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**PRIVATE MILITARY CONTRACTORS IN IRAQ:
AN EXAMINATION OF BLACKWATER'S
ACTIONS IN FALLUJAH**

PREPARED FOR
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EXECUTIVE SUMMARY

On February 7, 2007, the Committee on Oversight and Government Reform held a hearing to initiate an investigation into the performance and accountability of private military contractors in Iraq. The hearing included the examination of one prominent case study: a pivotal event of the Iraq War in which four Blackwater USA security contractors were ambushed and killed in Fallujah on March 31, 2004, while escorting a convoy.

At the hearing, Blackwater's General Counsel testified that the company acted responsibly in preparing for and executing the Fallujah mission. He asserted that the vehicles involved had an "appropriate" amount of protection and that the level of staffing was "the norm" given "the threat as it was known on the ground in Iraq."

Since the hearing, the Committee has investigated what actually happened in Fallujah on March 31, 2004, and whether Blackwater approached its security duties responsibly. As part of this investigation, the Committee staff has reviewed documents based on the accounts of eighteen individuals with knowledge of the incident, including Blackwater's Baghdad operations manager and project director, seven other Blackwater personnel who were based in Iraq or Kuwait, the three truck drivers escorted in the Blackwater convoy through Fallujah, and three personnel from a different government contractor who spoke to the Blackwater team the night before and morning of its ambush, as well as employees of another private security contractor and Blackwater's contract partner. The Committee has also obtained, and the staff reviewed, unclassified investigative reports generated by the counterintelligence unit of the Coalition Provisional Authority — the U.S. entity that was governing Iraq at the time of the incident — and the Naval Criminal Investigative Service.

These eyewitness accounts and investigative reports conflict with Blackwater's assertion that they sent the team out with sufficient preparation and equipment. They portray a company that ignored multiple warnings about the dangers of traveling through Fallujah, cut essential personnel from the mission, and failed to supply its team with armored vehicles, machine guns, sufficient threat intelligence, or even maps of the area. Blackwater's own employees described its conduct as "flat out a sloppy ... operation" and a "ship about to sink." Another Blackwater employee stated: "Why were they sent into the hottest zone in Iraq in unarmored, underpowered vehicles to protect a truck? They had no way to protect their flanks because they only had four guys." Even the internal review conducted by Blackwater at the direction of Erik Prince, the owner of Blackwater, found that the team ambushed in Fallujah "[h]ad no time to perform proper mission planning" and "[w]as without proper maps of the city."

The details of the events leading to the incident are disturbing, revealing an unprepared and disorderly organization operating in a hostile environment. Mistake apparently compounded mistake. According to the documents provided to the Committee:

- At the time of the Fallujah incident, Blackwater was taking over operations from a British security company, Control Risks Group. The project manager for the British company states that Blackwater “did not use the opportunity to learn from the experience gained by CRG on this operation, ... leading to inadequate preparation for taking on this task.” The company’s incident report states that Blackwater was informed that Control Risks Group twice rejected the mission because of unacceptable security risks, reporting: “Blackwater were informed that we had turned this task down and the reasons why were given.”
- Prior to the Blackwater team’s departure, two of the six members of the team were cut from the mission, depriving both security vehicles of a rear gunner. These personnel were removed from the mission to perform administrative duties at the Blackwater operations center.
- Blackwater had a contract dispute with a Kuwaiti company, Regency Hotel & Hospitality, over the acquisition of armored vehicles for the Blackwater team. Blackwater officials instructed its employees to “string these guys along and run this ... thing into the ground” because “if we stalled long enough they (Regency) would have no choice but to buy us armored cars, or they would default on the contract,” in which case the contractor who hired Regency “might go directly to Blackwater for security.” According to a Blackwater employee, Blackwater’s contract “paid for armor vehicles,” but “management in North Carolina made the decision to go with soft skin due to the cost.”
- One day before the Fallujah attack, Blackwater’s operations manager in Baghdad sent an urgent e-mail to Blackwater headquarters in North Carolina with the subject line “Ground Truth.” The e-mail stated: “I need new vehicles. I need new COMs, I need ammo, I need Glocks and M4s. ... I’ve requested hard cars from the beginning. ... Ground truth is appalling.”
- Because they were without maps and the mission had not been sufficiently planned, the Blackwater personnel arrived at the wrong military base the day before the attack, where they were forced to spend the night. A witness at the military base assessed that “the mission that they were on was hurriedly put together and that they were not prepared.”

Blackwater’s recalcitrance in responding to the Committee’s inquiry has also raised issues. The company consistently delayed and erected impediments to the Committee’s investigation, using tactics such as erroneously claiming that documents relating to the Fallujah incident were classified, seeking to have the Defense Department retroactively classify previously unclassified documents, and asserting questionable legal privileges.

I. BACKGROUND

A. The February 7, 2007, Committee Hearing

In one of the most infamous episodes of the Iraq War, four Americans working as private security personnel for Blackwater USA were ambushed and killed in Fallujah on March 31, 2004. This incident was a turning point in public opinion about the war, as photos of their burned and mutilated bodies were widely displayed in the U.S. media.

The ambush of the four Blackwater personnel prompted a major military offensive, known as the First Battle of Fallujah, which began four days later on April 4, 2004. The battle, which lasted until May 1, 2004, resulted in the deaths of at least 36 U.S. servicemen, approximately 200 insurgents, and an estimated 600 Iraqi civilians.¹ Military observers have credited the intensity of the U.S. offensive in Fallujah with aggravating the negative Iraqi sentiment towards the coalition occupation and fueling an escalation of the insurgency.²

On February 7, 2007, the Committee on Oversight and Government Reform held a hearing on the performance and accountability of private military contractors in Iraq. The Committee heard testimony from family members of the four Blackwater USA security contractors who were ambushed and killed in Fallujah, as well as from Andrew Howell, the General Counsel of Blackwater USA.

The four family members to testify at the February 7 Committee hearing were Ms. Kristal Batalona, daughter of Wesley Batalona; Ms. Kathryn Helvenston-Wettengel, mother of Scott Helvenston; Ms. Rhonda Teague, wife of Michael Teague; and Ms. Danica Zovko; mother of Jerry Zovko. They testified that Blackwater had sent their loved ones on a mission without the equipment and preparation that they needed to succeed and that they were promised in the contract.³ Delivering their joint statement, Katie Helvenston-Wettengel told the Committee that “Blackwater did not provide our men with ... these protections.”⁴

On behalf of Blackwater, Mr. Howell disputed the charge that the Blackwater team had been under-equipped or poorly prepared. He told the Committee that “the vehicle they went out in that day was believed appropriate based on the mission and by everyone involved in the mission.” He also testified that the “mission they were on that day, at that

¹ Iraq Coalition Casualty Count, *Fatalities by Month: April 2004* (online at www.icasualties.org) (accessed Sep. 25, 2007); Keiler, Jonathan F., *Who Won the Battle of Fallujah?*, The Naval Institute: Proceedings (Jan. 2005); The Iraq Body Count, *No Longer Unknowable: Fallujah's April Civilian Toll is 600* (Oct. 26, 2004) (online at www.iraqbodycount.org/analysis/reference/press-releases/9/).

² See, e.g., *Changing the Army for Counterinsurgency Operations*, Military Review (Nov. 2005).

³ House Committee on Oversight and Government Reform, *Hearing on Iraqi Reconstruction: Reliance on Private Military Contractors and Status Report* (Feb. 7, 2007).

⁴ *Id.*

point in time, given the threat as it was known on the ground in Iraq, the norm was not to have a third person.”⁵

B. Documents Reviewed

The Committee has obtained from multiple sources documents and statements relating details of the ambush in Fallujah and the events leading to it. The information reviewed by the Committee staff includes:

- An April 2004 incident report entitled *Consolidated Report: The 31 March 2004 Fallujah Ambush*, that was prepared by the Coalition Provisional Authority (CPA) Counterintelligence Analysis.⁶ This report is based largely upon the eyewitness accounts of the drivers of the three trucks that were being escorted by Blackwater through Fallujah and includes a detailed description of the attack itself.⁷
- An April 2004 investigative report about the Fallujah incident prepared by the Naval Criminal Investigative Service (NCIS).⁸ NCIS investigators interviewed three civilian contractors who had met the Blackwater contractors while they were staying at Camp Fallujah the night before the ambush.⁹
- An undated, two-page internal Blackwater memorandum entitled, *Post-Incident Investigation: Ambush of BSC Team 31 Mar 04 in Fallujah*. This memorandum memorializes conversations that a Blackwater representative had with military and contractor personnel during a visit to Camp Fallujah on April 3, 2004.¹⁰
- An April 27, 2004, “Internal Report” by Blackwater reviewing the decisions made by Blackwater prior to, during, and after the March 31 incident. This report was prompted by a request from Blackwater USA Chairman Erik Prince.¹¹
- Contemporaneous statements and After Action Reports by Blackwater personnel about Blackwater’s operations in Iraq, including three reports by Tom Powell, Blackwater’s Baghdad operations manager,¹² a report by Justin McQuown, the

⁵ *Id.*

⁶ Coalition Provisional Authority, Counterintelligence Analysis and Requirements Cell, *Consolidated Report: The 31 March 2004 Fallujah Ambush* (Apr. 2004).

⁷ This document, as provided to the Committee, was missing seven listed attachments, which neither the Defense Department nor Blackwater have been able to locate.

⁸ Naval Criminal Investigative Service, *Report of Investigation: Al Fallujah, Iraq/Murder of Blackwater, Inc. Civilian Contractors* (Apr. 20, 2004).

⁹ *Id.* The NCIS report includes photographs of the wreckage of the two vehicles driven by the Blackwater personnel. However, according to the Defense Department, “it is the Department’s practice to retain custody of such sensitive photographic evidence.” The Defense Department therefore declined to provide the Committee with the photographs accompanying the report.

¹⁰ Blackwater engineer, *Blackwater USA, Post-Incident Investigation: Ambush of BSC Team 31 Mar 04 in Fallujah* (undated) (name of individual redacted for security purposes).

¹¹ Blackwater supervisor, *Fallujah Incident Internal Report* (Apr. 27, 2004) (name of individual redacted for security purposes).

¹² Tom Powell, Blackwater Security Consulting, AAR: *Blackwater Iraq ESS Effort* (undated); AAR *Investigation* (Apr. 3, 2004); *Final Report* (Mar. 31, 2004).

Blackwater project manager overseeing the work on the security contract,¹³ and statements by five other Blackwater security personnel who were conducting other assignments in Iraq and Kuwait on March 31, 2004.¹⁴

- An April 2004 incident report prepared by an official at Control Risks Group (CRG), the British private security firm that preceded Blackwater on the security contract.¹⁵ Accompanying this report were three attachments: (1) a copy of the plan to transfer security operations from CRG to Blackwater; (2) a second CRG report, written by the CRG operations manager on April 2, 2004; and (3) an undated “After Action Report” by Tom Powell.

In addition, the Committee staff conducted an interview of R. Timothy Tapp, a representative of Regency Hotel & Hospitality Company.¹⁶

II. AN ACCOUNT OF THE INCIDENT IN FALLUJAH

Although the ambush of the Blackwater personnel in Fallujah is one of the most infamous episodes in the Iraq War, little is publicly known about events leading up to the ambush and how the ambush itself transpired. As a result, there is considerable uncertainty about a key issue: Did reckless or irresponsible actions by Blackwater contribute to the deaths of the four contractors and the military and political setbacks that ensued after the Fallujah incident?

The documents obtained by the Committee and reviewed by the staff shed considerable light on this issue. They indicate that Blackwater executed the Fallujah mission without sufficient preparation, resources, and support for its personnel. According to the documents, Blackwater agreed to the Fallujah mission before its contract officially began, ignored multiple warnings about the risks involved, and did not provide its team with adequate equipment, intelligence, or directions. According to one account, the result was an “incident that could have been avoided or at least the risk minimized.”

A. Blackwater’s Preparation

The Blackwater personnel who were killed in Fallujah were operating under a complex series of contracts. Between the Blackwater personnel, who were themselves independent contractors with Blackwater, and the federal government, which was

¹³ Justin McQuown, Blackwater Security Consulting, *ESS After Action Review* (undated).

¹⁴Statement of Jason M. Shupe (Apr. 4, 2004), William K. Bailey, II (Apr. 8, 2004), Daniel A. Browne (undated), and Troy James Lewis (Apr. 4, 2004).

¹⁵ Project director, Control Risks Group, *Incident Report 31st March 2004* (Apr. 2004) (name of individual redacted for security purposes).

¹⁶ Interview of R. Timothy Tapp, Regency Hotel & Hospital Company by Committee staff (Mar. 31, 2007).

ultimately paying for their services, there were four distinct contracting companies. Blackwater was providing security services to ESS Support Services Worldwide (ESS) as a subcontractor to a Kuwaiti company, Regency Hotel & Hospital Company. ESS itself was acting as a subcontractor to two government prime contractors. ESS was a subcontractor under Kellogg, Brown & Root (KBR), then a subsidiary of Halliburton, which held the LOGCAP contract with the U.S. Army to provide logistical support such as meals, laundry, and living containers for soldiers in Iraq. ESS was also a subcontractor under the Fluor Corporation, which held a similar prime contract to provide logistical services to the U.S. Air Force.

The Fallujah incident took place in a transition period during which ESS's security operations were being transferred from Control Risks Group (CRG), a British security firm, to Blackwater. On March 12, 2004, the two companies had agreed on a handover procedure involving a four-week transition period, during which Blackwater personnel would learn from CRG's experience by riding along on CRG security missions and sitting in on CRG activities at a joint command center.¹⁷ At the time of the Fallujah ambush on March 31, 2004, the handover plan called for Blackwater team leaders to accompany CRG armed protection teams. These missions were to remain under CRG command until April 2, when CRG would depart and Blackwater would assume full responsibility for the missions.¹⁸

According to CRG's project manager, the handover plan "was never adhered to by Blackwater."¹⁹ Blackwater, he wrote, "did not use the opportunity to learn from the experience gained by CRG on this operation, this leading to inadequate preparation for taking on this task, unfortunately the outcome was the loss of four lives. ... I believe that this incident could have been avoided or at least the risk minimised."²⁰

According to multiple contemporaneous accounts by Blackwater personnel, Blackwater was not fully equipped during the time period leading up to the Fallujah incident. Timothy Tapp of Regency Hotel & Hospitality told the Committee that Blackwater was still in the mobilization period of the contract and was not set to begin security operations until April 2004. According to Mr. Tapp, Regency was still in the process of obtaining the equipment that Blackwater was supposed to use under the ESS contract at the time of the Fallujah incident.²¹

One problem was the lack of appropriately armored vehicles. According to Mr. Tapp, the contract required that Blackwater use vehicles with an armored "protection kit," consisting of an armored shell protecting the rear compartment of the vehicle, but as of March 31, such vehicles had not yet been procured.²² Blackwater's own internal report confirms this point. It quotes a Blackwater employee who states that the ESS contract

¹⁷ Control Risks Group, *Contract Drawdown ESS Compass – Kuwait/Iraq* (Mar. 15, 2004).

¹⁸ *Id.*

¹⁹ Control Risks Group, *supra* note 15.

²⁰ *Id.*

²¹ Interview of R. Timothy Tapp, *supra* note 16.

²² *Id.*

“paid for armor vehicles,” but that “management in North Carolina ... made the decision to go with soft skin due to the cost.”²³

Several reports by Blackwater personnel in Baghdad and Kuwait indicate that Blackwater never intended to armor its vehicles, which included Honda Pilot SUVs, but instead planned to force Regency into purchasing new vehicles or risk losing its role on the ESS contract. According to Justin McQuown, the Blackwater project manager for the contract at the time of the March 31 incident, the former project manager, John Potter, told Blackwater employees to “string along Tim Tapp with the vehicle situation, instructing personnel to ‘Keep wasting time on the Hondas, and hopefully that will ... force Regency into non-compliance.’”²⁴ A second Blackwater employee reported that he was told to “string these guys along and run this Honda thing into the ground” because “if we stalled long enough they (Regency) would have no choice but to buy us armored cars, or they would default on the contract, and ESS might go directly to Blackwater for security.”²⁵

The vehicles actually used by Blackwater teams on March 31, Mitsubishi Pajeros, were owned by ESS and were being used provisionally until new vehicles could be purchased. Mr. Tapp stated that although these vehicles included an armor plate behind the back seat, that level of protection was below the armor protection kit called for by the contract.²⁶

Mr. Tapp also reported that as of March 31, Regency had not yet supplied Blackwater with Squad Automatic Weapons (SAWs) or equivalent heavy machine guns as contemplated by the contract.²⁷

Blackwater’s internal report documents other lapses, acknowledging that the mission “[h]ad no time to perform proper mission planning,” and “[w]as without proper maps of the city.”²⁸

Blackwater’s lack of readiness for missions was made clear in an urgent e-mail sent on March 30, 2004, the day before the Fallujah incident, from Tom Powell, Blackwater’s Baghdad operations manager. This e-mail had the subject line “Ground Truth” and was sent to Blackwater managers, including the Director of Blackwater Security Consulting at Blackwater headquarters and the project manager in Kuwait. In the e-mail, Mr. Powell wrote:

I need new vehicles. I need new COMs, I need ammo, I need Glocks and M4s. All the client body armor you got, guys are in the field with borrowed stuff and in harm’s way. I’ve requested hard cars from the beginning and, from my understanding, an order is still pending.²⁹

²³ Blackwater supervisor, *supra* note 11.

²⁴ McQuown, *supra* note 13.

²⁵ Statement of Blackwater supervisor (Apr. 9, 2004) (emphasis in original) (name of individual redacted for security purposes).

²⁶ Interview of R. Timothy Tapp, *supra* note 16.

²⁷ *Id.*

²⁸ Blackwater supervisor, *supra* note 11.

²⁹ E-mail from Tom Powell to Justin McQuown, Mike Rush, and Brian Berrey (Mar. 30, 2004).

Mr. Powell concluded the e-mail with this observation: “Ground truth is appalling.”³⁰

B. Warnings about the Fallujah Mission

When Blackwater agreed to conduct the Fallujah mission, Blackwater ignored warnings from Control Risks Group about the safety risks associated with the mission. According to the CRG incident report, “[t]his task had been previously requested on two occasions and was rejected on security and safety issues by CRG ops in Iraq. ... Blackwater were informed that we had turned this task down and the reasons why were given.”³¹

Specifically, CRG’s operations manager in Iraq for the ESS contract wrote in an April 2, 2004, report attached to the CRG incident report:

CRG Ops Manager was approached on two separate occasions by the ESS Construction Project Director who asked if a team could move three empty flatbed trucks from Taji to the ESS location at Fallujah. ... This was refused both times due to the obvious risk of transporting slow-moving loads through such a volatile area.³²

According to CRG’s operations manager, the contract with ESS was for the “movement and protection of ESS personnel, and that convoy escort should be requested by the military.”³³ CRG did not believe that it should take on dangerous missions not contemplated by its contract.

Blackwater rejected the cautious approach of CRG and dispatched its “white team” to convoy ESS’s flatbed trucks from Camp Taji to Camp Ridgeway on March 30, 2004. In his undated After Action Report, Tom Powell, the Baghdad operations manager, explained his decision to grant ESS’s convoy request:

The operations center was asked directly by ESS management to provide escort protection for his men and flatbeds. Keeping in good faith as a security provider and knowing the heighten [*sic*] security state factors that Fallujah was in, a decision was made by me to move only 3 mission essential trucks.³⁴

Blackwater’s internal report concluded that Mr. Powell “was trying to make Blackwater look good.”³⁵

³⁰ *Id.*

³¹ Control Risks Group, *supra*, note 15.

³² Control Risks Group operations manager, *Post-Incident Report: Blackwater Ambush* (Apr. 2, 2004) (name of individual redacted for security purposes).

³³ *Id.*

³⁴ Tom Powell, Blackwater Security Consulting, *AAR: Blackwater Iraq ESS Effort* (undated).

³⁵ Blackwater supervisor, *supra* note 11.

C. Staffing for the Fallujah Mission

Blackwater's internal report describes how the company reduced the number of security personnel assigned to the Fallujah mission. According to the report, Mr. Powell cut the team's size from six operators to four immediately before it departed on its mission on March 30. He acknowledged that he had reassigned two team members to "assist in other duties at the Blackwater House."³⁶ Another Blackwater employee reported that the personnel were held behind at headquarters in order to perform administrative tasks.³⁷

Another Blackwater team operating that day faced similar personnel cuts, which they described upon their return to Baghdad. According to their statements, they were sent on a mission on March 31 to pick up an ESS official at the Jordanian border and escort him into Iraq. They reported that the Blackwater teams were supposed to consist of six security personnel in two vehicles to allow each vehicle to have a rear gunner to defend against attacks.³⁸ But on this day, their team was cut back to four people. The team protested, but in the end they agreed to carry out the mission with only four members because they were threatened with losing their jobs.³⁹

This Blackwater team also objected to the assignment because its members had just arrived in Iraq and were suffering from jet-lag, were not familiar with the route and had not been provided with maps, and had not even had a chance to calibrate their weapons' sights.⁴⁰

One of them stated:

Why did we all want to kill [the Blackwater operations manager]? He had sent us on this f**ked mission and over our protest. We weren't sighted in, we had no maps, we had not enough sleep, he was taking 2 of our guys cutting off ou[r] field of fire. As we went over these things we [k]new that the other team had the same complaints. They too had their people cut. ... Why were they sent into the hottest zone in Iraq in unarmored, under powered vehicles to protect a truck? They had no way to protect their flanks because they only had four guys.⁴¹

This second Blackwater team reported that the Blackwater operations manager had also instructed it to drive through Fallujah on its way to the Jordanian border.⁴² In that team's case, it made the turn off to Fallujah as directed, but then chose to get back on the highway because, according to its global positioning device, that road seemed to head more directly to the Jordanian border.⁴³

³⁶ *Id.*

³⁷ Statement of William K. Bailey, II (Apr. 8, 2004).

³⁸ Statement of Jason M. Shupe (Apr. 4, 2004).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Statement of Daniel A. Browne (undated) (expletives redacted).

⁴² *Id.*

⁴³ *Id.*

D. Camp Fallujah

After leaving Camp Taji at 3:00 p.m. on March 30, 2004, the Blackwater convoy made its way to Camp Fallujah based on a mistaken belief that it was their intended destination.⁴⁴ In fact, the convoy was supposed to head for Camp Ridgeway, another base in the vicinity of the city of Fallujah. It is unclear how Blackwater failed to identify the proper destination.

According to civilian contractors who were working at Camp Fallujah for KBR, the Blackwater convoy arrived at Camp Fallujah and determined that there was no ESS presence there. After the KBR contractors gave the Blackwater team directions, the convoy set off for Camp Ridgeway. However, the Blackwater team was soon prevented from proceeding further by a military checkpoint and within an hour returned to Camp Fallujah for the night. The Blackwater team departed again for Camp Ridgeway early the next morning.⁴⁵

According to the KBR contractors, the Blackwater personnel seemed disorganized and unaware of the potential risk in traveling through the city of Fallujah. One of the KBR contractors said he felt that “the mission that they were on was hurriedly put together and that they were not prepared.”⁴⁶

The KBR contractors reported giving the Blackwater personnel multiple warnings to avoid driving directly through Fallujah and informing them that there were ambushes occurring there.⁴⁷ After one warning, one of the Blackwater personnel said that they would not go through Fallujah.⁴⁸ After a different warning, however, the response of the Blackwater personnel was that “they would see how it went when they got out there.”⁴⁹ According to one KBR contractor, “It almost felt like they were being pressured to get there and get there as quickly as possible.”⁵⁰

E. The Ambush

When the Blackwater operators left Camp Fallujah, they were traveling in Mitsubishi Pajeros with steel plates fastened to the back seats. According to the KBR contractors, their weaponry consisted of mini M-4 rifles and semiautomatic pistols. The team had global positioning devices and at least one satellite phone and unspecified maps.⁵¹

According to Mr. Powell, he last heard from the Blackwater team at 9:00 a.m. on March 31 when they informed him that “they would make the route call once they spoke with

⁴⁴ Coalition Provisional Authority, *supra* note 6.

⁴⁵ Naval Criminal Investigative Service, *supra* note 8.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

the Check point.”⁵² He noted that “it was unclear if this was a[n] Iraqi checkpoint or US marine.”⁵³ Although Mr. Powell reported that this was his final communication from the Blackwater team, the CRG operations manager’s report indicates that Blackwater’s operations manager was told in the team’s last transmission that it was at the military checkpoint and had decided to drive through Fallujah rather than around it.⁵⁴ Mr. Powell was aware that Fallujah was a “hot spot,” but apparently did not overrule that decision.⁵⁵

In describing the events of the morning, the truck drivers did not identify a U.S. Marines checkpoint along the route. According to the truck drivers, the convoy went through a checkpoint manned by Iraqi Civil Defense Corps (ICDC) and was simply waved through.⁵⁶ It is not clear whether this was the checkpoint at which the Blackwater team planned to make a route decision.

According to a U.S. military source who spoke to Blackwater, the Blackwater team had arranged to meet the ICDC outside of Fallujah, and the ICDC had advised the team that it could guide it along a shorter route to its destination through Fallujah. According to this source, the ICDC led the team into the ambush, facilitated blocking positions to prevent the team’s escape, and then disappeared.⁵⁷ The CPA report, however, contradicts this account, stating that the evidence does not support the claim that the ICDC participated in the ambush, either by escorting the convoy into Fallujah or by using its own vehicle to block the convoy from escaping the ambush.⁵⁸

Upon entering the city of Fallujah, the convoy was stopped at an Iraqi police checkpoint. The Blackwater personnel in the lead vehicle, occupied by Wes Batalona (driver) and Scott Helvenston (passenger), spoke with an officer and then were allowed to proceed. Only several blocks further down the road, the traffic again stopped. At the time, the convoy had separated into two lanes of traffic, with the lead Blackwater vehicle ahead of two of the convoy trucks in the left lane. In the lane to their right, the third convoy truck was ahead of the rear Blackwater vehicle, occupied by Mike Teague (driver) and Jerry Zovko (passenger).⁵⁹ According to one account, three vehicles, a dark Mercedes 300, a tan Opel sedan, and a 1990 white pickup truck with a double cab, had assisted in setting a roadblock, presumably ahead of the Blackwater vehicles.⁶⁰

While at a standstill in traffic, the lead Blackwater vehicle was approached by four to five boys for whom the security personnel rolled down their windows. One of them spoke briefly with Mr. Helvenston. Two of the boys then walked toward a large group of people and spoke to two men. At that point, the crowd seemed to focus its attention on the lead Blackwater vehicle. After several minutes, the Blackwater escort vehicles were attacked by insurgents bearing AK-47s. The initial shots apparently were fired at the rear

⁵² Powell, *supra* note 34.

⁵³ *Id.*

⁵⁴ Control Risks Group operations manager, *supra* note 32.

⁵⁵ Shupe, *supra* note 38.

⁵⁶ Coalition Provisional Authority, *supra* note 6.

⁵⁷ Blackwater engineer, *supra* note 10.

⁵⁸ Coalition Provisional Authority, *supra* note 6.

⁵⁹ *Id.*

⁶⁰ Blackwater engineer, *supra* note 10.

Blackwater vehicle. After the firing began, the lead Blackwater escort vehicle attempted to make a U-turn across the median but was blocked by the oncoming traffic.⁶¹ By one account, the vehicle blew out a tire in the process.⁶² This vehicle also came under attack by small arms fire. One insurgent, who had fired upon the vehicle from the rear, approached the stopped vehicle on the driver's side and fired four or five shots directly at the driver. The truck drivers indicated that there were at least five insurgents, and probably more, involved in the attack. At least one of the assailants was carrying a video camera along with his AK-47.⁶³ According to the CPA report, contrary to initial accounts, heavier weapons, such as rocket-propelled grenades (RPGs), were not used in the attack.⁶⁴

The available evidence, including bullet holes found in rear hatch doors and rear side doors, indicates that the attack was initiated from the rear blind spots of the vehicles, with fire initially focusing on the passengers, then on the drivers. Point blank shots were then fired through the windows. There was no evidence of return fire by the Blackwater personnel.⁶⁵

The truck drivers were able to drive out of the area. As they sought to exit Fallujah, they passed the site of the ambush again and witnessed both Blackwater vehicles on fire and a crowd of people chanting and yelling.⁶⁶ Although one of the trucks was struck by a bullet during the attack — as shown in pictures taken when they had returned to base — the truck drivers were apparently not targeted.⁶⁷ The CPA report surmises that the insurgents may not have realized that they were part of the same convoy as the Blackwater vehicles.⁶⁸

F. Aftermath of the Incident

Statements from Blackwater personnel reveal a chaotic situation at its Baghdad headquarters in the immediate aftermath of the incident. After scenes of the violence were broadcast on CNN — approximately five hours after the attack had transpired — there was brief consideration of a plan to mount a Quick Reaction Force of the five remaining personnel in Baghdad to go into Fallujah to extract the team, but the plan was never executed.⁶⁹ After hearing about the incident, Blackwater managers also attempted to establish which personnel had been on the team in Fallujah. For some time, they were under the mistaken impression that a fifth Blackwater operator had been on the mission.⁷⁰

⁶¹ Coalition Provisional Authority, *supra* note 6.

⁶² Control Risks Group operations manager, *supra* note 32.

⁶³ Coalition Provisional Authority, *supra* note 6.

⁶⁴ *Id.*

⁶⁵ Blackwater engineer, *supra* note 10.

⁶⁶ Coalition Provisional Authority, *supra* note 6.

⁶⁷ E-mail from Tom Powell to Steven Capace (Apr. 6, 2004).

⁶⁸ Coalition Provisional Authority, *supra* note 6.

⁶⁹ Statement of Troy James Lewis, (Apr. 4, 2004).

⁷⁰ Blackwater supervisor, *supra* note 25.

The following day, Blackwater Chairman Erik Prince called Blackwater's Baghdad operation and directed it "to perform an immediate internal audit and to keep the information close."⁷¹ The statements of many Blackwater personnel reveal strong opinions that the Blackwater organization in Baghdad was chaotic and staffed by unqualified individuals.

One Blackwater employee described it as "flat out a sloppy f**king operation," and further stated:

The caliber of most of the people here is not where it needs to be. More training, more discipline, and a more selective screening process are needed. ... Some of these lazy f**ks care about one thing, money. I suggest if you continue to employ this sort of trash, that you develop a way to use "their money" as a way to get them to do some f**king work. This, "I'm not in the military any more, I can do as I please/ I know they can't afford to loose [*sic*] more guys" bulls**t, is a non-starter.⁷²

The author of Blackwater's internal report referred to the "complete lack of support" that Blackwater operators in Baghdad "have gotten from the head shed in NC" and wrote to a Blackwater program manager:

"I am really disappointed in BSC right now. ... I see a ship about to sink if the head shed doesn't make some changes to get qualified people in the office."⁷³

The program manager for Blackwater Security Consulting, responded: "Your [*sic*] are right though, those guys seem to be the victims of poor mission planning, now where that buck stops, I don't know yet."⁷⁴

III. IMPEDIMENTS TO THE COMMITTEE INVESTIGATION

The Committee's investigation into the Fallujah incident was delayed and impeded by Blackwater's recalcitrance and the company's questionable claims that it could not make available to the Committee information about the Fallujah incident.

At the outset of the investigation, Blackwater made repeated claims that its internal documents relating to the Fallujah incident were classified and therefore could not be

⁷¹ Blackwater supervisor, *supra* note 11.

⁷² Blackwater supervisor, *supra* note 25 (emphasis in original) (expletives redacted).

⁷³ E-mail from Blackwater supervisor to Blackwater program manager (Apr. 2, 2004) (names of individuals redacted for security purposes).

⁷⁴ E-mail from Blackwater program manager to Blackwater supervisor (Apr. 2, 2004) (names of individuals redacted for security purposes).

released to the Committee. At the February 7 hearing, Andrew Howell asserted that incident reports about the Fallujah incident were classified by the government and thus not available for release to the Committee:

MR. HOWELL: Sir, some of the facts of that day were classified by the government and we are not permitted to discuss those.

REP. WELCH: Well, let me ask you this. This committee has requested copies of that report or reports, correct?

MR. HOWELL: Yes, sir.

REP. WELCH: Will you turn over to this committee those reports?

MR. HOWELL: Sir, we cannot turn over classified information. It would be a criminal act.⁷⁵

Blackwater's February 16 written submission for the hearing record reinforced the impression that Blackwater's investigative documents had been classified by the government. In the submission, Blackwater stated:

We understand the Committee has the facilities and necessary clearances to hold classified information. As a contractor, however, Blackwater lacks unilateral authority to provide the Committee with any classified incident reports (or any other classified information). Blackwater must obtain release authority from the government agency that has classification jurisdiction over the information.⁷⁶

In subsequent discussions, Blackwater counsel informed Committee staff that Blackwater had possession of a report about the Fallujah incident prepared by a governmental authority, but could not produce it because it had concerns about whether the document was classified by the Defense Department.

In fact, Committee staff learned that none of the documents about the Fallujah incident were classified. On March 22, Defense Department counsel, in response to an inquiry from Chairman Waxman, informed Committee staff that they did not believe that the incident report described by Blackwater was classified.⁷⁷ In an April 11 meeting with Committee staff, Blackwater counsel also revealed that — contrary to Mr. Howell's testimony and written submission to the Committee — Blackwater's internal documents about the incident were not classified either.⁷⁸

Blackwater also made multiple attempts to have the Defense Department classify documents that had been previously unclassified. In an April 21 meeting, Joseph

⁷⁵ House Committee on Oversight and Government Reform, *supra* note 3.

⁷⁶ Responses to Questions for the Record, Andrew Howell, General Counsel, Blackwater USA (Feb. 16, 2007).

⁷⁷ Meeting between Christian P. Marrone, Director, Office of Legislative Counsel, Department of Defense, and Oversight Committee staff (Mar. 22, 2007).

⁷⁸ Meeting between Beth Nolan and David C. Hammond, Crowell & Moring LLP, and Committee staff (Apr. 11, 2007).

Schmitz, Blackwater's Chief Operating Officer, acknowledged to Committee staff that rather than immediately produce the report by the Coalition Provisional Authority to the Committee, he instead hand-delivered it to Defense Department and requested that it be reviewed to determine whether it should be classified.⁷⁹ He took these steps even though the report was marked "unclassified," no portion of it was marked as classified, and neither Blackwater nor its outside counsel had stored it in a classified manner.⁸⁰ On April 20, the Defense Department produced the report to the Committee and confirmed that it did not consider this document to be classified.⁸¹

On June 20, 2007, Mr. Schmitz again submitted a document relating to the Fallujah incident, in this case an internal Blackwater memorandum, to the Defense Department and requested that it be reviewed for classification purposes. The Department informed Blackwater that the document, too, was not classified.⁸²

As the investigation proceeded, Blackwater also used questionable assertions of privilege, in particular the attorney-client privilege, to withhold 15 documents from the Committee. On May 7, 2007, Chairman Waxman wrote to Blackwater requesting the 15 documents (out of 41 withheld on privilege grounds), which appeared to be contemporaneous, factual accounts by individuals, not documents written by or to attorneys.⁸³ Although the Chairman's letter noted that Congress is not bound to recognize the attorney-client privilege, Blackwater refused to provide the documents.⁸⁴

On August 3, the Committee issued a subpoena for the documents, but Blackwater again refused to comply.⁸⁵ It was only after the Committee threatened a vote to hold Blackwater in contempt of Congress that Blackwater produced the subpoenaed documents.⁸⁶

There are serious questions about the appropriateness of Blackwater's privilege claims. Those claims were based on the premise that documents were held in confidence by the company and on Blackwater's assertion that they were created on the instructions of Blackwater counsel in anticipation of possible litigation. However, some of the documents were dispersed outside the company. One of the documents for which Blackwater claimed attorney-client privilege, for example, was provided separately to the Committee by Control Risks Group, the security contractor company that provided security services to ESS immediately prior to Blackwater.⁸⁷ Moreover, there is little or

⁷⁹ Meeting between Joseph Schmitz, Blackwater USA, and Oversight Committee Staff (Apr. 21, 2007).

⁸⁰ *Id.*

⁸¹ Letter from Robert L. Wilkie, Assistant Secretary of Defense for Legislative Affairs, to Henry A. Waxman, Chairman (Apr. 20, 2007).

⁸² Letter from Robert E. Easton, Department of Defense, Office of General Counsel, to Joseph E. Schmitz, Esq., Prince Group (July 16, 2007).

⁸³ Letter from Henry A. Waxman, Chairman, to Erik Prince, Chairman, Blackwater USA (May 7, 2007).

⁸⁴ Letter from Beth Nolan, Crowell & Moring LLP, to Henry A. Waxman, Chairman (May 15, 2007).

⁸⁵ Committee on Oversight and Government Reform, Subpoena of Erik Prince or Custodian of Records (Aug. 3, 2007).

⁸⁶ Letter from Beth Nolan, Crowell & Moring LLP, to Henry A. Waxman, Chairman (Aug. 28, 2007).

⁸⁷ Powell, *supra* note 34.

no evidence that the purportedly privileged documents were prepared at the direction of company counsel. One of the documents begins: “I have not submitted a statement, nor have I been asked to submit a statement about the events on and surrounding the 31MAR04 tragedy.”⁸⁸ An e-mail produced by Blackwater to the Committee reveals that Blackwater’s legal team initiated a “privileged” internal investigation only after several of the withheld witness statements had already been prepared as part of a separate internal inquiry.⁸⁹

IV. CONCLUSION

On March 31, 2004, four Blackwater personnel were killed by insurgents in Fallujah, Iraq, and their bodies desecrated. Since then, there have been many unanswered questions about Blackwater’s role in triggering a major incident in the Iraq War with multiple adverse consequences for U.S. interests.

The documents reviewed by the Committee indicate that Blackwater embarked on this mission without sufficient preparation, resources, and support for its personnel. According to these documents, Blackwater took on the Fallujah mission before its contract officially began, and after being warned by its predecessor that it was too dangerous. It sent its team on the mission without properly armored vehicles and machine guns. And it cut the standard mission team by two members, thus depriving them of rear gunners. Blackwater took all of these actions before sending the team into an area known to be an insurgent stronghold. These actions raise serious questions about the consequences of engaging private, for-profit entities to engage in essentially military operations in a war zone.

⁸⁸ Blackwater supervisor, *supra* note 25.

⁸⁹ E-mail from Steven Capace to Mike Rush (Apr. 5, 2004).