

SOFS-Registry3-S

From: IRAQ-TELCREV3-S
Sent: 17 May 2004 18:35
To: SOFS-Private Office-S
Subject: Draft Cabinet Colleagues Paper

Importance: Low

Chris

We spoke. I am afraid this includes several contributions which I have just cut and pasted in. There has been no time to polish or finally clear around the Dept. I will do that tomorrow in the Secretary of State's absence.

Simon



Cabinet Briefing.doc

File per

SJS

- this is a very detailed piece of work

- how much detail do you wish to pass to colleagues?

- Still some detail to paste in

- Mark Hemmi's content.

no ✓

I can see the case for detail - some points to follow up?
AMW
13/5

DRAFT CONFIDENTIAL – INVESTIGATION

BMI Downgrade - RESTRICTED

This policy was adjusted in February 2004 in recognition of the improved operational environment. The authority to determine whether a SIB investigation can be dispensed with is now vested in the Brigade Commander and DCOMBRITFOR, rather than unit COs. The presumption continues to be in favour of a SIB investigation taking place. Only exceptionally, where it is judged that such an investigation would serve no useful purpose, is it dispensed with. Any such decision is recorded and passed to HQ MND(SE). Detailed guidance has been provided to ensure that such decisions are clearly articulated to avoid legally "condoning" the action or otherwise revoking the possibility of disciplinary action in due course (should new evidence come to light).

Detail

At the conclusion of any RMP investigation a report together with supporting evidence is submitted to the appropriate Commanding Officer and to the Army Legal Services (ALS). ALS will then advise the Commanding Officer whether or not there is a *prima facie* case for the purposes of disciplinary action. In serious cases ALS will advise the Commanding Officer on the procedure for referral to a higher authority and then, if appropriate, onto the Army Prosecuting Authority (APA). The APA is statutorily independent of the chain of command and the chain of command is not allowed to seek to influence its case management or decision making processes. In addition to his non-statutory role as head of the ALS, the Director Army Legal Services has a statutory role as the Army Prosecuting Authority and is appointed by The Queen. In the exercise of his statutory functions he, too, is entirely independent of the chain of command. As members of professional bodies (the Bar Council or the Law Society), Army prosecutors, who practice in accordance with the Prosecutors' Convention, have an overriding duty to the court to act with independence in the interests of justice. As an additional measure of protection from interference, the APA is answerable to the Attorney General, whom it briefs on matters of importance.

Hooding

In terms of Army conduct in Iraq the issue of "hooding" has been the key issue, in terms of handling Iraqi civilians, that has been subject to operational policy changes since the beginning of the Conflict.

UK Army Doctrine and training states that the hooding of detainees during tactical questioning and interrogation is unacceptable and contrary to the Geneva Conventions and the Laws of Armed Combat. However, blindfolding or obscuring of a detainee's vision for operational reasons during arrest/transit is acceptable if there is clearly justifiable military reason, such as preventing a prisoner from seeing sensitive material, or friendly forces dispositions. It should be noted that there is no prescriptive direction with regard to hooding contained in any of the relevant manuals, doctrine or military law.

The hooding of detainees for arrest or transit of detainees was a standard procedure for UK troops during operations prior to Iraq, as it is for most armed forces throughout the world. The UK used hoods in Afghanistan. During operations in Iraq hooding during transit between the point of capture and the detention facility was widespread, as there were very few enclosed vehicles in which detainees could be transported. This was the established norm for UK troops but the extent to which it was used varied from unit to unit. There is however, no evidence that hooding was used at any time during tactical questioning or interrogations in Iraq.

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By ~~May 2003~~ the UK Divisional Commander had issued a direction that 1 Div should cease hooding (despite being given legal advice in theatre that under specific and limited circumstances – those under which UK troops routinely used hooding - it was not unlawful). When 1 Div handed over to 3 Div on 12 July 03 this direction was lost. 3 Div therefore ~~reverted to normal procedure~~ and the practice began again until the Chief of Joint Operations issued formal direction in late September 03 that hooding should cease.

There is no firm evidence that the hooding of prisoners at the PW camp Joint Force Interrogation Team (JFIT) facility, during major combat operations, went beyond the normal use for arrest/transit activity. Anecdotally there may have been problems stemming from the very large numbers of PWs in civilian clothing being held at a facility designed for military prisoners. There were very limited facilities for separating prisoners so it appears hooding was used on prisoners held at the centre. ~~It was concerns about this that Gen Brims noted when he visited the JTIF and which prompted him to direct 1 Div to cease the practice.~~

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