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Army Regulation 190-8: Detainee Categories (U)

(U) Detainee Categories:

- (U) EPW: Enemy prisoners of war.
- (U) CI: Civilian internees.
- (U) RP: Retained persons (medical personnel and chaplains).
- (U) OD: Other detainees. (AR 190-8 defines ODs as detainees who have not yet been classified as EPW, CI, or RP. ODs are entitled to EPW treatment until such a classification has been made by a competent tribunal.)

(U) Geneva and the War on Terror

(U) In a memo dated February 7, 2002, President George W. Bush determined that Taliban detainees were "unlawful combatants" not legally entitled to prisoner of war status, and al Qaeda members also did not qualify as prisoners of war, for the following reasons:

1. (U) *The Taliban*. Afghanistan is a party to the Geneva Conventions; however, members of the Taliban have not fulfilled the obligations of lawful combatants laid out in GPW.
2. (U) *Al Qaeda*. As a non-state organization, al Qaeda is not—and cannot be—a party to any international treaty, including the Geneva Conventions.

(U) Notwithstanding their legal status, the President determined that al Qaeda and Taliban

detainees were to be treated "humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva."

(U) As the foregoing discussion demonstrates, U.S. military operations since September 11, 2001 have taken place within an established legal and policy framework. The Global War on Terror is distinct from traditional conflicts such as the World Wars because of our adversaries' disregard for the law of war; however, U.S. forces continue to be governed by the law of war and by U.S. policy with an emphasis on the humane treatment of all detainees.

Interrogation: Doctrine (U)

(U) There is no master DoD interrogation doctrine; however, the U.S. Army tactical interro-

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gation doctrine forms the *de facto* basis for interrogations conducted by DoD intelligence personnel. This doctrine is currently codified in the 1992 Army Field Manual 34-52, *Intelligence Interrogation*, and consists of seventeen interrogation techniques - called "approaches" in the manual - which may be used singly or in combination in order to elicit information from detainees. FM 34-52 specifies that these techniques, listed in the figure on the next page, are not intended to constitute an all-inclusive list; rather, they constitute a compilation of methods and procedures that have proven successful over time. Additionally, the techniques are described in broad terms, and leave room for creativity in their implementation. However, FM 34-52 explicitly requires that all interrogations be conducted in accordance with the detainee protections guaranteed by the laws and policies described above: "The approach techniques are not new nor are all the possible or acceptable techniques discussed below. Everything the interrogator says and does must be in concert with the [Geneva Conventions] and [the Uniform Code of Military Justice]."

(U) Although they have not officially adopted FM 34-52 as doctrine, other DoD components remain bound to work within the legal and policy limits associated with the law of war during interrogations. (FM 34-52 also notes that within any military unit that includes interrogators, the sen-

ior intelligence officer is assigned the responsibility of ensuring that all interrogations are performed in accordance with the Geneva Conventions and U.S. policies. FM 34-52 suggests that this may be effected through the review of oral or written interrogation plans by senior interrogators "when possible;" however, review of interrogation plans is not mandatory.) Within these bounds, interrogators may employ "psychological ploys, verbal trickery, or other nonviolent [and] non-coercive ruses...in the interrogation of hesitant or uncooperative sources."

(U) Prior to its approval in 1992, FM 34-52 was reviewed for legal sufficiency by the Office of the Judge Advocate General of the Army. Though FM 34-52's 17 techniques are not inherently legal or illegal, the stipulation that interrogators must adhere at all times to the Geneva Conventions and the Uniform Code of Military Justice (UCMJ) provides the backstop intended to prevent abuse.

(U) As previously noted, there is no official DoD-wide interrogation doctrine. Though the Joint Staff is developing a Joint interrogation doctrine, at present FM 34-52 constitutes the standard guide for conducting interrogations.

(U) Questioning and Interrogation: From Capture to Internment

(U) Recognizing that the value of intelligence information may decrease with time, U.S. military doctrine states that detainees may be

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Interrogation Techniques (U)

(U) Source: U.S. Army Field Manual 34-52, *Intelligence Interrogation*

1. (U) **Direct.** The interrogator asks questions directly related to information sought, making no effort to conceal the interrogation's purpose. Always the first approach to be attempted, and reportedly highly effective during past conflicts (e.g., Operation DESERT STORM).
2. (U) **Incentive.** The interrogator uses luxury items (e.g., cigarettes) above and beyond those required by Geneva to reward the detainee for cooperation, with the implication that such items will be withheld for failure to cooperate. FM 34-52 cautions that any withholding of items must not amount to a denial of basic human needs - thus food, medicine, etc. may not be withheld.
3. (U) **Emotional Love.** The interrogator plays on the detainee's existing emotional tendencies to create a psychological "burden" which may be eased by cooperation with the interrogator. An "Emotional Love" technique might involve telling a detainee with apparent high regard for his fellow soldiers that cooperation will help shorten the conflict and ease their suffering.
4. (U) **Emotional Hate.** An "Emotional Hate" technique might involve telling a detainee with apparent contempt for his fellow soldiers that cooperation with the interrogator will allow allied forces to destroy the detainee's old unit, thus affording him a measure of revenge.
5. (U) **Fear Up (Harsh).** The "Fear Up" technique takes advantage of a detainee's pre-existing fears to promote cooperation. For example, an interrogator might exploit a detainee's fear of being prosecuted for war crimes. "Fear Up (Harsh)" involves the interrogator behaving in an overpowering manner with a loud and threatening voice, perhaps even throwing objects around the interrogation room. The intent is to convince the detainee that he does in fact have something to fear, but that the interrogator offers a possible way out of the "trap." FM 34-52 notes that of the 17 doctrinal approaches, "Fear Up"

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approaches have the greatest potential to violate the law of war, and that interrogators must take great care to avoid threatening or coercing a detainee in violation of the Geneva Convention. In addition, "Fear Up (Harsh)" is generally recommended only as a last resort, because other approaches may not be effective in generating rapport with the detainee once it has been used.

6. (U) **Fear Up (Mild).** "Fear Up (Mild)" uses a calm, rational approach to take advantage of the detainee's pre-existing fears, again in an attempt to convince the detainee that cooperation with the interrogator will have positive consequences.

7. (U) **Fear-Down.** The detainee is soothed and calmed in order to build rapport and a sense of security regarding the interrogator.

8. (U) **Pride and Ego-Up.** The detainee is flattered by the interrogator, prompting him to provide information in order to gain further praise (e.g., by demonstrating how important he was to his country's war effort).

9. (U) **Pride and Ego-Down.** The interrogator goads the detainee by challenging his loyalty, intelligence, etc.; the detainee may then reveal information in an attempt to demonstrate that the interrogator is wrong.

10. (U) **Futility.** The interrogator rationally persuades the detainee that it is futile to resist questioning, because (for example) the U.S. will inevitably win the conflict; everyone talks eventually, etc. This technique is not used by itself; rather, it is used to paint a bleak picture for the detainee, which can be exploited using other techniques (e.g., Emotional Love).

11. (U) **We Know All.** The interrogator employs test questions to which answers are already known in order to convince the detainee that the interrogator is all-knowing and resistance to questioning is therefore pointless.

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12. (U) **File and Dossier.** The interrogator prepares a dossier with complete information on the detainee's background, possibly padding the file with additional paper to increase its bulk. If this technique is successful, the detainee will be intimidated by the size of the file, and conclude that everything is already known and that resistance is pointless.

13. (U) **Establish Your Identity.** The interrogator insists that the detainee is not who he says he is, but rather an infamous person wanted on serious charges by higher authorities. The detainee may divulge information in an attempt to clear his name.

14. (U) **Repetition.** The interrogator repeats each question and answer multiple times until, in order to satisfy the interrogator and break the monotony, the detainee answers questions fully and candidly.

15. (U) **Rapid Fire.** The interrogator asks questions in rapid succession so that the detainee does not have time to answer fully. This may confuse and annoy the detainee, leading to contradictory answers; ultimately, the detainee may begin to speak more freely in order to make himself heard and explain inconsistencies pointed out by the interrogator.

16. (U) **Silent.** The interrogator silently looks the detainee squarely in the eye for an extended period, until the detainee becomes nervous or agitated. The interrogator breaks the silence when the detainee appears ready to talk.

17. (U) **Change of Scene.** The interrogator engages the detainee in an environment other than an interrogation room in order to ease the detainee's apprehension, or catch him with his guard down. For example, an interrogator might invite the detainee to another setting for coffee and pleasant conversation; alternatively, an interrogator might pose as a guard in the detention area and engage the detainee in conversation there.

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interrogated prior to their arrival at detention facilities, as noted in AR 190-8: "Prisoners may be interrogated in the combat zone. The use of physical or mental torture or any coercion to compel prisoners to provide information is prohibited...Interrogations will normally be performed by intelligence or counterintelligence personnel." Additionally, non-MI personnel may doctrinally conduct "tactical questioning" of detainees in the field prior to their delivery to short- or long-term detainee holding facilities.

(U) Detainees may be captured or collected in the field by any U.S. service member. Therefore, doctrine provides for basic, direct questioning of detainees by capturing forces to ascertain information of immediate tactical value. The figure on the following page provides an example of two memory aids created for U.S. Army soldiers for these purposes.

(U) After capture and tactical questioning by MI personnel (collectively termed "field processing"), detainees are normally transferred to Army MP units trained and organized to operate detention or internment/resettlement (I/R) facilities. (Though the Army has the primary responsibility for detention operations within DoD, other services may operate detention facilities as long as all of the provisions of the Geneva Conventions and AR 190-8 are fulfilled.) Detention and I/R doctrine is contained in Army Field Manual 3-19.40, *Military*

Police Detention and Internment/Resettlement Operations.

(U) By doctrine, there are three broad categories of detention facility: collecting points (normally operated by MP companies attached to Army divisions), holding areas (normally operated by MP companies attached to Army corps), and I/R facilities (normally operated by specially trained MP I/R battalions under MP brigades reporting to the theater commander). Division collecting points (CPs) and corps holding areas (CHAs) are intended to provide for the immediate safety and well-being of detainees, while preventing them from impeding combat operations on the battlefield. CP size may vary depending on the detainee capture rate, and facilities may range from simple concertina wire enclosures to existing structures such as abandoned schools or warehouses. CHAs may hold up to 2,000 detainees, and are established in existing structures or specially constructed camps. Internment/resettlement (I/R) facilities are intended to provide for long-term detention away from the combat zone, and normally consist of semi-permanent structures capable of holding up to 4,000 detainees.

(U) Division collecting points are further classified as either forward or central CPs. Closest to the battlefield, forward CPs are typically the most austere detention facilities, and by doctrine, should not house detainees for more than 12 hours

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Basic Detainee Capture and Questioning Procedures (U)

(U) Source: U.S. Army Special Text 2-91.6, *Small Unit Support to Intelligence*

(U) Handling of Enemy Prisoners of War and Detainees: "The Five S's"

- (U) Search - A thorough search of the person for weapons and documents.
- (U) Silence - Do not allow the EPWs/detainees to communicate with one another, either verbally or with gestures. Keep an eye open for potential troublemakers and be prepared to separate them.
- (U) Segregate - Keep civilians and military separate and then further divide them by rank, gender, nationality, ethnicity, and religion.
- (U) Safeguard - Provide security for and protect the EPWs/detainees. Get them out of immediate danger and allow them to keep their personal chemical protective gear, if they have any, and their identification cards.
- (U) Speed - Information is time sensitive. It is very important to move personnel to the rear as quickly as possible. An EPW/detainee's resistance to questioning grows as time goes on. The initial shock of being captured or detained wears off and they begin to think of escape. HUMINT soldiers who are trained in detailed exploitation, who have the appropriate time and means, will be waiting to talk to these individuals.

(U) Tactical Questioning: "JUMPS"

- (U) J - Job: What is your job? What do you do? If military: what is your rank? If civilian: what is your position title?
- (U) U - Unit: What is your unit or the name of the company you work for? Ask about chain of command and command structure.
- (U) M - Mission: What is the mission of your unit or element? What is the mission of the next higher unit or element? What mission or job were you performing when you were captured or detained?
- (U) P - Priority Questions: Ask questions based on small unit's tasking as briefed before patrol, roadblock, etc. Ensure questions are asked during natural conversation so unit's mission is not disclosed.
- (U) S - Supporting Information: Anything not covered above.

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prior to their transfer to a central CP. Central CPs are located further from the battlefield, and are intended to house detainees for up to 24 hours prior to their transfer to CHAs.

(U) Corps holding areas normally retain detainees for up to 72 hours, but may retain detainees for the duration of hostilities if required. Typically, one CHA is to be established per division conducting combat operations. Detainees in CHAs may be transferred to I/R facilities, where they remain until hostilities end or they are otherwise released.

(U) In sum, a detainee captured on the battlefield would typically be processed as follows: tactical questioning at the point of capture, followed by detention and possible interrogation at a forward CP for up to 12 hours, a central CP for up to 24 hours, a CHA for up to 72 hours (or longer as required), and finally an I/R facility (or CHA) until hostilities end or the detainee is approved for release. Detainees may also be turned over to facilities at any higher echelon immediately following capture. By doctrine, detainees are not to be released until they have been fully processed for control and accounting purposes by I/R-trained MP units.

(U) As noted in AR 190-8 and FM 34-52, interrogation by properly trained intelligence personnel may be conducted at any stage of the capture and detention process. In addition, AR 190-8

specifies that commanders of I/R facilities must provide an area for intelligence collection efforts (i.e., interrogation).

(U) Doctrinal Relationship Between Military Police and Military Intelligence

(U) *Doctrine does not clearly and distinctly address the relationship between the Military Police (MP) operating [internment/resettlement] facilities and the Military Intelligence (MI) personnel conducting intelligence exploitation at those facilities.*

— from the Detainee Operations Inspection Report, Department of the Army Inspector General, July 21, 2004

(U) *The [Geneva Conventions] and US policy expressly prohibit acts of violence or intimidation, including physical or mental torture, threats, insults, or exposure to inhumane treatment as a means of or aid to interrogation.*

— from Field Manual 34-52, *Intelligence Interrogation*

(U) *Coercion is not inflicted upon captives and detainees to obtain information...Inhumane treatment, even if committed under stress of combat and with deep provocation, is a serious and punishable violation under national law and international law...*

— from Field Manual 3-19.40, *Military Police Internment/Resettlement Operations*

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(U) Previous investigations of detainee abuse, such as the Department of the Army Inspector General report quoted above, have correctly pointed out that MP and MI doctrine do not completely describe the functional relationship between detention and interrogation operations. Existing guidance regarding the direct involvement of MPs in the interrogation mission - as opposed to external support for interrogation - is vague (see figure on the next page), and non-existent with regard to the implementation of techniques that are employed outside the interrogation room. (Examples of such techniques include environmental and dietary manipulation, as described in the declassified April 16, 2003 Secretary of Defense memorandum approving interrogation techniques for use at Guantanamo Bay.) However, the second and third excerpts cited above - one drawn from an MI manual, the other from an MP manual - demonstrate that doctrine clearly and specifically forbids the inhumane treatment of detainees.

(U) As previously described, MPs are responsible for establishing and operating detention facilities, which are typically found at the division, corps and theater levels (collecting points, corps holding areas and internment/resettlement facilities respectively). Within these facilities, MPs are responsible for the security, discipline, health, welfare, and humane treatment of detainees. In addition, MPs must main-

tain complete accountability for all detainees, assigning each an internment serial number (ISN) and forwarding it to the National Detainee Reporting Center (NDRC), as mandated by Army Regulation 190-8.

(U) As the subsequent figure illustrates, MPs are also responsible for coordinating with MI personnel to facilitate the collection of intelligence from detainees. The most extensive discussion of this responsibility is contained in FM 3-19.40, *Military Police Internment/Resettlement Operations*. MP responsibilities related to detainee intelligence collection, including interrogation, drawn from FM 3-19.40 are summarized in the subsequent figure.

(U) The figure demonstrates that MP administrative procedures pertaining to interrogation operations are well defined, and stress accountability for detainees at every stage of the detention and interrogation process. (FM 3-19.40 goes so far as to specify that if a detainee is removed from the receiving/processing line at a detention facility by MI personnel, the detainee and his or her possessions must first be accounted for on DD Form 2708 - *Receipt for Inmate or Detained Person* - and Department of the Army (DA) Form 4137, *Evidence/Property Custody Document*.) In directing MPs to "assist MI personnel by identifying detainees who may have useful information," doctrine clearly permits MPs to conduct passive intelligence collection within deten-

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MP, MI and Detainee Intelligence Collection: Existing Doctrine (U)

(U) From Army Regulation 190-8, *Enemy Prisoners of War, Retained Personnel, Civilian Internees and Other Detainees*

"The [enemy prisoner of war/civilian internee] facility commander will provide an area for intelligence collection efforts."

(U) From Field Manual 3-19.1, *Military Police Operations*

"The MP perform their...function of collecting, evacuating, and securing EPWs throughout the [area of operations]. In this process, the MP coordinate with MI to collect information that may be used in current or future operations."

(U) From Field Manual 3-19.40, *Military Police Internment/Resettlement Operations*

"The MP work closely with military intelligence interrogation teams...to determine if captives, their equipment, and their weapons have intelligence value."

(U) From Field Manual 34-52, *Intelligence Interrogation*

"Screeners coordinate with MP holding area guards on their role in the screening process. The guards are told where the screening will take place, how EPWs and detainees are to be brought from the holding area, and what types of behavior on their part will facilitate the screenings." (NOTE: FM 34-52 defines screening as "the selection of sources for interrogation." Screening is not interrogation.)

tion facilities. In addition, both MI and MP doctrine repeatedly emphasize the requirement for humane treatment of all detainees.

(U) However, there is a lack of doctrine regarding MP and MI roles in the application of the "outside-the-interrogation-room" interrogation techniques approved by DoD and service authorities in the course of the Global War on Terror. The techniques set forth in FM 34-52, such as direct

questioning and fear up, are generally described in the context of an "interrogation site." In contrast, many of the "new" techniques - such as the substitution of Meals-Ready-to-Eat (MREs) for hot meals, or reversing a detainee's sleep cycle from night to day - are applied outside the interrogation area in an effort to render the detainee more cooperative during subsequent interrogations. Neither MP nor MI doctrine prescribes specific responsibilities for the employment of techniques requiring