

ANNEX C

Summaries of U.S. Investigations of Abuse

Annex C: Summaries of U.S. Investigations of Abuse

Taguba Report

Maj. Gen. Antonio M. Taguba was appointed by Commander, Coalition Forces Land Component Command, Lt. Gen. David D. McKiernan, at the request of Lt. Gen. Ricardo Sanchez, Commander of the Coalition Joint Task Force in Iraq, to investigate the performance of the 800th Military Police Brigade, some of whom staffed Abu Ghraib.¹ Gen. Taguba reported on the criminal abuses inflicted on detainees and described these abuses as “systemic.”² Notably, Gen. Taguba traced the abuses in part to the recommendation of Maj. Gen. Geoffrey Miller, who was then Commander of the U.S. military joint task force at Guantánamo. Miller visited Iraq in August and September 2003 and recommended that “the guard force be actively engaged in setting the condition for successful exploitation of internees.”³

The report cited the presence of other government agencies who “actively requested that MP guards set physical and mental conditions for favorable interrogation of witnesses.”⁴ It also identified as problematic the practice of holding “ghost detainees”—detainees kept off official records and secret from the ICRC—as “deceptive, contrary to Army Doctrine, and in violation of international law.”⁵

Schlesinger Report

The Schlesinger panel, chosen by Secretary Rumsfeld on May 7, 2004, was asked to review Department of Defense detention operations, to advise the Secretary of Defense on the cause of the problems, and to recommend solutions. The panel was comprised of former Secretary of Defense, James Schlesinger; Tillie Flower, who formerly served in the U.S. House of Representatives from Florida; retired Air Force Gen. Charles Horner; and Harold Brown, former Secretary of Defense.

The panel found that the interrogation techniques authorized by Secretary Rumsfeld “migrated” from Guantánamo to Afghanistan and Iraq.⁶ The report noted that when Gen. Geoffrey Miller went to Iraq to set up methods for “actionable intelligence” he “brought

¹ Dep’t of Defense, *Article 15-6 Investigation of the 800th Military Police Brigade* (March 2004) (hereinafter “Taguba Report”), available at <http://www.globalsecurity.org/intell/library/reports/2004/800-mp-bde.htm>.

² *Id.* at “Regarding Part One of the Investigation” ¶ 5.

³ *Id.* at “Assessment of DoD Counter-Terrorism Interrogation and Detention Operations in Iraq (MG Miller’s Assessment)” ¶ 2.

⁴ *Id.* at “Regarding Part One of the Investigations” ¶ 10.

⁵ *Id.* at “Regarding Part Two of the Investigations” ¶ 33.

⁶ James R. Schlesinger, et al., *Final Report of the Independent Panel to Review DoD Detention Operations*, at 37, 82 (Aug. 2004) (hereinafter “Schlesinger Report”), available at <http://www.defenselink.mil/news/Aug2004/d20040824finalreport.pdf>.

to Iraq the Secretary of Defense's April 16, 2003 policy guidelines for Guantánamo . . . as a potential model" which he gave to Gen. Sanchez.⁷

The report also noted that when Gen. Sanchez on September 14, 2003 "signed a memorandum authorizing a dozen interrogation techniques beyond" the standard Army practice under the Geneva Conventions and Army Field Manual FM 34-52, including "five beyond those approved for Guantánamo," he did so "using reasoning from the President's memorandum of February 7, 2002," which he believed justified "additional, tougher measures."⁸ Although the panel interviewed top military and Pentagon officials, it conducted no independent research.

Despite making such links between interrogation policies approved by top government officials, the report did not find that such policies were linked to the abuse in the detention centers. In fact the chairman of the Schlesinger panel showed his bias when he suggested that the resignation of Secretary of Defense "would be a boon to all of America's enemies" and that "his conduct with regard to [the issue of interrogation policy] has been exemplary."⁹

Fay-Jones Report

In April 2004, U.S. Army Maj. Gen. George G. Fay, deputy chief of staff of Army intelligence, was appointed by Gen. Sanchez to examine the alleged misconduct of personnel assigned to the 205th Military Intelligence Brigade, which was in charge of Abu Ghraib.¹⁰ Gen. Anthony R. Jones was brought into the investigation in June 2004 to question Gen. Sanchez.

The report, released in August 2004, found that "inadequate interrogation doctrine and training, an acute shortage of MP [military police] and MI [military intelligence] [s]oldiers, the lack of clear lines of responsibility between the MP and MI chains of command, the lack of a clear interrogation policy for the Iraq Campaign, and intense pressure felt by the personnel on the ground to produce actionable intelligence from detainees" resulted in the abuse of detainees in Iraq.¹¹

The reports also found that the techniques authorized by Secretary Rumsfeld for use in Guantánamo were being used in Afghanistan, where interrogators were "removing

⁷ *Id.* at 37.

⁸ *Id.* at 9-10.

⁹ Dep't of Defense, *Press conference with members of the Independent Panel to Review Department of Defense Detention Operations* (Aug. 24, 2004) available at <http://www.defenselink.mil/transcripts/2004/tr20040824-secdef1221.html>.

¹⁰ Major General George R. Fay, *AR 15-6 Investigation of the Abu Ghraib Detention Facility and 205th Military Intelligence Brigade* (2004) (hereinafter "Fay-Jones Report"), available at <http://news.findlaw.com/hdocs/docs/dod/fay82504rpt.pdf>. Fay, an insurance company executive had been in active duty for five years and was a contributor to Republican campaigns. Walter Pincus, *Prison Investigator's Army Experience Questioned*, WASH. POST, May 26, 2004.

¹¹ *Id.* at 8.

clothing, isolating people for long periods of time, using stress positions, exploiting fear of dogs and implementing sleep and light deprivation.”¹²

Mikolashek Report

In February 2004, the Acting Secretary of the Army directed the Department of the Army Inspector General to conduct an assessment of detainee operations in Iraq and Afghanistan. Gen. Paul T. Mikolashek did not investigate actions taken high up the chain of command or consider sources of information outside the military. The inspector general’s team chose not to investigate “ghost detainees,” nor did it investigate the handling of ICRC reports by the staff of Gen. Sanchez.

The inspector general identified ninety-four cases of confirmed or possible abuse, including twenty prisoner deaths, but concluded that the abuses were “unauthorized actions taken by a few individuals,” and not the result of policy. The report blames low-ranking soldiers for abuse even though the summary identifies problems rooted in decisions by senior officials. For example the report states:

- Troops received “ambiguous guidance from command on the treatment of detainees”;¹³
- The decision by senior commanders to rely on the Guantánamo guidelines “appears to contradict” the terms of Rumsfeld’s decision, which explicitly stated that the guidelines were applicable only to interrogations at Guantánamo;¹⁴ and this led to the use of “high risk” interrogation techniques that “left considerable room for misapplication, particularly under high-stress combat conditions.”¹⁵

The report contradicted the conclusion of the earlier Taguba report, which found abuses to be “systemic,” and that of the February 2004 ICRC report which concluded that widespread “use of ill treatment” could be considered a “practice tolerated” by the coalition forces because it continued after the ICRC warned U.S. military and government officials.¹⁶

Church Report

In May 2004, Secretary of Defense Donald Rumsfeld ordered Vice Admiral Albert T. Church to investigate prisoner operations and intelligence gathering practices in

¹² *Id.* at 29.

¹³ Dep’t of Army, *The Inspector General Detainee Operations Inspection*, at 19 (July 21, 2004) (“Mikolashek Report”), available at <http://www.washingtonpost.com/wp-srv/world/iraq/abughraib/detaineereport.pdf>.

¹⁴ *Id.* at 19.

¹⁵ *Id.* at 40.

¹⁶ *Report of the International Committee of the Red Cross (ICRC) on the Treatment by the Coalition Forces of Prisoners of War and Other Protected Persons by the Geneva Conventions in Iraq During Arrest, Internment and Interrogation* (Feb. 2004), available at <http://www.cbsnews.com/htdocs/pdf/redcrossabuse.pdf>.

Guantánamo Bay, the Naval Consolidated Brig in Charleston, South Carolina, and Iraq and Afghanistan. The report was completed in late 2004, but was classified and given only to the U.S. Senate Armed Forces Committee. Only in March 2005 was an unclassified twenty-one page executive summary made public.¹⁷

This was the only government report on the development of interrogation techniques and detainee abuse in response to the “global war on terrorism,” but it was not thorough or exhaustive because investigators did not interview any current or former detainees. Nor did Vice Admiral Church interview Sec. Rumsfeld because, according to Vice Admiral Church, he “had no more questions . . . [and] had no need to go any further.”¹⁸

The report makes unsupported conclusions. For example, the report 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,” and “interrogators clearly understood that abusive practices and techniques— . . . such as terrorizing detainee with unmuzzled dogs . . . — were at all times prohibited.”¹⁹ Yet Secretary Rumsfeld in December 2002 approved techniques for Guantánamo detainees that violated the prohibition of cruel, inhuman or degrading treatment.²⁰ In addition, Gen. Sanchez in September 2003 authorized the use of dogs, stress positions, yelling, and sensory deprivation.²¹ In October 2003, Gen. Sanchez modified some techniques but continued to authorize interrogators to control lighting, heating, food, shelter, clothes, and required muzzle on dogs during interrogation.²²

Schmidt Report

In January 2005, U.S. Southern Command headquarters appointed Army Brigadier Gen. John Furlow to conduct “an internal investigation into recently disclosed allegations” by members of the FBI about detainee abuse in Guantánamo. In February 2005, following criticism that a one-star brigadier general would be unable to question senior officers, Air Force Lt. Gen. Randall Schmidt took over the investigation.²³ Despite striking evidence regarding the mistreatment of detainees (as noted above) and widespread use of approved

¹⁷ Dep’t of Defense, *Review of DoD Detention Operations and Detainee Interrogation Techniques, Executive Summary*, at 3 (Mar. 2005) (hereinafter “Church Report”), available at <http://www.defenselink.mil/news/Mar2005/d20050310exe.pdf>.

¹⁸ Dep’t of Defense, *Department of Defense Briefing on Detention Operations and Interrogation Techniques* (Mar. 10, 2005), available at <http://www.pentagon.mil/transcripts/2005/tr20050310-2262.html>.

¹⁹ Church Report, at 3, 10.

²⁰ See Memorandum from William J. Haynes II, General Counsel, Dep’t of Defense to Donald Rumsfeld, Sec’y of Defense, *Re: Counter-Resistance Techniques* (Nov. 27, 2002), available at <http://www.slate.com/features/whatistorture/pdfs/020927.pdf>. Haynes’ recommendations were approved by Rumsfeld on Dec. 2, 2002. *Id.*

²¹ Annex B220-225, Memorandum from Lieutenant General Sanchez to Commander, U.S. Central Command, *Re: CJTF-7 Interrogation and Counter-Resistance Policy* (Sept. 14, 2003).

²² Annex B226-230. Memorandum from Lieutenant General Sanchez to Commander, Combined Joint Task Force Seven, *Re: CJTF-7 Interrogation and Counter-Resistance Policy* (Oct. 12, 2003).

²³ News Release, U.S. Southern Command, Three-Star General Appointed to Lead Investigation (Feb. 28, 2005), available at <http://www.southcom.mil/pa/Media/Releases/PR050228.pdf>.

harsh and abusive interrogation methods, Schmidt concluded that abuses have not “crossed the threshold of being inhumane.”²⁴

The classified report, from which only the executive summary has been released, found that U.S. interrogators’ application of techniques including the use of dogs, the use of extreme heat and cold, and sleep deprivation was not improper because the Secretary of Defense had specifically approved these techniques.²⁵ While the report did not examine the legal validity of interrogation techniques, it found that techniques used by U.S. interrogators, including interrogation for eighteen to twenty hours per day for forty-eight out of fifty-four consecutive days, forcing a detainee to wear a woman’s bra and placing a thong on his head, and tying a leash to a detainee and forcing him to perform “a series of dog tricks” were not improper because they had been authorized by the Secretary of Defense.²⁶

²⁴ Kathleen T. Rhem, *Alleged Guantánamo Abuse Did Not Rise to Level of “Inhumane,”* AMERICAN FORCES INFORMATION SERVICE, July 13, 2005, available at http://www.defenselink.mil/news/Jul2005/20050713_2053.html. See also *Dep’t of Defense, Army Regulation 15-6: Final Report, Investigation into FBI Allegations of Detainee Abuse at Guantánamo Bay, Cuba Detention Facility* (June 9, 2005) (hereinafter “Schmidt Report”), available at <http://www.defenselink.mil/news/Jul2005/d20050714report.pdf>.

²⁵ *Id.* at 27-28.

²⁶ *Id.* at 19-20 (the report did conclude that the cumulative effect was abusive and degrading when done in the context of forty-eight days of interrogation but nevertheless concluded that “this treatment did not rise to the level of prohibited inhumane treatment”). See also Memorandum from Donald Rumsfeld, Sec’y of Defense to Commander, US Southern Command, *Re: Counter-Resistance Techniques in the War on Terrorism* (Apr. 16, 2003), available at <http://www.washingtonpost.com/wp-srv/nation/documents/041603rumsfeld.pdf>. (The techniques approved included isolation for up to thirty days, dietary manipulation, environmental manipulation, “sleep adjustment,” and “false flag”—leading detainees to believe that they were being interrogated by people from outside the U.S.—none of which is consistent with the authorized interrogation techniques in Army Field Manual 34-52). See also Annex B220-225.