

Abu Ghraib MP's Lawyer Targets DoD Chiefs

Paul Bergrin is the civilian attorney for Sergeant Javal S. Davis, one of seven soldiers from the 372nd Military Police Company who have been charged by the U.S. Army with abuse of prisoners at Abu Ghraib prison in Iraq. Bergrin was interviewed by EIR Law Editor Edward Spannaus on June 30; a follow-up on July 6, is appended.

EIR: You had a hearing on June 21 in Baghdad. What happened?

Bergrin: Col. James Pohl, a full-bird colonel in the United States Army, was serving as military judge. We had an evidentiary hearing, where witnesses were called; in that, we tried to get the Article 32 dismissed, and request a new Article 32.

EIR: What does that mean?

Bergrin: Article 32 is an investigation, similar to a Grand Jury proceeding, wherein the government, or prosecution, presents enough evidence to show that there's probable cause to believe that an offense has occurred, and enough to go forward to a trial. In our particular case, there were 25 witnesses who we requested be called at the Article 32 investigation. And of the 25 witnesses, not one was called.

It was our point that the government made absolutely no attempts whatsoever, to have these witnesses available. Many were demobilized and sent back to the States. Many civilian contractors, or military personnel that we requested, came back with a list of "whereabouts unknown." Consequently, it was a kangaroo, rubber-stamp type of proceeding, where the government called the witnesses that they wanted to proceed with. They testified, and the investigating officer made a recommendation of a general court-martial.

EIR: So, the Article 32 hearing preceded the hearing that you had?

Bergrin: Exactly, exactly.

We made further motions. One . . . was to preserve the Abu Ghraib prison as a crime scene . . . because we believe that there's numerous pieces of physical, forensic, and scientific evidence, that we intend to use, from the prison. We want the jury to be able to visually depict the actually interrogation shack, the shower stalls where the interrogations occurred, as well as the living conditions that the military police experienced during their tenure at the prison. We also wanted them to see the proximity to Fallujah, the attacks that occurred—

because there are still actually craters in the ground from all the mortar attacks, and as you know, based upon the history and precedent of the attacks on the Abu Ghraib prison, at least six detainees and at least four military personnel had been killed, during attacks at the prison, because they failed to protect the perimeter.

EIR: How close is it to Fallujah?

Bergrin: It's right on the outskirts. Right on the border of Fallujah. It's easy access in, easy access out. There's actually a tenement building, multi-unit building, that overlooks the prison. So, that's where a lot of the mortars were coming in, and rocket-propelled attacks were coming actually from the tenement building that was right within 50 yards of the actual building.

EIR: Your motion was granted, to preserve the prison?

Bergrin: The motion was granted, even in spite of President Bush's speech to the American people, about how he's going to tear down the Abu Ghraib prison. So, we made that motion because of the President's speech. The judge granted it, and ordered that it be preserved as a crime scene.

EIR: What else did you ask for in the hearing?

Bergrin: We asked for investigative services. Right now, the government is spending an inordinate amount of money interviewing detainees. Interviewing, taking photographs, doing forensic workups. And the defense has absolutely no monetary resources to hire investigators to counter what the government's been doing. So, essentially, we asked for an investigator to be appointed from either the criminal investigation division, military intelligence, naval investigative services—a qualified, accredited investigator to work in the theater of Iraq, as well as the United States and Europe.

EIR: He would work for you?

Bergrin: To work strictly for the defense, with the defense team. And this investigator would be responsible to report to us, and to have an attorney-client privilege, so that none of the information that they ascertain, could be revealed. The judge granted that motion.

We also made a motion to change the venue. Our strategy in that, is, you had the Commander in Chief, President Bush, who went on national television, without having *one piece of evidence*, without reading *one* investigative report, without *knowing* what occurred in this particular case. And he told the American people, as well as the Arab world, that these individuals are guilty; that they're going to be punished; and essentially, that they'll never wear the military uniform again.

Those remarks were echoed by General Abizaid, the four-star General and Commander of CENTCOM. They were echoed by Lt. Gen. Ricardo Sanchez, as well as a litany of other high-ranking military officials. So, without any investigation . . . these individuals already told their command, already told all soldiers in the theater of Iraq, already told their



Attorney Bergrin, who has succeeded with a motion to call Generals Abizaid and Sanchez, also intends eventually to be able to call Defense Secretary Donald Rumsfeld (left, at Abu Ghraib) and Undersecretary Steven Cambone (right) to show the chain of command orders all the way from them, down to his military police client. “I have numerous memorandums,” says Bergrin, “almost all of them written for the Department of Justice, that I was able to get declassified. . . . The President, as well as Rumsfeld, asked for a definition of what actually constitutes torture and abuse.”

subordinates, as well as the American people, that these soldiers are guilty; that they’re going to be severely punished; and that there’s going to be a deterrent message sent throughout the world, that the United States will not tolerate this. And this is without any exploration whatsoever, as to what really occurred in this case. . . .

So, we made a change of venue motion. The judge stated that on 21 August, he’s going to take testimony in reference to that change of venue. He denied it, but denied it without prejudice, allowing us to reinstate and bring up that motion, and also bring up a motion called “unlawful command influence.” And essentially, the unlawful command influence motion will depict the fact, and our belief, that the commanders in Iraq unlawfully influenced the outcome in the Article 32 investigation, and are attempting to influence, unlawfully, the outcome of a court-martial. . . .

We also made a motion—I made a motion—to have high-level government officials questioned, under oath, with a *verbatim* transcript, based upon actions and statements that they’ve made in this case, depicting some sort of prejudice against the soldiers in this case.

EIR: Which individuals?

Bergrin: I made a motion to have Rumsfeld and Cambone from the United States Department of Defense interviewed.

EIR: On what basis?

Bergrin: Based upon memorandums that we were in possession of, that have been provided to us—actually classified and declassified memorandums—wherein the President of the United States, as well as Secretary of Defense Rumsfeld, as

well as his Undersecretary of Defense for Intelligence, Steven Cambone, specifically requested high-level individuals to write legal opinions on behalf of the Central Intelligence Agency, the United States Defense Department, the United States Department of Justice . . . to give an opinion paper in reference to whether the detainees, the Taliban, the al-Qaeda, are subject to the Third Protocol in the Third Geneva Convention.

They asked that, because obviously they didn’t want them part of the Geneva Convention, so that they could use interrogation techniques that were in contravention of the Geneva Convention.

EIR: Is that Common Article 3, or is that something different?

Bergrin: That’s Common Article 3.

EIR: That’s the one that bans cruel and inhumane or degrading punishment.

Bergrin: And torture, yes. So, there were memorandums submitted to the President, from highest-level attorney advisors in the government—including the President’s own Attorney General John Ashcroft, attorneys within his office, as well as the attorney for the President, Alberto Gonzalez—saying that al-Qaeda, Taliban, and essentially any individual involved in the war on terror, were not subject to Geneva Convention, because they were stateless individuals, not part of a known military faction, and for other reasons also.

EIR: Do you have memos in addition to those that have been leaked, or made public?

Bergrin: Yes. I have numerous memorandums, almost all of them written for the Department of Justice, that I was able to get declassified, and I'm using in my motion. Also, the President, as well as Rumsfeld, asked for a definition of what actually constitutes torture and abuse.

EIR: You have something where the President directly is asking for that?

Bergrin: Absolutely. And what essentially happens, is, the United States Department of Justice attorneys redefine what constitutes abuse, and torture; and what they do is, they state that, unless an individual, such as an interrogator, specifically, and they use the words "specifically intended"—with specific intent, not general intent—to inflict serious bodily injury on the individual, or the individual suffers serious bodily injury, then you don't have what you call torture, or abuse, under the statute.

EIR: And then, even if you did do that, but you could claim that this was a *necessity*. . . .

Bergrin: For interrogation intelligence purposes; this would not constitute torture, abuse and, neglect under the Geneva Conventions—you're not in violation of international law.

We know that the Secretary of Defense requested his Undersecretary Cambone, to have a meeting through other dignitaries, with Maj. Gen. Geoffrey Miller, who was in charge of interrogations intelligence and commanding forces in Guantánamo Bay, Cuba. We know that there were numerous types of interrogation techniques that were *approved* in Guantánamo Bay, that, we submit, are in contravention of international law. Such as hooding for substantial periods of time; stress positions; isolation; light-deprivation; food-deprivation; sleep-deprivation. The use of dogs as a means of intimidation. Heat-exposure. Exposure to cold, different climates and temperatures. Segregation cells, where individuals would be placed in cells for up to 30 days, with absolutely no light whatsoever, in very small isolated solitary cells; and that individuals that were placed in these cells, completely unclothed, stripped, and paraded in front of other prisoners, which is a mockery to the Arab community.

So, if these methods were used in Guantánamo Bay, and the Undersecretary of Defense is ordered by Rumsfeld . . . to "Gitmotize" Iraq, and permit these type of aggressive interrogation techniques which were clearly in contravention to the law—then it's our position that the young military police officers who were, according to Maj. Gen. Geoffrey Miller, "setting the conditions"—and that's in documentation, not subject to interpretation—"setting the conditions for interrogation" at Abu Ghraib; we know that they were given orders to conduct these kinds of interrogations.

EIR: Now, were any of these methods used *before* General Miller made his trip to Abu Ghraib?

Bergrin: No, they weren't. There's no documentation that they were.

EIR: What happened to your request, in which you asked to interview Bush, Rumsfeld, Cambone?

Bergrin: The military judge initially denied my request on the civilian individuals, saying that unless I could show a direct link and nexus, that he'll reserve judgment on that. We're going to renew that on the 21st of August, when I show the memorandums that we've been receiving. He did order that General Abizaid, Lt. General Sanchez—who we know changed the jurisdiction, from the military police into the intelligence community, at Abu Ghraib—as well as any individuals below them, be subject to sworn testimony, *verbatim* transcripts made, in reference to this case; command influence, as well as any other questions we have for them.

EIR: And you will be able to do that questioning?

Bergrin: I will be able to do the questioning. I will take the lead and do the questioning on that.

EIR: Very good. And then, you believe that once you've made this case, then you can go back and have a good chance of getting the top guys—Bush, Rumsfeld, Cambone, and so forth.

Bergrin: Absolutely.

EIR: How did it work on the level of your client?

Bergrin: My client has been in the theater of Iraq for 16 months right now. He was trained as a Military Police officer. They sent him over to Iraq as an MP. No training, not even five minutes, in corrections, intelligence, or on the Geneva Conventions. They place him in the Abu Ghraib prison, make him a corrections officer. During the course of his duties at the Abu Ghraib prison, he's working anywhere from 14- to 18-hour shifts, seven days a week, for a year straight, without a day off.

They're living in the *cell block* at Abu Ghraib, and their room is right next door to the crematory that Saddam Hussein used. It's 140 degrees in the prison, and in their billets during the Summer. In the Wintertime, it's below freezing, and the only showers they have are outdoor showers. On a daily basis, they're subject to rocket and mortar attacks. So, they're almost essentially living as zombies. On a daily basis, Military Intelligence, other government agencies, are coming in to the prisons, conducting extensive interviews and interrogation of these high-value intelligence detainees.

My client is seeing individuals being taken away, for significant periods of time, coming back with no clothing, placed in isolation cells. He can hear screams. He can see individuals coming back all lumped up, and subject to assault.

And then, during the week that this occurred, where the photos are taken—approximately the beginning of November—you have an extreme loss of American life, the worst in the Iraq conflict; 23 American soldiers died during that week; 16 in the Chinook helicopter that was shot down, and seven based upon insurgency.

My client is told that the commanders in Washington,

D.C. and at the Pentagon, as well as every major military soldier in Iraq—as far as commanders are concerned—are going crazy. They want more intelligence acquisition. They want intelligence out of the detainees at Iraq, and it's his job, in order to save American lives, to "loosen up," or "soften up," the detainees.

EIR: So then what happened?

Bergrin: He's also told, from individuals, that they've spoken to Military Intelligence, as well as other government agents; and they're told one of the ways to "loosen up" or soften up the detainees, which will result in the saving of young American lives here and abroad, is to embarrass and humiliate them, especially sexually, and with the use of nudity. And consequently, he questions those orders, speaks to his non-commissioned officer in charge, which is Sgt. Chip Frederick; and he's told that "your job is to follow orders. Your job is to save American lives. Your job is to defend the soldier," as compared to the detainee. And, next thing he knows, he's conducting interrogation techniques similar to the other individuals. But on a personal level, my client, Javal Davis, is a 26-year-old father of two. His wife is full-time in the United States Navy. This is his third tour of duty, in a hostile environment. Twelve months in Bosnia, 12 months in Egypt, and over a year and a half in Iraq. As a reservist.

EIR: You refer to the other government agents, which I assume is the name for CIA and so forth?

Bergrin: Yes.

EIR: Were they giving orders? And were the private contractors giving orders?

Bergrin: Absolutely. . . . And enlisted personnel almost have free rein in reference to interrogations, and interrogation techniques.

EIR: On Cambone. Do you expect you can actually show, more or less, a chain of command, or orders, coming down from these guys, through Military Intelligence, down to the level of the MPs and your client?

Bergrin: Oh, absolutely, absolutely.

EIR: I know you believe you *can* show it. How optimistic are you that you will be permitted to show this?

Bergrin: Well, I know we *could* show it. Whether the government tries to cover up and protect these high-level individuals, is a different story.

On July 6, EIR asked Bergrin about his earlier comments implicating Israel in the Abu Ghraib situation.

Bergrin: We know for a fact that Joe Ryan, who is employed by CACI [corporation] for in excess of ten years as a specialist

interrogator, had worked with Mossad and Shin Beth on interrogation techniques of Arab prisoners. We know for a fact, based upon his own admissions, and his sworn statements given to Major General Fay, that he was taught, trained, and educated by Israeli intelligence.

We know also for a fact, that he made admissions that other members of CACI, as well as of Titan, had similar training to him, although he refused to give their names.

When I filed my motions, and argued my motions in Baghdad on the 21st of June, the judge ordered the U.S. government to provide to me a *curriculum vitae*, a background, and the actual contracts of employment, of all CACI as well as Titan investigators, interrogators, and interpreters, at the Abu Ghraib prison. Those haven't been turned over, yet. And the Titan and CACI corporations, which are obviously an arm of the government, since they were employed as a government agency, are refusing, and giving a very difficult time to the prosecutors and the trial counsel in this case, in turning them over. So that was ordered by the military judge, Colonel Pohl. And that was to show the Israeli connection.

Now we know for a fact that these interrogation techniques have been used by Israel on Arab prisoners, because of the Supreme Court case that came out of Israel, and the fact that the Geneva Convention wasn't followed by Israel on interrogation techniques.

We also know, that based upon interviews with Torin Nelson, who was also employed by CACI, as well as Flynt Leverett, who's a former CIA analyst who's also served on the National Security Council—he also has a fellowship at the Saban Center for Middle East Studies—that the Guantánamo-based model was employed in Iraq, to put aside all rules of interrogation. We also know, based upon what I said about Torin Nelson and Naseef Bakeer, that detainees were completely stripped and walked to the interrogation booths naked, and they have given sworn statements to that effect. So it wasn't something that came up with "six rogue soldiers." But once we receive the intelligence reports—that are highly classified, but the judge ordered that they be declassified—on the backgrounds of the 38 interrogators that worked on the Tiger Teams, from CACI and Titan, I think that we'll be able to prove the Israeli connection even further.

EIR: When do you expect to get those?

Bergrin: I just sent an e-mail again today, my fourth e-mail, to Colonel Pohl, letting him know that of everything that he ordered three weeks ago, nothing has been supplied. The annexes to the Taguba Report have not been declassified [as] he ordered. . . . He ordered that we be provided a copy of the Major General Fay intelligence report; zero has been provided. He ordered that we have the CV, background, and employment contracts of all CACI and Titan interrogators; that hasn't been provided as of yet. So the next motion is a motion to dismiss for failure to comply with the judge's order on discovery.