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HOLDING BLACKWATER ACCOUNTABLE: PRIVATE SECURITY CONTRACTORS AND THE PROTECTIONS OF USE IMMUNITY

Emily Kelly*

Abstract: Private security contractors who commit crimes abroad enjoy extensive protection from prosecution. When private security contractors discharge weapons without authorization, the U.S. State Department immediately compels them to make official statements regarding the incidents. The statements are made under the threat of job loss, but are subsequently protected by immunity. The U.S. District Court for the District of Columbia’s dismissal of United States v. Slough highlights the difficulties prosecutors face in obtaining untainted evidence as a result of these protected statements. The Department of Justice has no control over grants of immunity to private security contractors and they face substantial obstacles in obtaining independent untainted evidence in war zones. As a result, prosecutors in Slough could not gather sufficient untainted evidence to hold employees of the private security firm Blackwater responsible for the homicide of fourteen Iraqi civilians. This Comment suggests the State Department should adopt procedural changes to avoid future challenges associated with compelled statements and allow successful prosecutions of private security contractors.

Introduction

On December 31, 2009, the U.S. District Court for the District of Columbia dismissed manslaughter charges against five security guards formerly employed by Blackwater Security Consulting in United States v. Slough. The charges stemmed from a September 16, 2007 shooting in Baghdad, Iraq that left fourteen Iraqi citizens dead and twenty injured. In his ninety-page opinion, Judge Ricardo M. Urbina scolded Depart-

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* Emily Kelly is the Executive Comment Editor for the Boston College International & Comparative Law Review.
1 Dana Hedgpeth, Blackwater Sheds Name, Shifts Focus, Wash. Post, Feb. 14, 2009, at D1. Blackwater has since changed its name to “Xe” in an effort to rebrand after their image was tarnished in the September 2007 shootings. Id.
ment of Justice (DOJ) prosecutors for misusing statements that State Department investigators coerced from the defendants under the threat of job loss. Judge Urbina’s recognition of the extensive legal protection for compelled statements underscores the difficulties in obtaining admissible evidence against private security contractors who commit crimes in war zones.

The dismissal also placed further strain on relations between the United States and Iraq, sparking outrage from the victims and their families, and cementing Iraqi distrust of the democratic principles embodied in the American judicial system. On April 22, 2011, the U.S. Court of Appeals for the District of Columbia Circuit reignited the controversy when it issued a decision correcting the District Court’s interpretation of the law and remanding the case for further examination.

Part I of this Comment provides background information about the shooting, subsequent investigation, and prosecution of the Blackwater guards. This Part also presents an overview of the district court and appellate court decisions. Part II focuses on the jurisprudence of compelled statements in Garrity v. New Jersey and Kastigar v. United States, and the judicial protections it provides. Part II considers the evidentiary challenges associated with the common application of Garrity and Kastigar to cases of police misconduct. Part III analyzes in more detail the practice of eliciting compelled statements from private security contractors working in war zones. In particular, this Part highlights the difficulty prosecutors face in building a successful case against security contractors who have provided immunized statements.

I. Background

A. The Events in Nisur Square and Protected Statements

On September 16, 2007, a car bomb exploded near a Baghdad compound where a U.S. diplomat was meeting with Iraqi officials. A Blackwater Tactical Support Team, comprised of the five defendants and fourteen other Blackwater contractors, was dispatched to assist with

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7 See United States v. Slough (Slough II), 641 F.3d 544, 547 (D.C. Cir. 2011).
8 Slough II, 641 F.3d 544, 547 (D.C. Cir. 2011).
the diplomat’s evacuation.\textsuperscript{9} Although the nature of their mission was defensive, the defendants opened fire shortly after entering the Nisur Square traffic circle, killing fourteen unarmed civilians and wounding at least twenty others.\textsuperscript{10} In response to the shooting, Iraq’s Interior Minister ordered all Blackwater employees to leave the country immediately, citing the Nisur shooting as the final straw in a series of fatal incidents involving Iraqi citizens and foreign government contractors.\textsuperscript{11}

State Department procedures required that all Blackwater employees involved in any shooting incident submit to an immediate debriefing by the State Department’s Diplomatic Security Services (DSS).\textsuperscript{12} The procedures also required that any employee who discharged a weapon prepare a written statement on a template provided by the State Department.\textsuperscript{13} The template included a provision known as a “\textit{Garrity warning}” that required the employee to make a statement or face termination, but provided that any statement so made could not be used against the employee in a criminal proceeding.\textsuperscript{14} The defendants completed their interviews with DSS investigators hours after the shooting and submitted their written statements on September 18, 2007.\textsuperscript{15} In their interviews and written statements, the defendants maintained that they had opened fire in response to an insurgent attack.\textsuperscript{16} The shooting and subsequent investigation attracted global media attention, and portions of the defendants’ interviews and written statements began to appear in news reports.\textsuperscript{17}

At the direction of the State Department, the Federal Bureau of Investigation (FBI) launched an investigation in Baghdad and uncovered evidence showing that the defendants had fired their weapons at the crowd of civilians without provocation.\textsuperscript{18} When the government first presented the case to a grand jury in November 2007, key witnesses admitted to reading news reports featuring content from the defen-

\begin{itemize}
\item \textsuperscript{9} See id. at 548; Press Release, Department of Justice, supra note 3.
\item \textsuperscript{10} See Press Release, Department of Justice, supra note 5.
\item \textsuperscript{12} United States v. Slough (\textit{Slough I}), 677 F. Supp. 2d 112, 118 (D.D.C. 2009).
\item \textsuperscript{13} Id.
\item \textsuperscript{14} Garrity v. New Jersey, 385 U.S. 493, 500 (1967); \textit{Slough I}, 677 F. Supp. 2d at 119.
\item \textsuperscript{15} \textit{Slough I}, 677 F. Supp. 2d at 119.
\item \textsuperscript{16} See id. at 117–18.
\item \textsuperscript{17} See, e.g., Sudarsan Raghavan & Karen DeYoung, \textit{5 Witnesses Insist Iraqis Didn’t Fire on Guards; State Dept. to Study System for Security}, \textit{Wash. Post}, Sept. 29, 2007, at A1.
\item \textsuperscript{18} See James Glanz, \textit{New Evidence that Blackwater Guards Took No Fire}, \textit{N.Y. Times}, Oct. 13, 2007, at A1; Press Release, Department of Justice, supra note 3.
\end{itemize}
dants’ compelled statements, raising concern about tainted evidence.\textsuperscript{19} The government decided to re-present the case to a second grand jury in November 2008, providing redacted transcripts of testimony from the first grand jury without reference to information derived from the defendants’ compelled statements.\textsuperscript{20} The second grand jury delivered a thirty-five-count indictment against the defendants on December 8, 2008.\textsuperscript{21}

B. United States v. Slough: Kastigar Hearing and Dismissal

In May 2009, the government filed a “Motion for a Garrity Hearing in Lieu of a Pretrial Kastigar Hearing,” and argued that the defendants’ statements to DSS investigators should not be treated as immunized statements under the standards of analysis laid out in \textit{Kastigar v. United States}.\textsuperscript{22} When cases involve immunized statements, \textit{Kastigar} requires courts to hold a hearing for parties to prove proper evidentiary use of those statements.\textsuperscript{23} By filing this motion, the government attempted to avoid needing to prove proper use of the defendants’ statements to DSS investigators in a \textit{Kastigar} hearing.\textsuperscript{24}

The District Court for the District of Columbia denied the motion on the ground that there had not been adequate briefing on the legal and factual basis for the application of \textit{Kastigar}.\textsuperscript{25} After extensive additional briefing from both sides, the court determined that the defendants’ \textit{Garrity} compelled statements were protected by both use and derivative use immunity.\textsuperscript{26} The court held a \textit{Kastigar} hearing on October 14, 2009 to determine whether the government had impermissibly used any of the compelled statements.\textsuperscript{27} The government maintained it had effectively limited exposure to the compelled statements and any taint that may have occurred was “harmless beyond a reasonable doubt.”\textsuperscript{28}

\begin{thebibliography}{99}
\bibitem{19} See \textit{Slough I}, 677 F. Supp. 2d at 126.
\bibitem{20} See id. at 127.
\bibitem{21} See id. at 128; Press Release, Department of Justice, \textit{supra} note 3.
\bibitem{24} See id.
\bibitem{25} \textit{Slough I}, 677 F. Supp. 2d at 129.
\bibitem{26} \textit{Id}. Use immunity is “immunity from the use of the compelled testimony (or any information derived from that testimony) in a future prosecution against the witness. After granting use immunity, the government can still prosecute if it shows that its evidence comes from a legitimate independent source.” \textsc{Black’s Law Dictionary} 819 (9th ed. 2009).
\bibitem{27} \textit{Slough I}, 677 F. Supp. 2d at 129.
\bibitem{28} \textit{Id}. at 144.
\end{thebibliography}
The district court disagreed with the government and found most of the evidence presented to the second grand jury had been tainted by exposure to the defendants’ protected statements. The court also determined that the prosecutors’ exposure to the DSS interviews had impermissibly tainted the government’s decision to indicted two of the defendants.

The government appealed the district court’s decision, and the D.C. Circuit Court of Appeals issued a decision on April 22, 2011 clarifying points of law and remanding the case for further review. The appellate court held that the lower court had failed to evaluate the presence of tainted evidence for each defendant individually. Furthermore, the lower court failed to assess the existence of independent and untainted sources for the evidence, as required by Kastigar. For example, many of the objectionable news reports stemmed from statements made by all nineteen Tactical Team members, and were not exclusively based on the protected statements of the named defendants. On remand, the district court will review the government’s evidence on an individual basis to track the use of tainted evidence against each defendant.

II. DISCUSSION

A. The Historic Right Against Self-Incrimination

1. The Extension of Immunity Under Garrity

Traditionally, federal prosecutors provide immunity from criminal prosecution to induce testimony from witnesses asserting their Fifth Amendment right against self-incrimination. In 1967, the Supreme Court broadened the application of federal immunity in Garrity v. New Jersey, holding that statements obtained under the threat of removal from office could not be used in subsequent criminal proceedings

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29 See id. at 115–16.
30 Id.
31 See Slough II, 641 F.3d at 554–55.
32 See id.
33 Id. at 551.
34 Id.
35 See id. at 554–55.
against the accused. In Garrity, two police officers were investigated for their involvement in a conspiracy to obstruct motor vehicle traffic laws by fixing traffic tickets. Before being questioned by the deputy district attorney, each defendant was warned that his statements could be used against him in a criminal proceeding and that he had the right to refuse to answer if the disclosure would incriminate him. The defendants were also told, however, that refusal to answer any questions could result in their removal from office.

The Supreme Court found the choice between self-incrimination and job loss impermissibly coercive, and held that the defendants had broad transactional immunity, effectively protecting them from any future criminal prosecution. The defendants therefore received the same protection from criminal prosecution traditionally afforded to witnesses who were forced to give incriminating testimony. Garrity thus established that compelled statements are analogous to immunized witness testimony.

2. Kastigar and Use Immunity

In 1972, the Supreme Court once again modified the application of federal immunity in Kastigar v. United States. Unlike Garrity, Kastigar concerned subpoenaed witnesses rather than statements made under threat of job loss, yet the outcome had a substantial impact on the subsequent application of Garrity. The Kastigar defendants argued that they were entitled to complete transactional immunity from prosecution in exchange for their compelled testimony. The Court rejected the application of transactional immunity, holding that use and deriva-

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37 See 385 U.S. 493, 500 (1967).
38 See id. at 494.
39 Id.
40 Id.
41 See id. at 497, 500.
42 See id.
44 See 406 U.S. 441, 453 (1972).
46 See generally BLACK’S LAW DICTIONARY, supra note 26, at 819 (“Immunity from prosecution for any event or transaction described in the compelled testimony.”).
47 See Kastigar, 406 U.S. at 443.
tive use immunity for compelled statements was sufficient because it served the purpose of leaving the witness and prosecutors in “substantially the same position as if the witness had claimed the Fifth Amendment privilege.” Additionally, the Court reaffirmed the extensive protections associated with immunity by clearly placing the burden on the prosecution to prove that it had properly used immune statements.

In what is known as a “Kastigar hearing,” once a defendant shows that he testified under a grant of immunity, the prosecution must prove that the evidence it proposes to use stems from legitimate sources independent of the compelled testimony. This explanation of the prosecutor’s burden clarified the standard that must be applied to statements protected under Garrity.

3. Protection for Government Contractors

The Supreme Court addressed the Fifth Amendment protections of government contractors in Lefkowitz v. Turley. This 1973 case overturned a New York statute that required government contractors to either waive immunity by answering questions regarding their work, or have their contracts canceled.

The Court remarked that the State “intended to accomplish what Garrity specifically prohibited—to compel testimony that had not been immunized.” The State asserted that government contractors should not be afforded the protection of immunity because the threat of canceling government contracts is not as coercive as the threat of job loss to public employees. The Court disagreed, finding that a “significant infringement of constitutional rights” cannot be justified by speculations about a contractor’s ability to find subsequent employment. Lefkowitz thus extended to government contractors the protections that Garrity and Kastigar provided for public employees who gave compelled statements.

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48 See generally Black’s Law Dictionary, supra note 26, at 819 (defining “any information derived from [compelled] testimony” as within the scope of use immunity).
49 Kastigar, 406 U.S. at 462.
50 See id. at 461–62.
51 Id. at 460; see Bloch, supra note 36, at 645.
52 See Bloch, supra note 36, at 645.
54 Id. at 71.
55 Id. at 82.
56 See id. at 83.
57 Id. at 84.
58 See id. at 85.
B. Common Application of Garrity and Kastigar to Police Misconduct

Reviewing the common application of *Garrity* and *Kastigar* to cases of police misconduct highlights the new challenges raised in the context of prosecuting private security contractors for crimes committed abroad.59 Most police departments have internal affairs procedures that impose penalties, including job loss, on employees who refuse to answer questions during investigations.60 As a result, almost all criminal cases stemming from an internal police investigation require a *Kastigar* hearing to determine whether any compelled statement has tainted the prosecution’s evidence.61 This practice has elicited criticism from scholars who point to fundamental problems arising from the structure of police investigations.62

An initial challenge in preserving evidence is that investigators often take statements from officers immediately following an incident of misconduct, before a criminal investigation has been launched.63 At this stage, prosecutors have no involvement in the investigation, and therefore no control over the grant of immunity.64 Consequently, prosecutors lose any opportunity to preserve the independence of evidence before they are even made aware of the misconduct.65 This situation comes in stark contrast to the traditional application of immunity, where the prosecutor first weighs the challenges of *Garrity* inadmissibility before deciding to grant immunity to a witness.66

Additionally, prosecutors faced with the choice of granting immunity in exchange for compelled testimony have an opportunity before making that decision to preserve the independence from compelled statements of other evidence.67 This opportunity is often lost during a police misconduct investigation, when internal affairs investigators are free to make unimpeded use of compelled statements in the course of their investigation, often resulting in an almost inevitable witness contamination.68 For example, during a police misconduct investigation, an investigator may read a compelled statement to a third party witness.

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61 See id.
62 See id. at 1313.
63 See id. at 1328–29.
64 See id.
65 See id. at 1331.
67 See id. at 1330.
68 See Bloch, *supra* note 36, at 688.
in order to sort out inconsistencies and frame further questions. This practice eliminates potential witnesses before a formal criminal investigation even begins.

One final challenge in preserving the admissibility of testimony during a police misconduct investigation is that the grantor of immunity is often a colleague of the officer being questioned. Some scholars argue that this format essentially grants law enforcement officials the power to absolve their colleagues of criminal liability and undermines confidence in the integrity of the justice system.

C. The Prosecution’s Response: Methods for Avoiding Taint

In order to address the challenges presented by Garrity and Kastigar, the DOJ has developed elaborate procedures to help prevent the impermissible tainting of evidence. In order to identify and limit exposure to compelled statements, the prosecution usually designates a separate team of attorneys to sort through evidence before it reaches the trial team. This team screens all potential witnesses and only passes along evidence to the trial team once it has determined that the Garrity burden can be met.

Yet staffing a separate team to screen witnesses requires significant department resources, and the two-tiered process of reviewing evidence slows investigation immensely. Moreover, this elaborate process does not always ensure that a case is free from taint.

III. Analysis

A. Problems with the Garrity/Kastigar Burden in Cases Involving Private Security Contractors

The same evidentiary challenges that accompany immunized statements in prosecutions of police officers are even greater in prosecutions of private security contractors, because the DOJ has no control over grants of immunity and cannot gather sufficient independent evi-

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69 See id. at 637; Clymer, supra note 43, at 1333–34.
70 See Bloch, supra note 36, at 637; Clymer, supra note 43, at 1333–34.
71 See Bloch, supra note 36, at 677.
72 See id.; Clymer, supra note 43, at 1334–35.
74 See Slough I, 677 F. Supp. 2d at 122; Clymer, supra note 43, at 1340.
75 Clymer, supra note 43, at 1340.
76 See id., at 1341.
77 See Slough I, 677 F. Supp. 2d at 123; Clymer, supra note 43, at 1341.
dence in war zones.\textsuperscript{78} Despite numerous allegations of serious criminal conduct by security contractors working in Iraq and Afghanistan, there has only been one successful prosecution of contractors for violence against local citizens, because most cases collapse from a lack of untainted evidence.\textsuperscript{79}

For example, in October of 2010, the DOJ announced it would not seek murder charges against Andrew Moonen, a Blackwater employee who killed one of the Iraqi vice president’s bodyguards in 2004.\textsuperscript{80} In the immediate aftermath of the shooting, Moonen gave a statement to U.S. Embassy officials after receiving a \textit{Garrity} warning, triggering immunity protections and frustrating any opportunity for an independent DOJ investigation.\textsuperscript{81} Despite conducting a three-year investigation, the DOJ was unable to gather sufficient evidence to present a case that was independent of the immunized statement.\textsuperscript{82}

The dismissal of charges in \textit{Slough I} also illustrates the difficulty prosecutors face in building a successful case against security contractors while avoiding the spread of tainted evidence.\textsuperscript{83} Although Judge Urbina excoriated the government for failing to follow taint procedures, the number of obstacles stemming from the defendants’ compelled statements may have condemned any chance of successful prosecution before the official criminal investigation even began.\textsuperscript{84}

In addition to the technical challenges associated with immunity, criminal cases involving the actions of private security contractors are surrounded by immense political pressure and have serious implications for domestic and foreign relations.\textsuperscript{85} Failing to successfully prosecute contractors who commit crimes abroad erodes confidence in the integrity of the American justice system, and undermines foreign war efforts.\textsuperscript{86}

\textsuperscript{78} See McKinney, supra note 5, at 702.
\textsuperscript{81} Id.
\textsuperscript{82} See id.
\textsuperscript{84} See id. at 115, 122–23.
\textsuperscript{86} See id.
1. Gathering Independent Evidence

One of the most significant obstacles in criminal prosecutions of security contractors for their actions abroad is the difficulty associated with gathering evidence. The prohibitive costs associated with gathering evidence overseas are compounded when the crime scene is in the center of a war zone. It is virtually impossible to gather dependable physical and forensic evidence in this context. Unfortunately, the implications of Slough I serve only to further inhibit the prosecution’s ability to find reliable untainted evidence. If the prosecutor cannot find sufficient evidence to support a case that is completely independent of immunized statements, the case has a very low likelihood of success.

Slough I amplified this challenge by applying the exclusionary rule to any physical evidence derived from the defendants’ immunized statements, and without independent basis. In that instance, the court found that the physical evidence was tainted because the investigators who searched Nisur Square for shell casings were guided by the content of the protected statements.

2. Prosecutors with No Control

Another obstacle facing prosecutors in criminal cases against government contractors stems from their lack of control over grants of immunity. Because the State Department took compelled statements from the defendants immediately after the shooting incident, the DOJ lost any opportunity to preserve evidence before immunity attached. This situation mirrors the challenges of prosecuting police misconduct, where investigators take statements before prosecutors are even involved.

In addition to this lack of control over the initial investigation, DOJ Prosecutors face further challenges that stem from State Depart-

87 See McKinnon, supra note 5, at 702.
88 See id.
89 See id.
92 See id.
93 See id.
94 See McKinnon, supra note 5, at 702.
95 See id.
ment policies. After the shootings at Nisur Square, then-Secretary of State Condoleezza Rice tasked a panel of experts to review the State Department’s private security policies in Iraq. The panel made a series of recommendations, including a new procedure for responding to unauthorized weapons discharges. In order to decrease response time, the panel recommended the creation of a “Go Team” that would immediately proceed to the scene of any serious incident. The Go Team would be responsible for gathering information from contractors involved in the incident and preparing a report synthesizing their analysis.

The DOJ would only receive notification if an “Incident Review Board” determines that the use of force was not justified based on the contents of the Go Team’s report. This procedure effectively ensures that by the time the DOJ is involved, all parties connected to the incident will have already provided immunized statements to the Go Team. In addition, there is a high likelihood that the Go Team’s investigation will have been guided by information provided in the statements, thereby tainting any findings included in the final report.

B. Conflicts of Interest and International Outrage

In addition to the legal obstacles associated with protected statements, the State Department’s practice of granting immunity to private security contractors has caused a myriad of foreign relations problems. In the case of Blackwater, the State Department engineered and executed the initial investigation of the defendants while still relying on them for security protection. The mere appearance of a conflict of interest sparked resentment and weakened the United States’ position in Iraq. News of the immunity that had been attached to the defen-

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98 Id. at 3.
99 See id. at 9.
100 Id.
101 See id.
102 See id. at 10.
103 See U.S. Dep’t of State, supra note 97, at 9–10.
104 See id.
106 See id. at 28.
dants’ statements led many Iraqis to believe that the American judicial system placed private security contractors above the law. The court’s 2009 dismissal of *Slough I* compounded this belief and prompted Iraq to issue an order ejecting from the country hundreds of private security guards linked to Blackwater.

Some have even suggested that the investigation was handled poorly in order to purposely undermine any chance at a successful prosecution. David Farrington, a State Department security agent who worked in the U.S. Embassy in Iraq told prosecutors that his colleagues collected the compelled statements with the distinct objective of immunizing the defendants. These harmful speculations effectively show *Garrity* as a tool for protecting government contractors instead of a tool for protecting of Fifth Amendment rights.

C. Realizing Justice?

Although the Obama administration has vowed to bring the defendants to justice in an effort to repair relations with Iraq, the result of the appeal has not guaranteed a successful prosecution. Even under the nuanced review ordered by the appellate court, it is unclear whether the government will be able to prove that the compelled statements did not taint the prosecution. Although the final outcome of *Slough* will still be subjected to the burdens of *Garrity v. New Jersey* and *Kastigar v. United States*, the government can increase the likelihood of successful prosecutions of security contractors in the future by avoiding the challenges those decisions continue to present.

One possible solution for escaping the complications associated with compelled statements is to avoid taking them entirely. The State Department’s 2007 recommendations were independently formulated without adequate consideration for the DOJ’s interest in a prosecution.

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108 See id.
110 See *Scahill, supra* note 105, at 29.
112 See *Scahill, supra* note 105, at 29.
114 See Wilber & Hsu, *supra* note 113.
115 See *McKinnon, supra* note 5, at 712.
116 See id.
free from tainted statements. To understand and address the legal implications of immunity, the State Department should work with the DOJ to establish a uniform system for investigating serious incidents involving contractors. The DOJ could be granted immediate jurisdiction in all cases involving criminal matters instead of waiting for agencies to conduct preliminary findings. This would allow prosecutors to preserve evidence and weigh the legal implications before deciding to grant immunity, in addition to avoiding apparent investigative conflicts of interest.

An alternative approach would be to permit the State Department to elicit statements from security contractors without using the threat of job loss to encourage cooperation. Garrity immunity only attaches in cases where an individual is faced with such pressure that he is disabled from making a free choice. Using sanctions that are less severe than the threat of job loss to question contractors would not rise to a level of unacceptable coercion. Although this could potentially deprive the investigators of some initial information, it would also encourage the State Department to explore other sources of evidence to compensate. This process would allow the State Department to initiate an investigation without triggering Garrity immunity and foreclosing the chance of a subsequent criminal prosecution before the DOJ becomes involved.

**Conclusion**

United States v. Slough has highlighted the legal challenges attached to compelled statements and the government’s inability to effectively prosecute private security contractors who commit crimes abroad. Compelled statements have frustrated cases involving allegations of po-

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119 See McKinnon, supra note 5, at 712.
120 See id.
121 See Clymer, supra note 43, at 1376 (discussing solutions in context of police misconduct investigations).
123 See Clymer, supra note 43, at 1381.
124 See id.
125 See id.
licee misconduct since the Supreme Court changed the scope of federal immunity in *Garrity v. New Jersey* and *Kastigar v. United States*. Prosecutors who have no control over grants of immunity are forced to fight uphill battles to overcome the evidentiary complications that stem from protected statements. Despite the problems associated with the system for handling allegations of police misconduct, the method for dealing with allegations of security contractor misconduct has fallen into a similarly dysfunctional pattern.

The practice of taking compelled statements that are protected by immunity before prosecutors are involved with investigations creates serious legal obstacles that effectively shield contractors from criminal penalties. By adopting new procedures that immediately involve the DOJ in investigations of contractor misconduct, the State Department can avoid the complications associated with compelled statements under *Garrity* and *Kastigar*. Until then, the DOJ’s inability to hold private security contractors accountable will continue to strain the tenuous relationship between the United States and Iraq.