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ENEMY WAR CRIMES : HOW TO
INVESTIGATE AND PROSECUTE
AN INDIVIDUAL STUDY PROJECT

by

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30 March 1988

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ABSTRACT

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I INTRODUCTION

Enemy war crimes trials were last held following World War II. When the subject is mentioned, most people automatically think of Nuremberg. In many instances they recall seeing pictures of Goering, Hess, and Speer sitting together being tried before the International Military Tribunal. Some may also think of the Tokyo War Crimes Trial where Tojo and others were tried before the International Military Tribunal for the Far East. However, these two famous trials represent only a small percentage of the total number of war crimes prosecuted after World War II.¹ Much has been written about the trials at Nuremberg and Tokyo, but little about those held at Dachau, Yokohama, and Manila. The U.S. Army played a role at Nuremberg and Tokyo, but the cases tried there were more political in nature and involved the use of court members and prosecutors from various allied countries. Numerous other war crimes trials were tried and defended by Army lawyers before courts made up of Army officers.

The Army, alone, tried 489 cases,² involving 1,672 defendants,³ at Dachau. This was a massive undertaking requiring four years of work and more than 2,000 military personnel.⁴ No one knows if we will ever again be involved in a war like World War II, which will generate a large number of war crimes trials. If we are, it

is important that the U.S. Army be prepared to investigate, process, and prosecute war crimes committed by the enemy. Our soldiers are trained to understand what constitutes a war crime and how to report a violation if a crime is committed by an American soldier. It is also common knowledge that we tried our own U.S. soldiers who committed war crimes during the Vietnam War. However, little, if any, training contains guidance on how to report or process war crimes committed by the enemy.

This article will review war crimes in general and then cover how the U.S. Army dealt with enemy war crimes during World War II, the Korean War, and the Vietnam War. It will then use this historical basis to analyze how the Army plans to investigate,⁵ prosecute, and dispose of enemy war crimes in future wars.

II WAR CRIMES

A. DEFINED

Before addressing the reporting, investigating, and prosecuting of enemy war crimes, it is important to understand what is meant by war crimes and why the laws of war are enforced. A violation of the rules of war is considered a war crime.⁶ The rules are found in written treaties, such as the Geneva Conventions,⁷ and in unwritten customs. All soldiers receive instruction on the law of war and are somewhat familiar with the full range of crimes from killing a non-combatant to mistreatment of prisoners of war. The best source for the law of land warfare is FM 27-10.⁸

In addition to the traditional war crimes, there are two other types of war crimes which were developed at the end of World War II to deal with Nazi Germany - - crimes against peace and crimes against humanity.⁹ Both of these were controversial at the time and have continued to be discussed and argued over by legal scholars.¹⁰ This article will deal with the more traditional war crimes and not discuss the modern "political" additions.

B. WHY PROSECUTE VIOLATIONS?

It is often asked: Why have war crimes and why prosecute people for violating the laws of war? The easiest and most straight forward answer to this question is man's need to limit the cruelty and destructiveness of war to that which is absolutely necessary. Additionally, belligerents have concern for their

own soldiers who become prisoners of war and for the need to facilitate reconciliation and bring peace at the end of a war. ¹¹ This same question was answered a little differently by Leon Jaworski, a World War II war crimes prosecutor and later Watergate Prosecutor:

If these offenders, these war criminals, were not brought before the bar of justice for their acts, belligerents in future wars would feel no compulsion to heed the rules of land warfare. The result would be a loss of the advances made through these conventions, as well as the unwritten law of war, and each future belligerent would feel at liberty to mistreat civilians and prisoners-of-war at will and without risk of punishment.

... For the United States not to have brought to trial each of the German war criminals as could be apprehended and proven guilty, would have caused a breakdown in international law relating to the conduct of belligerents in much the same manner as would happen to the penal laws in our land should we permit criminals to go unpunished. The United States had no alternative than to bring these war criminals to trial before tribunals having a due regard for the judicial process.¹²

Mr. Jaworski's comment aside, in truth, whether or not you try your enemy for war crimes is a political issue determined by such facts as who wins the war and what type of armistice or treaty, if any, is signed at the end of the war. We tried no war crimes during or at the end of the Korean or the Vietnam Wars. The political decision to have war crimes trials is usually made near the end of the conflict or war. ¹³ The effect of this late decision will be discussed later, concerning War II and the impact it would or would not have on future enemy war crimes trials.

III WORLD WAR II EXPERIENCE

A. INITIAL TRIALS.

Dating back to the American Revolutionary War, the United States has been involved in enforcing the laws of war,¹⁴ but never to the extent of its involvement after World War II. To understand the role the U.S. Army played, it is necessary to review the events leading up to the end of the war before describing its part in trying enemy war crimes in Europe and the Far East.

The Army's first contact with war crimes during World War II involved German prisoners of war imprisoned in POW camps located in the United States. When Field Marshal Rommel's army surrendered in North Africa, thousands of German soldiers were brought to America.¹⁵ In several instances during late 1943 and 1944, fanatical Nazi German soldiers killed their fellow prisoners of war because they believed they were failing to follow the party line and showing too great an interest in America. The killers were tried and convicted in top secret courts-martial and later executed at Fort Leavenworth.¹⁶ These were important trials, because of the duty placed on the United States under the Geneva Conventions to protect and to care for the health and safety of POWs. They were also important because of the United States' concern that Germany would use them as propaganda against us and as a basis for executing our fliers whom they held as POWs. As a result of this concern, a Swiss representative was invited¹⁷ and was in attendance at all trials to witness to their fairness.

In investigating these cases, the procedure of segregating accused war criminals and isolating them from each other in solitary confinement as a means to obtain information and confessions was first used.¹⁸ This technique was suggested and used by the same Leon Jawarski mentioned earlier, who was then a captain in The Judge Advocate General's Corps. This technique will be discussed in more detail later.

B. UNITED NATIONS WAR CRIMES COMMISSION AND MOSCOW DECLARATION.

The United States officially became involved with the idea of trying World War II enemy war crimes on 20 October 1943, when seventeen allied countries,¹⁹ not including Russia, met in the British Foreign Office in London and created the United Nations War Crimes Commission.²⁰ It was created to investigate and record the evidence of War Crimes and then report them to the Government concerned.²¹ It was not involved, nor did it ever become involved, in trying war crimes trials. A few days after its creation, on 1 November 1943, Churchill, Stalin, and Rossevelt issued the Moscow Declaration which laid out the allied plan for the trial of war criminals.²² The major war criminals, with no particular geographic location, would be punished based on a joint decision made by the Allies. The remaining war criminals would be returned to where their alleged crime took place and tried there.

C. AMERICAN POLICY.

During most of 1944, the United States did not have a plan or

organization for trying war crimes. In fact, President Roosevelt had told a reporter in July 1944 that it was premature to ask questions such as those dealing with war criminals.²³ The war was progressing favorably, but there was concern that any publicity about capturing war criminals or holding war crimes trials would have an adverse impact on our POWs then being held by the Germans.²⁴

The first suggestion of a policy for post-war Germany was a proposal in August 1944 by the Secretary of the Treasury, Henry Morgenthau, Jr, to deindustrialize Germany, and to identify war criminals and to execute them by firing squad, without trial.²⁵ This plan was opposed by Secretary of War, Henry L. Stinson, Chief of Staff, General George C. Marshall, and The Judge Advocate General of the Army, Major General Myron C. Cramer. All of these men favored the trial of war criminals. Their position was eventually adopted and by the end of September 1944 Secretary Stinson directed MG Cramer to establish a war crimes office within the Office of The Judge Advocate General.²⁶ Based on an agreement with the Navy and the State Department, this office later became the National War Crimes Office. Its mission "was to collect evidence of cruelties, atrocities, and acts of oppression against members of the U.S. Armed Forces or other Americans and to apprehend, try, and execute sentences on persons against whom cases were developed."²⁷

At about the same time this was taking place, the Supreme Headquarters Allied Expeditionary Force (SHAEP) established, on 20

August 1944, a standing court of inquiry in its personnel section (G-1) " to collect and preserve evidence 'only in cases involving allied military personnel.'²⁸" Unfortunately, this organization did not move with the armies, but only reviewed evidence brought to it. It was, however, a beginning. Just prior to allied troops crossing into Germany in the first week of September 1944, SHAEF directed its Army commanders to take all war criminals into custody, but no orders or instructions were given on how to investigate war crimes.²⁹

D. CREATION OF WAR CRIMES GROUP.

On the morning of 16 December 1944, the German Army began the Ardennes Offensive, better known as the Battle of the Bulge.³⁰ This offensive was lead by the 1st Panzer Regiment of the 1st SS Division, Adolf Hitler's Bodyguard, commanded by Colonel Joachim Peiper, one of the youngest regimental commanders in the German Army.³¹ During the first seven days of this operation, Colonel Peiper and his men were involved in several war crimes. These included the killing of seventy-two American prisoners of war at the Bougniez Crossroads on the afternoon of 17 December 1944³² and the killing of numerous other American soldiers and Belgium civilians over the seven day period. Their criminal acts have become known as the "Malmedy Massacre". When news of these events³³ reached the United States, there was a great outcry. The Army was on its way to investigating and prosecuting numerous war crimes. The controversial techniques used in investigating the

Malmedy Massacre will be discussed later in this article.

The Judge Advocate General of the Army directed on 25
December 1944³⁴ that the European Theater Judge Advocate establish
a war crimes office. In response, the War Crimes Group was
created in February 1945.³⁵ Also in February, General Eisenhower
directed that all U.S. Army groups establish a war crimes branch
in the judge advocate sections of their headquarters.³⁶ The Army
organization for investigating and prosecuting war crimes was
beginning to take shape, but it was not yet being manned and the
war was soon to be concluded.

E. NUREMBERG WAR CRIMES TRIALS.

1. International Military Tribunal.

Before continuing the review of the Army organization for
war crimes trials, it is important to make a short side trip to
see where the Nuremberg trials fit into the overall war crimes
trials puzzle. While the Army struggled with the issue of how to
investigate and prosecute the more traditional war crimes, the
allies were attempting to work out how to deal with the so-called
major war criminals. The United States, after much internal
struggle, proposed to try the Nazi leaders based on a conspiracy/
criminal-organization plan theory.³⁷ The British opposed the
idea of an international tribunal (a treaty court), which was
essential to the American plan, and were still insisting on
summary executions of the Nazi leaders at the time of President
Roosevelt's death on 12 April 1945.³⁸ After President Truman took
office, he approved the American plan and appointed Supreme Court

Associate Justice Robert H. Jackson as Representative of the United States and Chief Counsel for the Prosecution of War Crimes.³⁹ Also, during April, a special war crimes planning group was created in the War Department with the responsibility for drafting the basic documents, "preparing the case against The Major Nazi Criminals", and assisting Justice Jackson.⁴⁰ After this, the Army was no longer directly involved in the Nuremberg war trials, although army officers did assist Justice Jackson with the prosecution. In San Francisco in May 1945, Britain agreed to the basic American plan. The four allied powers approved the London Agreement and Charter, which was the basis for the Nuremberg International Military Tribunal,⁴¹ on 8 August 1945.

The International Military Tribunal held its first session on 18 October 1945 in Berlin.⁴² The Tribunal consisted of one member and one alternate member from Great Britain, the United States, France and the Union of Soviet Socialist Republics.⁴³ The two soviet members were military officers and the other members were civilians. Each of the four countries had their own prosecution team. The proceedings in Nuremberg began 14 November 1945 and lasted until 10 October 1946. The tribunal tried 22 of the top Nazi leaders, including Reich Marshal Hermann Goring, Rudolf Hess, Albert Speer, and, in absentia, Martin Borman.⁴⁴ Of the 22 tried, 19 were convicted. The International Tribunal tried no other cases.

2. U.S. Military Tribunals.

It was then decided to establish at Nuremberg several U.S. military tribunals which tried twelve trials from 26 October 1946

until 14 April 1949. These tribunals were made up exclusively of American civilian judges and the cases prosecuted by Army officers, who were assigned to the Office of the Chief Counsel for the Prosecution of War Crimes and under the direction of Brigadier General Telford O⁴⁵Taylor. These were "dubbed" the trials of "second string"⁴⁶ criminals and involved such famous cases as the "doctors' case", the "lawyers' case", the trial of the senior executives of "IG - Farben", and the trial of Alfred Krupp Von Bohlen und Holbach and 11 senior executives of his firm. In total 184 accused were tried in these cases with 142 being convicted.⁴⁷⁴⁸

F. WAR CRIMES GROUP.

Lets now return to February 1945 and the creation of the War Crimes Group in the European Theater and General Eisenhower's direction that war crimes investigation groups be created for all U.S. Army Groups. There were to be 19 formal War Crimes Investigating Teams, 8 assigned to Headquarters, Twelfth Army Group, for attachment to its Armies; 3 to Headquarters, Sixth Army Group, for attachment to its Armies; 6 to the Headquarters of the base sections, Communication Zone; and 2 under the immediate operational control of the War Crimes Group.⁴⁹ "Only seven of these teams were organized before the war ended."⁵⁰

The officer selected to head the War Crimes Group was Colonel Clio E. Straight.⁵¹ Colonel Straight was called to active duty in September 1940 as a Captain.⁵² His previous military experience was one two week tour of duty with the 7th Corps Area Headquarters located in Omaha, Nebraska.⁵³ He had never tried a

criminal case. He initially was assigned to the Quartermaster General's Office, where he worked on government contracts, and later with the Corps of Engineers. In December 1944, he was assigned to Europe,⁵⁴ to the Channel Bay Section located in Belgium. In March of 1945, he received a call from Brigadier General Betts, who was the Staff Judge Advocate of the European Theater of Operations, and was told by him that he was to take over the war crimes operation.⁵⁵ Within 24 hours Colonel Straight was on a plane to Paris to begin organizing the War Crimes Group. It should be noted that besides not having tried a criminal case, Colonel Straight had never worked with or studied international law. Arriving in Paris he found a small staff and little or no direction as to what he was to do or how. His first task was to obtain more people to process the cases which were beginning to pile up. In his final report, Straight comments on this problem:

...There being no appreciation of the tremendous number of war crimes which had been and were being committed, the hasty plans as to organization, personnel, equipment and facilities were inadequate for the mission at hand. Furthermore, the War Department took no effective steps to make trained or untrained personnel available and it was not until the end of hostilities that a substantial number of personnel for the war crimes operation could be made available within the European Theater. 56

There was also a shortage of equipment. By the end of May 1945 it became apparent that the War Crimes Group needed to be closer to the field organizations.⁵⁷ In June, it was moved to Wiesbaden, Germany. The War Crimes Group had not yet tried a case. However, some war crimes cases had been tried, the first being tried by a First Army Military Commission on 7 April 1945.

1. Army Judge Advocate Sections.

Because the War Crimes Group was not yet fully operational, the Judge Advocate sections of the various armies had the responsibility to investigate and report war crimes. In some instances they also tried cases, as was done by the First Army. An example of how a Judge Advocate Section organized for this mission can be found in the Final After Action Report of the Fifteenth U.S. Army Judge Advocate Section. This Section was activated with the Fifteenth Army on 21 August 1944. It was divided into five branches: Administrative, Military Justice, Military Affairs, Military Government, and War Crimes. The War crimes Branch was further divided into three branches: Administrative, Operations, and Field Investigation. During the first half of 1945, this Judge Advocate Section had responsibility for investigating all war crimes within the Fifteenth Army area, which included the Army's involvement in the Battle of the Ruhr Pocket. It was initially given no extra personnel for this mission, and the lack of trained personnel continued throughout the war. The Army Judge Advocate exercised his authority over war crimes by requiring all judge advocates and commanders to report to the Army headquarters all pending or new cases of war crimes. The guidance given for reporting war crimes is found at Appendix A.

When finally manned, the War Crimes Branch was staffed with six officers, seven enlisted men, and five French military investigators. This grew to 16 officers and 24 enlisted men. Unfortunately, the sole qualification of many of them was the ability to be an interpreter. "There was a great need for

stenographers, typists, skilled investigators as well as
automobile transportation and drivers." ⁶³ During its existence,
the branch received 507 reports of war crimes and prosecuted a war
crimes trial. ⁶⁴ This trial, beginning 1 June 1945, was the second
war crime trial held by the U.S. Army in World War II. ⁶⁵ The three
accused were found guilty of killing a downed American flier,
sentenced to death, and were hung on 29 June 1945. See Appendix B
for a copy of the military commission convening order. ⁶⁶ The
lessons learned by the Fifteenth Army, Judge Advocate Section, War
Crimes Branch are best described by the Army Judge Advocate,
Colonel Julien C. Hyer:

The experience in connection with the war crimes investigations and prosecution in the Fifteenth Army clearly pointed to the fact that: (1) sufficient recognition by higher headquarters beyond Army Group was not given to the need for personnel and training until too late, (2) trained personnel were not made available when the need arose, (3) enough importance was not attached to the repeated requests of Fifteenth Army for staff and equipment for investigating war crimes, and (4) no well worked out, systematic plan for detection and apprehension of war criminals was ready as Germany was invaded and occupied. Because of the foregoing, the mission in connection with war crimes was inadequately met and comparatively few of the guilty were brought to justice. Full measure of praise, however, should be given to the few who did so much with so little under such trying conditions. ⁶⁷

2. Move to Wiesbaden.

After moving to Wiesbaden, the War Crimes Group began to hold war crimes trials. The first case was prosecuted by Lieutenant Colonel Leon Jaworski in Darmstadt, Germany, on 25
⁶⁸ July 1945. The War Crimes Group had now expanded its mission from investigating to trying war crimes. In these cases the accused was assigned a military defense counsel and given the

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opportunity to be represented by German counsel of their choice.
To insure fairness three interpreters were assigned to each case,
two official interpreters and one interpreter for the defense. If
there was any disagreement on translation all three had to agree. 70

Lieutenant Colonel Jaworski also prosecuted, in October 1945
the first case involving mass murder, the Hadamar Case. This case
involved a sanatorium located in Hadamar in which its staff
killed, by injection, the mentally ill and laborers from Poland
and Russia. Many more cases involving multiple accused and
multiple victims would be tried.

The personnel in the Twelfth Army Group Headquarters War
Crimes Branch were transferred to the War Crimes Group after it
was moved to Wiesbaden. The Group then began operating the
newly created War Crimes Evidence and Investigation Center. 72 See
Appendix C for its organization at the time.

The Group continued to be short of personnel and this
hampered its ability to investigate cases, locate defendants, and
prosecute cases. 73 Gradually, it obtained its own vehicles and
found it more expedient to perform its own second and third
echelon maintenance. 74 An additional difficulty during this time
was caused by the operational responsibility being with the Armies
and the Group not having the authority to direct the war crimes
branches as to which cases should be investigated and in what
priority. 75 In other words, the control of the war crimes effort
was not centralized. However, by the end of June 1945, all 19 War

Crimes Investigating Teams were organized, staffed, and assigned as discussed earlier.⁷⁶

During the summer of 1945, the Third U.S. Army was assigned occupational responsibility for the Eastern Area of the U.S. Zone of Occupation of Germany, and the Seventh U.S. Army was assigned occupation responsibility for the Western Area.⁷⁷ Each Army established a Central Suspect and Witness Enclosure within its Area. The Civilian Internment Enclosure No. 78 near Ludwigsburg was used by the Third Army, and the Dachau Concentration Camp near Munich was used by the Seventh Army.⁷⁸ War criminal suspects could now be segregated from other detainees.

3. Organized as 7708 War Crimes Group.

Beginning in June 1946, the War Crimes Group personnel status started improving as to numbers assigned, but many of the new personnel were not trained and lacked experience.⁷⁹ During the second half of 1946, all operational responsibilities for the investigation and trial of war crimes was assumed by the Theater Headquarters. After this assumption, a War Criminal Prison was established at Landsberg, Germany, to incarcerate convicted war criminals; all war criminal suspects and unfriendly witnesses to war crimes were moved to the Dachau War Crimes Enclosure; and all war crimes tribunals moved to Dachau.⁸⁰ All other personnel assigned to War Crimes Branches and the War Crimes Investigating Team personnel were then assigned to the War Crimes Group, as were those officers who were serving as members of the tribunals. The War Crimes Group was then moved to Augsburg, Germany in October

1946 and organized on 26 October as the 7708 War Crimes Group, commanded by the Deputy Judge Advocate for War Crimes, Colonel Clio Straight.⁸¹ The organization of this Group is at Appendix D. The Group later moved to Freising, Germany, and finally to McGraw Caserne, Munich, Germany in September 1947.

The War Crimes Group experienced a number of difficult and complex problems. Above all else it suffered from a shortage of personnel and, when this improved, a lack of trained personnel. At the same time, it did not have the authority, until October 1946, to control and direct the investigation of war crimes. This was especially difficult when military witnesses were scattered by redeployment to other theaters, civilian witnesses were often imported slave labor and were attempting to return home, and the alleged perpetrators were making every effort to hide.⁸²

Additionally, the overwhelming number of cases made it very difficult to decide which cases should be further developed. After several screenings there were still 12,000 people incarcerated at the Dachau War Crimes Enclosure on 20 September 1946.⁸³ In the end, only those cases considered of comparative major importance were tried.⁸⁴ It should be pointed out that the initial war crimes cases were tried before military commissions, but after 14 October 1946, all cases were referred to Military Government Courts appointed by the European Theater Headquarters.⁸⁵ The court members were permanently assigned to the War Crimes Group. In addition, all military defense counsel and all prosecutors were also assigned to the War Crimes Group. During most of 1947, eight Military Government Courts were in session at the same time at Dachau.⁸⁶

Besides investigating and prosecuting cases, the War Crimes Branch also had to prepare a formal written review of each case, including recommendations as to finding and sentence. These reviews were quite similar to a detailed post-trial review for a General Court-Martial.

The last trial was completed on 12 December 1947, and all reviews by 28 April 1948. In his final report, Lieutenant Colonel Straight (having reverted to his regular army rank) made the following conclusion: 1.) If a large war crime operation, involving other nations, is necessary, there should be a central agency for the recording of information as to names, description, and other pertinent data as to wanted war criminal suspects and witnesses and their location, if incarcerated; 2.) Evidence should be collected as soon as possible after the crime is committed. Witnesses should be interrogated and criminals apprehended before they scatter. " Experienced lawyer investigators must follow close behind the advancing armies in such numbers as to assure prompt development of cases." Work should be done by experienced lawyers; 3) War criminal suspects and unfriendly witnesses to war crimes should be detained in a central location from the beginning to expedite investigations; and 4) The entire war crimes operation should be centralized in a War Crimes Group from the beginning.

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4. Malmedy Massacre Investigation.

An excellent and controversial example of some of the problems incurred by the War Crimes Group is the investigation of

the Malmedy Massacre. As mentioned earlier, the Malmedy Massacre took place in mid-December 1944. It was initially investigated by the First Army's Inspector General's section on 14 January 1945,⁸⁸ and later the evidence was reviewed by the SHAEF standing court of inquiry. However, nothing else was done until the investigation of the case was given to Major Dwight Fanton, a member of the War Crimes Group investigation section, at the end of June 1945. Fanton was a lawyer, but did not speak German.

Initially, Fanton drove, with an interpreter, from internment camp to internment camp, attempting to locate members of Peiper's command. He met with little success until he read in the Stars and Stripes, in mid-August, that Peiper was being held in a POW camp near Munich.⁸⁹ Eventually, about one thousand suspected criminals from Peiper's task force were incarcerated in Enclosure 78. In October, two new interrogators were assigned to Fanton, Lieutenant William Perl and Harry Thon. When the suspects were initially interviewed they all stuck to the same story and no progress was made in the investigation. It was obvious that they were comparing stories after each was interrogated.⁹⁰ It was then suggested by Lieutenant Colonel Burton Ellis, who was assigned to the case as the chief prosecutor, that the most suspected men be moved to a prison where they could be separated from one another and then interrogated.⁹¹ About 500 prisoners were then moved, in December 1945, to Schwabisch-Hall where they were incarcerated in individual cells, not permitted to have contact with each other, and interrogated individually. The interrogators then began to have success and were able to obtain confessions and incriminating

statements. Two controversial things took place during these interrogations. First, when a prisoner was moved from his cell to the interrogation room, a black hood was placed over his head. This was done to keep the prisoners from knowing who was being interrogated and where in the prison certain prisoners were located. The second controversial thing was the staging of Mock Trials. It was suggested to Ellis by Perl that the "Schnell Procedure" be used. Three men would sit behind a table covered with a black cloth on which stood two lighted candles and a crucifix. A crucifix was found in most German Courts and helped provide an atmosphere of an official and serious nature. The suspect would be brought into the room, lighted only by the candles, and then have his hood removed. The dark room provided an eerie and solemn atmosphere. The three interrogators would act like they were trying the suspect, with one being the tough guy, one the softee, and one the mediator. Ellis attended two of these and decided they were neither man nor time efficient and had them stopped. In his opinion little information was gained, based on the time and manpower required.⁹²

Of the 73 defendants tried for the Malmedy Massacre, all were convicted and forty-three received the death sentence in a trial lasting from 16 May 1945 to 16 July 1946.⁹³ After the trial several defendants alleged that they had been physically abused. As a result there was a Senate Hearing in 1949⁹⁴ which looked into the case, but it was never established that prisoner abuse took place.⁹⁵

G. Far East War Crimes

The U.S. Army was also involved in investigating and prosecuting war crimes in the Pacific Theater. The International Military Tribunal for the Far East was established by General Douglas MacArthur, as Supreme Commander, on 19 January 1946.⁹⁶ The Tribunal was created to try the major Japanese leaders for offenses similar to those tried at the Nuremberg International Military Tribunal (for plotting and waging the Pacific War). The Potsdam Declaration of 26 July 1945, issued jointly by Britain, China, and the United States, and subsequently subscribed to by Russia, established the basic policy for trying the Japanese war criminals.⁹⁷ The tribunal consisted of judges from America, Great Britain, Australia, Netherlands, China, Philippines, France, Russia, Canada, New Zealand, and India. The original U.S. justice was John P. Higgins who resigned in July 1946 and was replaced by Major General Myron H. Cramer, who had retired as the Judge Advocate General of the Army.⁹⁸ The Far East Military Tribunal began in May 1946 and ended two and one-half years later on 4 November 1948. Twenty-eight war criminals were tried, with one being declared insane, two dying during the trial, and 25 convicted and sentenced.⁹⁹

The remaining war criminals, the so-called "B" and "C" criminals, were tried mainly by U.S. Army Judge Advocate Officers under the supervision of the Legal Section of the Supreme Commander for the Allied Powers. U.S. military tribunals tried cases in Yokohama, Manila, China, India, and the Pacific Islands.¹⁰⁰ There were 474 trials involving 1,409 accused.¹⁰¹ The

war crimes operation in the Far East experienced may of the same difficulties as those encountered in Europe: 1) a shortage of trained personnel; 2) an initial unawareness of the size of the task; and 3) difficulty in locating and identifying accused war criminals.

IV KOREA AND VIETNAM WAR EXPERIENCES

A. Korea.

World War II was not the end of the U.S. Army's involvement with investigating and prosecuting war crimes. In the midst of the United Nations counter offensive in September 1950, evidence came to light of a large number of war crimes having been committed by the North Koreans, against civilians and military prisoners of war, as they retreated northward.¹⁰²

The initial responsibility for investigating, accumulating evidence, preparing for and conducting war crimes trials, and reviewing their result was assigned to the Eighth Army Staff Judge Advocate by Staff Memorandum No. 40, 14 July 1950, Far East Command Headquarters.¹⁰³ This was followed by a Command Letter to all commanders on 27 July 1950 outlining how evidence on war crimes should be collected and processed and requiring the use of judge advocates in supervising the program.¹⁰⁴ The letter provided for the:

... investigation of those incidents reported where further action was deemed appropriate. The objectives were set forth as twofold. The first was to perpetuate all available evidence so as to permit the trial of the alleged war criminal at a subsequent date solely upon the evidence furnished by the report, in the absence of witnesses, if necessary, and , secondly, to collect evidence which, when properly correlated with evidence from other sources, might permit the fixing of responsibility at levels above that of the immediate perpetrators. All evidence having probative value to a reasonable man was to be received and included.¹⁰⁵

In October 1950 a War Crimes Division was created in the Eighth Army Judge Advocate Section with an authorization (TDA) of 26 Officers, a warrant officer, and 35 enlisted soldiers.¹⁰⁶ The

division was further organized into three branches:

Administrative, Investigation and Apprehension, and Trial.¹⁰⁷ In the beginning this division had difficulty obtaining housing and office space in Seoul. The "supply support was poor to unsatisfactory",¹⁰⁸ and little information was received from field units concerning war crimes.¹⁰⁹ This sounds very similar to the problems incurred by the War Crimes Group in Germany when it was established in February 1945.

As part of the operation, field investigating teams were organized and given the responsibility of going to the location where a war crime allegedly took place and determining if one had been committed. Normally, information came from the confession of a prisoner of war and then it was given to an individual officer for investigation. He would go to the location, accompanied by a driver and an interpreter, and attempt to locate physical evidence. At the same time, he would question the local population in an attempt to locate witnesses or survivors.¹¹⁰

Beginning in March 1952, cases were screened and divided into two categories: those which were substantiated by other evidence, and those based solely on confessions or statements of prisoners of war.¹¹¹ In April the division moved to Taegu and emphasis was placed on completing case files to make them "legally sufficient as triable war crimes".¹¹² Because there were limited personnel available to go to the location of alleged war crimes to locate evidence, such as bodies, the Graves Registrataion units were used

to help confirm that bodies were recovered from the cite of the
alleged crimes.¹¹³ Prior to March 1951, the Graves Registration
Units did not pin-point the sites of where bodies were actually
recovered and this made it difficult to obtain accurate
information. Once coordination was made with Graves Registration
Units and they understood the need for evidence of war crimes,
they began to accurately record the location of the bodies and
note if there were unusual wounds, if hands and/or feet were
bound, and if the body was naked.¹¹⁴ Checks were also made through
the local Republic of Korea National Police for additional
evidence.

Effective 1 September 1952, the War Crimes Division was
transferred to the Korean Communications Zone.¹¹⁵ It was then
directed to compile and prepare a historical and statistical
report on all war crimes to have available for reply to requests
for informataion and demands for data.¹¹⁶ In November 1952, a
historical branch was created to comply with this directive.¹¹⁷
By June 1953, there were 1643 case files, of which, 34 were
complete and prepared for trial.¹¹⁸

Because of the prisoner of war exchanges and the nature of
the truce which ended hostilities in Korea, no war crimes trials
were held. Interestingly, both Brigadier General Straight and
Colonel Ellis served in Korea, but neither worked with war
crimes.¹¹⁹

B. Vietnam.

The Army spent little time during Vietnam dealing with enemy war crimes. There was no War Crimes Division or War Crimes Group and no war crimes trials. However, a system for handling enemy war crimes was set out in MACV Directive 20-4, 18 May 1968.¹²⁰

(See Appendix E) This directive required that all war crimes be reported by soldiers to their commanding officer, who would then report this fact to the MACV Staff Judge Advocate. The Staff Judge Advocate was required to notify the appropriate appointing authority, assist and advise the investigating officer, review investigations, and maintain a file on all war crime investigations. The appointing authority was required to appoint an investigating officer and, where appropriate, a qualified criminal investigator as a technical assistant to investigate every reported incident. The investigating officer was required to determine the facts and circumstances surrounding the reported war crime, collect all necessary evidence and prepare and submit, without delay, his report to the appointing authority. It is unknown if this procedure was ever used for an enemy war crime,¹²¹ but there is evidence that enemy war crimes were committed.

V. LESSONS LEARNED

To prepare for future wars it is important that we understand what has taken place in the past. With this in mind the following list of lessons learned is offered for review and analysis to be used as a basis for planning how to investigate, prosecute, and review enemy war crimes for the next war. These lessons learned are based on the preceding review of the Army's role in investigating, prosecuting, and reviewing enemy war crimes since 1944.

1. The earlier war crimes are investigated, the more likely a case will be complete and provable. The Army does not make the decision to hold war crimes trials because this is a political decision. However, the Army should be aware of the importance of beginning early and share this fact with political authorities.
2. In both World War II and Korea there was a shortage of personnel, which hampered the investigation of war crimes. It is imperative that a sufficient number of personnel be made available.
3. In addition to being short of personnel, there was also the problem of obtaining trained personnel. Both officer and enlisted soldiers must be trained, prior to a conflict, on how to properly investigate a war crime. Such training should include instruction on interrogating witnesses and suspects, and guidance on how to prosecute a war crimes case.

4. Besides personnel, a war crimes operation needs support as to housing, office space, supplies, administrative assistance, and transportation. This must be planned ahead of time and be available as soon as needed.
5. The head of the war crimes operation must have control over the entire effort to allow emphasis and priority to be placed in the appropriate location at the correct time. Without centralized control over all assets, personnel will be diverted to other missions and effort expended on the wrong cases.
6. War crimes teams must be a part of or follow very closely combat organizations, otherwise key witnesses and evidence will be gone before a case is investigated.
7. Under the current organization a Staff Judge Advocate's office does not have enough officers or a large enough staff to accomplish the extra mission of investigating, prosecuting, and reviewing enemy war crimes in a full war.
8. Other than for preliminary investigations, all war crimes investigations need to be supervised by an attorney. Without legal input, investigations will not be complete.
9. In the event a large number of enemy troops surrender or are captured, facilities need to be available to separate suspected war criminals from other prisoners of war. To aid in this endeavor a workable system must be developed to record the names of suspects, their units, and the type of crime, to be used in screening captured soldiers.

10. There must be a procedure available, prior to war, which outlines how enemy war crimes will be reported and investigated. All military personnel should be trained in the use of this procedure.
11. If several accused are suspected of being involved in the same war crime, they should be segregated as soon as possible after coming under military control. This will prevent suspects from sharing alibis and covering for each other.
12. No bizarre methods should be used to interrogate prisoners. They are expensive, in both time and money, and the adverse publicity they generate can cast a large shadow on the entire operation.
13. All Grave Registration Teams should be trained on war crimes trials issues to insure that all significant facts concerning a body are properly recorded.
14. Suspected war criminals should be provided counsel and their trials should be fairly conducted. This brings with it world support and approval.
15. All trials should be open to the public.
16. After evidence has been collected, it should be examined for possible use as a psychological or diplomatic tool or for political purposes in general.

VI CURRENT ORGANIZATION

As was the case in World War II, the Army is today the primary service concerned with enemy war crimes. Its overall mission is set out in Department of Defense Directive 5100.77, para E.2.f.:

The Secretary of the Army is designated as the Executive Agent for the Department of Defense for the administration of the DOD law of war program with respect to alleged violations of the law of war committed against U.S. personnel. In this capacity, the Secretary shall act for the Department of Defense in the development and coordination of plans and policies for the investigation and, subject to the provisions of DOD Directive 5000.19 (reference (m)), collection, recording, and reporting of information related to enemy violations of the law of war.¹²³

Besides making the Army the Executive Agent for DOD this same directive makes it part of DOD policy to ensure that "Alleged violations of the law of war, whether committed by or against U.S. or enemy personnel, are promptly reported, thoroughly investigated, and, where appropriate, remedied by corrective action". It also assigns to each Military Department the mission of developing policies and procedures which "[p]rovide for the prompt reporting and investigation of alleged violations of the law of war committed by or against members of their respective Departments...".¹²⁴

The Army implementation of the DOD Directive is found in Chief of Staff Regulation No. 11-2, dated 7 May 1975.¹²⁵ This regulation assigns to the Deputy Chief of Staff for Personnel the responsibility for developing and coordinating "policies, plans, and programs for the prompt reporting and investigation of alleged violations of the law of war committed by or against Department

of the Army personnel." The same regulation makes The Judge Advocate General responsible for:

...

(2) Providing support through war crimes teams or other resources for necessary investigation, collection, collation, evaluation, and reporting in connection with war crimes alleged to have been committed against U.S. personnel.

(3) Maintenance of custody of records of war crimes trials conducted by U.S. Army personnel with respect to war crimes against U.S. Personnel.

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The Judge Advocate General's Corps is organized to accomplish its mission in three ways. First, all Staff Judge Advocates (SJAs) are assigned the responsibility of furnishing legal advice to their commanders concerning the "Administration of war crimes activities, investigation of alleged war crimes, and the conduct of war crimes trials".¹²⁸ Secondly, there are 22 International Law and Claims Judge Advocate General Service Organization (JAGSO)¹²⁹ Teams to augment SJA offices, where needed, who are trained to investigate and report war crimes and to prepare war crimes trials.¹³⁰ And, lastly, there are Individual Mobilization Augmentee positions, such as the Law of War Compliance Division in Europe,¹³¹ whose war time mission is the coordination of war crime investigation, prosecution, and review.

The JAGSO teams mentioned above are composed of five officers and four enlisted soldiers. Each team is capstoned to an active SJA office. This appears to be an excellent way to prepare for the next war, but there are some unanswered questions concerning this organization. Initially, if you read Army Regulation 27-4¹³²

it refers to international law teams and to claims teams.

Sometime in 1985 these two teams were combined into one, but this is not reflected in any regulation. When you review the Standard Training tasks it appears that the International Law tasks are geared to and focus on war crimes our soldiers might commit and not war crimes of the enemy. Training should include both. An unanswered question is who would defend enemy war criminals? We provided defense counsel for accused German war criminals. Will, or should we, do this in the future? If so, will counsel come from the Army Trial Defense Service? Besides these issues one also has to ask if there are enough teams. After World War II the War Crimes Group in Europe alone had approximately 2000 personnel assigned to it. Are the current 22 JAGSO teams (198 officers and enlisted soldiers) enough for the next war, or at least a sufficient base from which to grow to meet the challenges of the next war? The answers to these questions are beyond the scope of this paper, but the review and decisions required to answer them will further prepare the Army for investigating, prosecuting, and reviewing enemy war crimes committed in the next war.

CONCLUSION

No one knows what the future will bring. The Army may never again be involved in a war crimes organization as large as World War II. However, it is important that it be prepared to meet the needs of a World War II as well as a Vietnam.

As discussed, the amount of manpower and effort used varies extensively. The current JAG organization and planning for dealing with the war crimes of the enemy establishes a framework to meet these needs. In a low intensity to mid-intensity conflict, Staff Judge Advocates have enough organic manpower and personnel to properly investigate, prosecute, and review war crimes. As you move from mid-intensity to full war there will be a point when it will be necessary to use JAGSO teams and reserve units. This should correspond with the overall reserve needs of the Army.

Some SJAs may be concerned about the requirement to investigate war crimes, because traditionally investigation is an MP, CID, IG mission and not a JAG mission. It should be noted that the MACV directive gave this mission to the commander with advice from the SJA. However, because of the importance of taking complete and comprehensive statements--which would be admissible in an enemy war crime trial where the rules of evidence are relaxed--and of gathering each bit of evidence, an attorney should either conduct the investigation or actively be involved, as an advisor, in it.

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The history of war provides a meaningful list of lessons

learned on how to investigate, prosecute and review enemy war crimes. The current JAG organization for handling enemy war crimes is workable, but only if the officers who implement it understand the issues involved. It is hoped that this paper provides a starting point for such understanding.

ENDNOTES

1. Tutorow, Norman E. War Crimes, War Criminals, and War Crimes Trials. New York:Greenwood Press. 1986. pp.4-8. There is no exact or complete list of war crimes trials held following World War II. The United States, Great Britain, France, USSR, Canada, Australia, Netherlands, Norway, China, and Poland all held war crimes trials. It is estimated that the United States alone held approximately 900 war crimes trials involving more than 3,000 defendants. The majority of these cases were prosecuted by the U.S. Army. The British prosecuted approximately 662 cases, the Australians 296, the Dutch 448, and the Soviets more than 10,000.
2. Straight, Clio E., Lieutenant Colonel. Report of the Deputy Judge Advocate for War Crimes, European Command, June 1944 to July 1948. p.160. This document is an excellent review of the war crimes operation in Europe. It should be used as the starting point for any study in this area.
3. Interview with Brigadier General Clio E. Straight, USA Ret., Wilmington, Delaware, 14 December 1987 [hereinafter cited as Interview with Straight].
4. Id.
5. In helping to answer the questions suggested by this topic, Major General George Prugh, USA Retired, recommended that the author interview two retired army officers who played major roles in investigating and prosecuting enemy war crimes at the end of World War II. Based on his suggestion, Brigadier General Clio E. Straight, USA Retired, and Colonel Burton F. Ellis, USA Retired, were interviewed by the author and transcripts of those interviews prepared and made a part of the Military History Institute Senior Officer Oral History Program, located at Carlisle Barracks, Pennsylvania. The author thanks these officers for their time, interest, and sharing of ideas concerning enemy war crimes. Both interviews provide practical incites into the problems involved in prosecuting enemy war crimes.
6. Encyclopedia Americana. International ed. Danbury, Connecticut: Grolier Incorporated, 1987. Vol.28, p.333: "War Crimes".
7. U.S. Department of the Army. Field Manual 27-10: Law of Land Warfare (1956). p.4.
8. Id.
9. Smith, Bradley F. The American Road to Nuremberg. Stanford University, Stanford, California: Hoover Institution Press, 1982. p. 215; Tutorow, Norman E. War Crimes, War Criminals, and War Crimes Trials. New York: Greenwood Press, 1986. p.9

10. Keenan, Joseph B., and Brown, Brendon F. Crimes Against International Law. Washington, D.C.: Public Affairs Press, 1950.
11. Supra at 7.
12. Jaworski, Leon. After Fifteen Years. Houston, Texas: Gulf Publishing Company, 1961. pp. 53-54.
13. Smith, Bradley F. The Road to Nuremberg. United States: Basic Books, Inc., 1981.
14. Supra at 6, p.335. General George Washington had Major John Andre tried before a board of officers for spying, based on the then current international rules of war.
15. Supra at 12, p. 21.
16. Supra at 12, p. 33.
17. Jaworski, Leon. Crossroads. New York: Bantam Books, 1981. p.84.
18. Supra at 12, p.25.
19. The seventeen countries were: Australia, Belgium, Canada, China, Czechoslovakia, Denmark, France, Greece, India, Luxembourg, The Netherlands, New Zealand, Norway, Poland, United Kingdom, USA, Yugoslavia.
20. The United Nations War Crimes Commission. History of the United Nations War Crimes Commission and the Development of the Laws of War. London: Published for the United Nations War Crimes Commission by His Majesty's Stationery Office, 1948. p. 112.
21. Id., p.3.
22. Supra at 9, Smith, p. 13.
23. Supra at 13, p. 13.
24. Zienke, Earl F. The U.S. Army in the Occupation of Germany 1944-1946. Washington, D.C.: U.S. Government Printing Office, 1975. p. 170.
25. Supra at 13, pp. 23-29.
26. Supra at 24, p. 172.
27. Id.
28. Id., p. 170.

29. Id.
30. MacDonald, Charles B. A Time for Trumpets. New York: William Morrow and Company, Inc., 1985. P. 102.
31. Whiting, Charles. Massacre at Malmedy. New York: Stein and Day, 1971. p. 16.
32. Id., pp. 49-54.
33. Bower, Tom. The Pledge Betrayed. Garden City, New York: Doubleday and Company, Inc., 1982. p.89.
34. Supra at 24, p. 173.
35. Supra at 24, p. 219.
36. Supra at 2, p. 18.
37. Supra at 13, pp. 121-151.
38. Supra at 13, p. 190.
39. Supra at 24, p. 218.
40. Supra at 13, p. 206.
41. Supra at 9, Smith, p. 142 and pp. 212-220.
42. Secretariat of the International Military Tribunal. Trial of the Major War Criminals Before The International Military Tribunal. Nuremberg, Germany, 1947. p. 24.
43. Id., p.1.
44. Ruckerl, Adalbert. The Investigation of Nazi Crimes, 1945-1978. Shoe String Press: Hamden, Conneticut, 1980. p.24
45. Supra at 9, Tutorow, p. 11.
46. Id.
47. Id.
48. Supra at 44, p. 28.
49. Supra at 2, p. 21.
50. Supra at 24, p. 219.
51. Colonel Straight continued on active duty afer the war and in 1959 was promoted to Brigadier General. He retired as a Brigadier General in 1961.

52. Interview with Straight.
53. Id.
54. Id.
55. Id.
56. Supra at 2, p. 5.
57. Supra at 24, p. 391.
58. Hyer, Julien C. Colonel, Final After-Action Report, Judge Advocate Section, Fifteenth U.S. Army. 21 August 1944 - 8 May 1945. This type of report preserves for the future the legal history of World War II. It is critical that this and reports like it be studied and reviewed as the Army and The Judge Advocate General's Corps prepare for and plan for the next war.
59. Id., p.1.
60. Id., p.19.
61. Id., p. 3.
62. Id., Exhibit "C", p. 4.
63. Id., p. 19.
64. Id., p. 20.
65. Id., p.21. See Exhibit "M" for a full account of the trial, including numerous pictures.
66. Particular note should be taken of the direction concerning rules of procedure and evidence. "The Commission shall have regard for, but shall not be bound by rules of procedure and evidence prescribed for general courts-martial."
67. Supra at 58, p. 21.
68. Supra at 12, p. 60.
69. Supra at 12, p. 75.
70. Id.
71. Supra at 12, p. 103.
72. Supra at 2, p.7.
73. Id.
74. Supra at 2, p. 8.

75. Supra at 2, p.9.
76. Supra at 2, p. 225.
77. Id.
78. Supra at 2, p. 27.
79. Supra at 2, p.9.
80. Supra at 2, p. 10.
81. Id.
82. Supra at 2, p. 36.
83. Supra at 2, p. 44.
84. Supra at 2, p. 37.
85. Supra at 2, p. 46.
86. Supra at 2, p. 50.
87. Supra at 2, pp. 79-82.
88. Weingartner, James J. Crossroads of Death. Berkeley, California: University of California Press, 1979. p. 66.
89. Supra at 33, p. 118.
90. Supra at 33, p. 119.
91. Interview with Colonel Burton French Ellis, USA Ret, Merced, California, 11 January 1988. [hereinafter cited as Interview with Ellis].
92. Interview with Ellis.
93. None of these convicted war criminals were ever executed.
94. U.S. Congress. Senate. Committee on Armed Services. Subcommittee. Malmedy Massacre Investigation. S. Res. 42 1949, 81st Cong., 1st Sess. Washington: Government Printing Office, 1949.
95. This was the beginning of many such hearings in which Senator Joseph McCarthy was a principal player.
96. Appelman, John Alan. Military Tribunals and International Crimes. Westport, Connecticut: Greenwood Press, 1954. p.238. See also, Brackman, Arnold C. The Other Nuremberg: The Untold Story of the Tokyo War Crimes Trials. New York: William Morrow and Company, Inc., 1987.

97. Piccigallo, Philip R. The Japanese on Trial: Allied War Crimes Operations in the East, 1945-1951. Austin, Texas: University of Texas Press, 1979. p. 4.
98. Minear, Richard H. Victors' Justice: The Tokyo War Crimes Trial. Princeton, New Jersey: Princeton University Press, 1971. p. 86.
99. Supra at 96.
100. The Navy supervised and conducted the war crimes trials in the Pacific Islands (3 on Kawajallen Island and 44 on Guam). These were the first and only war crimes ever tried by the Navy. Supra at 98, p. 74.
101. Supra at 97, p. 48.
102. U.S. Congress. Senate. Committee on Government Operations. Subcommittee on Investigations. Subcommittee on Korean War Atrocities. Korean War Atrocities. S. Res. 40 1953, 83d Cong., 1st Sess. Washington: Government Printing Office 1954.
103. Extract of Interim Historical Report, War Crimes Division, Judge Advocate Section, Korean Communications Zone, APO 234, Cumulative to 30 June 1953. p.11.
104. Id.
105. Id.
106. Id., p.12.
107. Id.
108. Id.
119. Id.
110. Id.
111. Id.
112. Id., p. 13.
113. Id.
114. Id.
115. Id., p.14 .
116. Id.

117. Id.
118. Id., p. 20.
119. Interview with Straight and Interview with Ellis.
120. U.S. Military Assistance Command, Vietnam. Military Assistance Command, Vietnam Directive 20-4: Inspections and Investigations: War Crimes. Vietnam: 18 May 1968 (C2 10 February 1970).
121. Research Project Task force Final Report. Conduct of the War in Vietnam. Washington, D.C. 1971. Annex B. The collection of evidence of war crimes is useful, not only for prosecuting war criminals, but also for use as a political tool. The United States government did not use evidence of North Vietnam and Viet Cong war crimes as a political tool during Vietnam, but it could have. Evidence of war crimes was available.
122. It does not appear that any significant problems arose in prosecuting cases, but it is important that counsel have had criminal law courtroom experience before prosecuting war crimes.
123. Department of Defense Directive. Department of Defense Directive 5100.77: DoD Law of War Program. Washington, D.C., 10 July 1979.
124. Id.
125. U.S. Department of the Army. Army Chief of Staff Regulation 11-2: Army Programs: Implementation of DOD Law of War Program. Washington: 7 May 1975.
126. Id. In addition to the procedures mentioned here for reporting war crimes, they are also included as category 1 serious incidents and require a Serious Incident Report. U.S. Department of the Army. Army Regulation 190-40: Serious Incident Report. Washington: 1 September 1981. para 1-4 b(2).
127. Id.
128. U.S. Department of the Army. Army Regulation 27-1: Legal Services: Judge Advocate Legal Service. Washington: 1 August 1984. para 3-2a (3)(c).
129. U.S. Department of the Army. Army Regulation 27-4: Legal Services: Judge Advocate General Service Organizations: Organization, Training, Employment, and Administration. Washington: 1 January 1981. para 9 b(2).

130. U.S. Department of the Army. FORSCOM Circular 27-87-1: Legal Services: Reserve Component (RC) Legal Training Program. Ft. McPherson, Georgia: 1 April 1987.
131. This division, when activated, becomes part of the USAREUR Judge Advocate Office and is staffed with one Colonel and two Majors.
132. Supra at 129.
133. Supra at 130.
134. In Europe the investigation of enemy war crimes is a Criminal Investigation Division (CID) and Provost Marshal (PM) responsibility with SJA assistance until JASO Teams are deployed. Once deployed, the investigation becomes a JASO Team responsibility. USAREUR Regulation 27-8: Law of War Program. Heidelberg: 23 September 1982. para 7.

HEADQUARTERS FIFTEENTH U. S. ARMY
APO 408

In reply refer to:
OOO.5 - GNLJA

10 May 1945

SUBJECT: Reporting of War Crimes.

TO : See Distribution.

I. RECISSION.

1. Letter, Headquarters 12th Army Group, file O92.2 (JA), subject: Violations of Provisions of the Geneva Convention and Laws and Usages of War by Enemy Forces, dated 6 January 1945, which was distributed by first indorsement, this headquarters, dated 28 March 1945 has been rescinded.

II. SCOPE.

2. The following instructions are issued for the purpose of setting forth the method and procedure for reporting war crimes.

III. DEFINITIONS.

3. Pending instructions from higher authority, the following definitions of the terms "war crimes" and "war criminals" may be used as a guide for the purpose of reporting war crimes.

a. War crimes are violations of the laws and usages of war of general application and acceptance (including acts in contravention of treaties and conventions dealing with the conduct of war, as well as other offenses against persons or property which outrage common justice or involve moral turpitude) committed in connection with military operations or occupation, with or without orders or sanction of governments or commanders.

b. War criminals are those who have committed war crimes, or who have ordered, directed, or countenanced the commission of war crimes, without regard to their nationality or the capacity in which they acted.

IV. REPORTS.

4. Necessary action will be taken by all commanders to insure the proper coordination of sources of information within their commands, to the end that information respecting alleged war crimes (whether committed against members of the armed forces of the United

EXHIBIT "U", Final After-Action Report, Judge Advocate Section,
Fifteenth U.S. Army. 21 August 1944 - 2 May 1945.

States and other United States nationals, or against nationals of other nations) regardless of where committed, be promptly reported by such commanders, through channels.

5. Such reports will contain the information specified in Inclosure 1 insofar as practicable. This report will be forwarded to reach this headquarters in quintuplicate. Commanders of units which are under the general court-martial jurisdiction of this headquarters will use Inclosure 1, omitting paragraph 4 thereof.

6. Each such report will contain as an inclosure the following information, if known or available, as to the suspected perpetrator:

- a. Full name and title, accurately spelled.
- b. Physical description, with particular reference to obvious deformities, identifying marks, or unusual characteristics (to include photograph).
- c. Last known address or present locality.
- d. Office or position held in military or civilian life, or principal occupation.
- e. Other facts which would aid in identification and apprehension. If apprehended so state, giving place of detention.

7. Cases presently being processed under the provisions of letter, 12th Army Group, subject: Violations of Provisions of the Geneva Convention and Laws and Usages of War by Enemy Forces, file number 092.2 (JA), 6 January 1945, will be completed under the provisions of that letter.

V. PHOTOGRAPHY.

8. Where any of the physical evidence of the crime or atrocity is still obtainable, every effort will be made to record the evidence in the form of still or motion pictures. Photographic personnel of the Signal Corps will be utilized to assist in this respect. Any such pictures taken will be properly authenticated. The report of information of the alleged war crime submitted to this headquarters will include a statement to the effect that still or motion pictures have been or are being taken, if such is the case, and who has custody of the exposed film. Any such film exposed will be held for transmittal to this headquarters.

VI. COORDINATION OF WAR CRIME DATA.

9. To accomplish the purposes for which war crimes investi-

gations are made, close coordinations of all staff agencies is required with the view to furnishing the Judge Advocate Section of each command the maximum amount of data pertaining to war crimes.

VII. SECURITY.

10. In no case will the name of any individual connected with the investigation of war crimes, including investigators, witnesses or suspected war criminals, be released for publication, nor will any release for publicity as to alleged war crimes be authorized unless cleared by the War Crimes Branch, Judge Advocate Section, of this headquarters.

BY COMMAND OF LIEUTENANT GENERAL GEROW:

/s/ H. M. Page
H. M. PAGE,
Captain, A. G. D.,
Asst Adjutant General.

1 Incl:
Report Form

DISTRIBUTION:

"B" & "E"

150 - New Unit File
25 - JA, 15th A

(Form for reporting information of alleged war crimes)

SUBJECT: Report of Information of Alleged War Crime.

TO : Commanding General,
Fifteenth U. S. Army,
APO 408, U. S. Army,
Attention: Army Judge Advocate.

1. (Brief summary of incident, including nature, place and date of offense.)
2. (Victims. State names, rank, organization, nationality, and whether military or civilian.)
3. (Source of information, including names and addresses of witnesses, so far as known.)
- *4. The Staff Judge Advocate of this command is of the opinion that further investigation is (is not) warranted.

FOR THE COMMANDING GENERAL:

NOTE: Detailed investigation is not required; however, sufficient investigation should be made to establish that a war crime probably has been committed. Where it is imperative that investigation be commenced without delay, initial report should be made by message form or (with due attention to security) by telephone and confirmed by written report in the form of this Appendix.

This form will be forwarded so as to reach Army Headquarters in quintuplicate.

*Commanders of units which are under the general court-martial jurisdiction of Army Headquarters will omit paragraph 4.

Incl 1

EXHIBIT "J"

HEADQUARTERS FIFTEENTH U. S. ARMY
APO 408

SPECIAL ORDERS)

NUMBER 108)

19 May 1945

E X T R A C T

1. Pursuant to authority delegated to the Commanding General, Fifteenth U. S. Army by Commanding General, Twelfth Army Group, a Military Commission consisting of the following officers is hereby apptd to meet at the time and place designated by the President thereof for the trial of such persons as may be properly brought before it:

DETAIL FOR THE COMMISSION

Col Russell B Patterson O3 468 AGD, Hq Fifteenth US Army
Col Louis J Compton O7 419 FA, Hq Fifteenth US Army
Col Robert A Schow O12 180 GSC, Hq Fifteenth US Army
Col L Holmes Ginn Jr O17 341 MC, Hq Fifteenth US Army
Col Charles H Bryan O12 386 GSC, Hq Fifteenth US Army
Col Horace M Woodward Jr O10 188 CWS, Hq Fifteenth US Army
Lt Col George L Hecker O 288 071 GSC, Hq Fifteenth US Army
Maj Arnold N Davis O 335 510 JAGD, Hq Fifteenth US Army
Maj Theodore K Irwin O 510 568 JAGD, Hq Fifteenth US Army (TJA)
Capt Milton J Mehl O1 542 746 MAC, Hq Fifteenth US Army (Asst TJA)
Maj Richard T Brewster O32 117 Cav, Hq Fifteenth US Army (Def/C)
Capt Henry T Dunck O 418 573 CAC, Hq Fifteenth US Army (Asst Def/C)

The Commission, in conformity with Circular 14, Headquarters, Twelfth Army Group, 2 October 1944, as amended, shall have power, as required to make such rules for the conduct of its proceedings, consistent with the powers of such a commission as deemed necessary for a full and fair trial of the accused. The Commission shall have regard for, but shall not be bound by rules of procedure and evidence prescribed for general courts-martial. Such evidence shall be admitted as has, in the opinion of the President of the Commission, probative value to a reasonable man. Peremptory challenges shall not be allowed.

The concurrence of at least two-thirds of the members of the Commission present at the time of voting shall be necessary for a conviction or sentence.

The employment of an enlisted reporter is authorized.

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BY COMMAND OF LIEUTENANT GENERAL GEROW:

EXHIBIT "L", Final After-Action Report, Judge Advocate Section, Fifteenth U.S. Army. 21 August 1944 - 2 May 1945.

APPENDIX B

O. C. MOOD,
Colonel, GSC,
Chief of Staff.

OFFICIAL:

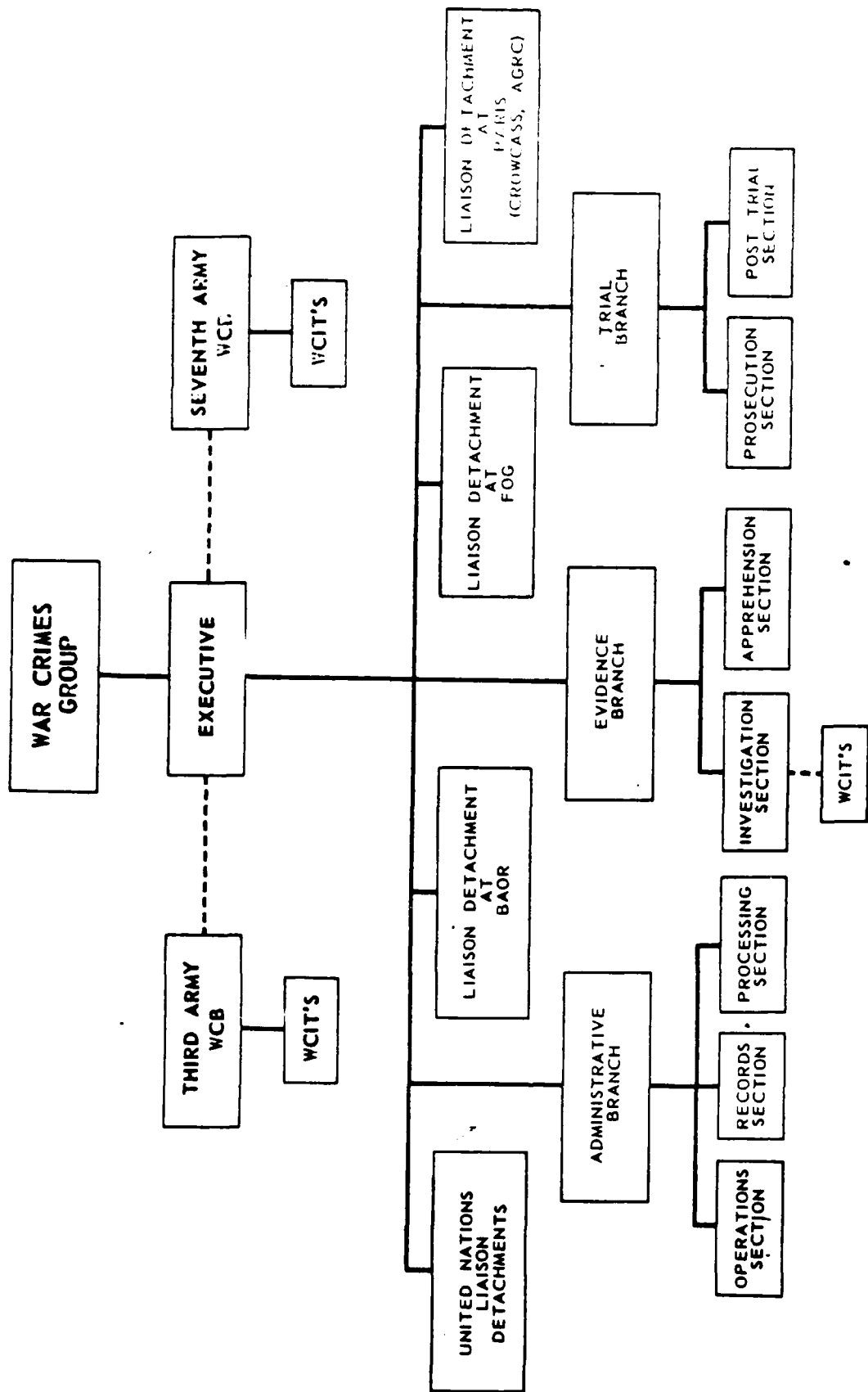
/s/ Robert M. Jones
ROBERT M. JONES,
Major, AGD,
Asst. Adj. Gen.

DISTRIBUTION:

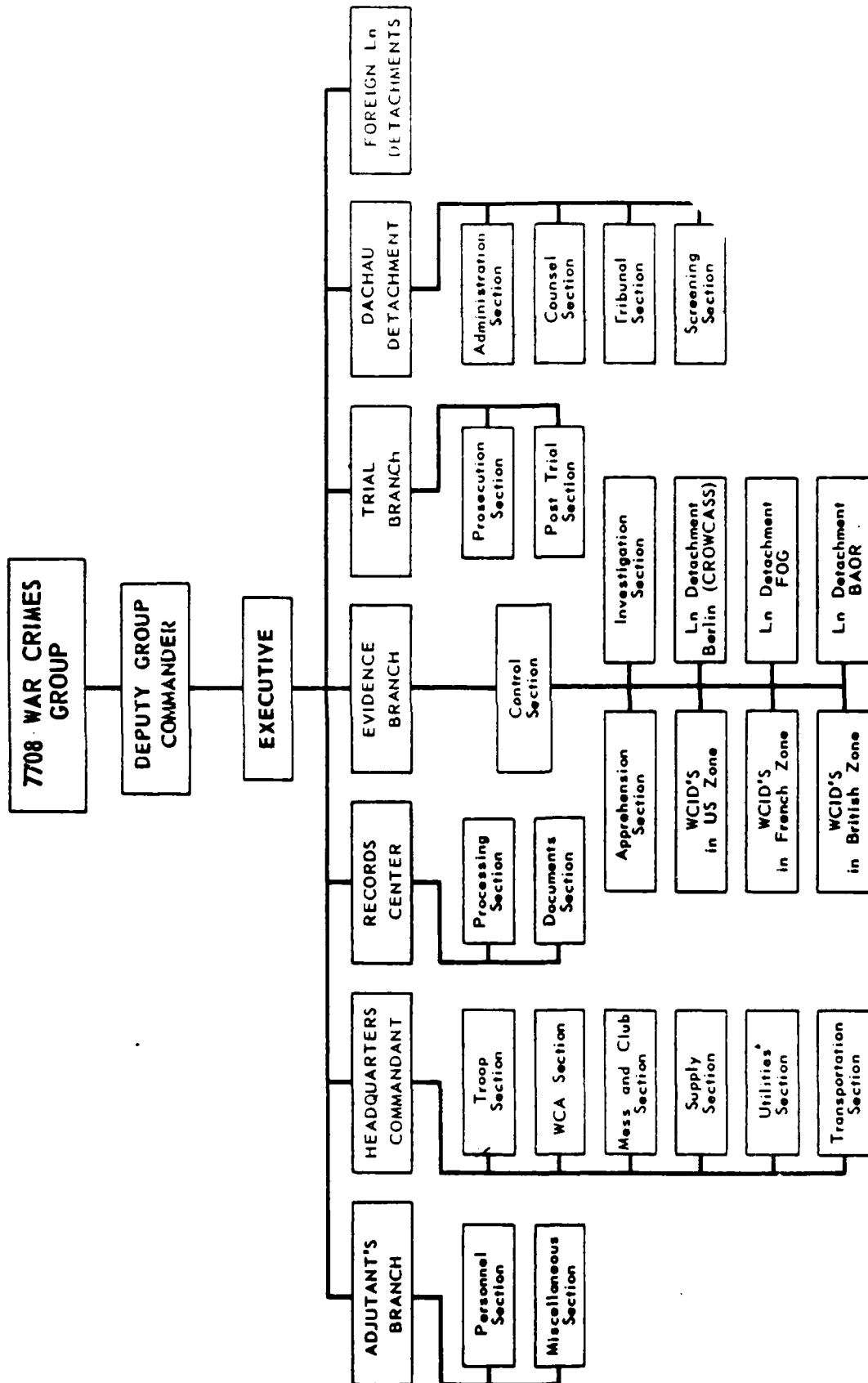
"B" & "X"

- 50 - JA Section
- 2 - Ea officer concerned
- 2 - CG, European T of Opns
- 2 - CG, 12th A Gp
- 2 - G-1
- 1 - Ea 201
- 1 - AG-R

EXHIBIT "L"



War Crimes Group - 2nd Phase - July 1945



7708 War Crimes Group - December 1946

HEADQUARTERS
UNITED STATES MILITARY ASSISTANCE COMMAND, VIETNAM
APO San Francisco 96222

CHANGE 2
DIRECTIVE
NUMBER 20-4

INSPECTIONS AND INVESTIGATIONS

WAR CRIMES

Directive Number 20-4, this headquarters, 18 May 1969, is changed as follows:

1. Page 3. Paragraph 5d(1) is superseded as follows:

- (1) Upon receipt of notification from the Staff Judge Advocate, MACV, or any other indication of an alleged or possible war crime concerning a member of his command, one of the following appointing authorities is to appoint, as soon as possible, an investigating officer to prepare and transmit to him a report of investigation. A qualified criminal investigator is to be designated to assist the investigating officer if considered appropriate by the appointing authority.
 - (a) Army. Officers who exercise general court-martial jurisdiction (or their designees) are appointing authorities for cases involving personnel under their general court-martial jurisdiction. Commanders of brigades (or their designees) who have a judge advocate assigned to their staff, are appointing authorities for cases involving personnel of their brigades.
 - (b) Air Force. The Commander, 7th Air Force (or his designee), is the appointing authority in cases involving US Air Force personnel.
 - (c) Navy. The Commander, US Naval Forces, Vietnam (or his designee), is the appointing authority in cases involving US Navy or Marine Corps personnel, except naval or Marine Corps personnel attached to Marine Corps commands.
 - (d) Marine Corps. The Commanding General, III Marine Amphibious Force (or his designee), is the appointing authority in cases involving US Navy or Marine Corps personnel attached to Marine Corps commands.
 - (e) Coast Guard. The Commander, Coast Guard Squadron #1 (or his designee), is the appointing authority in cases involving US Coast Guard personnel.

2. Page 5. Paragraph 5d(4) is added as follows:

C2, MACV Dir, 20-4

01	
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05	10 February 1970
(MACV/A)	
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C2, MACV Dir 20-4

- (4) Action taken against persons charged with war crimes is to be reported to COMUSMACV, ATTN: MACJA, by the appointing authority. Included there is to be the action taken by in-country appellate or reviewing authorities.
3. Page 5. Paragraph 6, add the following sentence: Reports required by paragraph 5d(4), above, are assigned reports control symbol MACJA-13 (RCS: MACJA-13)
4. This transmittal sheet is to be filed in front of the publication for reference purposes.

FOR THE COMMANDER:



LOUIS J. PROST
Colonel, USA
Adjutant General

ELIAS C. TOWNSEND
Major General, USA
Chief of Staff

DISTRIBUTION:
B
Plus:
300 - MACAG-AP
25 - MACJA

HEADQUARTERS
UNITED STATES MILITARY ASSISTANCE COMMAND, VIETNAM
APO San Francisco 96222

DIRECTIVE
NUMBER 20-4

18 May 1968
(MACJA)

INSPECTIONS AND INVESTIGATIONS
WAR CRIMES

1. PURPOSE. To provide uniform procedures for the collection and perpetuation of evidence relative to war crimes incidents and to designate the agencies responsible for the conduct of investigations for alleged or possible violations of the Geneva Conventions of 12 August 1949 For the Protection of War Victims.
2. APPLICABILITY. This directive is applicable to all alleged or possible war crimes violations of the subject Geneva Conventions, inflicted by hostile forces upon US military or civilian personnel assigned in Vietnam, or by US military personnel upon hostile military or civilian personnel.
3. DEFINITIONS.
 - a. War Crime. Every violation of the law of war is a war crime. (Chapter 8, DA Field Manual 27-10, The Law of Land Warfare, July 1956.)
 - b. Grave Breach. A grave breach of the Geneva Conventions is the most serious type of war crime. Examples of grave breaches are: willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, taking of hostages, compelling a prisoner of war to serve in the forces of the hostile power.
 - c. Other War Crimes. Examples are: making use of poisoned or otherwise forbidden arms or ammunition, treacherous request for quarter, maltreatment of dead bodies, firing on localities which are undefended and without military significance, abuse of or firing on the flag of truce, misuse of the Red Cross emblem, use of civilian clothing by troops to conceal their military character during battle, poisoning of wells or streams, pillage or purposeless destruction, improper use of privileged buildings for

*This directive supersedes MACV Directive 20-4 (O), 27 April 1967

military purposes, compelling prisoners of war to perform prohibited labor, killing spies or other persons who have committed hostile acts without trial, compelling civilians to perform prohibited labor, and violations of surrender terms.

4. COORDINATION. Investigations of alleged or possible war crimes will be coordinated with the Staff Judge Advocate, MACV.

5. RESPONSIBILITIES.

a. It is the responsibility of all military personnel having knowledge or receiving a report of an incident or of an act thought to be a war crime to make such incident known to his commanding officer as soon as practicable. Personnel performing investigative, intelligence, police, photographic, grave registration, or medical functions, as well as those in contact with the enemy, will, in the normal course of their duty, make every effort to detect the commission of war crimes and will report the essential facts to their commanding officer. Persons discovering war crimes will take all reasonable action under the circumstances to preserve physical evidence, to note identity of witnesses present, and to record (by photograph, sketch, or descriptive notes) the circumstances and surroundings.

b. Commanders and MACV staff sections receiving reports of probable war crimes will, in addition to any other required reports, report the facts as soon as practicable to the Staff Judge Advocate, MACV, and will make pertinent collateral information available to the appointing authority and investigating officers.

c. The Staff Judge Advocate, MACV will:

(1) Immediately notify the appropriate appointing authority (see paragraph 5d, below) of the receipt of a report of an alleged or possible war crime.

(2) Assist and advise the appointed investigating officer, in coordination with the Staff Judge Advocate or Legal Officer of the appointing authority.

(3) Receive and review completed and approved investigations from the appointing authority.

(4) Maintain a file on all war crime investigations.

(5) Make appropriate recommendations to COMUSMACV concerning use of the evidence obtained and disposition of the report of investigation.

d. Appointing Authority:

(1) Appoint an investigating officer and, if appropriate, designate a qualified criminal investigator as technical assistant. Upon receipt of notification of an alleged or possible war crime concerning a member of his command, one of the following appointing authorities will, with all dispatch, appoint an investigating officer to prepare and transmit to him a report of investigation.

(a) Army. Officers who exercise General Court-martial jurisdiction (or their designees) are appointing authorities for cases involving personnel under their General Court-martial jurisdiction. The CG, US Army Element, USMACV (or his designee) is the appointing authority for cases involving US Army personnel assigned to USMACV and any other person believed to be a US serviceman but not sufficiently identified or otherwise provided for by another appointing authority. Commanders of brigades (or their designees), who have a Judge Advocate assigned to their staff, are appointing authorities for cases involving personnel of their brigades.

(b) Air Force. The Commander, 7th Air Force, (or his designee) is the appointing authority in cases involving US Air Force personnel.

(c) Navy. Commander, US Naval Forces, Vietnam, (or his designee) is the appointing authority in cases involving US Naval or Marine Corps personnel, except naval or marine personnel attached to Marine Corps commands.

(d) Marine Corps. The CG, III Marine Amphibious Force (or his designee) is the appointing authority in cases involving US Marine Corps personnel and naval personnel attached to Marine Corps commands.

(e) Coast Guard. Commander, Coast Guard Squadron #1 (or his designee) is the appointing authority in cases involving US Coast Guard personnel.

(2) If two or more appointing authorities are concerned with the same incident, they will agree upon the appointment of one investigating officer, with such additional assistants as may be necessary, to make inquiry on behalf of all concerned.

(3) When the completed Report of Investigation (ROI) has been submitted to the appointing authority by the investigating officer, the appointing authority will receive, review, and, if appropriate, approve the report. Three copies of the ROI will be transmitted to COMUSMACV, ATTN: MACJA.

e. The investigating officer, with technical assistance furnished by qualified criminal investigators will:

(1) Promptly make inquiry to determine the facts and circumstances surrounding the alleged or apparent war crime, to include the following:

(a) Identity, organization, and status of victim.

(b) Nature of violation committed.

(c) Cause of injury or death and manner in which injury or death occurred.

(d) Time and place of commission.

(e) Identity of individuals or organizations suspected of commission of the act.

(f) Names, identification, addresses (or units) of witnesses or suspected witnesses.

(2) Collect all necessary evidence, statements, and exhibits, to include:

(a) Medical or autopsy reports.

(b) Photographic evidence, preferably taken at the scene of discovery, and properly identified as to time, place, subject, witnesses, and photographer.

(c) Statements of witnesses of any of the circumstances surrounding the incident and the discovery of evidence regarding the incident. Whenever practicable, statements should be under oath.

(d) Military reports, including after-action reports and those from intelligence sources, to identify suspected individuals and units.

(e) Physical evidence, such as weapons, clothing, bullets, shell casings, rope, etc., pertinent to the case.

(3) Without delay, prepare and submit his recommendations as to the disposition of the investigation report to the appointing authority.

6. REPORTS. Report by paragraph 5d, above, is exempt from reports control under the provisions of paragraph 39o, AR 335-15.

FOR THE COMMANDER:



WALTER T. KERWIN, JR.
Major General, USA
Chief of Staff

SIDNEY GRITZ
Colonel, USA
Adjutant General

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B

Plus:

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25-JA

5-AG-AO

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