



A BIG LEGAL MESS, TOO

Courts-martial have begun. But what were the rules on interrogation at Abu Ghraib?

BY ANGIE CANNON
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Spc. Jeremy Sivits is described as a quiet, well-mannered young man who loves baseball and worked in a window-blind factory. But this week, he's expected to plead guilty to charges of abusing Iraqi prisoners, the first U.S. soldier to face a court-martial in the case. Sivits's situation may be resolved quickly, but it's unlikely the same can be said for the many knotty legal questions swirling around the scandal.

Sivits, 24, of Hyndman, Pa., faces a "special" court-martial in Baghdad on three charges: mistreatment of detainees, conspiracy to mistreat, and dereliction of duty for negligently failing to protect detainees. His military lawyer, Stanley Martin, isn't commenting. Sivits's unit, the 372nd Military Police Company, from Cresap-town, Md., provided guards for the Abu Ghraib prison. Six other reservists from the unit have also been implicated, and three—Spc.

Charles Graner, Sgt. Javal Davis, and Staff Sgt. Ivan "Chip" Frederick—were charged last week and now face a general court-martial, a more serious forum akin to a felony trial.

What Sivits faces is comparable to a misdemeanor proceeding, with maximum penalties of a year in military prison and a possible discharge for bad conduct. The nature of the proceeding, and the speed at which it is occurring, have led to widespread speculation that Sivits has worked out a plea deal in exchange for testimony against others. Sivits reportedly has given military investigators detailed accounts of widespread abuse of detainees at Abu Ghraib.

"Gitmo rules." Already, some of the other reservists are claiming that they were just following orders from military intelligence officers. But that's "not an easy defense to make," says Eugene Fiddell, president of the National Institute of Military Justice, in Washington, D.C., since military personnel are obliged *not*



ACCUSED. Spc. Jeremy Sivits is expected to plead guilty to minor charges in exchange for testimony against others.

to carry out illegal orders. The behavior described at Abu Ghraib seems to have gone far beyond any civilized norm. But the larger issue, experts say, is the evident confusion among soldiers over which legal standards governed the treatment of Iraqi detainees. That may help some of the accused build a defense.

The Geneva Conventions, the post-World War II rules for the treatment of prisoners of war, require POWs to be treated humanely "at all times." They are to be protected "against acts of violence or intimidation and against insults and public curiosity." The rules

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also say that "no physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever."

The current confusion, however, is the result of distinctions in how the administration classifies detainees in the war on terrorism versus the Iraqi prisoners. President Bush has said that suspected terrorists in Afghanistan and at the U.S. Navy base at Guantánamo Bay, Cuba—all considered "enemy combatants"—are not covered by the Geneva Conventions, though they are to be treated humanely. But the situation grew more muddled after the general overseeing the detention camp at Guantánamo visited Iraq last fall and allegedly recommended that similar interrogation procedures be used there; he later assumed command of the prison facilities in Iraq. Those "Gitmo rules" permitted sleep deprivation and exposure to extreme temperatures, among other practices.

Just last week, Defense Secretary Donald Rumsfeld defended interrogation practices used in Iraq, denying that the interrogation rules violate international norms. The Geneva Conventions, Rumsfeld also said, do apply to prisoners in Iraq. But legal experts say rank-and-file soldiers might be confused about the distinctions between the Gitmo and

Iraqi detainees. "The Bush administration has danced around the question with respect to Iraq," says Deborah Pearlstein of Human Rights First. "Some detainees, like Saddam Hussein, are POWs. Some are civilian security detainees. Some are terrorist 'enemy combatants.' The language has intentionally made the question very blurry."

One legacy of the scandal could be to push the Supreme Court to clarify the rights of detainees in four cases to be decided by June. The prison abuses could lead the high court to clip the administration's wings in the war on terrorism, by limiting its powers to detain foreigners and U.S. citizens without beefed-up legal protections. The government has argued that the president must have broad authority to set detention policies in times of war. But the current scandal, contends Ken Hurwitz of Human Rights First, "sends a signal to the justices that perhaps you can't trust the whole executive [branch]." ●