



DEPARTMENT OF THE AIR FORCE
31ST FIGHTER WING (USAFE)

8 July 2004

MEMORANDUM FOR 31 SF/CC

FROM: 31 FW/JA

(b)(6),(b)(7)(C),(b)(7)(F)

SUBJECT: Legal Review of Detainee Photograph—Subject: SSgt [REDACTED]

1. I have reviewed the subject photograph and the statements obtained by the AFOSI from witnesses concerning the photograph.

(b)(5),(b)(6),(b)(7)(C)

2. FACTS.

a. By message DTG 131539Z May 04, Subject: Review of Air Force Detainee Operations, HQ USAF/XO directed all MAJCOMs to "report any known incidents, allegations, or investigations involving personnel in your commands regarding inappropriate detainee handling/operations (including, but not limited to, photographs or videos of detainees) from the beginning of Operations ENDURING FREEDOM/IRAQI FREEDOM until present that deviate from proper detainee procedures and requirements. Detainee operations are defined broadly to include, but not limited to, detainee handling, interrogation, transport, photography, and internment by Air Force personnel." The message requires commands to conduct a thorough review of any situations found that fall within the requested information.

(b)(7)(C) b. In response to the HQ AF/XO message, 31 FW Security Forces (SF) personnel recalled seeing a photograph of one of their personnel with a detainee while deployed to Kirkuk Air Base, Iraq in support of Operation IRAQI FREEDOM. They located the photograph and provided it to AFOSI, [REDACTED] for review and further investigation. The photograph (Attachment) depicts an Air Force member, identified as SSgt [REDACTED], standing outside next to a detainee. The detainee is lying prone on the ground in the sand. There is a hood, which appears to be a canvas sack, covering the detainee's head, and his hands appear to be bound behind his back. The detainee appears to be neatly attired, wearing a light blue shirt, brown pants, light blue socks, and light blue loafers. SSgt [REDACTED] is holding his rifle, with the muzzle pointed at an angle towards the ground. He is standing with his left foot propped on the detainee's buttocks. He is looking towards the photographer, seemingly posing for the photograph. The timeframe of the photograph is the summer of 2003. The photograph is a digital photo. An analysis of the .jpg file used to transmit the photo via email indicates the photo was taken on 10 August 2003.

(b)(6),(b)(7)(C),(b)(7)(F)

c. The statements obtained by the AFOSI indicate that the 31 SF personnel were not given any written Standard Operating Procedures (SOPs), Special Security Instructions, or other specific, written guidance or training regarding the handling of detainees. Instead, the

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information indicates that they followed AFI 31-302, *Air Base Defense Collective Skills*, and LOAC in handling detainees. The practice was to cover the head of any enemy prisoner of war (EPW) with a sandbag, and to handcuff them with either flexi-cuffs or duct tape. The detainees would be searched, then taken to the Detention Facility on base and turned over to the U.S. Army for processing.

(b)(6),(b)(7)(C),(b)(7)(F) d. SSgt [redacted] exercised his right to remain silent when approached for questioning about the photograph. Thus, there is no information available as to the exact facts and circumstances surrounding the situation depicted in the photograph. [redacted]

(b)(5),(b)(7)(C)

3. APPLICABLE LAW AND POLICY. I reviewed the following sources in arriving at my conclusions regarding the subject photograph.

(b)(5)

(b)(5)

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DOD056248

(b)(5)

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2433

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(b)(5)

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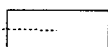
2434

ACLU-RDI 2466 p.5

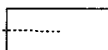
DOD056250

(b)(5)

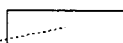
(b)(6),(b)(7)(C)



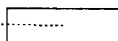
(b)(6),(b)(7)(C)



(b)(6),(b)(7)(C)



(b)(6),(b)(7)(C)



(b)(6),(b)(7)(C)



(b)(6),(b)(7)(C)



(b)(6),(b)(7)(C)



(b)(5)

6. If you have any questions about this review, please contact me at DSN 632-7843.

(b)(6)

[REDACTED] Lt Col, USAF
Staff Judge Advocate

Attachment:
Copy of Photograph

cc:
16 AF/JAO
Det 531, AFOSI/CC

"Return With Honor"

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DOD JUNE

2436

ACLU-RDI 2466 p.7

DOD056252

PHOTO
DENIED IN FULL
EXEMPTION
6&7



19 August 2004

MEMORANDUM FOR 16 AF/CC

FROM: 16 AF/JA

SUBJECT: Legal Review on Detainee Photograph

1. ACTION.

We reviewed the photograph, statements obtained through AFOSI interviews, the applicable law and regulations, and U.S. policy regarding the treatment of detainees. (b)(5)



2. FACTS.

a. On 14 May 2004, USAFE/DS sent the HQ USAF/XO message directing all "commands" to "report any known incidents, allegations, or investigations involving personnel in their commands regarding inappropriate detainee handling/operations (including, but not limited to, photographs or videos of detainees) from the beginning of Operations ENDURING FREEDOM/IRAQI FREEDOM until present that deviated from proper detainee procedures and requirements. Detainee operations were defined broadly to include, but not limited to, detainee handling, interrogation, transport, photography, and internment by Air Force personnel." The message required commands to conduct a thorough review of any situations found that fell within the requested information. In addition to the HQ USAF/XO message, USAFE/DS directed NAF commanders and installation commanders to report any allegations of prisoner abuse within USAFE's area of responsibility (AOR) to USAFE/SF.

(b)(6),(b)(7)(C) b. 31 SF/CC, Lt Col [redacted] recalled an e-mail containing a photograph of SSgt (b)(6),(b)(7)(C) [redacted] and a detainee that possibly met the criteria outlined in the message. The (b)(6),(b)(7)(C) photograph was taken while SSgt [redacted] was deployed to Kirkuk Air Base, Iraq (Kirkuk), in support of Operation IRAQI FREEDOM. Several members of the 31st Security Forces Squadron (SFS) received a copy of the photograph in an e-mail. 31 SF/CC subsequently reported the photograph and turned it over to AFOSI, Detachment 531 (Det 531) at Aviano Air Base, Italy. (b)(6),(b)(7)(C) The photograph depicts an Air Force member, identified as SSgt [redacted] standing next to a detainee. The detainee is lying on the ground. A hood covers the detainee's head, and his hands (b)(6),(b)(7)(C) are behind his back. SSgt [redacted] is holding his rifle, with the muzzle pointed towards the ground away from the detainee. He is standing with the ball of his left foot resting on the detainee's buttocks. [redacted] is looking towards the photographer. The timeframe of the photograph is 10 August 2003.

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C) c. On 18 May, Lt Col [] 31 FW/JA, notified 16 AF/JA of this photograph and indicated it fit the criteria of the 14 May 2004, USAF/XO message. This e-mail was forwarded to HQ USAFE/JA. She indicated that the photo was also reported to USAFE/SF through security police channels. OSI reported the matter to their higher headquarters.

(b)(6),(b)(7)(C) d. AFOSI agents from Det 531 did an assessment of the photograph and the facts surrounding it by interviewing 31st SFS members who deployed with SSgt []. AFOSI also attempted to interview SSgt [] regarding the potential LOAC violation. SSgt [] exercised his right to remain silent and requested counsel. During interviews, some of the deployed 31st SFS members recalled the incident with the detainee illegally entering Kirkuk but did not know that a photograph was taken or who took the photograph. They indicated that the detainee in the photograph allegedly jumped the fence surrounding the area patrolled by the SF. Apparently such incidents occurred frequently at Kirkuk. Standard procedure at the time when someone illegally entered the base was to detain the person, tie their hands with plastic flexi-cuffs or duct tape, place an empty sand bag over their head, and turn them over to the Army detention facility as soon as possible. TSgt [] deployed to Kirkuk at the same time as SSgt [].

(b)(6),(b)(7)(C) According to TSgt [] this was briefed as a standard operating procedure during in-flight orientation at Kirkuk.

(b)(6),(b)(7)(C) e. On 1 June 2004, AFOSI interviewed Major [] the current Operations Officer at Kirkuk. Major [] stated that deploying USAF security force personnel received normal LOAC training, but his unit did not receive any specific training on how to handle detainees. He also stated that he knew of no official Standard Operating Procedures (SOPs) or Special Security Instructions (SSIs) on how security forces were supposed to handle detainees. Accordingly, he stated that his unit followed guidance in Air Force Instruction (AFI) 31-302 and LOAC when handling detainees. Major [] also indicated that unwritten operating procedures used by previous deployed units regarding how to handle detainees continued to be the standard practice: using empty sandbags and cuffing them. The rationale for these procedures was to ensure the detainee remained secure and did not see the interior of the base when escorted to the Army detention facility.

(b)(6),(b)(7)(C) f. On 8 July, Lt Col [] 31 FW/JA, completed a legal review of the photograph and facts surrounding it.

(b)(5)

(b)(6),(b)(7)(C) g. Special Agent (SA) [] Commander, 53rd Field Investigative Squadron, Aviano, confirms the case is now closed since no LOAC violation was found. He stated the matter has been closed out with the Air Staff via SAF/IGX (who was responsible for tracking the AF/XO tasker) and DoD via DoD/IG (who was tracking the OSD tasker). No one in AF/XO asked to see the photograph.

3. APPLICABLE LAW & POLICY.

(b)(6),(b)(7)(C) a. To determine whether or not the actions of [] and the photograph taken in the August 2003 rise to the level of a LOAC violation, we reviewed the following relevant

international law, treaties, U.S. law, DoD Directives and USAF policy concerning the treatment of detainees.

(b)(5)



(b)(5)



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(b)(5)



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(b)(5)



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2443

ACLU-RDI 2466 p.14

DOD056259

(b)(5)

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

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(b)(6),(b)(7)(C)

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[Redacted]

(b)(6),(b)(7)(C)

[Redacted]

(b)(6),(b)(7)(C)

[Redacted]

(b)(5)

(b)(6)

[REDACTED], USAF
Judge Advocate, 16 AF

I concur.

(b)(6)

[REDACTED] Colonel, USAF
Staff Judge Advocate

Attachment
31 FW/JA Legal Opinion