

# Ripples From the Schlesinger Report

By Colonel Daniel Smith, USA (Ret.) | August 30, 2004

## First: The “Who.”

Initially seven, then 28, were charged or under investigation. Now at least two more may be charged and as many as 53 have been implicated. An additional five have been singled out by name as bearing responsibility. More may eventually be charged or be in some way held responsible.

## Second: The “What.”

Although some of the 11 investigations of detainee abuse are still in progress, there were at least 300 reported instances of abusive—sometimes fatally abusive—treatment of prisoners according to the August 24, 2004 “Final Report of the Independent Panel to Review DoD Detention Operations” (the Schlesinger panel). Of these 300 incidents, a number that triples the previously acknowledged total, the Schlesinger panel found 66 had been substantiated so far, with eight of the latter occurring at Guantanamo, three in Afghanistan, and 55 at Abu Ghraib. (An Army report released August 25 documented 44 cases of abuse at Abu Ghraib.)

## Third: The “How.”

Former Congresswoman Tillie Fowler, one of the four members of the Schlesinger panel, declared that “The warning signs were there, but went unnoticed or were ignored. Time and again we found examples of leaders failing to exercise the judgment, awareness and resourcefulness necessary to realize the magnitude of the problem.”

“Leadership”—rather, the absence of leadership—was also singled out in other reports by Major General Antonio Taguba (U.S. Central Command) in February and Lieutenant General Paul Mikolashek (Army Inspector General) in July. The August 25 Army report by Major General George Fay and Lieutenant General Anthony Jones, which focuses on the role of military intelligence personnel and civilian interrogators and translators, cites inadequate oversight and inconsistent and unclear guidance from senior officers—both failures in meeting responsibilities of leaders.

## Fourth: The Fallout

Here the “ripple rule” applies: the further one is from the epicenter (Iraq and Abu Ghraib specifically), the less severe the impact of the scandal.

Clearly, those who committed the abuses are directly at fault for their acts. Equally accountable are any, either in the chain-of-command or senior in rank to the abusers, who might have ordered or encouraged abuse or, knowing about it, condoned it. Given the military’s hierarchical structure, an argument for reduced culpability can be made for those who knew what was happening but were of lesser rank than the abusers.

Similarly, those in direct command of a unit are directly responsible for what is done and what is not done within their command. Here a basic rule, practiced by every successful noncommissioned and commissioned officer, comes into play: what the boss checks is what gets done. The Schlesinger panel describes the Abu Ghraib prison at night, when the sexual humiliations and the worst intimidations (dogs) occurred, as an “Animal House.” Significantly, there is no indication that officers in the chain-of-command made unannounced visits to Abu Ghraib “after hours” to see what happened during the night shift.

The new Army report essentially looked at the direct chain-of-command from brigade down, a limitation that did not apply to the Schlesinger report. Yet above the direct commanders, the ripples from the Schlesinger panel’s findings are muted. Lieutenant General Ricardo Sanchez and his deputy are both admonished for not pouring more resources into the prison, where the ratio of prisoners to guards was as great as 75 to 1. But then the panel backs off, attributing the failure to comprehend what was happening to the gross understaffing of Sanchez’s own headquarters (less than one-third of its authorized strength) as well as to the proverbial “fog of war.” Commanders of U.S. Central Command are admonished (along with Sanchez) for failing to react in a timely way to the insurgency that flared in early summer, both in terms of asking for more coalition fighters and more military police, interrogators, and translators to handle the influx of detainees. Again, the “distraction” of war-fighting is invoked as mitigation.

Finally, at the Pentagon itself, the Chairman of the Joint Chiefs of Staff, the Joint Staff itself, and the “Office of the Secretary of Defense” are admonished for failing to anticipate what could (and did) happen after Saddam’s fall and for being unprepared to rapidly respond to changed circumstances on the ground. Here the leadership failure lay in the mindset of top officials who envisioned only one, smooth,



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relatively benign scenario: transition from war to peace. It is a classic case of believing one's own propaganda.

### An Ethical Atmosphere that Enabled Abuse

These failings of leadership turn on the practical and pragmatic. There is, however, another dimension for which the greatest culpability for failure lies at the highest levels, not the lowest. This is the ethical atmosphere, both the actions encouraged or tolerated and those forbidden.

As the Schlesinger panel acknowledges, combat places great psychological stress on troops at the same time that actions normally forbidden—killing others—are sanctioned by the state in its defense. The pressures to succumb to “operational necessity” at the expense of individual ethics can be daunting, and success in resisting these pressures may turn on a combination of a solid ethical foundation reinforced by the unambiguous commitment of and emphasis by leaders and commanders at all levels to high moral conduct. Considering this latter element, constraints against mistreating detainees that should have been in play were missing because of unclear policies, exceptions to and expansion of permitted “techniques,” and the unintended but predictable migration of these techniques from one venue (Guantanamo Bay) to another (Abu Ghraib).

Unfortunately, the Schlesinger report itself tends to undercut standards for ethical treatment of detainees. It asserts that (and implicitly rejects) conforming to the International Committee of the Red Cross’ (ICRC) interpretation of the Geneva Conventions would mean that “interrogation operations would not be allowed.” The panel bases this conclusion on the fact that the ICRC recognizes only two classes of detainees—civilians who must be charged with and tried for a crime and enemy combatants subject to release when hostilities end—while the U.S. insists there is a third class, “unlawful combatants,” for those who do not fit into either of the Geneva categories.

Now enemy combatants, as prisoners-of-war, are required to give only basic personal information under interrogation,

but there is no prohibition against repeated interrogation sessions in accordance with applicable conventions and customary law. The real problem—and why the U.S. feels it needs to create a new category of detainee, lies in thinking of and designating the struggle against terror as a “war.” If “terrorism” is viewed as a “war crime” or “crime against humanity,” then its non-military practitioners—the U.S.-designated unlawful combatants—would fall into the first Geneva category in which they can be interrogated as criminals. (Military personnel suspected of committing one of these offenses would not be released until cleared of suspicion.) And considering the time spent by international tribunals in preparing war crimes cases, U.S. interrogators would have ample opportunity to question such “civilian detainees.”

The ethical question at hand is really the old one of whether the ends justify the means—in this case, whether, with only limited time to gain information that would save the lives of comrades, inhumane treatment during interrogation is justified. Although it does not say so, the Schlesinger panel suggests that in this scenario, treatment that does not cause permanent harm—or inflicting pain to “teach a lesson” or when it becomes clear that information will not be divulged—is permitted under a “minimum harm rule.”

Such ambiguity begs the question of how and where to draw the line for “minimum” or “allowable” harm beyond which interrogation will not proceed. The psychologies of power, friendship, nationality, and hatred, all of which come into play in interrogations, can best be constrained by clear lines between allowed and prohibited actions. And the drawing of those lines should not be left to any single country or be attempted during hostilities when passions can warp judgment.

All of which points to the observation of the great Roman philosopher-general-emperor, Marcus Aurelius: “If it is not right do not do it; if it is not true do not say it.”

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