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Defense Department Update

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July 11, 2006 - England Detainee Treatment Memo

- **A Department of Defense memorandum from Deputy Secretary of Defense Gordon England reiterates Department of Defense policy that detainees held by the U.S. military shall be treated humanely and orders commanders to review their practices to ensure they are in compliance.**
 - The memorandum does not reverse DoD policy. Humane treatment has always been the standard for detention and interrogation operations of the Defense Department.
 - The memorandum underscores the department's standing policy of treating detainees humanely, but emphasizes that it is now also a matter of law.

- **The July 7, 2006, memorandum does two things for commands and departments with detention responsibilities:**
 - First, it assesses that existing Defense Department directives, regulations, policies, practices and procedures in existence do comply with Common Article 3 of the Geneva Conventions of 1949.
 - The essence of Common Article 3 is humane treatment.
 - The memorandum requires those commands and departments with detention responsibilities to review and report back that they are complying.
 - Second, the memorandum informs these commands and departments that the June 29, 2006, Supreme Court *Hamdan* ruling determined that Common Article 3 applies as a matter of law to the conflict with al Qaeda.
 - The court found that military commissions as they are currently constituted by the Defense Department regarding detainees at U.S. Naval Base Guantanamo Bay are not consistent with Common Article 3, in essence ruling that military commissions for detainees charged with war crimes would violate the Geneva Conventions.
 - The court did not say that the full protections of the Geneva Conventions apply to al Qaeda or the Taliban; rather, it limited its ruling to Common Article 3.
 - The Supreme Court decision directly affects only 14 detainees at Guantanamo Bay. Ten already were facing commissions on charges of violating the laws of war. Ultimately 40 to 80 detainees who are expected to be charged in the future could be affected.
 - The Administration has indicated in a very strong way that it is going to abide by the Supreme Court decision.

- **As a practical matter, the England memorandum does not change the way in which individual service members are expected to carry out their duties and responsibilities with detention operations or interrogation operations because the doctrine, policies, instructions and procedures that have been in effect have always had humane treatment as their standard.**

Except for military commission procedures, all other DoD orders, policies and doctrine comply with Common Article 3, including U.S. Army Field Manual 34-52, "Intelligence Interrogation;" DoD Directive 3115.09, "DoD Intelligence Interrogation, Detainee Debriefings and Tactical Questioning;" DoD Directive 2311.01E, "DoD Law of War Program," and DoD Instruction 2310.08E, "Medical Program Support for Detainee Operations." (link: American Forces Information Service [story](http://www.dod.mil) on www.dod.mil)

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