

[REDACTED]

THE JUDGE ADVOCATE GENERAL'S LEGAL CENTER & SCHOOL
CHARLOTTESVILLE, VA

Timeline at a glance:

- 04 MAR 03—arrived in Camp Virginia, Kuwait
- Late MAR/early APR 03—jumped to LSA Bushmaster for several weeks
- APR thru SEP 03—located at LSA Anaconda (Balad, Iraq)
- SEP thru NOV 03—located at Camp Victory, Baghdad
- Thanksgiving (26 NOV 03?)—moved to FOB Abu Ghraib, Iraq
- 14 DEC 03 thru 5 or 6 JAN 04—went on R&R leave
- On/about 14 JAN 03—CID approached me re: abuse allegations/photos; notification/investigation began immediately
- Mid-FEB 04—returned to Kuwait for redeployment
- 24 FEB 04—redeployed to 1AD in Germany

I worked in the 1st Armored Division (1AD) Office of the Staff Judge Advocate (OSJA), Wiesbaden, Germany, but was attached to the 205th Military Intelligence (MI) Brigade MTOE and deployed to Kuwait/Iraq in MAR 03.

Once I arrived in Kuwait, I immediately made contact with the V Corps OSJA, led by [REDACTED]. At the beginning, my focus was on supporting the MI commanders with a wide variety of deployment legal issues, to include Targeting, ROE, LOW, Code of Conduct, Legal Assistance issues, Military Justice, etc. One of the main tasks that I performed at this time was ROE/LOW/Code of Conduct/Geneva Convention training for 205th MI personnel. I conducted more than 40 formal classes on ROE/LOW/etc. I also conducted "make-up" training classes for those officers/soldiers that missed the initial training. Company commanders and senior NCOs sometimes requested that I conduct refresher training, which I did on a frequent (but informal) basis. There were no interrogation operational issues in Kuwait.

In late MAR or early APR 03, I moved forward into Iraq with the 205th MI BDE. We moved forward soon after 3rd Infantry Division. Our first stop was at LSA BUSHMASTER. We were there for about two weeks and then we moved on to Balad, Iraq (LSA ANACONDA). The brigade had units in approximately 20 different locations. The Tactical HUMNINT Teams (THT) were almost everywhere throughout Iraq. I was on the road a great deal for the first several months, and visited many locations where the 205th MI had soldiers.

I would travel to the different locations for several reasons. First, I would go check to see whether the soldiers had any legal issues, concerns or questions and to make sure they knew where they could get in touch with me. Next, I would check on the communications to make sure commanders and soldiers had the means to communicate with me. Most places didn't have good comms in the beginning. It took Abu Ghraib longer than most places to get comms up and running. Finally, I would speak with

commanders to see if they had any military justice issues (ART 15s, etc.), administrative law issues (15-6 investigations, Reports of Survey, etc.), claims (later centralized at V Corps JAG), and provided legal assistance (Wills, Power of Attorneys, etc.).

"Home base" for me was LSA ANACONDA (Balad, Iraq) until September 03. I moved to Camp Victory (Baghdad, Iraq) in early September.

The first time I became involved with the Interrogation Rules of Engagement was when MG MILLER came to visit. He brought a contingent of personnel with him. [REDACTED] told me that it would be valuable for me (both now and in future operations) to sit in and participate in the discussions/staffing regarding the development of the interrogation operation policies. [REDACTED] asked whether I would be involved with the MP mission at Abu Ghraib. I told her "no" and that the 800th MP BDE had 4 of their own JAG attorneys. [REDACTED] told me to make myself available to the interrogators and [REDACTED] in case they had legal questions or issues concerning interrogation policies or approaches. [REDACTED] also recommended that I "sit in" on interrogations as much as possible, which I did on subsequent visits (as well as when I moved to Abu Ghraib in late NOV 03). I never witnessed any interrogators conduct interrogations in a manner that violated applicable laws, rules, or regulations.

Personnel involved in the staffing of the IROEs from the legal perspective were: [REDACTED]

[REDACTED] was the V Corps/CJTF-7 Staff Judge Advocate. [REDACTED] was the POC on what was eventually to become a theater-wide interrogation approach and safeguards policy. The initial policy drafting process took more than one week to complete (early SEP 03). The initial interrogation policy utilized the Guantanamo Bay interrogation policy as a template, but was changed substantially to reflect the fact that Geneva Convention protections applied to detainees in Iraq. The original policy included approaches from FM 34-52 as well as input from the intelligence and MP communities.

[REDACTED] would call me to check on the status of the IROEs from higher. She said that she needed IROES so that she could tell her soldiers "the rules" because there were numerous approaches that had been used in the past by various interrogators in different operations (not sure which operations she was referring to). I told [REDACTED] that I would check on the status of the policy with CJTF-7 JAG and that she should tell her soldiers to adhere to the accepted approaches in FM 34-52 until a signed, approved policy was in place.

The second week of SEP 03, I called [REDACTED] and said "I've got good news and bad news." The "good news" was that LTG Sanchez had signed the original interrogation policy, the "bad news" was that the policy would still have to be sent to CENTCOM, who could accept (or reject) it in whole or in part. I sent her the policy. [REDACTED] was eager to put something "on paper" (other than FM 34-52) that she could provide to her soldiers. She drafted the "IROE slide" and sent it to me. [REDACTED] told me that the slide she drafted had accepted FM 34-52 approaches on the left-hand side of the slide. She stated that the right-hand side of the slide contained some approaches that were not

in FM 34-52, and that these approaches were not to be utilized without the required approval from the CJTF-7 CG, if they would be allowed at all (since CENTCOM might eventually reject all or part of the policy). I took a copy of the slide to CJTF-7 OSJA for their thoughts/comments. The consensus was that the slide was "O.K." as long as the slide remained restrictive (not permissive) in scope and provided minimum protections (CG approval for all the approaches on the right-hand side of the slide). Interrogators that followed the IROE slide instructions wouldn't get in trouble because the CG would have to "sign off" on all restricted approaches (some of the approaches were later disallowed altogether). Also, I recommended that [REDACTED] include a sentence on the slide that the Geneva Conventions apply and that detainees should be treated humanely; she did include this language.

CENTCOM did not approve the first several IROE policies CJTF-7 had submitted. The final CENTCOM approved IROE was signed on 12 Oct 04. One of the reasons that it took a long time to get the IROEs established was because we were operating in uncharted waters. CJTF-7 OSJA attempted to look at all applicable legal authorities and precedents that were out there (Geneva Conventions/Protocols, Hague, international law, Army doctrine, established military protocols, case law, etc.). GTMO detainees were classified as unlawful combatants and weren't protected by the Geneva Conventions, whereas CJTF-7 understood that the Geneva Convention applied to IRAQ. I do not know whether SOUTHCOM was consulted on the IROEs. I do know that the IROEs were coordinated with CENTCOM, but I wasn't involved in those details. I helped type several of the modified versions of the policy.

One of the areas that CJTF-7 OSJA debated over and had legally intense discussions about was stress positions. In the original policy, stress positions could be used only with CG approval. I don't recall ever seeing a request for an exception to policy regarding stress positions.

I kept COL PAPPAS updated on each proposed change to the interrogation policy that came out. COL PAPPAS commented to me that the 12 October policy was very close to FM 34-52 except for the "Safeguards." I agreed with him. One of the changes implemented was changing the word "isolation" to "segregation." Segregation is the word used in the Geneva Conventions and CENTCOM/CJTF-7 OSJA wanted the interrogation policy's language, as well as intent, to be in accordance with the Geneva Conventions.

The final interrogation policy stated that the segregation of any detainee beyond 30 days had to be approved by LTG SANCHEZ. If segregation was utilized, it was supposed to be written in the interrogation plan. I was not involved in the first few requests for an exception to policy to extend segregation beyond 30 days. [REDACTED] conducted the final legal sufficiency review on segregation extensions. [REDACTED] called me and told me that several of the requests for exception to policy did not have sufficient factual information to justify continued segregation of a detainee. Therefore, he asked me to review future requests to insure that they were factually sufficient to allow [REDACTED] to make a decision regarding continued segregation. [REDACTED] also said it

wouldn't hurt to get another "set of eyes" on the requests, so I became part of the process of getting the requests reviewed.

The segregation extension requests would be written by the interrogator and reviewed by their section leader who would then pass it to [REDACTED]. [REDACTED] would review the request and, if they felt it was sufficient, pass the request to me. I reviewed the request to ensure there were sufficient details and facts justifying the segregation extension request. If I found the extension request to be legally and factually sufficient, I would then pass it on to COL PAPPAS to review and either sign off or reject the request. The request would then go to [REDACTED] at Camp Victory, who would hand deliver them to MG FAST for review and approval/disapproval. If approved by MG FAST, they went up to CPA where [REDACTED]. [REDACTED] would conduct the final legal review. It would then go to LTG SANCHEZ for approval/disapproval.

LTG SANCHEZ didn't rubber stamp requests, I believe he was looking at them very closely because he would sometimes reject requests, saying that if MI didn't (or couldn't) get the info from some of the detainees in a certain amount of time, they should let the detainee go (LTG SANCHEZ didn't communicate this to me personally, I heard it either through JAG or MI channels when an extension request was denied).

The exception to policy process was a somewhat of a logistical nightmare, since signed originals were required to go from Abu Ghraib to Camp Victory, then to CPA to obtain the required signatures. However, this needed to be done to ensure that everyone was in line with the interrogation policy. Average "turn around time" took 10 days to two weeks, although 5-7 days wasn't unusual. In order for someone to request an extension, they would normally begin the process approximately 10 days two weeks in advance because that is how long it took to physically move the document from place to place to get it reviewed, signed and approved (since we were in hostile territory). There were, however, several extension requests that we managed to get through the process in 1-2 days where detainees were near the "30 day window." I saw approximately two requests where an extension beyond the original 30 day extension was being submitted. Fully executed extension approvals were returned to the JIDC. I advised [REDACTED] to maintain the signed copy of the request just in case there were any issues with a detainee in the future.

In reference to the use of dogs: I recall thinking that it was unusual during the initial drafting of the interrogation policy that the use of dogs was placed in the IROE because I don't believe there were dogs at any of the Iraqi detention facilities at the time, but I believe it was inserted as a safeguard measure. The September 14 interrogation policy stated that the use of dogs during interrogations had to be approved by LTG SANCHEZ, even though the dogs had to be muzzled. I never told COL PAPPAS that the authority to approve the use of dogs had been delegated to his level.

I wasn't the approval authority for any approaches used. Although I was given the authority to be the "No guy" with regard to application of approaches, I couldn't be the

"Yes guy" to approve whether certain approaches could be used; approval authority for approaches falling outside the scope of the interrogation policy rested with the CG.

Some of the soldiers would ask me about some of the techniques they wanted to use and whether the proposed technique fell under an approved interrogation policy approach. I told them that we would always need to look at each circumstance on a case-by-case basis, since the facts surrounding a particular detainee could often determine whether an approach could be used (old/young man, female, health issues, etc.). I provided my analysis to CJTF-7 OSJA based on legal research of the Geneva Conventions, FM 34-52, ARs, interrogation policy, Federal Laws, etc., before giving the information to commanders for their assessment.

Several examples of issues that were addressed are: can we deprive detainees of food (no, not under any circumstances); can they use the good cop/bad cop technique (yes, provided there weren't any unusual factors that might preclude using this approach); can they change their meal times (yes or no, depending on the circumstances and as long as they weren't depriving detainees of food). Per CJTF-7, stress positions could not be used. Safety positions could be used if, for example, a detainee is physically confronting or fighting you, but must be discontinued once you get assistance or if the detainee calms down. Sleep management: anything less than 4 hours of sleep per night for the first 72 hours would have to be approved by higher.

I began visiting Abu Ghraib (weekly) in September. Upon introducing myself to the MP chain of command and NCOs/soldiers at Abu Ghraib, I told them that even though I wasn't their JAG, I would help them out if they had legal issues or if there was an emergency and they were unable to contact their attorneys. I did not discuss the IROEs with the MPs.

The only MP that took me up on my offer of assistance was [REDACTED]. When I first went to Abu Ghraib to tour the Hard Site in mid/late September, I saw a naked detainee. I approached [REDACTED] and asked him, "Hey, what the heck is going on here?" or words to that effect. [REDACTED] told me the detainee had approached him and wanted to wash his uniform, but that there wasn't a replacement uniform to give the detainee. [REDACTED] then took me to the back side of the cell (outside) where the detainee had hung his jumpsuit to dry. I told him to get the detainee a blanket, which he did. [REDACTED] told me there was always a shortage of uniforms. I told him to go to his S-4 and that if the S-4 was not responsive, to tell me and that I would get involved. I left my contact info for [REDACTED]. He didn't call, but when I saw him again and asked him if he had any results and he said "no." I called CJTF-7 OSJA [REDACTED] and he told me he would put a word out to CPA. I also told [REDACTED] about seeing the naked detainee and that we needed to make sure detainees had clothes. [REDACTED] told me it was hot [outside], but I think he was joking. I told [REDACTED] that if the ICRC came by and saw this they would have a problem because of our responsibilities under the Geneva Conventions. [REDACTED] said he understood and agreed; I believe he addressed the situation and corrected it. The next time I saw [REDACTED] he told me they had received 400 uniforms.

The MPs had four attorneys and the JAG at Abu Ghraib was [REDACTED] who worked in the Magistrate Cell. When I arrived permanently at Thanksgiving, I saw a lack of standards with the MPs. There was no military courtesy or uniform standards. There were soldiers out of uniform and one particular individual had a T-shirt that said "F-- Bush." I identified myself as an officer and made an on-the-spot correction by telling the individual he could not be wearing that and to change.

I moved to Abu Ghraib at COL PAPPAS' request. In mid-November, COL PAPPAS asked me to go to the Dining Facility with him. He sat me down and told me that LTG SANCHEZ had decided to make him the Forward Operating Base (FOB) Cdr for the prison. LTG SANCHEZ was concerned that there were too many perimeter security issues (mortars, rockets, RPGs, small arms, etc.) and that he wanted COL PAPPAS to fix it. COL PAPPAS decided to bring in the 165th MI BN to help with force protection. COL PAPPAS said that the MPs were going to run MP operations and MI was going to run the MI operations. COL PAPPAS took [REDACTED] to Abu Ghraib to help with the force protection and to instill standards. COL PAPPAS told me he wanted me to be on-site at Abu Ghraib so that I could be readily available for any questions that might arise. I remember the first time COL PAPPAS and [REDACTED] walked the outside perimeter--there were breaches in the perimeter walls. COL PAPPAS also brought in a Dining Facility, an Internet Café, and removed several local vendors that were conducting food/retail businesses at the prison.

Several MI soldiers were upset and approached me regarding their perception that the MP personnel were "getting away" with UCMJ and GOI violations, while MI personnel were being disciplined/punished for the same misconduct. I notified [REDACTED] (MP) about this perception and reiterated that I could assist with military justice issues, if needed. [REDACTED] thanked me and reminded me that they (MPs) were TACON to the 205th MI, not OPCON. I took his comment to mean that he had the situation under control and that I shouldn't tell the MPs how to conduct their business, so I left it at that.

I tried to walk through all the detainee camps daily, but always went at least four times a week minimum. I never walked through after my shift (usually midnight at the latest). I also walked through 1A and 1B regularly because I often acted as a "tour guide" whenever high ranking military officers, foreign military officers, the General Council, and civilians came to visit. In January, we had visitors almost every day; visits generally lasted half a day.

There was a change to Detainee [REDACTED] and I asked [REDACTED] whether or not he had seen it. He said "no," so I provided him with a copy. I told him to get his lawyer to come down and provide a class on the changes. I believe they did have a class. I believe this happened right before I left on R&R on 14 December 03.

Interrogators were familiar with the interrogation policy. The 519th received extra attention because they were conducting the more critical tasks. Upon arriving to Abu Ghraib, I gave a Train the Trainer Class on the IROE and Geneva Convention to 519th.

Section leaders and [REDACTED] provided them refresher training. I saw the section leaders discuss IROE strategy and approaches with soldiers during daily meetings. The interrogators were aware that I was observing interrogations at various times (behind the 2-way mirror). I always emphasized to classes that they must respect and protect the detainees and treat them humanely. I told soldiers that if they ever had any doubt, they should discuss whether an approach was permissible with me or their chain of command, etc. I also encouraged them to put themselves in the detainees place and ask whether they would want to be treated similarly if the tables were turned. I told them if they ever had any questions, they should see the IG, CID, chaplain, chain of command, me or any other JAG.

[REDACTED] was in charge of the JIDC but he was not in COL PAPPAS' rating chain of command. I believe [REDACTED] rated him, according to what [REDACTED] told me. [REDACTED] was in the prison (physically) all the time; the MPs liked him. He was present when a detainee obtained a weapon and shot an MP. The shooting incident occurred before I moved out to Abu Ghraib at Thanksgiving.

In reference to the ICRC: When the ICRC came for an October visit, [REDACTED] called me at Camp Victory and said, "This is B.S. they just showed up unannounced and they want to go anywhere/everywhere." I told him, "Sir, They can go everywhere." He then said, "We have to see about this, they need to announce they are coming; they have to make sure we know they are coming." He also said he knew there was a prohibition against allowing the ICRC access to some of the detainees. I told him that he was referring to Article 143 of the Geneva Convention and that it was possible to temporarily deny access if imperative military necessity requires. I discussed this issue with CJTF-7 OSJA [REDACTED], who agreed, although they stated that it couldn't be a "blanket" prohibition and that the Article 143 exception was very narrow in scope and must be addressed on a case-by-case basis.

The command invoked Article 143 regarding eight detainees during the December ICRC visit. The caveats to this decision (in order to meet the imperative military necessity standard) were: 1: It is only temporary. 2: Cannot apply as a general statement to an entire group. It cannot be a blanket request. 3: It has to be supported by factually sufficient reasons. 3: You must still give them access to their living area, since merely observing their living conditions won't compromise any intelligence objectives. I was on R&R leave during the December ICRC visit. The ICRC seemed pleased during their review of the December visit (in January 04) regarding the positive changes made since their October visit. In reference to the ICRC response to their first visit: I was not involved in replying. This is the memo that BG KARPINSKI signed.

I am aware of one allegation of sexual abuse. [REDACTED] called me and informed me that three interrogators and an interpreter had conducted an unauthorized interrogation on two female detainees and asked one of them to take her shirt off. When I discussed this with COL PAPPAS, he was very upset. He took this matter very seriously and told me we were going to "nail" these guys (soldiers) if the allegations proved true. CID conducted an investigation, but it was inconclusive and we were unable to prove sexual

assault. Also, the involved soldiers denied any misconduct, and other detainees in the same holding area told CID that the females making the allegations were "nuts." The only thing we could prove was that the soldiers conducted an unauthorized interrogation without clearing it through proper channels. They were given ARTICLE 15s for the unauthorized interrogations. I do not know of any other incidents. I do not know about the incident relating to [REDACTED] COL PAPPAS was always extremely careful to make sure he followed the UCMJ regulations.

I knew that detainees were placed in segregation. They were in cells alone to prevent them from speaking with other detainees. There might have been confusion with the word segregation and isolation. Segregation was authorized if you wanted to separate an individual from a group of detainees to prevent them from speaking to one another. Isolation was implemented as a means of discipline.

I never witnessed dogs being used during interrogations. I did see the dogs out in the yard near the Entry Control Point and walking around outside the concertina wire. No request for the use of dogs ever came through me. I never saw any requests with "want to be allowed use any approach necessary." In reference to women's underwear, I never witnessed or was aware of any detainee in women's underwear. Any interrogation plan with a combination of an approved technique and a technique requiring approval from higher had to be submitted in its entirety for approval.

About a week after I returned from R&R in January 04, [REDACTED] (CID) came to me with the pictures of detainee abuse that had been turned in. He wanted my assistance as a prosecutor to determine how to proceed. I immediately called CJTF-7 OSJA to notify them about the photographs. After assisting CID with the investigation for the first month, we felt that MPs and MI soldiers accused of abusing detainees were doing it (at least in part) for fun because of the witness statements, as well as the time, place and manner that the misconduct occurred.

The capturing units were bringing in detainees who were suspected of BA'ATH party or FEDAYEEN Membership. This was filling up Abu Ghraib. The magistrate cell identified good candidates for release in relation to theater policy and the Geneva Conventions. I would assist the magistrate cell with any questions relating to MI Holds who had been identified as candidates for release. If there was nothing on the capture tag, I would go to [REDACTED] and ask about the status of the detainee. She would then provide details on that particular detainee. The Magistrate Cell would have the copies of the Medical file, MI Notes, CID report, and MP report. The 519th kept the interrogation plans.

Please let me know if you have additional questions regarding this matter.

[REDACTED]
Judge Advocate General's Corps