

# ICE IN MINNEAPOLIS, THE “BLUE WALL OF SILENCE,” AND INVESTIGATIVE COVER-UPS: LESSONS FROM THE U.S. MILITARY

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## ABSTRACT

While the increased militarization of U.S. law enforcement is now well known, one important aspect of this is underappreciated: the use of self-investigations to exonerate those suspected of committing crimes in the performance of their duties. This essay explores three examples from the U.S. military in the so-called Global War on Terror. These reveal that ICE cover-ups in Minneapolis and law enforcement excesses elsewhere bear striking similarities to the U.S. military’s well-worn playbook for crisis management.

## INTRODUCTION

It was not just the news from Minneapolis in early 2026 that ICE agents fatally shot Renee Good, and then Alex Pretti, that shocked the nation.<sup>1</sup> It was also the responses: U.S. government officials quickly advanced narratives in support of the shooters and declared that there

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1. See Christian Martinez, *Minnesota Sues US Agencies for Access to Evidence in Killings of Renee Good, Alex Pretti*, REUTERS (Mar. 24, 2026), <https://www.reuters.com/legal/government/minnesota-sues-us-agencies-access-evidence-killings-rene-good-alex-pretti-2026-03-24> [on file with the *Columbia Human Rights Law Review*] (describing the shooting of Good, a Minneapolis resident and mother of three who was shot and killed in her car by an Immigration and Customs Enforcement (ICE) agent on January 7, 2026, and Pretti, an intensive-care-unit nurse and Minnesota resident who was shot and killed by ICE agents in a separate incident on January 24, 2026).

would be no investigation into what happened.<sup>2</sup> U.S. officials also blocked state law enforcement efforts from gathering facts about the incident.<sup>3</sup>

Why would the U.S. government not try to get to the bottom of what happened? This resistance to neutral fact finding did not happen in a vacuum. Following years of sustained attention on police brutality, the American public has an increased awareness of a phenomenon called the “Blue Wall of Silence.”<sup>4</sup> This phrase refers to the unspoken rule that police officers cover for each other or look the other way when their peers violate prescribed standards or commit crimes.<sup>5</sup> The “blue wall” may include police testimonial perjury, falsification of records, careless and forged work by state crime lab employees, failure to discipline wrongdoers, and concealment of police misconduct or investigative errors from the participants in criminal trials when the disclosures could cast doubt on a defendant’s guilt or mitigate a punishment.<sup>6</sup> Such practices became so prevalent in many American cities that they begot still another catchy nickname, “testilying,” a hybrid word that combines “testifying” and “lying.”<sup>7</sup>

Memorable examples of the “blue wall of silence” abound. Frank Serpico was a New York City police detective in the 1970s who faced retaliation, including an attempt on his life, for blowing the whistle on

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2. Ernesto Londoño, *Prosecutors Began Investigating Renee Good’s Killing. Washington Told Them to Stop.*, N.Y. TIMES (Feb. 7, 2026), <https://www.nytimes.com/2026/02/07/us/renee-good-investigation-minnesota-trump.html> [on file with the *Columbia Human Rights Law Review*].

3. *Id.*

4. Gabriel J. Chin & Scott C. Wells, *The “Blue Wall of Silence” as Evidence of Bias and Motive to Lie: A New Approach to Police Perjury*, 59 U. PITT. L. REV. 233, 237 (1998).

5. See Marina Torres & Felipe Curiel, *Cracking the Blue Wall of Silence: A Necessary Step for Police Reform*, ABA, Oct. 11, 2023, <https://www.americanbar.org/groups/gpsolo/resources/magazine/2023-september-october/cracking-blue-wall-silence-necessary-step-police-reform> [on file with the *Columbia Human Rights Law Review*] (describing as natural the tendency to not report crimes of others who share the same profession).

6. See generally Chin & Wells, *supra* note 4, at 245–56 (with examples of police perjury, frame-ups, and the blue wall of silence); see also *Brady v. Maryland*, 373 U.S. 83, 87 (1963) (holding that the government’s withholding of exculpatory evidence that is material to the determination of either guilt or punishment of a criminal defendant violates the defendant’s constitutional right to due process).

7. See Morgan Cloud, *Judges, “Testilying,” and the Constitution*, 69 S. CAL. L. REV. 1341, 1352 (1996) (describing a 1994 New York Police Commission Report of the Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department chaired by Milton Mollen and its focus on “testilying”).

widespread police corruption and bribery.<sup>8</sup> Cariol Horne was fired from the Buffalo police department in 2008 after intervening to stop a colleague from using an unauthorized chokehold on a handcuffed man.<sup>9</sup> Some officers may be bound by unofficial norms of self-regulation and values that differ from their official functions, such as members of the Ku Klux Klan who at one time infiltrated numerous police institutions.<sup>10</sup>

A positive sign that the blue wall is not impenetrable is the murder trial of Minnesota police officer Derek Chauvin. Chauvin was charged with killing George Floyd by pressing and holding his knee to Floyd's neck after he was already subdued.<sup>11</sup> The Police Chief—the department's most senior leader—gave powerful testimony that Chauvin's conduct was out of compliance with the department's training and ethical standards,<sup>12</sup> and another police veteran testified that Chauvin's use of forces was "totally unnecessary" and "uncalled for."<sup>13</sup>

What has not received as much attention is how the pressures and behavior that contribute to law enforcement cover-ups are also present in

8. See generally Josh Bell, *'Never Run When You're Right': The Real Story of NYPD Whistleblower Frank Serpico*, ACLU (Nov. 3, 2017), <https://www.aclu.org/news/free-speech/never-run-when-youre-right-real-story-nypd> [on file with the *Columbia Human Rights Law Review*] (with Serpico's reasons for speaking out against his peers, and his preference for being labelled a "lamplighter" rather than "whistleblower").

9. Robin Young & Serena McMahon, *Former Police Officer Recounts Firing After She Stopped Fellow Cop's Chokehold*, WBUR (July 21, 2020), <https://www.wbur.org/hereandnow/2020/07/21/former-buffalo-police-officer> [<https://perma.cc/FB63-A9RT>].

10. See Robin D. Barnes, *Blue by Day and White by (K)night: Regulating the Political Affiliations of Law Enforcement and Military Personnel*, 81 IOWA L. REV. 1079, 1086 (1996) ("The power entrusted to public safety officials provides white supremacists with unparalleled opportunities to conduct race warfare. Their conduct is expressed in conspiracies to commit acts of terrorism, lying under oath, efforts to sabotage criminal investigations, and the denial of public protection or services."). "Courts have found Klan membership to be a sufficient ground for terminating employment of law enforcement officers because of their readiness to betray public trust through conspiracy and deceit. They have taken an oath of membership which supersedes their pledge to protect all members of the public without bias." *Id.* See also *Investigation Finds Florida Police Secretly KKK Members*, BBC (July 14, 2014), <https://www.bbc.com/news/world-us-canada-28410303> [<https://perma.cc/9TYJ-2FMC>] (describing the discovery that three members of the Fruitland Park, Florida police department were KKK members).

11. Ben Crump & Antonio Romanucci, *At Derek Chauvin's Trial, a Dangerous Code of Silence Is Crumbling*, WASH. POST (Apr. 8, 2021), [https://www.washingtonpost.com/opinions/ben-crump-romanucci-chauvin-trial/2021/04/07/b9c649b0-97c9-11eb-a6d0-13d207aadb78\\_story.html](https://www.washingtonpost.com/opinions/ben-crump-romanucci-chauvin-trial/2021/04/07/b9c649b0-97c9-11eb-a6d0-13d207aadb78_story.html) [on file with the *Columbia Human Rights Law Review*].

12. *Id.*

13. *Id.*

the U.S. military. Military forces, like police, are government actors in tight-knit communities who have some license to use force in support of their official objectives.<sup>14</sup> Both groups may be called upon to work in dangerous situations against real or perceived adversaries.<sup>15</sup> Both are invested with special authorities that may let them investigate themselves in response to high-profile scandals or allegations of systemic failures.<sup>16</sup> Both may experience pressures to dismiss certain leads, deflect, cover-up, and temper the zealotry of their inquiries.<sup>17</sup> The result from such investigations is that facts are presented in a light most favorable to the own organization and less privileged scapegoats may endure any assigned blame.<sup>18</sup> By

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14. See Thomas Nolan, *Behind the Blue Wall of Silence*, 12 MEN AND MASCULINITIES 250, 251 (2009) (analogizing police culture to military culture, including its “militaristic coda, the hierarchical ‘chain’ of command that literally and metaphorically binds the warrior to the tribe, the uniform, replete with varying manifestations of hierarchy and privilege, the weaponry, phallogocentric . . . masculinity, the assemblage, a time-worn ritual of tribute to a hierarchical reproduction of a Roman legion or a Christian Crusade”).

15. See *id.* at 254–55 (“[P]olice of all stripes call each other ‘brother’ and therein lies an expectation: the special bonds that men develop in combating crime and fighting evil, the sanctity of ‘family’ (literal and metaphorical), the ubiquitous talk of the ‘loyalty’ so essential among those doing battle against the ‘forces of darkness.’”); Wayne McElrath & Sarah Turberville, *Poisoning Our Police: How the Militarization Mindset Threatens Constitutional Rights and Public Safety*, PROJECT ON GOVERNMENT OVERSIGHT (June 9, 2020), <https://www.pogo.org/analyses/poisoning-our-police-how-the-militarization-mindset-threatens-constitutional-rights-and-public-safety> (“As police drape themselves in the trappings of a military force, they increasingly look like members of an army prepared to go to war against unarmed civilians, escalating tensions between the police and peaceful protestors.”).

16. For the military context, see *infra* parts I, II, and III, (examples of the military being permitted to investigate itself after its own alleged misdeeds). For the police context, see, e.g., Erwin Chemerinsky, *The Rampart Scandal and the Criminal Justice System in Los Angeles County*, 57 GUILD PRACTITIONER 121, 122 (2000) (criticizing the Los Angeles Police Department’s Board of Inquiry self-investigation into a widespread police corruption scandal).

17. For the military context, see *infra* parts I, II, and III (three examples of military investigations that dismissed obvious leads, deflected blame, covered up wrongful acts, and tempered zealotry to protect military institutional elements and key leaders). For the police context, see Christopher Slobogin, *Deceit, Pretext, and Trickery: Investigative Lies by the Police*, 76 OR. L. REV. 775, 776–77 (1997) (chronicling police investigative lies in undercover work, searches and seizures, and interrogations); Torres & Curiel, *supra* note 5 (“[P]eople have a natural tendency to not report the crimes of those who share the same profession.”); Robin Abcarian, *Who You Gonna Call When the Abuser Wears a Badge?*, L.A. TIMES (Apr. 9, 1997), <https://www.latimes.com/archives/la-xpm-1997-04-09-ls-46728-story.html> [https://perma.cc/49J3-GN5Z] (“Law enforcement, with its well-known code of silence, often has trouble policing its own. Nor is it unusual for borderline felony domestic violence crimes to be plea-bargained down to misdemeanors.”).

18. See Radley Balko, *America’s Most Successful Stop Snitchin’ Campaign*, REASON (Mar. 18, 2010), <https://reason.com/2010/10/18/americas-most-successful-stop>

combining the "blue wall" phenomena with the characteristically green camouflage uniforms worn by U.S. military members, the Article contends that a new term is needed: the "Green Wall of Silence."

Somewhere between *blue* and *green* resides U.S. Immigration and Customs Enforcement (ICE), or more specifically, the most recent iteration of ICE as a well-funded and confrontational force deployed around the country during the first year of the second Trump administration.<sup>19</sup> The "new ICE" bears some characteristics of both domestic law enforcement and the U.S. military. All those institutions are state actors with some authorization to use force to carry out enforcement functions. ICE, along with several other components of domestic law enforcement, employ weapons, equipment, appearance,<sup>20</sup> and tactics that resemble those used by the U.S. military overseas.<sup>21</sup> Like the military and unlike local police, ICE

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[<https://perma.cc/9DBN-4K6G>] ("[T]he standard response from police groups and their supporters is that [police misconduct] is rare, the fault of 'a few bad apples.'"). "While that may be true, the 'good' officers tend to cover up for them. And in some departments, the good cops are afraid to come forward, because they know they will be treated the way Max Seifert was." *Id.*

19. See Christina Carrega, *A City-by-City Breakdown of Trump's Immigration Raids and Troop Deployments*, CAPITAL B (Jan. 26, 2026), <https://capitalbnews.org/trump-national-guard-city-updates> [on file with the *Columbia Human Rights Law Review*] (summarizing ICE and National Guard surges to several U.S. cities in the first year of the second Trump administration).

20. See Jay Price, *Why ICE Agents Are Wearing Body Armor, Helmets and Camouflage Clothing*, NPR, Mar. 16, 2026, <https://www.npr.org/2026/03/16/nx-s1-5747116/why-ice-agents-are-wearing-body-armor-helmets-and-camouflage-clothing> [<https://perma.cc/FY45-QWZ5>] (quoting costume historian and journalist Charles McFarland: "It's not your friendly neighborhood cop walking the beat, right? You know, it looks like they're dressed for an invasion. It looks like they are dressed for an occupation.").

21. See, e.g., Jeffery A. Endebak, *More Bang for Their Buck: How Federal Dollars Are Militarizing American Law Enforcement*, 47 J. MARSHALL L. REV. 1479, 1480 (2014) (discussing U.S. law enforcement's increased use of military-like weapons and the role weapons play in broader aspects of law enforcement militarization); Cadman Robb Kiker III, *From Mayberry to Ferguson: The Militarization of American Policing Equipment, Culture, and Mission*, 71 WASH. & LEE L. REV. ONLINE 282, 283-85 (2015) (describing the rise of "warrior cops" fighting home-grown "wars" against crime, drugs, and terrorism, the rise of militarized Special Weapons and Tactics (SWAT) units of domestic police, and the post-9/11 reorganization of federal law enforcement agencies under the Department of Homeland Security (the parent organization of ICE)); Mallory Meads, *The War Against Ourselves: Heien v. North Carolina, the War on Drugs, and Police Militarization*, 70 U. MIAMI L. REV. 615, 618 (2016) (discussing the effect of militarization of police on the treatment of everyday citizens and their rights).

agents deploy away from their home cities to unfamiliar places.<sup>22</sup> ICE agents conceal their identities<sup>23</sup> as some members of the military do as well.<sup>24</sup>

What does the “Green Wall of Silence” have to do with ICE? Given ICE’s transmogrification to a military-like force, it would be a mistake to apply only police analogies when surveying its excesses and atrocities. The experience of the U.S. military during the so-called “Global War on Terror” provides useful analogies for diagnosing ICE cover-ups: how self-serving narratives are promoted, wagons circled, and whistleblowers punished.

This Essay presents three vignettes of military cover-ups and investigative failures: at the Abu Ghraib prison in Iraq, Pat Tillman’s death in Afghanistan, and an errant drone strike during the closing days of the U.S. war in Afghanistan. In each of these examples, military members who erred or engaged in wrongful (sometimes criminal) conduct had self-interested reasons to conceal or distort unflattering facts. Those biases then went unexamined by military investigators, who, like the suspects under investigation, shared strong incentives to put bad situations in a more favorable light. The Essay concludes with a contemplation of what these

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22. Caitlin Dickerson, Zolan Kanno-Young & Annie Correal, *Flood the Streets’: ICE Targets Sanctuary Cities with Increased Surveillance*, N.Y. TIMES (Mar. 5, 2020), <https://www.nytimes.com/2020/03/05/us/ICE-BORTAC-sanctuary-cities.html> [on file with the *Columbia Human Rights Law Review*] (describing the deployment of ICE agents to a handful of so-called sanctuary cities).

23. See Noah C. Chauvin, *Can States Force ICE to Take off Their Masks?*, 99 S. CAL. L. REV. POSTSCRIPT 11, 27 (2025) (finding states cannot force ICE to take off their masks but providing recommendations for states to address “[t]he specter of masked agents of the state seizing people off the street”); *US: Masked Federal Agents Undermine Rule of Law*, HUM. RTS. WATCH (Dec. 18, 2025), <https://www.hrw.org/news/2025/12/18/us-masked-federal-agents-undermine-rule-of-law> [on file with the *Columbia Human Rights Law Review*] [hereinafter Human Rights Watch] (describing ICE officers wearing face coverings, not carrying identification, not identifying themselves, and driving unmarked cars).

24. Thomas Novelty, *Air Force Has Troops Remove Names, Unit Patches from Uniforms During Deportation Flights*, MILITARY.COM (Feb. 7, 2025), <https://www.military.com/daily-news/2025/02/07/air-force-has-troops-remove-names-unit-patches-uniforms-during-deportation-flights.html> [<https://perma.cc/55HK-87VB>] (detailing how the Air Force has not publicly disclosed the number of service members or what units are involved in “Donald Trump’s mandated border mission” as well as how aircrew are concealing their identity to ensure their safety); see also W. Hays Park, *Special Forces’ Wear of Non-Standard Uniforms*, 4 CHIC. J. INT’L L. 493, 508–14 (2003), [https://chicagounbound.uchicago.edu/cjil/vol4/iss2/16/?utm\\_source=chicagounbound.uchicago.edu%2Fcjil%2Fvol4%2Fiss2%2F16&utm\\_medium=PDF&utm\\_campaign=PDFCoverPages](https://chicagounbound.uchicago.edu/cjil/vol4/iss2/16/?utm_source=chicagounbound.uchicago.edu%2Fcjil%2Fvol4%2Fiss2%2F16&utm_medium=PDF&utm_campaign=PDFCoverPages) [on file with the *Columbia Human Rights Law Review*] (describing the requirements of the Geneva Conventions and the debate among military lawyers about when the use of standard uniforms with nametags is required).

lessons mean for unearthing wrongful acts by ICE and holding wrongdoers accountable.

### I. DETAINEE ABUSE AT THE ABU GHRAIB PRISON

A series of pictures and videos released to the public in April 2004 provided evidence that U.S. Army soldiers were torturing and abusing detainees under their custody at Iraq's Abu Ghraib prison.<sup>25</sup> The pictures and videos included hooded and naked prisoners stacked in a human pyramid, prisoners threatened by shotguns and muzzled dogs, and men forced to undergo various acts of sexual humiliation.<sup>26</sup> The revelations resulted in widespread condemnation within the United States and internationally.<sup>27</sup> The incident galvanized armed resistance to the U.S. military and served as a recruiting magnet for the insurgent groups who opposed the U.S. military occupation of Iraq.<sup>28</sup>

The photographs and videos raised pressing questions. Which soldiers were involved? Were these just a "few bad apples"<sup>29</sup> or were the photographed soldiers carrying out instructions from higher ranking military officers, intelligence officials, or political leaders? Beyond what was shown in the released photographs, how extensive was the torture?

Those are questions of fact. To find the facts, the Army first had to decide how to investigate what happened at Abu Ghraib. Doing so would

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25. Scott Higham & Joe Stephens, *New Details of Prison Abuse Emerge*, WASH. POST (May 21, 2004), <https://www.washingtonpost.com/archive/politics/2004/05/21/new-details-of-prison-abuse-emerge/7346e4cb-47f8-42ab-8897-38a021a1bd0c> [on file with the *Columbia Human Rights Law Review*].

26. *Id.*

27. *Id.*; see also Seymour M. Hersh, *Chain of Command*, NEW YORKER (May 10, 2004), <https://www.newyorker.com/magazine/2004/05/17/chain-of-command-2> [<https://perma.cc/N6YS-7CK3>] (detailing the significant abuse faced by prisoners); Seymour Hersh, *Annals of National Security: Torture at Abu Ghraib*, NEW YORKER (May 3, 2004), <https://www.newyorker.com/magazine/2004/05/10/torture-at-abu-ghraib> [<https://perma.cc/G6A7-2EQ8>] (discussing the Taguba report and its findings of detainee abuse).

28. Staff of Senate Armed Services Committee, *Inquiry Into The Treatment Of Detainees In U.S. Custody* at xii (2008) (quoting former Navy General Counsel Alberto Mora that several high-ranking U.S. military officers believed that "the first and second identifiable causes of U.S. combat deaths in Iraq—as judged by their effectiveness in recruiting insurgent fighters into combat—are, respectively the symbols of Abu Ghraib and Guantanamo.").

29. Mattathias Schwartz, *20 Years Later, a Jury Weighs Claims of Abuse at Abu Ghraib*, N.Y. TIMES (Apr. 24, 2024), <https://www.nytimes.com/2024/04/23/us/iraq-prison-lawsuit-abu-ghraib-abuse.html> [on file with the *Columbia Human Rights Law Review*].

require investigators with sufficient competence (to know how to conduct a rigorous investigation), access (ability to gather facts in a war zone), and independence (someone without a personal interest in the outcome or pressure to decide the case a certain way). The appointed investigators would need a mandate to go where the leads took them, even if the facts pointed to the involvement of higher-ranking officials.

For an investigation of such an infamous scandal, the Pentagon had many seemingly qualified options. The military could have called on federal prosecutors, experienced civilian investigators, or officials with experience with torture investigations, such as those who have worked for international criminal tribunals. The Army instead tapped its own military officers.<sup>30</sup> Kenneth Rohman, who had extensive experience with civil investigations, criticized this choice given the stakes of the Abu Ghraib investigation, stating, “There is an inherent conflict of interest for military officers conducting an investigation that could implicate superiors both at DoD and the White House.”<sup>31</sup>

A series of military self-investigations into Abu Ghraib shied away from probing whether torture was ordered or condoned by higher-ups.<sup>32</sup> Despite evidence that interrogators were under pressure to produce actionable intelligence from detainees, one of the military investigations concluded, “Despite the number of visits and intensity of interest in actionable intelligence, however, the Panel found no undue pressure exerted by senior officials. Nevertheless, their eagerness for intelligence may have been perceived by interrogators as pressure.”<sup>33</sup> With this wording, the report deemphasized the role played by senior officials (including by a member of the National Security Staff, implying the White House’s interest in the interrogations)<sup>34</sup> and focused instead on the fact that the torturing soldiers *felt pressured*. For soldiers to have *felt pressured*

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30. Kenneth Rohman, *Diagnosing and Analyzing Flawed Investigations: Abu Ghraib as a Case Study*, CARDOZO L. REV. DE NOVO 96, 100–01 (2009) (discussing the Abu Ghraib investigation).

31. *Id.* at 106.

32. *Id.* at 100–02 (describing the history of military investigations into Abu Ghraib, from the one led by Major General Antonio Taguba, to Lieutenant General Paul Mikolashek, to Major General George Fay, to Lieutenant General Anthony Jones, to an investigation panel chaired by former Secretary of Defense James Schlesinger); see generally STEVEN STRASSER, *THE ABU GHRAIB INVESTIGATIONS: THE OFFICIAL INDEPENDENT PANEL AND PENTAGON REPORTS ON THE SHOCKING PRISONER ABUSE IN IRAQ (2004)* (discussing the investigations and the historical and political context around them).

33. JAMES R. SCHLESINGER ET AL., *FINAL REPORT OF THE INDEPENDENT PANEL TO REVIEW DOD DETENTION OPERATIONS*, 65–66 (2004), <https://casebook.icrc.org/case-study/us-schlesinger-report> [<https://perma.cc/Y4HR-QR4W>].

34. *Id.*

necessarily means that others were applying pressure, but the passive wording of the findings tended to deemphasize who did what.

The Abu Ghraib investigations illuminate how thoughtless approaches can chill witnesses from candidly saying what they know. The soldiers who witnessed torture at the prison faced overt and subtle pressures to not snitch on their fellows. One military intelligence soldier, Sergeant Samuel Provance, explained:

After what had happened at Abu Ghraib became a matter of public knowledge and there was a demand for action, young soldiers were scapegoated while superiors misrepresented what had happened and misdirected attention away from what was really going on. . . . When I made clear to my superiors that I was troubled about what had happened, I was shown that the honor of my unit and the Army depended on either withholding the truth or outright lies. I cannot accept this.<sup>35</sup>

Sergeant Provance also noticed that the military's investigators became angry at him for his candid descriptions of detainee abuse he observed.<sup>36</sup> When General Fay, one of the investigators, interviewed Provance, Fay told him that he should have said something earlier, which would have broken the case wide open.<sup>37</sup> Fay then recommended that Sergeant Provance receive minor punishments, even though Provance was not involved in any of the abuse.<sup>38</sup> Provance was then disciplined by the Army and stripped of his security clearance for violating an order to not talk about the investigation.<sup>39</sup> For Sergeant Provance, staying quiet and not giving evidence against his fellow soldiers would have been a safer course for his personal safety and military career.

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35. *National Security Whistleblowers in the Post-September 11th Era: Lost in a Labyrinth and Facing Subtle Retaliation: Hearing Before the Subcommittee on National Security, Emerging Threats, and International Relations of the Committee on Government Reform*, 109th Cong., Feb. 14, 2006 (statement of Samuel J. Provance, Specialist, U.S. Army, Dept. of the Army) [hereinafter Sergeant Provance], available at [https://irp.fas.org/congress/2006\\_hr/whistle.html](https://irp.fas.org/congress/2006_hr/whistle.html) [on file with the *Columbia Human Rights Law Review*].

36. Rohman, *supra* note 30, at 112.

37. *Id.* (quoting TARA MCKELVEY, *MONSTERING: INSIDE AMERICA'S POLICY OF SECRET INTERROGATIONS AND TORTURE IN THE TERROR WAR* 178 (2007)).

38. *Id.*

39. Josh White, *Sergeant Punished for Talk of Abuse*, WASH. POST (May 21, 2004), <https://www.washingtonpost.com/archive/politics/2004/05/22/sergeant-punished-for-talk-of-abuse/d2002483-d8644a1f-b107-7f249e48ecdb> [on file with the *Columbia Human Rights Law Review*] (“‘I feel like I’m being punished for telling the truth,’ Provance said, adding that he was again ordered to remain silent about the investigation. ‘I don’t regret it. I want people to understand what happened.’”).

Investigations must account for how possible threats or intimidation can distort witness testimony.<sup>40</sup> At Abu Ghraib, one of the techniques was for investigators to talk to the soldiers in groups.<sup>41</sup> Soldiers who answered “yes” to any questions about abuse were publicly called back to speak with investigators, thus exposing them to the suspicion of their fellow soldiers.<sup>42</sup> Sergeant Provance recalled,

I got worried when the leadership announced to everybody who was being called back for interviews. I noticed very few others were called back, which implied they had nothing to say. As a result, the other soldiers there felt that I must be in trouble, or was telling on those who were.<sup>43</sup>

Such investigative techniques are of a nature to chill prospective witnesses and perpetuate a Green Wall of Silence.<sup>44</sup>

The Army’s Abu Ghraib investigators shaped their investigations in ways that minimized the chances they would make findings harmful to their organization.<sup>45</sup> For example, when it came to which witness to interview, they focused almost exclusively on the accounts of soldiers;<sup>46</sup> the perspectives of the detainees were considered less important and so were not sought.<sup>47</sup> The investigator who deviated from this tacit understanding to focus on the stories of soldiers and not detainees was Maj. Gen. Antonio

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40. Sergeant Provance, *supra* note 35.

41. *Id.*

42. *Id.*

43. *Id.*

44. For the code of silence as part of military culture, *see, e.g.*, Michael Gordon, *As Policy Decisions Loom, a Code of Silence Is Broken*, N.Y. TIMES (Apr. 16, 2006), <https://www.nytimes.com/2006/04/16/washington/16assess.html> [on file with the *Columbia Human Rights Law Review*] (describing a code of silence against military leaders speaking out against U.S. policies and political leaders); Richard A. Serrano, *Prosecutors Strike out with Tailhook Scandal*, L.A. TIMES (Dec. 19, 1993), <https://www.latimes.com/archives/la-xpm-1993-12-19-mn-3596-story.html> [on file with the *Columbia Human Rights Law Review*] (describing the code of silence in a scandal about sexual misconduct by Navy pilots known as Tailhook).

45. *See* Rohman, *supra* note 30, at 102–03 (summarizing the findings of several of the military’s Abu Ghraib investigations as acknowledging that some abuses occurred but emphasizing that only a few low-ranking soldiers were involved and not senior leaders); *see also* Charlie Savage, *Hegseth’s Boasts of ‘Maximum’ Engagement Authorities Face Scrutiny After School Is Hit*, N.Y. TIMES (Mar. 13, 2026), <https://www.nytimes.com/2026/03/13/us/politics/hegseth-iran-war-rules.html> [on file with the *Columbia Human Rights Law Review*] (providing gloss on an errant U.S. attack in Iran that killed nearly 200 civilians).

46. Schwartz, *supra* note 29.

47. *See* Rohman, *supra* note 30, at 108–11 (concerning the fact that investigations focused on interviews with military personnel over non-military witnesses).

Taguba.<sup>48</sup> For this infraction he was abruptly removed from his investigative duties midstream, then forced to retire early.<sup>49</sup> The treatment of General Taguba shows that the military was sensitive to only reaching Abu Ghraib investigation results that put the military in a favorable light—a goal that would not be achieved with evidence from detainees describing abuses they endured. The sacking of General Taguba for unearthing bad facts sent a clear message to the investigators who followed him: *Don't go there . . . or else.*

The firing of General Taguba for searching for the root causes of the scandal, and other investigators' indifference to gathering evidence from detainees, were glaring deficiencies, "akin to conducting a rape investigation in civilian law enforcement without interviewing the rape victim. Critical investigative insights are lost when this happens."<sup>50</sup> To paraphrase the famous military movie, at Abu Ghraib the military *couldn't handle the truth* about detainee abuse.<sup>51</sup>

The Abu Ghraib investigators following General Taguba preferred writing more pro-military conclusions. For example, the investigations went out of their way to lavish praise upon the soldiers investigated, saying that most did their duty, and that all faced grave danger in the war in Iraq.<sup>52</sup> While those things are true, they seem out of place in an investigation that should be objectively finding the facts about detainee abuse. Not surprisingly, the same investigations that were indifferent to evidence from detainees and went out of their way to praise the courageous American

48. See generally Maj. General Antonio Taguba, *U.S. Department of the Army, Army Regulation 15-6 Investigation of the 800th Military Police Brigade* (2004), [https://www.thetorturedatabase.org/files/foia\\_subsite/pdfs/DODDOA000248.pdf](https://www.thetorturedatabase.org/files/foia_subsite/pdfs/DODDOA000248.pdf) [<https://perma.cc/RWU6-XSEF>] (investigative findings that considered both the perspective of detainees and evidence that higher-ups were complicit in ordering the abuse).

49. David S. Cloud, *General Says Prison Inquiry Led to His Forced Retirement*, N.Y. TIMES (June 17, 2007), <https://www.nytimes.com/2007/06/17/washington/17ghraib.html> [<https://perma.cc/9DSM-ANVL>] ("[F]ormer Defense Secretary Donald H. Rumsfeld and other senior civilian and military officials had treated [Taguba] brusquely after the investigation into the formerly American-run prison outside Baghdad was completed in 2004. [Taguba] also said that in early 2006 he was ordered, without explanation, to retire within a year."). "They always shoot the messenger," General Taguba said. "To be accused of being overzealous and disloyal—that cuts deep into me. I was ostracized for doing what I was asked to do." *Id.*

50. Rohman, *supra* note 30, at 111.

51. A FEW GOOD MEN (Castle Rock Entertainment 1992), at 1:38:00 (paraphrasing testimony from fictional U.S. Marine Colonel Nathan R. Jessup, "You can't handle the truth!" in response to an unconventional cross-examination by Lieutenant Daniel Kaffee).

52. Rohman, *supra* note 30, at 122–23.

troops also found no systemic failures by the military—just isolated incidents by a “few bad apples.”<sup>53</sup>

But such biased investigations do not stand the test of time.<sup>54</sup> By bending to pressures to cherry-pick the facts of Abu Ghraib, the military investigations served to minimize the culpability of those involved and their higher-ups for either encouraging or setting the conditions for the abuse.<sup>55</sup> The Army’s investigations failed to satisfy many in the public that the military had uncovered the real facts.<sup>56</sup> The chairman of the Senate Judiciary Committee, unsatisfied, called for a truth commission.<sup>57</sup> The Bush administration, unexamined, faced sustained calls for war crimes investigations and possible trials.<sup>58</sup> The public, too, seemed dissatisfied with Abu Ghraib factfinding: despite numerous military investigations involving hundreds of witness interviews and thousands of pages of findings, a poll years later showed that Americans by about a two to one ratio favored an investigation into the Bush administration for use of

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53. *Id.* at 103.

54. See Schwartz, *supra* note 29 (describing the trial against Abu Ghraib guards twenty years after the incident).

55. Rohman, *supra* note 30, at 97 (assessing the Pentagon’s Abu Ghraib investigations and concluding, “[u]nfortunately, these investigations did not answer the most fundamental questions about who directed or ordered the use of abusive tactics on detainees, and the reports’ findings were the subject of widespread criticism by the news media, Congressional leaders, and human rights groups”).

56. *Soldiers Not Held Accountable for Abuse*, NYCLU (Jan. 4, 2007), <https://www.nyclu.org/press-release/soldiers-not-held-accountable-abuse> [on file with the *Columbia Human Rights Law Review*] (“Government investigations into allegations of torture and abuse have been woefully inadequate.”).

57. Kate Phillips, *Judiciary Committee Chairman Calls for Commission to Delve into Bush Practices*, N.Y. TIMES (Feb. 9, 2009), <https://archive.nytimes.com/thecaucus.blogs.nytimes.com/2009/02/09/judiciary-chairman-calls-for-commission-to-delve-into-bush-practices> [https://perma.cc/BCB6-FTXZ]; 151 Cong. Rec. S13,957 (daily ed. Dec. 17, 2005) (“I was a member of the Armed Services Committee. I am a member of the Judiciary Committee. We have had about 20 hearings on Abu Ghraib.”).

58. Joseph Williams, *Some Call For Bush Administration Trials*, BOSTON GLOBE (Feb. 3, 2009), [http://www.boston.com/news/nation/washington/articles/2009/02/03/some\\_call\\_for\\_bush\\_administration\\_trials](http://www.boston.com/news/nation/washington/articles/2009/02/03/some_call_for_bush_administration_trials) [on file with the *Columbia Human Rights Law Review*]; John Conyers, Jr., *Why We Have To Look Back*, WASH. POST (Jan. 16, 2009), <https://www.washingtonpost.com/archive/opinions/2009/01/16/why-we-have-to-look-back/3034a20d-a908-4486-9865-d5f5cd3d06c6> [on file with the *Columbia Human Rights Law Review*]; Scott Horton, *Justice After Bush: Prosecuting an Outlaw Administration*, HARPER’S MAGAZINE (Dec. 2008), <https://harpers.org/archive/2008/12/justice-after-bush> [https://perma.cc/T8TK-URG7].

torture.<sup>59</sup> Litigation over the facts of Abu Ghraib continues to this day, more than 20 years after the revelations.<sup>60</sup>

The military is not unique in its investigative self-dealing. There are inherent pressures of any large organization's ability to investigate itself.<sup>61</sup> This may be especially true in cases of uniformed public servants. Indeed, Abu Ghraib has echoes of internal police investigations such as the Rampart Scandal in the Los Angeles Police Department from 1999, which involved widespread police perjury that eventually led to the exonerations of over 100 defendants.<sup>62</sup> In both cases, internal investigators sought to minimize the scope of the problems, blame a "few bad apples," and shield high-level officials.<sup>63</sup>

## II. THE DEATH OF CORPORAL PAT TILLMAN

Motivated by the terrorist attacks of 9/11 and a desire to serve, Pat Tillman turned down a multi-million-dollar contract extension with the National Football League's Arizona Cardinals to enlist in the Army in 2002.<sup>64</sup> After Tillman and his brother Kevin completed their basic training<sup>65</sup> and unit training with the U.S. Army's 75th Ranger Regiment, an elite

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59. Jill Taylor, *Poll: Most Want Inquiry into Anti-Terror Tactics*, USA TODAY (Feb. 12, 2009), [https://www.usatoday.com/news/washington/2009-02-11-investigation-poll\\_N.htm](https://www.usatoday.com/news/washington/2009-02-11-investigation-poll_N.htm) [on file with the *Columbia Human Rights Law Review*].

60. Schwartz, *supra* note 29 (describing a lawsuit against CACI Premier Technology, a government contractor, for its role in Abu Ghraib interrogation).

61. See, e.g., The Honorable Dick Thornburgh, *Organizing a Successful Corporate Investigation*, LEGAL BACKGROUNDER (Apr. 21, 2006), at 1 (detailing the pressures of an internal investigation in the corporate world).

62. Erwin Chemerinsky, *An Independent Analysis of the Los Angeles Police Department's Board of Inquiry Report on the Rampart Scandal*, 34 LOY. L.A. L. REV. 545, 549 (2001).

63. See *id.* at 551-52 (criticizing the Los Angeles Police Department's Board of Inquiry report on the Rampart Scandal).

64. *Ex-NFL Star Tillman Makes 'Ultimate Sacrifice'*, NBC NEWS (Apr. 23, 2004), <https://www.nbcnews.com/id/wbna4815441> [on file with the *Columbia Human Rights Law Review*].

65. *NFL - Tillman Starts Quest to Join Army Rangers*, ESPN (July 8, 2002), <https://www.espn.com/nfl/news/2002/0708/1403113.html> [<https://perma.cc/ARV4-JHUE>].

commando unit,<sup>66</sup> they deployed together with the Rangers to Iraq in 2003, then to Afghanistan, where Pat Tillman was killed on April 22, 2004.<sup>67</sup>

After Tillman's death, the military immediately claimed that he was killed in a firefight with the enemy.<sup>68</sup> President Bush signed an award commendation for a posthumous Silver Star medal, the citation to which read that Tillman was killed in "devastating enemy fire."<sup>69</sup>

But that narrative was false: Tillman was killed by friendly fire.<sup>70</sup> Because the military and White House felt pressure to present the war in a favorable light, the real facts were distorted and concealed.<sup>71</sup> While the concealment involved many levels of the military, the internal investigation played an important role. One of the Army Rangers involved in the mission, Specialist Brian O'Neal, testified to Congress that he was ordered by his military superiors to not say anything about the fact that Tillman's death was caused by friendly fire.<sup>72</sup> Kevin Tillman, who was on the same mission, also testified about the military's pressure to handpick facts:

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66. *U.S. Army Rangers: The 75th Ranger Regiment*, U.S. ARMY, <https://www.army.mil/ranger> [<https://perma.cc/6SYH-TQQD>] ("The 75th Ranger Regiment is a lethal, agile and flexible force, capable of conducting many complex, joint special operations missions. Today's Ranger regiment is the Army's premier direct-action raid force.").

67. William Weinbaum & Jeremy Schaap, *Pat Tillman, His Mom and the 20-Year Torment of a Friendly Fire Death*, ESPN (Apr. 22, 2024), [https://www.espn.com/nfl/story/\\_/id/39954768/nfl-cardinals-tillman-afghanistan-9-11](https://www.espn.com/nfl/story/_/id/39954768/nfl-cardinals-tillman-afghanistan-9-11) [<https://perma.cc/8MWU-J2PM>].

68. *Id.*

69. *Id.*

70. See Justin Lowe, "Tillman Story" Sad Tale of a Military Cover-Up, REUTERS (Feb. 3, 2010), <https://www.reuters.com/article/lifestyle/tillman-story-sad-tale-of-a-military-cover-up-idUSTRE613053> [on file with the *Columbia Human Rights Law Review*] ("In April 2004, the Army reported that Tillman had been killed in action after saving dozens of comrades from an enemy ambush, an act of bravery that earned him a posthumous Silver Star."). "Astoundingly, almost nothing about this inspiring account was true. . . . [A]n investigation had revealed that Tillman was killed by friendly fire as members of his unit shot indiscriminately at him and a couple of other soldiers separated from their unit and believed to be guerrillas." *Id.*

71. See *id.* ("Fighting an unpopular war, the Army seized the opportunity to manufacture a contemporary hero.").

72. *Army Ranger Says He Was Told to Lie About Tillman's Death*, N.Y. TIMES (Apr. 24, 2007), <https://www.nytimes.com/2007/04/24/world/americas/24iht-house.5.5427061.html> [on file with the *Columbia Human Rights Law Review*] [hereinafter *Army Ranger*]; see *Army's Documents Detail Secrecy in Tillman Case*, N.Y. TIMES (Apr. 21, 2007), <https://www.nytimes.com/2007/04/21/us/21tillman.html> [on file with the *Columbia Human Rights Law Review*] ("Army investigative documents reviewed by The Associated Press describe how the military tried to seal off information about Corporal Tillman's death from all but a few soldiers.").

We believe this narrative [that Tillman died battling the enemy] was intended to deceive the family but more importantly the American public. . . . Pat's death was clearly the result of fratricide. . . . Revealing that Pat's death was a fratricide would have been yet another political disaster in a month of political disasters, . . . so the truth needed to be suppressed.<sup>73</sup>

Words matter in military narratives for signaling success or acknowledging setbacks. "Devastating enemy fire" evokes manliness, heroism, and an urgency to unify in the face of a powerful foe. "Fratricide," on the other hand, evokes dysfunction and incompetence. Little wonder the military felt pressure to curate the facts of Pat Tillman's death in support of its preferred narrative. Military investigators are subject to enormous pressure to pursue the evidence of a preferred narrative and shy away from less convenient facts when they lack independence from the unit they are investigating.<sup>74</sup>

The Tillman case also illustrates how the "Green Wall of Silence" infests the military's elite commando units such as the Army Rangers, Green Berets, or Navy SEALs.<sup>75</sup> These units may be characterized by exceptionally strong bonds and a mistrust of outsiders, making it more likely that they will close ranks during investigations that they perceive could put their conduct in a bad light.<sup>76</sup> Investigations into these units may involve classified information and other secrets that pose additional barriers to full and forthright disclosure—or provide an excuse for investigative omissions and concealment of relevant facts.<sup>77</sup>

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73. *Army Ranger*, *supra* note 72 (quoting Kevin Tillman).

74. See Maj. Peter Postma, *Reexamining Administrative Investigations*, MIL. REV. 127, 133–34 (2023) (acknowledging how a lack of independence in military investigations poses a risk of investigators being perceived as controlled by their commanders).

75. See Alex Ward, *Two SEAL Team 6 members. An Army Green Beret. A murder.*, VOX (Nov. 13, 2017), <https://www.vox.com/world/2017/11/7/16604484/seal-team-6-navy-army-green-beret-murder> [on file with the *Columbia Human Rights Law Review*] (quoting military law expert Geoff Corn, "The SEALs are a community that circles to protect its own, and it might be a little bit challenging to get people to be forthcoming with information.").

76. *Id.*

77. See John Vandiver, *Classifying Information for No Good Reason Is Hurting Military Effectiveness, Report Warns*, STARS AND STRIPES (Mar. 29, 2023), <https://www.stripes.com/theaters/us/2023-03-29/military-classified-documents-9639844.html> [<https://perma.cc/835W-ZVKG>] (describing the military's tendency to overclassify documents and withhold information).

## III. A “RIGHTEOUS STRIKE” IN KABUL, AFGHANISTAN

Fast forward to the end of the Afghanistan war. The facts are not in dispute that on August 29, 2021, an unmanned U.S. aircraft fired a Hellfire missile into the western suburbs of Kabul, destroying a white Toyota Corolla and killing ten people.<sup>78</sup> What was in dispute was whether those killed were planning a terrorist attack on the Kabul Airport in the final days of the war.<sup>79</sup> The U.S. military investigated itself and concluded that the strike killed terrorists who were plotting an attack.<sup>80</sup> Senior military leaders spoke at press conferences to announce their opinion that the mission was a “righteous strike.”<sup>81</sup>

But the self-serving findings of the military’s internal investigation proved to be false. The truth was discovered by journalists from the New York Times, who gathered the videos of the strike through Freedom of Information Act requests and conducted their own extensive on-the-ground investigation of the strike scene.<sup>82</sup> The *Times* found that there were no explosives in the vehicle, the driver had no connection to the ISIS terrorist group, and there was no second explosion (claims of which were used by the Pentagon as proof that the car was carrying bomb-making materials).<sup>83</sup> Instead, the driver was an aid worker named Zemari Ahmadi who worked for the California-based aid group Nutrition and Education International.<sup>84</sup> Presented with the undeniable facts that the strike killed aid workers and not terrorists, the Pentagon reversed course and acknowledged its mistake.<sup>85</sup> The mission was not a “righteous strike”; it was a devastating error for which none of those responsible would be held to account.<sup>86</sup>

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78. Alex Horton, *Pentagon Releases Drone Video of Botched Kabul Strike that Killed 10 Civilians*, WASH. POST (Jan. 19, 2022), <https://www.washingtonpost.com/national-security/2022/01/19/kabul-strike-drone-video> [on file with the *Columbia Human Rights Law Review*] (with video of the strike).

79. *Id.*

80. Mattieu Aikins, *Times Investigation: In U.S. Drone Strike, Evidence Suggests No ISIS Bomb*, N.Y. TIMES (Sept. 10, 2021), <https://www.nytimes.com/2021/09/10/world/asia/us-air-strike-drone-kabul-afghanistan-isis.html> [on file with the *Columbia Human Rights Law Review*].

81. *Id.* (quoting Chairman of the Joint Chiefs of Staff General Mark Milley).

82. *Id.*

83. *Id.*

84. *Id.*

85. C. Todd Lopez, *DoD: August 29 Strike in Kabul “Tragic Mistake,” Kills 10 Civilians*, DOD NEWS (Sept. 17, 2021), <https://www.war.gov/News/News-Stories/Article/article/2780257/dod-august-29-strike-in-kabul-tragic-mistake-kills-10-civilians> [on file with the *Columbia Human Rights Law Review*] (quoting Marine Corps General Kenneth F. McKenzie, Jr., the commander of U.S. Central Command: “Having thoroughly reviewed the findings of the investigation and the supporting analysis by

Why did military members authorize this strike? Evidence that the target was a terrorist objective was scant.<sup>87</sup> The imagery used to identify the target was fuzzy, hard to interpret in real time, and prone to confirmation bias.<sup>88</sup> The strike was not a close judgment call; in hindsight, it was inexcusable error. Yet, the military's self-investigation failed to diagnose the targeting errors.<sup>89</sup> The military investigators were under pressure to not reach findings that would complicate their preferred narrative.

It is worth highlighting the pressures the military investigators faced, including tacit pressures to limit the rigor and scope of their inquiry.<sup>90</sup> The military investigators could have felt more pressure to cut corners given the high operations tempo during the final days of the Afghanistan mission, which had already experienced a recent terrorist attack on the Kabul airport.<sup>91</sup> To tell the truth during this investigation would have been an unwelcome distraction. With no external investigative quality control, the "Green Wall of Silence" affected the outcome.

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interagency partners, I am now convinced that as many as 10 civilians—including up to seven children—were tragically killed in that strike.”).

86. Eric Schmitt, *No U.S. Troops Will Be Punished for Deadly Kabul Strike, Pentagon Chief Decides*, N.Y. TIMES (Dec. 13, 2021), <https://www.nytimes.com/2021/12/13/us/politics/afghanistan-drone-strike.html> [on file with the *Columbia Human Rights Law Review*].

87. See Eric Schmitt & Helene Cooper, *Pentagon Acknowledges Aug. 29 Drone Strike in Afghanistan Was a Tragic Mistake That Killed 10 Civilians.*, N.Y. TIMES (Sept. 17, 2021), <https://www.nytimes.com/2021/09/17/us/politics/pentagon-drone-strike-afghanistan.html> [on file with the *Columbia Human Rights Law Review*] (explaining how initial conclusions and faulty suspicions were based on insufficient evidence that biased the views of military and led to the tragic strike).

88. Charlie Savage, et al., *Newly Declassified Video Shows U.S. Killing of 10 Civilians in Drone Strike*, N.Y. TIMES (Jan. 19, 2022), <https://www.nytimes.com/2022/01/19/us/politics/afghanistan-drone-strike-video.html> [on file with the *Columbia Human Rights Law Review*].

89. *Id.*

90. See generally CLAIRE SIMMONS, *MILITARY INVESTIGATIONS IN ARMED CONFLICT: INDEPENDENCE AND IMPARTIALITY UNDER INTERNATIONAL LAW* (2024) (addressing the necessary standards for independence and impartiality in internal investigations); see also Antje Buehler, Gavin E. Oxburgh, Peter Zimmerman, Gerd-Dieter Willmund, Ulrich Weseman, *Challenges for Research into Military Investigations*, 26 PSYCHIATRY, PSYCH. & L. 50, 51 (2019) (drawing from studies on police investigations to describe how soldiers are likely to perceive and react to military investigations).

91. See Michael Shear, *Afghanistan Updates 'We Will Not Forgive,' Biden Says, Vowing Retaliation for Kabul Attack*, N.Y. TIMES (Aug. 26, 2021), <https://www.nytimes.com/live/2021/08/26/world/afghanistan-taliban-biden-news> [on file with the *Columbia Human Rights Law Review*] (“On Aug. 6, 2011, insurgents shot down a transport helicopter, killing 30 Americans and eight Afghans.”).

As the Kabul incident illustrates, military leaders under pressure face powerful incentives to shortcut rigorous factfinding. One of the most difficult tasks is resisting pressure to conceal and distort unflattering facts about military incidents that might amount to operational mistakes or even atrocities. Unfortunately, the Kabul strike has not been an aberration.<sup>92</sup> Time and time again, the military has been eager to look the other way, or to not look at all, when “mistakes” are committed in war.<sup>93</sup> As a result, the real facts of misdeeds might remain unknown and those who committed wrongdoing may never be held to account.

#### CONCLUSION

Lessons from the “Green Wall of Silence” have close parallels to the ICE controversies of the past year. Just as the military operated the notorious Abu Ghraib prison in Iraq, ICE is involved with numerous detention operations that impose harsh conditions on the detainees, including Florida’s notorious “Alligator Alcatraz.”<sup>94</sup> Just as secretive special

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92. See also Dave Phillips & Eric Schmidt, *How the U.S. Hid an Airstrike That Killed Dozens of Civilians in Syria*, N.Y. TIMES (Nov. 13, 2021), <https://www.nytimes.com/2021/11/13/us/us-airstrikes-civilian-deaths.html> [on file with the *Columbia Human Rights Law Review*] (chronicling an American bombing in Syria, where facts of a strike on civilians were suppressed); Imogen Piper & Joe Dyke, *Tens of Thousands of Civilians Likely Killed by US in ‘Forever Wars,’* AIRWARS (Sept. 6, 2021), <https://airwars.org/investigations/tens-of-thousands-of-civilians-likely-killed-by-us-in-forever-wars> [<https://perma.cc/7FWE-9DWH>] (concluding that U.S. military strikes in the twenty years since 9/11 killed as many as 48,308 civilians).

93. See Oona Hathaway & Azmat Khan, “Mistakes” in War, 173 U. PA. L. REV. 1, 2 (2024) (demonstrating that “mistakes” in U.S. military campaigns have been far more common than generally acknowledged and that repeated errors are the predictable result of a system that does too little to prevent or learn from its mistakes); see also Eugene R. Fidell, *U.S. Military Justice and “Operational Mishaps”: A Primer*, JUST SECURITY (Apr. 24, 2017), <https://www.justsecurity.org/40208/u-s-military-justice-operational-mishaps-primer> [<https://perma.cc/YS2Z-8GLD>] (proposing that military forces use courts of inquiry to help foster public confidence in investigations of battlefield mishaps).

94. See USA: *New Findings Reveal Human Rights Violations at Florida’s “Alligator Alcatraz” and Krome Detention Centers*, AMNESTY INT’L (Dec. 4, 2025), <https://www.amnesty.org/en/latest/news/2025/12/estados-unidos-nuevas-investigaciones-revelan-violaciones-de-derechos-humanos-en-los-centros-de-detencion-de-alligator-alcatraz-y-krome-en-florida/#:~:text=Other%20treatment%20those%20detained%20have,to%20restraints%20on%20the%20ground> [on file with the *Columbia Human Rights Law Review*] (describing how detainees are tortured, including by “being put in the ‘box,’ described as a 2x2 foot cage-like structure people are put in as punishment—sometimes for hours at a time exposed to the elements with hardly any water—with their hands and feet attached to restraints on the ground”); see also Transactional Records Access Clearinghouse, *ICE Immigration Detention: Current Data and Trends*, SYRACUSE UNIV. (last visited Mar. 19,

operations forces in Afghanistan attempted to cover up the real nature of Pat Tillman's killing, ICE agents seek to evade responsibility for wrongful acts by concealing the identities of individual agents.<sup>95</sup> And, just as military investigators in Afghanistan reached the military's preferred narrative that their "righteous strike" killed terrorists, government pronouncements following the ICE killings of Renee Good and Alex Pretti declared their killings to be reasonable acts of self-defense.<sup>96</sup>

The good news for those concerned about ICE's excesses is that they enjoy less of an information monopoly than the U.S. military overseas. Deployed troops, especially those in combat zones, are far from meaningful U.S. oversight bodies such as Congress, journalists, local and state officials, and civil society. The troops will enjoy more of an information monopoly to dictate their preferred messaging about Pat Tillman's death, for example, from a craggy remote corner of Afghanistan, than they would in a U.S. city. So, while ICE may seek to prevent the public from finding out its members or disclosing its self-serving internal investigations, that narrative is not the only one as local and state officials simultaneously gather facts and investigate allegations of ICE atrocities.<sup>97</sup> There is a competition for the truth in which self-serving findings might be more easily discredited.

This is not to suggest that local and state officials will have an easy time holding rogue ICE agents accountable. Far from it. Beyond their secrecy, ICE agents may enjoy other protections such as the President's pardon power, judicial immunity doctrines, and constitutional arguments that state and local enforcement efforts are preempted by federal law.<sup>98</sup> But

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2026), <https://tracreports.org/whatsnew/email.260217.html> [<https://perma.cc/4A8G-W34H>] (with recent data showing that ICE is currently holding over 68,289 people in custody, with 73.6% of detainees having no criminal conviction or record).

95. See Human Rights Watch, *supra* note 23 (quoting Belkis Wille of Human Rights Watch, "Allowing masked, unidentified agents to roam communities and apprehend people without identifying themselves erodes trusts in the rule of law and creates a dangerous vacuum where abuses can flourish, exacerbating the unnecessary violence and brutality of the arrests").

96. Amanda Watford, *Footage, Documents at Odds with DHS Accounts of Immigration Enforcement Incidents*, STATELINE (Jan. 23, 2026), <https://stateline.org/2026/01/23/footage-documents-at-odds-with-dhs-accounts-of-immigration-enforcement-incidents/#:~:text=One%20of%20the%20most%20prominent,car%2C%20and%20he%20began%20firing> [on file with the *Columbia Human Rights Law Review*] (describing a clash between government assurances that acts of ICE violence were done in self-defense with the accounts of eyewitness and widely-circulated video footage that casts doubt on those claims).

97. *Id.*

98. See Alicia Bannon, *When Can States Prosecute Federal Agents?*, STATE COURT REPORT (Jan. 27, 2026), <https://statecourtreport.org/our-work/analysis-opinion/when->

parallel factfinding does more than support criminal cases; it also has the potential to raise the political costs of audacious ICE activities and create a lasting record. Proper factfinding is a goal unto itself. If there is no competition for finding the facts, walls of silence are erected in which organizations investigating themselves will tend to close ranks, not snitch, and latch on to the most favorable set of facts. Lessons from the military reveal that ICE cover-ups in Minneapolis and elsewhere derive from the same well-worn playbook.

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can-states-prosecute-federal-agents [<https://perma.cc/KY4R-E6YX>] (describing federal law obstacles to potential state court prosecutions of federal agents, including immunity doctrines, removal of cases from state to federal courts, and the president's pardon power).