

DRAFT

16 July 2004

INFORMATION PAPER

CISA-ZF

SUBJECT: Potential Crimes Against Detainees

1. **Purpose.** To provide information on potential crimes committed against detainees by Army personnel using methods such as nudity and military working dogs in their interaction with detainees.

2. **Background.**

a. The on-going CID Abu Ghraib and other investigations have substantiated abuse of detainees by some Army personnel. Some acts are clearly criminal in nature and subject to traditional criminal law analysis. These include, but are not limited to, assaults and requiring detainees to simulate sexual acts. These cases represent fairly simple factual patterns and subject the perpetrator to criminal liability and subject those in the supervisory chain of command who knew of the misconduct and approved or condoned it to criminal liability also.

b. The more complex cases fall into two categories: What constitutes maltreatment under Article 93 in regards to detainees and what is the culpability of anyone approving, reviewing, or implementing an interrogation technique designed to comply with the law of war and Geneva Conventions and with the purpose of obtaining useful intelligence.

b. Investigation has shown that Army personnel used military working dogs, nudity, women's underwear, and stress positions in their interactions with detainees. Some examples of such use are:

(1) Army personnel required detainees to remove all clothing and then deprived them of clothing for extended periods of time;

(2) Army personnel placed women's underwear on the heads and faces of detainees while detainees were cuffed or otherwise unable to remove the panties;

(3) Army personnel had military working dogs present while interrogating detainees and, on at least one occasion, assertively used the dog to evoke fear in the detainee;

(4) Army personnel required detainees to remain in uncomfortable stress positions for extended periods of time.

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3. Discussion

a. For the reasons discussed below, [REDACTED]

[REDACTED] (b)(5)
The determination of whether a crime was committed will have to be made on a case-by-case basis; however

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[REDACTED] (b)(5)

b. The Applicable Rules.

(1) The possible UCMJ violations include violation of a lawful order under article 92, maltreatment under article 93, and / or assault under article 128. Citing a soldier or commander for a violation of Article 93 requires a probable cause determination that the accused was cruel toward, oppressed, or maltreated a person subject to the accused's orders.

(2) The relevant Army regulations provide general guidance in this area and do not specifically prohibit any of the acts described in paragraph 2a above. AR 190-8, *Enemy Prisoners of War, Retained Personnel, Civilian Internees and Other Detainees*, prohibits inhumane, cruel, and degrading treatment. Detainees are to be treated with respect for their person, honor, manners and customs and protected against all acts of violence, threats, and insults. AR 190-12, *Military Working Dogs*, authorizes the use of military working dogs to increase MP combat potential. Enemy prisoner of war control and point security are listed as examples of ways to use dogs to increase combat potential. It is left to commanders of units with military working dogs to establish policies and procedures governing release of dogs consistent with the regulation.

c. Evidence Needed to Support a Charge. Given that neither the UCMJ nor Army regulations specifically prohibit the activity in question, one must determine whether the above described acts (1) constituted inhumane, cruel, or degrading treatment, and (2) the actor's intent.

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(1) To support a charge under article 92, UCMJ, evidence would have to show that a soldier violated a general regulation or lawful order in his/her treatment of the detainees or that the soldier was derelict in his/her duties¹. Dereliction of duties is a legitimate charge, when the person willfully or negligently fails to perform that duty of care

[REDACTED]

(b) (5)

Admittedly, not all the provisions of AR 190-8 can be enforced under UCMJ Article 92; however,

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paragraph 1-5 is punitive because it clearly states, "Inhumane treatment is a serious and punishable offense under the UCMJ (AR 190-8, para 1-5a(4)). Paragraphs 1-5b through 1-5d go on to make specific actions in respect to detainees or their treatment prohibited by military service members.

[REDACTED]

(b) (5)

(2)

[REDACTED]

(b) (5)

(3)

[REDACTED]

(b) (5)

3. Conclusion.

[REDACTED]

(b) (5)

¹ A duty may be imposed by regulation (UCMJ Article 92, para c(3)(a))

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