



DEPARTMENT OF THE ARMY
HEADQUARTERS, TASK FORCE READY and FOB ABU GHRAIB
APO AE 09342

REPLY TO
ATTENTION OF

27 April 2004

AFVQ-JA

MEMORANDUM FOR Record

SUBJECT: Procedure 15 Investigation Questions on Photos of Iraqis on the Battlefield

1. On 27 April 2004 MG Fay interviewed me in conjunction with the Procedure 15 investigation he is conducting on intelligence involvement with civilian internment abuse at FOB Abu Ghraib during October and November 2003. During the course of his investigation interviewees related that they had heard of photos being discovered in the Joint Interrogation and Debriefing Center (JIDC) with "disturbing" images on it.
2. MG Fay questioned [REDACTED] the deputy director of the JIDC, and learned that LTC Foust had consulted me when the photographs kept on a "memory stick" were discovered in the JIDC and that [REDACTED] returned the memory stick to the soldier who owned it.
3. I informed MG Fay that I did recall the event and my conversations with [REDACTED]. The event occurred in either late February or early March 2004. To the best of my recollection the facts I was presented at the time were:
 - a. The photos were not taken at Abu Ghraib but immediately after an engagement by coalition forces here in Iraq.
 - b. The photos depicted dead anti-coalition personnel and anti-coalition personnel detained on the battlefield and masked with empty sandbags.
 - c. The photos did not indicate that the bodies or the captured personnel were being abused or treated improperly, merely that their images were recorded by digital photograph.
 - d. That the identity of the person who owned the memory stick was, at the time, unknown.
4. [REDACTED] sought my advice on whether an offense under the UCMJ, a violation of international law, or a violation of Army Regulations occurred by the taking of these photographs. Based on the facts presented to me, it was and is my opinion that no conduct occurred in violation of law or regulation. Army Regulation 190-8, paragraph 1-5(d) prohibits non-official photography of persons in custody at US military facilities. Additionally, the third and fourth Geneva Conventions of 1949 prohibit making EPWs and CIs the subject of public curiosity or ridicule. The photographed personnel were not in custody at Abu Ghraib or at another US Military detention facility, so AR 190-8 was not violated. Additionally, no information was presented to me indicating that the persons photographed were made the subject of ridicule or public curiosity.
5. As to the question about whether the photos or memory stick should have been returned to the person who owned it, I can think of no legal grounds to seize the item. In my opinion, a violation of law or military regulations had not occurred. The threshold question for a

AG0000396

AFVQ-JA

SUBJECT: Procedure 15 Investigation Questions on Photos of Iraqis on the Battlefield

commander or a military magistrate prior to directing the seizure of the personal property of someone subject to the UCMJ is that there is probable cause to believe a crime had been committed. See Military Rule of Evidence 316, Manual for Courts-Martial of the United States 2002. The government has no right to seize private property without due process of law. Even erasing the digital photos in issue would amount to a seizure of personal property absent some authority to do so under law or military regulations (like the authority we have to seize contraband items like alcohol and illegal drugs. See CENTCOM General Order number 1a and CJTF-7 General Order number 1).

6. As to the question of whether the soldier's chain of command should have been notified of the facts and circumstances as presented, I agree. At the time, I understood that the identity of the soldier who owned the photos and, presumably, took the photos, was unknown. After [REDACTED] or one of his subordinate leaders determined ownership, the chain of command should have been notified. I did not advise him to do so at the time believing that any soldier working in the JIDC was subject to the authority of the JIDC.

7. Additionally, during my conversation with MG Fay, he agreed that given the facts presented, he also could not think of a violation of the UCMJ, Army Regulations, or international law resulting from the photographs in question under the circumstances as we understand them today.

8. I have sent a request to [REDACTED], chief of operational and international law at OSJA, CJTF-7 to have a consideration given to a FRAGO prohibiting personal photography of anti-coalition personnel under all circumstances.

9. Point of contact is the undersigned a [REDACTED]

[REDACTED]
CPT, JA

Command Judge Advocate

AG0000397