Military Detention: uncovering the truth

Story 5 – Australian knowledge of, and role in investigating, torture and abuse at Abu Ghraib

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- encourage, influence and inform public debate on issues affecting legal and democratic rights; and
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- develop and assist community organisations with a public interest focus to pursue the interests of the communities they represent;
- develop models to respond to unmet legal need; and
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2. Executive summary

Documents released to PIAC show that an Australian military lawyer, Major George O'Kane, played a key role in responding to allegations of torture and abuse at the US-run prison, Abu Ghraib, in 2003.

The International Committee of the Red Cross (ICRC) visited detention facilities and collated detainees' allegations, filing confidential reports on its findings. The ICRC reports found that the US had engaged in serious mistreatment of detainees. This amounted to fundamental breaches of international law.

Major O'Kane was tasked to respond to some of these reports. He drafted a letter of response to the ICRC on behalf of the US Commander in charge of Abu Ghraib, Brigadier General Karpinski.

PIAC has obtained previously classified records of interview with Department of Defence officials, which reveal that Major O'Kane did not take seriously the ICRC reports of abuse and mistreatment. He did not investigate the abuses rigorously, and he was sceptical of the ICRC reports, dismissing their content.

Major O'Kane's attitude to at least some controversial interrogation techniques is disturbing. He said, '*they [the ICRC] call it ill treatment, but we call it successful interrogation techniques*'. Contrary to clear international law, O'Kane also expressed ambivalence about whether mistreatment or degradation of detainees is absolutely prohibited. This attitude is especially troubling given that it comes from Australia's military legal representative.

Unsurprisingly, the official response to the ICRC reports, which was drafted by Major O'Kane, '*glossed over'* the allegations of abuse and mistreatment.

The Australian Government protected Major O'Kane from public questioning by the Australian Senate and a US inquiry. It seems reasonable to conclude that the Australian Government did this because it was concerned about O'Kane's testimony.

Australia also failed to respond adequately to the abuse allegations. Its own report into the abuses was deficient. The Department of Defence '*struggled to provide accurate and timely advice to government'.*

3. Major O'Kane's role in responding to the ICRC abuse allegations

Major George O'Kane was embedded in the US Office of the Staff Judge Advocate, Combined Joint Task Force Seven (CJTF - 7), located within Camp Victory in Baghdad.[1]

In late November 2003, the Deputy Staff Judge Advocate tasked him with responding to International Committee of the Red Cross (ICRC) working papers regarding allegations of mistreatment at Abu Ghraib.

The task of responding to the allegations fell to Major O'Kane because the US army's Chief of Detention Operations was busy with other things.[2] From this point on, Major O'Kane became '*the ICRC person'*.[3]

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1 Doc 55, 16.

2 Answers to Questions on Notice to Senate Foreign Affairs, Defence and Trade Legislation Committee, Parliament of Australia, Budget Estimates 2004–05, 31 May, 1 June and 17 June 2004, Question No 10

3.1 What allegations were included in the ICRC working papers?

The working papers related to ICRC visits to the Baghdad Central Detention Facility (Abu Ghraib) and the Special Detention Facility in October and November 2003. The purpose of the visits was to inspect the facilities and to document any allegations of mistreatment or abuse. The visits were part of the ICRC's special role in monitoring compliance with international humanitarian law.

The full content of the ICRC October/November 2003 workings papers is not known because they have not been released to PIAC. Nonetheless, some parts of the working papers have been quoted in other documents, including allegations of:

1. *Threats during interrogation;*
2. *Insults and verbal violence during transfer in Unit 1A;*
3. *Sleeping deprivation: loud music, light on in the cell during night;*
4. *Walking in the corridors handcuffed and naked, except for female underwear over the head;*
5. *Handcuffing either to the upper bed bars or doors of the cell for 3-4 hours.*

Some detainees presented physical marks and psychological symptoms, which were compatible with these allegations. The ICRC delegates witnessed the following:

1. *Some detainees presented significant signs of concentration difficulties, memory problems, verbal expression problems, incoherent speech, acute anxiety reactions, abnormal behaviour and suicidal ideas. These symptoms appeared to have been provoked by the interrogation period and methods;*
2. *Some detainees were kept in total darkness in their cells;*
3. *Some detainees were kept naked in their cells;*
4. *Obvious scars around wrists, allegedly caused by very tight handcuffing with 'flexicuffs';*
5. *Some detainees wore female underwear;*
6. *Some were provided with one jumpsuit and no underwear;*
7. *In some cells beds were without mattresses and blankets.*

The authorities could not explain why this category was not provided with adequate clothes, underwear and accommodation facilities. With respect to the alleged ill treatment, the authorities could not provide clarification. However they promised to follow up the issue.[4]

<http://www.aph.gov.au/SENATE/committee/fadt_ctte/estimates/bud_0405/def/ans_def_all_jun04.pdf>.

[3] Doc 39, 35.

[4] Doc 55,21.

The details listed above suggest breaches of international humanitarian law, including the Geneva Conventions. Although the October and November 2003 working papers have not been made public, the ICRC's February 2004 Report on detention facilities in Iraq was leaked. As the October and November 2003 ICRC visits were in part the basis for the February 2004 Report, it is reasonable to assume that the content of both the report and working papers is similar.[5] The February 2004 Report has been widely reported.[6] It contains allegations of serious violations of international humanitarian law.

3.2 How did Major O'Kane respond to the ICRC allegations?

On 4 December 2003, Major O'Kane visited Abu Ghraib to raise the ICRC allegations with the military staff. This visit led to Major O'Kane drafting a reply to the ICRC on behalf of Brigadier General Karpinski, in a letter dated 24 December 2003.

On this visit, Major O'Kane met with a number of US army personnel, including the Commanding Officer of the Military Police battalion, non-commissioned officers (NCOs), the Lieutenant Colonel in charge of the Joint Intelligence Interrogation Debriefing Centre (JIDC), executive officers and an operations officer.[7]

In an interview with Mike Pezzullo, the head of Australia's Iraq Detainee Fact Finding Team (IDFFT), Major O'Kane described what happened at the meeting with US personnel at Abu Ghraib. He stated: '*There was about like 10, 15 people in this room, 'cause I remember I pulled the table out - I sat at the table with the ICRC report and read it out paragraph by paragraph…*'[8]. He added that he was '*you know asking for input from them to help me prepare a reply … their cooperation provided me with information to put a reply to the ICRC Working Paper'*.[9]

Major O'Kane said he raised the allegations of mistreatment with the US personnel as follows: '*I read those [allegations] out to them and asked for their views … In regard to the allegations of mistreatment, they denied - they denied that happened*'. Major O'Kane added: '*I don't doubt - I don't doubt that they weren't being sincere. I mean it's my first meeting with them but to me they were being upfront'*.[10]

Major O'Kane's description of his visit to Abu Ghraib on 4 December 2003 suggests that he did not take the allegations seriously and did not respond appropriately. He

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5 See comments by ICRC Director of Operations Pierre Krähenbühl, International Committee of the Red Cross, 'Iraq: ICRC Explains Position over Detention Report and Treatment of Prisoners' (Press Briefing, 8 May 2004) <http://www.icrc.org/eng/resources/documents/misc/5yrmyc.htm>. See also Major O'Kane's comments Doc 39, 34.

6 See 'Red Cross details alleged Iraq abuses' *The Guardian* (online) 10 May 2004 < http://www.guardian.co.uk/world/2004/may/10/military.usa>

7 Doc 39, 37-39.

8 Doc 39, 37.

9 Doc 39, 39-40.

10 Doc 39, 41.

said he sought the assistance of the US military personnel to help draft a '*reply'* to the ICRC. Major O'Kane's responses indicate that, in his view, he was not investigating allegations of abuse but merely drafting a letter in response. This is supported by the fact that he put the allegations to a room full of people. If, in fact, Major O'Kane was conducting a thorough, independent investigation he would have interviewed the individuals separately. It would have been difficult for individuals to speak out in a group setting if they were aware of detainee abuses.

Major O'Kane's approach is at odds with the ICRC's expectation regarding how detaining authorities should respond to ICRC reports.

According to the ICRC, the clear intention of its official reports, which are submitted to detaining authorities, is to '*inform them [ie, detaining authorities] of how detention conditions and treatment of detainees either do or do not comply with the requirements of applicable international law.'*[11] The ICRC states: '*The reports are meant to provide a sufficient basis upon which the detaining authority can investigate alleged failures of compliance and, where indicated, correct them.'*[12]

Major O'Kane said when he raised some of the issues in the ICRC's report, the US response was: '*we can improve that'* and '*that is no longer the case'*.[13] For example, '*they're now getting, you know, three showers a week instead of one'*.[14] However, it is clear from Major O'Kane's description of his discussions at Abu Ghraib that he did not adopt the role of an independent investigator.

Major O'Kane's comments regarding his approach to the task at hand suggest that he thought the complaints were without substance. In his interview with Mr Pezzullo, Major O'Kane said:

> If you've got 5000 or 6000, you know, "Saddam Fedayen, former regime elements, Islamic extremists, you know, a couple of terrorists, you know, all thrown in there and then you don't need to read that report to know that they're not going to be complimentary about the treatment, 'cause these people hate the Americans with a passion … and sure some will complain… So, in that context there is - to me it's obvious, but maybe it's not obvious to other people and of course they're going to complain about their treatment to the ICRC.[15]

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11 Letter from Dr Jakob Kellenberger, President ICRC to Kevin Edward Moley, Permanent Representative of the US, dated 8 June 2004, available < http://www.aclu.org/accountability/searchresults2.php>

12 Letter from Dr Jakob Kellenberger, President ICRC to Kevin Edward Moley, Permanent Representative of the US, dated 8 June 2004, available < http://www.aclu.org/accountability/searchresults2.php>

13 Doc 39, 41.

14 Doc 39, 41.

15 Doc 39, 45.

Major O'Kane also questioned the ICRC's methods of reporting allegations of mistreatment. He said:

> … the ICRC don't give you names or anything like that, so there's an allegation that's difficult to substantiate from their report, there's no detail, that's why, to me, I've always discounted it 'cause there's no detail, but nevertheless raised it with the Americans ...[16]

Major O'Kane did not approach his task of responding to the serious allegations contained in the ICRC's Working Papers as an independent investigator. He did not adopt a rigorous, independent fact-finding approach. Moreover, he took the view that many, if not all, of the detainees were members of the old regime, extremists or terrorists and, as such, were prone to complain about their treatment at the hands of the US to the ICRC. He seems to have discounted these complaints on this basis. The problem with this approach is that it ignores the possibility that, whatever their disposition towards the US, at least some of these detainees may have been subject to US mistreatment, as was subsequently proven to be the case.

4. Major O'Kane: some of what the ICRC call 'ill-treatment' means interrogation is working

Major O'Kane's attitude to interrogation suggests he did not take the ICRC allegations seriously.

According to Major O'Kane, it is up to the interrogator to determine what is permissible and what is illegal, depending on their '*own individual experience and training*'.[17] There is no question that individual interrogators must make decisions about what is and isn't appropriate in a given situation. But whether particular conduct is permissible under international law is necessarily subject to objective, not subjective, standards. Reference manuals such as the Australian and US interrogation manuals should provide individuals with clear guidance so that interrogation techniques are not solely determined by individual value judgments (see Story 4).

Major O'Kane's assessment of acceptable interrogation was not aligned with the ICRC. O'Kane was questioned about the allegations contained in the ICRC October/November Working Papers, which included detainees with significant signs of concentration difficulties, memory problems, problems with verbal expression, incoherent speech, acute anxiety, abnormal behaviour and suicidal ideas.[18] He replied: '*To me the ICRC report calls that ill treatment. To me the majority of those techniques basically prove that interrogation is working*.'[19]

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16 Doc 39, 45.

17 Doc 40, 15.

18 Doc 40, 13.

19 Doc 40, 14.

Major O'Kane described the role of interrogators as *'getting them [detainees] into a position where they're reducing their, they're persuading them to cooperate … they [the ICRC] call it ill treatment, but we call it successful interrogation techniques*'.[20]

Major O'Kane's response is at odds with the concerns expressed by the ICRC. O'Kane seemed to regard it as lawful for interrogation to induce the sorts of serious psychological harm that the ICRC reported witnessing.

Further evidence of Major O'Kane's views on interrogation techniques is revealed by his comments regarding the use of female underwear at Abu Ghraib.

The ICRC October/November Working Papers and February 2004 Report included allegations that detainees were made to parade naked outside their cells with female underwear on their heads,[21] or were issued only with female underwear to wear under jumpsuits[22]. When questioned by Mr Pezzullo as to whether the use of female underwear in this way was permissible under international law, Major O'Kane struggled to fit such an interrogation technique into a category. He concluded that:

> It's like the approach "good cop, bad cop"…humiliation…not giving comfort. It's an approach. And there might be cause to use that for a short period of time and then switch to something else to dislocate the person's expectations.[23]

Major O'Kane added that it was not a technique he had discussed with personnel at Abu Ghraib but that '*I understand that that would be a process of trying to humiliate that particular person'*.[24]

When discussing interrogation techniques, Major O'Kane indicated that harsh methods were appropriate given the confronting and difficult circumstances in Iraq. He described the rationale as follows: '*interrogation is not for kicks; interrogation is for information to save lives tomorrow or the next day. But that's the underlying rationale for it is for saving lives that are going to be lost if you do not get that information*'.[25]

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20 Doc 40, 15.

21 International Committee of the Red Cross, *Report of the International Committee of the Red Cross (ICRC) on the Treatment by the Coalition Forces of Prisoners of War and other Protected Persons by the Geneva Conventions in Iraq During Arrest, Internment and Interrogation*, February 2004, para 25.

22 International Committee of the Red Cross, *Report of the International Committee of the Red Cross (ICRC) on the Treatment by the Coalition Forces of Prisoners of War and other Protected Persons by the Geneva Conventions in Iraq During Arrest, Internment and Interrogation*, February 2004, para 27.

23 Doc 40, 16.

24 Doc 40, 15.

25 Doc 39, 73.

Major O'Kane repeatedly referred to the challenging environment and repeated attacks in Iraq. He said: '*The point is there's children who no longer have mothers and fathers because they've been killed. If someone's feelings are going to be hurt for [a] short period of time in order to get that information, then personally I think you've got justification'*.[26]

Major O'Kane's statements are troubling. It is of great concern that Australia's military representative in Abu Ghraib, a lawyer, took such a view. The Geneva Conventions and international law impose absolute standards regarding mistreatment of prisoners. They do not permit flexible application of these standards based on subjective judgements.

It is a well-settled principle of international law that torture or inhuman or degrading treatment cannot be justified in *any* circumstances. The absolute prohibition on torture, cruel, inhuman and degrading treatment or punishment is contained in various international human rights instruments[27] and can also be regarded as a principle of customary international law. There are no exceptions, even in times of armed conflict. The United Nations Torture Convention states:

> No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture. (Article 2 (2))

Moreover, torture is prohibited in international humanitarian law and is a crime under international criminal law. As a military lawyer, Major O'Kane should have been well aware of these provisions.

5. The significance of the role played by Major O'Kane

Major O'Kane's views on interrogation and treatment of detainees are significant. He was the person primarily responsible, within the Coalition, for drafting the letter on behalf of Brigadier General Karpinski in response to the ICRC's allegations of mistreatment.

The US inquiry headed by General Fay, concluded that the Karpinski letter '*glossed over*' the ICRC's allegations '*to the point of denying the inhumane treatment,*

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26 Doc 40, 17.

27 See UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 1 and 16; Universal Declaration of Human Rights, Article 5; International Covenant on Civil and Political Rights, Articles 7 and 10; European Convention on Human Rights, Article 3; American Convention on Human Rights, Article 5; and African Charter on Human and Peoples' Rights, Article 5.

humiliation and abuse identified by the ICRC'.[28] This view seems consistent with Major O'Kane's approach to investigating the allegations contained in the ICRC's Working Papers and his views on interrogations more generally. From the extracts above, it would be reasonable to conclude that Major O'Kane's judgment as to what conduct was consistent with the Geneva Conventions was unreliable.

Significantly, the Australian Government relied on Major O'Kane's conclusion that no prisoners were being held or interrogated contrary to the Geneva Convention to claim that it did not have any early knowledge of the Abu Ghraib abuses (ie, before media published photographs of the Abu Ghraib abuses).[29]

The Australian Government also relied on the accuracy of Major O'Kane's situation reports, none of which appear to have gone into the detail of the allegations or raised concerns.[30] However, other Australian Defence personnel, including military lawyers, were raising concerns about abuse during this period.[31] Was it sufficient for the Australian Government to rely selectively on Major O'Kane not raising issues about detainee mistreatment, when other ADF personnel had raised concerns?

It is possible that by May and June 2004, the Australian Government had become concerned about Major O'Kane's role in investigating the abuses and disagreed with the views he formed. Major O'Kane had allegedly described the abuses contained in the October Working Papers as '*general concerns about detainee conditions and treatment, but no mention of abuse'.*[32] Australia's Defence Minister, Robert Hill, was later forced to admit that this was inaccurate and that the allegations contained in the October Papers painted a '*grim'* picture.[33] However, the Minister continued to dismiss as '*nonsense'* the idea that '*Australia had knowledge of the extent of the abuses at Abu Ghraib through the October working papers*'[34].

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28 George Fay, "Investigation of the Abu Ghraib Detention Facility and 205th Military Intelligence Brigade", 67 available http://news.bbc.co.uk/2/hi/americas/3596686.stm (Accessed 24 May 2011).

29 See evidence to Senate Foreign Affairs, Defence and Trade Legislation Committee, Parliament of Australia, Canberra, 31 May 2004, 74 (Robert Hill, Minister for Defence).

30 Senate Foreign Affairs, Defence and Trade Legislation Committee, Parliament of Australia, Canberra, 31 May 2004, 84 (Shane Carmody, Department of Defence).

31 See Doc 47

32 Department of Defence, 'Statement by the Chief of the Defence Force and the Secretary for Defence on Allegations of Abuse on Iraqi Detainees' (Media Release, MECC 91/04, 28 May 2004) <http://www.defence.gov.au/media/DepartmentalTpl.cfm?CurrentId=3859>.

33 Evidence to Senate Foreign Affairs, Defence and Trade Legislation Committee, Parliament of Australia, Canberra, 17 June 2004, 84 (Robert Hill, Minister for Defence).

34 Commonwealth, *Parliamentary Debates*, Senate, 16 June 2004, 23941 (Robert Hill, Minister for Defence).

The allegations contained in the October Working Papers were sufficiently serious to warrant attention because they amounted to breaches of international law. The Australian Government seems to have engaged in semantic games regarding when and how it became aware of the abuses. The linguistic game-playing is highlighted in the annotations (indicated in italics below) on a Question Time brief, which states:

> The ICRC's investigation of detention facilities in October 2003 did not find any examples of abuse of the nature revealed through those abhorrent photographs released in late April [*true, but this raises the definitional issue again - ie what is abuse cf what is serious mistreatment]*.[35]

The Australian Government protected Major O'Kane from appearing before Senate Estimates in May and June 2004, despite his central role in responding to the abuses. At the time, the Minister vigorously defended his absence on the basis that it was '*not the usual practice'* and he was only a '*junior officer'*.[36] Major O'Kane was also protected from appearing before US Major General Fay's Inquiry into abuses at Abu Ghraib. The Australian Government agreed only to respond to Fay's written requests; however, they were not received in time for the report.[37] Was Major O'Kane protected by the Australian Government from appearing before these inquiries because the Government had serious concerns about his likely testimony?

6. Australian Government handling of abuses

It was not only Major O'Kane who failed to handle the detainee abuse allegations appropriately.

Internal Department of Defence documents released to PIAC reveal significant problems in the reporting systems and the management of the issue once it became the subject of public attention.

The documents also reveal the IDFFT investigation was unsatisfactory.

6.1 Problems with the ADF reporting systems

In addition to the reports from Major O'Kane regarding the US hiding detainees from the ICRC (see Story 3), other ADF personnel reported abuse of detainees in their situation reports or through their chain of command, from as early as June and July 2003.[38] These reports do not appear to have been acted upon. PIAC has obtained an internal Department of Defence document prepared by General Cosgrove, Chief of the

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35 Doc 5, 1-2.

36 Evidence to Senate Foreign Affairs, Defence and Trade Legislation Committee, Parliament of Australia, Canberra, 31 May 2004, 25-29 (Robert Hill, Minister for Defence).

37 George Fay, "Investigation of the Abu Ghraib Detention Facility and 205th Military Intelligence Brigade", 67 available http://news.bbc.co.uk/2/hi/americas/3596686.stm (Accessed 24 May 2011).

38 See Docs 18, 19, 28, 29, 33, 47, 61 and Matrix, 66.

Defence Force and Ric Smith, Secretary for Defence, dated 25 June 2004 for the Minister for Defence, which indicates that there were significant systemic problems in relation to the handling of such reports. The document states:

> Reporting from Iraq did not adequately highlight the significance of the issues, nor did it raise sufficient questions for the matters to be pursued from Australia with any vigour.[39]
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> […]
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> Reporting from the Area of Operations was fragmented, cryptic, of mixed quality, often copied to multiple addresses and normally passed through multiple filters. Monitoring and analysis of those reports as they passed through the command chain failed to address the 'So What?' question and recipients did not always recognise the sensitivity or criticality of the reported material.[40]

At best, the Department of Defence's handling of this issue was dysfunctional. Numerous allegations of detainee abuse and breaches of the Geneva Conventions were lost or ignored. There were no clear reporting channels or structures in place before Australia entered the conflict, nor were issues identified and raised with senior Defence officials and the Minister in a timely fashion.

The document makes some recommendations; however, it is unclear to PIAC whether these have been implemented.

6.2 Adequacy of Iraq Detainee Fact-Finding Report (IDFFT)

On 2 June 2004, General Cosgrove and Secretary Smith appointed Mr Pezzullo as head of an Iraq Detainee Fact-Finding Team (IDFFT).

The IDFFT was tasked with gathering '*all relevant facts and information concerning ADO involvement in any manner whatsoever in relation to detainee issues arising out of Coalition activities in Iraq'*.[41]

There was significant delay in appointing the IDFFT. The team was appointed some weeks after the Australia Government realised that the detainee issue was a major problem. PIAC has obtained a copy of the report, which has not been released publicly.

The IDFFT was not tasked to make findings or recommendations and it did not adopt an independent and robust approach to the fact-finding task. When interviewing Major O'Kane, the IDFFT joked with him, asked leading questions, and omitted significant

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39 Doc 193, 1 [2].

40 Doc 193, 4 [15].

41 Doc 55, 1.

questions such as when did Major O'Kane first become aware of *allegations* of abuse? The IDFFT instead asked Major O'Kane when he first became aware of i*nvestigations* of abuse.

Comments made by the head of the IDFFT, Mr Pezzullo, capture the IDFFT's general attitude:

- Regarding the ICRC's allegations of abuse, Mr Pezzullo said: '*Some detainees were kept in total darkness – well I'm not scared of the dark*'.[42]
- In response to Major O'Kane stating that one of the Military Intelligence personnel at Abu Ghraib suspected the ICRC inspectors were French intelligence, Mr Pezzullo said: '*They're suspicious – French. No, I'm joking.*'[43]

Mr Pezzullo and other members of his team questioned Major O'Kane lightly. For example, Commodore Smith asked O'Kane leading questions to confirm he had not heard of prior investigations.[44] He said:

O'Kane:	Yeah. Yeah. I had not heard about it previously…
Smith:	You thought, 'What allegations?'
O'Kane:	Yeah, that's it.
Smith:	Okay.
O'Kane:	But I-you know, I was told it was in hand…
Smith:	But you diligently – as a good honourable Australian officer – said, you know, "Is it in hand?" Is…
O'Kane:	In hand yeah. It was the idea that you know, it's being investigated.
Smith:	And you remember quite distinctly…
O'Kane:	I remember distinctly…

In the above example, Major O'Kane was not questioned about whether he subsequently followed the issue of the investigation further, or on what basis he had reasonable grounds to believe it was being investigated, or whether he reported this conversation to his superiors.

The IDFFT was given a notably short period of nine days in which to complete its report. However, there were some errors in the data the IDFFT presented to the Senate in relation to the documents tabled on 16 June 2004. First, in the tabled document '*Situation Reports from ADF Legal Officers embedded in Coalition Provisional Authority Office of General Counsel with references to detainee concerns and/or meetings with international organisations'*, only seven sitreps (situation reports) from Australian lawyer, Colonel Kelly, are mentioned dated from 2003. However, in internal Defence correspondence with Colonel Kelly, he repeatedly states that he wrote

42 Doc 40, 13.

43 Doc 39, 60.

44 Doc 39, 16–17.

15 sitreps from 2003 dealing with detainee concerns, all of which he sent to the IDFFT.[45]

Second, in another tabled document, '*ADF Visits to Coalition Detention Facilities in Iraq (Including Abu Ghraib)'* at least one person, an Australian Colonel, who had visited Abu Ghraib, was omitted from the table.[46] Although only minor omissions, the IDFFT report should have been an accurate and comprehensive record.

6.3 Defence management of the detainee abuse scandal

Australia's Defence Minister, Robert Hill, on 17 June 2004, praised the Department of Defence for its capacity to keep track of information: '*In providing full and detailed advice on this issue, Defence has faced difficulties but has always provided advice in good faith and based on the best knowledge to hand*'.[47] However, PIAC has obtained an internal Department of Defence document, which starkly contradicts the Minister's assessment:

> From late April 2004 Defence struggled to provide accurate and timely advice to government on issues related to the allegations. This culminated in an embarrassing performance at Senate Estimates Committee and a subsequent need for the Minister for Defence to make a clarifying statement in the Senate.[48]

This document confirms that Defence inadequately handled the Iraq detainee issue. It states:

> Issues relating to prisoners of war and detainees have been in play since the end of formal hostilities, but were not given high level consideration within Defence (or any other government agencies or the IDC [Interdepartmental Committee]). In particular, the April 2004 public release of images of detainee abuse should have elicited a more rapid and complete response from Defence.[49]
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> […]
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> From the moment the detainee issue emerged into public prominence - probably from late January, certainly from late April - it should have been managed as a major issue. That it was not so identified is a matter of serious concern, as is the fact that the issue was virtually ignored up until 10 May 2004, at which time we determined that our responses would benefit from "some improved coordination".[50]

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45 Doc 6, 1–2.

46 Doc 37.

47 Commonwealth, *Parliamentary Debates*, Senate, 16 June 2004, 23942 (Robert Hill, Minister for Defence).

48 Doc 193, 1 [3].

49 Doc 193, 1 [2].

50 Doc 193, 3 [10].

The document makes the startling comment that the Department of Defence did not fully appreciate the broader significance of the issues until journalist Tom Allard's article appeared in the *Sydney Morning Herald* on 27 May 2004, reporting his discussion with Major O'Kane.[51] The document goes on to state:

> Notwithstanding the considerable work done in the period between 10 and 27 May 2004, from that point we were engaged in a scramble to obtain and verify facts, many of which only subsequently emerged during the Senate hearing itself. Although we acknowledge the huge complexities involved, this is an unacceptable outcome.[52]

The frank admission contained in this document is revealing.

Many of the issues surrounding the Abu Ghraib abuse scandal were publicly revealed through the efforts of journalists and Opposition parliamentarians. However, the media and parliamentary process were not able to get to the bottom of these matters. A later Senate Inquiry into the detainee issue was also hampered because it did not have access to any key documents.[53]

PIAC has been able to expose some further details about Australia's involvement in detainee issues in Afghanistan and Iraq, through the documents it has obtained. However, many questions remain outstanding. This is why a full, independent inquiry, with Royal Commission powers, is needed to reveal to the Australian public the truth about Australia's involvement in these conflicts.

7. Timeline

June and July 2003: Colonel Kelly's sitreps (situation reports) report that Amnesty International is unhappy with detainee treatment.

July 2003: Major O'Kane begins working in the Office of the Staff Judge Advocate General in Baghdad.

27 August 2003: Major O'Kane visits Abu Ghraib prison.

November 2003: O'Kane receives a copy of the ICRC October working papers.

November 2003: Minister for Defence, Robert Hill, visits Baghdad and meets Paul Bremer, US Administrator of Coalition Provisional Authority of Iraq.

November 2003: Lieutenant Colonel Muggleton sends a sitrep detailing concerns by an Iraqi Minister about abuses in detention.

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51 Doc 193, 3 [10].

52 Doc 193, 3 [10].

53 See Foreign Affairs, Defence and Trade References Committee '*Duties of Australian personnel in Iraq'*, August 2005.

4 December 2003: O'Kane visits Abu Ghraib prison. He discusses the ICRC allegations with the 800th Brigade staff.

17 December 2003: O'Kane visits Abu Ghraib prison.

24 December 2003: Brigadier General Karpinski's letter, which O'Kane drafted, is sent to the ICRC.

2 January 2004: O'Kane visits Abu Ghraib prison. He gives a PowerPoint presentation on the Geneva Conventions, ahead of the ICRC visit on 4 January 2004.

4 January 2004: O'Kane visits Abu Ghraib prison.

February 2004: O'Kane finishes his work at the Office of the Staff Judge Advocate General in Baghdad.

15 February 2004: Muggleton's sitrep states February ICRC report delivered to Bremer '*which is detailed, comprehensive and highly critical*'.

29 February 2004: O'Kane's successor sends sitrep detailing meeting between senior officials, including Bremer, where Karpinski's removal was discussed. It included '*very serious allegations'* contained in the ICRC February report.

11 May 2004: O'Kane delivers a bundle of his papers to Defence officials.

May 2004: Minister Hill orders an investigation into what Australian personnel knew about abuses in Iraq.

5pm, 2 June 2004: Iraq Detainee Fact-Finding Team (IDFFT) appointed to investigate into ADF knowledge of abuses.

3 June 2004: O'Kane provides Defence with further documents.

7 June 2004: O'Kane is interviewed by the IDFFT.

10 June 2004: O'Kane is interviewed again by the IDFFT.

11 June 2004: IDFFT Report submitted to the Minister for Defence (doc 55).

Story 5 - Australian knowledge of, and role in investigating, torture and abuse at Abu Ghraib