

Senate Armed Services Committee

Full Committee Hearing

Questions for the Record

Hearing on 7/22/04, #04-75

"Hearing to receive testimony on the Department of the Army Inspector

General Report on detention operation doctrine and training"

Witnesses: Honorable Les Brownlee, Acting Secretary of the Army; General Peter J. Schoomaker, Chief of Staff of the Army; Lieutenant General Paul T. Mikolashek, Inspector General of the Army

Senator Carl Levin

Detainee Rights to Communicate with the International Committee of the Red Cross (ICRC) under Army Regulation 190-8

1. Secretary Brownlee, section 3-16 of Army Regulation 190-8 provides that prisoners of war have the right to "make complaints and requests to camp commanders and the ICRC... regarding the conditions of their internment." That section further provides that detainees who exercise this right to complain to the ICRC may do so, among other ways, "in person to the visiting representatives of the ICRC..." Did the Department of the Army Inspector General (DAIG) investigate whether procedures were in place in Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF) to fully implement detainee rights under Section 3-16 of Army Regulation 190-8? If so, what were the DAIG's findings regarding the implementation of Section 3-16? If not, why not? (DAIG)

2. Secretary Brownlee, section 3-16 also requires that "If [the] ICRC... communicates directly with an EPW/CI camp commander about any matter requiring an answer, the communication and commander's reply will be forwarded to HQDA, ODCSOPS (DAMO-ODL) NPWIC, for proper action." The Army IG Report says that the Office of the Provost Marshall General has redesignated the National Prisoner of War Information Center (NPWIC) as the National Detainee Reporting Center (NDRC). Cp. 56] Did the Army IG Report investigate whether any ICRC communications with camp commanders, or any replies to such communications, were forwarded to the NDRC? If so, what were the IG's findings? If not, why not? (DAIG)

Contract Interrogators

3. Secretary Brownlee, an Army memorandum dated December 26, 2000, and still in effect today, made the express determination that gathering tactical intelligence is an inherently governmental function. The memorandum states that "intelligence at the tactical level is integral to the application of combat power by the sovereign authority." The memorandum concludes: "At the tactical level, the intelligence function under the operational control of the Army performed by military in the operating forces is an inherently governmental function barred

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from private sector performance.” Office of Management and Budget (OMB) Circular A-76 expressly states that agencies “shall . . . Perform inherently governmental activities with government personnel.” At the hearing, you testified that “if these functions are performed by contract interrogators under an entity, which in this case was Central Command, or CJTF-7 specifically, then they would not be considered inherently governmental.” What specific language in the December 26, 2000, memorandum do you read as establishing an exception for functions performed under Central Command or CJTF-7? (G2)

4. Secretary Brownlee, do you agree or disagree with the statement in the memorandum that “intelligence at the tactical level is integral to the application of combat power by the sovereign authority”? If you agree with this statement, on what basis do you believe that it is appropriate to contract out this function? (G2)

5. Secretary Brownlee, you also testified that a contract interrogator “is supposed to work under the direct supervision of an officer or noncommissioned officer who would be the supervisor of that person.” Section 37.104 of the Federal Acquisition Regulation defines a “personal services contract” as a contract in which “contractor personnel are subject to the relatively continuous supervision and control of a Government officer or employee.” The same section states that: “The Government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. Obtaining personal services by contract, rather than direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract.” In light of your statement that contract interrogators are under the “direct supervision” of government personnel, it would appear that these personnel are “subject to the relatively continuous supervision and control of a Government officer or employee.” Do you agree or disagree? (G2)

6. Secretary Brownlee, in your view, was this contract a personal services contract? If so, why isn't the contract prohibited by section 37.104 of the Federal Acquisition Regulation? (G2)

7. Secretary Brownlee, do you agree or disagree with the statement in section 37.104 of the Federal Acquisition Regulation that the government should be “required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws”? If you agree with this statement, on what basis do you believe that it is appropriate to contract out this function? (G2)

Senator Bill Nelson

Training and Leader Development

8. Secretary Brownlee and General Schoomaker, I recall press reports of detainee abuse involving an Army battalion participating in peace enforcement operations in Kosovo from September 1999 to March 2000. Apparently soldiers and some leaders of this battalion were involved in misconduct and abuses of authority including unauthorized interrogations, inappropriate handling of females, threatening detainees with the use of weapons, and, although not a detainee incident, one soldier committed a rape and murder. Investigations by the Army suggested that the chain of command failed to appropriately train the unit for a peacekeeping mission, exceeded their authority in aggressively favoring one faction over another, and tolerated misconduct by members of the unit. According to investigators, the battalion's command climate fostered actions by troops that, "violated the limits and terms of their military assignments by intimidating, interrogating, abusing, and beating Albanians."

Detainee abuse in Iraq and Afghanistan echoes the incidents reported in Kosovo, with the clear exception of the more dangerous and stressful conditions of combat versus peace enforcement operations. This begs questions, however, about how the Army may have used the lessons of Kosovo and will use the lessons of Iraq and Afghanistan to better prepare leaders and soldiers for the realities of military operations today and tomorrow.

Press reports at the time of the Kosovo situation indicate that the Army ordered detainee treatment training for U. S. based units. Can you determine if this training specifically used the incidents in Kosovo as an illustration of what soldiers should not do and what leaders should not allow to happen? (G3-37/TR)

- a. Secretary Brownlee
- b. General Schoomaker

9. Secretary Brownlee and General Schoomaker, if specific examples were not used, can you explain why not? ? (G3-37/TR)

- a. Secretary Brownlee
- b. General Schoomaker

10. Secretary Brownlee and General Schoomaker, was the detainee treatment training directed by the Army in 2000 integrated into long-term Army training requirements and plans? If not, why not? ? (G3-37/TR)

- a. Secretary Brownlee
- b. General Schoomaker

11. Secretary Brownlee and General Schoomaker, was or is the Kosovo situation used as a case study, as is often done with the case of My Lai during the Vietnam War, in either training or leader development courses in the Army's institutional training and professional development and education systems? If so where and how? If not, why not? ? (G3-37/TR)

- a. Secretary Brownlee
- b. General Schoomaker

12. Secretary Brownlee and General Schoomaker, will the lessons learned from Iraq and Afghanistan be integrated into the Army's institutional training and leader development and education systems? How and on what time line? (G3-37/TR)

- a. Secretary Brownlee
- b. General Schoomaker