrogations. They were not an active participant. In fact, they would be monitoring, also, interrogators, to see how stress was impacting them. They were doing this more as an operational psychologist.

So there are two different BSCTs, and even today the military has now created a BSCT capability, and they're still training psychologists at Fort Huachuca to go out and assist in detainee operations. In what capacity I'm not sure, but I am aware they're still employing psychologists in that manner.

Q: Are you mindful of the position of the American Psychological Association, for example, and how Dr. Gelles had a view of what the APA and others like Stephen Soldz ought to do in this regard and counter that position with another view? Is that something you followed at all?

Fallon: As a friend of Mike Gelles, I followed it a little bit. I'm not really that versed in it, other than that I have briefed with Mike Gelles a number of times at conferences, describing how, as an operator, I would utilize a psychologist—again trying to show that they were in a support capacity—just like I would use an engineer. I would use whoever I could to try to help me understand whatever I was investigating, but not as an active operator, doing anything. So I'm a little bit familiar with it, and I know there's a huge controversy in the psychological community.

Q: But you're saying that your BSCT people did not compromise the integrity of a detainee.

Fallon: No, absolutely not. Again, Mike Gelles has the utmost integrity, and I know he was concerned about the psychologists at JTF GTMO crossing that line. I know that Mike personally described to me how he had told them down there that they were jeopardizing their licenses if they continued to go down that path. It was something that troubled Mike, as a psychologist, for his colleagues or fellow psychologists down there.

Q: Okay. Now al-Qahtani was given very rough treatment down there at Guantánamo in the fall and early winter of 2002, apparently with the knowledge of the Secretary of Defense. Is that not correct?

Fallon: Yes, that's correct.

Q: Were you aware that that was going on at the time it was going on?

Fallon: I was. We were reviewing the interrogation logs—

Q: "We" being—?

Fallon: —the CITF—and were actually reporting back that information to the general counsel of the Navy and to NCIS Headquarters, because we were so concerned that there was possibly illegal activity going on down there. It was something that we were actively reviewing. We ensured that we had no one in there participating, but as they produced interrogation logs describing what they did, we would review those on a daily basis and forward them on.

Q: Well, you might think—or an innocent like myself might think—that they really wouldn't want this bothersome guy, Mark Fallon, or Mike Gelles, or what have you, to see these logs, right? If we're going to do these things to al-Qahtani, we don't want them to see it.

Fallon: I'm not sure they knew that we had the ability to review their logs.

Q: Is this computerized?

Fallon: Yes, they're computerized. Our analysts had access to them, but I'm fairly sure that the JTF folks didn't even realize we had that type of access.

Q: Is it just logs of al-Qahtani or of other detainees' treatment in interrogations?

Fallon: Our analysts down there were looking at all the different data. They would access that information. If we were going to do an interrogation, you would want to look at any historical information, so they had the ability to look at whatever else anybody was doing down there. In this case, al-Qahtani was controversial, so they were looking at it real-time, on a constant basis, reviewing it, and reporting back to us. We told them, "Hey, report back anything you see or hear," so they were doing so, and we were reporting it on. We would go back to the Office of General Counsel.

Q: Let me get to that in a second. Did you, Mark, ever see, yourself, any of this harsh treatment?

Fallon: No.

Q: You did not.

Fallon: No. Absolutely not.

Q: All right. Do you know whether Mike Gelles ever saw it himself?

Fallon: I'm confident he did not. We would get reports back of things that we would bring to JTF GTMO's attention that were of concern. We would find duct tape in an interrogation booth, and we were told later that they would duct tape a detainee's mouth. Of course, you worry about suffocation and other things by doing that. They would see cinder blocks in a room, and later learn that that was to short-shackle the detainee in an uncomfortable position, sitting on a cinder block. Our personnel might not witness those things happening, but would see the residual effects and report them, saying, "Hey, our folks saw this. This is of concern to us. We're reporting it back up through the chain of command at JTF GTMO." Then they would let us know at the CITF.

Q: Okay, and you had access to the logs of the interrogation of al-Qahtani, as well as others being interrogated.

Fallon: Yes. Correct.

Q: Do you know whether al-Qahtani was cooperating in any respect, before they ratcheted up this treatment?

Fallon: Yes. He was cooperative, and gave us a tremendous amount of information. At one point, his cooperation stopped. He just stopped giving us information. Once we knew who he was, we actually had a strategy, and it was a mutually-agreed-to strategy by the JTF GTMO, the FBI, and CITF. The rationale was, let's let the FBI interrogators go first, because al-Qahtani might have existing information on the other 9/11 hijackers, or other cases that the Department of Justice might try within the United States—recognizing that any intelligence could still be used by JTF GTMO and any evidence gathered could still be used by CITF. It was thought that by allowing the FBI in there first—and the FBI agent we brought down was Ali Soufan, whom I was very familiar with, whom I consider one of the top assets that the government had to interrogate Al-Qaeda with. It was my position that the FBI, and Ali Soufan specifically, should be used to interrogate al-Qahtani first. That's what we did, and we got an incredible amount of information.

Q: Around when would that have been? Do you know? It was before he was beaten up.

Fallon: Yes, this was before. This was what led to that. We got a tremendous amount of information. From a CITF perspective, that's great. That's evidence. It doesn't matter to me who interrogates. My outcome is getting evidence for trial, for military commissions.

Q: Usable evidence.

Fallon: Exactly. So, if the FBI does it, it's great. My concern was that if JTF GTMO 170 did it, it might be unusable. The goal was to get the FBI in there first, because the derivative product from him is still intelligence. It still met the JTF 170 or GTMO mission. It was getting intelligence

that they could then disseminate, and it met the CITF's threshold because it was evidence that we could use in military commission.

When his cooperation stopped, the next thought was, "Okay, now let CITF have a crack at him. We'll go in with a fresh set of interrogators. Maybe he hit a wall with Ali Soufan and he wasn't going to go any further, so let's have some fresh CITF interrogators go in there." It was at that point when JTF GTMO came on the scene and started to demand that they have access to him, and started, then, this process of trying to employ these techniques against him. It was all based on his initial information that he got, and then JTF GTMO wanting to further exploit the derivative intelligence that they might get from him. They wanted to use these techniques to facilitate that.

Q: Okay. Now on December 18 of 2002, Alberto [J.] Mora, the general counsel of the Navy, had a meeting with Director Brant and Dr. Gelles in which certain things are described to him, such as you've been saying, that were going on within the military intelligence people down there who were now being run by General Miller. There are a series of meetings, thereafter, and Alberto Mora, a civilian and the general counsel of the Navy, in a memo he wrote two years later to the Navy inspector general [Albert T. Church III] in June of 2004, recalls these events. For example, I asked you before about the request from Gitmo that landed on Jim Haynes' desk on December 2, 2002, for ratcheting up, and Alberto Mora, here, is recalling that Secretary Rumsfeld had approved the use of certain identified interrogations techniques, including, with some restrictions, "the use of stress positions," "isolation," "deprivation of light and auditory stimuli," the use of "detainees' individual phobias—such as fear or dogs—to induce stress," etc. He's

recalling, two years later, this sequence of events that includes a meeting, on January 17, 2003, with Dr. Gelles and yourself.

Fallon: Right.

Q: Did you know Alberto Mora?

Fallon: I certainly knew of him. I don't recall if I had met Mr. Mora before that or not. I suspect I might have. But I certainly wouldn't consider that I knew him as a friend or anything.

Q: Did you, David Brant, or Michael Gelles have any trepidation about going to the general counsel of the Department of the Navy with these observations and implicit if not explicit complaints?

Fallon: Let me tell you how we got there. When these things came on our scope—again, CITF, myself, and Britt Mallow felt an affirmative obligation to alert superiors that we thought there were violations going on down there. We took our concerns to the two parallel chains of command we had, and that was—one, we took them to the Department of the Army. We took them to General Ryder, the commanding general of Army CID, who then registered them back with the department, talking to—I remember him telling me—the Army general counsel and others. General Ryder came back and basically said, "There's nothing we can do about this." We simultaneously took our concerns to the Office of General Counsel, to the folks who work for Jim Haynes, our operational reporting chain in the office of the Secretary of Defense, the Office

of General Counsel, and we were again told that there was nothing they could do to prevent this. I felt an obligation as a detailed NCIS agent that I still had an alternative to report this information, and that was back through my parent organization, which was NCIS.

I went back through my chain at NCIS to Director Brant, who brought it to the General Counsel of the Navy's attention, and that's what precipitated Mike Gelles and Dave Brant initially meeting with Alberto Mora. Later, Alberto Mora said, "Hey, can you get Mark down here?" and I went with Mike Gelles, and described in detail what we were observing to not just Mr. Mora but to the Judge Advocate General of the Navy, to the Judge Advocate of the Marine Corps, and to the senior lawyers both military and civilian for the Department of the Navy, meaning the Navy and Marine Corps, and got their opinions on it—on whether this was legal or illegal, and whether the legal analysis was sound or not. That's what you see here, just to give you a little background and context of that particular meeting.

Q: Well, you didn't actually meet with the TJAGs [The Judge Advocate Generals], did you?

Fallon: No, that was something that General Ryder had done. Our chain was through General Ryder, Army CID, and to the Army, but it was directly to the general counsel's office.

Q: Looking back on it now, is it your impression that Alberto Mora, general counsel of the Navy, did more to carry your view forward than the others did?

Fallon: Oh, absolutely. I don't want to say it fell on deaf ears. Both within the Army chain and the Office of General Counsel chain, the reply back was that there was nothing they could do. It was only Alberto Mora who felt an affirmative obligation to try to do more than that. It was Alberto Mora who then took this information and—I don't want to say went on the offensive, but said, "This isn't right. This is a flawed legal analysis by Diane Beaver." Alberto Mora was shocked that we were unable to convince General Miller of the illegality of this, the inappropriateness of this, and the ineffectiveness of the road he was going down.

Q: Had you tried going to Miller before?

Fallon: Oh, it was constant. We were in constant battles, for lack of a better term, with JTF GTMO on this, telling them, "Wrong road. Don't go down it. It's illegal. Our people see this." Here was one of the things we told them was a legitimate fear. We were sworn federal law enforcement officers. If you see someone assaulted in our presence, you risk a CITF agent putting the handcuffs on one of your interrogators if he sees a felony committed in his presence. You don't know what's going to happen when they see that.

We just felt that this road they were going down was just unsound, unwise from a tactical perspective, and really not in our best national interest from a strategic perspective. We had tried numerous times. Alberto Mora said, "Can you go down one more time and just try to talk to Miller yourself, again?" That's what we did, actually. Mike Gelles, myself, and another consultant we had on board—Brian Vossquel, who was a retired Secret Service agent. Brian was one of the founders of the National Threat Center for the Secret Service, so his career was kind

of working threats against the President. We wanted to give another outside perspective of another professional. I don't know if Brian's name has surfaced in other things, but Brian came along on that trip. We sat down with Miller and tried to convince him—

Q: This is not the first time with Miller.

Fallon: No. We had numerous meetings, numerous emails, and video-teleconferences. There was a constant struggle trying to dissuade them from going down this road.

Q: There's an interesting sentence here. In Mora's memo, recalling the meeting he had with you and Dr. Gelles, he says here, "In the meeting, I," meaning Mora, "mentioned my concern that simple opposition to the use of the coercive interrogation techniques may not be sufficient to prevail in the impending bureaucratic reexamination of which procedures to authorize. We couldn't fight something with nothing." That's when he says to you, "Can you come up with something that really decisively makes the day for non-coercive techniques," right? And "Go back and convince Miller of them."

Fallon: Correct.

Q: And you did go back, right?

Fallon: I did, and I was unsuccessful.

Q: Well, were various papers done up to support your position from a behavioral science point of view?

Fallon: They were.

Q: Right. Curiously, Mora ends his memo, written in 2004, with the following. "Detainee treatment"—this is the last draft. "NCIS advised me, following Secretary Rumsfeld's January 15, 2003 suspension of the interrogation authorities contained in the December 2 memo that the reports of detainee abuses at Guantánamo had ceased. At no subsequent time, up to and including the present, did NCIS or any other person or organization forward to me any report of further detainee abuse. Because of NCIS's demonstrated integrity and ability to detect detainee abuse at Guantánamo, I felt a high degree of confidence that the prisoner abuses at Guantánamo had indeed stopped after January 15, 2003. Signed, Alberto J. Mora."

Now let me just mention before I ask you about this that after Haynes forwarded these recommendations of this harsh treatment down at Guantánamo on, and Rumsfeld had approved some of them, and then the TJAGs and Mora, after your intervention, also—Rumsfeld had backed off on January 15, and had appointed a so-called working group that reviewed thirty-five interrogation techniques well beyond the Army Field Manual—in another world from the Army Field Manual, in some respects—and the working group was given a legal opinion by John [C.] Yoo of the Department of Justice Office of Legal Counsel who had previously written about this subject that later became rather infamous torture memos. They were given a legal opinion. Then

the working group reported for these thirty-five favorably, and Rumsfeld signed off on twenty-four of the thirty-five.

I mention this because that all took place in March and April of 2003, and some of the TJAGs, certainly including Tom [Thomas J.] Romig, never even knew that the working group had reported. I mention it to you because a year later in 2004, here we have Alberto Mora saying that he never heard from you folks again, and that he assumed after January 15 that all abuse had stopped at Guantánamo. It's a long way of asking you, did it stop? And if it didn't stop, how come Alberto Mora thought it did?

Fallon: I don't recall the time sequence. We had felt that Alberto Mora—and god bless him—carried the ball here. As I told him, he restored my faith in political appointees, because he actually carried the message forward. Actually, if it weren't for Alberto Mora, I'm fully confident that the Department of Defense would be stained with having water-boarded people. They were going down that road, and it was clear in my mind that the abuses would have been far greater than occurred. He was able to keep the Department of Defense out of this policy of going down that road to a great extent, so I give him an incredible amount of credit for his courage in doing so.

There were other concerns of the treatment of the other seven hundred sixty detainees down there—not to the degree of al-Qahtani. From a CITF perspective and from a prosecutive perspective, one of the things, in addition to everything else, is that it was making detainees unprosecutable. Of course, at the time, when we were seeking justice for the families of 9/11, to

see that—al-Qahtani, who would have been one of the killers, who was part of the original 9/11 conspiracy, remains someone who is still untried down there. This is concerning now, more than a decade later. Whether now that all this information is exposed and it's less of an embarrassment, might he be tried one day? I hope so.

Q: Well, is he the detainee that Susan [J.] Crawford, the convening officer of the military commissions, said could not be prosecuted because he was tortured?

Fallon: Correct.

Q: Can I ask whether you're whistling Dixie, since we're down here in Georgia?

Fallon: [Laughs] Nice comment. Well, you never know if they could make a case on the information they had that was not affected by the fruits of the poisonous tree. In other words, might you be able to make a case, regardless of anything he confessed to, based on other evidence? You never know when you get to jury members whether somebody's going to be convicted or not, particularly now that they've fortunately improved the military commission processes, so there's better due process. In the early days, it was concerning to the investigators how they were trying to stack the deck. We didn't want kangaroo courts. We wanted fair trials, where the evidence is heard, and where someone receives a verdict that would withstand both international scrutiny and our Supreme Court scrutiny. As we found from the early days, the U.S. government lost some cases in the Supreme Court because due process wasn't being carried out appropriately down at Guantánamo.

Q: For sure. Certainly the military commissions had to be revised. They were last revised, I think, in 2009, after President [Barack H.] Obama came into office, although there are some people who say that they still suffer from a lack of due process, especially with regard to—what do they call that—hearing, where it's not reliable or it's second-hand or something?

Fallon: With hearsay evidence?

Q: Hearsay evidence.

But let me ask you about these military commissions. The federal courts have tried a lot of terrorism-related cases.

Fallon: They have.

Q: They tried one case not that long ago in New York. I've forgotten his name now [Ahmed Khalfan Ghailani]. He's the only one sent to Guantánamo to be tried in federal court, and he faced something like 284 counts. He was acquitted on like 283. He's now been sentenced to life in prison on the one count that he was convicted of.

Fallon: That's all you need.

Q: Perhaps so, but it gave ammunition to those in Congress who said, "Wait a minute. You can't bring these people to federal court in the United States," to such an extent that congressional action has left it so that these cases are going to be tried by military commission, and they're going to be tried in Guantánamo.

Fallon: Yes, particularly with the latest Defense Authorization Act. It just further solidifies that the federal district courts are not an option. They have been successful, and I was part of successful prosecutions in that venue. Frankly, when I first got the mission at the CITF, I thought it was a historic event—that the Department of Defense would be doing a mission that was traditionally the Department of Justice's and that the Department of Defense would wind up being the lead on the investigation of Al-Qaeda for these trials. I was aware of the history of the FBI, the Department of Justice, and the U.S. Attorney's office in successfully doing so. This global war with Al-Qaeda, or whatever we want to call it—with the violent extremists—is a war of the minds. It's a war of ideas. It's a war of philosophies. It's the ability for the adversary to recruit and retain soldiers who would risk their lives to attack us, and our ability to defend that.

The real issue at hand is, what happens now when you have a detainee, an accused, go before a military commission who is a very dangerous individual, and he's found not guilty? If your position is, "Well, we'll hold them anyway," then, from a government perspective, why are you going through trials at all? This was the conundrum that began under President Bush when he gave his first speech after 9/11—that we will bring these people to justice. The rules of land warfare from the attorneys who have advised me over the years have a provision to actually

remove these people from the battlefield, and you do so so that they don't become fighters against you. But with Al-Qaeda, it's not a uniformed military, so how—

Q: And they're not considered prisoners of war.

Fallon: —so how do you know when this war ends? If you get to a point where there is indefinite detention without any provision for any release, or being brought before any type of judicial process, the challenge is, how might that embolden the adversary? Right now, Al-Qaeda's on the run. They're an organization that is floundering. The Arab Spring has let the Arab world know that the Al-Qaeda philosophy that violent action is the only way to overthrow governments was ineffective. Ayman al-Zawahiri, the head of Al-Qaeda now, spent two decades trying to remove Hosni Mubarak with bombs and bullets. It took two months to remove him with Facebook and Twitter.

The world is changing, and Al-Qaeda is less and less relevant. We have to ensure that our own strategies don't enable them to regroup and bring greater numbers against us. I think that's going to be a challenge in the future, particularly military commissions. What do you do with someone who is not guilty and is still dangerous?

Q: Unless you want to retire politically, you don't let them go.

Fallon: That's the challenge we're going to have as a nation in the future.

Q: This gets back, in a way, to al-Nashiri—you having worked the *Cole* investigation so assiduously. Al-Nashiri is the first person to face military commission under the Obama administration, is he not?

Fallon: Correct.

Q: It's just coming up.

Fallon: Correct.

Q: Right, so it's incumbent upon me to compel you to make an educated guess as to the verdict.

Fallon: Well, I know al-Nashiri to be a very bad person and a very dangerous person. I'm certainly aware of tremendous evidence we have against him, and I'm confident that the government prosecutors in the Office of Military Commission will be able to mount an effective case against him.

Q: Was he tortured?

Fallon: That is going to be the defense. Of what the impact of anything that was done to him—

Q: What are the known facts? When was he arrested? Do you recall that?

Fallon: I hesitate because I always hesitate when I'm not certain what's been declassified yet. There are things I'm aware of that I'm not at liberty—I just don't know whether I can say—. The public record makes it very clear that he was subjected to techniques that have since been outlawed. The challenge for the prosecution is going to be, will they be able to mount an effective case against him without use of that information? I'm confident that they can. However, what will be the impact on those members of the jury of the defense's ability to bring forward the treatment he endured during that process?

Q: Right. You mentioned that you knew Colonel Morris [D.] Davis.

Fallon: Yes.

Q: Didn't Morris Davis resign as chief prosecutor for the military commissions?

Fallon: I believe he did.

Q: Do you know why?

Fallon: A lot of frustration about the due process involved. Since we've revised military commissions, we've made things more transparent. There are public websites. It's amazing what you can pull from the Department of Defense website on military commissions for trial transcripts and other things. One of President Obama's first executive orders was, "We will not torture," and he created a high-value detainee interrogation group.

Q: There are a lot of people who are very disappointed with Obama for not following through on his promise to close Guantánamo.

Fallon: I understand that.

Q: Should it be closed?

Fallon: First of all, they may need to look at Congress rather than at President Obama as to why Guantánamo is still open. He's unable to close it, whether he'd like to or not. Should it be closed? My opinion has been, for a number of years, that absolutely it should be closed because it has been a recruiting tool. It's associated with Abu Ghraib. General Miller went to Iraq, and the, quote, "Gitmo-izing" of detainees occurred. It has been investigated and corroborated. When he went there, they started to apply different techniques you might be able to use when the Geneva Conventions didn't apply. They certainly applied in Iraq, but he failed to appreciate that or failed to convey that.

From a long-range, strategic perspective, to counter violent extremism, you either need to eliminate a source of recruitment, a rallying cry, something that emboldens your adversary, or you need to change the opinion about that place. Right now the Obama administration, whether they want to or not, would be unable to close Gitmo. They can't move detainees to the States. There's nowhere they can legally put them. They can't try them in the U.S., so we're stuck with it. Your next strategy, in my opinion, from a strategic perspective, is let's try to clean Gitmo up and

make it as good as we can. Let's try to create a transparent process. I often said at the CITF that for us to show that this military commission process is a valid one, we're just going to have to lose some cases, because if we win all the cases, it's going to look like a kangaroo court.

Q: Let me ask you this. When you left the CITF assignment in 2004—do you remember the month?

Fallon: I will in a second. This is the only way I know where I've been. This says 28 May 2004.

Q: Okay. Let the record reflect that Mark Fallon has just consulted something on his wall.

Why did you leave?

Fallon: Well, at the time I felt that my contribution at CITF had run its course. We had what I thought were solid investigations against Al-Qaeda and against the detainees down there. From a career perspective within NCIS, my superiors were saying, "It's time to come back home"—to come back and utilize my talents at NCIS headquarters, rather than being detailed to a joint assignment. I offered my contributions there, and it was felt that it had run its course, and now it was time for me to move on.

Q: You say you made cases. If one looks back on it, though, there have only been a half a dozen military-commission conclusions—prosecutions—at least several of which have been plea bargains, and at least several of which have resulted in time-served or almost time-served. The

one person who is serving a life sentence declined to put up a defense, I believe. A handful. Maybe another score of them have been charged. Is that success, really?

Fallon: It's not the investigator's job to try the case. It's the investigator's job to gather the facts. From an investigative case perspective, we had gathered the information, we had the data, and it was there. The decision to try wound up being a political one. Some of the detainees that we thought would be the first to try wound up being released to other governments. With the case of [David H.] Hicks and his plea agreement, the chief prosecutor was not even cut in the loop. He was totally unaware that this agreement was going down.

At that level there are political decisions made, and I understand that and live with it. From an investigative perspective, my role is to gather evidence against the detainees. We had done that. We had also ensured that a number of detainees were released.

Q: More than you wanted to have cases brought against?

Fallon: Say the question again?

Q: Were there more people that you recommended that they not be prosecuted than you recommended should be prosecuted?

Fallon: Oh, yes. Absolutely. When you're talking to the chief prosecutor, you're trying to determine where to apply your resources. We were probably looking at maybe sixty or so active

investigations. That's a guess. Probably under a hundred, but I'm going to estimate we probably had about sixty. Now this is before the higher-value detainees came—the al-Nashiris, the KSMS [Khalid Sheikh Mohammed], and the others. That was another fourteen or whatever it was who came in in a later wave. We were running cases on those that we felt, based on what we had gathered, were the most prosecutable and were the baddest that we had down there, for lack of a better term.

Q: I found a quarter in my pocket today, and I'm willing to wager that quarter that many Americans assume that the people who are now identified as the high-value detainees who came to Guantánamo in maybe 2006 were the ones that Rumsfeld and all were talking about from the beginning—that it was always these kinds of people down there. In fact, where were those high-value detainees? Weren't they in the black sites? Weren't they in the rendition program?

Fallon: Yes. That was some of the concerns that we had at CITF. I know that Britt and I had some rather heated meetings at Langley, CIA headquarters, about this, because our position was that we're eventually going to get these guys, so why don't you give us access now? Why don't you let us do what we need to do so that you don't taint our ability to try this group in the future? Again, if you play this out two or three moves down the road, okay, you have them at a black site, you've done whatever you're going to do to them, and you've exploited them. What are you going to do with them? Are you going to hold them forever in a black site? What are your alternatives?

As we looked at this, we felt—"we" meaning Britt Mallow and myself at the CITF—that the only reasonable/legal alternative for the government would be to turn them over to somebody, and the CITF was the likely venue. We felt we would eventually get them. Of course, it didn't happen while I was still there or Britt was still there, I don't believe, but eventually that's what happened. You wound up with al-Nashiri, Khalid Sheikh Mohammed, and everyone else, and now the challenge is, how do you now prosecute them after the things that were done to them?

Q: Do you know whether real, actionable, timely, reliable information was gotten at the black sites and in the rendition program?

Fallon: I am unaware of any actionable intelligence that you can conclude occurred due to those techniques that you would not have gotten under regular techniques, or wouldn't have gotten even sooner under regular techniques. I am aware that a lot of bad information was obtained. I am aware that a lot of false information was obtained.

Let's not forget why we went to Iraq—why we said we went to Iraq. Colin Powell testified before the United Nations that there was Al-Qaeda in Iraq, and there was a source from Al-Qaeda who said that there was Al-Qaeda in Iraq. Now we worked Al-Qaeda before the Iraq war, and we had people, especially from Mr. Rumsfeld and Mr. [Paul D.] Wolfowitz's office come to us and say, "We need information that there's Al-Qaeda in Iraq."

We said, "There's no evidence of Al-Qaeda in Iraq. We worked this target. It doesn't make sense. We have all the evidence. We brought people from the Pentagon working for Mr. Wolfowitz to

Guantánamo. You want to see some of the interrogations? We'll show you all the evidence we have. There is no evidence that Al-Qaeda is in Iraq."

That's the danger when you use false information. That was part of the premise we used for going to invade Iraq. That's what Colin Powell said to the United Nations. We went to war using false information obtained from those types of techniques and our leaders not having accurate information, and we lost a lot of American lives.

Q: All right. When you say you're unaware of any good intelligence that was gotten out of those techniques, and black sites and rendition program—maybe you just wouldn't know. Maybe you just wouldn't know about the good intelligence that was gotten. In fact, in the time that you were in CITF and Guantánamo, would you say that good, useful intelligence was gotten down there?

Fallon: I think quite a bit of good intelligence was obtained there. Now people's understanding of "actionable" is different. There is a lot of good, strategic intelligence. Did anyone learn where bin Laden was hiding? Absolutely not. Did anyone learn where bombs were ready to explode? Absolutely not. Did we learn about the adversary? Absolutely. Did we learn about the recruiting methods? Absolutely. Did we learn where safe houses were? Absolutely. There was a ton of good intelligence received down there, but was it actionable as far as sending Special Forces in to interdict an operation? No. We didn't get that. They were already exploited before they got to Gitmo. A lot of intelligence occurred on the battlefield. A lot of intelligence occurred in Afghanistan before they even got to Gitmo.

Q: In January of 2004, General Miller, whom we've spoken of here—and this is a couple of months after his arrival at Gitmo and maybe three-quarters, or a half a year, before his assignment to Iraq—says, "We are developing information of enormous value to the nation. We have an enormously thorough process that has very high resolution and clarity. We think we're fighting not only to save and protect our families, but your families also. I think of Gitmo as the counterterrorism-interrogation battle lab." This is done partly through a, quote, "rewards and penalties system." Have you ever heard that term?

Fallon: Yes. The whole battle lab concept was troubling right from the beginning, and it was something that we advised JTF GTMO against.

Q: Is that another name for—?

Fallon: It's kind of a colloquialism within, particularly, the Army, about the way to do tests and evaluations, to try new procedures, and to try new tactics, so they label things a battle lab. We're talking about human beings here. It stinks of human experimentation. You're trying things that are untested. General Miller was an artillery officer. He had absolutely no background in intelligence whatsoever when he arrived there, so this is your perspective from an artillery officer who was given a mission that he really was untrained and inexperienced to handle.

Q: Before we close today, Mark, the pictures of Abu Ghraib came out, I believe, in April of 2004, just [unclear]. Do you have a view on whether the pictures from Abu Ghraib had real

consequence in what the American military and/or CIA continued to do in terms of interrogation methods?

Fallon: What they continued to do? I certainly hope not.

Q: Did they help lead to the non-use of these interrogation techniques?

Fallon: Well, yes. I certainly think the fact that they were made public—just the vivid pictures—to see the degrading treatment that we would inflict on another human being. I think a picture paints a thousand words, so the fact that they were available to the public I think certainly had an impact. It certainly had an impact in Al-Qaeda's ability to recruit people who attack us. That is a stain on our nation, just as some of the embarrassing treatment that we did at Guantánamo was. It's a stain on our history. Even more importantly, it enabled Al-Qaeda to recruit people and to obtain money to finance their operations. It was one of the main rallying cries because it showed photographic evidence of the abuses. All the things that bin Laden and Al-Qaeda were saying about the United States was right there in photographic form, in front of their eyes.

Q: It was a gift to him.

Fallon: It was a gift to him. Yes, absolutely.

Q: Do you remember when you saw these pictures yourself, what your reaction was then?

Fallon: My heart sunk. When General Miller went from Guantánamo first to try to tell them about the techniques he was using then, we tried to send Blaine Thomas to give that alternate view, and Blaine was iced out of those meetings just as I was iced out of the meetings with Addington and Gonzales.

Q: That was in the summer of 2003.

Fallon: Correct. My heart sunk because what I most feared would happen, happened. As hard as I tried to stop it from happening, it still happened. My first reaction was kind of regret that I was unable to do more. My second reaction was embarrassment for what we would do to somebody. The third was that it would be an incredible recruiting tool for Al-Qaeda.

Q: Is it ironic that after the pictures came out, none other than General Geoffrey Miller was assigned to Iraq to help clean up the situation in the prisons there? Is that correct? He didn't assign Britt Mallow or Mark Fallon. The Pentagon assigned General Miller!

Fallon: Yes, they did. From the information I had at the time, he wasn't the Army's choice. He was Secretary of Defense Rumsfeld's choice.

Q: Well, as we close, let me ask this.

Fallon: You're right on time. [Laughs]

Q: You agreed to give me this time, and it is very kind of you. It's often noted that since 9/11 there hasn't been another major attack—I don't want to say "attack," because I'm not sure—but certainly not another major attack in the United States by Al-Qaeda or any affiliate of Al-Qaeda. Can we not, then, give the Bush administration credit for that?

Fallon: Well, you can give a lot of people credit. When you say "administration," it sounds like the stuff you see on television. Let's give a lot of credit to the military forces. Let's give a lot of credit to law enforcement forces. Let's give a lot of credit to our improvement of our border security. There are a lot of reasons we weren't attacked, and a lot of it is policies. So, by all means, should the Bush administration get some credit? Absolutely. Should the Obama administration have some credit? Absolutely. It's a good thing we weren't attacked, but it's more than an administration's policies that led to that. Our ability to connect the dots is much better. I don't believe it's perfect yet, but it's much better. We're working together. We've established some very secure borders. The planes operation was kind of a seam in the fabric of our security, just as the boats operation was for the *Cole*. The concern is, might they find the next seam in the future? I'm beyond giving an administration credit or not. That's for the pundits on television. I'm just happy we weren't attacked.

Q: Thank you, Mark Fallon.

Fallon: You're welcome.

[END OF INTERVIEW]

Abdel-Rahman, Omar	9, 23, 55
Addington, David S.	56, 96
Allen, Michael	6
al-Nashiri, Abd al-Rahim	13, 86, 91, 92
al-Qahtani, Mohammed	66, 71, 72, 73, 74, 81, 82
al-Zawahiri, Ayman	85
Baccus, Rick	33
Banks, Morgan	58
Beaver, Diane E.	61, 63, 78
bin Laden, Osama	7, 19, 55, 93, 95
Brant, David	24, 25, 34, 67, 68, 75, 76, 77
Bush, George W.	30, 84, 97
Cheney, Richard B.	30
Church, Albert T., III	75
Clarke, Richard A.	18, 20
Cobb, Paul W., Jr.	30

Corbett, Steve	14
Crawford, Susan J.	82
Davis, Morris D.	87
Dunlavey, Michael E.	54, 55, 56, 57, 59
Fitzgerald, Patrick J.	9
Fredman, Jonathan	63
Gelles, Michael	67, 68, 70, 71, 73, 75, 76, 77, 78, 79
Ghailani, Ahmed Khalfan	83
Gonzales, Alberto R.	56, 96
Haynes, W. James, II	59, 75, 76, 80
Hicks, David H.	90
Hodes, Hillel Daniel	7
Johnson, Scott	65
Lehnert, Michael R.	54
Libby, I. Lewis "Scooter"	9
Lietzau, William K.	45

Mallow, Brittain P.	34, 35, 57, 62, 65, 76, 91, 92, 96
Marcinko, Richard	6, 7
McCahon, Sam W.	65
McFadden, Robert	14
Miller, Geoffrey D.	55, 56, 59, 75, 78, 79, 88, 94, 96
Mohammed, Khalid Sheikh	91, 92
Mora, Alberto J.	75, 76, 77, 78, 79, 80, 81
Mubarak, Hosni	8, 85
Myers, Richard B.	30
North, Oliver L.	7
Obama, Barack H.	83, 86, 87, 88, 97
Patterson, L. Eric	25
Powell, Colin L.	92, 93
Romig, Thomas J.	81
Rumsfeld, Donald H.	30, 31, 75, 80, 81, 91, 92, 96

Ryder, Donald J.	24, 25, 57, 76, 77
Simpson, O.J.	9
Smith, David A.	65
Soldz, Stephen	70
Soufan, Ali H.	1, 13, 14, 74, 75
Thatcher, Margaret	19
Thomas, Blaine	65, 96
Vosquel, Brian	78, 79
Wolfowitz, Paul D.	92
Yoo, John C.	80