

FROM THE TOP ON DOWN

Secretary of Defense Donald Rumsfeld needs to be held accountable for abuses on his watch.

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The latest government report on military interrogation policy is notable not so much for what it says, but rather for what it does not say.

The report pays a lot of attention to the wrongdoing of junior soldiers who carried out abuses directed at Afghans, Iraqis, and others held in U.S. custody.

The report fails, however, to critically examine the actions of senior officials higher up the chain of command. Although it says that Defense Department officials did not intend to permit abuse, it does not ask the necessary probing questions about the accountability of those in charge.

Indeed, when asked at a press conference following the release of an unclassified summary of the report in March why Secretary of Defense Donald Rumsfeld was not interviewed by investigators, Vice Adm. Albert Church III, who led the investigating team, said, "I did not have any questions for him."

That's a problem. U.S. investigators should have questions for Rumsfeld. To ensure that torture and abuse in U.S. facilities is stopped, investigators need to look up the chain of command to find those ultimately responsible.

COMMAND RESPONSIBILITY

It's not sufficient for a leader to claim "I did not commit the criminal act," or "I did not personally order it." Command bears distinct responsibilities to make decisions and be held accountable for their consequences. The military—an organization that relies on discipline in the midst of chaos—cannot function without such accountability for decisions.

As one example, a leader must take meaningful measures to stop grave violations of international law in facilities and areas under his control, especially grave violations spawned by his policies.

If there were any doubts about this, those doubts were put to rest in cases decided by the courts since World War II.

The United States led the way in crafting the doctrine of command responsibility. After World War II, the United States prosecuted Gen. Tomoyuki Yamashita, the Japanese commander of the Philippines, for grave breaches of international law committed by his forces, even though circumstances cast some doubt about his actual control of and communications with those forces.

The American military tribunal ruled that Yamashita failed to take sufficiently strong measures to ensure his forces did not commit war crimes. The case went all the way to the U.S. Supreme Court, which ruled against him in 1946. He was subsequently executed. Our country argued that Yamashita was responsible for abuses by his forces, and no one can persuasively argue that we should exempt ourselves from the same standard.

Indeed, the U.S. Army has codified the Yamashita standard as part of military doctrine in the U.S. Army Field Manual on the Law of Land Warfare. The manual states: "The commander is also responsible if he has actual knowledge, or should have knowledge . . . that troops or other persons subject to his control are about to commit or have committed a war crime and he fails to take the necessary and reasonable steps to insure compliance with the law of war or to punish violators."

Both the International Criminal Tribunals for the former Yugoslavia and for Rwanda have adopted essentially that same standard.

The findings of the commission led by Gen. William Peers after the My Lai massacre in 1968 supported the notion that senior Department of Defense officials be held accountable. Among the contributing elements leading to the massacre, said the Peers Commission, was the culture created by Secretary of Defense Robert McNamara's emphasis on literally measuring success in war. The "body count syndrome" that evolved from the focus on quantitative success played a significant role in the circumstances leading to My Lai. Dehumanization of the enemy was also prominently mentioned by Peers as a factor bearing on the war crimes' predictability.

The humiliation of today's detainees under interrogation tactics permitted by Rumsfeld should cause us to amplify the warnings that Peers sounded three decades ago: Dehumanization of the enemy and a push to succeed can lead to atrocities if soldiers are not properly trained and supervised.

RUMSFELD IS RESPONSIBLE

A plethora of news sources, government and nongovernmental reports, and Defense Department memos indicate that Rumsfeld had direct and indirect roles in the detainee abuse scandal.

Rumsfeld put in place policies that facilitated the disgraceful acts about which we read with numbing regularity.

Specifically, on Dec. 2, 2002, Rumsfeld personally approved a list of interrogation techniques for use at Guantánamo Bay that were contrary to the established military standards set forth in the Army Field Manual. These techniques included the use of "stress positions," 20-hour interrogations, the removal of clothing, and the use of dogs, isolation, and sensory deprivation.

In doing so, he undercut long-standing prohibitions on the use of torture and other inhuman and degrading treatment. These procedures then spread to detention facilities in Afghanistan and Iraq (including Abu Ghraib), and Rumsfeld knew or should have known it, based on government, nongovernment, and press reports.

Rumsfeld knew that the prison guards and interrogators at these facilities had been deployed without adequate training (as reported in the Army inspector general's report of July 2004). Despite this, he placed intense pressure on the military to deliver intelligence—pressure that was passed down the line.

Rumsfeld had countless indications over a period of many months that things were going wrong from an early stage—with reports of abuse and torture in the press, from the International Red Cross, from human rights organizations, and from his own commanders in the field. But, based on government, nongovernment, and press reports, he ignored these indications repeatedly and failed to take action to properly punish those responsible for these violations or create new procedures.

LIMITED SCOPE

The recently released Church report does not assign any responsibility for wrongdoing to higher-level commanders. Most of the Church report is still classified. Only a 21-page summary has been released.

What is clear, however, is that Vice Adm. Church was not authorized to conduct a full-scale, comprehensive investigation into those ultimately responsible for Department of Defense interrogation operations.

Church explained to the Senate Armed Services Committee on March 10, 2005, that while he agreed there was institutional responsibility at higher levels, it was not within his charter to assign such responsibility.

Hence, in the course of his 10-month review of detainee interrogations involving some 800 interviews of individuals, Church testified that he did not feel compelled to interview key individuals connected to detainee interrogations, including Rumsfeld; Ambassador Paul Bremer, who oversaw Iraq at the time when some of the worst abuses were committed in Iraq; Brig. Gen. Janice Karpinski, who is the former commander of the U.S. prisons in Iraq; and Federal Bureau of Investigation officials who witnessed abuses at Guantánamo Bay.

In addition, the Central Intelligence Agency, while cooperating with regard to Iraq, did not provide any information to Church regarding its activity in Afghanistan, Guantánamo Bay, or any secret locations. Church thought that such detention facilities were beyond the scope of his investigation. As such, his report is significantly incomplete.

A NEW INVESTIGATION

In part, the limitations of the Church report arise from the fact that it was authorized by Rumsfeld—the man who has overall control of and responsibility for the facilities where abuse occurred. The Church report is essentially an in-house investigation.

The failure to investigate in an unrestrained manner these recurring patterns of abusive conduct shows the need for a truly independent report—one that is bipartisan and led by recognized experts in military and intelligence operations, human rights, and international law.

Such a commission must be independent of the executive branch, with commission members selected jointly by appropriate congressional and executive officials. It must have access to classified information and a mandate to inquire into information from all relevant agencies and all levels of authority.

While Rumsfeld has admitted that these abuses "occurred on my watch" and that he intends to take "full responsibility," his actions have made it clear that he does not intend to accept real responsibility for the patterns of misconduct emerging in the wake of his policy decisions. A few public utterances issued for damage-control purposes are not sufficient.

The honor of our military is at stake. We owe it to those who still wear the uniform and continue to serve their country honorably to find out what happened at Abu Ghraib and other detention facilities in Iraq, Afghanistan, and elsewhere.

Only by enforcing the concept of accountability can we begin healing, redeeming our self-respect, and repairing our international reputation.

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