



DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-1010

May 10, 2010

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DEPUTY CHIEF MANAGEMENT OFFICER
COMMANDERS OF THE COMBATANT COMMANDS
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
DIRECTOR, COST ASSESSMENT AND PROGRAM
EVALUATION
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DoD FIELD ACTIVITIES

SUBJECT: Directive-Type Memorandum (DTM) 09-031, "Videotaping or Otherwise Electronically Recording Strategic Intelligence Interrogations of Persons in the Custody of the Department of Defense"

References: See Attachment 1

Purpose. This DTM establishes policy, assigns responsibilities, and provides uniform guidelines for videotaping or otherwise electronically recording each strategic intelligence interrogation of any person who is in the custody or under the effective control of the Department of Defense or under detention in a DoD facility, as required by subsection 1080(a) of Public Law 111-84 (Reference (a)). This DTM is effective immediately; it shall be incorporated into DoD Directive 3115.09 (Reference (b)) within 180 days.

Applicability. This DTM applies to:

- OSD, the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the "DoD Components").

- DoD military personnel, DoD civilian employees, and DoD contractor personnel, to the extent incorporated in their contracts, who conduct or support strategic intelligence interrogations.
- Non-DoD personnel who agree, as a condition of permitting them access to conduct strategic intelligence interrogations, to comply with its terms, including other U.S. Government agency personnel, interagency mobile interrogation teams, and foreign government personnel.
- DoD and non-DoD law enforcement and counterintelligence personnel who conduct or support strategic intelligence interrogations.

Policy. It is DoD policy that:

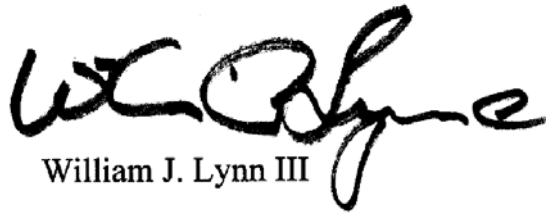
- Subject to the waiver and suspension provisions in Attachment 2 of this DTM, an audio-video recording shall be made of each strategic intelligence interrogation of any person who is in the custody or under the effective control of the Department of Defense or under detention in a DoD facility, conducted at a theater-level detention facility. This requirement applies only to strategic intelligence interrogations. Reference (a) specifically excludes from this requirement members of the Armed Forces engaged in direct combat operations and DoD personnel conducting tactical questioning.
- Subject to the waiver and suspension provisions in Attachment 2, an audio-video recording shall be made of each strategic intelligence interrogation of any person who is interned in a theater-level detention facility but who is temporarily transferred to another location, such as to a medical treatment facility.
- As a condition of having access to conduct strategic intelligence interrogations, individuals representing other U.S. Government agencies, interagency mobile interrogation teams, and foreign governments must comply with this DTM when conducting strategic intelligence interrogations.
- The requirements detailed in the first three bullets of this Policy section and in Attachment 2 of this DTM shall be implemented in accordance with References (a) and (b), U.S. Army Field Manual 2-22.3 (Reference (c)), this DTM, the standard operating procedures developed by the Department of the Army pursuant to section 5 of Attachment 3 of this DTM, and the

implementing plans, policies, orders, directives, and doctrine developed by the DoD Components.

- Information that identifies a U.S. person shall be collected, retained, and disseminated in accordance with DoD 5240.1-R (Reference (d)) and the Privacy Act of 1974, as implemented in the Department of Defense by DoD 5400.11-R (Reference (e)).

Responsibilities. See Attachment 3.

Releasability. UNLIMITED. This DTM is approved for public release and is available on the DoD Issuances Website at <http://www.dtic.mil/whs/directives>.



William J. Lynn III

Attachments:
As stated

ATTACHMENT 1

REFERENCES

- (a) Section 1080 of Public Law 111-84, "The National Defense Authorization Act for Fiscal Year 2010," October 28, 2009
- (b) DoD Directive 3115.09, "DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning," October 9, 2008
- (c) U.S. Army Field Manual 2-22.3, "Human Intelligence Collector Operations," September 6, 2006
- (d) DoD 5240.1-R, "Procedures Governing the Activities of DoD Intelligence Components That Affect United States Persons," December 7, 1982
- (e) DoD 5400.11-R, "Department of Defense Privacy Program," May 14, 2007
- (f) Executive Order 12958, "Classified National Security Information," April 20, 1995, as amended
- (g) DoD 5200.1-R, "Information Security Program," January 14, 1997
- (h) National Disclosure Policy No. 1, "National Policy and Procedures for the Disclosure of Classified Military Information to Foreign Governments and International Organizations," October 2, 2000
- (i) DoD Directive 5230.11, "Disclosure of Classified Military Information to Foreign Governments and International Organizations," June 16, 1992
- (j) Chapter 12 of title 36, Code of Federal Regulations

ATTACHMENT 2REQUIREMENTS FOR VIDEOTAPING OR ELECTRONICALLY RECORDING
STRATEGIC INTELLIGENCE INTERROGATIONS

The requirement to videotape or otherwise electronically record strategic intelligence interrogations shall be implemented in accordance with References (a) through (c); the standard operating procedures developed by the Department of the Army pursuant to section 5 of Attachment 3 of this DTM; the implementing plans, policies, orders, directives, and doctrine developed by the DoD Components; and this DTM, including the following requirements:

a. Use of Standardized Procedures. Disparate standard operating procedures could create interoperability issues and data storage and retrieval problems. Therefore, each theater-level detention facility will use a standard file naming convention and standard archiving procedures to ensure a similar process and product are achieved.

b. Classification of Videotapes or Other Electronic Recordings. In accordance with Reference (b), all videotapes or other electronic recordings of strategic intelligence interrogations shall be classified at a minimum as “SECRET//RELEASABLE TO” or “SECRET//NOFORN,” as appropriate, to protect the association of specific interrogators and interrogation support personnel with the interrogation of a specific detainee; to protect the identity of detainees who have cooperated with the U.S. Intelligence Community, pursuant to section 1.4(c) of Executive Order 12958 (Reference (f)); and to safeguard intelligence collection methodologies. These classified recordings shall be handled and protected in accordance with Reference (f), DoD 5200.1-R (Reference (g)), and applicable security classification guides. Such media shall display the following declassification instructions: “DERIVED FROM: DoDD 3115.09; DECLASSIFY ON: 25X1-human.” If the contents include information classified at a higher classification level by another original classification authority (security classification guide), then the overall classification shall reflect the higher classification. In such cases, videotapes or other electronic recordings shall display the following declassification instructions: “DERIVED FROM: Multiple Sources; DECLASSIFY ON: 25X1-human. A list of the sources shall accompany each record file copy of the recordings. Only the Under Secretary of Defense for Intelligence (USD(I)) is authorized to declassify recordings of strategic intelligence interrogations.

c. Disposition of Videotapes or Other Electronic Recordings. In accordance with Reference (b), videotapes and other electronic recordings shall be disposed of only in accordance with a disposition schedule developed by the USD(I) and approved by the Archivist of the United States. If a recording contains any credible evidence of a suspected or alleged violation of applicable law or policy, it shall be retained as evidence

to support any investigation and disciplinary or corrective action. Retained recordings shall be accounted for, controlled, and marked as required by References (f) and (g) and section b. of this Attachment.

d. Ownership of Videotapes or Other Electronic Recordings. All videotapes or other electronic recordings of strategic intelligence interrogations shall be owned and controlled by the Department of Defense until such time as any retained recording is transferred to the control of the Archivist of the United States.

e. Disclosure or Release of Videotapes or Other Electronic Recordings

(1) In accordance with Reference (b), the audio-video recording of a strategic interrogation may only be disclosed or released to representatives of a foreign government, either visually, audibly, or in hard copy, in accordance with National Disclosure Policy No. 1 (Reference (h)), and DoD Directive 5230.11 (Reference (i)). A disclosure decision may not be further delegated below the level of a Combatant Command or a Defense agency headquarters Foreign Disclosure Office. Before disclosure to a foreign government, proper consideration shall be given to the possible risk to the detainee and his or her family of disclosing that the detainee has cooperated with U.S. Intelligence. If a recording is released to another organization or to a foreign government, the original shall be retained.

(2) Before a video or other electronic recording is disclosed or released to any person or entity outside the Department of Defense or the U.S. Intelligence Community, the identities of any interrogators and other interrogation support personnel shall be concealed. Only the USD(I) may authorize an exception to this policy.

(3) If a recording is released to a non-DoD or non-Intelligence Community entity or to a foreign government, the original will be retained. The contents of a released recording shall be originator-controlled and shall not be further disseminated by the recipient.

f. Equipment Failures. Recording technicians will inspect the recording equipment prior to each interrogation session to ensure that it is functioning properly. If the recording equipment fails for any reason (e.g., mechanical malfunction, power outage), backup equipment (e.g., a battery-powered camcorder) will be used. If the backup equipment fails, the interrogation center commander may authorize the unrecorded interrogation of individual detainees on a case-by-case basis based on exigent circumstances. Exigent circumstances exist when the information expected to be collected from the detainee is necessary to support ongoing or imminent military operations or to save human life. An observer who can hear and see the participants must monitor all such interrogations. The observer will prepare a report immediately after each interrogation session. The report will include the date and time of the equipment

failure; the reason for the failure, if known; steps taken to repair or replace the equipment before proceeding with the interrogation, if any; and whether or not the interrogation session was conducted in accordance with applicable law, policy, and the interrogation plan. The report will be annotated and archived so that it is available whenever the records of the detainee being interrogated are accessed. If the equipment failure is discovered after the completion of an interrogation session, the interrogation center commander will record and archive the circumstances in the same manner. The recording equipment must be repaired or replaced as soon as possible, but not later than 72 hours after its failure. If the recording equipment cannot be repaired or replaced within 72 hours, all interrogations will stop until the recording equipment is repaired or replaced or the Secretary of Defense or his designee suspends the recording requirement at the theater-level detention facility in question in accordance with paragraph j. of this attachment.

g. Data Loss or Corruption. The interrogation unit commander will document instances of data loss or corruption. The documentation will be annotated and archived so that it is available whenever the records of the detainee being interrogated are accessed.

h. Information to Be Included With Each Recording. Whenever a videotape or other electronic recording is made, the following information shall be made part of the archived record or otherwise be electronically linked to the recording and easily accessible:

- (1) Internment serial number of the detainee being interrogated.
- (2) Field reporting number of the interrogator.
- (3) Unique identifying number for interpreters and any other third parties present in the interrogation booth during the interrogation session.
- (4) Date, place, and length of the interrogation session.

i. Waivers. In accordance with Reference (a), the Secretary of Defense:

(1) May, as an exceptional measure and as part of a specific interrogation plan for a specific person, waive the requirement in the first two bullets of the Policy section in the front matter of this DTM on a case-by-case basis for a period not to exceed 30 days, if the Secretary:

(a) Makes a written determination that such a waiver is necessary to the national security interests of the United States; and

(b) By not later than 5 days after the date on which such a determination is made, submits to the Committees on Armed Services of the Senate and House of Representatives, the House Permanent Select Committee on Intelligence, and the Senate Select Committee on Intelligence notice of that determination, including a justification for that determination.

(2) May delegate this authority no lower than the level of the Combatant Commander of the theater in which the detention facility holding the person is located.

(3) May extend such a waiver for one additional 30-day period if the Secretary of Defense makes a written determination that such an extension is necessary to the national security interests of the United States. Not later than 5 days after the date on which such a determination is made, the Secretary must submit to the Committees on Armed Services of the Senate and House of Representatives, the House Permanent Select Committee on Intelligence, and the Senate Select Committee on Intelligence notice of that determination, including a justification for that determination.

j. Suspensions. In accordance with Reference (a), the Secretary of Defense:

(1) May temporarily suspend the requirement in the first two bullets of the Policy section in the front matter of this DTM at a specific theater-level detention facility for a period not to exceed 30 days, if the Secretary:

(a) Makes a written determination that such a suspension is vital to the national security interests of the United States; and

(b) By not later than 5 days after the date on which such a determination is made, submits to the Committees on Armed Services of the Senate and House of Representatives, the House Permanent Select Committee on Intelligence, and the Senate Select Committee on Intelligence notice of that determination, including a justification for that determination.

(2) May delegate this authority no lower than the level of the Deputy Secretary of Defense.

(3) May extend such a suspension for one additional 30-day period if the Secretary of Defense makes a written determination that such an extension is vital to the national security interests of the United States. Not later than 5 days after the date on which such a determination is made, the Secretary must submit to the Committees on Armed Services of the Senate and House of Representatives, the House Permanent Select Committee on Intelligence, and the Senate Select Committee on Intelligence notice of that determination, including a justification for that determination.

k. Funding. To the extent possible, the recording of strategic intelligence interrogations will be accomplished using existing resources, infrastructure, and staffing. The incremental cost of this requirement will be supported through supplemental funding.

l. Training. Equipment operators, archivists, and records managers will receive standardized, comprehensive training.

ATTACHMENT 3

RESPONSIBILITIES

1. USD(I). The USD(I) shall:

a. Provide oversight of recording operations and the development, coordination, approval, and publication of DoD- and DoD Component-level policies and implementation plans for the recording of strategic intelligence interrogations.

b. Develop a DoD disposition schedule for strategic intelligence interrogation records for submission to the National Archives and Records Administration for review and approval, in accordance with chapter 12 of title 36, Code of Federal Regulations (Reference (j)).

2. DIRECTOR, DIA. The Director, DIA, under the authority, direction, and control of the USD(I), shall, as Defense HUMINT Manager, ensure that each interrogator who conducts a strategic intelligence interrogation is assigned a unique field reporting number and that the field reporting number system captures each interrogator's real name, unit, branch or agency, and contact information.

3. HEADS OF THE DoD COMPONENTS. The Heads of the DoD Components shall:

a. Implement this DTM throughout their respective Components as soon as possible but not later than 180 days of its issuance.

b. Ensure compliance with the standard operating procedures developed by the Department of the Army, pursuant to section 5 of this attachment.

4. SECRETARIES OF THE MILITARY DEPARTMENTS. To the extent that the Military Departments conduct or support strategic intelligence interrogations, the Secretaries of the Military Departments shall ensure that training is provided in accordance with the standards established by the Department of the Army, pursuant to this DTM.

5. SECRETARY OF THE ARMY. The Secretary of the Army, in addition to the responsibilities in sections 3 and 4 of this attachment, shall develop standard operating

procedures to ensure that the requirements in this DTM are uniformly implemented throughout the Department of Defense. This includes:

- a. Selecting, purchasing, installing, and maintaining audio-video recording equipment and archiving hardware and software.
- b. Developing and implementing archiving conventions and procedures.
- c. Establishing and managing a unique identifying number system and data base for interpreters and other personnel who support strategic intelligence interrogations. The data base will be centrally maintained and searchable for data identifying these personnel and their employing U.S. Government agency or contractor.
- d. Establishing training standards and managing a training program for equipment operators, archivists, and records managers.
- e. Planning, programming, and budgeting as necessary to carry out these responsibilities.

GLOSSARY

DEFINITIONS

Unless otherwise noted, the following terms and their definitions are for the purposes of this DTM.

intelligence interrogation. The systematic process of using interrogation approaches to question a captured or detained person to obtain reliable information to satisfy foreign intelligence collection requirements.

strategic intelligence interrogation. An intelligence interrogation of any person who is in the custody or under the effective control of the Department of Defense or under detention in a DoD facility, conducted at a theater-level detention facility.

tactical questioning. The expedient initial questioning for information of immediate tactical value. Tactical questioning is generally performed by members of patrols, but can be done by any DoD personnel. Tactical questioning is limited to direct questioning.

theater-level detention facility. Any theater- or higher-level internment facility under the control of the Department of Defense, including the Detention Facility in Parwan, Afghanistan; the Taji Theater Internment Facility Reconciliation Center and the Remembrance Theater Internment Facility, Iraq; the DoD Detention Facility at the U.S. Naval Base, Guantanamo Bay, Cuba; and any successor internment facilities.

U.S. person. A U.S. citizen; an alien known by the DoD intelligence component concerned to be a permanent resident alien; an unincorporated association substantially composed of U.S. citizens or permanent resident aliens; a corporation incorporated in the United States, except for a corporation directed and controlled by a foreign government or governments. A corporation or corporate subsidiary incorporated abroad, even if partially or wholly owned by a corporation incorporated in the United States, is not a U.S. person. A person or organization outside the United States shall be presumed not to be a U.S. person unless specific information to the contrary is obtained. An alien in the United States shall be presumed not to be a U.S. person unless specific information to the contrary is obtained. A permanent resident alien is a foreign national lawfully admitted into the United States for permanent residence.