

Appendix B: Sample Homicide Cases Documented by Human Rights First

Investigation Problems, Failures to Prosecute and Inappropriate Uses of Non-judicial Punishment

- In December 2003, Abu Malik Kenami (also referred to as Abdureda Lafta Abdul Kareem), a 44-year-old Iraqi man, died in a U.S. detention facility in Mosul, Iraq.⁴⁵ U.S. military personnel who examined him when he first arrived at the facility determined that Kenami had no pre-existing medical conditions. As a disciplinary measure for talking, however, Kenami was required to do extreme amounts of exercise, after which his hands were cuffed behind his back with plastic handcuffs, he was hooded, and was forced to lie down among other detainees in an overcrowded cell. Kenami was found dead the next morning, still bound and hooded. No autopsy was ever conducted in connection with an initial administrative investigation into Kenami's death. Without an autopsy, no official cause of death was determined. An internal review of the Kenami case was initiated after the Abu Ghraib scandal became public. Army reviewers criticized the initial criminal investigation for failing to conduct an autopsy, failing to interview the interrogators, medics, or detainees present at the scene of the death, and failing to collect physical evidence. The Army has taken no punitive or disciplinary action in the case.
- In November 2003, Mark Swanner, a CIA interrogator, nine Navy special forces personnel, and a sailor, were implicated in the interrogation death of a "ghost" detainee named Manadel al-Jamadi at Abu Ghraib prison.⁴⁶ (Pictures of Abu Ghraib personnel Charles

⁴⁵ Department of the Army, *AR 15-6 Investigation Into the Death of Abu Malik Kenami* (Dec. 28, 2003), p. 2, retrieved April 17, 2006, at http://www.aclu.org/torturefoia/released/032505/1281_1380.pdf; Dep't of the Army, CID, *CID Report of Investigation – Final – 0140-03-CID389-61697-5H9B* (Jan. 1, 2004), p. 1, retrieved April 17, 2006, at http://www.aclu.org/torturefoia/released/DOA_1206_1234.pdf.

⁴⁶ "Ghost" detainees are those who were held off the books and hidden from the International Committee of the Red Cross. For details about the case discussed here, see Human Rights First, *Command's Responsibility*, p. 11. See also Jane Mayer, "A Deadly Interrogation," *The New Yorker*, November 14, 2005; John McChesney, "The Death of an Iraqi Prisoner," All Things Considered, National Public Radio broadcast, October 27, 2005; Douglas Jehl and Tim Golden, "CIA is Likely to Avoid Charges in Most Prisoner Deaths," *New York Times*, October 23, 2005, p. A6; David S. Cloud, "Navy Officer Found Not Guilty in Death of an Iraqi Prisoner," *New York Times*, May 28, 2005, p. A6; David S. Cloud, "SEAL Officer Hears Charges in Court Martial in Iraqi's Death," *New York Times*, May 25, 2005, p. A6; Seth Hettena, "Iraqi Died While Hung From Wrists," Associated Press, February 17, 2005; Seth Hettena, "Navy SEAL: CIA Roughed Up Iraqi Prisoner," Associated Press, November 1, 2004; Office of the Armed Forces Medical Examiner, *Final Autopsy Report, Autopsy No. ME03-504*, January 9, 2004, [hereinafter Autopsy, al-Jamadi], p. 85, retrieved April 17, 2006, at http://www.aclu.org/torturefoia/released/041905/m001_203.pdf.

Graner and Sabrina Harman posing with al-Jamadi's body were among some of the most notorious of the Abu Ghraib photographs published in April 2004.) U.S. forces did not release al-Jamadi's body to the International Committee of the Red Cross until February 11, 2004, more than three months after his death. The ICRC delivered the body to Baghdad's mortuary the same day, but an expert from Baghdad's main forensic institute said that the refrigeration of al-Jamadi's body for that period made it difficult for the Iraqis to establish the real cause of death by autopsy. An autopsy conducted by the U.S. military five days after al-Jamadi's death had found that the cause of death was "Blunt Force Injuries Complicated by Compromised Respiration."⁴⁷

Of the ten Navy personnel accused by prosecutors of being involved in al-Jamadi's death, nine were given non-judicial punishment, including rank reductions and letters of reprimand. A tenth was acquitted. After an investigation, the CIA referred the case to the Department of Justice for possible criminal prosecution of CIA personnel involved, but no charges have been brought. DAA Project researchers requested information and updates on the case from Department of Justice officials in April 2006, but as of April 14, 2006, they had received no response.

- In the first reported death of a detainee in U.S. custody in Afghanistan, occurring in August 2002, an Army CID investigation found probable cause to recommend charges of murder and conspiracy against four members of a Special Forces unit who captured a detainee (a civilian non-combatant) and later shot him.⁴⁸ Investigators also recommended dereliction of duty charges against three of them and a charge of obstruction of justice against the highest-ranking, a captain. After consultation with legal advisors, however, commanders decided not to order a court-martial, and the case was closed. To date, the only action commanders have taken in response to the criminal investigators' recommendations is to reprimand the captain for destroying evidence. The captain was disciplined—he had admittedly destroyed evidence—but he received only a letter of reprimand. No further action was taken against the four soldiers.

⁴⁷ Autopsy, al-Jamadi, p. 85.

⁴⁸ For details about the case discussed here, see Human Rights First, *Command's Responsibility*, p. 11; Department of the Army, CID, *Criminal Investigative Command Report of Investigation—Final (C)/SSI-0114-02-CID369-23525-5H1A* (May 23, 2003), Part 1, retrieved April 17, 2006, at http://www.aclu.org/torturefoia/released/745_814.pdf, and Part 4, retrieved April 17, 2006, at http://www.aclu.org/torturefoia/released/908_963.pdf. See also John J. Lumpkin, "Army Overturns Afghan Death Finding," Associated Press, January 24, 2005.

Sentences in the December 2002 Bagram Homicide Cases

The accountability record has been particularly poor in a set of cases in Afghanistan involving two detainees who died at the Bagram airbase in December 2002 after suffering extensive beatings and mistreatment by military intelligence and military police. The events surrounding the killings were investigated by Army criminal investigators, who recommended that at least twenty-seven different personnel, including military police, be criminally charged, both for crimes relating to the deaths and for other abuses of detainees at Bagram that were documented during the investigation.

As of April 2006, most of the soldiers and officers implicated in connection with the killings have avoided punishment, and none of the four who have been convicted were sentenced to more than a few months in prison (the sentences were two months, two-and-a-half months, three months, and five months, respectively).⁴⁹

One of the military police not sentenced to prison time got a particularly light sentence: Willie Brand, who admitted to kicking and striking one of the detainees over thirty times, and who was initially charged with homicide and ultimately found guilty of cruelty and maltreatment, assault, maiming, and making a false official statement—crimes that carried a potential sixteen-year prison sentence—was only punished with a rank reduction and received an honorable discharge.⁵⁰

Another soldier directly involved in beating the detainees and found guilty of assault and dereliction of duty was merely fined \$1000 (payable in four monthly installments of \$250) and given a letter of reprimand.⁵¹

Moreover, though evidence was uncovered during the investigation that commanders up the chain of command had authorized harsh interrogation methods at the time of the beatings, no senior officers have even been investigated for criminal liability under the command responsibility doctrine. The one officer charged for command failures was charged for dereliction of duty in failing to properly train his troops—and he was acquitted. No officer has been charged in this case as a principal in the commission of any crime.

⁴⁹ This case is discussed in more detail in Human Rights First, *Command's Responsibility*, pp. 14-15.

⁵⁰ See *ibid.*

⁵¹ See “A Look at the Soldiers Charged in the Afghanistan Abuse Investigation,” Associated Press, October 5, 2005.