

CIA officers make grave mistakes

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By
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WASHINGTON — In December 2003, security forces boarded a bus in Macedonia and snatched a German citizen named Khaled el-Masri. For the next five months, el-Masri was a ghost. Only a select group of CIA officers knew he had been whisked to a secret prison for interrogation in Afghanistan.

But he was the wrong guy.

A hard-charging CIA analyst had pushed the agency into one of the biggest diplomatic embarrassments of the U.S. war on terrorism. Yet despite recommendations by an internal review, the analyst was never punished. In fact, she has risen to one of the premier jobs in the CIA's Counterterrorism Center, helping lead President Barack Obama's efforts to disrupt al-Qaida.

In the years since the Sept. 11, 2001, terrorist attacks, officers who committed serious mistakes that left people wrongly imprisoned or even dead have received only minor admonishments or no punishment at all, an Associated Press investigation has revealed. The botched el-Masri case is but one example of a CIA accountability process that even some within the agency say is unpredictable and inconsistent.

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Though Obama has sought to put the CIA's interrogation program behind him, the result of a decade of haphazard accountability is that many officers who made significant missteps are now the senior managers fighting the president's spy wars.

The AP investigation of the CIA's actions revealed a disciplinary system that takes years to make decisions, hands down reprimands inconsistently and is viewed inside the agency as prone to favoritism and manipulation. When people are disciplined, the punishment seems to roll downhill, sparing senior managers even when they were directly involved in operations that go awry.

Mock execution

Two officers involved in the death of a prisoner in Afghanistan, for instance, received no discipline and have advanced into Middle East leadership positions. Other officers were punished after participating in a mock execution in Poland and playing a role in the death of a prisoner in Iraq. Those officers retired, then rejoined the intelligence community as contractors.

Some lawmakers were so concerned about the lack of accountability that last year they created a new inspector general position with broad authority to investigate missteps in the CIA or anywhere else in the intelligence community.

"There are occasions when people ought to be fired," former Sen. Kit Bond said in November as he completed his tenure as the top Republican on the Senate Intelligence Committee. "Someone who made a huge error ought not to be working at the agency. We've seen instance after instance where there hasn't been accountability."

In a makeshift prison fashioned out of an abandoned Afghan brick factory, CIA officers left terrorism suspect Gul Rahman overnight in an unheated cell as the early morning temperature hovered around freezing.



Sebast
German national of Lebanese origin Khaled el-Masri sitting at the start of his trial in southern Germany, where he was accused of beating the mayor of Neuhausen in September 2009.

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Known as Salt Pit, the jail was the precursor to the CIA's secret network of overseas prisons. Guards wore masks. There, stripped half naked, Rahman froze to death in November 2002.

The CIA's inspector general launched an inquiry. The results have never been made public but were summarized for AP by former officials who, like most of the dozens of people who discussed the CIA's disciplinary system, insisted on anonymity because they were not authorized to discuss it.

The investigation determined that the CIA's top officer at the prison, Matt, displayed poor judgment by leaving Rahman in the cold. The report also expressed concerns about the role of Paul, the CIA station chief in Afghanistan, and later placed some blame on agency management at headquarters.

The AP is identifying Matt, Paul and other current and former undercover CIA officers — though only by partial names — because they are central to the question of who is being held accountable and because it enhances the credibility of AP's reporting in this case. AP's policy is to use names whenever possible. The AP determined that even the most sophisticated commercial information services could not be used to derive the officers' full names or, for example, find their home addresses knowing only their first names and the fact of their CIA employment. The AP has withheld further details that could help identify them.

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The CIA asked that the officers not be identified at all, saying doing so would benefit terrorists and hostile nations. Spokesman George Little called the AP's decision "nothing short of reckless" but did not provide any specific information about threats. The CIA has previously provided detailed arguments in efforts to persuade senior executives at the AP and other U.S. news organizations to withhold or delay publishing information it said would endanger lives or national security, but that did not happen in this case.

The CIA regularly reviews books by retired officers and allows them to identify their undercover colleagues by first name and last initial, even when they're still on the job. The CIA said only the agency is equipped to make those decisions through a formal review process.

After the inspector general reviewed the Rahman case, he referred the matter to the Department of Justice for the first of several legal reviews. Though current and former officials say it was a close call, prosecutors decided not to bring charges.

Next, a review board comprised of senior officers examined the case and found a number of troubling problems. The board was conflicted.

Matt was a young spy operating a prison in a war zone with little guidance about what was and wasn't allowed. The CIA had never been in the interrogation and detention business, so agency lawyers, President George W. Bush's White House and the Justice Department were writing the rules as they went.

'One hand tied behind his back'

A former Naval intelligence officer, Matt had repeatedly asked the CIA for heaters and additional help, but his requests were ignored by headquarters and by Paul, who was in charge of all CIA operations in Afghanistan but who had no experience in a war zone.

"How far do you go to sanction a person who made a mistake with one hand tied behind his back?" one former intelligence officer asked, recalling the board's discussions only on condition of anonymity because they are private.

Finally, more than three years after the inquiry began, the board recommended Matt be disciplined. Though the board believed he had not intended to kill Rahman, it determined that as the head of the prison, he was responsible. The board did not recommend punishing Paul. And nobody at headquarters was to be disciplined.

The recommendations were viewed as unfair by some in the CIA. A young officer was about to be disciplined while his supervisors all got a pass.

In the end, it turned out, everyone was treated the same. The CIA's No. 3 employee, Kyle "Dusty" Foggo, reviewed the recommendations and decided nobody would be punished. Foggo was later imprisoned in an unrelated corruption case.

In another case involving detainee mistreatment, a CIA interrogator named Albert put an unloaded gun and a bitless drill to the head of an al-Qaida operative at a secret prison in Poland. The inspector general labeled this a "mock execution" — something the U.S. is forbidden to do. Albert was reprimanded. His boss, Mike, who ran the secret prison, retired while the case was under investigation.

Albert returned to the agency as a CIA contractor and helped train future officers. Ron, the Poland station chief who witnessed the mock execution but did not stop it, now runs the Central European Division and oversees all operations in Russia.

Since Rahman's death, Paul's career has advanced quickly. He is chief of the Near East Division, the section that oversees spy operations in Iraq, Iran and other Middle East countries. It's one of the most important jobs in the agency. Matt has completed assignments in Bahrain, Afghanistan

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and Pakistan, where he was deputy chief of tribal operations.

Little, the CIA spokesman, said the agency's internal review process was vigorous and thorough. In other cases, CIA Director Leon Panetta has fired employees for misconduct, he said.

"Any suggestion that the agency does not take seriously its obligation to review employee misconduct — including those of senior officers — is flat wrong," Little said.

The CIA wants its officers to take chances. Spying is a risky business and, as former CIA Director Michael Hayden told Congress, the agency wants its officers operating so close to the legal boundaries that they get "chalk on their cleats."

When officers cross those lines, discipline is usually handled internally, which usually means secretly. In complicated cases, the director can convene a group of senior officers to review the matter, a panel known as an accountability board. But the board can only make recommendations. It's up to the director whether to accept them.

These layers of review, along with parallel Justice Department and congressional investigations, can drag on for years, leaving careers in limbo. And the results can leave veteran officers confused about why some people were disciplined and others were not.

"It's unpredictable and scattershot," said John Maguire, a former senior operations officer who spent 23 years at the CIA.

There are four branches of the CIA, but one commands more attention and wields more clout than the others. The National Clandestine Service conducts espionage and runs secret operations. It's the stuff of spy novels and Hollywood movies. It's also the place most likely to get into high-profile trouble.

So when disciplinary issues arise, a politically appointed CIA director faces a dilemma. Cracking down on missteps might earn the director some praise on Capitol Hill, but it's also likely to cause grousing within the clubby, tight-knit spy community.

Directors who broadened the reach of the clandestine service, like William Casey under President Ronald Reagan, are part of CIA lore. Those who tried to rein in the spies, like John Deutch under President Bill Clinton, are still disparaged internally, years later.

The 9/11 Commission Report faulted the CIA for being "institutionally averse to risk" before the terrorist attacks. In the post-9/11 CIA, officials say, nobody wants to be accused of discouraging risk taking.

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There's a built-in tension between supporting officers who make difficult decisions and holding them responsible when those decisions are incorrect, former CIA Director James Woolsey said in an interview.

"If you don't want to deal with that tension, you should find another government job, one where you're not faced with judging people who have made life and death decisions," Woolsey said.

The fallout from the bungled el-Masri kidnapping is an example of that tension.

At the Counterterrorism Center, some had doubts that el-Masri was a terrorist, current and former U.S. officials said. But Frances, a counterterrorism analyst with no field experience, pushed ahead. She supported el-Masri's rendition — in which the CIA snatches someone and takes him to another country. The AP agreed to the CIA's request to refer to Frances by her middle name because her first is unusual.

Senior managers knew what was happening, and a lawyer in the Counterterrorism Center, Elizabeth, signed off on the decision, former officials said.

Once el-Masri arrived in Afghanistan, however, questions persisted. A second detainee in U.S. custody looked at a picture of el-Masri and told CIA officers that they'd grabbed the wrong man. Perhaps most glaring, el-Masri had a German passport. The man the CIA was looking for was not a German citizen.

El-Masri says he was beaten, sodomized and drugged.

Quiet release

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Even after the CIA confirmed that the German passport was authentic, Frances was not convinced, former officials said. She argued against freeing el-Masri, saying his phone had been linked to terrorists. For weeks, the U.S. knowingly held the wrong man, as top CIA officers tried to figure out what to do.

Five months after the abduction, the U.S. privately acknowledged to the Germans what had happened. El-Masri was quietly released.

"I was blindfolded, put back on a plane, flown to Europe and left on a hilltop in Albania — without any explanation or apology for the nightmare that I had endured," el-Masri wrote in *The Los Angeles Times* in 2007.

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The CIA's inspector general opened an investigation and determined there had been no legal justification for el-Masri's rendition. It was a startling finding. Though the inspector general does not make legal conclusions, the CIA's watchdog had essentially said the agency acted illegally.

The document has never been released but its findings were summarized by people who have seen it. The report came down hard on Frances. She had been warned about the uncertainties surrounding el-Masri's identity. There hadn't been enough evidence for a rendition, the report said, but Frances pushed ahead.

"You can't render people because they have called a bad guy or know a bad guy," a former U.S. intelligence official said, describing the investigation's findings on condition of anonymity because the report still has not been released. "She was convinced he was a bad guy."

Nobody in management was singled out for discipline.

The inspector general's report posed a dilemma for senior managers. Even before the el-Masri case, station chiefs had complained to top CIA officials raising concerns about Frances' operational judgment. But she was one of the few analysts who had a deep knowledge of al-Qaida before 9/11, working in a former unit known as Alec Station created to track down Osama bin Laden.

Intense pressure

In the nascent war on terrorism, Frances and her team were essential and had racked up successes. She was a tireless worker who made the wrong call under intense pressure. Would disciplining her send a message that the best way to handle a tough decision was not to make one?

The report also faulted Elizabeth, the lawyer. The inspector general said her legal analysis was flawed. Elizabeth has a reputation in the agency as a diligent and cautious lawyer. Before she agreed to conduct any legal analysis on interrogation tactics, for instance, she insisted on being waterboarded, current and former officials said.

Hayden reviewed the report and decided Elizabeth should be reprimanded. Frances, however, would be spared, current and former officials said.

Hayden didn't believe that two people who made similar mistakes had to be treated the same way. Job titles and morale mattered. He told colleagues that he gave Frances a pass because he didn't want to deter initiative within the counterterrorism ranks, a former senior intelligence official recalled.

Hayden would not discuss any specific cases, but he said in an AP interview, "Beyond the requirements of fairness and justice, you always made these decisions with an eye toward the future health and operational success of the institution."

The disciplinary action made Elizabeth ineligible for bonuses and pay increases worth thousands of dollars. But it didn't stall her career. She was promoted to the senior ranks in 2005 and is now legal adviser to the CIA's Near East division.

While the inspector general was investigating the mishandled el-Masri case, congressional investigators discovered several other CIA renditions that seemed to rest on bad legal footing, a U.S. intelligence official said. The CIA looked into them and conceded that, yes, the renditions had been based on faulty analysis.

But the agency said the renditions would have been approved even if the correct analysis had been used, so nobody was disciplined.

Frances now runs the CIA's Global Jihad unit, the counterterrorism squad dedicated to hunting down al-Qaida worldwide. She regularly briefs Panetta, making her an influential voice in Obama's intelligence circle.

As evidence mounted of U.S. abuse of prisoners in the prison in Iraq, the CIA cleaned house at its station in Baghdad. Many former officers point to that upheaval as an example of accountability at work.

That's only partially true, AP's investigation found.

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The Baghdad case is also a prime example of how peculiar the CIA's disciplinary system can be.

U.S. authorities at Abu Ghraib forced prisoners to pose naked, wear leashes and perform sexual acts. And in 2003, an Iraqi prisoner named Manadel al-Jamadi died in a shower room under CIA interrogation.

Al-Jamadi was one of the CIA's "ghost" prisoners, those men who were captured and interrogated but whose names were never entered in the Army's books. His head was covered by a hood. His arms were shackled behind his back, then were bound to a barred window. That way, he could stand without pain but if he tried to lower himself, his arms would be painfully stretched above and behind him.

About a half hour later, a CIA interrogator called for military guards to reposition al-Jamadi. He was slouching over, his arms stretched behind him. The CIA believed al-Jamadi was playing possum, investigative documents show.

He was dead.

An Army autopsy report labeled al-Jamadi's death a homicide. He had been badly injured during a struggle with the Navy SEALs who captured him, doctors said. But those injuries alone wouldn't have killed him, the medical examiner said. The strained position and the bag over his head contributed to his death, the doctor said.

The scandal at Abu Ghraib became a rallying point for anti-U.S. sentiment abroad. Eleven soldiers were convicted of wrongdoing at the prison. All were publicly tried and were kicked out of the Army.

Letter of reprimand

The CIA would face no such public scrutiny. Like its ghost prisoners, the CIA might as well have never been at Abu Ghraib.

Steve, a CIA officer who ran the detainee unit there, received a letter of reprimand, former officials said. Steve processed al-Jamadi into prison after the Navy SEALs captured him. Investigators found that Steve violated procedure by not having a doctor examine al-Jamadi. That decision delayed important medical care for a man who would be dead within an hour.

Some on the Abu Ghraib review board believed Steve should have gotten a harsher punishment, according to former senior intelligence officers privy to the board's decisions. Steve retired and is now back at CIA as a contractor.

A CIA review board also faulted Baghdad's station chief, Gerry Meyer, and his deputy, Gordon. But they were not blamed just for the problems at Abu Ghraib. The review panel said they were too inexperienced to run the busy Baghdad station. As the situation in Iraq worsened, the station ballooned from dozens of officers into a staff of hundreds. Senior CIA managers left Meyer and Gordon in place until they were over their heads, the review panel said.

Meyer resigned rather than take a demotion. His name and job title have been identified in many books and articles since his resignation.

Gordon was temporarily barred from going overseas and sent to a training facility. But he salvaged his career at the agency, rising within the Counterterrorism Center to run the Pakistan-Afghanistan Department. In that role, Gordon, whom former colleagues describe as a very capable officer, has briefed Obama.

Since 9/11, retired CIA officers have published a variety of books opining on what ails the CIA. Their conclusions differ, but they are in nearly unanimous agreement that the system of accountability is broken.

There are accounts of womanizing CIA managers who repeatedly violated the agency's rules, only to receive a slap on the wrist, if anything, followed by promotion. Officers who were favored by senior managers at headquarters were spared discipline. Those without such political ties were more likely to face punishment.

In his book "Beyond Repair," longtime CIA officer Charles Faddis contrasted the CIA with the military, where he said officers are held responsible for their mistakes and the mistakes of their subordinates.

"There is no such system in place within the CIA, and the long-term effect is catastrophically corrosive," Faddis wrote.

'Administrative penalties'

On Panetta's watch, about 100 employees, including about 20 senior officers, have been subjected to disciplinary review, a U.S. intelligence official said. Of those, most were disciplined and more than a third were fired or resigned, said the official.

Last year, Panetta finally punished 16 current and former officers involved in a mishap in Peru nearly a decade ago. A civilian airplane that was

misidentified as a drug flight was shot down, killing an American missionary and her young daughter.

The current officers received "administrative penalties." And though there's no formal way to discipline a retired officer, Panetta canceled a consulting contract for one of the former officials involved.

Still, the case lasted for years as the CIA and Justice Department investigated, leaving careers in question as officers wondered what would happen to them. Officers who were ultimately exonerated had to wait for the process to play out.

Panetta was forceful in his handling of the Peru case. He was far less harsh in his response to a deadly attack at a CIA base more recently in Khost, Afghanistan.

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Humam al-Balawi, a supposed al-Qaida turncoat whom the CIA codenamed "Wolf," had promised to lead the U.S. to Osama bin Laden's deputy, Ayman al-Zawahiri. But al-Balawi was really a double agent, and as the CIA ushered him onto its base in December 2009, he detonated a suicide bomb. The explosion killed five CIA officers, including the base chief, and two contractors. Six other people were injured in an attack that led to criticism in and out of the CIA that the officers had violated basic rules.

In the face of that criticism, Panetta quickly defended his fallen officers. In a Washington Post op-ed written days after the attack, he said the CIA would learn from the lessons of Khost. But he said little was to be gained by accusations of bad spycraft.

"No one ignored the hazards" of bringing the Jordanian man to the CIA base, Panetta said.

Nine months later, a CIA review determined the opposite. Warnings had, in fact, been ignored. Jordanian intelligence had raised concerns about al-Balawi. But the promise of killing or capturing al-Zawahiri clouded the agency's decision-making, the review found. Security protocols weren't followed. Officers displayed bad judgment.

Many former officers were angry at that outcome. Some took the unusual step of speaking publicly about it. They said CIA managers should be held responsible. Officers in the field don't make decisions in a vacuum, they said, and you can't blame the dead for everything that went wrong that day. The planning for the operation, for instance, was directly overseen by Stephen Kappes, the agency's now-retired second in command, and by Mike, the longtime chief of the CIA's Counterterrorism Center who helped Frances and the Khost base chief rise through the ranks despite their operational inexperience.

"It's not about retribution," Maguire, the retired veteran CIA officer said. "It's about maintaining discipline and order and responsibility up and down the command chain. Otherwise trust is eroded."

Panetta agreed there were widespread problems. But, in a move that's been compared to former CIA Director Porter Goss' decision not to hold an accountability review for the failures before 9/11, Panetta opted not to punish anyone.

The director explained his reasoning to journalists in October.

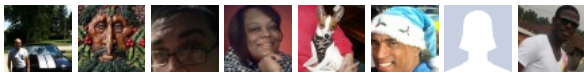
"The conclusion was that the blame just didn't rest with one individual or group of individuals," Panetta said. "That there were some systemic failures that took place here."

It was a collective failure, Panetta said. So nobody was held accountable.

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9

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