

file

August 6, 2004

TO: Jim Haynes
Ryan Henry

J 8/16

CC: Pete Geren
Gen. Mike Maples

FROM: Donald Rumsfeld *DR*

SUBJECT: Delay in Reporting Detainee Data to Red Cross

383.6

Attached is a memo from the Inspector General, which I found interesting. It apparently was worked over by some **JAG**. Is it accurate?

Thanks.

Attach.

6/29/04 IG memo to SecDef re: DoD Policy on Delays in Reporting Detainee Data to Red Cross

DHR:dh
080504-9

.....
Please respond by 8/20/04

~~DA~~ 8/25

15 Aug 04

Sir
Response Attached.

V/R,
Col B

6 Aug 04





INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-4704

INFO MEMO

CONTROL #
09746-04

DA 8

June 29, 2004 11:30 a.m.

FOR: SECRETARY OF DEFENSE

FROM: Joseph E. Schmitz, Inspector General of the Department of Defense

SUBJECT: Clarity of DoD Policy on Delays in Reporting Detainee Data to Red Cross

- At the conclusion of your June 17, 2004, Press Briefing, during which briefing one reporter asked you if there was "an intention to hide [a certain detainee] from the Red Cross," you asked, "is there anything **we** want to calibrate on this detainee subject," stating, among other things: "We want to communicate accurately. . . . Our policy is clear, unambiguous and demonstrable."
- By coincidence, on the same day of your Press Briefing, I received a classified briefing in Afghanistan on the protocols governing how and when we provide information about detainees to the International Committee of the Red Cross (ICRC).
- In talking with commanders and staff judge advocates who are dealing daily and routinely with the ICRC on detainee issues in Afghanistan, I learned that there **is** a "clear, unambiguous and demonstrable" protocol -- at least at Bagram Air Base -- to govern the transfer of data about detainees, and deception is **NOT** our intention -- against the ICRC or otherwise.
- In order to assist you in responding to any further press questions about reporting detainee information to the ICRC, I asked the intelligence officer and staff judge advocate at Bagram Air Base to prepare an unclassified explanation of why **we** under certain circumstance delay passing on detainee information to the ICRC. In summary, the primary reasons that we delay reporting detainee information to the ICRC are: (1) force protection; and (2) so as not to hinder our ability to defeat threats.
- I would respectfully submit the attachment as field input or "talking points" for any further press or congressional inquiries on the subject.

COORDINATION: None

Attachment: As stated



Certified Unclassified
January 9 2009
IAW EO 12958, as amended
Chief, RDD, ESD, WHS

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051 09746-04

UNCLASSIFIED

Question regarding Detention Operations in Afghanistan:

I UNDERSTAND NORMAL PRACTICE IS TO ASSIGN AN INTERNMENT SERIAL NUMBER (ISN) WITHIN A REASONABLE PERIOD AFTER DETENTION, AND TO ALLOW ICRC TO INTERVIEW DETAINEES ONCE THE ISN IS ASSIGNED. WHY DON'T WE DO THAT IN EVERY CASE?

Response:

ONCE AN ISN NUMBER IS ASSIGNED TO A DETAINEE AND JCRC ACCESS FOR INTERVIEWS IS GRANTED, WE CAN EXPECT THE ICRC TO PROMPTLY NOTIFY THE FAMILY OF A DETAINEE THAT HE IS IN OUR CUSTODY. IN CERTAIN SITUATIONS, THIS CAN AFFECT FORCE PROTECTION AND HINDER **OUR** ABILITY TO DEFEAT **THREATS**. SPECIFICALLY:

- A terrorist cell that does not know one of its members is in custody will likely continue to operate for at least a limited period of time. If we can learn about the cell from the detainee, we have a good chance of not only stopping its mission, but exploiting or destroying the cell.
- Similarly, disclosure that a highly placed detainee has been captured could provide warnings to the enemy still at large that we possess information regarding their whereabouts. This disclosure could result in their taking measures to avoid capture.
- Notice that an individual has been taken into custody may cause the enemy to make assumptions about the sources and methods used to capture him. In response, the enemy may endanger real sources or innocent people.
- The disclosure that a specific leader or organizer is in custody could cause the enemy to assume the detainee will disclose certain information. As a result, the enemy might hide weapons, move high value targets, or anticipate our actions. This may impact the success of future coalition actions, and could endanger US Forces participating in those actions.
- If enemy forces discover a key leader is in custody, there may be an attempt to gain his release by force. This would clearly endanger the lives of our forces and potentially disrupt our mission.

AS A PRACTICAL MATTER, DELAYING ASSIGNMENT OF AN ISN AND ICRC ACCESS HAS ONLY OCCURRED ON RARE AND INFREQUENT OCCASIONS.

Note: I do not believe that this is an accurate statement for AF operations - At best, it is somewhat misleading - Eek 8-11-04



INFO MEMO

August 11, 2004, 7:00 P.M.

FOR SECRETARY OF DEFENSE

FROM: Daniel J. Dell'Orto, Principal ~~Deputy~~ General Counsel



SUBJECT: Delay in Reporting Data on Detainees to the International Committee of the Red Cross (ICRC)

- The DoD Inspector General provided you with talking points on delays in reporting detainee data to the ICRC that appear to have been prepared by the Staff Judge Advocate for CJTF-76 in Afghanistan. (Tab A). You inquired whether these talking points are accurate.
- The talking points appear to be a description of the rationale for delaying notification to ICRC or restricting ICRC access to al ~~Qaida~~ and Taliban detainees in Afghanistan. While they may reflect current US CENTCOM practice with respect to detainees held at Bagram, we do not have a basis to ascertain their accuracy.
- As a general matter, the rationale for delaying ICRC notification that is stated in the talking points is one of imperative military necessity. This rationale would be consistent with the President's February 7, 2002 direction to US Armed Forces with respect to the treatment of al Qaida and Taliban detainees and application of the principles of the Geneva Conventions.
- Use of these talking points to describe matters concerning detainees in Iraq, however, raises more complex legal issues that we are addressing currently within the Department and with other agencies. We continue to work to resolve these issues, but in the interim, these talking points should not be used to address operations in Iraq.
- It is advisable to ensure that the relevant commands have and apply consistent policies and practices concerning notification of detainees to the ICRC, the application of the concept of imperative military necessity, and what is a reasonable delay in notifying ICRC under the requirements of the military mission.
 - You may want to request that US CENTCOM, US SOCOM, the Joint Staff, the Office of Detainee Affairs, and the Office of the Under Secretary of Defense for Intelligence undertake an appropriate review.



COORDINATION None.

Certified Uncl ss
January 9 2009
IAW EO 12958, as amended
Chief, RDD, ESD, WHS

OSD 19293-04

ATTACHMENTS:
As stated



Certi Uncl ss
January 9 2009
IAW EO 12958, as amended
Chief, RDD, ESD, WHS