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**PROPOSED STANDARD OPERATING PROCEDURES FOR THE  
PRESERVATION OF EVIDENCE DISCOVERED DURING THE COURSE OF  
MILITARY AND OTHER COALITION OPERATIONS**

Need to preserve evidence for criminal prosecution

As provided for under the provisions of the Fourth Geneva Convention, both military and other Coalition operations may be undertaken in order to maintain security in Iraq. In many cases a military or other Coalition operation will reveal evidence of a criminal act, even though the initial reason for the operation was one related to security. When these military or other Coalition operations reveal evidence of a criminal act, there is an urgent need to preserve the evidence in a manner that will protect sensitive sources and methods while simultaneously providing a procedure to demonstrate the authenticity of the evidence in a subsequent criminal prosecution.

In this regard, it is important to note that military and other Coalition operations should not be conducted as substitutes for law enforcement investigations, but rather should be undertaken based upon the independent legal right under the Fourth Geneva Convention for Coalition forces to conduct such operations in order to maintain security. Similar considerations should prevail under the anticipated subsequent agreements related to the status of Coalition forces following the transition of sovereignty.

Procedures for the preservation of evidence will differ depending on the type of operation. The procedures should be as simple as possible in order to preserve evidence and eliminate the confusion that can develop when elaborate and lengthy procedures are developed.

**2. All operations should have a designated evidence custodian**

In any operation a single person should be designated to receive the evidence collected at the raid site. This person should be able to testify in court. In operations conducted by covert entities this person should be a person from another agency, whose identity can be revealed in court. For example, the "imbedded" designated evidence custodian could be a Military Police Officer, an FBI agent, a CID agent or any person who is both trustworthy and capable of testifying in court.

In the case of an operation conducted by non-covert entities, such as a Brigade Combat Team, any responsible soldier should be designated and given the responsibility and the minimal training needed to preserve and collect the evidence for subsequent presentation in court.

The initial collection procedure

Because of operational considerations, raids conducted by military and other coalition agencies do not need to be conducted in the same manner as a law enforcement search. Indeed, such operations are not conducted for law enforcement purposes, even though, as noted above, evidence of criminal violations are often discovered during the course of such operations.

Consequently, the evidence should simply be collected in a common sense manner that will enable the general location of the evidence to be presented to the court in a manner that will preserve the relationship between the evidence seized to any persons located at the raid location. In this regard, the greater the specificity in documenting the location of the seized evidence the better it will be for a subsequent court presentation.

At a minimum, Coalition forces need to only seize the evidence and preserve it in order to transport the evidence to a more secure location. In other words, the evidence may simply be placed into a bag and transported back to a more secure location. The designated evidence custodian should have custody of the evidence. Ideally, this should be actual physical custody, but because of the volume of material this may be "legal custody" but the evidence custodian should be able to see the evidence as it is being transported.

Any unexploded ordinance should be handled in a manner that maximizes the safety of the soldiers or other coalition forces. However, all efforts, consistent with safety, should be undertaken to photograph any un-exploded ordinance in its original condition.

#### 4. Temporary custody following the raid.

After the evidence has been taken to a secure site it should be inventoried and labeled. To the maximum extent possible, each item of evidence, e.g., a computer, a group of photographs, a note book, should be marked and identified in some manner. These items should be listed on a standard military chain of custody form, which should be supplied to all BCT'S and all other military units involved in such operations. This form should at all times accompany the evidence.

#### 5. The Evidence should follow the detained person

One of the largest problems affecting our ability to bring criminal cases in Iraq is our inability to locate and track evidence seized as a result of the raid. Thus, with the sole exception of evidence submitted for a technical analysis, the evidence should always accompany the detained person.

#### 6. All persons who take custody of the evidence must sign for it

The standard military chain of custody form should always follow the evidence and a person must be designated as the evidence custodian and sign for the evidence. This will preserve the chain of custody for this evidence so that it may be properly presented in court.

#### 7 Testimony in Court

As a general rule only the first and last person to have control of the evidence are needed to testify in court. In this regard the testimony of soldiers may be preserved before an investigating judge, provided that the defendant is represented by a lawyer. This should be done at the earliest opportunity given the rotation out of theater by many coalition forces. As a matter of policy, coalition forces will not be requested to return to Iraq to testify in court.

#### 8. The timing of a criminal charge

As noted above, these procedures relate to legally authorized military and other operations. Thus, it is anticipated that any criminal charges based on evidence gathered during the raid will be initiated only after the original security purpose for the operation has been completed. After the completion of the security operation, then the person may be charged in a criminal case.

#### 9. The relationship between the security operations and the criminal charge

Any statements made by a detained person, during the course of security questioning should not be used against him at trial. On a case by case basis, consideration should be given to admitting such statements if the defendant testifies in a manner inconsistent with his statements before the court. This needs to be carefully considered in light of the need to preserve sensitive sources and methods.

#### 10. Handling of the evidence by other coalition forces

All coalition forces should have full and unencumbered access to all items seized during the course of the raid. However, custody of such evidence should never pass to a person who is not able to publicly testify in court. Thus, a designated evidence custodian should, if possible, be with the evidence at all times when it is being examined by any person not able to testify in court. To the maximum extent possible, examinations of seized evidence by coalition forces that are not able to testify in court should be conducted on copies, e.g., a mirrored imaged computer hard drive, and not on the original evidence.

#### 11. Need for a single central evidence room and interim procedures

Because of the recurring problem of lost evidence, there is an urgent need for a permanent evidence storage facility that is located at the physical site of detention. In this manner the evidence would be both easily identifiable and accessible as needed

by either coalition forces or the judiciary. To the extent possible any examinations that can not be conducted on a copy of the evidence should be conducted on the evidence at the central evidence facility.

However, some forensic examinations of the evidence will need to be conducted in a forensic criminal laboratory, e.g. examination of bomb fragments or some examinations of computer hard drives. When these procedures are undertaken, the custodian of the evidence should maintain an accurate record of the person who signed for the evidence. This should be done using standard existing military chain of custody forms. The evidence should be received back from the laboratory and properly recorded in an evidence log.

We suggest that this evidence room be located at Abu Ghreb prison and be placed under the responsibility of Military Police Officers who will be given proper instruction on the need to preserve the evidence.

When the case is transferred to court, the evidence will be signed for by an appropriate Iraqi law enforcement or judicial official, whose responsibility it will become to preserve the evidence in the manner he or she received it from the Coalition.

Prior to the establishment of a central evidence room, one person or unit shall be designated as the custodian of the evidence and they shall be responsible for ensuring that it is maintained in a manner so that it may be produced in court as needed.

#### 12. Pre-Raid Planning

In particular cases where it is anticipated in advance that a large volume or high quality of evidence may be discovered, it is urged that a pre-raid planning conference take place in which all the details of the collection and preservation of potential evidence may be discussed.