

Gorsuch, Neil M

From: Gorsuch, Neil M
Sent: Wednesday, July 12, 2006 4:54 PM
To: Scolinos, Tasia; Bradbury, Steve; Engel, Steve; Eisenberg, John; Moschella, William; Taylor, Jeffrey (OAG); McNulty, Paul J; McCallum, Robert (SMO)
Subject: RE: DoD Memo on Geneva
Attachments: england tps.doc

Revised tps, reflecting NSC-Legal and OLC comments.

From: Scolinos, Tasia
Sent: Wednesday, July 12, 2006 12:14 PM
To: Gorsuch, Neil M; Bradbury, Steve; Engel, Steve; Eisenberg, John; Moschella, William; Taylor, Jeffrey (OAG); McNulty, Paul J; McCallum, Robert (SMO)
Subject: RE: DoD Memo on Geneva

These are very helpful. Please let me know when they are cleared within DOJ as I would like to distribute them to the NSC, DOD, and State communicators. Thanks!

From: Gorsuch, Neil M
Sent: Wednesday, July 12, 2006 10:18 AM
To: Bradbury, Steve; Engel, Steve; Eisenberg, John; Moschella, William; Taylor, Jeffrey (OAG); Scolinos, Tasia; McNulty, Paul J; McCallum, Robert (SMO)
Subject: DoD Memo on Geneva

Attached is a first draft of some potential talking pts on the DoD Memo, per our discussion with the AG this morning. I'd appreciate your input. Obviously, these are close hold, not for dissemination. Thanks.

<< File: england tps.doc >>

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DOD Secretary England Memo Talking Points

- We are *not* giving al Qaeda the protections of POW status under the Geneva Conventions. The England Memo discusses only Art. 3's minimal humanitarian protections applicable even to those not entitled to POW status.
- Al Qaeda unlawful enemy combatants are not entitled to POW status. They have nothing but contempt for the laws of war and the Geneva Conventions. They kidnap relief aid workers, behead contractors, journalists, and U.S. military personnel, and bomb religious shrines, wedding parties, and restaurants. They openly mock the rule of law, the Geneva Conventions, and the standards of civilized people everywhere.
- There's nothing remarkable about the England Memo. In February 2002, the President instructed the Armed Forces as a matter of policy to "treat detainees humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva." The England Memo alerts the field that, after the Supreme Court's recent decision, Art. 3 applies to al Qaeda not merely as a matter of policy but as a matter of law.
- DoD detainees at GTMO *already* receive treatment compliant with Art. 3. DoD treats detainees at GTMO humanely and with respect -- much better, in fact, than Art. 3 requires. At Tuesday's Senate Judiciary Committee hearing, Senator Durbin commented on this fact based on his recent trip to GTMO.
- The Supreme Court's decision that Art. 3 applies as a matter of law to the conflict with al Qaeda makes it critical to be clear about exactly what is required. Terms like "outrages upon personal dignity" are susceptible of different interpretations. And once Art. 3 applies as a matter of law, we are obligated -- absent a congressional statute -- to look to how other countries interpret its terms. So a judge in another country could decide that some benign conduct is an "outrage" and potentially influence what constitutes a war crime under American law for the men and women on the front lines in the war on terror.
- To ensure that our personnel operate under clear standards now that the Supreme Court has spoken, it is imperative that Congress address this issue. We stand ready to work with Congress to help clarify the situation for our personnel.