This scenario is loosely based on an incident that news media have reported occurred in Najaf in April, 2004.¹

The Department of State recently entered into a contract with Firestone Security Services to guard key sites in Iraq. Firestone Security Services is a U.S. corporation. Alan Brady and Chris Duncan, both U.S. citizens, are employees of Firestone posted to Iraq. As specified in their contract, they received two weeks of training in weapons handling, force protection, and close quarter battle, among other skills. They also both received copies of the US CENTCOM Rules for the Use of Force by Contracted Security in Iraq.² They then flew to Iraq, where they were tasked with providing force protection at Camp Hollaway.

Three weeks ago, U.S. Marine Cpl. Richard White arrived at Camp Hollaway to install communications equipment. White, a twenty-five year old native of Kansas City, Missouri, was deployed to Iraq as a Defense Messaging System administrator. When he arrived at the front gate of the camp, White noticed that a small group of Iraqi protesters were out in the streets. He also saw that there were numerous coalition soldiers in riot gear near the front gate. White and his three colleagues met with the local occupation commander, a Spanish official, and then proceeded to the roof of the building to install the communications equipment. About twenty-minutes later, White had finished his task, and tried to catch a quick, ten-minute nap in the back of his truck before lunch.

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² A copy of the CENTCOM rules is reprinted in the briefing book at Tab 27. Rule 4 provides:
   “GRADUATED FORCE: You will use the reasonable amount of force necessary. The following are some techniques you can use, if their use will not unnecessarily endanger you or others:
   a. SHOUT: Verbal warnings to HALT in native language.
   b. SHOVE: physically restrain, block access, or detain.
   c. SHOW: your weapon and demonstrate intent to use it.
   d. SHOOT: to remove the threat only where necessary.”
But a few minutes later, White’s colleague woke him up to tell him the equipment was not working properly. White got dressed, grabbed his weapon, and was about to get out of the truck when he heard and AK-47 rifle fire a few rounds out in the street in front of the base. White quickly grabbed his gear and headed into the building, eventually making it to the roof, where he joined Brady, Duncan, and six other Firestone employees and Salvadoran coalition troops. White assumed a position on the roof and readied his heavy M249 squad automatic weapon. After a few seconds, he saw people got out of a truck and start running. There were as many as a thousand people massing outside the camp. White saw one of the Iraqis drop into a prone position and fire several rounds at the base. White started yelling that he had one in his sights and asked if he could engage, but there was no commanding officer on hand from the U.S. military. Brady gave White the call to commence firing. White then fired a short burst of 5.56 mm rounds, and he saw a man fall to the ground.

During the course of the next four hours, several active-duty military police officers joined White and the Firestone security guards on the roof. So did some of the Salvadoran troops. All of them fired into the crowd, and Iraqis fired back. At one point, Iraqi demonstrators overwhelmed a vehicle carrying Salvadoran soldiers outside the camp, and seized and executed one of the Salvadoran soldiers on the spot. Two of the other soldiers were seen being led by armed men into a mosque. The exchange of fire continued. White was shot in the shoulder and helped bandage a Firestone employee’s wound.

Throughout the day, Brady and the other Firestone employees tried to reach U.S. military commanders but were unsuccessful. Brady and Duncan eventually reached Firestone’s headquarters in Baghdad, and told Firestone that they were running out of ammunition. Within moments, U.S. civilian authorities in Baghdad had authorized Firestone to send three helicopters to bring in more ammunition. By the end of the day, Firestone employees had fired thousands of rounds into the crowd.

Eventually, U.S. Special Forces moved into the city and the crowd was dispersed. Approximately 20-30 Iraqis were killed, and two hundred wounded.

The scenario is designed to raise the following issues:

(1) What are the operational and coordination issues that arise when security contractors fight alongside U.S. troops?

(2) What degree of control do commanders exercise over security contractors on the ground? To whom do the contractors report? What is the role of contract monitors?

(3) Can the role played by Firestone personnel be distinguished from that of uniformed forces?

(4) What type of training do security contractors typically receive? Is it comparable, better, or worse, than that of uniformed troops? Does it typically include training in the appropriate limits on the use of force?
(5) Might more specific contract drafting (such as more detailed training requirements or terms providing for the authority of commanders in some circumstances) address some of these issues?
Hypothetical Problem-Solving Scenario#2

The scenario is loosely based on the case of Daniel Passaro, the one instance to date in which a U.S. federal court has convicted a civilian contractor for committing abuses in Iraq or Afghanistan. 3

The Department of Defense recently entered into a contract with Humint Services Security, Inc. (HSS), under which HSS agreed to provide interrogators and translators to participate in intelligence operations in Iraq. HSS is a U.S. corporation.

Two weeks ago, U.S. soldiers captured Yussef Ibrahim, an Iraqi farmer suspected in rocket attacks on a military outpost, and brought him to a U.S. detention facility in southern Iraq, manned by soldiers from the Army’s 986th Division. According to soldiers at the facility, Daniel Shaw, a U.S. citizen employee of HSS, ordered the soldiers to deny Ibrahim sleep and limit his access to food and water. Shaw then subjected him to two consecutive nights of interrogation and beatings. After striking Ibrahim in the shins, elbows and wrists, Shaw kicked the detainee in the groin hard enough to lift him off the ground and jabbed him in the abdomen with a 2-foot long flashlight, all in the view of soldiers at the facility. Others also witnessed the beatings, including Amartya Patel, a CIA contractor and citizen of Fiji working at the facility, and Brad King, another U.S. citizen HSS employee who translated for Shaw throughout the incident.

At one point, Patel held a rifle, and Staff Sgt. Drew Wilson held Shaw’s alcoholic drink while Shaw hit Ibrahim with the flashlight. Shaw also subjected Ibrahim to the “iron chair,” a position in which a detainee has his back against the wall and his legs bent as if sitting in a chair. Shaw told the soldiers that they could not hit Shaw but that he could.

On his fourth day in custody, soldiers brought a doctor to see Ibrahim. The doctor could not save him, however, and he died. Throughout the beatings, he repeatedly denied any involvement in the rocket attacks.

Shortly after Ibrahim’s death, Wilson contacted Army Criminal Investigation Command to report the abuse. Wilson told the investigator, Mike Johnson, about the event; other soldiers on the scene were more reticent to talk. Ibrahim’s family refused to allow an autopsy for religious reasons.

The scenario is designed to raise the following issues:

(1) Who should be in charge of determining whether Shaw should be punished for his treatment of the prisoner? Shaw’s company? The facility commander? Army investigators? Justice Department investigators?

(2) What responsibility did the Army have, as operators of the prison, to supervise the conduct of Shaw when he was inside the facility conducting interrogations?

(3) Should the UCMJ apply to contractors? Assuming the UCMJ does apply, what categories of contractors (if any) ought to fall within the UCMJ? Should non-citizens, for example, be subject to military trial? CIA contractors? Those who do not use force, such as translators?

(4) Assume that Shaw previously served as an Army Ranger, had full training, was discharged only recently, and now has army reserve status. Would this affect your analysis of whether UCMJ should apply?

(5) In the case of overlapping jurisdiction, how might authorities choose between the UCMJ and MEJA/SMTJ?

(6) Who would investigate such cases?

(7) What are the evidentiary hurdles at issue in trials for such cases under the UCMJ? MEJA/SMTJ?