

4 February 2003

MEMORANDUM FOR Commander, United States Army Special Forces Command (Airborne),  
Fort Bragg, North Carolina 28310

SUBJECT: Review of Informal 15-6 Investigation

1. I have reviewed the enclosed informal AR 15-6 investigation conducted by Brigadier General David P. Burford and find it legally sufficient and in compliance with the requirements of AR 15-6, paragraph 2-3b.
2. The investigation complies with legal requirements.
3. The investigation is complete, with the following exceptions:
  - a. Three statements from the MAJ [REDACTED] investigation, included within the current investigation, contain only the front side of the DA Form 2823. Thus, the statements exist as unsigned, unsworn statements. To the extent that diligent efforts have failed to produce signed, sworn statements, these unsigned, unsworn statements will suffice. I find this error harmless and without material effect on an individual's rights. -b6-2
  - b. The sworn statements from the MAJ [REDACTED] investigation attributed to SFC [REDACTED] and SSG [REDACTED] are missing from the file. Both of these soldiers were subsequently interviewed by BG Burford as part of this investigation. There is no reason to believe that the earlier statements would contain contrary information. I find this error harmless and without material effect on an individual's rights. -b6-2
4. Sufficient evidence supports the findings of the investigation.
5. The Investigating Officer's recommendations are consistent with the findings.
6. POC is the undersigned at 432 [REDACTED] -b6-2

[REDACTED SIGNATURE] -b6-2  
CPT, JA  
Deputy Staff Judge  
Advocate (Acting)

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USASFC 15-6 Investigation of photographs by 5<sup>th</sup> Special Forces Group (Abn) of John Walker Lindh

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  - a) Appointment memo for COL(P) Burford of 22 April 2002
  - b) Initial 15-6 investigation from 5<sup>th</sup> SFGA of April 2002  
(i.e.; the MAJ [REDACTED] Report) (includes the [REDACTED] Exhibits)
  - c) Exhibits to Burford's 15-6

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Specific responses to the allegations in the 15-6 appointment order of 22 April

Paragraph 1a

Regarding when, where, and why the photograph depicting Mr. Lindh bound, and with the word "shithead" written across his blindfold or headband, was taken:

- o Yes, SFC [REDACTED] of [REDACTED] took the photo on the ODA's digital camera on 7 Dec 01 on or about 1320Z in the detainee's room at the "Turkish School House" (initial detention point) just as prisoner transfer was to occur. The photo was taken "as barracks humor." Mr. Lindh was said to be "unaware" of the event or the photo. b6-4/b7c-4 b2-2
- o Binding and blindfolding a detainee is acceptable doctrinal guidance as taught in Soldier Training Procedures (STP 191-000-001) and FM 21-75, Chapter 6 under the "silence" and "safeguard" headings of the 5 S's of EPW handling.

Paragraph 1b

Regarding when, where, and under whose orders the photograph in question was removed, deleted, or otherwise destroyed by [REDACTED] b2-2

- o On [REDACTED] specifically, Team Sergeant, MSG [REDACTED] attempted the first deletion on the camera itself within 24-48 hours of the actual photo after discussion, agreement and at the direction of the Team Commander, CPT [REDACTED]. b2-2 b6-4/b7c-4
- o No hardcopy of the photo was made at ODA level.
- o It wasn't until 5 April 02 (>100 days) when MSG [REDACTED] was interviewed by the DOJ / FBI and asked to turn anything over to them that this question arose. As far as MSG [REDACTED] and [REDACTED] knew up to that point in time ... this photo-in-question did not exist anymore after [REDACTED] camera deletion. b6-4/b7c-4 b6-4/b7c-4 b2-2
- o However, standard practice had each ODA's camera or its "flashcard" memory device downloaded daily at the Group's Support Center for archival purposes onto the Support Center's laptop hard drive. Once this has occurred, it is virtually impossible to track the transmission or dissemination

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electronically. It is also virtually impossible to identify all who may have seen it.

- o At least one other deletion did occur at Fort Campbell by Battalion staff.... but as a result of an operational security concern by intelligence specialists since the faces of ODA members were visible in the photo-in-question. These actions predate the issuance or receipt of the formal Preservation Order and Discovery Motion delivered to Fort Campbell on 5 April 2002.
- o Later, mention is made of "hard copy" photo's printed for COL [REDACTED] review in early April but no mention is made of how these were handled. It is possible that it is these that were the ones turned over to the DOJ / FBI at about that time.

#### Paragraph 1c

Regarding when, where, and by whom the photograph was next discovered by members of 5<sup>th</sup> Special Forces Group (Airborne):

- o [REDACTED] members saw it on the camera's playback screen.
- o Support Center personnel saw it on the Support Center (SupCen) laptop hard drive.
- o Other FOB personnel may have seen it on other computers that were electronically connected by "LAN" to the Support Center laptop or on an "MWR" laptop in the FOB (not on a "LAN").
- o At the initial screening back at Fort Campbell in late February 2002, in response to the DOJ / FBI's initial request (after the first visit by DOJ / FBI), a CD with this photo was produced by SSG [REDACTED] and screened by CPT [REDACTED] who recommended to CPT [REDACTED] (3<sup>rd</sup> Battalion S2) that it be deleted for operational security reasons.

#### Paragraph 1d

Regarding when, where, by whom, and to whom the photograph has been distributed; to include distribution modes such as email, hardcopy, accessing via a digital camera or computer screen:

- o There are a number of soldiers interviewed who admit to seeing this photo and perhaps more who say they did not. Likewise

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common access to a certain laptop like the Support Center laptop ("The entire Battalion S4 Section") or the MWR laptop in a widely accessible common location ("the entire Battalion Operations Section") do not seem to be direct determinants of who did and who did not see this photo.

- o There is little testimony that indicates this photo was passed around electronically and the vast majority of testimony that says it was hardly ever seen in hard copy. There is also limited mention of a few individuals who have seen it subsequently in the public domain (internet sites).

- o COL [REDACTED] was shown a hard copy in early April by LTC [REDACTED], after the Motion to Discover arrived at Fort Campbell, as [REDACTED] had only returned to Fort Campbell in late March and had not seen the photo-in-question up to that point in time.

Paragraph 1e

Regarding what training program was in effect prior to or during 5<sup>th</sup> Special Forces Group (Airborne)'s deployment into Afghanistan as regards status and/or treatment of Prisoners of War and Detainees:

- o Prior to deployment, the SF Soldiers routinely trained in combat skills such as Military Skill Level Tasks found in STP 191-000-0001 and FM 21-75, Chapter 6 (the 5's of EPW handling) and ODA SOP Rehearsals.
- o However, it should be pointed out that these skills focus mostly on the doctrine we have now, describing a more linear battlefield where prisoners might be taken captive but are quickly turned over to a holding authority as the battle lines advance; a holding authority trained to hold or inter them. In fact, STP 191-000-001 and FM 21-75, Chapter 6 talk about quickly "evacuating them to the MP collection point or holding area" ... and to "evacuate them as quickly as possible".
- o Further, the diagrams in FM 19-10, Chapter 16 show just such a linear arrangement of the battlefield and the "orderly" movement of EPWs to the rear ... and into MP custody.
- o Factually, we train our Military Policemen for the follow-on part of EPW handling in FM 19-4 and have dedicated units to do so. None were nearby in Afghanistan. Consequently, we

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b2-2

begin to see how asymmetric warfare can be different and doesn't fit exactly in our current doctrine. While the ODA's like [REDACTED] considered the possibility and trained themselves to be ready to take prisoners, there are two significant diversions;

- First, these individual might be prisoners ... or they might be detainees ... or maybe refugees;
  - And second, there was no one to hand them off to.
- b2-2
- o While trained to provide capture in the first moments of combat [REDACTED] was not trained to retain custody. None of our combat soldiers are, to my knowledge.
- b2-2
- o As a result, [REDACTED] became a defacto internment element, without much training beyond the "five S's" of EPW handling for the first moments of combat: search, silence, segregate, safeguard, and speed. Speed refers to hastening an EPW's movement into custodial control of battlefield MP's.
  - o All this being said, taking the photo-in-question of Mr. Lindh was still an immature, sophomoric idea.

Paragraph 1f

Regarding what training was actually received by [REDACTED] prior to or during its contact with Mr. Lindh:

- o None in evidence beyond that of initial soldier and 18-series training in "detain and secure" as described in the response above to Para 1e: search, silence, segregate, safeguard, and speed.

- b2-2
- o However, supplemental verbal guidance was given by LTC [REDACTED] to [REDACTED] to provide food, water, medical treatment, and shelter [REDACTED] to Mr. Lindh.

b6-4/b7c-4

b6-4/b7c-4

b6-4/b7c-4

Paragraph 1g

Regarding what status individual members of [REDACTED] believed Mr. Lindh to have while in their custody:

- b2-2
- o The team was not certain of his status ... neither were many legal scholars, but [REDACTED] certainly approached their assignment with utmost caution and meticulous record keeping from twice-hourly, ODA command-directed observations of Mr. Lindh in his room. The training in

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STP 191-000-001 in paragraph 3 under the "segregate" section trains our soldiers; "when in doubt of a captive's status ... treat them like an EPW" as well as in FM 21-75, Chapter 6.

- o From FM 19-10, Military Police Law and Order Operations, Chapter 16; "On the battlefield, MP's provide for the temporary confinement and swift evacuation of US military prisoners. MP confinement operations parallel, but are separate from, the MP EPW internment and evacuation system."
- o I am certain that few among us expected to find any Americans alongside the Taliban and Al Qaeda among those armed and arrayed against our forces on the ground. This was clearly an undefined event. In hindsight, I am not sure we should expect [REDACTED] to resolve this completely on their own and make such a determination in Mr. Lindh's five to six days at the Turkish Schoolhouse. b2-2
- o I do not know if [REDACTED] was forewarned or anticipated the length of its custodial duties. More likely, decision makers either had not made that decision or were unable to implement their decision because of combat conditions around Mazar-e-Sharif. b2-2
- o ODA [REDACTED] generosity toward M. Lindh was humbling as on Day 1 of custody, [REDACTED] segregated Mr. Walker in the Turkish Schoolhouse in a room, not a cell; out of concern for the possibly unpredictable actions of other Taliban/Al Qaeda detainees toward Mr. Lindh. [REDACTED] gave up their own food and supplies to him for consumption and warmth, confiscated an electric heater (FOB Supply Room) and even another man's cot (SSG [REDACTED]) for Mr. Lindh to use while [REDACTED] continued to sleep on a concrete floor, in a separate unheated room [REDACTED]. b2-2 b6-4/b7c-4
- o Mr. Lindh was given soap, a toothbrush, toothpaste and towel for his personal hygiene and was permitted to practice religious beliefs whenever he was so moved. [REDACTED] even went so far as to manually heat water for Mr. Lindh in makeshift vessels so that he could bathe in the hot water. b2-2 b6-4/b7c-4
- o Mr. Lindh was afforded a visit from the Red Cross within the first ~36 hours of [REDACTED] taking custody. Mr. Lindh

b2-2

was also visited one additional time by the Red Cross while under the care of [REDACTED] before his departure from [REDACTED]

- b2-2
- b2-2
- o Mr. Lindh was provided three (3) MRE meals a day and bottled water while [REDACTED] and the other SOF forces in the Turkish Schoolhouse subsisted on one (1) MRE meal a day, plus local rice and drank from the local water supply [REDACTED] b6-4/b7c-4

- b6-4/b7c-4
- o Mr. Lindh received a daily medical evaluation from a qualified physician, CPT [REDACTED] MD 3<sup>rd</sup> Battalion 5<sup>th</sup> SFGA Surgeon, who treated Mr. Lindh's wounds and provided medication daily. Dr. [REDACTED] also pressed higher Headquarters to be ready to "preserve evidence" if John Walker Lindh's leg wound was later to produce any fragments or ballistic evidence during subsequent surgery. Further, Dr. [REDACTED] persisted in asking higher Headquarters to make sure that Mr. Lindh received their highest medical priority once he was moved on beyond Dr. [REDACTED]'s care. b6-4/b7c-4

b6-4/  
b7c-4

b2-2

Dr. [REDACTED] also kept a medical log separate from [REDACTED] twice-hourly journal that recounts in detail; the meticulous care Dr. [REDACTED] gave Mr. Lindh.

b6-4/b7c-4      b6-4/b7c-4

Paragraph 1h

Regarding what rules individual members of [REDACTED] believed to be in operation during their contact with Mr. Lindh: b2-2

- o As in Para 1e, [REDACTED] unexpectedly became a defacto custodial element for a detainee, without much training beyond the five S's of basic soldier-skills intended for EPWs; search, silence, segregate, safeguard, and speed. b2-2
- o The training in STP 191-000-001 in paragraph 3 under the "segregate" section, trains our soldiers; "... when in doubt of a captive's status ... treat them like an EPW" as well as noted in FM 21-75, Chapter 6
- o However, his status as a "possible American" among the Taliban certainly fueled the extra caution and care that [REDACTED] rendered Mr. Walker as well as the meticulous note-taking of their every interaction with him, to include the support described in Para 1g above ... which went so far as to record the weights and measure of his food and Mr. Lindh's use of his confinement latrine, just before [REDACTED] cleaned it for him. b2-2



Paragraph 1i

Regarding when individual members of [REDACTED] were interviewed by any member of the Department of Justice or Federal Bureau of Investigation:

- o Most [REDACTED] members were still deployed OCONUS in February and not contacted by the DOJ / FBI until April 2002.

Paragraph 1j

Regarding if the individual members of [REDACTED] were questioned by DOJ or FBI concerning the existence of photographic evidence of Mr. Lindh:

- o Yes, in April 2002 [REDACTED] and [REDACTED]

Paragraph 1k

Regarding whether the individual members or [REDACTED] revealed to the DOJ or FBI representatives the existence of the photograph of Mr. Lindh now in question:

- o Yes, in April 2002, but most referred to participating by being in the photo of 7 December 2001 while they were still in Mazar-e-Sharif, Afghanistan; but not seeing it afterward in any form beyond the on-camera playback on 7 December, as questioned in the subsequent review a few months later during the investigative interest.

Paragraph 1l

Regarding whether any other member of the 5<sup>th</sup> Special Forces Group (Airborne), identified in the investigation as having knowledge of the photograph of Mr. Lindh now in question, was interviewed by DOJ or FBI:

- o Yes, see multiple responses of several witnesses.

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Paragraph 1m

Regarding whether these members (referenced above) of 5<sup>th</sup> SFG(A) were questioned by DOJ or FBI concerning the existence of photographic evidence of Mr. Lindh:

- o Yes, there were those who saw this photo in Afghanistan beyond b2-2 [redacted] and perhaps a few who may have not been part of 5<sup>th</sup> SFGA ... as they could have seen it at FOB 53 on other business; electronic versions of the photo were reportedly seen on laptops. But most were 5<sup>th</sup> SFGA soldiers who saw it within the confines of their staff section laptops (SupCen and OpCen) ... and a few who then saw it back at Fort Campbell afterward, during the "search phase" after the initial DOJ / FBI requests and visit to Fort Campbell. b6-4/b7c-4
- o Of the first grouping (in Afghanistan); SSG [redacted] is an example as it was one of his jobs to daily log-in the digital photos from all the ODA cameras and other data downloads in the SupCen. b6-4/b7c-4 b6-4/b7c-4 b6-4/b7c-4
- o Of the later grouping (at Fort Campbell); MAJ [redacted], CPT [redacted] b6-4/b7c-4 and COL [redacted] b6-4/b7c-4 are examples of those who b6-4/b7c-4 say they saw it later. Some, like COL [redacted] b6-4/b7c-4 have never b6-4/b7c-4 been questioned by the DOJ or FBI to this day. b6-4/b7c-4
- o Also noting that COL [redacted] b6-4/b7c-4 did not see the photo-in-question until early April, upon his return CONUS when MAJ [redacted] b6-4/b7c-4 had to print off a hard copy for [redacted] b6-4/b7c-4 to review. b6-4/b7c-4

Paragraph 1n

Regarding whether these members (referenced above) of 5<sup>th</sup> SFG(A) revealed to the DOJ or FBI the existence of the photograph of Mr. Lindh now in question:

- o Yes, those who saw it admitted such.
- o However, I cannot find anyone one who came forward voluntarily with an admission of having seen it or anyone "accused" of seeing it who came forward later on. b6-4/b7c-4
- o Further, all who were implicated by speculation ("... [redacted] may have seen it, since he had access to the SupCen laptop...") claim they did not, as discussed in Narrative section below.

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Paragraph 10

Regarding whether efforts were taken by any member of 5<sup>th</sup> SFG(A) to conceal or attempt to conceal the existence of the photograph of Mr. Lindh now in question:

- o Yes, within 24 hours of ODA taking the photo (~8 December) the ODA Commander, CPT [REDACTED], grew uneasy, thinking it might "embarrass the command" talked it over with the Team Sergeant, MSG [REDACTED], and directed MSG [REDACTED] to "delete it" from the camera. b6-4/b7c-4
  - o Taking the photo-in-question was truly an immature and sophomoric idea, and the team began to have doubts about it almost immediately. Deleting the photo on the camera was clearly in the interests of the team and the 5<sup>th</sup> SFGA and shows considerable good judgment (or good judgment-reborn); it is what we aspire to with our SOF leadership training. This first deletion was done in the Turkish Schoolhouse in Afghanistan in December 2001, over 100 days prior to any investigative interest. b6-4/b7c-4
  - o Later, a CD was made back at Fort Campbell that had the photo-in-question on it, but this CD was discarded after a new CD, minus this photo, was recreated during the initial inquiry by Captains [REDACTED] and [REDACTED]. b6-4/b7c-4
  - o As Captains [REDACTED] and [REDACTED] described it ... the deletion was recommended to be in the interests of protecting 5<sup>th</sup> SFGA's documentation as this particular photo was questionable from an operational security point of view since it revealed [REDACTED] member's identities as they stood alongside Mr. Lindh. b6-4/b7c-4
- b2-2 Captains [REDACTED] and [REDACTED] logical progression was likely that;
- Numerous other pictures were to be turned over to the DOJ / FBI, illustrating Mr. Lindh's detention, along with very detailed written documentation,
  - This one photo-in-question was unremarkable for showing prisoner treatment as it was similar to other photos showing Mr. Lindh's detention that were to be surrendered to the DOJ that day,
  - This picture however, was unique, in that it included recognizable [REDACTED] team members standing alongside Mr. Lindh which threatens their "viability" and future survivability on SOF missions.
- b6-2

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b6-4/b7c-4

- This "success of logic" for Captains [REDACTED] and [REDACTED] in turning over any photo's of Mr. Lindh's detention but omitting this one, fit seamlessly with what [REDACTED] and [REDACTED] believed was the DOJ / FBI's intent on 21 February, and to them, omitting this one photo did not seem to impact the DOJ's implied requirements of; "gather evidence ... see what you have." b6-4/b7c-4
- Captains [REDACTED] and [REDACTED] were operating at the limits of their training but ostensibly as the leading vanguard of the SF Battalion's operational security barrier. The SF ODA's, Battalions and Group are expected to be their own gatekeepers for deciding if classified / sensitive information is to exit their SOF security umbrella.
- When MAJ [REDACTED] concurred with the recommendation to delete this one photo, from among other similar photo's, his concurrence confirmed Captains [REDACTED] and [REDACTED]'s "success of logic"; so the deletion occurred. The "logic trail" here should be one for considerable debate at future Professional Development meetings at 5<sup>th</sup> SFGA. Captains [REDACTED] and [REDACTED] erred on the side of strict operational security and are not found to be motivated by concealing evidence in my opinion. b6-4/b7c-4
- Statements indicate that soldiers all felt that the DOJ / FBI inquiry was friendly and informal and perhaps assumed that prosecution of Lindh was their only goal.
- To review some of the words attributed to and made in the DOJ / FBI statements;
  - o "we are just getting oriented on what happened" (DOJ at Campbell on 21 Feb)
  - o CPT [REDACTED] was asked to "facilitate a meeting" (DOJ with 5th SFGA soldiers)
  - o "informal meetings with soldiers"
  - o "to see what (evidence) you might have"
  - o DOJ indicated that "a (written) directive on this should come down shortly"
- DOJ seemed to understand on 21 February, at the departure of its first delegation from Fort Campbell;
  - o "you have given us all you have for now"
  - o "the items handed over today, was just what could be made ready today"
- DOJ stated that their intent was; "to return to get more later (items / photos)".

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Paragraph 1p

Regarding what efforts were taken by the leadership of 5<sup>th</sup> SFG(A) to ensure all documentation and/or photographic evidence of Mr. Lindh was disclosed with requests from the DOJ or FBI:

- It should first be noted that the initial meeting of 21 February was arranged by FBI liaison, through Fort Campbell's CID Agent [REDACTED], by direct phone contact with CPT [REDACTED] at 5<sup>th</sup> SFGA. The Command element learned of the visit from CPT [REDACTED] as it developed; the Command element said to proceed. b6-4/b7c-4 b6-1/b7c-6 b6-2
- Emails of 21 February 2002 between LTC [REDACTED] (Commander of 5<sup>th</sup> SFGA Rear at Campbell) to COL [REDACTED] (Commander of 5<sup>th</sup> SFGA Forward, still in Afghanistan); communicating the announcement of the DOJ / FBI visit and directions to cooperate, including "cc'd" copies of his email to several others but not all of their respective staff members; LTC [REDACTED] was keeping his Boss informed of an important event and both seem to start with a "let's cooperate" perspective, including email intermediaries like MAJ [REDACTED] who said; "give them everything". b6-4/b7c-4 b6-2 b6-4/b7c-4
- Witness statement of LTC [REDACTED]; "... to not delete anything pertaining to John Walker Lindh", is corroborated by several other interviews as a directive made to the entire unit, called-out into formation. This statement appears to have been at about the time of the formal legal directives to do so ... and was also the causative factor for a unit recall for formation, during a weekend in April 2002; a highly unusual military event, but speaks volumes of the importance that LTC [REDACTED] placed on finding and producing this Lindh documentation for the DOJ / FBI. b6-4/b7c-4 b6-4/b7c-4
- On April 4, 2002 LTC [REDACTED] called all the Battalion leadership into his office to pass along his intent to comply with the Motion to Discover, delivered to Fort Campbell, to produce all documentation. It was at this meeting that LTC [REDACTED] asked for and first saw the photo in printed format (MAJ [REDACTED]). b6-4/b7c-4 b6-4/b7c-4
- There is one interviewee (SSG [REDACTED] who recalls LTC [REDACTED] making a similar statement "about two weeks after" the 21 February 2002 visit to make "all data on Lindh available to the DOJ". b6-4/b7c-4

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- On 8 April 2002 (possibility the Monday following the Battalion "recall formation"), JAG officer, CPT [REDACTED] electronically distributes the official DOJ Motion of Discovery and official Preservation Order across the 5<sup>th</sup> SFGA along with his comprehensive instructions on how this should proceed and how data is to be collected. His instructive wording includes; "search all ... for any [REDACTED] materials... do not delete or shred any materials." b6-2 b2-2

- Counseling on the concerns caused by the photo, began within 24 hours of 7 December 2001 by the ODA leadership [REDACTED] and continued throughout the ODA, Battalion and Group chains of command as they learned of the event. b6-4/b7c-4 b2-2

Editorial Note: As Commander of [REDACTED] stationed within the Turkish Schoolhouse throughout December 2001 and into January 2002, LTC [REDACTED] apparently never saw nor heard of this photo. In the other Editorial Note at the end of the Narrative Section, I too stayed at the Turkish Schoolhouse in January 2001 and was not aware of it or even any mention of it. b6-4/b7c-4

### Narrative

As part of the Special Forces A-team's routine efforts to document Team activities and as ordered by higher SOF headquarters, digital photographs were taken of the detainee, Mr. John Walker Lindh by 5<sup>th</sup> SFGA's [REDACTED] during his detention in Afghanistan. One particular photo of 7 December 2001 showed objectionable wording, visibly written on Mr. Lindh's blindfold. The team Sergeant of [REDACTED] took steps to delete it within 24 hours (~ 8 December) ... but the photo had already spread ... through electronic "legs", as it had already been downloaded into the Support Center laptop hard drive, as was daily SOP for all ODA camera products. Back at Fort Campbell in February 2002, this photo was found on this Support Center laptop as well as on the Operations Center laptop and at least one CD. The MWR laptop was also referred to as having the photo at one time but reported to have had a hard drive "crash" that was unrecoverable. b2-2

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When federal authorities inquired about information and data pertaining to Mr. John Walker Lindh in February of 2002, in anticipation of prosecution, efforts were made to locate this and other information within 5<sup>th</sup> SFGA on Mr. Lindh, as some of the Group had by then, redeployed to Fort Campbell. However, most of 5<sup>th</sup> SFGA was still OCONUS at this time.

The photo-in-question was variously reported by 5<sup>th</sup> SFGA individuals as;

- Non-existent / never saw it / never heard of it [REDACTED] b6-4/b7c-4
- Heard about it ... but never saw it [REDACTED] b6-4/b7c-4
- Most soldiers implicated through speculation by others ("XXXXX might have seen it, since he had access to ZZZ section's laptop") stated they had not seen it
- Viewed on-screen only
  - Viewed on-screen in Afghanistan
    - At the FOB (Battalion Headquarters) OpsCen (Operations Center) [REDACTED] b6-4/b7c-4
    - On the Battalion SupCen laptop (Logistical Support Center) [REDACTED] #1) b6-4/b7c-4
      - SupCen laptop was on a LAN but not internet capable
    - On the Battalion SupCen MWR laptop
      - MWR laptop was on the internet but not LAN - capable (MWR hard drive reported to have crashed while OCONUS) [REDACTED] #2) b6-4/b7c-4
  - Viewed on screen during the archival process [REDACTED] b6-4/b7c-4
  - Viewed on screen in order to scrub for potentially classified information [REDACTED] b6-4/b7c-4
- Viewed and saved on the hard drive but not a removable copy (initial) b6-4/b7c-4
- Viewed and later saved onto a disk / CD / flashcard (subsequent) b7c-4
- Viewed but location unknown (several)
- Viewed but not kept [REDACTED] b6-4/b7c-4
- Viewed but deleted (all [REDACTED] -b2-2
- View on TV newscast at a much later date [REDACTED] b6-4/b7c-4

All of whom seem to have been truthful; to wit; each individual truthfully reported what he knew to be true, as all had different experiences related to the photo-in-question.

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There were actions taken with the photo-in-question to delete it but several preceded redeployment. Once back at Fort Campbell, further actions to limit the spread of this photo-in-question preceded the initial contact by federal officials and therefore, were not prejudiced by any need to conceal or delete anything for other than for routine operational security, customary to SOF.

It is noted that several actions were taken by [REDACTED] in a self-policing fashion and by others to limit the spread and storage of this particular photo-in-question due to it's possibly offensive nature. Despite their best efforts, not all these efforts proved to be successful. In addition, it is not indicated that [REDACTED] ever knew later on, that the photo was in other electronic locations and hard drives. b2-2

Delivery to an electronic device that has multiple access ... like a staff section computer with several authorized users or an Internet connection by any means whether electronic or physical ... severely limits the effectiveness of any efforts to "capture the photo-in-question". Consequently, the photo-in-question may well have traveled beyond 5<sup>th</sup> Group's electronic perimeter into the private or public domains. b2-2

Since the photo-in-question was not produced nor consistently alluded to in initial interviews ... but was delivered to federal prosecutors at a later date, there was some initial speculation by the prosecutors that this was in an attempt to conceal this particular photo. I do not find this to be true, nor do I see this as a "cause and effect" relationship with DOJ's visit; i.e.; the initial DOJ visit did not cause the photo to disappear, other than the one CD version reviewed for operational security, customary to SOF operational protections.

Statements and the chronology of events point more strongly toward the facts that;

- The photo-in-question was not known to all who were interviewed
- It was not available to all who sought it
- The federal authorities saw their search as an iterative process and their statements indicate that they planned "subsequent visits" to Fort Campbell; apparently accepting the fact that the search and subsequent discovery events would take some time and multiple visits

013578



- b6-4/b7c-4
- The photo-in-question was delivered to the prosecution when it was described as a crucial item with Mr. Lindh's defense counsel's Motion for Discovery.
  - Discussions about the photo-in-question's possible offensive nature by members of 5<sup>th</sup> SFGA gave way to Command Guidance by LTC [REDACTED] that everything be turned over and that nothing should be deleted. Although he did not talk to the Prosecuting Attorney's team until April 2002, LTC [REDACTED] guidance was given sometime after their first visit to Fort Campbell in February and perhaps again after the second contact by federal officials (telephonic) at an unusual "recall" formation on a weekend ... its issuance clearly preceded LTC [REDACTED] first meeting with Prosecutors in April 2002 and the importance supported by the highly unusual "weekend recall formation" of the unit.
  - Consequently, I surmise that LTC [REDACTED] guidance was driven by the 5<sup>th</sup> SFGA leadership's "good faith" estimate of the situation, as the transfer of this particular photo of Mr. Lindh very closely followed the delivery of the official Discovery Motion on or about 5 April 2002.

Editorial Note: The 15-6 investigator here ... then COL(P) Burford ... actually stayed in the Turkish School House in Mazar-e-Sharif in January 2002 for several days ... within 3-4 weeks of the photo ... [REDACTED] and LTC [REDACTED] were still there ... and COL Burford never heard of it nor heard it referred to by anyone.

b2-2

b6-4/b7c-4

013579

## Summary Timeline

2 December 2001

John Walker Lindh was taken into US custody by [REDACTED] at the Quali Jangi Prison after the intense combat there and significant loss of life, including CIA Agent [REDACTED] transferred Mr. Lindh into the care of [REDACTED] at the "Turkish Schoolhouse" in Mazar-e-Sharif

b2-2

b6-1

b2-2

7 December 2001

- The photo-in-question was taken by [REDACTED] at the time of transfer of Mr. Lindh;
- Mr. Lindh was delivered out of [REDACTED] responsibility into MP custody at the MES airfield for air transport; concluding [REDACTED] custodial internment assignment

b2-2

b2-2

b2-2

8 December 2001

[REDACTED] Team Sergeant, MSG [REDACTED] deliberately deletes the photo from [REDACTED] digital camera but the flash-card storage device from that camera has already been sent to the 3<sup>rd</sup> Battalion's Support Center for archival purposes (as is daily routine); photo is downloaded into the Battalion archives onto the hard drive of the SupCen laptop computer (as is daily routine)

b2-2

b2-2

b6-4/b7c-4

January 2002

Elements of 5<sup>th</sup> SFGA begin to redeploy to Fort Campbell

013530

Early February 2002

b6-1/b7c-6

b6-4/b7c-4

- Initial coordination comes direct from the FBI to Fort Campbell's CID Agent [REDACTED] who called CPT [REDACTED] direct at 5<sup>th</sup> SFGA

- First phone call from the US Attorney's office to 5<sup>th</sup> SFGA, was directly to CPT [REDACTED] b6-4/b7c-4

b(6)-4;

b(7)(c)-4

- CPT [REDACTED] assumes POC duties for the US Attorneys;

b6-4

b7c-4

- CPT [REDACTED] begins coordination for setting up meetings

- CPT [REDACTED] informs LTC [REDACTED] (Commander, 5<sup>th</sup> Group Rear) b6-2

- LTC [REDACTED] informs COL [REDACTED] (5<sup>th</sup> Group Forward, OCONUS) by email b6-4/b7c-4

- Initial search for information begins within 5<sup>th</sup> SFGA at Fort Campbell

- 21 February 2002

- Electronic messages from 5<sup>th</sup> SFGA at Campbell to JSOTF-Afghanistan (5<sup>th</sup> Group Forward) to gather everything they have on Mr. Lindh, particularly focusing on [REDACTED] items
- First visit to Fort Campbell by US Attorneys
- First face-to-face meetings with 5<sup>th</sup> SFGA soldiers
- First items-of-evidence turned over to US Attorneys

b2-2

- SSG [REDACTED] finds the photo-in-question, among others, on the SupCen laptop hard drive

- Concerned about security, [REDACTED] makes a CD copy and brings CD to CPT [REDACTED] b6-4/b(7)(c)-4

b6-4

b7c-4

- CPT [REDACTED] takes the CD to CPT [REDACTED] (Battalion S2) to inquire about security and recommends deleting this particular photo but no others

- CPT [REDACTED] asks MAJ [REDACTED] and MAJ [REDACTED] concurs
- CPT [REDACTED] cuts another CD without the photo-in-question

b6-4/b7c-4

- NOTE: It is likely that the photo-in-question now resides on both SSG [REDACTED]'s SupCen laptop and now CPT [REDACTED] hard drive though the re-cutting of a

b6-4

b7c-4

- new CD ( >> copy content / >> delete one file (the photo) / >> recut a new CD)

b6-4/b7c-4

- The fate of the original CD from SSG [REDACTED] with the photo-in-question) is not certain but is referred to by more than one person as "probably destroyed"

013531

- o US Attorney's depart Campbell on 21 February with a number of items but are reported to have said; "We know we may need to come back..."

Late February 2002

- First mention of finding the photo-in-question elsewhere within 5<sup>th</sup> SFGA at Fort Campbell begin to emerge
- LTC [REDACTED], Commander to 3<sup>rd</sup> Bn / 5<sup>th</sup> SFGA at Fort Campbell, "Do not delete anything"

b64 / b7c-4

21 March 2002

- Telephonic interviews by US Attorneys (virtual visit to Fort Campbell) (second visit)
- Additional materials and items sent to US Attorneys

4 April 2002

US Army Special Forces Command (USASFC) receives the formal Discovery Motion and Preservation Order dated 13 March 2002

5 April 2002

Discovery Motion and Preservation Order sent from USASFC are received electronically at Fort Campbell by 5<sup>th</sup> SFGA JAG officer CPT [REDACTED] and distributed electronically within 5<sup>th</sup> Group with explicit instructions as to the importance and sensitivity of this issue

b6-2

6 & 7 (Weekend) April 2002

- LTC [REDACTED] directs a weekend recall formation and announces; "Do not delete anything"
- LTC [REDACTED] also calls all available 5<sup>th</sup> SFGA leadership into his office and says; "Do not delete anything"
- LTC [REDACTED] also directs that the detailed JAG guidelines of 5 April be strictly followed

b6-4  
b7c-4

013582

27

8 April 2002

MAJ [REDACTED] appointed as the AR 15-6 Investigating Officer by 5<sup>th</sup> Group Commander (Rear) (Monday, following the weekend recall formation)

10 - 18 April 2002

MAJ [REDACTED] conducts his investigation

12 April 2002

The photo-in-question is found and turned over to US Attorneys by 5<sup>th</sup> SFGA

16 April

MAJ [REDACTED] finishes the 15-6 Chronology of Events

17 April 2002

MAJ [REDACTED] submits final draft for legal review to 5<sup>th</sup> SFGA JAG section

18 April 2002

- MAJ [REDACTED] submits his 15-6 Conclusions and Recommendations as an MFR to the 5<sup>th</sup> SFGA Group Commander
- Group Commander acknowledges receipt by rendering his recommendations ... but 5<sup>th</sup> SFGA Group Commander's comments are not dated in Section VIII (Actions by Appointing Authority) of the DA Form 1574 to [REDACTED] 15-6 submittal (Report of Proceedings)

22 April 2002

Burford appointed as 15-6 investigator by CG, USASFC; Burford meets with USASFC legal advisor (MAJ [REDACTED])

Late April 2002

First mention of possible Obstruction of Justice charges against 5<sup>th</sup> SFGA individuals

013583

29 May 2002

- [REDACTED] 15-6 arrives at USASFC by FAX from SGT [REDACTED] of 5<sup>th</sup> SFGA COMMCEN but is classified SECRET (SCI)
- [REDACTED] 15-6 exhibits are found to be mislabeled or misplaced;

- 1) Exhibit P is actually that of SSG [REDACTED] (not SSG [REDACTED], as listed)
- 2) Exhibit Q and Exhibit R are missing (listed as [REDACTED] and [REDACTED])

Early June 2002

Members of 5<sup>th</sup> SFGA are called to Virginia by US Attorneys to assist in the Prosecution's preparation of their case [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED])

3 June 2002

Memorandum from CG, USASFC to Chairman, Joint Chiefs of Staff-LC (Legal Counsel) to notify the CJCS's office that two of the statements had to be redacted [REDACTED] and [REDACTED] before the [REDACTED] 15-6 could be distributed elsewhere as-needed and to notify CJSC that USASFC would hold its own USASFC-level 15-6 Investigation

Mid - June 2002

US Attorneys request other witnesses from 5<sup>th</sup> SFGA to attend upcoming Lindh trial

Early July 2002

US Attorneys return to Fort Campbell and conduct multiple interviews of 5<sup>th</sup> SFGA to assist in the preparation of the prosecution's case

9 July 2002

Burford meets again with USASFC replacement legal advisor, CPT [REDACTED]

15 July 2002

bl-2  
BG Burford, MAJ [REDACTED] and CPT [REDACTED] are at Fort Campbell for the majority of their USASFC 15-6 interviews

17 July 2002

Mr. Lindh pleads guilty

18 July 2002

bl-2  
BG Burford, MAJ [REDACTED] and CPT [REDACTED] telephonically interview DOJ attorney [REDACTED]

Late July 2002

- bl-2
- Original USASFC legal advisor, MAJ [REDACTED], PCS's to CGSC
- Officially replaced by USASFC legal advisor CPT [REDACTED]

5 August 2002

bl-2 bl-2  
Email from CPT [REDACTED] (JAG USASFC) to CPT [REDACTED] (JAG 5<sup>th</sup> SFGA) trying to establish contact with 5<sup>th</sup> SFGA personnel, many of whom are no longer at Campbell

23 August 2002

bl-2  
BG Burford and CPT [REDACTED] conduct more telephonic interviews

6 September 2002

- bl-2
- BG Burford and CPT [REDACTED] telephonically interview FBI agent [REDACTED]
- bl-6/b7c-6
- BG Burford requests an extension from USASFC that is granted

013535

25 September 2002

BG Burford meets again with CPT [REDACTED] b6-2

26 September 2002

First draft of USASFC 15-6 and form 1574 done by BG Burford

4 October 2002

Mr. Lindh is sentenced

7 October 2002

Letter dated [REDACTED]

Information withheld - Exemption (b)(5) - pursuant to a request from the Executive Office of the United States Attorney.

Late November / early December 2002

- US Attorney's letter of 7 October 2002 arrives at USASFC CG's office at Fort Bragg
- CG USASFC shares a copy of the letter with USASFC 15-6 Investigating officer (Burford)

January 2003

Finalization of the 15-6 findings, recommendations and exhibits

End of Summary Timeline

013586



Facts that bear further consideration:

The members of 5<sup>th</sup> SFGA deployed to Afghanistan without anticipating any extraordinary requirements to be custodial caretakers of captured combatants but maintained the training provided under FM 27-100 on the Law of War ("... regardless of the nature of the conflict") and applying the five basic skills of search, silence, segregate, safeguard, and speed ... the guidelines of STP 191-000-0001 training. It is noted that this training is focused on the moment of capture and initial handling of EPWs and not so much on long term care or confinement. Long-term confinement is a basic Military Police function described fully in FM 19-40, FM 19-4 and AR 190-8. In fact, it was MP's that took Mr. Lindh into custody from [REDACTED] at the [REDACTED] Airfield for transport by C-130 on 7 December 2001. b2-2  
(b)(2)-2

Additionally, the uncertain status of individuals like Mr. Lindh was second only to our surprise to find Americans on the battlefield ... needing a continuing lengthy legal debate that ensued at the highest legal and political levels that partly continues today; ... EPWs? ... detainees? ... unwilling combatants? ... passively interested (but armed) observers? [REDACTED] was left on the battlefield to determine a great deal of this on their own. I feel they exercised an extraordinary sense of caution. b2-2

In the five or six days that Mr. Walker was secured, safeguarded and sustained by [REDACTED], members of the ODA and 3<sup>rd</sup> Battalion Medical staff went well out of their way to improve the health and welfare of Mr. John Walker Lindh. This is evidenced by the daily examination by the Battalion Surgeon and fact that Mr. Lindh was able to move on his own after this period ... as compared to his capture when he was unable to move on his own at all and initially had to be carried into the Turkish Schoolhouse on a stretcher. b2-2

It is not widely reported ... but members of [REDACTED] and others in 5<sup>th</sup> SFGA gave up their own food, cots, heaters and sleeping gear to Mr. Lindh in order to sustain him and support his recovery while at the Turkish Schoolhouse. Meticulous daily logs kept by the team attest to this hourly occurrence. The members of [REDACTED] even went so far as to manually heat water in makeshift vessels for Mr. Lindh to be able to bathe with hot water ... on more than one occasion. b2-2  
013587

The [REDACTED]

Information withheld - Exemption (b)(5) - pursuant to a request from the Executive Office of the United States Attorney.

Upon their phased redeployment to CONUS, the members of 5<sup>th</sup> SFGA responded to the very first request for information in February quickly and completely ... to the best of their individual abilities without delay or trepidation. Many of the members of 5<sup>th</sup> SFGA did not return to Fort Campbell until later ... and some not until much later in April. It should be noted that there was limited involvement from military legal staff in the very important initial search in February.

A generic request for DOJ / FBI to "... see what you have ..." was not interpreted as an official demand, nor a complete statement of intent ... nor certainly as a potential legal risk by those who responded. To state later that "soldiers should have known" is to disregard the vast difference in expertise there is in this area between a lawyer ... and a soldier/sailor/airman ... and was perhaps unintentional to turn knowledge of the law against the soldiers' goodwill and naïve spirit of cooperation.

b2-2

b6-4/b7c-4

Counseling about the photo began within 24 hours of its origin, focusing on how inappropriate it was, between the two leaders of [REDACTED] and [REDACTED]. That counseling continued at each level of command, as that level became aware of it, and reached done the entire chain of command, again and again, to those in-charge at ODA, Company and Battalion.

013588

Initial contact points for federal officials to meet with 5<sup>th</sup> SFGA personnel were neither through legal channels nor Command channels, but started through Fort Campbell's CID office, direct to a point of contact (CPT [REDACTED]), and continued this way for sometime; b6-4/b7c-4

- Initial contact was represented by both federal representatives and 5<sup>th</sup> SFGA as "cordial"
- The DOJ representatives were heard to say;
  - "please facilitate a meeting (with soldiers) for us" (to CPT [REDACTED]) - b6-4/b7c-4
  - "... informal meetings ..."
  - "... we are just getting oriented ... as to what happened" (with Mr. Lindh)
- Initial contact by federal representatives was not preceded by any formalities nor any in-brief as to their intentions ... when coordinating the visit to the points of contact nor during the initial visit with individual unit members nor later to the Command element. b6-4/b7c-4
- The Group Commander, COL [REDACTED] has never been interviewed nor ever spoken with the Department of Justice or FBI. COL [REDACTED] did not see the photo-in-question until early April upon his return CONUS when MAJ [REDACTED] had to print one off for him. b6-4/b7c-4 b6-4/b7c-4

The disk handed off to the DOJ representatives at the conclusion of their very first visit to Campbell on 21 February 2002 was acknowledged by DOJ to be; "... what 5<sup>th</sup> SFGA could lay their hands on and prepare at this time ...". The DOJ representatives were also heard to say; "... (5<sup>th</sup> SFGA) will get us more later..."

DOJ representatives did go back to Fort Campbell again in March 2002 but made numerous telephonic contacts over the intervening months.

013539

Findings and Conclusions:

b6-4/b7c-4 b2-2

The photo-in-question was in fact, taken by SFC [redacted] of [redacted] on 7 December 2001 at ~1320Z at the "Turkish School" in Mazar-e-Sharif, Afghanistan, the safe house for Joint Coalition Special Operations Forces, in the moments just prior to the orderly transfer of John Walker Lindh into the control of non-SOF US MP forces.

The offending headband tape was removed from Mr. Lindh immediately after the photo was taken and this tape was not seen elsewhere, other than on the photo-in-question.

No testimony was offered that showed Mr. Lindh was aware of this event, the photo or the wording. From Mr. Lindh's perspective, he had received food, clothing, religious freedoms and even had his latrine container cleaned for him by an ODA member. Six days after he had to be carried in on a stretcher, Mr. Lindh walked out of the Turkish Schoolhouse on his own power for the transfer event.

Steps were taken to limit the distribution of the photo-in-question within 24 hours of its existence, by the very same team that had taken it. This significantly pre-dates any legal or judicial intervention.

Despite the ODA's best efforts to limit its existence, dissemination of the photo-in-question did take place, primarily electronically. However, it was also transferred non-electronically by physical means more than once as a stored image on disk / CD / camera flash card but was not found in any printed format. These transfers cannot be charted, tracked nor cataloged as to time or electronic destination.

The staff and members of 5<sup>th</sup> SFGA cooperated with federal authorities on both visits to Fort Campbell and for telephonic requests without delay or obfuscation. In addition, 5<sup>th</sup> SFGA members rightfully assessed the confidentiality / classification / content of materials-to-be-surrendered for operational security preservation that is routine to SOF operations. 013590

Members of 5<sup>th</sup> SFGA who claimed innocence or "no knowledge" of the photo-in-question or its disposition were truthful.

Members of 5<sup>th</sup> SFGA involved here (and soldiers/sailors/airmen in general) are not familiar with the complex legal rules pertaining to evidentiary preservation nor the due process of defense or prosecution. Statements by the US Attorney's involved in the initial visits and interviews do not indicate that these were described to 5<sup>th</sup> SFGA members until the two formal motions were delivered in April.

013591

No page 28

013592

37

- Although it is a common core task in basic soldier skill training and included again during 18-series training for Green Berets, additional training of ODA members and SOF staff in the handling of captured combatants and the processing of captives / detainees is called for in light of the non-linearity of today's battlefield ... and the resulting difficulty of MP access through increased emphasis on training for uncertainty, according to existing regulations and manuals;
  - o AR 190-8 Enemy POW's, Retained Personnel, Civilian Internees and other Detainees
  - o DA Pam 27-1 Treaties Governing Land Warfare
  - o FM 3-19.1 Military Police Operations
  - o FM 3-19.4 Military Police Leader's Handbook
  - o FM 3-19.40 Military Police Internment/Resettlement Operations
  - o FM 19.4 MP Battlefield Circulation Control Area
  - o FM 19-10 Security and Enemy POW Operations
  - o FM 19.40 Military Police Law and Order Operations
  - o FM 21-75 Enemy POW's, Civilian Internees and other Detained Persons
  - o STP 19-95B1-SM Combat Skills of the Soldier
  - o STP 19-95B24-SM Soldier's Manual MOS 95B, Military Police Skill Level 1
  - o STP 19-95C14-SM Soldier's Manual MOS 95B, Military Police Skill Levels 2/3/4, Trainer's Guide
  - o STP 21-1-SMCT Soldier's Manual MOS 95C, Internment/Resettlement Specialist Levels 12/3/4
  - o STP 21-1-SMCT Conduct Combat Operations According to the Law of War Task 181-906-1505

Selected topics and lessons should be reinforced through counseling sessions, staff training and inclusion in future Professional Development sessions.

013593

- As an addendum, federal authorities may have inadvertently created an atmosphere of informal camaraderie with 5<sup>th</sup> SFGA soldiers during their calls and visits that was probably mistaken for procedural informality. This may jeopardize the soldier in a legal sense later on, if the other federal agency assumes more formality ... or knows of more formality ... than it conveys to the soldier(s).

- o If legal implications are even remotely possible during such an encounter, the federal authorities have a mandate of honor, if not a duty, to be truthful and forthright ... to make the unit and individuals formally aware of the gravity of the proceedings, the consequences of their own and unit actions ... and to make legal counsel available beforehand as well as during questioning, analogous to what is done in a military Article 31 proceeding.
- o The relationship of federal agency-to-military contact, while "comfortable" should not deprive the subordinate agency of its rights, limit its actions nor jeopardize an individual soldier, sailor or airman's right. Likewise, the federal agency should not insinuate itself as a friend ... then consider becoming a potential accuser.

b2-2

- Lastly, this event can have excellent training value, through vignettes and the study of this particular situation for [REDACTED]. It should result in force-wide review of our SOF thought process in understanding a combat element's "detainee status determination" and the addressing of what to do when a detainee is held for unexpected periods by SOF elements or other combat elements due to the speed of the battle or the likelihood of overwhelming numbers (like Desert Storm) or an inability to effect a timely hand-off with custodial MP's. As such, these events could lead to the need for a review of possible doctrinal changes, added basic soldier skill training, reinforcing 18-series training and perhaps more importantly, for repetitive refresher emphasis within Group Professional Development training.

013594