

Research Brief: Selected examples of Defence, Intelligence and Justice Investigative Reports into detention and interrogation practices¹

International Center for Transitional Justice (ICTJ)²

November 2008

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(* Pending investigation)

¹ It should be noted that that the list of investigations is not exhaustive and the notes on each are not complete summaries of the reports’ contents or analysis of their significance. The purpose of this brief is to provide a sampling of reports to survey the ways in which these have been commissioned, what they have covered, and how they relate to other, similar efforts within the same system. The reports are roughly ordered by the date that the report was made public.

² This information is drawn largely from research by the ICTJ’s Senior Consultant on the US Accountability Project, Patty Blum. The annex was drafted with the assistance of Research Intern Lauren Crain, with Lisa Magarrell.

I. Department of Defense

November 2003: Ryder Report

Prior to the publication of the Abu Ghraib photographs in April 2004, Major Gen. Donald Ryder investigated conditions in U.S. run prisons in Iraq. He found problems throughout the system, such as inadequate training of prison guards in the 800th Military Police Brigade at Abu Ghraib. His report recommended a clear separation in function between military police (MPs) and military intelligence (MIs), a position in diametric opposition to the structure recommended by Maj. Gen. Geoffrey Miller.³ However, even Ryder's own warnings were undercut by his refusal to sound any serious alarm bells as his report implied the situation could be fixed in the short term.⁴

January 2004: Taguba Report

As revelations about detainee abuse at Abu Ghraib made their way up the military chain of command, Lt. Gen. Sanchez requested in January of 2004 that Maj. Gen. Antonio Taguba conduct an investigation and write a report on detainee abuses from November 2003. Taguba was to focus solely on the 372nd Military Police Company, 320th MP Battalion, 800th MP brigade, the MPs guarding prisoners in Abu Ghraib, particularly in Tier 1-A, where the "High Value Detainees" were held.⁵ In so doing, he first reviewed Maj. Gen. Miller's recommendations and Ryder's report. Interestingly, he too found Miller's recommendations problematic, in part, because the detained population in Iraq was largely criminals, not terror suspects and, in part, because he agreed with Ryder that MPs should not participate in MI activities. He noted that many of the problems surfacing in Ryder's investigation still existed at the time of his investigation. The report concluded that numerous incidents of "sadistic, blatant, and wanton criminal abuses" were inflicted intentionally on detainees, many of which had already been referred for criminal investigation. (He noted that prosecutions could be assisted by the fact that many of the perpetrators/suspects confessed and the availability of the photographic evidence). Taguba found the command climate, unclear command structure, and insufficient training to be key factors contributing to the abuses. He found abuse, such as those documented in the now infamous photos, to be a systemic problem. He concluded that Army intelligence interrogators, CIA agents and private contractors actively requested MPs to set

³ Ryder Report on Detention and Corrections Operations I Iraq, November 2003, *available at* <http://www1/unm.edu/humanrts/OathBetrayed/Ryder%20Report.pdf>

⁴ Seymour M. Hersh, "Torture at Abu Ghraib," *The New Yorker*, May 10, 2004, p. 45.

⁵ In candid interviews with Seymour M. Hersh, Taguba said that he quickly found signs of the involvement of MI (the 205th Brigade under Col. Pappas) and OGAs (probably CIA). He also believed that Sanchez and other top commanders in Iraq knew about the abuses at Abu Ghraib before Darby turned over the evidence to CID. Hersh, "The General's Report," *The New Yorker*, June 25, 2007.

favorable physical and mental conditions for them. He made recommendations to address his central concerns regarding training, the applicability of the GCs, re-examining the role of the MIs, the proper supervision of the prison guards and the evident confusion of command in the prison.⁶ He also recommended reprimands for many in the chain of command of the 800th including Brig Gen Janis Karpinski, Col. Pappas, Lt. Col. Phillabaum and Lt. Col. Jordan, the former director of the Joint Interrogation and Debriefing Center (he suggested he be relieved of duty) and others. He urged that Steven Sephanowicz, of CACI International, be fired from his Army job, reprimanded and denied his security clearance and that another CACI employee, John Israel, be disciplined.⁷

February 2004: Mikolashek/DAIG Report

The Mikolashek Report, prepared by the Army Inspector General, (DAIG) at the request of the Acting Secretary of the Army in February 2004, was a broader overview of the general prison operations in Iraq and Afghanistan. It did not identify any system failures and noted that the soldiers and their commanders conducted themselves in a “professional and exemplary manner” while working under the “stress of combat operations and prolonged insurgency operations.” Thus, this report essentially blames the abuses that occurred on the unauthorized actions of a small number of soldiers and the failure of a few leaders to adequately monitor and supervise them. In Mikolashek’s view, the abuses were “aberrations.” While harsher techniques were based, in part, on memos from GTMO interrogators, commanders did fail to appreciate that different standards applied at GTMO and in Iraq and Afghanistan. The report included over four dozen recommendations to improve the care and control of detainees as well as boost interrogation operations. He also recommended closing Abu Ghraib.⁸

May 2004: Schlesinger Panel

In May 2004, Secretary Rumsfeld chartered the Independent Panel, with James R. Schlesinger, a former Secretary of Defense under Presidents Nixon and Ford and a former Director of the CIA, as the Chairman and Harold Brown, former Secretary of Defense under Carter, Tillie Fowler, former Congresswoman, and General Charles A. Horner, USAF (Ret.) as its members.⁹ Their mandate was to

⁶ Taguba Report, Article 15-6, Investigation of the 800th Military Police Brigade, January 2004, available at [http://www1.unm.edu/humanrts/OathBetrayed/Taguba Report.pdf](http://www1.unm.edu/humanrts/OathBetrayed/Taguba%20Report.pdf) or http://www.npr.org/iraq/2004/prison_abuse_report.pdf accessed 10/22/08. Taguba interviewed dozens of military personnel as well as detainees.

⁷ He later said that he felt all those listed were either directly or indirectly responsible for what happened at Abu Ghraib.

⁸ Mikolashek Report on Detainee Operations Inspection, July 2004, available at <http://www.washingtonpost.com/wp-srv/world/iraq/abughraib/detaineeereport.pdf> or <http://www.washingtonpost.com/wp-srv/world/iraq/abughraib/detaineeereport.pdf> accessed 10/22/08.

⁹ At the time of Schlesinger Panel investigation, the following investigations had already occurred and been released or were awaiting release: CID investigations, Ryder Report, Miller assessment, DAIR Report, Taguba investigation, Army Reserve Command Inspector General assessment of training of Reserve units

review the pre-existing investigations and other materials and report on the cause of the problems in detention operations and suggest means to repair them.¹⁰ The Panel issued a strongly worded condemnation of the abuses, calling them “acts of brutality and purposeless sadism.”¹¹ Like other studies, the Panel emphasized the need for proper training, leadership, and oversight. But it also examined more closely the role of commanders and recommended disciplinary action as a result of command failures. The report found that Sanchez, the Central Command and the Joint Chiefs *should have known* about and reacted to the limitations of the MP Battalion guarding prisoners at Abu Ghraib. The command should have had more effective means of getting, as the Panel framed it, “bad news” up the chain of command.¹² In giving some glimpse of changes that had been instituted since the Abu Ghraib scandal, the Panel noted a number of actions that could have been taken earlier but were being taken at the time of their report (i.e. designating one commander for detention/interrogation operations, increasing the number of MPs, properly manning and equipping MPs, etc.). As in the other reports, the Panel found that there was a confusing chain of command on the MI side and between MI and MP (one example is the lack of response to the ICRC reports). Nonetheless, this was the only report thus far that was willing to conclude:

...that commanding officers and their staffs at various levels failed in their duties and that such failures contributed directly or indirectly to detainee abuse. Commanders are responsible for all their units do or fail to do, and should be held accountable for their action or inaction.

The Panel was quick to blame the “weak and ineffectual leadership” of the Commanders of the MP and MI Brigades and of the Joint Interrogation and Debriefing Center at Abu Ghraib.¹³ And they noted the “institutional and personal

regarding MI and MP, Naval Inspector General Review of detention procedures at GTMO and the Naval Brig at Charleston, SC, Naval Inspector General’s review of DoD worldwide interrogation operations, Special Inspection of Detainee Operations and Facilities in Afghanistan (Jacoby Report); Administrative Investigation of Alleged Detainee Abuse by the Combined Joint Special Operations Task Force – Arabian Peninsula (Formica Report); See The Schlesinger Report, Final Report of the Independent Panel to Review DoD Detention Operations, the Independent Panel to Review Department of Defense Detention Operations, in *The Torture Papers: The Road to Abu Ghraib*, Karen J. Greenberg and Joshua L. Dratel, Eds. (Cambridge University Press: 2005), at 918 (hereafter *The Torture Papers*).

¹⁰ The volunteer executive director of the panel was James Blackwell, a Pentagon consultant who worked for Science Applications International Corp. of San Diego, the seventh largest recipient of defense contracts – at \$2.1 billion – in 2002. HRW, *Getting Away With Torture?* April 2005, Vol 17, No. I(G), at 22-23.

¹¹ The report summarized the underlying statistics in the following way: 300 reports of abuse led to 155 completed investigations (at that point in time). Sixty-six (eight in GTMO, three in Afghanistan, and fifty-five in Iraq) resulted in the conclusion that the detainee had been abused. Only about 1/3 of these related to interrogation. The report also noted five detainee deaths as a result of abuse, many more dying of “natural causes” or mortar attacks. Twenty-three deaths were then under investigation. Schlesinger Panel Report, in *The Torture Papers*, 914.

¹² Other commentators do not believe this was an issue. They believe that Rumsfeld, Sanchez and others at the top of the chain of command were well aware of the abuses at Abu Ghraib (and elsewhere) before they became public in late April 2004. See, e.g., Hersh, *The General’s Report*, 63.

¹³ They concurred in criticisms of Brig. Gen. Janis Karpinski.

responsibility at higher levels.” But while somewhat critical, they backed off finding Lt. Gen. Sanchez in violation of his own command duties, even though he bore the ultimate responsibility as the top of the chain of command in country.¹⁴

In summing up the work of all the investigations extant, the Panel noted that, as a conglomerate, they had made over 300 recommendations, most of which the Panel endorsed. It suggested some additional recommendations that emphasized the need to further define the status and treatment of all detainees (obtusely noting that the U.S. needs to redefine its “approach” to IHL in accord with the realities of the twenty-first century), define the joint relationship between MI and MP, develop a new operational concept for detention in the war on terror, have clear guidelines on permissible interrogations, and other refinements of prior recommendations.¹⁵

June 2004: Jacoby Report

The Jacoby report focused on prisons in Afghanistan.¹⁶ Jacoby found that, “...detention operations are functional, but lack cohesive direction, and are constrained by friction at critical junctures. Specifically, in addition to the ... lack of comprehensive detention guidelines, there are significant problems associated with timely aircraft movement of detainees, lines of communication critical to both processing detention approvals and receiving detainee operations guidance, and joint use of detention facilities. Current theater guidance is drafted clearly, but is not comprehensive or well known outside the task force headquarters. In addition, a comprehensive means of disseminating guidance, training, and inspecting detention operations needs to be developed.”¹⁷

August 2004: Fay/Jones Report

Maj. Gen. George Fay was appointed by Lt. Gen. Sanchez to focus on whether 205th Military Intelligence personnel had encouraged, condoned or solicited the MPs to abuse prisoners and whether they comported with their own interrogation procedures and regulations. Simultaneously, Lt. Gen. Anthony Jones was appointed by the Acting Secretary of the Army to look into intelligence operations. To avoid duplicating Fay’s work, Jones was to focus on personnel higher up the intelligence chain of command and events beyond those connected to the actions of the 205th MI Brigade which might have contributed to the abuses at Abu Ghraib. The Fay/Jones report, submitted in August 2004, focused on the difficulties that the Iraqi coalition provisional authority (CPA) had in carrying out

¹⁴ When pressed, Schlesinger also said that Rumsfeld should not resign because that would be giving “our enemies” what they want.

¹⁵ The Schlesinger Report, in *The Torture Papers*, 908-975.

¹⁶ Jacoby Report, CFC-A, AO Detainee Operations – Report of Investigation, June 2004, available at <http://www1.unm.edu/humanrts/OathBetrayed/Jacoby%20Report.pdf>.

¹⁷ General Findings, Report, para. 19. Accessed at: <http://media.thenewstribune.com/images/blogmedia/users/mikegilbert/jacobyreport.pdf>. (October 20, 2008).

its mandate for imprisoning and interrogating suspects. They attributed this to inadequate resources and personnel, due to both the intensity of the counter-insurgency in general (and therefore the CPA's necessary diversion of resources to fight it) as well the fact that Abu Ghraib itself was located in a hostile environment and was under continual attack. Counter-insurgency measures to protect the prison had not been anticipated (when the war "ended" in May 2003, only 600 prisoners were in Abu Ghraib; as the insurgency grew this number grew exponentially). Again, key resources were diverted just to protect the prison.

Fay and Jones found that, while no one reason explained the abuses at Abu Ghraib, the primary cause was the "misconduct (ranging from inhuman to sadistic) by a small group of morally corrupt soldiers and civilians," as well as failures of leadership in the MI Brigade and higher up. The report set forth two categories of abuse: (1) intentionally violent or sexual abuse; and (2) abusive actions taken because of misinterpretation of the law or policy. Fay concluded that twenty-nine MIs did encourage, condone or solicit MPs to commit detainee abuse. The Fay/Jones report was instrumental in laying bare the "party line" that a few rotten MPs were responsible for the abuses since they concluded that MI played a major role.¹⁸ But most of the abuse in the first category – the violent or sexual abuses – occurred separately from scheduled interrogations and did not focus on persons held for intelligence value. Thus, these soldiers knew they were violating policy and procedures. Jones found that senior officials bore responsibility for lack of oversight at the facility, for failing to respond to the reports from the ICRC, and for failing to provide clear guidance. Alleged incidents have been referred to CID for investigation (the study includes specific summaries of incidents and the evidence on each case). Private contractor abuse should be referred to DoD for referral to DoJ for prosecution, as applicable. Fay/Jones acknowledged that there was confusion about interrogation methods (those promulgated by Sanchez); as a result, they suggested that some be referred for disciplinary action. They also specifically noted that interrogation practices of Other Government Agencies (OGA – usually CIA) led to a "loss of accountability" at Abu Ghraib. They referred this aspect of the inquiry to the DoD Inspector General to liaison with those agencies for follow up investigation. Like the other studies, Fay and Jones made numerous recommendations to improve training, leadership and discipline and a recommitment to the GCs and other governing principles.¹⁹

August 2004: Army Reserve Training Review

¹⁸ The Fay/Jones Report recounted some of these abuses, including using unmuzzled dogs in a "game" of making prisoners urinate on themselves or forcing detainees to participate in group masturbation. HRW, *Getting Away With Torture? Command Responsibility for the U.S. Abuses of Detainees*, April 2005.

¹⁹ The Fay/Jones Report, Investigation of Intelligence Activities at Abu Ghraib, Investigation of the Abu Ghraib Prison and 205th Military Intelligence Brigade, LTG Anthony Jones, Investigation of the Abu Ghraib Detention Facility and 205th Military Intelligence Brigade, MG George Fay, August 2004, in *The Torture Papers*, 987-1131.

Lt. Gen. James Helmly requested the inspector general of the U.S. Army Reserve Command to conduct an assessment of the training of reserve units and personnel in the law of war, detainee treatment, interrogation techniques, ethics and leadership. Reservists were directly involved as perpetrators of some of the abuses at Abu Ghraib. The preliminary findings of the assessment indicated an “inferior command climate” and deficiencies in training resulting in a lack of preparedness for duties in combat zones.²⁰ As a result, Helmly authorized a new training regime for all reservists and additional leadership training for company commanders.²¹

March 2005: Church Report

The Naval Inspector General, Vice Admiral Albert Church III, conducted a comprehensive investigation of interrogation operations. Only the Executive Summary had been declassified and released in March 2005. The Church Report contrasted what it saw as the rigorous review of interrogation practices at GTMO with the more haphazard oversight of Afghanistan and Iraq. According to Church, the migration from one location to the other was a mistake since Rumsfeld had only approved certain techniques for GTMO.²² The Church report summary states that “it is clear that none of the pictured abuses at Abu Ghraib bear any resemblance to approved policies at any level, in any theater.”²³ This conclusion appears contradictory, at minimum, to the use of guard dogs to instill fear in prisoners which was authorized by both Rumsfeld and Sanchez.²⁴

More recently, newly un-redacted portions of the Church Report were released as a result of the ACLU FOIA litigation.²⁵ The report discussed in the first assessment report, was commissioned by former Secretary of Defense Rumsfeld as a review of military interrogation procedures, including the 187 closed investigations of detainee abuse.²⁶ One of the key revelations of the new material is the role of psychologists in operational positions in both Afghanistan and Iraq, mostly with Special Operations Forces. As the report states, “They provide direct support to military operations. They do not function as mental health providers, and one of their core missions is to support interrogations.”²⁷ The documents also reveal that Army medics failed to report abuses that took place at Abu Ghraib.²⁸

²⁰ Thom Shanker, “More Reserve Training Set As Result of Abuse Inquiry,” *The New York Times*, August 23, 2004.

²¹ *Ibid.*

²² Church Report, Executive Summary of the Secretary of Defense, March 2005, available at <http://www.defenselink.mil/news/Mar2005/d20050310exe.pdf>

²³ *Ibid.*

²⁴ HRW, *Getting Away With Torture? Command Responsibility for the U.S. Abuse of Detainees*, April 2005.

²⁵ ACLU Press Release, *Newly Unredacted Report Confirms Psychologists Supported Illegal Interrogations in Iraq and Afghanistan*, April 30, 2008.

²⁶ Pending detainee abuse cases – at that time 130 – were not included in the review. Also, Church had no authority to address command responsibility. *Id.*

²⁷ *Id.*

²⁸ *Id.* (medics witnessed episodes of abuse without reporting them up the chain of command).

The new portions of the report also verify that abusive techniques were used long after their authorization was revoked. The report blames this on “dysfunctional command procedures.”²⁹ The newly available information ratifies previous concerns about several detainee deaths: one in Abu Ghraib (the detainee died with “compromised respiration”); one in FOB Tiger (detainee died of asphyxia in circumstances that warranted medical personnel to follow up on detainee abuse); one in Al Nasiriyah, Iraq (detainee died of strangulation and had broken ribs and neck bone).³⁰

April 2005: Army Surgeon General’s Report

The Army Surgeon General’s report focused on medical operations and rejected a recommendation not to use psychiatrists or BSCT teams in interrogations.³¹

July 2005: Furlow/Schmidt Report

General Craddock, commander of the Southern Command (command responsible for oversight of Guantánamo), ordered an investigation of allegations of detainee abuse at GTMO after FBI allegations of aggressive interrogation surfaced in a 2004 FOIA release. This investigation focused on the particular allegations in FBI reports, including the use of dogs, taping detainees’ heads, and impersonation of FBI personnel. The tenor was an attempt to “reframe” every event so that it could be seen as an authorized practice. For example, representations made to the investigators that practices which were authorized at some point were no longer being used (such as freezing temperatures in interrogation rooms or sleep deprivation) seemed to be readily accepted without question. In one instance, MPs held a detainee down while a female interrogator straddled him; the report described this as an authorized example of the “futility” technique (they took the same approach with a female interrogator’s massaging of a detainee’s back and neck).³²

The Furlow-Schmidt Report includes an extensive examination of the techniques used on Mohammed Al Qahtani. They found that all the techniques were permissible under the then-applicable legal guidance. Nonetheless, the report found that the cumulative effect of the practices was “degrading and abusive treatment.” The report found that the commander of JTF-GTMO should have been on top of this interrogation and *should be held accountable* for his failure to

²⁹ *Id.*

³⁰ *Id.*

³¹ Army Surgeon General Report, Assessment of Detainee Medical Operations for OEF, GTMO and OIF, April 2005, available at <http://www1.um.edu/humanrights/OathBetrayed/Army/%20Surgeon%20General%Report.pdf> or http://www.globalsecurity.org/military/library/report/2005/detmedopsrpt_13apr2005.pdf accessed 10/22/08

³² Interestingly, in the Furlow/Schmidt report, the authors recommend that approval authority for the specific use of so-called “gender coercion” as a “futility” technique be withdrawn. Army Regulation 15-6, Investigation into FBI Allegations of Detainee Abuse at Guantanamo Bay, Cuba Detention Facility 7-8 [Schmidt Report]. See also, McKelvey, Tara, ed., *One of the Guys*. Emeryville, CA.: Seal Press, 2007.

supervise properly by being admonished for that failure.³³ Gen. Craddock rejected the recommendation of the report to admonish Maj. Gen. Miller. He absolved Miller of any responsibility for mistreatment of any of the prisoners.³⁴

June 2006: Formica Report

The Formica Report focused on the actions of the Special Operations Forces,³⁵ and Brig. Gen. Richard Formica described treatment by Special Operations Forces in detention sites they controlled. He noted that prisoners might be given only bread or crackers and water to eat, in one case for as long as seventeen days.³⁶ Formica reported on the holding of prisoners in cells so small they could not stand up or lie down while being blasted with loud music and the stripping of prisoners, drenching them with water, and interrogating them in air conditioned rooms and exposing them to extremely cold weather (see description *supra.*). He noted that these practices were used on a prisoner who died in custody in Mosul, but said he had been presented with no allegations that the techniques were related to the death. Remarkably after making these factual findings, Formica did not recommend that any service member should be disciplined. He credited inadequacies to failures in policy guidance, including the erroneous use of interrogation methods that Sanchez had withdrawn, and to the dangerous mission environment. His recommendations for training and new standards for detention, among others, were allegedly adopted immediately.³⁷

August 2006: Inspector General, Department of Defense, Report

In August 2006, the Office of the Inspector General (IG) of the DoD issued a report that reviewed all of the DoD investigations to date. It noted that, thus far, thirteen senior level reports provided extensive coverage of interrogation and detention operations.³⁸ The report noted that as of February 2006, 842 criminal investigations alleging abuse had been opened. The report applauded the work of the Detainee Senior Leadership Oversight Committee (DSLOC) tasked to review and track all the over 450 recommendations from the various studies. As of March 2006, 421 recommendations had been closed, and only seventy-one

³³ Schmidt-Furlow Report, AR 15-6, Investigation of Detainee Abuse at Guantánamo Bay Cuba Detention Facility, <http://www.defenselink.mil/news/Jul2005/d20050714report.pdf> or <http://www.defenselink.mil/news/Jul2005/d20050714report.pdf> accessed 10/22/08.

³⁴ Schmidt told Seymour Hersh that Rumsfeld was intimately involved in the interrogation of Al Qahtani and personally approved the most severe tactics. Hersh, *The General's Report*, 67.

³⁵ Formica Report, Article 15-6 Investigation of CJSOTF-AP, Combined Joint Special Operations Task Force – Arabian Peninsula and 5th Special Forces Group Detention Operation, June 2006, available at <http://www1.unm.edu/humanrts/OathBetrayed/Formica/%20Report.pdf> or <http://www.dod.gov/pubs/foi/detainees/FormicaReportRelease.pdf> accessed 10/22/08.

³⁶ Formica seemed to feel that none of the detainees were worse off because of their treatment. He consulted the military command's surgeon general who said that it would take many more than seventeen days to develop protein or vitamin deficiency from the diet described *supra.* Eric Schmitt, "Pentagon Study Describes Abuse by Special Units," *The New York Times*, June 17, 2006.

³⁷ Lolita Baldor, "Pentagon Details Abuse of Iraqi Detainees," *Associated Press*, June 16, 2006.

³⁸ A separate report examined criminal investigations. This report does not appear to be declassified yet.

remained open, according to the study. This study found that allegations of abuse were not consistently reported, investigated or managed in an effective, systematic or timely manner. In particular, interrogation support lacked unity of command. The report notes that interrogation methods that “migrated” from GTMO to Iraq exceeded the legal limits of the AFM which was the governing doctrine at the time. It also specifically mentioned the use of the SERE techniques and stated that these should be precluded from use in interrogation. As with the other reports, various recommendations for training, better command and control and streamlined command were recommended.³⁹ One of the more revealing parts of this study is the responses from various entities in the military which were solicited for comments and input on the draft report. For example, the Joint Chiefs of Staff “non-concurred” in any findings that assigned them any responsibility for failures of command. The Deputy Assistant Secretary of Defense for Detainee Affairs rejected the implication that SERE techniques had been used on detainees. Further, he rejected any notion in the report that the command had any direct responsibility in either the creation of an atmosphere that paved the way for abuses or in actually sanctioning improper or illegal interrogation methods. He eschewed any responsibility by DoD detainee operations for any of the abuses occurring in Iraq, Afghanistan or GTMO.⁴⁰

January 2008 *DoD Review of Taping Policy (ongoing)*

In light of the CIA’s destruction of tapes of some interrogations, in January 2008 the DoD initiated a review of DoD policy about preserving tapes of interrogations.⁴¹ Initial findings were that thousands of tapes or security camera recordings had been destroyed for lack of a consistent policy. No real clarity exists as to how many tapes may still exist, although it is known that tapes of the interrogations of Jose Padilla and Ali al-Marri, both housed at the Charleston, S.C. Naval Brig, exist.⁴² One of the aims of the review is to develop uniform procedures across the detention sites.⁴³

II. Department of Justice

February 2007: *FBI Investigation/Bassett Investigation*

³⁹ Office of Inspector General, Review of DoD Directed Investigations of Detainee Abuse, August 2006, <http://www1.unm.edu/humanrts/OathBetrayed/OIG%202006%20Report.pdf> or http://www.dodig.osd.mil/Ir/reports/ExecSum_IntelRpt_082506.pdf accessed 10/22/08.

⁴⁰ Memorandum for Deputy Assistant Inspector General for Intelligence Evaluation, from Cully Stimson, Office of the Under Secretary of Defense, July 19, 2006, Re: Report on Review of DoD Directed Investigations of Detainee Abuse, in IG Report, 106-108.

⁴¹ Pauline Jelinek, “Defense Department Reviews Its Policy on Videotaping Prisoner Interrogations,” *law.com*, March 13, 2008.

⁴² *Id.* One of the tapes shows al-Marri having his mouth taped shut, an action which his lawyer says nearly choked him but which the government claims was not abusive. *Id.*

⁴³ *Id.*

The FBI conducted an investigation of abuses at GTMO. A survey of 493 FBI agents showed that twenty-six admitted witnessing incidents that they believed were aggressive mistreatment of prisoners. The FBI issued a document describing the incidents, none of which showed FBI involvement in the abuses.⁴⁴ Col, Richard Bassett investigated allegations of abuses at GTMO after some guards allegedly bragged about beating detainees to Sgt. Heather Cerveny, a paralegal working at GTMO, on her first day on the job. After interviewing about twenty people, Bassett concluded that the evidence did not support the allegations, and no disciplinary action would be recommended.⁴⁵

May 2008: *Inspector General, DoJ, Review of FBI Role in Interrogations and Abuses*

The Office of the Inspector General (OIG) of the DoJ was ostensibly mandated to examine FBI involvement in detainee abuse and/or FBI failure to report detainee abuse in Iraq, Afghanistan and GTMO. More significantly, the report is a corroboration of findings about the widespread use of torture on detainees.⁴⁶ The report has been ready since October 2007; however, due to DoD's lack of a "timely response" to the document, it was unnecessarily delayed.⁴⁷ In order to accomplish the review – which began in mid-2004 – the OIG evaluated over 1,000 survey questionnaires of FBI employees who were deployed to one of the zones. Further, they interviewed more than 230 witnesses. They also reviewed over a half million pages of documents of the FBI, other DoJ components and DoD. They made two trips to GTMO and interviewed 5 detainees there. One released detainee was interviewed by phone.⁴⁸ The FBI deployment from late 2001 to end of 2004 was: 25 employees in Afghanistan at any given time (total of 200 FBI employees); 30 at GTMO (total of 500 FBI employees); and 60 in Iraq (total of 260 FBI employees).⁴⁹

The general findings of the report regarding the FBI were as follows: the FBI generally followed (and still follows) the practice of using non-aggressive, non-invasive, rapport-building interrogation techniques; FBI agents at GTMO and in Afghanistan and Iraq faced interrogators from other agencies who used more aggressive tactics than the FBI; the FBI decided it would not participate in interrogations in which those tactics were used; the vast majority of FBI agents complied with this "separation" policy; in a few instances, agents participated in

⁴⁴ FBI, "Guantanamo Bay Inquiry," <http://foia.fbi.gov/guantanamo/122106.htm>

⁴⁵ "'No evidence' of Guantanamo abuse," *BBC News*, February 7, 2007.

⁴⁶ Office of the Inspector General, Oversight and Review Division, *A Review of the FBI's Involvement and Observations of Detainee Interrogations in Guantanamo Bay, Afghanistan and Iraq*, May 2008. An interesting interview with the Inspector General, Glenn Fine, can be found at Marissa Taylor, "Justice Department watchdog: Gitmo abuse probe 'massive,'" *McClatchey Newspapers*, April 15, 2008.

⁴⁷ OIG, *A Review of the FBI's Involvement...*, i.

⁴⁸ *Id.*, i-ii. OIG also examined the prior investigative reports, summarized in the first assessment report. Although requested, they were not allowed to interview Abu Zubaydah, and former Attorney General John Ashcroft refused to be interviewed. *Id.*, n. 4 (discussing why OIG believes that they should have been given access to Zubaydah), n.6.

⁴⁹ *Id.*, v.

or used “techniques ... that would not normally be permitted in the United States;” some concerns were reported to the on-site FBI supervisor; some tried to resolve the issue with military counterparts on site; friction existed between FBI and the military, particularly at GTMO; and the FBI failed to provide sufficient guidance to field officers on responding to this problem.⁵⁰

In order to reach these findings, the OIG did an exhaustive examination of the FBI’s interrogation policies as well as those of the DoD. It recounted in detail the official changes in DoD policy for interrogations, as they varied for each location.⁵¹ The specific impetus for re-thinking the FBI role came as a result of the torture of Abu Zubaydah. FBI agents initially had control of Zubaydah’s interrogation and attempted using rapport building methods with him, especially as they cared for him (he had been wounded on apprehension). But when the CIA took over and used “techniques [that] undoubtedly would not be permitted under FBI interview policies,” one of the two agents assigned to Zubaydah expressed concerns to senior officials in the FBI Headquarters Counter-terrorism Division.⁵² Ultimately, this report-back led to FBI Director Mueller’s decision that FBI agents should not participate in interrogations that used extreme techniques disfavored by the FBI.⁵³ These differences surfaced again regarding interrogations at GTMO, in general, and of Mohamed al-Qahtani in particular.⁵⁴ The report states that FBI agents’ objections were “passionate,” and one official described “trench warfare” between the FBI and the military over the methods used on detainees.⁵⁵ These concerns led to complaints “up the chain of command” to senior officials in the Criminal Division of DoJ, to the Assistant AG for the Criminal Division (Michael Chertoff), and the Deputy to and the Attorney General.⁵⁶ Only in the wake of the Abu Ghraib revelations did the FBI issue clear directives to the field prohibiting the use of force, threat or abuse and the participation in interrogations where such tactics were used. However, the directive counseled agents that they only were required to report “abuse or mistreatment” of detainees, without precisely defining those terms.⁵⁷

⁵⁰ *Id.*, iv-v, xxxi-xxxii. The report indicated that guidance to the field should have been provided well before the Abu Ghraib disclosures. *Id.* xvii-xviii. The report additionally stated that the FBI Office of General Counsel still needed to review its detainee policy to decide when FBI agents may interview detainees who have been previously been subject to harsh interrogation by other agencies.

⁵¹ *Id.*, v-ix.

⁵² *Id.* ix-x.

⁵³ *Id.*

⁵⁴ *Id.*, x-xiv. The report devotes close to an entire chapter to Al-Qahtani. *Id.* chp. 5.

⁵⁵ Eric Lichtblau and Scott Shane, “Report Details Dissent on Guantánamo Tactics,” *The New York Times*, May 21, 2008.

⁵⁶ The complaints focused on the effectiveness of such techniques and to some extent, their legality. The report does not make clear whether inter-agency groups, such as the Policy Coordinating Committee, the Principals Committee (see discussion above), or the Deputies Committee, all chaired by the National Security Council, were aware of the FBI complaints. OIG Report, xi-xii. However, senior officials, like Spike Bowman, head of the national security law unit at the F.B.I., wrote an email message to top officials stating, “Beyond any doubt, what they are doing (and I don’t know the extent of it) would be unlawful were these enemy prisoners of war.” Lichtblau and Shane, “Report Details Dissent.”

⁵⁷ *Id.*, xiv-xv.

One of the most startling revelations of the report was that FBI agents at GTMO created a “war crimes file” to document the abuses they were witnessing. Sometime in 2003, however, they were ordered to shut the file because “investigating detainee allegations of abuse was not the F.B.I.’s mission.”⁵⁸ In addition, the report adds to pre-existing documentation of the level and types of abuses in all three locations. For example, FBI agents witnessed detainees regularly being subject to sleep deprivation and disruption at GTMO.⁵⁹ Agents described the use of extreme temperatures and prolonged short-shackling, often in combination as well as the use of isolation for 30 days or longer. Incidents such as the use of military dogs to intimidate prisoners or having a female interrogator inappropriately touch detainees became well known at the camp.⁶⁰ Despite the fact that concerns about these techniques were raised as early as June 2002, they continued until at least 2004. Complaints did not get elevated within the chain of command because on-site FBI supervisors understood that DoD permitted the techniques.⁶¹

Some FBI agents also reported witnessing abuses at Bagram and Kandahar, including sleep deprivation and disruption, the use of loud music and bright or flashing lights, shackling in painful positions or for prolonged periods, and prolonged isolation. Several agents were aware of two deaths of detainees. Few documented reports of abuse in Afghanistan were found by the investigators.⁶²

In Iraq, FBI agents observed forced nudity, sleep deprivation, isolation, hooding/blindfolding of prisoners, stress positions, prolonged shackling, and forced exercise. Several agents also were aware of unregistered “ghost” prisoners.⁶³ The agents claimed not to be aware of the well-publicized abuses at Abu Ghraib since they worked outside the prison building. Few reported the mistreatment of prisoners; the report blames this on the lack of clear guidance as well as the belief that the military interrogation policies were permitted. Once again, the FBI did not believe their role was to police the practices of the military.⁶⁴

Finally, the report considers specific allegations of FBI involvement in abuses against seven prisoners and in one facility in or near Baghdad. In general, the report concludes that the allegations are not supported. However, in one instance,

⁵⁸ Lichtblau and Shane, “Report Details Dissent.” See also OIG Report, xxii.

⁵⁹ This involved the “frequent flyer program” in which detainees were moved from cell to cell to keep them awake (also disrupting relationships among prisoners), use of strobe lights and playing rock music (often together). OIG Report, xxi.

⁶⁰ *Id.*, xxi-xxii.

⁶¹ *Id.*, xxii.

⁶² *Id.* xxiii-xxiv. The report notes that agents believed, “sometimes incorrectly,” that the military was authorized to use the tactics they witnesses. The report also emphasizes the dependence of the FBI on the military for protection and support. *Id.*, xxiv.

⁶³ *Id.*, xxiv-xxv.

⁶⁴ *Id.*, xxv.

the report found that four FBI agents were present when a prisoner in Iraq had water forced down his throat while he was cuffed and kneeling. The report concludes that this conduct would not be permissible for agents in the U.S.⁶⁵

III. Central Intelligence Agency

October 2007: CIA Investigation of CIA Inspector General

In October of 2007 *The New York Times* revealed that the Inspector General (IG) of the CIA, a position supposedly operating independently of the agency, was being investigated by the Director of the CIA.⁶⁶ This “reverse engineering” of the investigation process seems clearly linked to the fact that the IG was serious about investigating the CIA’s participation in abusive practices.⁶⁷ As a result of the investigation, Director Hayden announced that new procedures had been created to allow for agent complaints about the office’s investigations, through the creation of an Ombudsman Office, for the recording of interviews in connection with investigations, and for the designating of a quality control officer.⁶⁸ Some in Congress, however, were dubious of whether the review was necessary and might have occurred as retaliation for the IG’s serious inquiries into CIA practices.⁶⁹

⁶⁵ *Id.*, xxv-xxix. The report, however, hastens to state that this act was not the same as waterboarding. *Id.*, n. 9.

⁶⁶ Scott Shane and Mark Mazzetti, “Lawmakers Raise Concerns Over Call for Investigation of C.I.A. Watchdog’s Work,” *New York Times*, October 13, 2007.

⁶⁷ HRW reported on a half-dozen investigations concerning detention, interrogation and rendition of terrorism suspects allegedly being conducted by the CIA Inspector General. HRW, *Getting Away With Torture?*

⁶⁸ Mark Mazzetti, “C.I.A. Tells of Changes For Its Internal Inquiry,” *The New York Times*, February 2, 2008. The IG reports to Congress and the CIA Director.

⁶⁹ *Id.* See also Scott Shane and Mark Mazzetti, “Lawmakers Raise Concerns Over Call for Investigation of C.I.A. Watchdog’s Work” *The New York Times*, October 13, 2007. One former CIA official had said that a conflict between the IG and agents had been his report on the botched case of Khaled el-Masri’s kidnapping. *Id.*