



ST. MARY'S  
UNIVERSITY

Digital Commons at St. Mary's University

---

Faculty Articles

School of Law Faculty Scholarship

---

1992

## The Twenty-Fifth Anniversary of My Lai: A Time to Inculcate the Lessons

Jeffrey F. Addicott

*St. Mary's University School of Law*, [jaddicott@stmarytx.edu](mailto:jaddicott@stmarytx.edu)

William A. Hudson Jr

Follow this and additional works at: <https://commons.stmarytx.edu/facarticles>



Part of the [Military, War, and Peace Commons](#)

---

### Recommended Citation

Jeffrey F. Addicott and William A. Hudson, Jr., The Twenty-Fifth Anniversary of My Lai: A Time to Inculcate the Lessons, 139 *Mil. L. Rev.* 153 (1992).

This Article is brought to you for free and open access by the School of Law Faculty Scholarship at Digital Commons at St. Mary's University. It has been accepted for inclusion in Faculty Articles by an authorized administrator of Digital Commons at St. Mary's University. For more information, please contact [jilloyd@stmarytx.edu](mailto:jilloyd@stmarytx.edu).

# THE TWENTY-FIFTH ANNIVERSARY OF MY LAI: A TIME TO INCULCATE THE LESSONS

MAJOR JEFFREY F. ADDICOTT\*  
MAJOR WILLIAM A. HUDSON, JR.\*\*

## I. Introduction

*The way of the superior man is like that of the archer. When he misses the center of the target he turns and seeks the cause of his failure in himself.<sup>1</sup>*

If history teaches anything about avoiding the mistakes and disasters of the past, it is that humanity first must understand historical lessons—lessons often understood only after the expenditure of incredible amounts of human blood and treasure—and then must inculcate those lessons in the members of each of its succeeding generations.

As America passes the second anniversary of its victory in the Persian Gulf War,<sup>2</sup> correctly having heeded the lessons of appeasement from World War II,<sup>3</sup> another reminder of critical historical lessons is rapidly approaching. Spring 1993 marks the twenty-fifth anniversary of the My Lai massacre—an appropriate time to revisit the event and to reinforce the lessons learned.

Representing the antithesis of the conduct of United States Armed Forces during the Liberation and Defense of Kuwait, the My Lai massacre was a nightmarish event that most Americans would like to forget. Nevertheless, My Lai never must be forgotten. Its horror and disgrace are precisely why My Lai must never be erased from the individual memories of American citizens, nor must it ever be lost from the legacy of the United States. To the contrary, nothing provides a greater vehicle for inculcating the

---

\*Judge Advocate General's Corps, United States Army. Currently assigned to the International and Operational Law Division, Office of The Judge Advocate General, U.S. Army.

\*\*Judge Advocate General's Corps, U.S. Army. Currently assigned as Instructor, International Law Division, The Judge Advocate General's School, U.S. Army.

<sup>1</sup>CONFUCIUS, THE ANALECTS OF CONFUCIUS 59 (Arthur Waley trans., 1939).

<sup>2</sup>See Michael Cramer, *Kuwait: Back to the Past*, TIME, Aug. 5, 1991, at 33. The ground phase of the military campaign in the Persian Gulf War lasted only 100 hours, from 24 to 28 February 1991. For an excellent overview of the entire operation, see *The Gulf War*, MIL. REV., Sept. 1991.

<sup>3</sup>See THE NATIONAL MILITARY STRATEGY OF THE UNITED STATES 6 (Jan. 1992).

necessity for strict adherence to the law of war than the lessons from the massacre at My Lai. From its engagements in Grenada in 1983, to Panama in 1989, to Kuwait in 1991, the United States military can take full credit for its commendable record in adhering to the law of war largely because of its commitment to institutionalizing the lessons learned from My Lai. Accordingly, every American soldier must understand the significance of the My Lai massacre and steadfastly must keep it in the forefront of his or her conscious.

## 11. The Massacre at My Lai

### A. An Emblem of Shame

Every army has its own mythology, its symbols of heroism, and its symbols of shame. The Army of the United States is no exception. In the sphere of heroism, the American military has an incredible reservoir of noble and fantastic figures to draw from—men whose military proficiency and ethical conduct in combat have maintained an impeccable American reputation for both battlefield excellence and strict adherence to the laws regulating warfare.<sup>4</sup> More than any other army in modern history, the American Army is able to claim proudly as its own some of the greatest soldiers in the history of warfare.

Unfortunately, the United States military also has its figures of shame, soldiers who have engaged in blatant violations of the most fundamental and civilized rules regulating behavior in combat.<sup>5</sup> While American misconduct is certainly an aberration and not the norm, that does not lessen the severity of the shame. Without question, each and every grave breach<sup>6</sup> of the law of war represents a horrible scar on the credibility of the American military, as well as the civilized democracy it protects.

In this context, the greatest emblem of American military shame in the twentieth century occurred during the Vietnam War—a war few Americans yet understand.<sup>7</sup> While American troops were involved in several cases of unlawful killings of

---

<sup>4</sup>Jeffrey F. Addicott, *Operation Desert Storm, R.E. Lee or W.T. Sherman?* 136 MIL. L. REV. 115 (1992) (arguing that General R. E. Lee set such a standard for the United States military).

<sup>5</sup>*Id.* (pointing out the war crimes of General William T. Sherman during the Civil War).

<sup>6</sup>See *infra* note 44 and accompanying text.

<sup>7</sup>See, e.g., THE VIETNAM DEBATE (John Norton Moore ed., 1990); JOHN NORTON MOORE, LAW AND THE INDO-CHINA WAR (1972). An entire series of myths has persisted over the Vietnam War. These myths commonly have covered issues such as the lawfulness of the American intervention, the nature and purpose of the Communist Party in North Vietnam, and the reasons for the failure of the United States to carry the war into North Vietnam to win a military victory.

unarmed civilians during the Indo-China War, by far the most violent—and hence the most infamous—of these incidents has come to be called the My Lai massacre.

Any discussion of the American violations of the law of war during Vietnam in general, and at My Lai in particular, must be viewed against the background of the enemy's activities. In this context, American violations absolutely pale in comparison to the many thousands of command-directed slaughters that were committed by the communist regime of North Vietnam. Accordingly, though the incident was not atypical of the war in general, the My Lai massacre certainly can be characterized as an aberration with respect to the American presence in Vietnam.

The American record in Vietnam with regard to observance of the law of war is not a succession of war crimes and does not support charges of a systematic and willful violation of existing agreements for standards of human decency in time of war, as many critics of the American involvement have alleged. Such charges were based on a distorted picture of the actual battlefield situation, on ignorance of existing rules of engagement, and on a tendency to construe every mistake of judgement as a wanton breach of the law of war.<sup>8</sup>

In contrast, blatant violations of numerous provisions of the law of war—including murder, torture, and intimidation—were the *modus operandi* for the Viet Cong and North Vietnamese Army.<sup>9</sup> In one scholar's estimate, North Vietnam sponsored the slaughter of over one and a quarter million of its own people from 1945 to 1987.<sup>10</sup> Included in this figure, since the fall of South Vietnam in 1975, are over 250,000 Vietnamese "boat people" as well as 250,000 other civilians who either were slaughtered ruthlessly outright or perished in communist death camps created to "re-educate" noncommunists.<sup>11</sup> These massive crimes never have been punished, much less acknowledged forcefully by human rights groups. "In sum, re-education was a label for revenge, punishment, and social prophylaxes. But unlike the Khmer Rouge who were too public about their mass killing, the Vietnamese regime cleverly and at first hid it from the outside world."<sup>12</sup>

---

<sup>8</sup>R.J. RUMMEL, DEATH BY GOVERNMENT: GENOCIDE AND MASS MURDER IN THE TWENTIETH CENTURY (forthcoming 1993) (manuscript at 31, on file with author).

<sup>9</sup>See infra note 52 and accompanying text.

<sup>10</sup>RUMMEL, supra note 8, manuscript at 1.

<sup>11</sup>Id. at 48-52.

<sup>12</sup>Id. at 46.

The enemy's barbaric conduct should offer little solace to the American conscience in the wake of My Lai. The record of misconduct amassed by the communists in no way justifies what occurred at My Lai; nevertheless, it helps to place the American violations in a real-world perspective. For North Vietnam, the strategy for a communist victory intentionally was predicated on terror and propaganda; for the United States, the massacre at My Lai was an unfortunate contradiction.

### *B. The Facts of My Lai*

The hard facts relating to the My Lai massacre are now fairly certain, thanks to a thorough criminal investigation aimed at the perpetrators of the crime and a collateral administrative investigation ordered by the Secretary of the Army and headed by Lieutenant General W. R. Peers.<sup>13</sup> Despite an initial cover-up by some of those associated with the crime, the enormity of the atrocity diminished the likelihood that it long could be kept secret. Nevertheless, for well over a year, the general public knew nothing of the incident.<sup>14</sup>

On March 16, 1968, an American combat task force of the 23d Infantry Division (the Americal Division)<sup>15</sup> launched an airmobile assault into the village complex of Son My in the province of Quang Ngai, South Vietnam. Like all such operations, the attack was executed only after the commander of the task force, Lieutenant Colonel Frank Barker, had assembled his key junior commanders for a final review of the details of the combat operation. This briefing, which took place on March 15, 1968, involved discussions on the positioning of helicopters, the conduct of artillery preparation, and the specific assignments of the three companies that comprised what became known as *Task Force "Barker."* While the other two companies provided blocking and support functions, Charlie Company, commanded by Captain

---

<sup>13</sup>WILLIAM R. PEERS, *THE MY LAI INQUIRY* (1979) [hereinafter PEERS REPORT]. The Secretary of the Army and the Chief of Staff, United States Army, issued a joint directive for Lieutenant General William R. Peers to explore the original Army investigations of what had occurred on March 16, 1968, in Son My Village, Quang Ngai Province, Republic of Vietnam. This investigation became known as the Peers Report. Specifically, General Peers was tasked to determine the following: (1) the adequacy of such investigations or inquiries and subsequent reviews and reports within the chain of command; and (2) whether any suppression or withholding of information by persons involved in the incident had taken place. See also JOSEPH GOLDSTEIN ET AL., *THE MY LAI MASSACRE AND ITS COVER-UP: BEYOND THE REACH OF LAW?* 29 (1976).

<sup>14</sup>For an excellent discussion of the initial breaking of the story see William Wilson, *I Prayed to God That This Thing Was Fiction . . .*, AMER. HERITAGE, Feb. 1990, at 44.

<sup>15</sup>*Id.* The troops making up the task force were from the 1st Battalion, 20th Infantry, 11th Light Infantry Brigade.

Ernest Medina, would take the primary responsibility for battling any enemy resistance encountered in the village.

At the briefing, Lieutenant Colonel Barker reminded his commanders that intelligence reports had indicated that the village complex was a staging area for the 48th Viet Cong local force battalion and that the Americans could expect an enemy force of up to 250 soldiers.<sup>16</sup> Accordingly, the American soldiers anticipated that they would be outnumbered by the enemy. Still, having yet to engage any enemy forces in direct combat, *Task Force Barker* saw the operation as an opportunity finally to fight the ever-elusive Viet Cong in the open.<sup>17</sup>

The intelligence on a large enemy force, however, proved to be incorrect. When the American combat forces landed, they soon found that the village was occupied almost totally by noncombatants.<sup>18</sup> Although the civilians offered no resistance whatsoever, some of the members of Charlie Company went on a command-directed killing spree. Under the direct supervision of several company grade officers—First Lieutenant William L. Calley, Jr., being the most notorious—American troops murdered well over 200 unarmed South Vietnamese civilians.<sup>19</sup>

The largest killing of civilians occurred in the hamlet of My Lai, known to the Americans by the nickname of “Pinkville,” which was part of the Son My complex. The murdered consisted primarily of women, children, and old men; some were shot in small groups, others were fired upon as they fled. At My Lai, most of the civilians methodically had been herded into groups and then gunned down. The largest group was killed under the direct supervision of Lieutenant Calley.<sup>20</sup>

---

<sup>16</sup>PEERS REPORT, *supra* note 13, at 47. Total enemy strength in Quang Ngai Province in the spring of 1968 was thought to be between 10,000 and 14,000 men.

<sup>17</sup>GOLDSTEIN ET AL., *supra* note 13, at 492. The Son My area had been the scene of numerous incidents in which many Americans had been killed or wounded by booby traps and snipers during the few months prior to the My Lai incident. Charlie Company had lost two dead and 13 wounded in a minefield on February 25, 1968. On March 14, 1968, a popular sergeant had been killed and three other soldiers wounded, by a booby trap. In total, Charlie Company had lost 20 soldiers killed or wounded in the Son My area.

<sup>18</sup>*Id.* at 103. The *Peers Report* made the following finding on enemy combatants: “The evidence indicates that only three or four were confirmed as Viet Cong, although there were undoubtedly several unarmed Viet Cong men, women and children among them and many more active supporters and sympathizers . . .” *Id.*

<sup>19</sup>Although the official count of the dead was 175, this figure was certainly low. The dead may have reached almost 400. *Id.* at 1, 314. *But see* George Esper, *Twenty Years Later, My Lai Remains a Symbol of Shame*, L. A. TIMES, Mar. 13, 1988, at 2A; RUMMEL, *supra* note 8, manuscript at 32 (putting the figure at 347). The current communist regime in Vietnam has erected a plaque in My Lai with the names of 540 men, women, and children listed as dying in the massacre.

<sup>20</sup>*But see infra* note 31.

In addition to the unlawful killing of civilians, the soldiers destroyed most of the homes and killed most of the domestic animals in the village.<sup>21</sup> Several cases of rape also were reported to have taken place during the massacre.<sup>22</sup> When it was over, the statistics told the story: one American soldier in Charlie Company had been wounded by friendly fire<sup>23</sup> and hundreds of South Vietnamese women, children, and elderly men were dead.

Perhaps the only redeeming aspect of the incident was the fact that some of the American soldiers either had refused to participate<sup>24</sup> or openly had attempted to halt the killings. Chief Warrant Officer Hugh C. Thompson, Jr., was one of those who took specific actions to halt the killings. Tasked with piloting one of the helicopters during the operation, Chief Thompson testified that he noticed large numbers of "wounded and dead civilians everywhere."<sup>25</sup> Assuming that the Americans on the ground would assist those who were wounded, which was the standard procedure, Chief Thompson began to mark the location of the wounded Vietnamese civilians with smoke canisters as he flew overhead. To his horror, he witnessed the exact opposite. Drawn to the smoke, American soldiers were shooting the wounded that Chief Thompson had marked so accurately. Still only partially realizing the full impact of what was happening on the ground, Chief Thompson immediately headed his helicopter into My Lai, and landed near a large drainage ditch filled with dead and dying civilians. As he began to assist the Vietnamese who were still alive, Lieutenant Calley and a handful of troops approached.

When Chief Thompson asked for assistance in caring for the civilians, Lieutenant Calley clarified his intentions to kill the remaining noncombatants. Chief Thompson recalled that Lieutenant Calley said of the civilians, "The only way you'll get them out is with a hand grenade."<sup>26</sup> Instead of backing down from the clear

---

<sup>21</sup>See PEERS REPORT, *supra* note 13, at 277. The report from the Son My Village Chief, dated March 22, 1968, indicated that 90% of the animals and houses as destroyed.

<sup>22</sup>See Esper, *supra* note 19; GOLDSTEIN ET AL., *supra* note 13, at 343. The Peers Report made the following specific findings in reference to one platoon leader, Lieutenant Steven K. Brooks: "Although he knew that a number of his men habitually raped Vietnamese women in villages during operations, on 16 March 1968, he observed, did not prevent, and failed to report several rapes by members of his platoon while in My Lai ... on 16 March."

<sup>23</sup>See GOLDSTEIN ET AL., *supra* note 13, at 493. The single casualty probably was a self-inflicted gun shot wound by one of the members of Company C who was seeking to avoid participation in the operation.

<sup>24</sup>See Wilson, *supra* note 14, at 49. One of the soldiers who had refused to participate was Sergeant Michael Bernhardt. Sergeant Bernhardt, however, did not attempt to halt his fellow soldiers from the killings. He stated, "It was point blank murder, and I was standing there watching it." *Id.*

<sup>25</sup>*Id.* at 50.

<sup>26</sup>*Id.*

designs of a superior officer, however, Chief Thompson quickly ordered his M60 machine gunner, Private First Class Lawrence Colburn, to open fire on the United States soldiers if they came any closer to the remaining civilians. Chief Thompson then placed all the civilians he could on his helicopter and ferried them to safety.

### *C. My Lai Comes to Light*

The initial attempts to cover up the crime could not quell the nightmares of those who had witnessed the slaughter. Rumors of the massacre persisted, coming to a boiling point when an ex-serviceman named Ron Ridenhour sent a second-hand account of the massacre to President Richard Nixon, “twenty three members of Congress, the Secretaries of State and Defense, the Secretary of the Army, and the Chairman of the Joint Chiefs of Staff.”<sup>27</sup> Ridenhour had written a four-page letter that chronicled detailed information from several of the soldiers who either had taken part in the bloody massacre or had witnessed it first hand. The letter read in part as follows:

It was late in April, 1968 that I first heard of “Pinkville” [(My Lai)]. ... It was in the end of June, 1968 when I ran into Sargent [sic] Larry La Croix at the USO in Chu Lai. La Croix had been in 2nd Lt. Kally’s [sic] platoon on the day Task Force Barker swept through “Pinkville.” What he told me verified the stories of the others, but he also had something new to add. He had been a witness to Kally’s [sic] gunning down of at least three separate groups of villagers. “It was terrible. They were slaughtering the villagers like so many sheep.” Kally’s [sic] men were dragging people out of bunkers and hootches and putting them together in a group. The people in the group were men, women and children of all ages. As soon as he felt that the group was big enough, Kally [sic] ordered an M-60 (machine gun) set up and the people killed. La Croix said he bore witness to this procedure at least three times. ... This account of Sargent La Croix confirmed the rumors that Gruver, Terry and Doherty had previously told me about Lieutenant Kally [sic] .... I have considered sending this to newspapers, magazines, and broadcasting companies, but I somehow feel that investigation and action by the Congress of the United States is the appropriate procedure. ...<sup>28</sup>

---

<sup>27</sup>*Id.* at 46.

<sup>28</sup>GOLDSTEIN ET AL., *supra* note 13, at 36.



Ron Ridenhour's letter received prompt attention both in the media and in the legislative and executive branches of the federal government. The initial military reaction was one of disbelief. No one believed that a massacre of that magnitude could have been committed by American soldiers or that the massacre "could have remained hidden for so long."<sup>29</sup>

As the horrible truth of the crime came to light, however, the Army quickly launched the comprehensive Peers Commission investigation, popularly known as the Peers Report.<sup>30</sup> At the same time, the general public tasted the horror of the My Lai massacre through a series of gruesome photographs of the dead, which had been taken by a former Army photographer named Ronald Haeberle. The color photographs appeared in the December 1969 issue of *Life* magazine.

#### D. The Impact of My Lai

Charges were preferred against four officers<sup>31</sup> and nine enlisted men<sup>32</sup> for their involvements in the My Lai massacre. In

---

"PEERS REPORT *supra* note 13, at 7; *see also* GOLDSTEIN ET AL., *supra* note 13, at 274-75. The Army knew that the communists had reported the alleged killing of civilians at My Lai, but the reports largely were ignored, in keeping with the common communist technique of outrageous propaganda. One notice that was captured in late March 1968 was entitled "Concerning Crimes Committed by US Imperialists and Their Lackeys Who Killed More Than 500 Civilians at Tinh Khe Village (Son My), Son Tinh District." It stated the following:

Xam Lang (Thuan Yen) Subhamlet of Tu Cung Hamlet and Xom Go Subhamlet of Co Luy were pounded by artillery for hours. After shelling, nine helicopters landed troops who besieged the two small hamlets, killing and destroying. They formed themselves into three groups: one group was in charge of killing civilians, one group burned huts, and the third group destroyed vegetation and trees and killed animals. Wherever they went, civilians were killed, houses and vegetation were destroyed and cows, buffalo, chickens, and ducks were also killed. They even killed old people and children; pregnant women were raped and killed. This was by far the most barbaric killing in human history.

<sup>30</sup>See PEERS REPORT, *supra* note 13; *supra* text accompanying note 13.

<sup>31</sup>Two other key officers involved in the massacre, Lieutenant Steven Brooks and Lieutenant Colonel Frank Barker, had been killed in Vietnam before the formal investigation into My Lai had begun. The *Peers Report* found that Lieutenant Brooks had "directed and supervised the men of his platoon in the systematic killing of at least 60-70 noncombatants in the subhamlets of My Lai and Binh Tay." The *Peers Report* also found that Colonel Barker had been involved in the cover-up of the massacre. See GOLDSTEIN ET AL., *supra* note 13, at 343. The officers charged with murder were Captain Ernest L. Medina, Captain Eugene M. Kotouc, First Lieutenant William L. Calley, Jr., and First Lieutenant Thomas K. Willingham. See *Peers Report*, *supra* note 13, at 227.

<sup>32</sup>The enlisted men charged with murder were Sergeant Kenneth L. Hodges, Sergeant Charles E. Hutton, Sergeant David Mitchell, Sergeant Escquiel Torres, Specialist Four William F. Doherty, Specialist Four Robert W. T'Souvas, Corporal Kenneth Schiel, Private Max Hutson, and Private Gerald A. Smith. See PEERS REPORT, *supra* note 13, at 227.

addition, twelve other officers were charged with military offenses associated with the cover-up.<sup>33</sup> Of these twenty-five accused soldiers, only Lieutenant William Calley was convicted.<sup>34</sup> The other officers and enlisted men either successfully moved to have the charges against them dismissed or were found not guilty at their courts-martial.

Tried before a military panel composed of six officers, Lieutenant Calley was found guilty of the premeditated murder of twenty-two noncombatants and of assault with intent to murder a two-year-old child. Although Calley was sentenced to a dismissal and confinement at hard labor for life, the convening authority reduced this sentence to a dismissal and twenty years at hard labor. Subsequent to the convening authority's action, the Secretary of the Army further reduced the sentence to a dismissal and ten years at hard labor.<sup>35</sup>

Aside from the issue of individual culpability for those involved in the massacre, My Lai had a devastating impact on the outcome of the Vietnam War. In particular, because the United States apparently had no grand strategy to win the war,<sup>36</sup> this one atrocity arguably did as much to harm the survival of an independent South Vietnam as any other single event during the Indo-China War. The public revelation of this massacre not only solidified the anti-war movement in the United States, but also cast a pall of confusion and shame over the nation at large. This aura contributed significantly to the eventual abandonment of South Vietnam to the communist forces in the North. Beginning in 1969, a vocal minority of war protesters incorporated the United States soldier into their opposition to the war. For many of these people, the enemy was now the American fighting man—not the communists.

---

<sup>33</sup>These consisted of Major General Samuel W. Koster, Brigadier General George H. Young, Colonel Oran K. Henderson, Colonel Nels A. Parson, Lieutenant Colonel Robert B. Luper, Major Charles C. Calhoun, Major David C. Gavin, Major Robert W. McKnight, Major Frederic W. Watke, First Lieutenant Kenneth W. Boatman, and First Lieutenant Dennis H. Johnson. See PEERS REPORT, *supra* note 13, at 221-22.

<sup>34</sup>United States v. Calley, 48 C.M.R. 19 (C.M.A. 1973).

<sup>35</sup>William Calley, Jr., actually served a total of only three years under house arrest at Fort Benning, Georgia, and six months at the confinement facility at Fort Leavenworth, Kansas (from June 1974 to November 1974). Calley was released from confinement at Fort Leavenworth when his sentence was overturned by a federal district judge in Georgia. When the Fifth Circuit Court of Appeals reinstated the conviction, Calley was not returned to confinement; instead, he was paroled by the Secretary of The Army in 1975. He works today in his father-in-law's jewelry store in Columbus, Georgia. See Wilson *supra* note 14, at 53.

<sup>36</sup>See *infra* text accompanying notes 73-75.

Within the military, the revelation of what happened at My Lai was a devastating blow to *esprit de corps* and professionalism. Even now, twenty-five years after the incident, the United States Army continues to recover from the pain that the My Lai massacre inflicted—a pain that still lingers in the very soul of every American soldier.<sup>37</sup>

### III. Why Did My Lai Happen?

Notwithstanding the social and political machinations that were brewing in the United States in the late 1960s and early 1970s, Americans had little problem focusing on the immediate question raised in the aftermath of the massacre—that is, “Why did My Lai happen?” The nation legitimately wondered how so many American soldiers could have become involved in such a heinous war crime.<sup>38</sup> More importantly, Americans wondered how the officers in command of the operation could have ordered such atrocities or could have participated in the attempt to cover them up. To realize that some civilians are killed as a collateral matter through military action against legitimate military targets was one thing; to have ground forces intentionally shoot innocent noncombatants in cold blood was incomprehensible.

#### A. *The Peers Report*

The Peers Report did not limit the cause of the My Lai massacre to only one factor. While the panel observed that “what may have influenced one man to commit atrocities had no effect on another,”<sup>39</sup> General Peers was determined that the final report should reflect some explanation as to why the massacre had occurred. Recognizing the inherent difficulty in finger pointing,

---

<sup>37</sup>*Army Teaches Gulf Soldiers How to Avoid My Lai Type Massacre*, PITTSBURGH PRESS, Feb. 24, 1991, at A12 [hereinafter *Avoid My Lai*].

<sup>38</sup>For a legal definition of the term, DEP'T OF ARMY, FIELD MANUAL 27-10, THE LAW OF LAND WARFARE, para. 499 (July 1956) [hereinafter FM 27-10] (“The term *war crime* is the technical expression for a violation of the law of war by any person or persons, military or civilian. Every violation of the law of war is a war crime”). The definition in FM 27-10 would include both customary and treaty law in the realm law of war. For a layman’s definition, see also INT’L L. DIV., THE JUDGE ADVOCATE GENERAL’S SCHOOL, U.S. ARMY, JA 401, INTERNATIONAL LAW BASIC COURSE DESKBOOK 4-2 (July 1992) (“A non-legal, generic term for all illegal actions relating to the inception or conduct of warfare. It includes all the separate categories of offenses tried at Nuremberg. A more accurate term for this would be: Crimes under International Law”) Under a strict definition, the murder of civilian co-belligerents would be a crime, but not necessarily a war crime because the victims would not be protected persons under any international agreement or general customary principles relating to the conduct of war. By popular reference, however, such acts commonly are referred to as war crimes.

<sup>39</sup>PEERS REPORT, *supra* note 13, at 229.

the panel nonetheless identified several factors that seemed to be conducive to an environment that might lead to violations of the law of war.

1. *Lack of Proper Training.*—The lack of proper training in the law of war was a common theme in the interviews of the witnesses and subjects involved in the My Lai massacre. Perhaps the most graphic illustration of this factor appeared at the trial of Lieutenant Calley, when Calley testified that the Geneva Convention classes conducted during Officer Candidate School were inadequate.<sup>40</sup> Regardless of the overall veracity of Calley's claim, the Peers Report entered specific findings that the soldiers who composed Task Force Barker had not received sufficient training in the "Law of War (Hague and Geneva Conventions), the safeguarding of noncombatants, or the Rules of Engagement."<sup>41</sup> Although the requirements set out in United States Army Republic of Vietnam (USARV) Regulation **350-1**, dated 10 November 1967, clarified that, at a minimum, all soldiers were required to have annual refresher training in the Geneva Conventions, many commanders failed to emphasize this requirement. Consequently, individual soldiers often lacked proper training on the requirements imposed by these conventions.

The Commission also found that, although pocket-size guidance cards were issued to all soldiers to help them learn and abide by the law of war, the soldiers usually never read the information on the cards and the cards themselves rarely survived the first monsoon rains.<sup>42</sup> In addition, Military Assistance Command Vietnam Directive *20-4*,<sup>43</sup> which required the immediate reporting of all violations of the law of war, seldom was stressed by the command structure.

Despite these particular shortcomings, however, the Peers Report did not find deficiencies in the law of war training to be a

---

<sup>40</sup> See *United States v. Calley*, 46 C.M.R. 1131 (A.C.M.R.), *aff'd*, 22 C.M.A. 534, 48 C.M.R. 19 (1973). *But see* Interview with Lindsay Dorrier by Major Jeffrey Addicott, in Charlottesville, Va. (12 Mar. 1992). A former classmate of Calley, Mr. Dorrier recalls that the Officer Candidate School did provide adequate law of war training to the students. Actually, all those going through Officer Candidate School received training in the four Geneva Conventions.

<sup>41</sup> PEERS REPORT, *supra* note 13, at 230.

<sup>42</sup> See GOLDSTEIN ET AL., *supra* note 13, at 220. Four of the cards were entitled "The Enemy in Your Hands," "Nine Rules," "Code of Conduct," and "Geneva Conventions."

<sup>43</sup> See Military Assistance Command Vietnam, Directive *20-4* (20 Apr. 1965) (requiring the immediate reporting of any alleged violation of the law of war to the next higher military authority, as well as directly to Headquarters, Military Assistance Command Vietnam, located in Saigon).

significant reason for the grave breaches<sup>44</sup> that occurred at My Lai. Such deficiencies in training might excuse minor or technical breaches of the law of war, but not the grave malum in se breaches that were before the Commission. The members of the Commission correctly noted that “there were some things a soldier did not have to be told were wrong—such as rounding up women and children and then mowing them down, shooting babies out of mother’s arms, and raping.”<sup>45</sup> Therefore, the Commission apparently had no hesitation in concluding that some of the members of the company—both enlisted men and officers—simply were criminals.<sup>46</sup> These individuals clearly were in an environment in which little, if anything, deterred them from overtly expressing their criminal propensities.

2. Attitude Toward the Vietnamese.—In addition to the lack of proper training, a tendency by some of the members of Charlie Company to view the Vietnamese people as almost subhuman was another factor that may have contributed to the massacre. The use of derogatory terms to describe the Vietnamese as nothing but “gooks,” “dinks,” or “slopes” was not uncommon during the Vietnam War. Actually, soldiers in all wars have developed derogatory phrases to describe their enemies;<sup>47</sup> such characterizations of inferiority inure soldiers to killing their enemy. In the My Lai case, however, the Peers Report concluded that some of the members of Charlie Company had carried this practice of dehumanizing the enemy to an unreasonable extreme, viewing

---

<sup>44</sup>The term “grave breaches” technically is related only to specific violations defined as such in the Geneva Conventions. Grave breaches include specific acts committed against persons or property such as willful killing, torture, or inhuman treatment, including biological experiments, willfully causing great suffering, or willfully causing serious injury to body or health. See FM 27-10 *supra* note 35, at 179.

<sup>45</sup>PEERS REPORT, *supra* note 13, at 230.

<sup>46</sup>While one may possess a propensity for criminal behavior, all behavior is controlled directly by the individual’s volition. In turn, the act of choosing to commit a crime often is related to a crude cost-benefit analysis process. Obviously, crime more likely will occur in an environment in which the likelihood of punishment is minimal. For an excellent discussion on how the criminal mind functions, see Dr. Stanton E. Samenow, Jr., *INSIDE THE CRIMINAL MIND* 6 (1984).

Criminals cause crime—not bad neighborhoods, inadequate parents, television, schools, drugs, or unemployment. Crime resides in the minds of human beings and is not caused by social conditions. Once we as a society recognize this simple fact, we shall take measures radically different from current ones. To be sure, we shall continue to remedy intolerable social conditions for this is worthwhile in and of itself. But we shall not expect criminals to change because of such efforts.

*Id.*

<sup>47</sup>In World War II, Americans called the Germans “Krauts” and called the Japanese “Nips.” In the Gulf War, some United States troops referred to the Iraqis as “Rag Heads.”

the “Vietnamese with contempt, considering them subhuman, on the level of dogs.”<sup>48</sup>

To discover the reason for such unsettling hatred, the Peers Report had a detailed background analysis performed on each individual in Company C. The results, however, revealed nothing unusual. The company was a then-average unit with seventy percent of its troops having high school diplomas and nineteen percent having some college education. The Commission concluded that the hatred was a result of a combination of several factors, the greatest of which was merely the arrogance inherent in the criminal mind; the least of which was the frustration of having to fight an enemy who refused to abide by the law of war.<sup>49</sup>

3. *Nature of the Enemy.*—One of the most telling factors listed in the Peers Report dealt with examining the nature of the enemy forces that infested South Vietnam, with the implicit criticism that the United States military never was allowed to take the war to the real enemy—North Vietnam. In the South, the United States military was asked to carry out primarily defensive operations against a well-trained and well-equipped guerilla force that not only was indistinguishable from the local population, but also refused to abide by the established principles of the law of war.

They would set up their bunkers in villages and attack from the midst of helpless civilians. Thus, surrounding themselves with and using innocent civilians to protect themselves is in itself a war crime and makes them criminally responsible for the resulting civilian dead. ... [T]hey would also directly attack villages and hamlets, kill the inhabitants, including children, in order to panic the civilians in the area and cause social chaos that the communist then could exploit.<sup>50</sup>

The Viet Cong and regular North Vietnamese Army soldiers knew every path, trail, and hut in their areas of operation. In addition, whether by brute force—which included public torture and execution—or by psychological intimidation, the Viet Cong could count on the local support of the civilian population for shelter, food, and intelligence. Similarly, these soldiers commonly could depend on women and children to participate actively in

---

<sup>48</sup>PEERS REPORT, *supra* note 13, at 230.

<sup>49</sup>See *infra* text accompanying notes 51-52.

<sup>50</sup>RUMMEL, *supra* note 8, at 24.

military operations against United States forces.<sup>51</sup> With women and children participating in actual combat activities—such as laying booby traps, serving as scouts, or carrying arms—the American soldier had to disregard the traditional indicators of sex and age as criteria for categorizing the noncombatant and, instead, had to concentrate on the extremely difficult issue of hostile intent. The Peers Report recognized this dilemma.

The communist forces in South Vietnam had long recognized our general reluctance to do battle with them among the civilian populace and had used that knowledge to our tactical and strategic disadvantage throughout the history of the war in Vietnam. Exploitation of that reluctance by ... [the enemy] forces caused a distortion of the classic distinction between combatants and noncombatants.<sup>52</sup>

Distinguishing between friend and foe among military-aged male Vietnamese was even more difficult. Having developed an incredible system of underground tunnels and caves, the Viet Cong and North Vietnamese Army were able to appear and disappear at will. Moreover, when under pressure, these soldiers took only seconds to remove all military insignia and equipment, and blend in with the local population.

Without question, the use of guerilla tactics, characterized by a heavy reliance on booby traps and hit-and-run missions, had a tremendous adverse psychological impact on American commanders and their troops. After numerous interviews, the Peers Report noted that the general attitude of the soldier was one of extreme tension about engaging this unseen enemy—an enemy who hid behind women and children and would not come out in the open to do battle.<sup>53</sup>

Every civilian was viewed as a potential threat; every inch of ground was a potential hiding place for a booby trap or mine. Accordingly, descriptive terms such as “keyed up” frequently were used to describe the apprehension and frustration associated with going out on patrol or, in many cases, just being in a friendly village.<sup>54</sup> The Viet Cong commonly would visit a friendly village at night, setting mines that would kill Americans the next day. Consequently, some of those who testified naturally assumed that

---

<sup>51</sup>GOLDSTEIN ET AL., *supra* note 13, at 199.

<sup>52</sup>*Id.* at 198-99.

<sup>53</sup>*Id.*

<sup>54</sup>PEERS REPORT, *supra* note 13, at 234. The suggestions that members of Task Force Barker were either high on marijuana or intoxicated were found to be without substance and not a significant factor in the operation.

the “effects of mines and booby traps were the main reason for the atrocities committed by the task force.”<sup>55</sup> This view is incorrect. While these factors undoubtedly contributed to the extraordinary level of tension in Task Force Barker, citing the illegal warfighting tactics of the enemy as the primary reason for the atrocity would be far too simplistic. Actually, if this factor was the main cause for My Lai, one would have expected many massacres similar to My Lai to have taken place throughout Vietnam.

**4. Organizational Problems.**—One of the dominant characteristics of the Vietnam War was the lack of effective organization in the United States Army’s force structure. In the realm of directing combat operations, the lack of effective command and control can be disastrous. From the brigade level, down to platoons, shortages of personnel and frequent rotations resulted in ad hoc arrangements in composing military units.

Adding to the organizational deficiencies was the influx of poorly trained or ill-disciplined troops who were assigned to Vietnam on “short” tours of only one year.<sup>56</sup> These short tours virtually ensured that problems in command and control would arise. By the time the soldier had gained the necessary experience to be an effective member of a unit, he was eligible for transfer back to the “States.”

Taking strong note of the overall organizational problems throughout the Army structure in Vietnam, the Peers Report found that certain specific organizational problems in Task Force Barker “played the most prominent part in the My Lai incident.”<sup>57</sup> Focusing on the structure of Task Force Barker, the report noted that the lack of staff personnel was a serious impediment to effective command and control. The task force “could hardly function properly, particularly in such matters as development of intelligence, planning and supervision of operations, and even routine administration.”<sup>58</sup>

In addition to the general organizational problems in the task force, the plans and orders that delineated the operation into Son My lacked clarity. Because the entire operation was based on intelligence that anticipated a large enemy force in the area, the American soldiers initially expected that they were going to be

---

<sup>55</sup> *Id.* at 235.

<sup>56</sup> *Id.* Many of the combat officer positions were rotated after only six months in the field.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 235.



outnumbered by at least two to one.<sup>59</sup> In addition, the task force leaders regularly employed the term "search and destroy"<sup>60</sup> without providing an adequate definition to the troops. Despite the term's connotation, "search and destroy" never was meant to provide soldiers with a "license to kill" whoever was encountered during an operation. In particular, the Peers Report found that the command gave no instructions to its soldiers on how to handle the civilians that they inevitably would encounter during the Son My operation.<sup>61</sup>

5. *Leadership.*—In the final analysis, organizational problems contributed to an overall atmosphere that made the events at My Lai possible. The most fundamental aspect of the task force's pervasive structural deficiency, however, was the command and control problem created by the tremendous lack of leadership at the ground level.

"You know what to do with them," [Lieutenant] Calley said, and walked off. Ten minutes later he returned and asked, "Haven't you got rid of them yet? I want them dead. Waste them." . . . We stood about ten to fifteen feet away from them [a group of eighty men, women, and children herded together] and then [Lieutenant Calley] started shooting them. I used more than a whole clip—used four or five clips.<sup>62</sup>

As with almost any military operation, success or failure depends, to at least some degree, on proper leadership. In the case of My Lai, however, the lack of responsible leadership was obvious. More importantly, as the above passage indicates, that failure of leadership was manifest at the very level at which it was most critical—the junior officer level.<sup>63</sup> Although the Peers

---

<sup>59</sup> See *supra* note 16 and accompanying text.

<sup>60</sup> PEERS REPORT, *supra* note 13, at 236. The military no longer uses the term "search and destroy." During the Vietnam War, it was defined as a "military operation conducted for the purpose of seeking out and destroying enemy forces, installations, resources, and base areas." See GOLDSTEIN ET AL., *supra* note 13, at 389.

<sup>61</sup> PEERS REPORT, *supra* note 13, at 237.

<sup>62</sup> Wilson, *supra* note 14, at 52 (citing Private Paul D. Medlo (1969)); GOLDSTEIN ET AL., *supra* note 13, at 499. Another witness, Private First Class Dennis Conti, related at the trial of Lieutenant Calley that he and Medlo were told to "take care of the people." When Lieutenant Calley returned, however, he was upset that the civilians had not been killed. Lieutenant Calley then stated, "I mean kill them."

<sup>63</sup> The My Lai massacre was not the only command-directed atrocity in Vietnam. A few less extensive killings occurred in which superiors unlawfully ordered subordinates to kill civilians. See, e.g., GARY D. SOLIS, MARINES AND MILITARY LAW IN VIETNAM: TRIAL BY FIRE 176 (1989).

[Lance Corporal] Herrod gave the order to kill . . . the people,

Report faulted all levels of command, noting that “at all levels, from division down to platoon, leadership or the lack of it was perhaps the principal causative factor in the tragic events before, during, and after the My Lai operation,”<sup>64</sup> the direct underlying deficiency most certainly rested at the company and platoon level.

By virtue of the chain of command structure of the military, the primary responsibility for ensuring adherence to the law of war rests on the officer corps. This structure demands the highest levels of professionalism from the junior officers at the platoon and company level, at which soldiers are most apt to encounter the vast majority of law of war issues. Simply put, soldiers are expected to obey the law of war and their officers are expected to ensure that they do.

The difficult issue in enforcing the law of war is not in how to deal with soldiers or officers who, in their individual capacities, violate the law of war—they normally are punished by courts-martial.<sup>65</sup> Rather, the really difficult issues arise when an officer orders his or her soldiers to commit war crimes, or knowingly fails to control soldiers under his or her command who violate the law of war.<sup>66</sup> Clearly, the most difficult issue to arise from the My

---

and I told him not to do it . . . . Then he says, “Well, I have orders to do this by the company commander, and I want it done,” and he said it again, “I want these people killed!” And I turned to PFC Boyd, and I said to PFC Boyd, “Is he crazy, or what?” And Boyd said, “I don’t know, he must be.” . . . And then everybody started opening up on the people.

*Id.* (quoting Lance Corporal Michael S. Krichten, Vietnam 1970).

<sup>64</sup>PEERS REPORT, *supra* note 13, at 232.

<sup>65</sup>See FM 27-10, *supra* note 38, para. 506(a). Under the Geneva Conventions, each nation is under a strict obligation to search for all persons alleged to have committed war crimes, to investigate the allegations of war crimes, and to prosecute or extradite those so accused. The policy of the United States is that all American military personnel so accused will be prosecuted by military courts-martial under the substantive provisions of the Uniform Code of Military Justice. See also GERHARD VON GLAHN, LAW AMONG NATIONS 870-91 (1991).

<sup>66</sup>See LAWRENCE TAYLOR, A TRIAL OF GENERALS 165-67 (1981). Under the concept of command responsibility or indirect responsibility, a commander can be charged with the law of war violations committed by his or her subordinates if he or she ordered the crimes committed or “knew that a crime was about to be committed, had the power to prevent it, and failed to exercise that power.” In the United States, this standard has come to be known as the Medina Standard, so named for Captain Ernest Medina. A second standard for indirect responsibility that has been the object of a great deal of debate and is recognized only in the United States, is the Yamashita Standard. The Yamashita Standard is named for the World War II Japanese general, Tomoyuki Yamashita, who was tried before a military commission for war crimes committed by soldiers under his command. The primary charge against Yamashita concerned 20,000 Japanese sailors under his command who went on a murder and rape rampage in Manila near the end of the war. Although the prosecution was unable to prove that Yamashita ordered the crimes, or even knew about them, he was convicted under a “should have

Lai incident was how to reconcile command-directed breaches of the law of war with the concept of following orders. If every soldier is expected to obey the lawful order of a superior, lest face the ominous prospect of a court-martial, how should a soldier react to an unlawful order—that is, of course, assuming the soldier actually can recognize the order as an unlawful one?<sup>67</sup>

In considering the question whether a superior order constitutes a valid defense, the court shall take into consideration the fact that obedience to lawful military orders is the duty of every member of the armed forces; that the latter cannot be expected, in conditions of war discipline, to weigh scrupulously the legal merits of the orders received; that certain rules of warfare may be controversial; or that an act otherwise amounting to a war crime may be done in obedience to orders conceived as a measure of reprisal. At the same time it must be borne in mind that members of the armed forces are bound to obey only lawful orders.<sup>68</sup>

Furthermore, soldiers normally cannot depend on the defense of superior orders to protect them from charges that they carried out unlawful orders. Instead, the law holds the soldier fully responsible for his or her acts or omissions. When a soldier raises superior orders as a defense, however, a court will apply a two-tier test to determine if the defense is cognizable. The first tier is a subjective one concentrating on whether or not the accused knew that the order was illegal. If the accused did not know that the order was illegal then the inquiry shifts to the second tier, at which the court must determine whether the accused reasonably could have been expected to know that the order was illegal. “The fact that the law of war has been violated pursuant to an order of a superior authority ... does not constitute a defense ... unless [the accused] did not know and could not reasonably have been expected to know that the act ordered was unlawful.”<sup>69</sup> Although the objective tier of the two-part test draws upon the “reasonable man” standard, the

---

known” standard. This standard permits a commander to be found guilty for war crimes under a theory that, through normal events, the commander should have known of the war crimes of those under his or her command, and did nothing to stop them. The commander, therefore, is vicariously guilty of the actions of his or her soldiers. This “should have known” standard applies only when the war crimes are associated with a widespread pattern of abuse over a prolonged period of time. In such a scenario, the commander is presumed to have knowledge of the crime or to have abandoned his or her command.

<sup>67</sup>See FM 27-10, *supra* note 38, para. 509.

<sup>68</sup>*Id.* para. 509.

<sup>69</sup>*Id.*

standard actually considers the actions of a reasonable man under the stresses present in the particular combat environment.

The task of distinguishing the legitimacy of the orders of a superior also must be viewed against the entire concept of enforced discipline, which the military systematizes from the first day a recruit enters boot camp until the day he or she is discharged. The requirement for enforced discipline is absolutely essential to ensure that in the unnatural conditions of the combat environment soldiers will be able to function properly. No army could survive without a system promoting genuine and enforced discipline, which is rooted firmly in the requirement to obey the directions of superiors. Accordingly, if soldiers are expected to obey all lawful orders, *a fortiori*, they reasonably cannot be expected to scrupulously weigh the legal merits of orders received under the stresses of combat.<sup>70</sup>

Consequently, an army must fill its officer corps with only the finest available men and women. Nowhere is this requirement more essential than in the selection and placement of the men who serve as officers in combat units. Only men of the highest moral caliber and military skill should be assigned the responsibility of combat command. In commenting on leadership skills for officers, General George S. Patton, Jr., correctly stated, "If you do not enforce and maintain discipline, [officers] are potential murderers."<sup>71</sup>

General Patton's comment prophesied the tragedy at My Lai. Several of the junior officers on the scene were totally inadequate, not only in their moral characters and integrities, but also in basic military skills. As they exhibited by their behaviors,<sup>72</sup> these officers were totally unworthy of the responsibility of command. They were murderers.

Not surprisingly, William Calley—the centerpiece of the command-directed killings—was not the type of individual who

---

<sup>70</sup>*Id.*

<sup>71</sup>PETER B. WILLIAMSON, PATTON'S PRINCIPLES: A HANDBOOK FOR MANAGERS WHO MEAN IT 35 (1979).

<sup>72</sup>See *supra* note 46 and accompanying text. For an interesting observation concerning the nature of man, see THE DICTIONARY OF WAR QUOTATIONS 341 (Justin Wintle ed., 1989). Anne Frank wrote the following in 1942:

I don't believe that the big men, the politicians and the capitalists alone, are guilty of war. Oh no, the little man is just as guilty, otherwise the peoples of the world would have risen in revolt long ago. There's in people simply an urge to destroy, an urge to kill, to murder and rage, and until all mankind, without exception, undergoes a great change, wars will be waged, everything that has been built up, cultivated, and grown will be destroyed and disfigured, after which mankind will have to begin all over again.

should have been charged with leadership responsibilities of any nature. Having flunked out of a junior college in Miami, Calley moved west before enlisting in the Army in 1966.<sup>73</sup> Once in the Army, Calley somehow was selected to attend Officers Candidate School, where he graduated despite poor academic marks.<sup>74</sup> Assigned to the field as a platoon leader in a combat unit, the soldiers under his command quickly discovered that Lieutenant Calley did not even understand basic military combat skills. As one rifleman in the platoon put it, "I wonder how he ever got through Officer Candidate School. [Calley] couldn't read no darn [sic] map and a compass would confuse his ass."<sup>75</sup>

Accordingly, the factor that impacted most directly on the crime at My Lai certainly rested on the shoulders of a few junior officers on the ground—Lieutenant William Calley being one of the worst. All of the evidence suggests that Lieutenant Calley initiated much of the murder, acting both in his individual capacity and—far more shamefully—in his capacity as an officer in charge of subordinates. Abusing the authority of his position, Lieutenant Calley directly ordered the soldiers under his command to commit murder; some of the men obeyed, while some did not. While no one can pardon the behavior of those who carried out the illegal orders, the real tragedy of My Lai was the absence of competent leadership.

As Sun Tzu laid out almost 2500 years ago, "The commander stands for the virtues of wisdom, sincerity, benevolence, courage, and strictness."<sup>76</sup> Instead of setting the standard for moral conduct, Calley performed exactly in the opposite manner. He represented the antithesis of what a commander should be.

6. The Lack of a Grand Strategy by the United States.—A final factor that bears exploration is one that few commentators on My Lai have properly gauged—that is, the full impact that the lack of a grand strategy by the United States had on the outcome of the Indo-China conflict. My Lai actually was made possible because of the total and complete absence of a grand strategy to deal with the communist-sponsored aggression against South Vietnam.

If the concept of a grand strategy is defined as the use of a state's full national power to achieve a particular objective, the United States clearly had no grand strategy for dealing with the

---

<sup>73</sup>Wilson, *supra* note 14, at 50.

<sup>74</sup>*Id.*

<sup>75</sup>*Id.* (remarks of Rifleman Roy L. A. Wood).

<sup>76</sup>THE ART OF WAR: SUN Tzu 9 (James Clavell ed., 1983)

communist aggression in Vietnam. The communists, on the other hand, obviously had a complete and dedicated grand strategy for conquering all of Indo-China through the use of revolutionary warfare.<sup>77</sup>

A sound grand strategy envisages the means by which a nation will take advantage of its strengths and will exploit its enemy's vulnerabilities; concomitantly, such a grand strategy comprises the methods by which the nation will diminish its weaknesses and neutralize the enemy's strengths. In practically every category of factors associated with the art of waging war, the communists fulfilled this formula, while the United States did not. Therefore, while the communists mobilized all of the people under their control in a unified effort, the United States consistently sought to disassociate the American people from the war.

The communists were well aware that their forces were no match for the far superior power of American combat forces and knew that engaging the United States in conventional warfare was pure folly. Nevertheless, they apparently were extremely effective at drawing on their strengths, while the United States typically refused to use its overwhelming might. Accordingly, the enemy found that it effectively could employ hit-and-run tactics against selected targets. Coupled with guerilla tactics deliberately focused on becoming the unseen enemy, the communists illegally took advantage of the American respect for the law of war. By hiding themselves among civilian populations, the communists intentionally sought to blur the distinction between the combatant and the noncombatant, "hoping either for immunity from attack or to provoke ... indiscriminate attack."<sup>78</sup> Establishing well-stocked sanctuaries in neighboring Cambodia and Laos, the communists were immune from defeat as long as the United States refused to attack these bases.

Finally, in tandem with their guerilla tactics, the communists relied heavily on all forms of propaganda, placing special emphasis on the ambiguity of words to erode the national will of the United States to continue the war. While the North Vietnamese leadership falsely would portray the conflict as a protracted war waged by agrarian reformers with no end in sight,

---

<sup>77</sup>See KEVIN M. GENEROUS, *VIETNAM: THE SECRET WAR* (1985). The term "revolutionary war" refers to a strategy characterized by disinformation and guerilla tactics.

<sup>78</sup>Thomas J. Begines, *The American Military and the Western Idea*, MIL. REV., Mar. 1992, at 39, 42.

it often would promise a negotiated settlement and a termination of its army's hostilities at any moment.

Although many of the factors discussed above contributed to the communists' prevailing in Vietnam, their strategy's ultimate success can be attributed to the United States' failing to develop its own coherent grand strategy. Surprisingly, not until 1968 did the impact of not having a viable grand strategy become apparent to the American soldier. United States combat troops then finally began to recognize that they were fighting and risking their lives to attain no comprehensive national objective. This revelation initiated a festering demoralization among members of the United States military forces in Vietnam.

This demoralization was manifest in every action involving American ground soldiers. In addition, as the attendant anti-war protests at home increased, more soldiers seriously questioned the efficacy of their sacrifices in Vietnam. More importantly, American soldiers such as those at My Lai realized that the emphasis of the American leadership was not on achieving peace through a military victory, but on peace through negotiations—negotiations that constantly promised an end to the war at any time. As a consequence, no one wanted to be the last casualty in a war that was not supported at home and which the United States government refused to let the military win. The specter of dying in vain weighed heavily on the mind of the individual soldier and, to a degree, degenerated that soldier's respect for his own chain of command.

#### IV. The Lessons of My Lai

The massacre at My Lai cannot be undone. In developing a methodology for preventing future atrocities, however, the images of the horror of My Lai illustrate perfectly the necessity for abiding by the law of war. The Peers Report also is a valuable tool in attempting to explain some of the factors that seemed to create an environment in which law of war violations were more likely to occur. Taken together, these resources teach three fundamental lessons.

##### A. *Soldiers Must Understand the Rationale for the Law of War*

One of the most troubling issues for American soldiers is the realization that in many of the wars that the United States has fought, the enemy openly and repeatedly has violated numerous

provisions of the law of war.<sup>79</sup> In the Vietnam War, the North Vietnamese Army and the Viet Cong regularly engaged in command-directed atrocities on a massive scale.<sup>80</sup> For example, virtually every American prisoner of war was tortured and maltreated in flagrant violation of the Geneva Conventions.

For many American soldiers, the knowledge of enemy violations elicits a negative response to law of war issues. The realization that the enemy may refuse to abide by the law of war often prompts the instinctive response, "Why should I care about the rules if the enemy doesn't?" Informing the soldier that he or she will be punished for law of war violations is not enough; ensuring that the soldier understands the basic rationale for abiding by the law of war is imperative. Accordingly, military leaders must impart the soldier with a basic understanding of the entire concept of the development of rules regulating combat.

If the military establishment cannot understand the fundamental rationale and historical basis for having a law of war, then the tragedy at My Lai certainly will be repeated. This is the first lesson of My Lai; soldiers not only must know the law of war, but also must be able to understand the necessity and rationale for having a law of war.

**1. Necessity for the Law of War.**—Warfare is not a novel phenomenon; it is as old as human history itself. Even a cursory review of the practice reveals that all cultures and societies have participated in warfare—either in defense or in aggression. In addition, as long as mankind has practiced war, rules have existed to lessen and regulate the attendant sufferings associated with warfare. In the modern world, either by treaty law or through customary<sup>81</sup> international law, every nation is bound legally by a universal body of law known as the law of war.

---

<sup>79</sup>See LOUIS HENKIN ET AL., *MIGHT V. RIGHT* 126 (2d ed. 1991). The conduct of the Iraqis during the Persian Gulf War made a mockery of almost every precept in international law. Actually, throughout the entire war, Saddam Hussein made no attempt even to conceal his open violations of the law of war, the United Nations Charter, or any other applicable international norm. As one Pentagon official noted, "it was as if Saddam Hussein awoke one morning and asked, 'What international law shall I violate today?'"

<sup>80</sup>RUMMEL, *supra* note 8 and accompanying text.

<sup>81</sup>A state may express its consent to be bound by a treaty in one of the following ways: (1) signature, followed by ratification; (2) accession; or (3) a declaration of succession. Even absent consent, however, a state nevertheless may become bound by those standards and norms of behavior that, through widespread acceptance in the international community, have entered the realm of customary principles of international law. Customary principles derive from the recognition of long-term uniform practices among nations. Indicia of customary international law are judicial rulings, the writings of renowned jurists, diplomatic interactions, and other documentary sources. See Statute of the International Court of Justice, art. 38, 59 Stat. 1031, T.S. No. 993, 3 Bevans 1179. Accordingly, both international law and the law of war derive from numerous sources.



Individuals uninitiated to the study of war understandably may be puzzled that one of humanity's most violent activities should be governed by rules of conduct. Some writers, such as Leo Tolstoy, even have argued that the very establishment of rules that seek to regulate warfare are per se immoral because such rules wrongfully cloak war with a form of legitimacy and therefore are counterproductive to the goal of eliminating the scourge of war itself. Accordingly, Tolstoy advanced the notion that the waging of war should not be regulated. Tolstoy proposed that "when [war] becomes too horrible, rational men will outlaw war altogether."<sup>82</sup> Most commentators, however, have rejected this utopian attitude, acknowledging the necessity of rules of conduct to mitigate the various categories of suffering that are the natural consequence of war.<sup>83</sup> The law of war never was intended to be an "idealistic proscription against war."<sup>84</sup>

The current body of the law of war consists of all laws that, by treaty and customary principles, are applicable to warfare. The cornerstones of the modern law of war are the Geneva Conventions of 1949.<sup>85</sup> The basic goal of the law of war is to limit the impact of the inevitable evils of war by "(1) protecting both combatants and noncombatants from unnecessary suffering; (2) safeguarding certain fundamental human rights of persons who fall into the hands of the enemy, particularly prisoners of war, the wounded and sick, and civilians; and (3) facilitating the restoration of peace."<sup>86</sup>

2. Origins of *the* Law of War.—Many people harbor the misconception that rules regulating warfare are of relatively recent origin, arising in the aftermath of World War II or, at least, no earlier than World War I. As long as man has fought in wars, however, rules to reduce the suffering to both the environment and to other humans have existed. While some of these ancient

---

<sup>82</sup>LEO TOLSTOY, WAR AND PEACE 45 (1868).

<sup>83</sup>See generally DIETRICH SCHINDLER & JIRI TOMAN, THE LAWS OF ARMED CONFLICT (1981).

<sup>84</sup>See DEP'T OF ARMY, PAMPHLET 27-161-2, INTERNATIONAL LAW, vol. 11, at 38 (23 Oct. 1962).

<sup>85</sup>The 1949 Geneva Conventions cover four categories: (1) Geneva Convention of August 12, 1949, for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 6 U.S.T. 3114, T.I.A.S. No. 3362, 75 U.N.T.S. 31; (2) Geneva Convention of August 12, 1949 for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea, 6 U.S.T. 3217, T.I.A.S. No. 3363, 75 U.N.T.S. 85; (3) Geneva Convention of August 12, 1949, Relative to the Treatment of Prisoners of War 6 U.S.T. 3316, T.I.A.S. No. 3364, 75 U.N.T.S. 135; and (4) Geneva Convention of August 12, 1949, Relative to the Protections of Civilian Persons in Time of War, 6 U.S.T. 3316, T.I.A.S. No. 3365, 75 U.N.T.S. 287.

<sup>86</sup>FM 27-10, *supra* note 38, para. 2.

rules would be inconsistent with the modern humanitarian concepts reflected in the current law of war, many of the provisions in the modern law of war are derived directly from some of the earliest formulations of rules regulating warfare. For example, in the book of *Deuteronomy*, the ancient Hebrews were given specific instructions on the protections that were to be afforded to the persons or property of an enemy city under siege.<sup>87</sup> Generally, if the city surrendered, the inhabitants were not to be harmed. If the city refused to surrender, but subsequently was captured, no women or children were to be molested. In all cases, however, torture absolutely was prohibited. Similarly, protection for the environment also was codified. For example, fruit trees located outside of a besieged city were protected from unnecessary damage. Soldiers could partake of the fruit, but cutting down the trees was unlawful.

Acknowledging that the modern law of war rests firmly on an ancient foundation of intrinsically acceptable humanitarian concerns is only one reason why the law of war has enjoyed universal acceptance through time. Understanding that such rules are valuable moral axioms only captures part of the significance of their development and utility. Clearly, the historical development of rules regulating warfare also follows a general pattern of what might be termed “pragmatic necessity.” While many of the rules limiting suffering undoubtedly were based on humanitarian concerns, the basic rationale for having a law of war arguably has been rooted in several collateral principles of self-interest.

First, under the concept of reciprocity, nations would develop and adhere to laws of war because they were confident that their enemies also would abide by those rules under a quid pro quo theory. This mutual assurance theory long has been recognized not only as a primary motivator for establishing rules regulating warfare, but also as the centerpiece in almost every other function of international intercourse.

The second element in the development of the law of war also reflects self-interest. Alexander the Great<sup>88</sup> exemplified this

---

<sup>87</sup>DEUTERONOMY 20:10-20. *But see id.* 21:17-18. Some mandates were given for the Hebrews to kill all of the citizens of a few selected cultures. This practice, however, was the exception and was related to halting the spread of systematic human sacrifice and phallic cult practices associated with those cultures.

<sup>88</sup>Alexander the Great (356-323 B.C.) conquered an enormous empire which extended from India to Europe and from Asia Minor to North Africa. Alexander is recognized as one of the finest strategists, tacticians, and military commanders in the ancient world. *See R. ERNEST DUPUY & TREVOR N. DUPUY, THE ENCYCLOPEDIA OF MILITARY HISTORY 47-54 (1977).*

element when, on the eve of practically every battle, he admonished to his army, "Why should we destroy those things which shall soon be ours?"<sup>89</sup> Under this reasoning, particularly in the context of securing limited amounts of spoil, the destruction of anything beyond military targets to subdue the enemy's military forces would be neither beneficial nor reasonable. Under modern principles, similar violations of the law of war would not contribute to the goal of the collection of legitimate reparations—a measure often employed against the aggressor nation.<sup>90</sup>

A third line of reasoning in the development of the law of war derives from an acceptance that abuses seldom shorten the length of the conflict and are never beneficial in facilitating the restoration of peace. For instance, targeting nonmilitary property usually produces undesirable effects. The activities of General William Sherman during the Civil War illustrate this point. General Sherman's widespread looting and burning of civilian homes and personal property on his march through Georgia in the fall of 1864 did not contribute significantly to the defeat of the

---

<sup>89</sup>*Id.*

<sup>90</sup>*Definition of Aggression*, G.A. Res. 3314, 29 G.O.A.R. Supp. 31, U.N. Doc. A/9631, at 142. The United Nations Definition of Aggression Resolution states, in part the following:

ARTICLE 1. Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any manner inconsistent with the Charter of the United Nations . . . .

ARTICLE 2. The first use of armed force by a State in contravention of the Charter shall constitute *prima facie* evidence of an act of aggression . . . .

ARTICLE 3. Any of the following acts, regardless of a declaration of war, shall . . . qualify as an act of aggression:

- (a) The invasion or attack by the armed forces of a State of another State or part thereof;
- (b) Bombardment by the armed forces of a State against the territory of another State . . . ;
- (c) The blockade of the ports or coasts of a State by the armed forces of another State;
- (d) An attack by the armed forces of a State on the land, sea or air forces, or marine and airfleets of another State;
- (e) The use of armed forces of one State . . . in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;
- (f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;
- (g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

Confederacy.<sup>91</sup> On the contrary, his actions simply strengthened the resolve of the enemy to resist, while sowing the seeds of bitterness for generations to come.<sup>92</sup>

Clearly, the intelligent warfighter makes every effort to comply with, and even to exceed, the requirements of the law of war—particularly in the treatment of prisoners of war and noncombatants. A nation's enforcement of humane treatment not only demonstrates the best evidence that it is the party waging a *jus in bello*,<sup>93</sup> but also often serves as the best avenue to counter enemy propaganda of law of war violations. As the pragmatic Prussian soldier and author, Karl von Clausewitz observed, "If we find that civilized nations do not ... devastate towns and countries, this is because their intelligence exercises greater influence on their mode of carrying on war, and has taught them a more effectual means of applying force ..."<sup>94</sup>

A fourth factor in the development of the law of war is a matter of military pragmatism. Specifically, using limited military resources to destroy civilian targets wastes assets that a force otherwise could employ to defeat the enemy's military. Accordingly, such conduct is simply counterproductive, and "rarely gains the violator a distinct military advantage."<sup>95</sup>

The final rationale—albeit of greater impact in an era characterized by the widespread dissemination of information—derives from the very nature of the modern, civilized nation-state. States that adhere to the principles of democratic institutions and fundamental human rights will not tolerate activities that are

<sup>91</sup>See Thomas Robertson, *The War in Words*, CIVIL WAR TIMES ILLUS., Oct. 1979, at 20 ("Although the havoc wreaked by Sherman's hordes contributed to the Confederate defeat, this contribution was so indirect and ambiguous that it did not justify militarily, much less morally, the human misery that accompanied and followed it").

<sup>92</sup>See, e.g., RUSSEL F. WEIGLEY, HISTORY OF THE UNITED STATES ARMY 301 (1984).

<sup>93</sup>*Jus in bello* refers to just conduct, in war or abiding by the law of war under the concepts of proportionality, military necessity, and unnecessary suffering. The concept of waging a just war, *jus ad bellum*, encompasses several elements. These elements include the following: (1) just cause; (2) legitimate authority; (3) just intentions; (4) public declaration of causes and intentions; (5) proportionality in results; (6) last resort; and (7) a reasonable hope of success. With the adoption of the United Nations Charter, however, *jus ad bellum* is no longer a viable tool in determining when force is lawful. The United Nations Charter mandates that the analysis for determining the legitimate use of force turn on the self-defense provisions of Article 51. See WILLIAM V. O'BRIEN, THE CONDUCT OF JUST AND LIMITED WAR 37-70 (1981).

<sup>94</sup>KARL VON CLAUSEWITZ, ON WAR 4 (J. Graham trans., 1918).

<sup>95</sup>H. Wayne Elliott, *Theory and Practice: Some Suggestions for the Law of War Trainer*, ARMY LAW. J. July 1983, at 1.

conducted in defiance of the rule of law.<sup>96</sup> As brought out so strongly by the My Lai incident, civilized societies will not provide the necessary homefront support for an army that it perceives to be acting in violation of the law of war. Although in the radical regime<sup>97</sup> this factor generally is ignored, in the United States—as in all democratic societies—this element of homefront support is absolutely essential to any deployment and sustainment of military forces. Actually, the precept that a civilized society must adhere to basic, minimum “standards of morality transcends national boundaries.”<sup>98</sup>

Sustaining homefront support is not always easy for the military. In part, the difficulty rests in the associated phenomenon of “imputed responsibility”—that is, the responsibility for the acts of a few soldiers who engage in egregious abuses of the law of war immediately can be imputed to the entire military establishment. Accordingly, because Lieutenant Calley and a handful of others murdered babies at My Lai, some segments of the public viewed all American soldiers in Vietnam as baby killers. The mass media largely feed this phenomenon, as reflected by almost every movie on the Vietnam War. In American cinema, the soldier routinely has been depicted engaging in abuses of the law of war or ingesting illegal drugs. That the vast majority of American soldiers participated in neither of these practices is not shown.<sup>99</sup> Consequently, the best method for the military to protect itself from imputed responsibility is to make every possible effort to see that abuses do not occur and, if they

---

<sup>96</sup>*Id.* at 7.

<sup>97</sup>The term “radical regime” was coined by Professor John Norton Moore, Walter L. Brown Professor of Law, University of Virginia School of Law, to describe totalitarian systems that are likely to resort to violence to achieve goals. See JOHN NORTON MOORE, ET AL. NATIONAL SECURITY LAW 77 (1990). Professor Moore describes the characteristics of the radical regime as follows:

A radical totalitarian regime ... seems to blend together a mixture of a failing centrally planned economy, severe limitations on economic freedom, a one party political system, an absence of an independent judiciary, a police state with minimal human rights and political freedoms at home, denials of the right to emigrate, heavy involvement of the military in political leadership, a large percentage of the GNP devoted to the military sector, a high percentage of the population in the military, leaders strongly motivated by an ideology of “true beliefs” including willingness to use force, aggressively anti-Western and antidemocratic in behavior, and selective support for wars of national liberation, terrorism, and disinformation against Western or democratic interests.

<sup>98</sup>*Id.*

<sup>99</sup>See SOLIS, *supra* note 63, at vii. The vast majority of military personnel in Vietnam served with honor. In the Marines, “[o]f the 448,00 Marines that served in Vietnam, only a small percentage came into contact with the military justice system. By far the greater number served honorably and never committed illegal or improper acts.” *Id.*

do, to promptly investigate and punish those proven to be guilty. Under no circumstances can a cover-up be justified; the light must be shed promptly and fully on all allegations of war crimes.

The law of war in the modern era, therefore, is based on a combination of rationales that reflect a mixture of pragmatic and moral concerns. The competent warfighter should understand that the factors include the following: (1) humanitarian concerns based on moral precepts; (2) the concept of reciprocity in behavior; (3) the desire for lawful reparations; (4) the desire to limit the scope and duration of the conflict and to facilitate the restoration of peace; (5) the effective use of military resources; and (6) the necessity for securing homefront support.

### *B. Soldiers Must Be Trained in the Law of War*

The second lesson from My Lai needs little introduction: To be effective, the leaders constantly must teach the law of war to soldiers. The United States military long has held an outstanding reputation for adhering to the law of war because of its commitment to law of war training.<sup>100</sup> Unfortunately, periods have arisen during which training has not been emphasized properly; these periods provided fertile ground for law of war violations. If it did nothing else, the massacre at My Lai served as the “catalyst for a complete review of Army training in the law of war.”<sup>101</sup>

The primary Department of Defense (DOD) response to the Peers Report was a directive entitled the “DOD Law of War Program.” The directive, which is still in effect, lists the following four specific DOD mandates:

(1) The law of war and the obligations of the United States government under that law shall be observed fully by all members of the United States Armed Forces;

(2) A law of war program, designed to prevent violations of the law of war, shall be implemented;

(3) All alleged violations of the law of war, whether committed by or against United States or enemy personnel, shall be reported promptly, investigated thoroughly, and, when appropriate, remedied by corrective action; and

---

<sup>100</sup> *But see* Fredrick A. Graf, *Knowing the Law*, PROCEEDINGS, June 1988, at 58. If the record United States is measured against the rules and not against its adversaries the record has “been far from perfect.”

“Elliott, *supra* note 95, at 9.

(4) All violations of the law alleged to have been committed by or against allied military or civilian personnel shall be reported through appropriate command channels for ultimate transmission to appropriate agencies of allied governments.

Specific responsibilities are assigned to the secretaries of the military departments and the unified and specified commands on law of war training and instruction. The Army is the training proponent for the law of war for all branches of the military. In response to that mandate, the Army has developed a ready-made lesson plan for the law of war instructor, which includes detailed discussion in the following areas:

(1) The rights and obligations of United States Army personnel regarding the enemy, other personnel, and property;

(2) The rights and obligations of United States Army personnel if captured, detained, or retained;

(3) The requirements of customary and conventional law pertaining to captured, detained, or retained personnel, property, and civilians;

(4) The probable results of acts of violence against, and inhuman treatment of, personnel;

(5) Illegal orders;

(6) Rules of Engagement; and

(7) The procedures for reporting war crimes.<sup>102</sup>

The current methodology for teaching the law of war attempts to tailor the training to the particular type of military unit. Special Forces units, for example, not only receive constant classroom instruction on the law of war, but also must answer difficult law of war questions. These questions deal with situations that could arise during special operations and are incorporated in their training missions.<sup>103</sup> The much-reported incident of the Gulf War, in which a Special Forces "A team had to choose between killing an Iraqi girl or risk being discovered, actually was a well-trained scenario which, in the real world,

---

<sup>102</sup>DEPT OF ARMY, REG. 350-216, TRAINING—THE GENEVA CONVENTIONS OF 1949 AND HAGUE No. IV OF 1907, para. 5a (7 Mar. 1975); see Elliott, *supra* note 95, at 33.

<sup>103</sup>See Gary L. Walsh, *Role of the Judge Advocate in Special Operations*, ARMY LAW., Aug. 1989, at 6-8; Jeffrey F. Addicott, *Developing a Security Strategy for Indochina*, 128 MIL. L. REV. 35 (1990).

resulted in a correct application of a very difficult law of war issue.<sup>104</sup>

The one thread that runs throughout the complex web of ensuring compliance with the law of war is the role of the judge advocate. To ensure that American forces comply with all aspects of the law of war, the Army has expanded its use of military attorneys dramatically.<sup>105</sup> For example, all combat forces have an “operational law”<sup>106</sup> attorney assigned at the division level. This judge advocate advises operational commanders on decision-making and training to ensure that their units comply with and adhere to the law of war. The operational law advisor also examines the full range of international and domestic law that impacts “specifically upon legal issues associated with the planning for and deployment of **U.S.** forces overseas in both peacetime and combat environments.”<sup>107</sup> This is a major change from the role of judge advocate in Vietnam—a role primarily delegated to the administration of military justice.

Currently, the function of the judge advocate can be divided into two elements: a preventive role and an active role. In the preventive role, the judge advocate advises commanders on potential issues dealing with rules of engagement, targeting, and all other relevant aspects of the law of war. In addition, the judge advocate is involved deeply in providing actual law of war instruction and training to soldiers within his or her particular command.

---

<sup>104</sup>Douglas Waller, *Secret Warriors*, NEWSWEEK, June 17, 1991, at 20. Each Special Forces group has a military attorney assigned as the group judge advocate. Part of the function of this officer is to deal with operational law issues associated with special operations.

<sup>105</sup>See, e.g., James A. Burger, *International Law—The Role of the Legal Advisor, and Law of War Instruction*, ARMY LAW., Sept. 1978, at 22; William H. Parks, *The Law of War Advisor*, 31 JAG J. 1 (1980).

<sup>106</sup>See David E. Graham, *Operational Law (OPLAW)—A Concept Comes of Age*, ARMY LAW., July 1987, at 9.

<sup>107</sup>One major effort to prepare operational law attorneys was the establishment of the Center for Law and Military Operations (CLAMO) by then-Secretary of the Army, John O. Marsh Jr., in December of 1988. The CLAMO is located at The Judge Advocate General's School, **U.S.** Army, in Charlottesville, Virginia. The goal of the CLAMO is to examine both current and potential legal issues attendant to military operations through the use of professional exchanges such as symposia, consultations, and advice; writing, reviewing, editing, commenting on, and publishing reports, treatises, articles, and other written materials; and ensuring access to a well-stocked joint service operational law library. The CLAMO serves as a source for, guide to, and clearinghouse of, information about operational law and national security law. See Jeffrey F. Addicott, *Operational Law Note: Proceedings of the First Center for Law and Military Operations Symposium, 18 to 20 April 1990*, ARMY LAW., Dec. 1990, at 47-57.



In the active role, the judge advocate is involved in the investigation of allegations of law of war violations. The requirement to investigate is either carried out directly by the legal officer or is monitored closely by the judge advocate.<sup>108</sup> Finally, the judge advocate will be called upon to either prosecute or defend individuals who have been charged with law of war violations.

*C. Officers Must Ensure Compliance with the Law of War Through Training and Leadership*

As implied throughout this article, the importance of professional conduct on the battlefield extends to the strategic, political, and social realms. The primary responsibility for ensuring this professional conduct falls directly on the officer corps. For this reason, nowhere is the need for law of war training more critical than in the proper development of the military's officer corps. No officer should be given the responsibility of leadership unless he or she possesses two essential qualities: (1) technical proficiency in the profession of arms; and (2) the highest ethical and moral courage. Under the ancient Roman adage that no man can control others until he first can control himself, officers must be prepared and tested thoroughly in both of these areas. Combat command should be offered only to officers who thoroughly have been scrutinized and put through extensive field training exercises designed to test combat pressures.

The primary cause of My Lai unquestionably was the lack of disciplined control—in other words, the lack of any real leadership. Leadership is absolutely essential in preventing law of war violations. The associated tensions set out by the Peers Report were not the real problem at My Lai; tensions of combat always will be present in one form or another. The real problem was that the leaders failed to control those tensions effectively. A soldier facing the stresses of war cannot be expected to temper his actions solely by exercising the level of restraint that commonly is considered self-control. Rather, ensuring that soldiers know how to—and actually are capable of—maintaining self-control under warfighting pressures depends considerably on a commander's training and leadership. Sadly, many of the officers in Charlie Company not only allowed the illegal manifestations of battlefield

---

<sup>108</sup>DEPT OF DEFENSE, DIRECTIVE 5100.77, DOD LAW OF WAR PROGRAM (July 1979); Memorandum, Office of the Joint Chiefs of Staff, MJCS 0124-88, subject: Implementation of DOD Law of War Program, (4 Aug. 1988); UNITED STATES CENTRAL COMMAND, CENTCOM REG. 27-1, LEGAL SERVICES: LAW OF WAR PROGRAM (3 Jan. 1989); UNITED STATES CENTRAL COMMAND, CENTCOM REG. 27-25, REPORTING AND DOCUMENTATION OF ALLEGED WAR CRIMES (3 Jan. 1989).

stress to be exhibited by their troops, but also initiated and participated actively in the atrocities—both through the orders they gave and examples they set. Proper officer leadership undoubtedly could have prevented the law of war violations at My Lai. Accordingly, the primary responsibility for these crimes lay with those officers. The function of leadership is to hold up, at all times and at all costs, the professional torch. The officers involved in the incident at My Lai, however, did not merely allow that torch to fall; instead, they actually extinguished its flame before those who depended upon it for enlightenment and guidance.

## V. Conclusion

Future My Lai's cannot be prevented unless the answers to the "why?" of My Lai are repeated over and over—that is, until they are inculcated into every warfighter in uniform. Just as Americans must never forget their rallying cries of honor and nobility—"Remember the Alamo"<sup>109</sup>—they must be forced to deal with their nightmares—"Remember My Lai." On the other hand, precisely because of its horror and repulsiveness, My Lai is suited uniquely to serve as *the* primary vehicle to address the entire issue of adherence to the law of war, as well as the necessity for effective leadership in the modern era characterized by low intensity conflict environments.

The American military cannot afford to take these lessons lightly. Not surprisingly, with the passing of time, many lessons of history will be forgotten and therefore, many mistakes will be repeated.<sup>110</sup> This human reality is particularly unfortunate in light of humanity's continuing efforts at curtailing warfare. Accordingly, the lessons of My Lai not only must be remembered, but also must be inculcated.

---

<sup>109</sup> See LON TINKLE, *THE ALAMO* (1958). For 13 days in March of 1836, 187 Americans fought off a Mexican Army that outnumbered them by thirty to one. The battle **took** place at the Alamo at San Antonio, Texas. Although all of the Americans could have escaped, they choose to fulfill their duties, even knowing that doing so would mean almost certain death. All died in combat—killing 1600 Mexicans in the process—to buy time for the birth of the Texas Republic. The subsequent battle cry of "Remember the Alamo," was coined by General Sam Houston in the defeat of the same Mexican forces later that year.

<sup>110</sup> Many military writers have lamented that basic historical lessons related to combat are not emphasized, even at the nation's military academies. See, e.g., Jeffrey Record, *Our Academies Don't Teach The History of War*, HARPER'S MAG., Apr. 1980, at 26; Jay Luvaas, *Military History: Is it Still Practicable?*, PARAMETERS, Mar. 1982, at 2; T. N. Dupuy, *Practical Value Largely Unappreciated, History and Modern Battle*, ARMY, Nov. 1982, at 18; Jeffrey F. Addicott, *The United States of America: Champion of the New World Order or the Rule of Law?*, 6 FLA. J. INT'L L. 63 (1990).