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More Abuse Trials To Come

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WASHINGTON - The speedy court martial conviction of the ringleader of the Abu Ghraib prison abuse scandal, Spc. Charles Graner, may have closed out one chapter in the U.S. military's most infamous use of torture. But the book is far from finished. The number of complaints and investigations of alleged abuses continues to mount, even as the government struggles to clarify its definition of torture.

In fact, several former military officers and legal experts say the numbers of complaints will probably multiply as long as the United States maintains a presence in Iraq, and as long as the definition of what constitutes torture remains somewhat ambiguous - in a global war on terror that is amorphous itself.

"Conflicts like the one in Iraq make it tougher for a soldier to figure out for himself who's friendly and who's the enemy," says Mary Hall, a former military judge now in private practice. "When that line starts to blur, you increase the chance that some soldier is going to be tempted to take matters into his own hands. It's not like World War I, where you knew the enemy was wearing a different color uniform."

The possibility of more problems surfacing comes as revelations indicate that past prisoner abuses have been more widespread and happened earlier than originally thought. Last month, for instance, the American Civil Liberties Union (ACLU) released a number of FBI documents that indicated its agents complained of military abuses of detainees at Guantanamo Bay, Cuba, as early as late 2002. This was about a year before the scandal broke at Abu Ghraib.

More recently, an article in the New England Journal of Medicine alleged that U.S. Army doctors violated the Geneva Conventions by developing and executing "aggressive counter-resistance plans" for detainees at Guantanamo.

More charges could well be coming. While two Pentagon-ordered reports looking into abuses have already been completed, several more are still pending. They are examining allegations of prisoner mistreatment in Iraq, Afghanistan, and Guantanamo. So far, the Pentagon says 137 members of the military have either been disciplined or face courts-martial for abusing detainees.

Mr. Graner, the most notorious of the Abu Ghraib abusers was convicted of assault, conspiracy, maltreatment of detainees, committing indecent acts, dereliction of duty, and one count of battery. He was sentenced to serve 10 years in a military stockade, his rank was reduced to private, and he was dishonorably discharged from the Army.

He was the first to be court martialed. Three others who served with him have pleaded guilty, and three more face courts-martial. Investigations of higher-level officers remain under way. None has yet been charged. Yet the two studies commissioned by the Pentagon - the Taguba report and the Schlesinger report - both found responsibility, although not culpability, lay with higher-level officers.

"Washington continues to establish policies that are very important as guidelines," says a former Army general who still works for the Pentagon. "But it is almost always impossible to draw a straight line from a Washington policy to a specific act or series of acts in a prison in Iraq. In order for a policy to be executed, it must be determined to be lawful at each echelon of the chain of command and by the individual soldier carrying out the act."

STILL, questions endure about who ultimately bears responsibility for the abuses that took place at Abu Ghraib: Is it the soldiers who committed the acts or senior officers who failed to prevent them?

Many experts say the mistreatment occurred in tandem with an increasingly tolerant U.S. interrogation policy. The "gloves off" approach began in Afghanistan, after U.S. officials created new rules designed to soften up prisoners to ferret out crucial information in the war on terror. Those practices carried over to the detainees held at Guantánamo Bay, officials and experts say, and were later used in Iraq.

"There's been so much of this in so many places that you have to look at what was being said and done at the top to have affected this behavior," says Patrick Lang, former head of Middle East intelligence at the Defense Intelligence Agency.

At the time, the government's policy on what constituted torture was outlined in an August 2002 memo. Interrogators were allowed to use pain up to the "equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function or even death."

Under its new policy, issued in late December, the Bush administration backed off that standard somewhat, stating: "We conclude that under some circumstances 'severe physical suffering' may constitute torture even if it does not involve 'severe physical pain.' "

Yet, overall, the policy still remains ambiguous. Supporters say that is appropriate, even necessary. If the U.S. had someone in custody who knew about an imminent terrorist attack - say, one involving a nuclear device - it would want to use aggressive tactics to get that information out of him.

But critics think the new policy still gives too much leeway to interrogators. "There are two issues that are bothersome to people here," says Hurst Hannun, a human rights expert at Tufts University's Fletcher School in Medford, Mass. "One is the administration's early suggestion that torture might have been OK. The second is that the administration seems to be trying to leave itself total discretion to take what actions it needs when confronted with terrorists."

Another longstanding issue is whether harsh tactics work. In the FBI documents released by the ACLU, federal agents complain that military interrogators at Guantánamo were aggressive: They poked lit cigarettes in detainees' ears, deprived them of food and sleep, and used dogs, among other cruel and sexually humiliating tactics. But besides an agency prohibition against using such tactics, FBI agents said they generally aren't effective in eliciting information.

Yet most disturbing to critics are the moral issues and questions of accountability. "Theses documents ultimately raise the same questions that arise from the Graner trial," says Amrit Singh, an ACLU lawyer. "What was the responsibility of policymakers and those in the military chain of command in authorizing the abuse? We still don't know."