

RECOGNIZING BRETT RYAN HUNTLEY FOR ACHIEVING THE RANK OF EAGLE SCOUT

HON. SAM GRAVES

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 25, 2006

Mr. GRAVES. Mr. Speaker, I proudly pause to recognize Brett Ryan Huntley, a very special young man who has exemplified the finest qualities of citizenship and leadership by taking an active part in the Boy Scouts of America, Troop 351, and in earning the most prestigious award of Eagle Scout.

Brett has been very active with his troop, participating in many Scout activities. Over the many years Brett has been involved with Scouting, he has not only earned numerous merit badges, but also the respect of his family, peers, and community.

Mr. Speaker, I proudly ask you to join me in commending Brett Ryan Huntley for his accomplishments with the Boy Scouts of America and for his efforts put forth in achieving the highest distinction of Eagle Scout.

ON THE NEED FOR ACCOUNTABILITY IN THE DETAINEE ABUSE SCANDAL

HON. RUSH D. HOLT

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 25, 2006

Mr. HOLT. Mr. Speaker, it's been more than 2 years now since the world saw the infamous photographs showing prisoner abuse at Abu Ghraib. To date, mostly junior enlisted personnel have been tried and prosecuted for various offenses related to detainee abuse in Iraq and Afghanistan. These individuals did not commit these acts in a vacuum; senior leaders allowed this abuse—and in several cases, deaths—to occur on their watch. That's not simply my opinion. It's the judgment of men like retired Rear Admiral John D. Hutson, a former senior Navy Judge Advocate General officer who has said "One such incident would be an isolated transgression; two would be a serious problem; a dozen of them is policy."

Admiral Hutson and other senior officers offered those kinds of comments, and their endorsement, for a report issued earlier this year by Human Rights First entitled *Command's Responsibility: Detainee Deaths in U.S. Custody in Iraq and Afghanistan*. I strongly encourage my colleagues to take the time to read at least the executive summary of this meticulously documented 82-page report. You can find this report on the web at: <http://www.humanrightsfirstinfo/pdf/06221-etn-hrf-dic-rep-web.pdf>

I would also recommend that my colleagues familiarize themselves with Human Rights First 2004 report, *Getting to Ground Truth*, which formed the foundation of their work on the detainee abuse issue. That report can be found on the Human Rights First website at: http://www.humanrightsfirst.org/us_law/PDF/detainees/Getting_to_Ground_Truth_0908.04.pdf

Let me take a moment to share with you some of the key findings from *Command's Responsibility*, which I am also including for the RECORD. The report documents 98 detainee

deaths in U.S. custody. Of those 98 deaths, 45 are suspected or confirmed homicides. Thirty-four deaths were classified as homicides under the U.S. military's own definition. Human Rights First found 11 additional cases where the facts suggest that deaths were the result of physical abuse or the harsh conditions of detention. In 48 cases—close to half of all the cases—the cause of death remains officially undetermined or unannounced. At least 8 detainees, and possibly as many as 12, were tortured to death. To date, only 12 deaths have resulted in any kind of punishment, and the highest punishment for a torture-related death has been 5 months confinement.

Most tellingly, no civilian official or officer above the rank of colonel responsible for interrogation and detention policies or practices has been charged in connection with any death of a detainee in U.S. custody, including the deaths of detainees by torture or abuse.

As retired Army Brigadier General David Irvine noted in the Human Rights First report, "What is unquestionably broken is the fundamental principle of command accountability, and that starts at the very top. The Army exists not just to win America's wars, but to defend America's values. The policy and practice of torture without accountability has jeopardized both."

I wholeheartedly agree, which is why last June I joined over 170 of my colleagues in co-sponsoring HR 3003, which would establish an independent Commission on the Investigation of Detainee Abuses to conduct a full, complete, independent, and impartial investigation of the abuses of detainees in connection with Operation Iraqi Freedom, Operation Enduring Freedom, or any operation within the wider war against Al Qaeda. The Commission would be charged with determining: (1) the extent of the abuses; (2) why the abuses occurred; and (3) who is responsible, and to provide recommendations for corrective action.

This Commission is necessary because the work of uncovering all of the facts in these cases has yet to be done. This Commission must also help Congress determine why no flag-rank officers have been held accountable for the deaths and abuse that occurred on their watch. If we are to avoid future cases of abuse and rebuild our reputation as a nation that lives by the rule of law, we must air the full facts about how aggressive interrogation techniques resulted in serious injury or death for dozens of detainees in our custody.

Mr. Speaker, the detainee abuse scandal has done grievous harm to our moral standing in the world, and given our terrorist enemies a powerful recruiting tool. We cannot allow it to happen again. I urge the House leadership to bring H.R. 3003 to floor for an immediate vote. Congress has allowed too much time to pass already; we need answers, and we need to hold senior civilian and military leaders accountable for this sorry episode.

Finally, I commend Human Rights First for their unflagging commitment to preserving and protecting human rights, for the high quality of their work on these issues, and for holding our Government and its representatives accountable in the court of public opinion on this critically important issue.

[From *Command's Responsibility*]

I. INTRODUCTION

"Do I believe that [abuse] may have hurt us in winning the hearts and minds of Mus-

lims around the world? Yes, and I do regret that. But one of the ways we address that is to show the world that we don't just talk about Geneva, we enforce Geneva. . . . [T]hat's why you have these military court-martials; that's why you have these administrative penalties imposed upon those responsible because we want to find out what happened so it doesn't happen again. And if someone has done something wrong, they're going to be held accountable."—U.S. Attorney General Alberto Gonzales, Confirmation Hearings before the Senate Judiciary Committee, January 6, 2005.

"Basically [an August 30, 2003 memo] said that as far as they [senior commanders] knew there were no ROE [Rules of Engagement] for interrogations. They were still struggling with the definition for a detainee. It also said that commanders were tired of us taking casualties and they [told interrogators they] wanted the gloves to come off. . . . Other than a memo saying that they were to be considered 'unprivileged combatants' we received no guidance from them [on the status of detainees]."—Chief Warrant Officer Lewis Welshofer, Testifying during his Court Martial for Death of Iraqi General Abed Hamed Mowhoush, January 19, 2006.

Since August 2002, nearly 100 detainees have died while in the hands of U.S. officials in the global "war on terror." According to the U.S. military's own classifications, 34 of these cases are suspected or confirmed homicides; Human Rights First has identified another 11 in which the facts suggest death as a result of physical abuse or harsh conditions of detention. In close to half the deaths Human Rights First surveyed, the cause of death remains officially undetermined or unannounced. Overall, eight people in U.S. custody were tortured to death.

Despite these numbers, four years since the first known death in U.S. custody, only 12 detainee deaths have resulted in punishment of any kind for any U.S. official. Of the 34 homicide cases so far identified by the military, investigators recommended criminal charges in fewer than two thirds, and charges were actually brought (based on decisions made by command) in less than half. While the CIA has been implicated in several deaths, not one CIA agent has faced a criminal charge. Crucially, among the worst cases in this list—those of detainees tortured to death—only half have resulted in punishment; the steepest sentence for anyone involved in a torture-related death: five months in jail.

It is difficult to assess the systemic adequacy of punishment when so few have been punished, and when the deliberations of juries and commanders are largely unknown. Nonetheless, two patterns clearly emerge: (1) because of investigative and evidentiary failures, accountability for wrongdoing has been limited at best, and almost non-existent for command; and (2) commanders have played a key role in undermining chances for full accountability. In dozens of cases documented here, grossly inadequate reporting, investigation, and follow-through have left no one at all responsible for homicides and other unexplained deaths. Commanders have failed both to provide troops clear guidance, and to take crimes seriously by insisting on vigorous investigations. And command responsibility itself—the law that requires commanders to be held liable for the unlawful acts of their subordinates about which they knew or should have known—has been all but forgotten.

The failure to deal adequately with these cases has opened a serious accountability gap for the U.S. military and intelligence community, and has produced a credibility gap for the United States—between policies the leadership says it respects on paper, and

behavior it actually allows in practice. As long as the accountability gap exists, there will be little incentive for military command to correct bad behavior, or for civilian leadership to adopt policies that follow the law. As long as that gap exists, the problem of torture and abuse will remain.

This report examines how cases of deaths in custody have been handled. It is about how and why this "accountability gap" between U.S. policy and practice has come to exist. And it is about why ensuring that officials up and down the chain of command bear responsibility for detainee mistreatment should be a top priority for the United States.

THE CASES TO DATE

The cases behind these numbers have names and faces. This report describes more than 20 cases in detail, to illustrate both the failures in investigation and in accountability. Among the cases is that of Manadel al-Jamadi, whose death became public during the Abu Ghraib prisoner-abuse scandal when photographs depicting prison guards giving the thumbs-up over his body were released; to date, no U.S. military or intelligence official has been punished criminally in connection with Jamadi's death.

The cases also include that of Abed Hamed Mowhoush, a former Iraqi general beaten over days by U.S. Army, CIA and other non-military forces, stuffed into a sleeping bag, wrapped with electrical cord, and suffocated to death. In the recently concluded trial of a low-level military officer charged in Mowhoush's death, the officer received a written reprimand, a fine, and 60 days with his movements limited to his work, home, and church.

And they include cases like that of Nagem Sadoon Hatab, in which investigative failures have made accountability impossible. Hatab, a 52-year-old Iraqi, was killed while in U.S. custody at a holding camp close to Nasiriyah. Although a U.S. Army medical examiner found that Hatab had died of strangulation, the evidence that would have been required to secure accountability for his death—Hatab's body—was rendered unusable in court. Hatab's internal organs were left exposed on an airport tarmac for hours; in the blistering Baghdad heat, the organs were destroyed; the throat bone that would have supported the Army medical examiner's findings of strangulation was never found.

Although policing crimes in wartime is always challenging, government investigations into deaths in custody since 2002 have been unacceptable. The cases discussed in this report include incidents where deaths went unreported, witnesses were never interviewed, evidence was lost or mishandled, and record-keeping was scattershot. They also include investigations that were cut short as a result of decisions by commanders—who are given the authority to decide whether and to what extent to pursue an investigation—to rely on incomplete inquiries, or to discharge a suspect before an investigation can be completed. Given the extent of the non-reporting, under-reporting, and lax record keeping to date, it is likely that the statistics reported here, if anything, under-count the number of deaths.

Among our key findings:

Commanders have failed to report deaths of detainees in the custody of their command, reported the deaths only after a period of days and sometimes weeks, or actively interfered in efforts to pursue investigations;

Investigators have failed to interview key witnesses, collect useable evidence, or maintain evidence that could be used for any subsequent prosecution;

Record keeping has been inadequate, further undermining chances for effective investigation or appropriate prosecution;

Overlapping criminal and administrative investigations have compromised chances for accountability;

Overbroad classification of information and other investigation restrictions have left CIA and Special Forces essentially immune from accountability;

Agencies have failed to disclose critical information, including the cause or circumstance of death, in close to half the cases examined;

Effective punishment has been too little and too late.

CLOSING THE ACCOUNTABILITY GAP

The military has taken some steps toward correcting the failings identified here. Under public pressure following the release of the Abu Ghraib photographs in 2004, the Army reopened over a dozen investigations into deaths in custody and conducted multiple investigation reviews; many of these identified serious flaws. The Defense Department also "clarified" some existing rules, reminding commanders that they were required to report "immediately" the death of a detainee to service criminal investigators, and barring release of a body without written authorization from the relevant investigation agency or the Armed Forces Medical Examiner. It also made the performance of an autopsy the norm, with exceptions made only by the Armed Forces Medical Examiner. And the Defense Department says that it is now providing pre-deployment training on the Geneva Conventions and rules of engagement to all new units to be stationed in Iraq and responsible for guarding and processing detainees.

But these reforms are only first steps. They have not addressed systemic flaws in the investigation of detainee deaths, or in the prosecution and punishment of those responsible for wrongdoing. Most important, they have not addressed the role of those leaders who have emerged as a pivotal part of the problem—military and civilian command. Commanders are the only line between troops in the field who need clear, usable rules, and policy-makers who have provided broad instructions since 2002 that have been at worst unlawful and at best unclear. Under today's military justice system, commanders also have broad discretion to insist that investigations into wrongdoing be pursued, and that charges, when appropriate, be brought. And commanders have a historic, legal, and ethical duty to take responsibility for the acts of their subordinates. As the U.S. Supreme Court has recognized since World War II, commanders are responsible for the acts of their subordinates if they knew or should have known unlawful activity was underway, and yet did nothing to correct or stop it. That doctrine of command responsibility has yet to be invoked in a single prosecution arising out of the "war on terror."

Closing this accountability gap will require, at a minimum, a zero-tolerance approach to commanders who fail to take steps to provide clear guidance, and who allow unlawful conduct to persist on their watch. Zero tolerance includes at least this:

First, the President, as Commander-in-Chief, should move immediately to fully implement the ban on cruel, inhuman and degrading treatment passed overwhelmingly by the U.S. Congress and signed into law on December 30, 2005. Full implementation requires that the President clarify his commitment to abide by the ban (which was called into question by the President's statement signing the bill into law). It also requires the President to instruct all relevant military and intelligence agencies involved in detention and interrogation operations to review and revise internal rules and legal guidance

to make sure they are in line with the statutory mandate.

Second, the President, the U.S. military, and relevant intelligence agencies should take immediate steps to make clear that all acts of torture and abuse are taken seriously—not from the moment a crime becomes public, but from the moment the United States sends troops and agents into the field. The President should issue regular reminders to command that abuse will not be tolerated, and commanders should regularly give troops the same, serious message. Relevant agencies should welcome independent oversight—by Congress and the American people—by establishing a centralized, up-to-date, and publicly available collection of information about the status of investigations and prosecutions in torture and abuse cases (including trial transcripts, documents, and evidence presented), and all incidents of abuse. And the Defense and Justice Departments should move forward promptly with long-pending actions against those involved in cases of wrongful detainee death or abuse.

Third, the U.S. military should make good on the obligation of command responsibility by developing, in consultation with congressional, military justice, human rights, and other advisors, a public plan for holding all those who engage in wrongdoing accountable. Such a plan might include the implementation of a single, high-level convening authority across the service branches for allegations of detainee torture and abuse. Such a convening authority would review and make decisions about whom to hold responsible; bring uniformity, certainty, and more independent oversight to the process of discipline and punishment; and make punishing commanders themselves more likely.

Finally, Congress should at long last establish an independent, bipartisan commission to review the scope of U.S. detention and interrogation operations worldwide in the "war on terror." Such a commission could investigate and identify the systemic causes of failures that lead to torture, abuse, and wrongful death, and chart a detailed and specific path going forward to make sure those mistakes never happen again. The proposal for a commission has been endorsed by a wide range of distinguished Americans from Republican and Democratic members of Congress to former presidents to leaders in the U.S. military. We urge Congress to act without further delay.

This report underscores what a growing number of Americans have come to understand. As a distinguished group of retired generals and admirals put it in a September 2004 letter to the President: "Understanding what has gone wrong and what can be done to avoid systemic failure in the future is essential not only to ensure that those who may be responsible are held accountable for any wrongdoing, but also to ensure that the effectiveness of the U.S. military and intelligence operations is not compromised by an atmosphere of permissiveness, ambiguity, or confusion. This is fundamentally a command responsibility." It is the responsibility of American leadership.

TRIBUTE TO SAMANTHA FANG

HON. ZOE LOFGREN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 25, 2006

Ms. ZOE LOFGREN of California. Mr. Speaker, I rise today to recognize Samantha Fang for her selection as a Presidential Scholar in the Arts for 2006, our Nation's highest honor for graduating high school artists.