U.S. ARMY INTELLIGENCE CENTER AND FORT HUACHUCA
FORT HUACHUCA, ARIZONA 85613-7000
HUMINT LEGAL PRINCIPLES

18 March 2004

PFN: 97E1A02L

SECTION I - ADMINISTRATIVE DATA

All Courses Including This Lesson:

COURSE NUMBER	COURSE TITLE
244-97E10	HUMINT Intelligence Collector

Task Taught or Supported:

TASK NUMBER	TASK TITLE
301-S97-6002	Apply Principles of Military Intelligence Collection Activities

Reinforced Tasks:

TASK NUMBER	TASK TITLE
None.	

Academic Hours: **The Academic hours required to teach this lesson are as follows:**

PEACETIME				MOB
AC	TASS Training Battalions		AC/RC Non-Res DL HRS/MOI	
Resident HRS/MOI	AT/ADT HRS/MOI	IDT HRS/MOI		HRS/MOI
4:00 CO 1:00 PE 2:00 TE 2:00 TR	4:00 CO 1:00 PE 2:00 TE 2:00 TR			4:00 CO 1:00 PE 2:00 TE 2:00 TR

Test Lesson Number:

	Hours	Lesson No.
Testing:	2.0, TE	97E1A02L
REVIEW OF TEST RESULTS:	2.0, TR	97E1A02L

Prerequisite Lessons:

LESSON NUMBER	LESSON TITLE
None	None

Clearance and Access: Access is limited to US Government Agencies and US Government Contractors.

023022

00335

Foreign Disclosure Restrictions:

FD6. This product has been reviewed by the product developers in coordination with the Fort Huachuca foreign disclosure authority. This product is releasable to students from foreign countries on a case-by-case basis.

References:

Number	Title	Date	Additional Information
AR 381-10	US Army Intelligence Activities	Aug 84	
FM 27-10	Law of War	Jul 56	
SO 01HEDNLE	Military Law	Feb 01	

Student Study Assignments:

Read AR 381-10 procedures 1, 2, 3, 4, 14 and 15. Skim procedures 5 – 13. Read FM 27-10, Law of Land Warfare.

Instructor Requirements:

MOS qualified. BITC completed. One PI to present instructions one. AI to assist with PE and Test. Instructor to Student Ratio is (CO) 1:15, (PE) 1:15, (TE) 1:15, (TR) 1:15.

Additional Support Personnel Requirements:

None

Equipment Required:

Computer with MS PowerPoint; Projector with screen, or large screen monitor.

Materials Required:

INSTRUCTOR MATERIALS: Lesson plan, computer disk with PowerPoint presentation; AR 381-10. FM 27-10

STUDENT MATERIALS: Note taking materials, AR 381-10, FM 27-10

Classroom, Training Area, and Range Requirements:

General instructional classroom, bldg 62702.

Ammunition Requirements:

None

023023

000336

Instructional Guidance: None.

Branch Safety Mgr Approval: N/A

Proponent Lesson Plan Approval:

[redacted], MSG, Chief Instructor — Date

[redacted] GG12, OIC, HUMINT — Date

[redacted] GG11, Education Specialist — Date

[redacted] CW5, Chief, TAC/HUMINT Committee — Date

b(7)(C)-2

023024
000337

SECTION II – INTRODUCTION

SLIDE 1: HUMINT LEGAL PRINCIPLES

Method of Instruction: CO
Instructor to student ratio is 1:15
Time of Instruction: 5 minutes
Media: PowerPoint slides.

Motivator: How would you feel if the CIA decided to bug your home? What about your job? What if they followed you around? Decided to wire tap your phone and listen in on your most private conversations? Wouldn't you feel violated? Don't you have a right to privacy? Doesn't the constitution protect that right? This is what intelligence oversight is all about. Protecting your right to privacy while allowing intelligence components to collect information in accordance with their mission. Intelligence Oversight, implemented in AR 381-10, simply defines the parameters of intelligence collection when a unit already has the mission/ authority.

Note: Inform the students of the following Terminal Learning Objective.

Terminal Learning Objective:

SLIDE 2: OBJECTIVE

ACTION:	Apply principles of Military Intelligence Law to collection activities.
CONDITIONS:	Given information on a collection activity, applicable Executive Orders, AR 381-10, AR 381-20, DIAM 58-11 (U), DIAM 58-12 (U), AR 27-10, FM 27-10, local Standing Operating Procedures (SOP) and student handouts.
STANDARDS:	Complied with all legal guidance related to HUMINT collection activities. Identifies and reports violations to chain of command IAW applicable Executive Orders, AR 381-10, AR 381-20, DIAM 58-11 (U), DIAM 58-12 (U), AR 27-10, FM 27-10, and a local SOP.

SLIDE 3: ADMINISTRATIVE DATA

Safety Requirements: None

Risk Assessment Level: IV, D, LOW

Environmental Impacts: None

Evaluation: Series of student checks, a practical exercise and a written exam at end of module.

000338

023025

Instructional Lead-in: **SLIDE 4: AGENDA**

During this class, we will discuss Intelligence Oversight. We will discuss the history and background behind Intelligence Oversight and identify the six procedures in AR 381-10 implementing Intelligence. In addition, we will take a brief look at the Special Collection Techniques located in procedures 5 through 13.

Following Intelligence Oversight, we will discuss the Law of War. We will discuss the source of the Laws of War, its purpose, its principles and how they apply to the use of weapons, targeting issues and to different personnel found on the battlefield.

We will apply the principles learned in both classes in a series of student checks, a practical exercise and a performance-based evaluation you will receive at the end of class.

SECTION III – PRESENTATION

SLIDE 5: ENABLING LEARNING OBJECTIVE

A. **ENABLING LEARNING OBJECTIVE A**

ACTION:	Apply Procedures 1, 2, 3, 4, 14, and 15 of AR 381-10 to HUMINT collection activities.
CONDITIONS:	Given AR 381-10.
STANDARDS:	Applied procedures 1,2, 3, 4, 14, and 15 of AR 381-10 to HUMINT collection activities with 100% accuracy.

1. **Learning Step/Activity 1:** Discuss Intelligence Oversight
Method of Instruction: CO **Instructor to student ratio is:** 1:15
Time of Instruction: 100 **minutes.**
Media: PowerPoint slides.

SLIDE 6: INTELLIGENCE OVERSIGHT: HISTORY
a. History of 381-10

1) You should understand a little history in order to understand why we have intelligence oversight. This regulation, and Intelligence Oversight in general, is a relatively new phenomenon. Oversight only dates back to the mid-1970s. Prior to that time, there was little oversight, and consequently, little guidance as to the acceptable parameters of intelligence activities. Intelligence units without clear boundaries often infringed upon the constitutional rights of US citizens in their zeal to protect the national security.

2) A NY Times article by Seymour Hersh in 1974 exposed some of these abuses – notably by the CIA. The CIA was collecting intelligence files on tens of thousands of US citizens who were against the Vietnam War. Files were also maintained on some members of Congress! Congress looked into the matter and formed Intelligence Committees that now provide significant oversight. Congress controls the money and with those purse strings, can effectively control intelligence activities.

023026

209339

3) Some other examples of abuses include the following:
- Surveillance and Intelligence collection on Martin Luther King Jr.
- Infiltration of college campuses and organizations by Army CI agents
- Alleged CIA involvement in assassination attempts

SLIDE 7: AR 381-10 OVERVIEW

4) AR 381-10 provides procedures for the collection, retention and dissemination of information on US persons by intelligence components performing intelligence activities, use of intrusive collection techniques (surveillance, bugging, phone taps), and Investigating, reporting and taking corrective action regarding violations.

5) In 1981, President Ronald Reagan signed Executive Order 12333. This was implemented with DoD 5240.1, and further refined with AR 381-10. Despite the perception of AR 381-10 as a burdensome regulation, it was greeted with relief when signed in 1981. (After Congressional hearings in the late 70's, extremely restrictive regulations resulted).

6) This regulation should really be viewed as 'enabling' intelligence components to do their job, not restricting what they do. The DAIG for Intelligence Oversight always asks, during inspection visits, whether 381-10 ever prevents accomplishing a mission. It shouldn't, and that's what he's found. Overall, this regulation provides procedures on how information on US Persons may be collected, retained and disseminated.

SLIDE 8: BASIC PRINCIPLES

b. Background

1) The first bullet sums up the most important element of the entire regulation. It simply says, know your job, and stay within your job. MI should not be doing the job of MPs or the Provost Marshall, or local law enforcement. That is typically where violations might occur.

2) The second bullet explains the overall purpose of the regulation; it's a balance between the constitutional rights of US Persons, and the need to collect intelligence. What constitutional rights? Specifically, the right of privacy, which is implicit in several of the provisions of the Bill of Rights. (First Amendment, Third Amendment, Fourth Amendment).

SLIDE 9: AR 381-10 DOES NOT APPLY TO NON-INTELLIGENCE ACTIVITIES

3) Confusion occurs about this regulation because while individuals rightly believe that AR 381-10 applies to Army intelligence units, it does not apply to all aspects of those units. For example, files kept as part of the unit's administrative activities are not subject to AR 381-10. Likewise, law enforcement is not constrained by AR 381-10.

4) AR 381-10 applies to "DoD intelligence components" and other DA components performing "intelligence activities." We'll cover exactly what intelligence activities are later.

SLIDE 10: MISSION

5) Mission, mission, mission. Mission creep is really the reason intelligence oversight exists, and it is still a concern today. With expanded missions, peacekeeping, etc., it is more important today to understand your job. For example, UAV training here at Fort Huachuca. The unit that does this training began coordination with the border patrol; at first the unit would simply pass along information that might be of interest to the Border Patrol that the unit may have incidentally acquired as part of their training mission. Soon, however, the Border Patrol apparently began contacting the unit and asking them to check out certain areas. Pretty soon they were not doing their own mission, but in fact, accepting taskings from another federal agency. Gathering evidence for the border patrol was not the unit's mission, but sometimes the lines are blurred and it's easy to cross. Beyond the mission considerations, there are potential problems with the Posse Comitatus Act, which prohibits military from acting in a law enforcement role.

6) MI response to threat of domestic terrorism. Commanders wrongly look to intelligence units for information and intelligence on these 'threats.' In CONUS, however, this responsibility rests with the Provost Marshal. Now if the domestic threat had some foreign intelligence or counterintelligence connection, then military intelligence might be involved. Conversely, units deployed to Kosovo wanted to collect intelligence on the Kosovo Liberation Army (KLA). Several members of the KLA are US Persons, so there was a hesitancy to collect the info. However, it was completely within the unit's mission, their reason for being there, so it was ok to collect the intelligence so long as the unit was complying with the procedures of AR 381-10.

SLIDE 11: PROCEDURE 1: MISSION AND AUTHORITY

c. Procedure 1

1) AR 381-10, like EO 12333, is laid out in Procedures (there are 15 of them). Procedures 1, 2, 3, 4, 14 & 15 implements Intelligence Oversight. Procedures 5 – 13 are called Special Collection Techniques and are tools used by intelligence components to gather information.

2) Procedure 1 is administrative in nature. It establishes the applicability, scope and purpose of the regulation, as well as contains a few prohibitions. The Mission is the most important consideration, and the regulation emphasizes this upfront. Before conducting any intelligence activity, Army Intelligence component employees must first determine whether they have the mission and authority to do so. Each intelligence activity conducted must have prior approval. If a component does not have both the mission and the authority to conduct a proposed intelligence activity, it may not conduct the activity. Army intelligence components never have the mission or authority to conduct activities prohibited by law, Executive Order, Presidential directive or DoD policy, including AR 381-10.

3) Mission

a) The term "mission" refers to a major continuing duty assigned to a military service or command.

b) Missions are assigned to units and organizations in Table of Organization and Equipment (TOE) and Table of Distribution and Allowances (TDA) documents and in directives (normally 10-series regulations) from higher headquarters. You should be familiar with all the applicable TOE/TDA documents and other directives before planning or conducting any intelligence activity.

4) Authority

a) The authority to conduct intelligence activities is prescribed in regulations and other directives. Examples include Executive Orders, National Security Directives (NSDs), Director of Central Intelligence Directives (DCIDs), Defense Intelligence Agency Manuals (DIAMs), United States Signals Intelligence Directives (USSIDs) and Army Regulations.

b) These directives normally require the unit/individual to obtain the written approval of designated officials before conducting proposed intelligence activities. Such approval constitutes the specific authority to conduct the proposed intelligence activity. For Example:

(1) A properly conducted overt operational proposal (OVOP) is the authority to conduct the proposed overt HUMINT collection project.

(2) A properly approved counterintelligence operational concept (CIOC) is the authority to conduct the proposed offensive counterespionage operation.

(3) A tasking from the Army Central Control Office (ACCO) or the appropriate SubControl Office (SCO) is the authority to conduct the proposed counterespionage investigation.

(4) A properly approved proposal to conduct electronic surveillance is the authority to conduct the proposed electronic surveillance.

5) Prior Approval

a) Look to your source of authority to determine from whom you must gain prior approval for a specific activity and what basis you must show.

b) Prior approval must comply exactly with the listed prerequisites. (i.e. written approval)

c) Remember the Special Collection Techniques found in procedures 5-13. These are special and can be quite intrusive. Because of this they require special approval in addition to the approval needed to begin an investigation.

SLIDE 12: PROCEDURE 1: PROHIBITED ACIVITIES

6) Prohibited Activities

a) Army intelligence components never have the mission or the authority to conduct activities prohibited by federal law (including the UCMJ), by Executive Order (such as EO 12333) or by applicable regulations and directives. Procedure 1, AR 381-10, specifically prohibits two types of activities.

b) DA employees are prohibited from conducting or providing support for the conduct of special activities without approval from the President or Secretary of Defense. A special activity is one conducted in support of national foreign policy objectives abroad. These activities are planned and executed so that the role of the US Government is not apparent or acknowledged publicly. Functions in support of such activities are not intended to influence US political processes, public opinion, or media, and do not include diplomatic activities or the collection and production of intelligence or related support functions. Exceptions to the approval requirement are in time of declared war or during a period covered by a report from the President and directed by the Secretary of Defense. Examples of special activities would include the movie Clear and Present Danger – inserting drug interdiction troops into Columbia because these soldiers could not be identified as a United States asset.

c) DA employees are prohibited from engaging, or conspiring to engage in assassination, or murder for political purposes. Murder is the intentional unjustified killing of a human being. Note that combat involves justified killing. Under the Law of War, it is permissible to target combatants and other lawful targets. This prohibition was in response to allegations of CIA involvement in assassination attempts.

SLIDE 13: PROCEDURE 1: INTERPRETATION

7) Questions of Interpretation. Procedure 1, AR 381-10, requires that all questions of interpretation pertaining to the regulation be referred to the legal office responsible for advising that unit. The only real wrong answer is not getting a legal opinion when unsure of something under the regulation.

SLIDE 14: PROCEDURE 2:

d. Procedure 2. Procedure 2 concerns the collection of information that identifies US Persons. US Persons information may be intentionally collected only if it is necessary to conduct a function assigned the collecting component (your mission).

1) Collection. Information is "collected" only when it has been received for use by an employee of an intelligence component in the course of his official duties. "Received for use," means that an employee must take some affirmative action that demonstrates intent to use or retain the information, such as the production of a formal report, filing of an investigative summary, or electronic storage of received data (i.e.. saving information on a computer).

a) Other regulations require you to report information to other authorities, even if such information falls outside of your mission. For instance, AR 381-12 requires, under penalty of UCMJ prosecution, that you report SAEDA incidents, including information covering any international or domestic terrorist activity or sabotage that poses an actual or potential threat to DoD facilities, activities, personnel, or resources.

b) Note that this reported information will not necessarily be collected until you take some affirmative action to use or retain the information yourself. If you simply pass along information to the appropriate authorities, then the information has not been 'collected.'

SLIDE 15: PROCEDURE 2: U.S. PERSON

2) United States Person. The term "United States Person" (US Person) is used frequently in Procedure 2. Appendix A, Para 27 outlines the parameters for a US Person and defines the term as follows:

a. A US citizen.

b. A permanent resident alien (green card holder).

c. An unincorporated association substantially composed of US citizens or permanent resident aliens. Think of militias possibly, or other extremist organizations. If 'substantially composed' of US persons, then the entity is a US Person.

d. A corporation incorporated in the US, except a corporation directed and controlled by a foreign government. A corporation or corporate subsidiary incorporated abroad, even if partially or wholly owned by a US corporation, is not a US person.

e. An alien in the US is presumed to be a non-US person unless specific information to the contrary is obtained. Note that any person in the US is presumed to be a US person, absent specific contrary evidence.

f. A person or organization outside the US is presumed to be a non-US person unless specific information to the contrary is obtained.

SLIDE 16: PROCEDURE 2: 13 CATEGORIES

3) 13 Authorized Categories

a. When information is collected concerning a US Person, it must fall under one or more of 13 authorized categories. These categories are listed in Para C of Procedure 2 in AR 381-10.

NOTE: Refer students to list of categories in AR 381-10

b. These categories are broadly written and should probably never hinder the collection of information that falls within your mission. Some examples include information available from consent, publicly available information, information relating to threats to the Safety of Persons, etc.

c. The bottom line is this: If the US Person information you need fits within your mission, then the intelligence will fit within 1 of the 13 categories. The categories are intended as an exhaustive list.

d. Of course, upfront it says "nothing in this procedure will be interpreted as authorizing the collection of any information relating to a US person solely because of lawful advocacy of measures opposed to Government policy." This means a US person has the legal right to speak out against government policy without fear of intelligence agencies using such speech as justification for a collection activity.

SLIDE 17: PROCEDURE 2: LEAST INTRUSIVE MEANS

4) Rule of Least Intrusive Means. To the extent feasible and sufficient, intelligence agencies must use the least intrusive methods to collect information about U.S. persons. The hierarchy of collection techniques, from the least intrusive to the most intrusive, is as follows:

a. Purpose. The purpose of this law goes back to the purpose of EO 12333 and AR 381-10 itself; to balance need for intelligence against the Constitutional rights of privacy of US citizens. When you can get the intelligence through means not as injurious to the privacy interests of a US person, you must use that method first.

b. Consent. An agent may obtain information from the U.S. Person directly with the consent of the person. Before obtaining consent, the collector must tell the subject that he/she is a member of a DoD intelligence component.

c. Publicly Available Information. Publicly available means information that has been published or broadcast for general public consumption, is available on request to a member of the general public, could be seen or heard by any casual observer or is made available at a meeting open to the public.

d. Cooperating Sources. Cooperating sources include government agencies, academic institutions, credit agencies, friends, relatives, employees and foreign governments. Questioning persons with whom there is an assumption of protected and private conversation (i.e., doctors, lawyers, spouse, clergy) is more intrusive than questioning acquaintances or persons with whom there is no such assumption of privacy. For example, questioning a target's work supervisor is less intrusive than questioning the target's spouse. The collector must tell the source that he/she is a member of a DoD intelligence component.

e. Special Collection Techniques that do not require a judicial warrant or approval of the Attorney General (e.g., physical surveillance and concealed monitoring).

f. Special Collection Techniques that do require a judicial warrant or approval of the Attorney General (e.g., electronic surveillance and physical surveillance).

SLIDE 18: STUDENT CHECK

What is the purpose for using the least intrusive means when collecting information on a US person?

-- Goes back to the purpose of EO 12333 and AR 381-10 itself - to balance need for intelligence against the Constitutional rights of privacy of US citizens --
When you can get the intelligence through means not as injurious to the privacy interests of a US person, you must use that method first.

SLIDE 19: STUDENT CHECK

When is information considered collected under Procedure 2?

-- when it is "received for use" - some affirmative act taken to synthesize information to keep it for later use - usually in the form of a report filed for later use.

SLIDE 20: STUDENT CHECK

Under Procedure 2 individuals who are outside the United States are presumed to be _____.

-- non-US persons. Facts may later indicate otherwise - if so, follow procedures of AR 381-10.

SLIDE 21: PROCEDURE 3: RETENTION

e. Procedure 3. Procedure 3 covers the retention of US Person information. Ordinarily, intelligence information about a US person may be retained only with the consent of that person. Absent consent, Procedure 3 sets forth rules governing retention of this information.

1) Retention: Information has been 'retained' under the regulation only when it is retrievable by reference to a US Person's name or other identifying data. Historically, that would have meant the information would only have been 'retained' if it were kept in a separate file folder in a drawer of files. Now, with the advent of computers, retention occurs when the information is saved on the computer hard drive. A US Persons name and information can be referenced through a simple computer search of the hard drive, so thus the regulation considers the information 'retained.'

SLIDE 22: PROCEDURE 3: RETENTION CONT.

2) Criteria for Permanent Retention.

a. The information was properly collected pursuant to procedure 2; or

b. Such information was collected incidentally to authorized collection under procedure 2 and:

(1) It could have been collected intentionally under procedure 2; or

(2) It is necessary to understand or assess foreign intelligence or counterintelligence; or

(3) It is foreign intelligence or counterintelligence collected from electronic surveillance conducted in compliance with applicable law; or

(4) It is incidental to authorized collection and may indicate involvement in activities that may violate federal, state, local, or foreign law.

SLIDE 23: PROCEDURE 3: TEMPORARY RETENTION

3) Criteria for Temporary Retention

a. If information pertains solely to the functions of other DoD components or agencies outside DoD, it may be transmitted or delivered to the appropriate recipients.

b. Information may be temporarily retained for up to 90 days to determine whether or not it may be permanently retained under Procedure 3.

c. For all other cases, information may be temporarily retained only to report such collection for oversight purposes and for any subsequent proceedings.

d. Also, while you may not be able to retain the info (because it's not within your mission), you could potentially transfer it to another agency to which the information would pertain. e.g. Force Protection Information in CONUS must be passed along to Provost Marshall and/or CID. They are lead on-post in CONUS. FBI is lead off-post for domestic threat organizations.

SLIDE 24: PROCEDURE 3: PERIODIC REVIEW

4) Periodic Review. Review of retained information about US persons is required to ensure that its continued retention serves the purpose for which it was collected and that it is necessary to the conduct of authorized functions of the intelligence agency or other Government agencies. Under AR 381-10, this review must be conducted annually. Units have Intelligence Oversight Officers (appointed by G2/S2) that typically oversee this process, as well as overseeing continued intelligence oversight training requirements.

SLIDE 25: PROCEDURE 4: DISSEMINATION

f. Procedure 4. Procedure 4 covers the dissemination of US Person information. As previously mentioned, information can be disseminated to other agencies who are assigned the mission and function which you are not. Do not ever believe that useful intelligence information must be destroyed simply because you cannot keep it. It's actually your responsibility to pass on such information. This is the definition and criteria for dissemination.

1) Dissemination. The transfer of information about a US person outside the intelligence component that collected or retained it.

2) Criteria for Dissemination. Ordinarily, U.S. person information may be disseminated only with the person's consent. Absent consent, the information may be disseminated only under the following circumstances:

a. The information was collected, or retained, or both under procedures 2 and 3; and

b. The disseminating agency reasonably believes the recipient has a need to receive such information for the performance of a lawful governmental function; and

c. The recipient is a one of the following:

(1) U.S. Intelligence Agency. The recipient may determine whether or not the information is relevant to its responsibilities without such a determination being required of the disseminating intelligence component; or

(2) DoD Contractor, Law Enforcement Agency, other Federal Agency or allied foreign government that has demonstrated a need to know the information as well as authorized access to the information.

d. OR dissemination has been approved by the supporting legal office after consultation with the Department of Justice and the DoD General Counsel.

e. Exceptions. Procedure 4 does not apply to information collected solely for administrative purposes; disseminated pursuant to law; or disseminated pursuant to a court order that otherwise imposes controls upon such dissemination.

SLIDE 26: STUDENT CHECK

How long do you have to make a retainability determination under Procedure 3?
-- 90 days

To whom do you refer questions about AR 381-10?
-- Supporting legal office

SLIDE 27: PROCEDURES 5 – 13

g. You will only receive training on these procedures if you are a member of a unit that utilizes such 'special collection techniques'.

Procedures 5-13

Procedure 5 - Electronic Surveillance
Procedure 6 - Concealed Monitoring
Procedure 7 - Physical Searches
Procedure 8 - Searches and Examination of Mail
Procedure 9 - Physical Surveillance
Procedure 10 - Undisclosed Participation in Organizations
Procedure 11 - Contracting for Goods and Services
Procedure 12 - Provisions of Assistance to Law Enforcement Agencies
Procedure 13 - Experimentation on Human Subjects for Intelligence Purposes

1) You should nonetheless be aware that these Procedures exist and they outline the authorities that can approve the use of these special collection techniques.

SLIDE 28: PROCEDURES 5 – 13 CONT.

2) Again, you will notice how this regulation is a reaction to some of the events that occurred prior to its implementation. For example, Procedure 13 discusses Experimentation on Human Subjects for Intelligence Purposes – typically a non-

starter these days.

SLIDE 29: PROCEDURE 14: FAMILIARIZATION

h. Familiarization. Procedure 14 requires that employees of DoD Intelligence Components conduct intelligence activities only in compliance with EO 12333 and AR 381-10. It also requires that all employees of intelligence components be familiar with the regulation. At a minimum, this training must include annual coverage of Procedures 1-4, 14 and 15, and procedures covering any collection techniques employed by that component.

SLIDE 30: STUDENT CHECK

How often must you have training on AR 381-10?
-- annually (if INSCOM more frequently - but most likely will receive annual training regardless of location)

SLIDE 31: PROCEDURE 15: REPORTING QUESTIONABLE ACTIVITY

i. Procedure 15. Has anyone heard of a Procedure 15 investigation?
If yes, Procedure 15 of AR 381-10 was what was being referred to. Questionable activities and violations of federal crimes by intelligence component employees must be reported under AR 381-10. Often, perception is Procedure 15 is a career stopper, go to jail, etc.; and it could be. But individuals err on the side of caution, and often report what are not really questionable activities. Procedure 15 covers the identifying, investigating and reporting of questionable activities and federal crimes.

1) Reporting. Each employee must report any questionable activity to Inspector General, (DAIG for soldiers) for the DoD intelligence component concerned, or to the DoD General Counsel or the ATSD (IO) as soon as possible. The DoD Directive does not specify time frames within which you must report questionable activities; however, service regulations may specify time frames for reporting, such as the five-day reporting requirement under AR 381-10.

a. Content of reports. Reports must include: description of the nature of the questionable activity; date, time, and location of occurrence; individual or unit responsible for the questionable activity; summary of the incident; and status of the investigation of the incident.

b. No adverse action may be taken against any employee because he/she reports questionable activities or federal crimes.

c. Procedure 15 lists the commands investigative responsibilities following a report.

SLIDE 32: QUESTIONABLE ACTIVITY

2) Questionable Activity. Any conduct in the course of or in furtherance of an intelligence activity that may violate the law, any Executive Order or Presidential directive, including EO 12333, DoD policy, or applicable service regulations or policy. Notice the 'may' in the regulation. Essentially, when in doubt, report the possible violation so that corrective actions can be taken.

000349
023036

SLIDE 33: INTELLIGENCE ACTIVITIES

a. Activities intelligence components are authorized to undertake pursuant to Executive Order 12333. These include: collection, production and dissemination of military and military-related foreign intelligence and counterintelligence, and information on the foreign aspects of narcotics production and trafficking. Note that intelligence activities, as defined in EO 12333, discusses 'foreign intelligence' and 'counterintelligence.' That really is the proper role for Military Intelligence; focusing on the foreign threats to the United States (as opposed to domestic ones).

b. According to the DAIG, he has had units destroying individual security clearance files in preparation for IG visit, not realizing information is administrative in nature and not related to an intelligence activity. Retention of old information could be a MARKS violation, but not a 381-10 problem. Likewise, forgetting to lock a safe, while a security issue, is normally not going to be a questionable activity, reportable under the regulation. Neither is personal wrongdoing, if not related to an intelligence activity. Misperceptions still linger about what actually is reportable under Procedure 15.

SLIDE 34: PROCEDURE 15: FEDERAL CRIMES

3) Federal Crimes.

a) Under AR 381-10, employees must report any facts and circumstances that tend to show the following:

(1) That an employee of an intelligence agency may have violated any federal statute. Current guidance limits these crimes to those that exceed $500 or are not only administrative in nature.

(2) That any other employee of an intelligence agency may have violated a federal criminal statute in one of the following categories:

(a) Crimes involving intentional infliction or threat of death or serious physical harm.

(b) Crimes likely to impact on the national security, defense or foreign relations of the US.

(c) Crimes involving foreign interference with the integrity of US governmental institutions or processes.

(d) Crimes that appear to have been committed by or on behalf of a foreign power or in connection with international terrorist activity.

(e) Any conspiracy or attempt to commit a crime reportable under the above categories.

b) Suspected federal crimes must be reported to the DAIG within 5 working days. Employees are encouraged to file reports through command channels, but are not required to do so. Note that there is no time stated in the DoD Directive

for reporting federal crimes. Under the DoD Directive, federal crimes are supposed to be reported as soon as possible.

SLIDE 35: MORE FUN QUESTIONS

How often must you have training on AR 381-10?
-- Annually

How long do you have to make a retainability determination under Procedure 3?
-- 90 Days

To whom do you refer questions about AR 381-10?
-- The legal office responsible for advising the unit

SLIDE 36: JUST A FEW MORE QUESTIONS

Does AR 381-10 apply to law enforcement activities?
-- NO - only to intel activities - does not apply to law enforcement or administrative activities

What is the most important consideration when determining whether you can collect US person information?
-- your Mission
AR 381-10 places no restriction on the retention of publicly available information. True ____ False _____
-- False - it must be your mission, fit within Procedure 2 13 categories of information that may be collected

What happens if you are wrong (violate AR 381-10)?
-- if it is just a violation of 381-10 and not a violation of other regulations/statutes, you will probably be hit with corrective training (which is bad enough!). If it violates other statutes - it can lead to military justice action.

SLIDE 37: LAW OF WAR FM 27-10
Next we will discuss Law of War. Can there truly be a thing called the "Law of War"? Isn't war sanctioned killing? In fact, we do regulate how we fight wars. Because we do, it is extremely important for you not only as soldiers, but in particular as HUMINT collectors. Although many soldiers come in contact with captured personnel, they do not spend as much time interacting with them as HUMINT collectors do. Consequently, you need to have a better understanding of the laws of war than the average soldier. Specifically, you must understand how to treat captured personnel and to balance that treatment with your need to collect information from them. Failure to do so can result in severe legal consequences and can certainly have a negative impact on the United States' war effort.

B. **SLIDE 38: OBJECTIVE**

ACTION:	Apply principles of the Law of War to HUMINT collection activities.
CONDITIONS:	Given FM 27-10
STANDARDS:	Principles of Law of War are applied HUMINT collection activities IAW FM 27-10.

1. **Learning Step/Activity 1:** Discuss the principles of the Law of War.
Method of Instruction: CO **Instructor to student ratio is:** 1:15
Time of Instruction: 95 minutes.
Media: PowerPoint slides.

SLIDE 39: PROCEDURE

a. Purposes of Law of War
b. Sources of Law
c. Legal Principles
d. Discrimination/Distinction
e. Status of Detained Individuals
f. Treatment of POWs
g. Treatment of Retained personnel
h. Treatment of Protected Persons
i. War Crimes

SLIDE 40: PURPOSES OF THE LAW OF WAR

a. Purposes of Law of War

Why do we have the Law of War and why should you comply?

NOTE: Solicit student input as to why it is important, and why it is necessary to comply.

1) In fact, there are several reasons for it.

a) Prevent unnecessary suffering / minimize that which is a necessary part of warfare.

b) Encourage reciprocity. For example, in WWII American POWs were treated much better than their Russian counterparts, most likely because we complied with the Law of War in handling German POWs.

c) Facilitate the Restoration of Peace / end the conflict sooner. Perhaps this is the best practical reason. Treat enemy POWs well and it will encourage them to surrender. Reference the Persian Gulf War and the overwhelming number of Iraqis who voluntarily surrendered.

d) Foster High Discipline and Morale

e) Separate Soldiers from Unruly Mobs

f) Enhance public support. Reference Vietnam War and the loss of public support.

g) The UCMJ! Stay out of jail. A violation of the Law of War is a violation of the UCMJ. The United States prosecutes war criminals – even our own.

SLIDE 41: THE BOTTOM LINE

2) This quote from BG Telford Taylor sums up the reason we have the Law of

War and why you must comply with it. It separates a true soldier, a professional and member of a noble profession, from a mere criminal.

SLIDE 42: SOURCES OF LAW

b. Sources of Law. The sources of the Law of War are through formal Conventions or treaties and through accepted customs. Treaties which the United States has signed and ratified are under Article VI, Clause 2 of the Constitution of the United States, part of the "supreme law of the land",i.e. such treaties have the same force and validity as laws enacted by Congress.

1) **Customary laws** are those standards of behavior that are generally held to be proper in relations between states, even though they may not be explicitly expressed in the form of a treaty. Unwritten laws and rules governing conduct during war that have developed over time. Violations of customary law or war are usually called "crimes against peace" or "crimes against humanity." (FM 27-10, par. 7)

2) The terms of most lawmaking treaties are technically only binding between parties who have both ratified them, nevertheless, **"the treaty provisions quoted herein (27-10) will be strictly observed and enforced by United States forces without regard to whether they are legally binding upon this country"** In addition, the Law of War applies even in cases where there has been no formal declaration of war. (27-10, par.9). The Hague conventions of 1907 regulate hostilities by dealing with targets, tactics and weapons. However, they do have a few rules concerning the treatment of captives. The Geneva Gas protocol of 1925 prohibits the use of chemical agents and biological weapons (the US Senate did not ratify).

3) **The Geneva Conventions** were established in 1949 and are the primary sources of law regarding the treatment of captured personnel during war. Specifically, they regulate the treatment of prisoners of war, unlawful combatants, civilians, medical and religious personnel and the sick and wounded. The United States has ratified the Geneva Conventions. Therefore, according to the U.S. Constitution, the Geneva Conventions have the same force and effect of law as any federal statute. Note that the Geneva Conventions of 1949 do not apply to all types of conflicts. For instance, the Geneva Conventions do not apply to civil wars. However, according to U.S. policy, our soldiers will follow the Law of War no matter what type of operation or conflict our soldiers are involved in.

4) **Uniform Code of Military Justice (UCMJ).** Yes, the UCMJ is a source of the Law of War, because it governs our conduct during war. Under the UCMJ, soldiers can be prosecuted for crimes such as assault, pillage, rape and murder of enemy prisoners of war (POWs). U.S. policy is to prosecute U.S. soldiers for UCMJ offenses rather than to try them for war crimes.

5) **Rules of Engagement.** In any armed conflict you will be involved in, there will be rules of engagement, which will provide more specific guidance regarding the actions you will take in the conflict. These rules can change, as the circumstances on the ground do. For example, in peacekeeping missions, we have restrictive rules of engagement, whereas in declared war and combat, the rules are more relaxed. The rules of engagement are intended to supplement the laws of war and will be more restrictive than the laws of war. You must follow the laws of war and the rules of engagement if you and your soldiers wish to stay out of jail. You should always find out what the rules of engagement are before you

00353 023040

enter into an armed conflict. The UCMJ and international treaties make compliance a requirement of all US Soldiers. Compliance enhances our public support and encourages the opposing side to comply with the laws of war.

SLIDE 43: LEGAL PRINCIPLES

c. Legal Principles. There are four legal principles that essentially guide the Law of War and combatants as to what is the correct action. And as you delve deeper into the specifics of the Law of War, you will see how these principles play out on the ground.

1) The first principle is **military necessity**. This principle simply means that every target and every action in combat must be necessary to a military objective and cannot be otherwise prohibited by international laws. For example, wanton destruction and slash and burn techniques used in the past, which do not have any legitimate military objective, are prohibited.

2) The second principle, **humanity or unnecessary suffering**, guides our actions in warfare as well. Essentially, we are required to minimize suffering to the extent feasible. For this reason, some weapons are prohibited as a violation of the Law of War. For example, we cannot use ordinance with glass fragments. Treating an individual who suffered from such an ordinance would be nearly impossible; glass does not show up on x-rays. The result would simply be unnecessary suffering. Another example would be hollow-point rounds.

3) The third principle is **proportionality**. This recognizes that collateral damage, such a civilian deaths, is sometimes unavoidable in warfare. However, such damage must not be disproportionate to the military objective gained. Also, deployed weapons must be proportional to the objective. Tactical nuclear weapons might end a conflict quickly, but the resulting destruction and death of noncombatants would be wholly disproportional to the military objective gained.

4) Finally, **discrimination or distinction** is perhaps the most basic principle. It requires that we discriminate between legitimate military targets, and those that are not. For example, combatants are legitimate military targets; civilians are not.

SLIDE 44: STUDENT CHECK

There is currently a worldwide effort to ban the use of land mines. What principle might they most likely violate?

Answer: Discrimination. Land mines do not discriminate. Current estimates indicate that there are approximately 10,000,000 land mines placed and active, waiting for someone to set them off. It is unlikely that it will be a combatant that does so.

SLIDE 45: COMBATANTS

d. Combatants. As mentioned previously, the most fundamental principle of the Law of War is distinction or discrimination. This principle recognizes that in all actions in warfare, we must discriminate between combatants and noncombatants. As you will learn shortly, we extend POW status to an

enumerated list of individuals. Nevertheless, we have basic rules that qualify someone as a lawful combatant, entitled to POW status. These four rules are derived from international law.

1) Commanded by a person responsible for subordinates
2) Fixed distinctive sign visible from a distance
3) Carry arms openly
4) Abide by the Law of War

SLIDE 46: STUDENT CHECK

Do terrorists qualify as combatants?

No, they typically do not wear uniforms, nor do they carry arms openly or comply with the Law of War. Consequently, they would not be entitled to POW status and we would try them in court as ordinary criminals.

SLIDE 47: NONCOMBATANTS

e. Noncombatants. Diplomats, Embassy Persons, Staff of Relief Societies, Medical Personnel, Chaplains, Nonbelligerent Civilians and Out of Combat Persons such as the wounded, sick, parachutists, and surrendering persons are considered noncombatants, and not subject to targeting. For example, medical personnel and chaplains are noncombatants, and should be able to operate on the field of battle without being targeted. During World War II, American and German troops generally complied with this Law of War, allowing the treatment of the wounded and sick on the battlefield. On the Eastern front, the same was not true. And personnel could not be adequately treated on the battlefield.

The wounded are also considered noncombatants, not subject to targeting. This presupposes of course that the wounded individual is out of combat and not continuing to fight.

This point brings up an important caveat. All of these individuals are considered noncombatants. However, each of them could lose their status if they engage in combat. In other words, don't ever think that if a doctor or chaplain is firing at you that you cannot return fire. These noncombatants should not be engaging in combat, they would be unlawful combatants, but they lose their status of noncombatants by their actions.

SLIDE 48: TACTICS

f. Tactics.

1) Are these three tactics legal under the law of land warfare? Can we use ruses to, in a sense, trick the enemy? Can we do psychological operations against the enemy? And what is treachery?

2) You should recognize that both ruses and PSYOP are permissible under the Law of War. They are permissible and they are done. Can anyone think of examples?

a) In the Persian Gulf War, the US set up a 'fake' unit outside Kuwait City, complete with inflatable tanks and HUMVEES and false radio traffic, to confuse

the enemy and make them think we would attack directly in the city. The same thing was done for the D-Day invasions in Normandy. In a sense, interrogators could also use permissible ruses against enemy POWs. For example, putting a plant in among POWs, or, while interrogating, pretending you already know about a situation you are attempting to gather intelligence on.

b) PSYOP were also conducted during the Persian Gulf War as the US dropped millions of flyers on Iraqi positions, impressing upon them the futility of fighting and of the need to surrender. Studies of Iraqi POWs demonstrated that about 98% of the POWs saw the leaflets and about 70% said it had some influence on their decision to surrender.

3) Treachery, however, is illegal under the Law of War. Treachery is defined as using the enemy's compliance with and adherence to the Law of War to gain an advantage. For example, using the Red Cross symbol on anti-aircraft positions so the enemy will not target that position. Or pretending to surrender but then continuing to fight after the enemy has exposed its position. Finally, for interrogators, an example would be impersonating a Chaplain or medical personnel (persons protected by the Geneva Conventions) in an attempt to solicit intelligence. These actions would violate the Law of War.

SLIDE 49: WEAPONS

g. Weapons. So how do we know that all weapons in the United States' military arsenal comply with the Law of War and all those principles we discussed? Don't let the answer scare you . . .

SLIDE 50: WEAPONS

1) Every weapon system has been approved for use by a lawyer! There is a legal review done simply to ensure that each weapon complies with the Law of War, as well as every other treaty to which we are bound. The referenced regulations outline how this review is done.

2) Although generally weapons should not be altered and used in a manner inconsistent with its purpose, you may use a weapon in a way other than it was intended if that's all you have to defend yourself. For instance, you may not use a flamethrower against a person generally, however, if that is all you have when attacked to defend yourself, you may use it.

SLIDE 51: MINES AND BOOBY TRAPS

2) The use of mines and booby traps is permitted in certain situations. These mines/booby traps must target the military and not just placed indiscriminately so that any civilian can walk up on them. The mines/booby traps cannot be used in a manner to take advantage of the enemy's compliance with the Law of War. For instance you cannot booby trap a corpse. There must be signs, a plan for recovery or a map to permit recovery of these mines/booby traps.

NOTE: Point out that the limitations on this slide are not exhaustive. However, the point should be made that use of mines must comply with the principles of the Law of War. Point out the prohibition on devices designed to cause unnecessary suffering. The US policy on anti-personnel land mines is that the US may no longer employ "dumb" mines (those that don't self destruct or self neutralize). The

exception is in the DMZ between North and South Korea and for training purposes.

SLIDE 52: LEGAL?

3) Are the following weapons legal?

a) Shotguns? Yes
b) Fragmentation Grenades? Depends (metal - yes; glass - no?)
c) .50 caliber targeting combatants? Yes
d) Hollow-point rounds? No
e) Lasers? For Targeting only not to blind
f) Bulldozer blades on armor? Yes
g) Water Cannons? (Depends on the water pressure)

NOTE: Poll the class on the legality of each of these weapons. Reiterate the importance of the humanity principle. Dispel myth that .50 caliber rounds may not be used against people (but bring up the proportionality principle). Explain that lasers may properly be used for targeting and range finding, but may not intentionally be used to blind someone. Ask the class if fixing a bulldozer blade on the front of a tank with the purpose of caving in bunkers is legal in light of the humanity principle. Explain that this very tactic was used in the Persian Gulf war and was found to be legal. Sometimes this sparks a good discussion about exactly how we determine whether a tactic or use of a weapon is humane.

SLIDE 53: INITIAL HANDLING OF CAPTURED PERSONNEL

h. **Handling of Surrendering Personnel/The 5 S's.** Once you capture enemy personnel, you must perform the five S's: search, silence, segregate, safeguard, and speed to the rear. Record any relevant information concerning activities observed before capture and any circumstances surrounding suspected war crimes. By performing the 5 S's we ensure the safety of the soldier and the safety of ourselves. It is vital to the HUMINT collector that this is done as it can help to keep the source in as close to the same state of mind, emotions and physical condition he/she was in at the time of capture. This will help to allow us to choose a more accurate alternative approach.

1) **Evacuation of Captives.** Prisoners of war shall be evacuated in a **timely manner.** Meaning as soon as possible after their capture to camps situated in an area far enough from the combat zone for them to be out of danger. Some prisoners may have a **delayed evacuation.** These will be only those prisoners of war who have wounds or sickness, which would run greater risks by being evacuated than by remaining where they are. These prisoners may be temporarily kept back, even though it is a danger zone. This is because Prisoners of War shall not be unnecessarily exposed to danger while awaiting evacuation or being evacuated and shall be afforded **protection and humane treatment.**

2) **Humane Treatment of Captives.** Security of POWs must always be adhered to. No prisoner of war may at any time be sent to or detained in areas where he/she may be exposed to the fire of the combat zone, nor may his presence be used to render certain points or areas immune from military operations. They will have shelter against air bombardment and other hazards of war, to the same extent as the local civilian population. When military

considerations allow, POW Camps shall be clearly marked and in such a way that the markings can be seen from the air. Detaining powers shall give the Powers concerned all useful information regarding the geographical location of POW Camps.

SLIDE 54: PERSONNEL CATEGORIES

3) **Categories of Personnel.** Captured personnel can be divided into three general groups/categories. We will talk about each of these categories as it pertains to their status and who is afforded each status and some of their rights under each status.

a) Prisoners of War (POW) - Lawful combatants will be treated as prisoners of war.

b) Retained Personnel - Medical personnel, chaplains and persons working for volunteer aid societies (Red Cross personnel, for example) will be treated as retained personnel.

c) Protected Persons - Unlawful combatants and noncombatants will be treated as protected persons.

SLIDE 55: PRISONER OF WAR

d) Only lawful combatants will receive POW status and, thus, immunity from prosecution for their warlike acts. In order for someone to be considered a lawful combatant, the person must conduct his or her operations in accordance with the Law of War. Also, that person must fall within one of the following six categories of persons.

(1) **Armed Forces Members.** Members of the armed forces of a party to the conflict. This category includes members of militias or volunteer corps that are part of the armed force.

(2) **Other Militias or Volunteer Corps.** Members of other militias or volunteer corps. This category includes those organized resistance movements, belonging to a party to the conflict and operating inside or outside their territory, even if this territory is occupied. Such militia, volunteer corps or resistance movement must meet the requirements of combatants, as discussed previously:

(a) Be commanded by a person responsible for his or her subordinates;

(b) Have a fixed distinctive sign or insignia recognizable at a distance;
(c) Carry arms openly; **and**

(d) Conduct their operations in accordance with the Law of War.

(3) **Armed Forces Not Recognized by a Detaining Power**. Members of a regular armed force who profess allegiance to a government or authority not recognized by a detaining power.

(4) **Civilians With an Armed Force (ID card)**. Persons who accompany the armed force without actually being a member thereof. Examples of such people include civilian members of military airlift crews, war correspondents, supply contractors, and members of labor units or of services responsible for the

023045
000358

welfare of the armed forces. These people must have received authorization from the armed force they accompany in order to be considered lawful combatants. The armed force must provide these people with an identity card for the purpose of accompanying the armed force.

(5) **Merchant Marine/Civil Aircraft Crew Members**. Members of crews; including masters, pilots and apprentices; of the merchant marine and crews of civil aircraft of a party to the conflict, who do not benefit from more favorable treatment under any provisions of international law.

(6) **Levee En Masse**. These are inhabitants of an unoccupied territory, who upon the approach of the enemy, spontaneously take up arms to resist the invading force. These people must not have had time to form themselves into regular armed units. These people must carry arms openly and respect the Law of War in order for them to be considered lawful combatants.

(7) **Armed Forces (present or past) of Occupied County.**

SLIDE 56: EPW/POW Rights

3) **EPW Rights.**

a) Quarters. POWs must be quartered under conditions at least as favorable as the conditions the detaining power houses its own soldiers in the same area. (See FM 27-10, paragraph 101).

b) Rations. POWs must receive daily rations that are sufficient in quantity, quality and variety to keep the POWs in good health. The POWs' habitual diet shall also be taken into account. (See FM 27-10, paragraph 102).

c) Clothing. POWs shall receive sufficient clothing, taking into account the climate where the POWs are held. (See FM 27-10, paragraph 103)

d) Hygiene and Medical Attention. The detaining power shall take all sanitary measures necessary to maintain a clean and healthy camp. Adequate medical attention shall also be provided to POWs. Also, there must be an adequate infirmary at each camp. (See FM 27-10, paragraphs 106-108).

e) Protective Equipment. POWs shall be allowed to retain protective equipment; such as gas masks, helmets and field jackets.

f) Other items. Items used for clothing and feeding; badges, decorations, and other items having a personal or sentimental value; and identification documents. An officer may order that money be taken from POWs, as long as the money is properly accounted for and the POW is given a receipt for the money that was taken. Valuables may also be taken from POWs, but only for security reasons. If valuables are taken, they must be properly accounted for and the POW must be given a receipt for the valuables taken. Finally, you may not barter with POWs. (See FM 27-10, paragraph 94).

The following table is a list of some other basic rights POWs have, along with a citation to FM 27-10 where you can find more specific information about each of these rights.

SLIDE 57: OTHER EPW/POW RIGHTS

TABLE of – SPECIFIC RIGHTS OF PRISONERS OF WAR

Right	Reference to FM 27-10
Freedom to practice religion and faith	Paragraphs 110-113
Sending and receiving mail	Paragraphs 147, 150, and 152
Receiving packages containing food stuffs	Paragraphs 148-149
Identity documents	Paragraph 146
Access to educational, religious, or recreational material	Paragraphs 112-114
Access to a prisoner's representative	Paragraphs 154-157

SLIDE 58: EPW/POW RESPONSIBILITIES

5) EPW/POWS have 4 major responsibilities:

a) The EPW is "bound" to provide only his/her surname and first names, rank, date of birth, and unit or serial number. Failing this, the EPW should provide equivalent information. (FM 27-10, Para 93) If an EPW refuses to give this information, they may be treated as a Private E-1 with all the restrictions and duties thereof.

b) EPWs are required to show the proper military courtesies to soldiers of higher rank, according to their OWN regulations. (Para 115)

c) EPWs may be made to work and must be paid for that work based on their rank. Junior enlisted soldiers may be made to work details. NCOs may be made to supervise the details. Officers may not be made to work. (Paras 125, 126, 130)

(1) Combining points 1 and 3: If an officer refuses to provide their rank or identify themselves as an officer, they can be segregated with the lower enlisted and given appropriate details, i.e., they will live and work as an E-1 Private.

d) EPWs are subject to the laws, regulations, and orders of the Detaining Force. If the EPW chooses to disobey those laws, they are then subject to the punishments accorded to the infraction WITHIN THE GENEVA CONVENTIONS. (Para 158)

SLIDE 59: NO POW STATUS

6) **No POW Status.** Members of the armed forces of a party to the conflict, including members of militias or volunteer corps which are part of the armed force, will not be treated as POWs when they deliberately conceal their status to pass behind enemy lines in order to gather military information or to wage war. These captives will be treated as protected persons. Note, it is lawful to disguise yourself any way you want and go behind enemy lines to collect military information. However, it is not lawful to disguise yourself as an enemy soldier and wage war by shooting at enemy targets. (Reference General Otto Skorzeny – German special forces during the Battle of the Bulge. Skorzeny led a panzer brigade of German soldiers in the Battle of the Bulge disguised as American soldiers in an operation known as Operation Greif.). To make things simpler and to ensure our compliance

with the Law of War, Army policy is that individuals are afforded POW status until an Article 5 Tribunal determines otherwise. (see slide 65)

7) **Spies Hague Convention (Annex IV).** The Hague Conventions define a spy as a person who "act[s] clandestinely, or on false pretenses, [to obtain] or endeavor to obtain information in the zone of operations of [the enemy], with the intention of communicating it to [friendly forces]." (See FM 27-10, paragraph 75, **quoting** Annex IV to the Hague Convention, Article 29). Article 106 of the UCMJ defines a spy as "any person who in time of war is found lurking as a spy or acting as a spy in or about any place...within the control or jurisdiction of any of the armed forces of the United States, or...any other place or institution engaged in work or in aid of the prosecution of the war by the United States, or elsewhere. The Hague Convention Rule and Article 106 will be applied together where the two provisions do not conflict. Otherwise, Article 106 governs American practice. (See FM 27-10, paragraph 75).

SLIDE 60: RETAINED PERSONNEL

8) **Retained Personnel.** As mentioned earlier, retained person status is given to permanent medical personnel, chaplains and workers for the Red Cross and other recognized voluntary aid societies. (See FM 27-10, paragraphs 67-69). Retained personnel status entitles them to receive at least the same benefits as POWs. But, retained personnel may only be required to perform medical and religious duties. They may only be retained as long as required by the health and spiritual needs of POWs. (See FM 27-10, paragraph 230). Retained personnel must be returned when their "retention is not indispensable ... as soon as the road is open for their return and military requirements permit." (See FM 27-10, paragraph 231). More information about the treatment of retained personnel can be found in FM 27-10, paragraphs 230-232

a) **Medical Personnel**: Medical personnel include those people who are "exclusively engaged in the search for, or collection, transport or treatment of the wounded or sick, or in the prevention of disease." (See FM 27-10, paragraph 67). Medical personnel also include the administrative staff of a medical unit. Medics and other people who temporarily perform medical functions will be treated as POWs, but will perform medical duties when the need arises. (See FM 27-10, paragraph 68).

b) **Religious Personnel.** Ministers of religion who are not chaplains are considered to be POWs and not retained personnel. However, they are free to minister to the members of their community. They cannot be obligated to do other work. (See FM 27-10, paragraph 112).

c) **Volunteer Aid Society Workers.** Workers of volunteer aid societies, such as the red cross, are considered retained personnel so long as the "staff of such societies are subject to military laws and regulations." See FM 27-10, paragraph 69, for further information about treating workers of volunteer aid societies as retained personnel.

SLIDE 61: RETAINED PERSONNEL CONT.

d) **Retained Person's Rights.** Retained personnel must receive at least the same benefits as POWs. They may only be required to perform religious or medical duties and may only be retained as long as required by health and spiritual needs of POWs. They must be returned to their home country when no longer needed.

SLIDE 62: PROTECTED PERSONS

9) **Protected Persons.** Protected persons include civilian noncombatants and unlawful combatants who are "in the hands of a party to the conflict or occupying power of which they are not nationals." (See FM 27-10, paragraph 247). Since protected persons are not POWs, they may be tried as a criminal for their warlike acts.

If you suspect that a captive is an unlawful combatant, you must treat that person as a POW until a tribunal convened under Article 5 of the Geneva Conventions determines that the person is an unlawful combatant. (See FM 27-10, paragraph 71).

SLIDE 63: PROTECTED PERSONS' RIGHTS

a) Rights of Protected Persons. Protected persons are always entitled to "respect for their persons, their honor, their family rights, their religious convictions and practices and their manners and customs. They shall at all times be humanely treated...." (See FM 27-10, paragraph 266). Specific examples of these rights include the following:

(1) Protection from all acts of violence or threats of violence. (See FM 27-10, paragraph 266).

(2) Protection from insults and public curiosity. (See FM 27-10, paragraph 266).

(3) Protection for women from attacks on their honor. Specifically, this includes protection from rape, enforced prostitution and indecent assault. (See FM 27-10, paragraph 266).

(4) Equal treatment, without any adverse distinction based on race, religion or political opinion. (See FM 27-10, paragraph 266).

SLIDE 64: PROTECTED PERSONS' SLIDES CONT.

(5) Protection from being used as human shields to render certain areas immune from military operations. (See FM 27-10, paragraph 267). (Reference Iraq – and its use of human shields in the beginnings of the Persian Gulf War).

(6) Protection from physical or moral coercion. (See FM 27-10, paragraph 270).

000362

(7) Protection from murder, torture, corporal punishment, mutilation, medical experiments and any other forms of brutality. (See FM 27-10, paragraph 271).

(8) Protection from collective penalties, pillage, reprisals, intimidation and terrorism. (See FM 27-10, paragraph 272).

(9) Protection from being taken hostage. (See FM 27-10, paragraph 273).

SLIDE 65: LIMITATIONS ON PROTECTED PERSONS' RIGHTS

b) Limitation on Protected Person's Rights. All protected persons who may desire to leave the territory at the outset of, or during a conflict, shall be entitled to do so, unless their departure is contrary to the national interest of the State. This means that although they have the right to leave, it is/can be limited to the approval of the State authorities. Additionally, protected persons are not immune to prosecution for illegal acts or war crimes. Protected persons may also still be screened for intelligence information purposes

SLIDE 66: U.S. POLICY ON CAPTURED ENEMY PERSONNEL

10) U.S. Policy on captured enemy personnel. The United States of America has assumed the policy of treating EVERY captured enemy as a POW/EPW until an Article 5 Tribunal (per the Geneva Conventions) determines their status and treatment be conducted otherwise. This policy establishes a code of conduct for ALL U.S. military members regardless of the situation or the captured enemy person. If the prisoner refuses to answer any questions and U.S. forces are unable to make a determination of prisoner status per FM 27-10, the source is also to be treated as a POW/EPW until the prisoner's status is clarified.

There is a distinct difference between being treated like a POW and actually being given the status of POW. All status' are to be treated like POWs with similar rights and privileges although they may be taken away when approved by the proper authority, typically by Echelons above Corps or a tribunal.

SLIDE 67: TORTURE AND COERCION

11) **Torture and Coercion.** No physical or mental coercion or torture may be used in order to obtain any information. POWs who refuse to answer "may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind." (FM 27-10, paragraph 93). FM 34-52 defines torture as "the infliction of intense pain to body or mind to extract a confession or information, or for sadistic pleasure. Physical or mental torture and coercion revolve around eliminating the source's free will." (FM 34-52, page 1-8). Coercion is defined as "actions designed to unlawfully induce another to commit an act against one's will." (FM 34-52, page 1-8).

SLIDE 68: EXAMPLES OF PROHIBITED ACTIVITIES

a) The following are examples of physical torture and prohibited under the Law of War.

(1) Electric Shock

(2) Pain Through Chemicals
(3) Pain Through Bondage
(Legitimate use of Restraints to Prevent Escapes is allowed)
(4) Forced to Stand, Sit, or Kneel in Abnormal Positions
(5) Food Deprivation
(6) Any Form of Beating

b) The following are examples of mental torture and prohibited under the Law of War.

(1) Mock Executions
(2) Abnormal Sleep Deprivation
(3) Chemically Induced Psychosis

c) The following are examples of coercion and prohibited under the Law of War.

(1) Threatening or Implying Physical or Mental Torture to the subject, his family, or others to whom he owes loyalty.
(2) Intentionally denying medical assistance or care in exchange for information sought or other cooperation.
(3) Threatening or implying the other rights guaranteed by the Geneva Conventions will **not** be provided unless cooperation is forthcoming.

SLIDE 69: STUDENT CHECK

Can an interrogator delay or postpone feeding captured enemy personnel in order to encourage him/her to speak?

No, this is a form of coercion. Even though the interrogator intends to feed the enemy personnel eventually, you cannot threaten the rights guaranteed by the Geneva Conventions in any way.

SLIDE 70: HUMANE TREATMENT OF CAPTIVES

12) **Humane Treatment of Captives.** Captives must always be treated humanely and with respect. They must be protected and safeguarded from combat from the time they first fall into enemy hands until their final repatriation. Captives must be allowed to keep their personal protective equipment; such as their helmet, protective mask and field jacket. (See FM 27-10, paragraph 94).

How do we deal with media? Do we allow the media to photograph POWs we hold? US policy generally does not permit this, as we do not want to violate the Geneva Convention by making POWs objects of public curiosity.

13) **Reprisals.** Finally, reprisals against POWs are not allowed. But what is a reprisal?

A reprisal is not revenge, its purpose is deterrence. A reprisal is what would otherwise be a Law of War violation in response to the enemy's Law of War violation. In other words, reprisals are permitted in response to Law of War violations in order to deter the enemy's future violations. We want to encourage compliance with the Law of War and a reprisal is one permissible means of doing

so.

Nevertheless, reprisals against POWs, retained or protected persons are not permitted. And the authority to order a reprisal rests with the National Command Authority, not at a low level.

SLIDE 71: Student Check

What are civilians who take a direct and active part in hostilities?
Combatants.

What Geneva Convention status are they given if they are caught by the enemy?

Since they are not members of an armed force, or otherwise belong to some militia or volunteer corps, or travel with an armed force or are crew members, we must look to see if they may be Levee en Mass or otherwise satisfy the four criteria for EPW/POW status:

(1) Be commanded by a person responsible for his or her subordinates;

(2) Have a fixed distinctive sign or insignia recognizable at a distance;

(3) Carry arms openly; **and**

(4) Conduct their operations in accordance with the Law of War.

If they do not satisfy the four criteria, and are not medical, religious or volunteer aid society personnel (retained persons), then they are protected persons.

How are these civilians to be treated upon capture?

They are initially treated as though they are EPWs until an ART 5 Tribunal can determine their actual status.

SLIDE 72: WAR CRIMES

i. **War Crimes.** A war crime is a violation of the Law of War committed by any person during an armed conflict. Each violation of the Law of War is a separate war crime. There are two types of war crimes: grave breaches of the Law of War and simple breaches of the Law of War. The type of war crime involved determines what the US's responsibilities are for addressing the crime.

1) Types of war crimes.

a) Grave breaches of the Law of War include the following: murder; mutilation; taking of hostages; torture; medical or scientific experiments; unlawful and wanton destruction and/or appropriation of property not justified by military necessity; compelling captured personnel to serve in the forces of a hostile power; willfully depriving a captured person the rights of a fair and regular trial as required by the conventions; and unlawful deportation, transfer, or confinement of a protected person.

b) Simple breaches of the Law of War include the following: misuse of Red

so.

Nevertheless, reprisals against POWs, retained or protected persons are not permitted. And the authority to order a reprisal rests with the National Command Authority, not at a low level.

SLIDE 71: Student Check

What are civilians who take a direct and active part in hostilities?
Combatants.

What Geneva Convention status are they given if they are caught by the enemy?

Since they are not members of an armed force, or otherwise belong to some militia or volunteer corps, or travel with an armed force or are crew members, we must look to see if they may be Levee en Mass or otherwise satisfy the four criteria for EPW/POW status:

(1) Be commanded by a person responsible for his or her subordinates;

(2) Have a fixed distinctive sign or insignia recognizable at a distance;

(3) Carry arms openly; **and**

(4) Conduct their operations in accordance with the Law of War.

If they do not satisfy the four criteria, and are not medical, religious or volunteer aid society personnel (retained persons), then they are protected persons.

How are these civilians to be treated upon capture?

They are initially treated as though they are EPWs until an ART 5 Tribunal can determine their actual status.

SLIDE 72: WAR CRIMES

i. **War Crimes.** A war crime is a violation of the Law of War committed by any person during an armed conflict. Each violation of the Law of War is a separate war crime. There are two types of war crimes: grave breaches of the Law of War and simple breaches of the Law of War. The type of war crime involved determines what the US's responsibilities are for addressing the crime.

1) Types of war crimes.

a) Grave breaches of the Law of War include the following: murder; mutilation; taking of hostages; torture; medical or scientific experiments; unlawful and wanton destruction and/or appropriation of property not justified by military necessity; compelling captured personnel to serve in the forces of a hostile power; willfully depriving a captured person the rights of a fair and regular trial as required by the conventions; and unlawful deportation, transfer, or confinement of a protected person.

b) Simple breaches of the Law of War include the following: misuse of Red

Cross emblems; maltreatment of dead bodies; using poisoned or otherwise forbidden arms or ammunition; compelling captured personnel to perform prohibited labor; and violation of surrender terms.

SLIDE 73: OBLIGATION TO SUPPRESS WAR CRIMES

2) Suppression of War Crimes. Each nation has the responsibility to suppress war crimes. This obligation is facilitated by the fact that there is universal jurisdiction over war criminals and there are no statutes of limitations on war crimes.

The nation's obligation to suppress war crime depends on the type of war crime involved. For grave breaches, each nation has the obligation to search out and prosecute the war criminal, or extradite the war criminal to a country that will prosecute. For simple breaches, each nation must take steps to ensure that the breaches do not happen again.

SLIDE 74: DEALING WITH ILLEGAL ORDERS

3) **Illegal Orders.** A soldier is responsible for his or her actions or omissions that violate the Law of War. Also, a soldier must not obey any order that, if executed, violates the Law of War. If a soldier believes that an order violates the Law of War, the soldier should take the following steps to try to stop the violation:

a) Clarify unclear orders by repeating what soldier believes to be the correct order.

b) If the order is illegal, the soldier must state that he or she believes the order violates the Law of War.

c) Use moral arguments.

d) Threaten to report the act.

e) Ask the senior soldier to stop the act.

f) Refuse to obey an order that violates the Law of War.

g) If the order is not withdrawn, or the act is committed, report the incident or order to the appropriate authorities.

SLIDE 75: DUTY TO REPORT WAR CRIMES

4) War Crime Reporting. A soldier is required to report any observed or suspected violation of the Law of War as a serious incident. This applies to all violations of the Law of War no matter who committed it, including enemy violations of the Law of War. (See AR 190-40 for the requirements of making a serious incident report).

a) Observed or suspected serious incidents should also be reported to the chain of command as soon as possible after their discovery. If the chain of command might be implicated in the incident, a soldier can report the incident to a JAG, IG, provost marshal or chaplain.

SLIDE 76: REASONS FOR REPORTING WAR CRIMES

b) Why report war crimes? Reporting enemy war crimes is important because enemy war crimes can be the basis for legitimate reprisals against opposing forces. Also, publishing enemy war crimes is an effective tool for influencing public opinion against the enemy and to ensure cohesion of the allied force. Even if you comply with the Law of War during your HUMINT collection activity, stay alert for any evidence of prior abuse and document and report any suspicions. Remember, you have a duty to report any violations or suspected violations of the Law of War as a serious incident. (See AR 190-40). This will help protect you and your subordinates against allegations that you abused the POW.

c) Reporting war crimes committed by our allies is important for us to meet our obligations regarding transfer of captured personnel to other countries. The Geneva Convention prohibits us from transferring captured personnel from our custody to the custody of those who may jeopardize their health, safety or life. Reporting and investigating war crimes committed by allied forces allows us to abide by our requirements to safeguard those captured personnel that are in our custody.

SLIDE 77: INTERROGATORS MUST NOT:

d) Interrogators Must **NOT**:

(1) Impersonate chaplains, medical personnel or Red Cross personnel. Doing so is a violation of the Geneva Conventions.

(2) Interrogate a POW if he or she is injured or ill until you have received a medical release specifically for questioning.

(3) Delay evacuation of a POW in a danger zone for the purposes of interrogation.

SLIDE 78: INTERROGATORS MUST:

e) Interrogators must:

(1) Report suspected war crimes encountered in the course of your duties.

(2) Conduct yourself in a professional manner when dealing with POWs, taking into consideration the rank and status of the POW.

(3) Ensure your security and that of the POW.

SLIDE 79: GENERAL MACARTHUR

5) We have covered a substantial amount of material, and indeed, the Law of War is a complicated subject. But for all the reasons we discussed at the outset of this presentation, the Law of War is extremely important to follow. Not only will it keep you personally out of legal trouble, it also contributes to the greater war effort, and ultimately the restoration of peace.

023055

000367

This quote from General Douglas MacArthur sums up the sacred trust given to the profession of arms. Complying with the Law of War is necessary to preserve this trust, and indeed society as a whole.

SLIDE 80: FIGHT AND WIN BY THE RULES!

Method of Instruction: PE
Instructor to student ratio is: 1:15
Time of Instruction: 50 minutes
Media: PowerPoint slides.

SLIDE 81: PRACTICAL EXERCISE

SLIDE 82: OBJECTIVE

ACTION:	Apply principles of Military Intelligence Law to collection activities.
CONDITIONS:	Given information on a collection activity, applicable Executive Orders, AR 381-10, AR 381-20, DIAM 58-11 (U), DIAM 58-12 (U), AR 27-10, FM 27-10, local Standing Operating Procedures (SOP) and student handouts.
STANDARDS:	Complied with all legal guidance related to HUMINT collection activities. Identifies and reports violations to chain of command IAW applicable Executive Orders, AR 381-10, AR 381-20, DIAM 58-11 (U), DIAM 58-12 (U), AR 27-10, FM 27-10, and a local SOP.

SECTION IV – SUMMARY

Method of Instruction: CO
Instructor to student ratio is: 1:15
Time of Instruction: 5 **minutes.**
Media: PowerPoint slides.

Check on Learning: Determine if students have learned the material presented by:

a. Soliciting student questions and explanations.

b. Asking questions and getting answers from the students.

c. Providing immediate feedback in context to the material presented and correcting any student misunderstandings.

SLIDE 83: SUMMARY

Review/Summarize: In this lesson we discussed Intelligence Oversight. We talked about its history and background. We then identified the six procedures that implement Intelligence Oversight. In performing your own Intel Oversight, you start by determining whether your investigation is properly within your mission - this is the biggest hurdle to overcome in your oversight analysis. Then, you move on

023056

00368

to the Procedure 2 aspects - is the information on a US person? If so, did you actually collect the information under the procedure 2 definition? If so, did you use the least intrusive means? Did the information fall within one of the 13 categories of information? Then you move on to Procedure 3 – am I properly retaining the information? Have I reviewed my files this year? If ok so far - can I disseminate this information - and to whom (look to procedure 4). Finally, we discussed Procedures 14 and 15 - about getting training on AR 381-10 annually over the procedures that your local office employs and about reporting questionable activities and federal crimes.

In addition to Intelligence Oversight, we covered the Law of War. We talked about the source of the Law of War and its purpose. We talked about the four legal principles of the Law of War (military necessity, humanity/unnecessary suffering, proportionality and discrimination—weapons and persons). We also talked about the status of detained individuals (EPW/POW, Retained persons and Protected Persons). We talked about the rights of these individuals as well as the limits on those rights. Finally we discussed war crimes and how to prevent them.

SLIDE 84: QUESTIONS?

Transition to Next Lesson:

Once again, Intelligence Oversight is all about allowing intelligence components to collect as their mission requires, while protecting the privacy rights of those you collect against. It's a balancing act. As you prepare for your exam, that should be at the forefront of your mind.

Just as you found Intelligence Oversight a balancing act, the same is true of the Law of War. It is a balancing act between the four principles—particularly, military necessity, unnecessary suffering and proportionality. These lessons become real when you are on the battlefield. LTC [redacted] who fired a weapon next to the head of an Iraqi detainee in order to get him to talk, certainly found out how real the rules were, when he found himself face-to-face with charges for actions. Don't be caught out there.

b(7)(C)-2

SECTION V – STUDENT EVALUATION

Testing Requirements:

Students demonstrate their aptitude and skill by successfully completing the administered Practical Exercise, and the Intelligence Oversight performance-based examination administered following the lesson.

Feedback Requirements:

Students will complete an end-of-course evaluation upon completion of all course requirements.

000369

023057