

# Iraq

*When the Abu Ghraib photographs were released, U.S. officials were, appropriately, horrified. They quickly promised a full investigation which would result in bringing the perpetrators to justice.*

*President George W. Bush told an Arabic-language television station that “people will be held to account. That’s what the process does. That’s what we do in America. We fully investigate; we let everybody see the results of the investigation; and then people will be held to account.”*

*Secretary of State Colin Powell described telling foreign audiences:*

*Watch America. Watch how we deal with this. Watch how America will do the right thing. Watch what a nation of values and character, a nation that believes in justice, does to right this kind of wrong. Watch how a nation such as ours will not tolerate such actions.... [T]hey will see a free press and an independent Congress at work. They will see a Defense Department led by Secretary Rumsfeld that will launch multiple investigations to get to the facts. Above all, they will see a President — our President, President Bush — determined to find out where responsibility and accountability lie. And justice will be done.*

*Secretary of Defense Donald Rumsfeld also said the soldiers’ actions were completely unauthorized, and promised a full investigation. He testified to Congress that troops’ “instructions are to, in the case of Iraq, adhere to the Geneva Convention. The Geneva Conventions apply to all of the individuals there in one way or another.”*

*There were multiple investigations into the abuses at Abu Ghraib, and many of the soldiers involved were prosecuted. Seven military police (MPs), two dog handlers, and two interrogators were convicted of abusing prisoners. Corporal Charles Graner received the longest sentence: 10 years in prison, of which he served over six. Sergeant Ivan “Chip” Frederick was sentenced to eight years, and served three. But not every photograph resulted in a conviction, or even a prosecution. Army investigators determined that many photographs were too closely tied to military intelligence techniques that were, if not strictly authorized, “standard operating procedures.”*

*Abuses in Iraq were not restricted to Abu Ghraib. But attempts to prosecute abuses in other Iraqi prisons*

*were even less successful, due to a lack of resources for investigators and widespread confusion about the rules for prisoner treatment. This was particularly true in cases of “ghost” detainees held by the CIA or by a secretive Joint Special Operations Command (JSOC) task force, known over time as Task Force 20, Task Force 121, Task Force 6-26, and Task Force 143. The JSOC task force was part of a highly classified Special Access Program, which reported to a different chain of command from other U.S. forces in Iraq and was subject to different rules. Contrary to Rumsfeld’s congressional testimony, the task force did not consider detainees in its custody entitled to the protections of the Geneva Conventions. Neither the International Committee of the Red Cross (ICRC) nor most criminal investigators had access to its detention facilities. Two witnesses, retired Air Force Colonel Steven Kleinman and retired Army interrogator Colonel Stuart Herrington, described their attempts to report and stop abuses by JSOC troops at a detention facility at Baghdad International Airport in interviews with Task Force staff. They were both unsuccessful — and in Kleinman’s case, he was threatened as a result.*

# Special Forces and the CIA

## The Battlefield Interrogation Facility

According to a comprehensive report by the Senate Armed Services Committee, the first reports of abuses by the JSOC task force in Iraq came from the Iraq Survey Group (ISG), formed in June 2003 to look for evidence of weapons of mass destruction in Iraq. As part of that effort, the ISG interrogated high-value prisoners at a facility near Baghdad International Airport. Many had been captured by the JSOC task force or the CIA.

A civilian employee of the Department of Defense (DOD) who ran the high-value detainee interrogation center, identified in one DOD inspector general's report as "Mr. Q,"<sup>1</sup> said he first heard about abuses by JSOC forces in the first week of June 2003, when a military interrogator told him that a detainee she was interrogating had alleged physical abuse by task force personnel.<sup>2</sup> By the middle of June, Q told investigators, the abuse reports had become "a pattern." He relayed a report from a British interrogator in the last week of June about a detainee whose "back was almost broken, his nose was probably broken, and he had two black eyes, plus multiple contusions on his face."<sup>3</sup>

Q reported these allegations to Major General Keith Dayton, the commander of the Iraq Survey Group. Dayton said the interrogation center chief had described the abuses as "a disaster waiting to happen," and told him that the ISG had to "slam some rules on this place to basically keep ourselves from getting in trouble and make sure these people are treated properly."<sup>4</sup> But another official involved with the JSOC task force, whose name and position are redacted in the Senate Armed Services Committee Report, told Dayton that he would hear "rumors" of abuse but "it's all untrue."<sup>5</sup>

Dayton described a "notorious case" of alleged detainee abuse, in which "special forces guys" brought a badly burned detainee to the Iraq Survey Group facility, claiming he had burned himself on the floor of a Humvee.<sup>6</sup> An FBI report identifies that detainee as Ibrahim Khalid Samir al-Ani, the Baathist intelligence officer who was erroneously reported to have met with Mohammed Atta in Prague before the September 11 attacks.<sup>7</sup>

Al-Ani was captured on July 2, 2003. He alleged to criminal investigators that when he was captured, he was put on the floor of a car with his hands cuffed behind his back. His captor

put his foot on my back and started screaming and cursing me in English, which I do understand. And after 15 minutes, I felt that one side of my belly and thigh started to burn due to the heated air that was coming out of the car. And the back of my feet started to burn. I asked the responsible [person] to be careful but he did not care.<sup>8</sup>

Al-Ani said he remained on the floor of the vehicle for an hour. When he arrived at Camp Cropper, he fainted, and woke up in a hospital over a month later after being anesthetized. He remained hospitalized until mid-October. Al-Ani alleged that his injuries included the partial amputation of his right thumb; the complete loss of use of his right forefinger; severe burns on both the palm and back of his left hand, resulting in the partial loss of use of his hand; and burns on both of his legs, feet and abdomen, requiring multiple surgeries.<sup>9</sup> His medical records

and photographs corroborated these allegations, as did statements from U.S. troops stationed at Camp Cropper.<sup>10</sup> Investigators from the Army Criminal Investigation Command (CID) confirmed that troops from a JSOC task force captured al-Ani, but they could not identify or locate the individuals involved, in part because al-Ani's captors had used pseudonyms on the capture documents.<sup>11</sup>

According to retired Army colonel and veteran interrogator Stuart Herrington, Q's reports of abuses by the JSOC task force failed to stop them. Herrington told Army investigators that Q

finally was sufficiently upset about the problem by early July that he basically didn't want to associate himself with it anymore. ... [H]is words to me were he gave up and asked to leave. Asked to depart theater. He didn't want to have anything do with it.<sup>12</sup>

Some of JSOC task force's harsh treatment was explicitly authorized. According to the DOD inspector general and the Senate Armed Services Committee, the JSOC task force's written standard operating procedures (SOP), dated July 15, 2003, authorized sleep deprivation, loud music, stress positions, light control, and the use of military dogs.<sup>13</sup> Although not in the written SOP, nudity was also commonly used, reportedly with the knowledge of the JSOC task force's commander and legal advisor.<sup>14</sup>

The July 15, 2003, interrogation policy was unsigned, although the task force commander's name was on the signature block. The commander, Brigadier General Lyle Koenig,<sup>15</sup> told Senate committee staff that he did not recall approving or even seeing an interrogation policy, though he did acknowledge that he knew about some of the harsh techniques in use.<sup>16</sup> But two task force legal advisors — one who served in July and August 2003, and another who arrived in late August — said that they had repeatedly showed the policy to the commander and tried to get his signature on it.<sup>17</sup> The Senate committee reported that according to the second task force legal advisor,

it got to the point where he would print out a fresh copy of the policy every night and give it to [redacted] aide. The Legal Advisor said that he knew the Commander had received copies of the policy from his aide, but that he had a habit of repeatedly "losing" the draft policy. He said the exercise became "laughable."<sup>18</sup>

In addition to the specific authorization of abusive techniques, the JSOC task force took the position that, contrary to later official statements in the wake of Abu Ghraib, detainees in its custody were not protected by the Geneva Conventions because they were "unlawful combatants."

In the summer of 2003, General Koenig, then the head of the JSOC task force, asked Colonel Randy Moulton, the commander of the Joint Personnel Recovery Agency (JPRA), for help with interrogation. Moulton later testified to Congress that "before I sent the team over, I talked to the task force commander and asked him what the legal status was. I was told they were DUCs [Detained Unlawful Combatants] and not covered under the Geneva Conventions."<sup>19</sup>

JPRA sent a team of three people: Lieutenant Colonel Steven Kleinman, its senior intelligence officer; Terrence Russell, a civilian employee who had previously trained interrogators in

SERE (survival, evasion, resistance, escape) techniques at Guantánamo; and Lenny Miller, a contractor.<sup>20</sup> In an interview with Task Force staff, Kleinman said the team arrived in Iraq at the end of August and departed in early October.<sup>21</sup>

On September 6, Kleinman “walked into an interrogation room all painted black.”<sup>22</sup> A detainee was kneeling on the floor, and a Special Forces interrogator was asking him questions, and slapping his face with every response.<sup>23</sup> Miller and Russell, who were already in the room observing, told Kleinman this had been going on for a half hour. Russell’s report of the trip to Iraq said that he and Miller told Kleinman that “we saw nothing wrong with what was going on,” but over their objections, Kleinman stopped the interrogation and told the interrogator it was a violation of the Geneva Conventions.<sup>24</sup> Kleinman later stopped interrogators from implementing a plan that called for sleep deprivation and holding a detainee in stress positions for hours at a time.<sup>25</sup> Kleinman called Moulton and told him what he had done, but Moulton, after consulting with the JSOC task force commander, told Kleinman that the JPRA team was authorized to use the full range of SERE techniques on prisoners, including “walling, sleep deprivation, isolation, physical pressures (to include various stress positions, facial and stomach slaps, and finger pokes to the chest, space/time disorientation, [and] white noise).”<sup>26</sup>

Kleinman testified to the Senate Armed Services Committee that after his conversation with Moulton, he intervened in a third interrogation, in which his two JPRA colleagues

ripped [a detainee’s] Abaya off — not cut — they ripped it off. ... [R]ipped off his underwear, took his shoes, they’d hooded him already, then they — they had shackled him by the wrist and ankles. ... And then the orders were given that he was to stand in that position for 12 hours no matter how much he asked for help, no matter how much he pleaded, unless he passed out, the guards were not to respond to any requests for help.<sup>27</sup>

Kleinman said he told his colleagues that this was “unlawful,” and stopped it.<sup>28</sup> Kleinman’s colleagues at the JPRA gave different accounts of this interrogation. Terrence Russell testified that both he and Miller had removed the detainee’s clothing, while Miller said that only Russell had.<sup>29</sup> Russell denied that Kleinman had objected to the interrogation, and said the detainee was naked only for “however long it took to have his clothes taken off and put the new [clothing] on.”<sup>30</sup>

Kleinman attempted to address his concerns with the JSOC task force’s commanding general and its legal advisor. Both seemed to agree with him, he said, when he raised the issue, but the commander “never once issued an order.”<sup>31</sup>

Others soldiers at the Battlefield Interrogation Facility were “very hostile” to Kleinman’s objections, and in some cases “literally threatening.”<sup>32</sup> Several accosted him and tried to take his camera away, until Kleinman told them it would be an enormous mistake to assault a senior officer. One Army Ranger — who was not an interrogator, but went out on raids based on information obtained from detainees and had heard that Kleinman was “coddling terrorists” — made his point by sharpening a knife near Kleinman, and warned him not to sleep too soundly.<sup>33</sup> Kleinman reported this to the JSOC task force’s legal advisor, who responded that he should be careful.<sup>34</sup> The legal advisor had expressed concern about his own safety to officers visiting from Guantánamo shortly before Kleinman traveled to Iraq. According to the Senate Armed Services Committee’s Report:

According to LTC Beaver the SMU TF Legal Advisor raised concerns with her about physical violence being used by SMU TF personnel during interrogations, including punching, choking, and beating detainees. He told her he was “risking his life” by talking to her about these issues. ... [T]he SMU TF Legal Advisor said he had also raised these issues with the Commander of the SMU TF, but that [redacted] was not receptive to his concerns.<sup>35</sup>

After Kleinman returned from Iraq, Moulton asked him to write a memo on how JPRA could assist the interrogation effort. Kleinman said he refused, because he believed making the recommendations Moulton wanted would be unlawful, and suggested that Terrence Russell could write a report instead. After that, “I was a pariah. ... My access to anything was cut off when we got back from Iraq.”<sup>36</sup>

Russell’s report, released in response to a Freedom of Information Act request, describes a JSOC task force officer as “very angry and frustrated” with Kleinman. The officer “told us he was going to recommend ... the earliest possible departure” for Kleinman because “his presence was counter-productive and was a direct impediment for his people to conduct interrogation operations.” Russell suggested that “under different circumstances and under a different team chief JPRA could re-engage with TF-20.”<sup>37</sup>

The next report about abuses by the JSOC task force came from retired Army Colonel Stuart Herrington, who had extensive interrogation experience in the Vietnam War, Operation Just Cause in Panama, and the first Gulf War. Colonel Herrington traveled to Iraq in December of 2003, at the request of Major General Barbara Fast, to assess U.S. intelligence operations there. Shortly before Herrington went to Iraq, Mr. Q, the former head of the high-value detainee interrogation center at Camp Cropper who first reported abuses by the JSOC task force, told Herrington what he had witnessed, and Herrington did his best to investigate further in Iraq.

Herrington provided Task Force staff with a copy of his report, which states that his team learned from an officer serving at the ISG detention and interrogation facility at Camp Cropper (separate from Herrington’s original source) that

prisoners arriving at his facility who had been captured by Task Force 121 showed signs of having been mistreated (beaten) by their captors. Medical personnel supporting the [interrogation center] examine each detainee upon his arrival to document pre-existing conditions. Detainees captured by TF 121 have shown injuries that caused examining medical personnel to note that “detainee shows signs of having been beaten.” ... I asked the officer if he had reported this problem. He replied that “Everyone knows about it.”<sup>38</sup>

Herrington’s report also describes discussions with “an interagency representative,” most likely from the CIA, who told him that the CIA had been directed not to have contact with JSOC task force’s interrogation facility “because practices there were in contravention to his Agency’s guidance on what was and what was not permissible in interrogating detainees.”<sup>39</sup> This is consistent with a later *New York Times* report that the CIA had barred its personnel from working at the interrogation facility at Camp Nama in August 2003.<sup>40</sup> Herrington concluded, “[I]t seems clear that TF 121 needs to be reined in with respect to its treatment of detainees.”<sup>41</sup>

In March or April of 2004, the Combined Joint Task Force 7 (CJTF-7) legal advisor's office wrote to Herrington that they had investigated his sources' allegations and found no evidence of mistreatment. Herrington said he expressed "blunt dismay" and incredulity at this conclusion, and said his source "could be excused for thinking this is a cover-up."<sup>42</sup>

An interrogator based at the Battlefield Interrogation Facility in Camp Nama in the first half of 2004 later spoke to Human Rights Watch about ongoing abuses there, including one incident in which a detainee "was stripped naked, put in the mud and sprayed with the hose, with very cold hoses, in February. At night it was very cold ... this happened all night."<sup>43</sup> He and several colleagues had gone to the colonel in charge of the facility, and told him they were "uneasy" with the detainees' treatment

And within a couple hours a team of two JAG officers, JAG lawyers, came and gave us a couple hours slide show on why this is necessary, why this is legal, they're enemy combatants, they're not POWs, and so we can do all this stuff to them and so forth. ... And then they went on to the actual treatment itself ... that's not inhumane because they're able to rebound from it. And they claim no lasting mental effects or physical marks or anything, or permanent damage of any kind, so it's not inhumane.<sup>44</sup>

Because of the high level of secrecy surrounding the camp, and its unusual chain of command, the interrogator had little other recourse:

I didn't have any contact with my normal uniformed battalion. [Task Force 121/6-26] was my new chain of command for several months. ...

We called the colonel by his first name, called the sergeant major by his first name. ... I couldn't tell you the sergeant major's last name if I tried. Same with the colonel. A lot of my fellow interrogators, I didn't know their last names either. ... [W]hen you asked someone their name they don't offer up the last name. ... [M]ore often than not, when they gave you their name it probably wasn't their real name anyway.<sup>45</sup>

In addition to Special Forces personnel, the interrogator said, he worked with the CIA, who were stationed at another building nearby. Because of the level of secrecy, "[w]e knew that we were only a couple steps removed from the Pentagon, but it was a little unclear, especially to the interrogators who weren't really part of that task force."<sup>46</sup>

The interrogator said that neither the Red Cross nor the Army's Criminal Investigative Division had access to Camp Nama. Theoretically, he could have gone to his normal unit's chain of command and reported to CID, but he had been told on his first day at the camp that he was not allowed to disclose anything that happened at the Special Forces facility to his normal command.<sup>47</sup>

According to Army CID investigator Angela Birt, if he had reported to Army CID there was little they could have done:

[A]ny investigations that came out of [JSOC facilities] were referred to a couple of agents embedded with the folks at Fort Bragg. And they operate and work directly for them. And as soon as we saw something visible to us that

belonged to them we had to hand it over. You don't see it again. We'd hear about it from other detainees but as soon as we referred something it went into a black hole and we never saw it again.<sup>48</sup>

But the reports of abuse kept coming. On June 25, 2004, an FBI agent emailed his superiors and alleged that a detainee captured by the JSOC task force had suspicious burn marks on his body, which he said came from torture by his captors.<sup>49</sup> The same day, Vice Admiral Lowell Jacoby wrote to Undersecretary of Defense for Intelligence Stephen Cambone, asserting that two Defense Intelligence Agency (DIA) personnel had observed

[p]risoners arriving at the Temporary Detention Facility in Baghdad with burn marks on their backs. Some have bruises, and some have complained of kidney pain.

One of the two DIA/DH interrogators/debriefers witnessed TF 6-26 officers punch a prisoner in the face to the point the individual needed medical attention. ...

One DIA/DH interrogator/debriefer took pictures of [a detainee's] injuries and showed them to his TF 6-26 supervisor, who immediately confiscated them.

TF 6-26 personnel have taken the following actions with regards to the DIA/DH interrogators/debriefers:

- Confiscated vehicle keys
- Instructed them not to leave the compound without specific permission, even to get a haircut at the PX
- Threatened them
- Informed them that their e-mails were being screened
- Ordered them not to talk to anyone in the U.S.<sup>50</sup>

The next day, Cambone wrote a handwritten note on Jacoby's report to his deputy, Lieutenant General William G. Boykin, ordering him to "[g]et to the bottom of this immediately. This is not acceptable."<sup>51</sup> Boykin's review has never been made public, but a spokesman told *The New York Times* that he found no pattern of abuse.<sup>52</sup>

A 2006 DOD inspector general's report states that "the disagreements between the DIA and special mission units were not reconciled to the benefit of all those conducting interrogation operations in Iraq." Instead, the Department of Defense seems to have concluded that the problem was "disaffected interrogators from DIA who were not prepared for the demanding and exacting pace of operations."<sup>53</sup>

Shortly after the Abu Ghraib scandal broke, and a month before Cambone's note to Boykin, investigative journalist Seymour Hersh had reported that the abuses were linked to a highly classified Special Access Program (SAP) run by Cambone and Rumsfeld, code named Copper Green. Hersh reported that his source described the program, which predated the Iraq war, as operating at the highest level of secrecy:

Do the people working the problem have to use aliases? Yes. Do we need dead drops for the mail? Yes. No traceability and no budget. And some special-access programs are never fully briefed to Congress.<sup>54</sup>

Hersh wrote that it was Rumsfeld's and Cambone's decision to expand the program to Iraq, and Cambone's decision to bring

some of the Army military-intelligence officers working inside the Iraqi prisons under the SAP's auspices. "So here are fundamentally good soldiers — military-intelligence guys — being told that no rules apply," the former official, who has extensive knowledge of the special-access programs, added. "And, as far as they're concerned, this is a covert operation, and it's to be kept within Defense Department channels."<sup>55</sup>

Cambone and Rumsfeld declined interview requests from Task Force staff. At the time, Larry DiRita, a spokesman for Donald Rumsfeld, called Hersh's story "the most hysterical piece of journalist malpractice I have ever observed," and CIA spokesman Bill Harlow said the story was "fundamentally wrong. There was no DOD/CIA program to abuse and humiliate Iraqi prisoners."<sup>56</sup>

Many details of Hersh's report are unconfirmed, and some may not be accurate, but the existence of "Copper Green" has been reported by others. A 2010 memoir by U.S. Army intelligence officer Lieutenant Colonel Anthony Shaffer about his service in Afghanistan in 2003 refers to an "enhanced" interrogation program run by the CIA and JSOC task force and authorized by the Pentagon's leadership, called "Copper Green."<sup>57</sup> A more recent book by Marc Ambinder and D.B. Grady states that "Copper Green" was another name for a classified operation called "MATCHBOX" that "included direct authorization to use certain interrogation techniques in the field."<sup>58</sup>

Moreover, government documents show that the JSOC task force's abuse of prisoners were part of a Special Access Program. In April 2005, a regular Army CID investigation team wrote to the commander of Criminal Investigation Command that it had been unable to thoroughly investigate over 20 cases of alleged detainee abuse,

due to the suspects and witnesses involvement in Special Access Program's (SAP) and/or the security classification of the unit they were assigned to during the offense. Attempts by Special Agents ... to be "read on" to these programs ha[ve] been unsuccessful.<sup>59</sup>

Some of those cases involve uncorroborated allegations of abuse, which investigators did not find credible. Others were far more serious.

Another memo, written on February 11, 2005, describes in more detail the obstacles that CID agents faced in trying to investigate the JSOC task force:

A review of this case file and investigative reports revealed this detainee was captured and detained by Task Force 6-26. ... An Information Report was provided to this office which stated fake names were used by the 6-26 members. The only names identified by this investigation were determined to be fake

names used by the capturing soldiers; however, the abuse allegedly occurred during the interrogation of the detainee. The 6-26 CID agent related that the capturing soldiers would not know who the interrogators were. 6-26 also had a major computer malfunction which resulted in them losing 70 percent of their files; therefore, they can't find the cases we need to review.

This investigation meets the necessary requirements and does not need to be reopened. Hell, even if we reopened it we wouldn't get anymore information [than] we already have.<sup>60</sup>

### **Five Suspicious Deaths**

There are at least five suspicious detainee deaths in Iraq that appear to be linked to the CIA's operations or the JSOC task forces. Four were classified as homicides by medical examiners, but only one, the death of Abed Hamed Mowhoush, resulted in a successful court-martial conviction. The interrogator convicted in that case, Chief Warrant Officer Lewis Welshofer (a regular Army interrogator, not a CIA officer or Special Forces soldier), received a sentence of two months confinement to barracks and a fine of \$6,000.

#### ***Dilar Dababa***

On June 13, 2003, a detainee named Dilar Dababa died in the custody of the JSOC task force, at an annex to the Battlefield Interrogation Facility in Camp Nama. Documents from the investigation of Dababa's death show that after he died, medics from the Battlefield Interrogation Facility drove Dababa to a field clinic, and falsely told the clinic staff that the patient "had walked up to a guard post and collapsed."<sup>61</sup> Early entries in the investigative file also state that Dababa died of "an apparent heart attack,"<sup>62</sup> but his autopsy contradicted this, finding instead that his death was a homicide caused by traumatic brain injury and hemorrhage. The autopsy also describes dozens of abrasions and bruises, concentrated but not limited to the head and neck, and injuries from handcuffs around the wrists and ankles. Many of these injuries were not present at the time of his capture.<sup>63</sup>

Investigators encountered a number of obstacles. No physical evidence was collected, because Dababa's cell was cleaned and another high-value detainee placed there before investigators could analyze the crime scene. According to a memorandum in the file from August 7, 2003, "[a]ll of the guards on duty at the time of the detainees' death were not interviewed nor were they retained in Baghdad until interviewed by CID."<sup>64</sup> Interpreters and other detainees at the facility were never interviewed. The death certificate and autopsy report were not finalized until May 2004.<sup>65</sup>

The JSOC task force guards and interrogators who were interviewed said that they had been "smoking the prisoner" and "putting the detainee under stress," subjecting him to nudity, sleep deprivation, forced exercise, and using "pressure points and bone manipulation"<sup>66</sup> if he did not comply with orders. One guard also admitted making a "stink bomb" in Dababa's cell using Tabasco sauce and the heater from an MRE packet.<sup>67</sup> They said, though, that they had only struck Dababa in self-defense after he tried to grab their weapons in an escape attempt.<sup>68</sup> Guards described Dababa being blindfolded and flex-cuffed at the hands and feet before his escape attempt; it was unclear how he had gotten out of his restraints, and how he received most of his injuries.

An agent who reviewed the file in August 2004 wrote that while there were inconsistencies in the soldiers' statements, and between the statements and the autopsy, "[t]he only way we solve this now is with a confession."<sup>69</sup> No confession ever occurred. The case was eventually ruled a justifiable homicide in September 2006, though at least one investigator "non-concur[red]" with that conclusion.<sup>70</sup>

### ***Manadel al-Jamadi***

Manadel al-Jamadi is sometimes called the "Ice Man," because there are notorious photographs of Abu Ghraib guards Sabrina Harman and Charles Graner posing with his ice-packed corpse. On November 4, 2003, he was arrested by a team of Navy SEALs and CIA agents. Al-Jamadi struggled violently; even after he was subdued he was reportedly struck and "body slammed into the back of a Humvee". He was interrogated in a CIA facility, and then driven to Abu Ghraib.<sup>71</sup>

Several of the military police present when al-Jamadi arrived have spoken to government investigators and journalists about what happened next. One MP, Jason Kenner, told military investigators that al-Jamadi was naked from the waist down when he arrived at the prison, with a bag over his head. Two CIA personnel (whom guards referred to as "OGA," an abbreviation for "Other Government Agency"), an interrogator and a translator, asked Kenner and another MP to take him to tier one. Kenner said they placed al-Jamadi in an orange jumpsuit and steel handcuffs, which was "common procedure" for CIA prisoners, and

walked the prisoner to the shower room on Tier 1B. ... The OGA personnel followed behind us. The interrogator told us that he did not want the prisoner to sit down and wanted him shackled to the wall. I got some leg irons and shackled the prisoner to the wall by attaching one end of the leg irons to the bars on the window and the other end to the prisoner's handcuffs.<sup>72</sup>

The window was five feet off the ground. According to Kenner and another MP, Dennis Stevanus, there was enough slack that al-Jamadi could stand with his legs supporting his weight, but not if he slumped forward or kneeled. The MPs exited the shower room, leaving al-Jamadi with CIA interrogator Mark Swanner and a contract interrogator.<sup>73</sup>

According to a National Public Radio (NPR) report, the CIA personnel involved told investigators that al-Jamadi had been talking "about the city of Mosul and hating Americans, when all of a sudden he dropped, falling to at least one knee. ... [T]hey immediately called for a medic."<sup>74</sup>

The MPs contradicted this. Walter Diaz stated that Swanner had called the MPs in, and asked them to re-shackle al-Jamadi's hands higher on the window frame, even though his arms were already

almost literally coming out of his sockets. I mean, that's how bad he was hanging. The OGA guy, he was kind of calm. He was sitting down the whole time. He was, like, 'Yeah, you know, he just don't want to cooperate. I think you should lift him a little higher.'<sup>75</sup>

Diaz asked for help from two other MPs, Jeffrey Frost and Dennis Stevanus, to lift al-Jamadi up and re-fasten the handcuffs. Frost said that Swanner assured them the detainee was just "playing possum,"<sup>76</sup> but when they released him,

[h]e didn't stand up. His arms just kept on bending at this awkward — not awkward position, but it was — you know, I was almost waiting for a bone to break or something and just thinking, you know, this guy — he's really good at playing 'possum.<sup>77</sup>

The MPs removed al-Jamadi's hood, and realized that he was dead. When they lowered him to the floor, according to Frost, "blood came gushing out of his nose and mouth, as if a faucet had been turned on."<sup>78</sup> The military autopsy classified the death as a homicide, caused by "compromised respiration" and "blunt force injuries" to the head and torso, including several broken ribs. Other pathologists who reviewed the autopsy report believed that what was fatal was the combination of the broken ribs and al-Jamadi's position. Dr. Michael Baden, the chief forensic examiner for the New York State Police, told Jane Mayer, "You don't die from broken ribs. But if he had been hung up in this way *and* had broken ribs, that's different. ... [A]sphyxia is what he died from — as in a crucifixion."<sup>79</sup>

Lieutenant Andrew Ledford, a Navy SEAL from the unit that captured al-Jamadi, was court-martialed, but acquitted based on evidence that he did not cause al-Jamadi's death. No CIA officer was ever charged. According to the Associated Press, a grand jury was convened, and focused not on Swanner but on the role of a former CIA officer named Steve Stormoen, who ran the agency's "detainee exploitation cell" at Abu Ghraib. The AP reported that Stormoen had processed al-Jamadi into Abu Ghraib, but was not present in the room where he died, and that he had been reprimanded after an internal CIA probe for permitting agents to "ghost" prisoners, *i.e.*, detain them without registering them or acknowledging their identity, without headquarters authorization. The grand jury also reportedly heard testimony about a CIA employee nicknamed "Chili" who was at Abu Ghraib the day al-Jamadi died and still works for the agency.<sup>80</sup>

But the grand jury did not lead to any indictments, and it is unclear whether the Department of Justice (DOJ) ever proposed any indictments. On August 30, 2012, Attorney General Eric Holder released a statement that no charges would be brought because "the admissible evidence would not be sufficient to obtain and sustain a conviction beyond a reasonable doubt."<sup>81</sup> DOJ declined to elaborate further, or respond to questions about the investigation.

Charles Graner, the soldier who received the longest prison sentence for abusing prisoners at Abu Ghraib, spoke to Army investigators about Chili in April 2005. Graner said that Chili had said he was an FBI contract worker, but "lo and behold he ends up being the interrogator over the analyst that the fellow in the shower dies with."<sup>82</sup> He also described another incident where Chili and his colleagues were interviewing a detainee in the back stairwell, and "drug him back unconscious to his cell."<sup>83</sup>

The MPs' handwritten log books corroborate Graner's allegations about CIA involvement in interrogation, though they use euphemisms. The entry that, according to Graner, corresponded to the detainee being carried unconscious from the stairwell reads simply: "OGA in cell 13 was taken away will be taken off of the count at this time."<sup>84</sup> The only record of al-Jamadi's death is an entry stating: "Shift change Normal relief 1 OGA in IB shower not to be used until OGA is moved out."<sup>85</sup>

One entry from November 11, 2003, is more explicit, stating:

The 4 new OGA's are in 2, 4, 6, and 8 they are to have no contact with each other or anyone else — they are not to sleep or sit down until authorized by OGA personnel also we were informed that all four are neither hungry nor thirsty.<sup>86</sup>

Walter Diaz also reported that the CIA routinely interrogated “ghost prisoners” at Abu Ghraib. According to Diaz, the agency “would bring in people all the time to interview them. We had one wing, Tier One Alpha, reserved for the O.G.A. They’d have maybe twenty people there at a time.” Diaz said, “We, as soldiers, didn’t get involved. We’d lock the door for them and leave. We didn’t know what they were doing,” but “we heard a lot of screaming.”<sup>87</sup>

Major General Antonio Taguba and Major General George Fay confirmed that MPs held “ghost detainees” for the CIA. Taguba reported that one MP unit had helped hide detainees from a visiting Red Cross survey team.<sup>88</sup> Fay found that Lieutenant Colonel Steven Jordan “became fascinated with the “Other Government Agencies,” a term used mostly to mean CIA, and “allowed OGA to do interrogations without the presence of Army personnel.”<sup>89</sup>

In addition to the criminal investigation, the CIA’s Office of the Inspector General (OIG) investigated al-Jamadi’s killing before the case was referred to DOJ. But the OIG report itself remains classified, and courts have ruled that the CIA is not required to disclose it under the Freedom of Information Act.

The Army CID file on al-Jamadi’s death does provide some clues as to the CIA OIG’s conclusions. According to the CID file, OIG personnel “advised their investigation had revealed that the CIA personnel involved in the interrogation of [al-Jamadi] had not been entirely truthful in their accounts of the incident, but declined to provide specifics.”<sup>90</sup> One individual whom the CIA OIG interviewed “had admitted removing the sand bag that was used to hood [al-Jamadi],” and his explanation for its removal was “not believable.”<sup>91</sup> The individual in question claimed that he had taken the bag to keep it secure in the event of an investigation, and had given it to a security officer, but “further information had not corroborated this statement.”<sup>92</sup> The hood was never recovered.

### ***Abed Hamed Mowhoush***

On November 10, less than one week after Manadel al-Jamadi’s death, former General Abed Hamed Mowhoush turned himself in to U.S. troops at Forward Operating Base (FOB) Tiger near the border with Syria. On November 21, he was moved to a temporary detention facility in an old train station, known as the “Blacksmith Hotel.” Chief Warrant Officer Lewis Welshofer, a former SERE trainer, took charge of Mowhoush’s interrogation.

On November 24, according to classified documents obtained by *The Washington Post*, Mowhoush was interrogated by a CIA operative referred to as “OGA Brian” and a team of Iraqi paramilitaries working for the CIA, known as “the Scorpions.” The Iraqis “were hitting the detainee with fists, a club, and a length of rubber hose.”<sup>93</sup> The documents state that this was not uncommon treatment for uncooperative detainees at the Blacksmith Hotel.<sup>94</sup>

At Welshofer’s court-martial, the CIA’s role in Mowhoush’s interrogation was discussed only

obliquely. One witness who testified at the court-martial did so anonymously and behind a tarp, to conceal his identity from the public and press.<sup>95</sup> At one point a defense attorney asked the witness if he had reported something “to the CIA,” but then stopped himself and apologized to the judge for the reference to the agency.<sup>96</sup>

Several witnesses did testify about the November 24 interrogation. Specialist Jerry Loper, testifying under a grant of immunity, said that he had escorted Mowhoush to the interrogation room and waited outside. While waiting, “I heard loud thuds and screams. It sounded like he was being beaten.” When Mowhoush was brought out half an hour to an hour afterwards, “[h]is hands were severely swollen, and he couldn’t walk. His breathing was labored. . . . It took five of us to get him back.”<sup>97</sup> Warrant Officer Jefferson Williams gave a very similar account to Loper’s.<sup>98</sup>

Todd Sonnek, a chief warrant officer with the Army Special Forces unit Operational Detachment Alpha, testified that Welshofer had brought in Special Forces troops, civilians, and Iraqis to interview Mowhoush with a “fear-up” technique, and supplied the Iraqis with the questions to ask. Sonnek testified that “from start to finish, this was Chief Welshofer’s interrogation,” though he acknowledged that Welshofer was not actually the one asking the questions and did not have “supervisory or operational control over the Iraqis.” Sonnek claimed that Mowhoush had tried to “strike out” and needed to be subdued, and denied that Mowhoush was unable to walk unassisted afterwards.<sup>99</sup>

Testifying in his own defense, Welshofer acknowledged that he was present for the November 24 incident but denied he was in control of it:

5 minutes into his interrogation, when he continued to deny, deny, deny, I noticed other people in the hallway. . . . I passed control of the interrogation over to these individuals in the hallway. It is not correct that I was in control of the interrogation and that the others were just assisting me. I did not feel I had any command control over those people. . . . When the general left the room, it was under his own power. I saw what looked like a straight piece of radiator hose, a little bit softer material but of the same diameter, as well as a piece of something like insulation that might go around a door, only it was thicker and hollow on the inside with a camouflage net pole down in one end of it. These devices were used to beat the general. There were also some kicks, some slaps.<sup>100</sup>

CIA Director George Tenet refers in his memoirs to “the Agency-sponsored Iraqi paramilitary group known as ‘the Scorpions,’ ”<sup>101</sup> but details of their involvement with Mowhoush’s death have not been declassified. The CIA OIG prepared a report on Mowhoush’s death, but that also remains classified.

OGA and the Scorpions do not appear to have directly caused Mowhoush’s death. According to court-martial testimony, on November 26, Mowhoush was having obvious breathing difficulties at the beginning of an interrogation, but Welshofer nonetheless put him into a sleeping bag, and wrapped it in a cord to hold it in place. (Welshofer said that Mowhoush did not appear to require medical assistance, and he concluded he was using a “resistance technique” of “acting excessively fatigued.”) Welshofer asked Mowhoush questions while sitting on his chest, and

sometimes obstructing his nose or mouth.<sup>102</sup> Mowhoush died soon after of “asphyxia due to smothering and chest compression,” according to the autopsy report.<sup>103</sup>

Welshofer was convicted of negligent homicide, but was sentenced to only two months of confinement to barracks. This was in part because of evidence that his commanding officers knew of the sleeping bag technique and allowed him to use it on a number of detainees. They also condoned a similar technique that involved placing detainees in wall lockers.<sup>104</sup>

Welshofer and his unit continued to use “close confinement” after Mowhoush’s death. Major Christopher Layton testified that while investigating the homicide in mid-January 2004, he had traveled to FOB Rifles near Al Asad, where Welshofer’s unit was based. He saw a sleeping bag and wall lockers in an interrogation room there.<sup>105</sup> Another witness, Gerald Pratt, said that after Mowhoush’s death, CID took the original sleeping bag, but “Chief Welshofer procured another one. A detainee came in with a sleeping bag, and Chief got it.”<sup>106</sup>

Welshofer has denied that his actions caused Mowhoush’s death. In a 2009 interview with CBS, he said he only did what was necessary: “I helped save soldiers lives. I’m 100 percent convinced of that.”<sup>107</sup>

### **Abdul Jameel**

Welshofer’s unit, the Third Armored Cavalry Regiment, operated out of FOB Rifles in Al Asad. Another detainee, 47-year-old Abdul Jameel, died there on January 9, 2004. According to Jameel’s autopsy, his death was a homicide, caused by

blunt force injuries and asphyxia. ... According to the investigative report provided by U.S. Army CID, the decedent was shackled to the top of a doorframe with a gag in his mouth at the time he lost consciousness and became pulseless.

The severe blunt force injuries, the hanging position, and the obstruction of the oral cavity with a gag contributed to this individual’s death.<sup>108</sup>

Another document summarizing the autopsy report describes the circumstances of death as: “Q by OGA, gagged in standing restraint.”<sup>109</sup> In addition to being gagged and shackled, the detainee had suffered “the fracturing of most of his ribs and multiple fractures of some of his ribs,” and a fractured hyoid bone.<sup>110</sup>

CID investigators concluded that a series of incidents had contributed to Jameel’s death. Jameel was captured by Operational Detachment Alpha 525 of the 5th Special Forces Group on January 4, 2004. CID found that one soldier had kicked Jameel in the chest several times after he was already restrained in zip-ties.

On January 6, 2004, guards and other detainees saw masked interrogators take Jameel out for interrogation. He returned with severe bruises on his abdomen, and told other detainees and guards that he had been beaten.<sup>111</sup> One detainee said Jameel had difficulty breathing. Three soldiers in ODA 525 and one interpreter claimed that Jameel had attacked them, attempted to grab one of their weapons during interrogation, and they had been forced to strike

him repeatedly for one to two minutes in order to subdue him because “[h]e was strong and fought back,” demonstrating “extreme resistance.”<sup>112</sup> CID investigators noted this conflicted with other descriptions of Jameel as appearing to be frail and in poor health.<sup>113</sup> The summary of Jameel’s interrogation on January 6 did not mention any struggle, and CID concluded that the interrogators’ account of the incident could not credibly account for the extent of Jameel’s injuries.<sup>114</sup>

At approximately 2:00 a.m. on January 9, Jameel allegedly tried to escape from the isolation/sleep deprivation area. After he was re-captured, a soldier in the 3rd ACR (Armored Cavalry Regiment) used a military police baton to force Jameel to a standing position, by placing the baton under Jameel’s chin and lifting. CID investigators concluded that this had broken Jameel’s hyoid bone, an injury that directly contributed to his death. CID also found that several soldiers had conspired to give a false account of the details of Jameel’s attempted escape.<sup>115</sup>

Finally, shortly after 7:00 a.m. on January 9, Jameel was “repeatedly ordered ... to stand as part of a mass punishment” of detainees for talking.<sup>116</sup> Jameel did not obey. According to military doctors, based on the number and manner of Jameel’s broken ribs and other injuries, he “would have been in great pain and would have had great difficulty breathing and would not have been able to walk.”<sup>117</sup> Soldiers handcuffed him to the door frame of his cell in a standing position, and forced a gag into his mouth after he “refused to stop making noises.”<sup>118</sup> Five minutes later, he was dead.<sup>119</sup>

No one was ever prosecuted for Jameel’s death, despite criminal investigators’ recommendation of charges against 11 soldiers. According to an Army document:

The command, with the assistance of advice of command legal counsel, determined that the detainee died as a result of lawful applications of force in response to repeated aggression and misconduct by the detainee.<sup>120</sup>

### ***Anonymous Detainee***

There may have been an additional homicide at Al Asad shortly before Jameel’s death. On January 4, 2004, a detainee died of anoxic brain injury at a military hospital in Balad, after being medically evacuated from Al Asad Air Base.<sup>121</sup> According to witnesses, he was brought to a medical unit in Al Asad by a civilian SUV.<sup>122</sup> The patient was unconscious and had a bruise on his forehead, approximately 4 centimeters in diameter.<sup>123</sup> The person who brought him in said the individual had collapsed during interrogation, and might be diabetic.<sup>124</sup> A medic described the person who brought the patient as

over 6’0” tall, sandy blonde hair, wearing a baseball hat, thin, fair complexion, no glasses, wearing civilian clothes. I thought I had seen him in the hospital in the past. There were some people in civilian clothes that would frequent the hospital from time to time like this person and would carry 9 mm pistols. I never saw any identification and I don’t think I ever questioned them about who they were. ... I think that I was told by someone that they were maybe Special Forces or other government agent (OGA). This particular night I did not question the individual who brought the patient in.<sup>125</sup>

A CT scan was performed on the unidentified detainee at Balad, which revealed brain hemorrhages caused by blunt force trauma.<sup>126</sup> The death was reported to CID shortly after it occurred, but the doctors who treated the detainee were never interviewed, nor was an autopsy performed.<sup>127</sup> An investigation was opened after a colonel re-reported the incident in the wake of Abu Ghraib, but the deceased detainee could not be conclusively identified and the perpetrators could not be identified at all.

### **The CIA's and JSOC's Response to Allegations of Abuse**

In an interview with Task Force staff, former CIA General Counsel John Rizzo said that headquarters had sent “detailed cables” that gave CIA personnel in Iraq clear limits on their role in interrogations:

Don't hold prisoners yourself. Defer to the military on questioning. Only participate when invited to do so. Don't try to force yourself into these interrogations. Obviously no enhanced interrogation techniques. The bottom line of the guidelines was defer to the military; these were prisoners under their control, their auspices. Help, support them, when you're asked to participate in interrogations, do it, but just stay a step back.<sup>128</sup>

But, Rizzo said, “either some people ... didn't understand it, or chose in the heat of battle to go beyond it.” He said a CIA station chief and two other officers “were fired because they went beyond the guidelines. They started participating in these interrogations. They actually were capturing, helping the military capture Iraqi prisoners, and then lied about it.”<sup>129</sup>

The Associated Press has reported that CIA officers in Iraq were disciplined, but depicts those decisions somewhat differently. According to the AP, CIA officer Steve Stormoen, who ran the detainee unit at Abu Ghraib, received a letter of reprimand for running an unauthorized “ghosting” program in Iraq and failing to have a doctor examine Manadel al-Jamadi when he arrived at the prison. Stormoen retired, but later returned to the intelligence work as a contractor for SpecTal. The CIA also disciplined the Baghdad station chief, Gerry Meyer, and his deputy. Meyer resigned rather than be demoted. His deputy was temporarily barred from overseas work but later was promoted to run the Pakistan-Afghanistan department within the Counterterrorism Center. Another officer involved in al-Jamadi's death, Chili, remains employed by the CIA as of the date of the report.<sup>130</sup>

General Stanley McChrystal has written that in September 2003, the first day he assumed control of the JSOC task forces,

Lyle Koenig, the air force brigadier general then commanding our task force in Iraq, called me from Baghdad to welcome me to the command. After pleasantries, he stated flatly, “Sir, we need to close the screening facility we're operating at our base at [Baghdad International Airport]. We don't have the expertise or experience to do this correctly.”<sup>131</sup>

McChrystal visited the facility about a week later, and “was unimpressed with both the facility and our ability to staff it.”<sup>132</sup> He wrote that he told JSOC staff regarding detainee treatment that “[t]his is our Achilles' heel. ... If we don't do this right we'll be taken off the battlefield.”<sup>133</sup>

His memoirs do not specify what he saw, but reporters Dana Priest and William Arkin have reported that during McChrystal's visit, several detainees were being kept naked and their cells were guarded by dogs.<sup>134</sup>

In January 2004, the *Army Times* reported that Koenig was retiring "under a cloud of secrecy." After several weeks of inquiries about rumors that Koenig had been relieved of command, an Air Force spokesman told the newspaper that he was on terminal leave pending retirement. The spokesman said there were no "ongoing investigations at this time" regarding Koenig, and refused to elaborate further.<sup>135</sup>

In summer 2004, the JSOC task force moved its headquarters to Balad and built a new screening facility. McChrystal wrote that the new facility was "as internally transparent as possible," open to visits by representatives from the FBI, the regular military, and other agencies as well as U.S. allies.<sup>136</sup> McChrystal does not state whether the ICRC had access to the facility in Balad, however, and British journalist Mark Urban has written that the Red Cross did not.<sup>137</sup>

McChrystal's memoir does discuss a visit by Sen. Carl Levin, who toured the facility

in its first weeks of use, when the cells had been built smaller than some others in Iraq and were painted black. They weren't dirty, and the paint choice had been made with no particular intent. But it sent a negative message. Senator Levin said nothing during the visit, and I judged him satisfied with what he saw. But soon afterward I received a letter he'd sent to the secretary of defense, expressing concern with the black cells. ... [W]e immediately painted the cells a brighter color.<sup>138</sup>

McChrystal wrote that the screening facility was expanded with new cells "that matched exactly with the standards that had begun to be carried out across all of" Iraq, but did not specify whether the small cells remained in use.<sup>139</sup>

According to Urban, one British official who visited the Balad detention facility said that "the cells there were like dog kennels — tiny."<sup>140</sup> Britain eventually told JSOC that its Special Forces could not transfer prisoners to the Americans unless the U.S. agreed not to send them to Balad.<sup>141</sup> Urban states that one visit by British intelligence occurred shortly before a November 2004 operation in Falluja<sup>142</sup> — which implies that the cramped cells remained in use despite Levin's objections.

McChrystal acknowledged that

[a]s late as the spring of 2004, six months into my command, I believed our force needed the option of employing select, carefully controlled "enhanced" interrogation techniques, including sleep management. I was wrong. Although these techniques were rarely requested or used, by the summer of that year we got rid of them completely, and all handling inside our centers followed the field manual used by the Army.<sup>143</sup>

Other reports seem to confirm the ongoing use of "enhanced techniques" that included "close confinement" as well as sleep deprivation into the spring of 2004. An investigation into Special Forces task forces' treatment of detainees by Brigadier General Richard Formica documented

one incident in April or May 2004, in which detainees were held for periods between two and seven days in “small cells measuring 20 inches (wide) x 4 feet (high) x 4 feet (deep),” which did not provide enough room “to lie down or stand up. They were removed from the cells periodically for latrine breaks, to be washed, and for interrogations,” and were “not kept in the cells for 72 continuous hours.” The same detainees were sometimes kept naked, “blindfolded, sometimes with duct tape,” and loud music was played to prevent them from communicating with each other and for “sleep management.”<sup>144</sup>

Formica recommended against disciplining soldiers for these incidents. He acknowledged that the tiny cells were “inappropriate for long-term detention,” but said they were not used for this purpose:

Rather, special forces secured combative, resistant detainees in these cells for short periods of time in order to elicit tactical intelligence. ... It is reasonable to conclude that this would be acceptable for short periods of time. ... [T]wo days would be reasonable; five to seven days would not.<sup>145</sup>

Formica also accepted the explanation that detainees were blindfolded with duct tape “for purposes of force protection and to prevent escape,” and found that this was not inhumane. In part, this was because an interrogation policy for Special Forces troops disseminated in February 2004 permitted interrogation techniques that had been rescinded for ordinary troops, including sleep deprivation, stress positions and environmental manipulation.<sup>146</sup>

Formica stated, consistent with McChrystal’s memoirs, that this had been corrected in May 2004. However, in interviews conducted by attorneys in July 2007, two former detainees gave detailed descriptions of being imprisoned in tiny cells that detainees called “black coffins” in January 2006.<sup>147</sup> They were arrested together and interrogated about the kidnapping of the *Christian Science Monitor* reporter Jill Carroll, and then taken to a prison near Baghdad airport.<sup>148</sup> There, they alleged, they were held in small wooden cells, painted black, at most one meter wide and one meter high. One detainee stated that he was held there for over a week, and the other for 16 days.<sup>149</sup> Both said that they were continuously handcuffed and hooded, and allowed out of the cells only to use the toilet. One of the detainees said that he fainted twice inside his box, was taken out and given an IV nearby, but afterwards he was returned to the cell: “Everything was just the same.”<sup>150</sup> These accounts, while detailed and consistent with each other, could not be independently corroborated.

McChrystal wrote in his memoirs that even after special operations troops were restricted to interrogation methods in the Army Field Manual, “[t]here were lapses of discipline, but they were never tolerated. Never a wink and a nod.”<sup>151</sup> As an example of this, McChrystal describes an incident where task force troops interrogating a detainee about Abu Musab al-Zarqawi’s location “mistreated the detainee by electrically shooting him several times with a Taser.”<sup>152</sup>

McChrystal wrote:

[A]t the conclusion of the investigation, we acted swiftly. Included in the punishment of those responsible was expulsion from the unit, a uniquely difficult blow for soldiers whose very identity relied upon being part of the finest unit of its kind in the world. They weren’t the first to fall short of our standards and values, nor were they the last. But each time we acted.<sup>153</sup>

Pentagon spokesman Lawrence Di Rita told a press conference in December 8, 2004, in an apparent reference to the same incident, that four individuals associated with the JSOC task force “received administration punishments for excessive use of force. In particular I’m advised that it was the unauthorized use of Taser.”<sup>154</sup> Two of the four were removed from the unit.<sup>155</sup>

Di Rita described other investigations involving the JSOC task forces, but most resulted in letters of reprimand or other administrative punishments:

The unit has issued overall 10 letters of reprimand relating to all allegations of detainee abuse, other allegations that have arisen as well over time. The Navy Special Warfare Command has two special courts-martial pending. Two personnel have already received non-judicial punishment. There are four other non-judicial punishments pending. And there are two investigations of a — what we call Article 32 nature ongoing.<sup>156</sup>

According to journalist Marc Ambinder, at some point McChrystal

ordered deputy commanding general Eric Fiel to quietly review the practices at Camp Nama. The review, which remains classified and locked in a vault at Pope Army Airfield, resulted in disciplinary action against more than forty JSOC personnel. Several promising careers — including that of the colonel responsible for Nama at the time of the abuses — were ended.<sup>157</sup>

Ambinder does not specify whether the “disciplinary action” included criminal proceedings, perhaps due to ongoing classification.

## The Regular Military

### Rules of Engagement for Conventional Forces in Iraq

At congressional hearings after the Abu Ghraib scandal, a series of Defense Department and military officials testified that unlike Taliban and Al Qaeda suspects in Guantánamo and Afghanistan, detainees in Iraq were protected by the Geneva Conventions. Secretary of Defense Donald Rumsfeld testified to Congress that troops’ “instructions are to, in the case of Iraq, adhere to the Geneva Conventions. The Geneva Conventions apply to all of the individuals there in one way or another.”<sup>158</sup> General Ricardo Sanchez has written that in mid-June 2003, he “put out an order to all my units stating that the Geneva Conventions applied to all detainees for all interrogations and handling.”<sup>159</sup>

During the summer of 2003, 10 or 12 members of the 519th Military Intelligence Battalion, the same unit linked to two detainee deaths in Afghanistan, traveled to Abu Ghraib to set up interrogation operations there. Captain Carolyn Wood became the officer in charge. On July 26, 2003, Wood sent a proposed interrogation policy that included sleep management, “comfort positions,” the presence of military dogs, 20-hour interrogations, isolation and light control.<sup>160</sup> Wood said she understood Sanchez’s order to apply Geneva in Iraq created a different legal situation, which was why she sought command approval for the techniques. But she “perceived the Iraq experience to be evolving into the same operational environment as Afghanistan,” and thought the same techniques would be useful.<sup>161</sup>

Wood did not hear back from her command about the proposal, and resubmitted it on August 27, 2003. This time, two lawyers from CJTF-7 visited Abu Ghraib, and told her that “they did not see anything wrong with it,” and would approve it and forward it to higher-ranking officers for review.<sup>162</sup>

In early September, Major General Geoffrey Miller visited Iraq to advise personnel there about improving interrogations. Several soldiers who met with him recalled him saying that they were treating detainees too leniently. For example, Major General Keith Dayton, also of the Iraq Survey Group, remembered Miller telling him that ISG is “not getting much out of these people” because “you haven’t broken [the detainees] psychologically.”<sup>163</sup>

On September 14, CJTF-7 issued its first theater-wide interrogation policy, signed by General Sanchez. The policy stated that the Geneva Conventions applied, but nonetheless authorized sleep “adjustment,” stress positions, the presence of military dogs, yelling, loud music, light control, environmental manipulation, and isolation. The policy went into effect immediately. According to Sanchez’s autobiography, his legal advisor, Colonel Marc Warren, told him there was “unanimous agreement” among legal experts in Iraq that “every one of these is authorized by the Geneva Conventions.”<sup>164</sup>

At a hearing on May 19, 2004, Sen. Jack Reed asked Warren how he could have concluded that those techniques complied with Article 31 of the Fourth Geneva Convention, which states that “physical or moral coercion shall not be exercised against protected persons, in particular to obtain information from them or from third parties.” Warren stated that they were permitted “when applied to security internees, in this case who are unlawful combatants,” and who “would have been permissibly under active interrogation.”<sup>165</sup>

A December 24, 2003, letter from the military to the Red Cross explains this interpretation in more detail. Warren apparently relied on Article 5 of the Fourth Geneva Convention, which states that if a party to a conflict

is satisfied that an individual protected person is definitely suspected of or engaged in activities hostile to the security of the State, such individual person shall not be entitled to claim such rights and privileges under the present Convention as would, if exercised in the favour of such individual person, be prejudicial to the security of such State. ... [S]uch persons shall nevertheless be treated with humanity.

The letter cites this provision to argue that security detainees are not eligible for full protection under the Fourth Geneva Convention, and “in the context of ongoing strategic interrogation ... we consider their detention to be humane.”<sup>166</sup>

At Central Command, Major Carrie Ricci disagreed with Warren’s interpretation. She stated that many of the techniques in the September 14 policy violated the Third and Fourth Geneva Conventions, and should not be authorized.<sup>167</sup> On October 12, 2003, Sanchez released a new directive, which listed only techniques included in the Army Field Manual, and stated that requests for unlisted techniques had to be submitted to him in writing.<sup>168</sup>

## **Abu Ghraib**

Many have argued that Sanchez’s second memo demonstrates that any subsequent abuses in

Iraq were a function of undisciplined, sadistic soldiers, not policy. This is particularly true of the notorious Abu Ghraib photographs. Many of those pictures depict cruelty and humiliation for no discernible purpose, and it was these incidents on which the court-martial convictions of Charles Graner, Ivan Frederick, Lynndie England, and the other night-shift MPs rested. Christopher Graveline, the lead Army prosecutor on the cases, later stated that his team had avoided “charging MPs if there was even a hint of MI [military intelligence] involvement that may have led to confusion about how detainees should be treated.”<sup>169</sup> Instead, Graveline focused on a few incidents where the detainees involved were never interrogated by MI — a fact that he believed put “a stake in the heart” of the defendants’ claim that they were just following orders from interrogators.<sup>170</sup>

On October 24, three prisoners who were accused of raping a juvenile were brought to Tier 1 of Abu Ghraib. The MPs stripped them naked, and handcuffed them together in sexual positions. The same night, Graner dragged a naked prisoner nicknamed “Gus” out of his cell with a leash around his neck. He handed the leash to Lynndie England, and took a picture of the incident. Two weeks later, on November 7, the guards subjected seven detainees accused of starting a riot in another part of the prison to a litany of abuses: they were hooded, punched and kicked (in at least one case, to the point of unconsciousness), stripped, stacked into a pyramid and photographed, and forced to masturbate. As Graveline anticipated, courts-martial rejected the soldiers’ attempt to argue that interrogators were ultimately responsible for those incidents.

But other photographs depict abuses that began before Graner’s unit arrived at the prison, and were widely condoned if not actually authorized. The “Fay Report,” an investigation by Major General George Fay into military intelligence personnel’s role in the Abu Ghraib abuses, found that

The MPs being prosecuted claim their actions came at the direction of MI. Although self-serving, these claims do have some basis in fact. The environment created at Abu Ghraib contributed to the occurrence of such abuse and that it remained undiscovered by higher authority for a long period of time. What started as nakedness and humiliation, stress and physical training (exercise), carried over into sexual and physical assaults by a small group of morally corrupt and unsupervised soldiers and civilians.<sup>171</sup>

Major General Antonio Taguba (in the “Taguba Report” investigating MP abuses) also found a link between MI and the MP guards’ abuses:

Military Intelligence (MI) interrogators and Other US Government Agency’s (OGA) interrogators actively requested that MP guards set physical and mental conditions for favorable interrogation of witnesses. . . . I find that personnel assigned to the 372nd MP Company, 800th MP Brigade were directed to change facility procedures to “set the conditions” for MI interrogations.<sup>172</sup>

In an interview with Task Force staff, General Taguba said he had originally been assigned only to interview MP personnel at Abu Ghraib, but he had interpreted his authority broadly in order to speak to some of the key figures in military intelligence. Taguba said he thought the MPs had been “exploited,” and that there had been a failure both within the military and in Congress to hold those at the top responsible. “It has to be the generals,” Taguba said. In the Navy “if that ship runs aground, who gets relieved? The captain.”<sup>173</sup> Instead, Taguba said, there were several

officers complicit or involved in abuse who “got away, or got their fourth star.” He did not want to name specific individuals, however.<sup>174</sup>

Brent Pack, the CID agent who examined the Abu Ghraib photographs, later told journalists that he asked of each photo, “does this one actually constitute a crime or is it standard operating procedure?” Pack regarded nudity and stress positions as “standard operating procedures.”<sup>175</sup>

Damien Corsetti, an MP from the 519th Military Intelligence Brigade, has stated, regarding stress positions, nudity, and sleep deprivation, that his unit “set the same policies in Abu as we set at Bagram. The same exact rules.”<sup>176</sup> A September 16, 2003, entry from the logbooks kept by the 72nd MP Company corroborates this, stating that a detainee “was stripped down per MI and he is [naked] and standing tall in his cell.”<sup>177</sup>

The Fay Report found that at Abu Ghraib, nudity was “employed routinely and with the belief it was not abuse. ... CPT Reese, 372 MP CO, stated upon his initial arrival at Abu Ghraib, ‘There’s a lot of nude people here.’ ”<sup>178</sup> Fay also said “interrogators believed they had the authority to use ... stress positions, and were not attempting to hide their use.”<sup>179</sup>

The Red Cross came to a similar conclusion based on visits to Abu Ghraib in mid-October 2003, where they “witnessed the practice of keeping persons deprived of their liberty completely naked in totally empty concrete cells and in total darkness, allegedly for several consecutive days.”<sup>180</sup> When they demanded an explanation, “[t]he military intelligence officer in charge of the interrogation explained that this practice was ‘part of the process.’ ”<sup>181</sup> The ICRC also witnessed sleep deprivation, threats, and detainees being “handcuffed either dressed or naked to the bed bars or the cell door.”<sup>182</sup> Its medical officer observed both physical and psychological symptoms resulting from this treatment, including bruising and cuts around the wrist, “incoherent speech, acute anxiety reactions, abnormal behavior, and suicidal tendencies.”<sup>183</sup>

Sabrina Harman arrived at Tier 1A of the prison on October 18 or 19. She was one of the MPs assigned to handle the night shift. On October 20, she wrote to her partner, Kelly, that she had seen a detainee, nicknamed “the taxi cab driver,” being handcuffed to his window and his bed frame for hours, naked and with underwear over his face, until he was “yelling for Allah.”<sup>184</sup> “Taxi Driver’s” real name was Amjad Ismail Waleed,<sup>185</sup> and there are multiple photographs of him in the position Harman described. According to Harman, his interrogator was Steve Stefanowicz, a contractor who worked for CACI International, Inc.<sup>186</sup> Stefanowicz was not present that night, but Charles Graner told CID investigators that “Big Steve” had instructed him to place Waleed in that position:

With Taxi Driver he was supposed to just be stood up in his cell with—strip him out and have his underwear on his head and yelling at him, harass him. You know, what if he doesn’t want to stand there? Well, cuff him to his bed for x amount of time.<sup>187</sup>

Graner said this was part of an interrogator’s “sleep plan,” in which MPs allowed detainees to sleep for only four hours out of every 24. During those four hours, though, detainees were interrogated, so “for those guys, initially, they didn’t get much sleep starting out.”<sup>188</sup>

**“...some detainees arrive at [Abu Ghraib] who were detained because the correct target of a raid was not home, so a family member was taken in his place...”**

Waleed gave a statement to CID investigators on January 21, 2004, in which he described these and other incidents of being beaten and handcuffed in painful positions until unconsciousness. He also described being sodomized with a police baton.<sup>189</sup> Both Taguba and Fay found that his testimony was credible and corroborated by other detainees' and soldiers' reports.<sup>190</sup> Waleed testified at greater length for Sabrina Harman's court-martial defense, both in a February 2005 deposition and during Harman's trial. At the February 2005 deposition, for example, he directly attributed the abuse to instructions from "Interrogator Steve," who "used to come and watch the torture and laugh, sometimes he spits, and hit me once or twice."<sup>191</sup> No soldiers were ever charged for Waleed's abuse.

In his post-conviction interview with CID, Charles Graner said that in addition to Stefanowicz, a sergeant from a Guantánamo Bay interrogation training team had instructed him to use stress positions. Graner stated that the previous MP company stationed at Abu Ghraib would sometimes handcuff detainees to the cell bars as punishment for talking, but it was the Guantánamo sergeant who "got into the exotic positions," like handcuffing them "from behind the back, up on the toes or up high enough just not to be standing and low enough just not to be kneeling."<sup>192</sup>

Ivan Frederick, another Abu Ghraib MP convicted of abusing prisoners, corroborated Graner's claims.<sup>193</sup> At the court-martial of Army dog handler Michael Smith, Frederick described Stefanowicz telling guards to menace one detainee with military dogs.<sup>194</sup> Both the prosecution and defense stipulated that Stefanowicz had written in his interrogation notes that working dogs were being used during interrogations with command approval.<sup>195</sup> Frederick also testified to CID that a Guantánamo interrogator had taught Graner about stress positions shortly after the unit's arrival at the prison.<sup>196</sup>

Stefanowicz has denied these allegations through counsel. His attorney at the time of the Smith court-martial, Henry E. Hockheimer Jr., told reporters that "we deny that Mr. Stefanowicz conspired with anyone to commit any kind of unlawful act."<sup>197</sup> Hockheimer has also noted that the MPs convicted of the worst Abu Ghraib abuses have inherent credibility problems.<sup>198</sup> Stefanowicz's former employer, CACI International, has asserted that its internal investigation "could not confirm the suspicion of the Taguba Report about Stefanowicz or find any credible evidence of abuse by CACI interrogators."<sup>199</sup> Although Taguba and Fay both found that Stefanowicz had instructed MPs to abuse detainees, and made false statements to investigators,<sup>200</sup> the United States has never charged him with any offense.

The Fay Report draws a sharp distinction between the use of nudity and stress positions and "violent and sexual abuses."<sup>201</sup> But Abu Ghraib detainees who spoke to Army investigators described the use of stress positions as one of the most common and painful forms of abuse. Detainee number 150542 told investigators that "Graner used to hang prisoners by the doors and windows in a way that was very painful for several hours and we heard them screaming."<sup>202</sup> Detainee number 151362 said

they handcuffed me and hung me to the bed. They ordered me to curse Islam and because they started to hit my broken leg, I cursed my religion. They ordered me to thank Jesus that I'm alive. And I did what they ordered me. This is against my belief. They left me hang from the bed and after a little while I lost consciousness. When I woke up, I found myself still hang[ing] between the bed and the floor.<sup>203</sup>

Detainee number 150247 described being “cuffed ... to the window of the room about 5 hours.”<sup>204</sup> Detainee number 7787 said a night guard “took the clothes and left us naked and handcuffed to the bed” for the guard’s entire shift.<sup>205</sup> Detainee number 152529 said that a soldier with glasses had “grabbed my head and hit it against the wall and then tied my hand to the bed until noon the next day.”<sup>206</sup> Detainee number 151108 said Graner had

cuffed my hands with irons behind my back to the metal of the window, to the point my feet were off the ground and I was hanging there for about 5 hours just because I asked about the time, because I wanted to pray. And then they took all my clothes and he took the female underwear and he put it over my head. After he released me from the window, he tied me to my bed until before dawn.<sup>207</sup>

**“Once detained, it was almost impossible for detainees to get released even if they were innocent.”**

Colonel Stuart Herrington visited Abu Ghraib in mid-December 2003, after the worst of the abuses had ended. Even then, he found it to be “a sewer,” and “as wrong as wrong could be.”<sup>208</sup> The prison was dangerously overcrowded, in part because some units were detaining people on vague suspicions. In some cases,

we were told, some detainees arrive at [Abu Ghraib] who were detained because the correct target of a raid was not home, so a family member was taken in his place (either “voluntarily” or against his will), who would then be released when the target turns himself in. This practice, if it is being done, has a “hostage” feel to it.<sup>209</sup>

Once detained, it was almost impossible for detainees to get released even if they were innocent. The prison was subjected to regular mortar attacks, resulting in casualties. MPs were still keeping detainees off the books for the CIA. Herrington did not see any detainees being mistreated on his visit, but he did see cells with sheets covering the bars. He was told they were there to give female detainees some privacy. After the photographs were released, he suspected that this was untrue, and the cells had actually held naked male prisoners.<sup>210</sup>

### **Abuses by Conventional Forces Outside Abu Ghraib**

Abuses in Iraq were not limited to Abu Ghraib. John Sifton of Human Rights Watch told a reporter that detainee abuse in Iraq was

widespread, but that doesn’t mean it’s all the same. There’s been spontaneous abuse at the troops’ level; there’s been more authorized abuse; there’s been overlap — a sort of combination of authorized and unauthorized. And you have abuse that passed around like a virus; abuse that started because one unit was approved to use it, and then another unit which wasn’t started copying them.<sup>211</sup>

The abuses by both OGA and the 3rd Armored Cavalry at the Blacksmith Hotel and Al Asad Air Base are one example of abuse being “passed around like a virus.” Two nearby detention facilities in Mosul were another. One was a detention site for Navy SEAL Team 7, one of the units affiliated with the JSOC task forces. The other was a “Brigade Holding Area” (BHA) for the 2nd Brigade Combat Team, a unit of the 101st Airborne Division.

Specialist Tony Lagouranis, an interrogator with the 202nd Military Intelligence Battalion who was stationed in Mosul, described prisoners' accounts of being abused by the SEALs at the base. One detainee dropped off by the SEALs in March 2004, whom Lagouranis called "Fadel," had swollen and black feet, and burns on his legs. Fadel, crying "the entire time," told Lagouranis he had been blindfolded, stripped naked, and placed on a plywood floor. He felt cold water and ice poured over him, and started to shiver. A thin tube was inserted into his rectum. Interrogators played loud noises, and when he removed his blindfold there was a flashing light. Then he was moved to a chair, where someone beat his feet and burned his legs.<sup>212</sup>

Lagouranis wrote,

It was not the last I heard about these techniques. At least a half dozen prisoners told me about ice water, beatings, or the strobe and music treatment. These prisoners were separated by space and time, so I believe these were not coordinated stories.<sup>213</sup>

Lagouranis said that a guard who sometimes worked with the SEALs described similar techniques, including the use of a rectal thermometer to ensure that the detainee's body temperature did not drop too low.<sup>214</sup> Staff Sergeant Shawn Campbell, the leader of Lagouranis's interrogation team, corroborated his account to journalist Joshua Phillips. Campbell said he remembered one detainee "shivering ... He looked like he [became] hypothermic."<sup>215</sup>

A detainee named Fashad Mohammed died at the SEAL compound in Mosul on April 5, 2004. He was lying on a sheet of plywood at the time of his death.<sup>216</sup> According to his autopsy, "[d]uring his confinement, he was hooded, sleep deprived, and subjected to hot and cold environmental conditions, including the use of cold water on his body and hood."<sup>217</sup> Mohammed also had "multiple minor injuries" on his body, including two black eyes, but none significant enough to cause his death. The autopsy found that Mohammed "was subjected to cold and wet conditions, and hypothermia may have contributed to his death," but "the cause of death is best classified as undetermined, and the manner of death is undetermined."<sup>218</sup> Mohammed's death was the subject of a preliminary inquiry by the Navy Special Warfare Group, which in contrast to the final autopsy rapidly "ruled out the possibility that the detainee was even mildly hypothermic" because his temperature was measured at 97.5 degrees Fahrenheit approximately half an hour prior to death.<sup>219</sup> *The Washington Post* reported in September 2004 that several Navy SEALs were charged with assaulting and mistreating Mohammed,<sup>220</sup> but in June 2006 a Navy Special Warfare Command public affairs officer said his office had no information about anyone being disciplined in the case.<sup>221</sup>

Lagouranis and Campbell said that with the encouragement of the warrant officer who ran interrogations at Mosul, the regular Army interrogators began adopting many of the same tactics as the SEALs, including sleep deprivation, stress positions, threatening detainees with dogs, subjecting them to hot and cold temperatures.<sup>222</sup>

These allegations are consistent with several detainees' accounts of the detention facilities in Mosul. Detainees referred to both the Navy SEAL and Army facilities as the "Disco," or "Disco Mosul," because of the loud sounds and flashing lights. Some of their reports predated Lagouranis's deployment to Mosul. Similarly, in December 2003, a teenaged detainee

alleged that a soldier broke his jaw while he was doing stress exercises. An Army investigation into that incident found that detainees in Mosul

were being systematically and intentionally mistreated (heavy metal music, bullhorn, hit with water bottles, forced to perform repetitive physical exercises until they could not stand, having cold water thrown on them, deprived of sleep, and roughly grabbed off the floor when they could no longer stand). ... The 3rd & 4th Geneva Conventions were violated in regard to the treatment afforded to these detainees.<sup>223</sup>

Ben Allbright, an MP guard with the 82nd Airborne told Human Rights Watch that he saw similar techniques used at FOB Tiger in Al Qaim. Allbright said that “standard procedure” was to deprive detainees of sleep for the first 24 hours of their detention by blindfolding them, handcuffing them in zip-ties behind their backs, and forcing them to stand inside a metal shipping container where the temperatures could reach 135 or 145 degrees.<sup>224</sup> After this, detainees were taken to be interrogated for the first time. The interrogators were

[s]ometimes, military interrogators. Sometimes, civilian personnel. We had a lot of various different — we could have CIA rolling through — it was chaos. We had special forces, CIA, everybody — various people at different times. The civilian people, I couldn’t really tell you who they were, you know, they weren’t wearing tags or tapes or anything. You couldn’t really know, unless you went up and asked them.<sup>225</sup>

Allbright said that he repeatedly witnessed interrogators beat or threaten detainees; he estimated that “about half the guys to 60 percent of the guys got at least one gut shot — either punched or the butt of the rifle in the stomach.”<sup>226</sup> He said in general, civilian interrogators seemed more likely to be violent.<sup>227</sup>

Before Allbright, three other soldiers in the 82nd airborne spoke to Human Rights Watch about abuses they witnessed. Two of them corroborated his allegations of mistreatment at FOB Tiger. But all three said the worst abuses they knew of were at FOB Mercury, near Falluja, in late 2003 and early 2004. One sergeant, who did not give his name, alleged that he had participated and witnessed daily beatings of detainees, and “smoked” detainees by putting them “in stress positions until they get muscle fatigue and pass out. That happened every day.” The same sergeant alleged that he had witnessed a soldier break a detainee’s leg with a baseball bat, and another incident where soldiers broke open chemical light sticks and beat detainees with them.<sup>228</sup>

The unit did not have much interaction with OGA or Special Forces in Falluja. According to the sergeant and Captain Ian Fishback, they did witness OGA “stress” prisoners in Afghanistan, and had some interactions with them at FOB Tiger. They also had instructions from military intelligence to keep prisoners awake. But much of the abuse was spontaneous, a function of soldiers without training in detention or interrogation guarding the same prisoners who had shot at their unit. The sergeants who spoke to Human Rights Watch were not military police. The first sergeant, who made the most serious allegations of abuse, said

I was an Infantry Fire Team Leader. The majority of the time I was out on

**“But much of the abuse was spontaneous, a function of soldiers without training in detention or interrogation guarding the same prisoners who had shot at their unit.”**

mission. When not on mission I was riding the PUCs [Person Under Control]. We should have had MPs. We should have taken them to Abu Ghraib [which] was only 15 fucking minutes drive. ... We should never have been allowed to watch guys we had fought.<sup>229</sup>

Captain Fishback, who repeatedly heard about abuses from noncommissioned officers but witnessed fewer directly, agreed:

It's army doctrine that when you take a prisoner, one of the things you do is secure that prisoner and then you speed him to the rear. You get him out of the hands of the unit that took him. Well, we didn't do that. We'd keep them at our holding facility for I think it was up to seventy-two hours. Then we would place him under the guard of soldiers he had just been trying to kill. The incident with the detainee hit with a baseball bat; he was suspected of having killed one of our officers.<sup>230</sup>

Fishback did directly witness some abuses, such as the use of stress positions and forced exercise to exhaust detainees, "that I knew were violations of the Geneva Conventions when they happened but I was under the impression that that was U.S. policy at the time."<sup>231</sup> After Abu Ghraib, when Rumsfeld testified that U.S. troops in Iraq were to follow the Geneva Conventions, Fishback sought guidance from his chain of command, without success. On September 16, 2005, he wrote to Sen. John McCain about his attempts:

For 17 months, I tried to determine what specific standards governed the treatment of detainees by consulting my chain of command through battalion commander, multiple JAG lawyers, multiple Democrat and Republican Congressmen and their aides, the Ft. Bragg Inspector General's office, multiple government reports, the Secretary of the Army and multiple general officers. ... Despite my efforts, I have been unable to get clear, consistent answers from my leadership about what constitutes lawful and humane treatment of detainees.<sup>232</sup>

Fishback described to Human Rights Watch a particularly frustrating conversation with a JAG officer:

So I went to JAG and ... he says, "Well the Geneva Conventions are a gray area." So I mentioned some things that I had heard about and said, "Is it a violation to chain prisoners to the ground naked for the purpose of interrogations?" and he said, "That's within the Geneva Conventions." So I said, "Okay. That is within the Geneva Conventions." And then there is the prisoner on the box with the wires attached to him, and to me, as long as electricity didn't go through the wires, that was in accordance with what I would have expected US policy to be and that he wasn't under the threat of death. And he said, "Well, that is a clear violation of the Geneva Conventions." And I said, "Okay, but I'm looking for some kind of standard here to be able to tell what I should stop and what I should allow to happen." And he says, "Well, we've had questions about that at times." ... If I go to JAG and JAG cannot give me clear guidance about what I should stop and what I should allow to happen, how is an NCO or a private expected to act appropriately?<sup>233</sup>

Six soldiers in the 1st Battalion, 68th Armor Regiment — a tank battalion with no experience in detainee operations — told reporter Joshua Phillips that they had regularly tortured detainees at a makeshift jail near FOB Lion, in Balad.<sup>234</sup> Techniques included sleep deprivation, beatings, using zip ties to force detainees into painful positions, and choking detainees with water. The sleep deprivation was requested by military intelligence, but many other techniques were improvised — though several soldiers said their command discouraged them from reporting abuse.<sup>235</sup>

The unit had no experience or training in interrogation or detainee handling, but “[w]e were getting shot at all the time so we needed to know what they knew,” according to Adam Stevenson.<sup>236</sup> A medic, Jonathan Millantz, told Phillips that it was reckless

to give that much power and responsibility to a bunch of guys who were full of hate and resentment — getting shot at and watching their friends get killed ... seeing people decapitated [in videos] — and then putting those guys in direct control of the people who did these things.<sup>237</sup>

Millantz committed suicide in 2009. Based on Phillips’ interviews with Millantz, his friends and family members, it seems clear that his death was linked to remorse over his role in torturing prisoners. Another soldier from Battalion 1-68, Sergeant Adam Grey, died in August 2004 in another likely suicide, though the military officially ruled his death “accidental.”

The confusion about standards of detainee treatment was not universal in Iraq. Most units — too many to thoroughly record or document here — followed the Geneva Conventions’ and Army Regulations’ requirements regarding the treatment of prisoners, though there were individual violations. To give one example, Colonel Herrington and Major Douglas Pryer have cited the First Armored Division, commanded by Major General Martin Dempsey, for its professional and ethical treatment of captives.<sup>238</sup> Reports of abuses by U.S. forces also declined dramatically after Abu Ghraib, as a result of clearer rules and greater oversight.

A report on U.S. detention operations by Admiral Albert Church found that abuses of captives in Iraq represented “a tiny proportion of detainee operations,” given that over 50,000 detainees had been in coalition custody. Church wrote, “As of September 30, 2004, 274 investigations of alleged detainee abuses in Iraq had been initiated ... 160 investigations have been closed, of which 60 substantiated abuse.”<sup>239</sup>

That number, though, should not be taken as an estimate of the number of detainees who were abused, even for the time period in question. First, many substantiated cases of abuse involved more than one detainee, a factor that was particularly relevant where abuses were “standard operating procedure” at a facility. Second, many abuses likely went unreported, or were reported without leading to a formal investigation. Church wrote that while soldiers, civilians and contractors understood their obligation to report abuse, they had “widely varied” descriptions of what constituted abuse, and to whom they should report it.<sup>240</sup> Third, military criminal investigators faced enormous obstacles in investigating cases.

Five members of the Detainee Abuse Task Force, a CID unit charged with investigating cases in the vicinity of Camp Victory in Baghdad — the largest concentration of detainees in Iraq — explained to journalist Joshua Phillips the difficulties they faced. Six full-time agents were responsible for investigating hundreds of cases. Given the agents’ caseload, tracking down

corroborating witnesses was extremely difficult, particularly Iraqi victims who had been released from prison. The investigators themselves did not have a clear working definition of what constituted unlawful abuse. Jon Renaud, who headed the task force, said

I was an interrogator for a year in 2003. I ran the Detainee Abuse Task Force, and I can't give you an absolute definition of what detainee abuse is — and none of my bosses can. ... Everyone thinks that every interrogator in theater had read a list of enhanced interrogation techniques. Nobody knew what those were.<sup>241</sup>

Renaud assumed that some complaints never reached CID because military intelligence commanders believed the techniques were authorized: “If you believe your folks didn't do anything wrong ... why would you report it?”<sup>242</sup> Another member of the task force, former Sergeant Cooper Tieaskie, said that sometimes the task force would receive reports of abuse from military intelligence units that were heavily redacted for “operational security reasons”: “Sometimes, it was just like, ‘Here's what we're going to give you — one sentence.’”<sup>243</sup> This problem was especially acute for Special Forces units, but not limited to them. None of the members of the task force could recall a single one of their cases proceeding to a court-martial — even in cases where there was clear physical evidence that a detainee had been beaten. Renaud said he viewed the task force's work as “a whitewash.”<sup>244</sup>

A 2006 study by a group of human rights organizations reviewing various public sources found “at least 330 cases” where U.S. personnel were credibly alleged to have abused detainees, involving at least 600 alleged perpetrators, 460 detainees, and “more than 1,000 individual criminal acts of abuse.”<sup>245</sup> Two-thirds of those cases occurred in Iraq. In all theaters, the report found that 10 individuals had received sentences of one year or more in prison. None of them were officers.<sup>246</sup>

The Department of Defense said these numbers were inaccurate at the time, and even if completely accurate they are obviously dated. DOD does not, however, compile its own statistics on disciplinary proceedings for abuse, and did not respond to Task Force staff's requests for statistical information on detentions and disciplinary proceedings.

### **Changes After Abu Ghraib**

After Abu Ghraib, abuses by U.S. forces declined dramatically, but other problems arose as the prison population continued to grow. Major General William Brandenburg, who became head of detention operations in Iraq in November 2004, said that by the time he arrived, as a result of the Abu Ghraib scandal, “[w]e had very defined rules in place for interrogation. ... There was no grey areas.”<sup>247</sup>

Brandenburg stated that when he took over command of Iraq's prisons, his predecessor, General Geoffrey Miller, told him that they planned to reduce the population from approximately 7,000 to 4,000. But “the enemy always gets a vote, and circumstances on the ground,” and the desire for improved security before the first Iraqi election, “translated to more detainees.”<sup>248</sup> Brandenburg said that by November 2005, shortly before he was replaced by Lieutenant General Jack Gardner as the head of detention operations, the population stood at “13,000 plus.”<sup>249</sup> The population rose further with the “surge”; by August 2007, *The New York Times* reported that it had reached 24,500.<sup>250</sup>

Some of them were doubtless civilians, unaffiliated with the insurgency. In an interview with Task Force staff, Gardner discussed the difficulties this raised:

If you hold somebody that's not really linked to it, you know, you're either going to alienate him or his family or both, or his community and that doesn't help counter-insurgency, it doesn't help anything. And then, he's susceptible to being recruited potentially inside.<sup>251</sup>

Gardner described conducting “a counterinsurgency” inside the tent compounds at Abu Ghraib in March or April 2006 to try to identify people who were “either recruiting or didn't fit in that compound.”<sup>252</sup> Brandenburg also described recruitment as a problem:

A guy who was paid \$100 to dig the hole for the IED [improvised explosive device] is doing that to feed his family. He's ... at worst, neutral. He goes into the theater internment facility. He rubs up against Al Qaeda and Iraq guys. You release him, and the next thing you know, you find him dead, as he's participated in some major heinous act somewhere.”<sup>253</sup>

Major General Douglas Stone, who followed Gardner as commander of detention operations in Iraq, said that some detainees were planning attacks from inside the prisons.<sup>254</sup> There was also escalating sectarian violence within U.S. detention facilities after the February 2006 bombing of the Askariya Shrine in Samarra. Stone said that “the detainees were burning, they were killing each other, they were maiming each other.”<sup>255</sup> This was not an exaggeration; autopsy reports released to the ACLU under the Freedom of Information Act show a number of cases where detainees appear to have been beaten to death, stabbed, or strangled by other inmates.<sup>256</sup> Military officials told the Associated Press in July 2008 that some of these killings were carried out by self-styled “sharia courts” organized by extremists in the prisons.<sup>257</sup> Stone confirmed this in an interview with Task Force staff.<sup>258</sup>

Brigadier General Rodney L. Johnson told a newspaper that the total number of detainees tried by the “sharia courts” was in the double digits.<sup>259</sup> One of them was 31-year old Mohammed Ajimi al-Isawi, who was strangled and beaten to death in Camp Bucca in 2007. According to his autopsy report, he was “murdered by members of the [redacted] and buried in a grave inside the detention facility compound. ... He was allegedly sentenced to death by the [redacted] for speaking against the compound's [detainee] leadership.”<sup>260</sup>

Stone said that one of the primary problems with the detention system was that “the system is designed for you to go in, but never for you to come out. ... Even if you shouldn't have been in there.”<sup>261</sup> In March of 2008, Stone estimated that of the 24,000 detainees in Iraq, “one-third are genuinely continuing and imperative security risks. ... But that means two-thirds are not, or at least remain a question mark.”

Stone said he viewed this as a strategic problem:

[O]ne out of every ten Iraqis had a personal experience with detention. So, what is the biggest strategic disadvantage to the Surge, in my judgment? And the answer, to me, was, the biggest strategic disadvantage is if anything goes wrong in that detention camp — and it was already going wrong.<sup>262</sup>

Stone instituted a number of changes. He created administrative boards to determine whether individuals in detention remained an “imperative security risk.”<sup>263</sup> The boards did not offer detainees much in the way of formal procedural protections — detainees did not have lawyers, or access to all of the evidence the board did — but at least gave them a genuine opportunity to be heard, and roughly 45 to 50 percent of hearings resulted in a recommendation for release.<sup>264</sup> The boards also helped identify extremists within the prison, so they could be sequestered from more moderate detainees.<sup>265</sup> There was a concerted effort to improve conditions for most detainees, with measures including literacy and job training courses and other educational programs, greater opportunity for family visits, and teleconferences for families who could not safely travel to visit their detained relatives.<sup>266</sup>

Stone said that contrary to what might have been feared, these measures decreased rather than increased the recidivism rate, from approximately 5–10 percent to 1 percent. Riots and other violent incidents within the prisons also declined dramatically.<sup>267</sup>

## Accounts from Former Iraqi Detainees

In August of 2012, Task Force staff traveled to Iraq and interviewed dozens of people in U.S. detention about their experiences, to preserve their stories and to help assess the detention and interrogation programs. There is no way empirically to evaluate these accounts; they can neither be reliably corroborated nor dismissed. There are, however, factors that make the accounts, at least significant parts of them, generally plausible and credible. The most important is that they comport with what could be expected in a war waged by a military hurriedly trying to learn a foreign culture and society; add to that the confusion inherent in an urban military engagement where the enemy is in civilian clothes and scattered among the population. The initially poor understanding by U.S. occupation forces of the sectarian and tribal enmities that existed, combined with an uncertain and hostile environment, meant that there was a reduced awareness that some people would see the confusion as an opportunity to lodge false accusations to gain advantages over their rivals.

One of the most common complaints from detainees was that they were locked up for years, with no opportunity to see or rebut any evidence against them.<sup>268</sup> Former detainee Nuri Nejem Abdullah said he was detained in September 2003, and held in Abu Ghraib for three months and Camp Bucca for 2½ years. “Till now, I don’t know why they arrested me,” he said. His interrogators “didn’t know anything about me,” Abdullah said. “They kept asking me two questions. They asked about Al Qaeda and about Saddam.”<sup>269</sup> When he was released he was told he had been kept in detention because of a rifle found in house, a weapon that he said most Iraqi households have for protection. Abdullah said, “We were so happy [when the Americans came]; we believed they would save us from Saddam. We used to curse him but now we send blessing to Saddam’s soul.”<sup>270</sup> Abdullah said he suffered a tragedy during the American occupation and the chaotic violence that followed: his son, Akhil, born in 1986, disappeared one day in 2006 and to this day Abdullah does not know what happened to him.<sup>271</sup>

Most of the former detainees alleged being physically abused by U.S. forces, with excessive force at the point of capture being the most common allegation.<sup>272</sup> Some said they still suffered from the injuries they sustained: Saddam Rahm said that he had been kicked in the groin repeatedly, and is unable to have children or perform sexually as a result.<sup>273</sup> Tay Rahm Addularida, who

was held at Camp Bucca for two years and one month, said that the troops who arrested him broke his ribs with their boot, and smashed his teeth. He said he still suffers pain as a result.<sup>274</sup>



Each former detainee interviewed by Task Force staff said that before his release, he signed a paper attesting that he had not been mistreated. Translated from Arabic, the form reads:

I know that one of my rights is to give notice of any mistreatment and I know that one of my rights is to complain about any mistreatment I got during the period of my arrest.

And I understand that no one will punish me because of this notification. And I know also that any notification with regard to this issue will not have an effect on the order to release me.

Choice 1: I did not suffer from any mistreatment. [check box]

Choice 2: I suffered from mistreatment during my period of arrest. [check box]

All those interviewed said they believed the assurances on the release form that they could report abuse without suffering any consequences were meaningless. They said that they had no choice but to say they had not been mistreated. To do otherwise, they believed, would have been foolish.

