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INFORMATION PAPER

AZFB-JA

20 December 2005

SUBJECT: The Permissibility of Photographing Enemy Prisoners of War and Detainees

1. Purpose: To provide information regarding the permissibility of photographing enemy prisoners of war (EPWs) and detainees in the Iraqi Theater of Operations.

2. References:

- a. Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949
- b. Geneva Convention Relative to the Protection of Civilian Persons In Time of War of August 12, 1949
- c. SECDEF Message, DTG 111124Z JAN 02, SUBJ: Supplemental
- d. Public Affairs Guidance (PAG) on Detainees
- e. SECDEF Message, DTG 101900Z FEB 03, SUBJ: Public Affairs Guidance (PAG) on Embedding Media During Possible Future Operations/Deployments in the U.S. Central Command (CENTCOM) Area of Responsibility (AOR)
- f. SEFDEF Message, DTG 291600Z MAR 03, SUBJ: Public Affairs Guidance (PAG) for Media Coverage of Enemy Prisoners of War (EPWS) and Detainees
- g. USCENTCOM Policy Prohibiting Photographing or Filming Detainees or Human Casualties or Possessing, Distributing, or Posting Visual Images Depicting Human Casualties (22 OCT 05)
- h. Army Regulation 190-8, Enemy Prisoners of War, Retained Persons, Civilian Internees and Other Detainees (1 OCT 97)
- i. MNF-I FRAGO 05-174 [Public Affairs Guidance for High Value Individual Capture] (2 JUL 05)
- j. MNC-I FRAGO 380 [Detention Operations at MNC-I and Echelons Below] (7 NOV 05)
- k. 101st Airborne Division (Air Assault) Detention Operations Standard Operating Procedures (1 AUG 05)

3. ANALYSIS. Public Affair Office (PAO) guidance allows the media to photograph EPWs and detainees within certain limitations. However, guidance provided to U.S. Soldiers is much more restrictive, limiting such photography to official duties.

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a. GUIDANCE FOR THE NEWS MEDIA AND PAO: The news media and PAO are generally permitted, and to some extent even encouraged, to photograph EPWs and detainees from the point-of-capture throughout the entire detainment process. The photographs or other visual media must be limited such that the EPWs and detainees are not displayed in any manner that might be interpreted as holding them up to public curiosity in violation of Article 13 of the Geneva Convention Relative to the Treatment of Prisoners of War or Article 27 of the Geneva Convention Relative to the Protection of Civilian Persons In Time of War as applicable. This generally means that the photographs cannot show the recognizable face or other identifying feature of an EPW or detainee. This policy is delineated by the following authorities:

(1) Secretary of Defense (SECDEF) Guidance: The SECDEF has disseminated several messages to the news media and PAO regarding photographing EPWs and detainees. The SECDEF Message on Supplemental Public Affairs Guidance on Detainees emphasizes that the U.S. policy limiting news coverage of detainees is consistent with the Geneva Conventions. Pursuant to the Geneva Conventions, the news media may photograph detainees or groups of detainees that are in or around detention facilities. However, the photographs may not (1) identify detainees by name or by image; (2) display detainees in transit to or from detention facilities; (3) or display detainee interrogations or interviews.

The SECDEF Message entitled Public Affairs Guidance on Embedding Media During Possible Future Operations/Deployments in the U.S. Central Command (USCENTCOM) Area of Responsibility encourages the photographing of EPWs and detainees by the news media, stating that the capture or detention of EPWs and detainees are "newsworthy events." These newsworthy events may be photographed so long as the photographs do not display close-up images of detainees's faces that would allow the individual to be identified or display detainees partially clothed, engaged in personal hygiene, or praying. Visual media coverage of interviews and live broadcasts of EPWs or detainees are nonetheless prohibited.

As with the previous SECDEF Messages, the SECDEF Message regarding Public Affairs Guidance for Media Coverage of Enemy Prisoners of War (EPWS[sic]) and Detainees permits photographing EPWs and detainees by the news media and PAO during a deployment or an operation so long as the photographs do not show the "recognizable face, nametag or other identifying feature or item" of an EPW or detainee. Photographing custody operations or interviews with persons under custody is, however, prohibited.

(2) Multinational Force-Iraq (MNF-I) Guidance: Consistent with the guidance provided by the SECDEF, MNF-I guidance published in FRAGO 05-174 [Public Affairs Guidance for High Value Individual Capture] permits photographing high value individuals by the news media and PAO. However, the photographs cannot display

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“recognizable faces, nametags or other identifying features or items of enemy prisoners of war or detainees...without prior coordination through the MNF-I SOC.”

(3) United States Army Guidance: Army Regulation 190-8, a Military Police regulation regarding treatment of EPWs and detainees, allows the news media and PAO to take group wide area or aerial photography of EPWs, civilian internees, retained personnel and facilities if approved by the Senior Military Police officer in the Internment Facility commander's chain of command.

b. GUIDANCE FOR U.S. SOLDIERS: While the news media and PAO are permitted to photograph EPWs and detainees within certain limitations, U.S. Soldiers are prohibited from such photography unless done in an official capacity. This policy is delineated by the following authorities:

(1) United States Central Command Guidance: The Memorandum articulating USCENTCOM's policy on the permissibility of U.S. Soldiers taking photographs of EPWs and detainees provides that “photographing or filming detainees...as well as the possession, distribution, transfer or posting, whether electronically or physically, of visual images depicting detainees...is prohibited.” While this is a restrictive policy, the Memorandum does the permit an exception for photographs taken as part of the photographer's “official duties.”

(2) Multinational Corps-Iraq (MNC-I) Guidance: Multinational Corps-Iraq has published FRAGO 380 [Detention Operations at MNC-I and Echelons Below], which provides that “use of any technology to capture a visual image of detainees, such as photography or videotape...by coalition or Iraqi forces is strictly prohibited.” Thus, this FRAGO prohibits photographing EPWs and detainees by service member except as part of official duties such as BATS processing and capture evidence.

(3) United States Army Guidance: As discussed above, AR 190-8 permits the news media to photograph detainees in limited circumstances. However, the Regulation otherwise prohibits U.S. Soldiers from “[p]hotographing, filming or video taping of individual EPW, CI [civilian internee] and RP [retained personnel] for other than internal Internment Facility administration or intelligence/counterintelligence purposes.....”

(4) 101st Airborne Division (Air Assault) Guidance:

a) The Detention Operations Standard Operating Procedures (SOP) for the 101st Airborne Division (Air Assault) outlines standards of conduct for U.S. personnel assigned to detention facilities operated by the Division. The SOP states that “[d]etainees will not be photographed, humiliated or placed in positions with sexual overtones.”

b) The Division General Order Number 1 also prohibits U.S. Soldiers from photographing detainees unless conducted pursuant to official duties. It goes on

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to give examples of official duties such as "processing and evidence gathering upon initial point of capture and entry into an internment facility, intelligence gathering, and official investigations."

c. CONCLUSION: As discussed above, the news media and PAO are permitted to photograph EPWs and detainees so long as the photography is done in such a manner that cannot be interpreted as holding the EPWs and detainees up to public curiosity. U.S. Soldiers, on the other hand, are prohibited from photographing EPWs and detainees except as required as part of the photographer's official duties.

4. The above Information Paper has been reviewed and released by LTC Pamela Stahl, Staff Judge Advocate, 101st Airborne Division (Air Assault).