

War Crimes Under Command

Subject Area Leadership

EWS 2006

War Crimes Under Command  
EWS Contemporary Issues Paper  
Submitted by Captain MR Myer  
to  
Major Dixon, CG 8  
February 2006

| Report Documentation Page                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                    |                                     |                                                           | Form Approved<br>OMB No. 0704-0188                  |                                 |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|-------------------------------------|-----------------------------------------------------------|-----------------------------------------------------|---------------------------------|
| Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. |                                    |                                     |                                                           |                                                     |                                 |
| 1. REPORT DATE<br><b>FEB 2006</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                    | 2. REPORT TYPE                      |                                                           | 3. DATES COVERED<br><b>00-00-2006 to 00-00-2006</b> |                                 |
| 4. TITLE AND SUBTITLE<br><b>War Crimes Under Command</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                    |                                     |                                                           | 5a. CONTRACT NUMBER                                 |                                 |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                    |                                     |                                                           | 5b. GRANT NUMBER                                    |                                 |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                    |                                     |                                                           | 5c. PROGRAM ELEMENT NUMBER                          |                                 |
| 6. AUTHOR(S)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                    |                                     |                                                           | 5d. PROJECT NUMBER                                  |                                 |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                    |                                     |                                                           | 5e. TASK NUMBER                                     |                                 |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                    |                                     |                                                           | 5f. WORK UNIT NUMBER                                |                                 |
| 7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES)<br><b>United States Marine Corps,Command Staff College Marine Corps University,2076 South Street, Marine Corps Combat Development Command,Quantico,VA,22134-5068</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                    |                                     |                                                           | 8. PERFORMING ORGANIZATION REPORT NUMBER            |                                 |
| 9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                    |                                     |                                                           | 10. SPONSOR/MONITOR'S ACRONYM(S)                    |                                 |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                    |                                     |                                                           | 11. SPONSOR/MONITOR'S REPORT NUMBER(S)              |                                 |
| 12. DISTRIBUTION/AVAILABILITY STATEMENT<br><b>Approved for public release; distribution unlimited</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                    |                                     |                                                           |                                                     |                                 |
| 13. SUPPLEMENTARY NOTES                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                    |                                     |                                                           |                                                     |                                 |
| 14. ABSTRACT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                    |                                     |                                                           |                                                     |                                 |
| 15. SUBJECT TERMS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                    |                                     |                                                           |                                                     |                                 |
| 16. SECURITY CLASSIFICATION OF:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                    |                                     | 17. LIMITATION OF ABSTRACT<br><b>Same as Report (SAR)</b> | 18. NUMBER OF PAGES<br><b>14</b>                    | 19a. NAME OF RESPONSIBLE PERSON |
| a. REPORT<br><b>unclassified</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | b. ABSTRACT<br><b>unclassified</b> | c. THIS PAGE<br><b>unclassified</b> |                                                           |                                                     |                                 |

"Once inside, Williams and May stood in front of the Iraqi.  
'You know what you have to do,' Williams told May...  
'Can I shoot him?' May asked Williams. 'Shoot him,'  
Williams replied, according to military attorneys.  
May fired two shots.  
'I shot him in the head twice, took a picture of him,  
and walked outside,' May told a military investigator."<sup>1</sup>

The actions of Sergeant Williams and Specialist May resulted in the murder of an unarmed Iraqi civilian near Sadr City, Iraq in August of 2004. Williams and May serve as an example of how the uncertainty of war creates a very thin line between crime and duty. A soldier can think he is doing his duty when he actually is violating the Law of Land Warfare. A soldier relies on his commander as the trainer and enforcer of ethical conduct. The role of the commander is essential in the ethical conduct of war. Conversely, a few soldiers and marines may defy the orders of their superiors. Commanders can minimize war crimes in their units by punishing those few soldiers before the orders they defy cause them to commit a war crime. Subordinates look to the commander to know what to do and trust him to make the right decisions as the authority figure in a unit. He gives orders that subordinates assume are lawful, establishes discipline in his unit, and takes responsibility for educating subordinates on proper behavior in war. Consequently, command climate is always a contributing factor when a soldier commits a war crime.

## **The commander's orders are lawful**

A soldier takes action without questioning it because he trusts that his commander's orders are always lawful. The soldier feels the freedom of action in war because he is following the orders of the commander. When a soldier misconstrues his commander's orders war crimes may occur. An example of this freedom of action is evident in the My Lai Massacre of the Vietnam War in March of 1968.

My Lai was a hamlet in the village of Son My in the Son Tinh district of Vietnam. U.S. Soldiers killed over five hundred innocent Vietnamese civilians there as part of an offensive to attack a Viet Cong stronghold. Captain Ernest Medina, commander of Charlie Company, 1<sup>st</sup> Battalion, 20<sup>th</sup> Infantry Regiment, American Division, commanded the soldiers who committed the war crimes. Some of the soldiers understood his orders were to destroy everything alive in the My Lai hamlet. However, CPT Medina stressed to his subordinates that they "must use common sense."<sup>2</sup>

The soldiers involved in the My Lai massacre relied on their commander's orders, or their interpretations of their commander's orders rather than their own judgment. The soldiers who murdered the civilians of My Lai did not question the order. Instead they acted on it as if they did not have to answer to a higher authority. Their

immediate supervisor told them to “destroy everything”; therefore, the soldiers acted above the law.<sup>3</sup>

The post-WWII war crimes tribunal at Nuremburg provides another example of subordinates committing atrocious war crimes without remorse. These trials revealed that many Nazi soldiers and doctors believed that the horrors of the Holocaust they perpetrated were their duty. A soldier acts freely and without guilt when he feels he is performing the duty outlined in his commander’s orders.

My Lai and Nuremburg show that command climate contributes to war crimes because the soldiers that commit the crimes often claim they acted on a commander’s orders. To avoid such a misunderstanding commanders must give explicit orders to their subordinates so they clearly understand their duty. When orders are ambiguous, soldiers can confuse the actions they should take during a mission.

### **The Commander establishes discipline**

Discipline in a unit revolves around the commander. Lack of discipline in a unit can lead to war crimes. A soldier may think his superiors will not punish bad behavior because violations in the past have been overlooked. When a commander allows soldiers to violate rules without facing disciplinary action, overall discipline begins to fade in a unit. A commander’s best

weapon against a snowball of disciplinary problems, including war crimes, is judicial punishment. Punishment of small violations maintains discipline in the larger rules of the military. The reason Army leaders make sure their subordinates brush their teeth in the dirtiest places of the world and shave their faces in the field when temperatures are below freezing is to instill discipline. Discipline practices enhance a unit's ability to do what is right no matter what the circumstances.

LTC Steven Russell commanded 1<sup>st</sup> Battalion, 22<sup>nd</sup> Infantry Regiment, 4<sup>th</sup> Infantry Division in Iraq from May 2003 to April 2004. When asked what key factors prevented war crimes from being committed in his unit during deployment to Iraq he stated:

Checks of weapons, equipment and the fitness of the men and units goes a long way to prevent denigration of standards with consequent migrations toward immoral conduct, especially to the enemy. By maintaining good discipline, backed by winning our fights, the soldiers kept themselves in check most of the time. They extended this behavior toward captured enemy and toward civilians.<sup>4</sup>

The commander sets the tone for standards of discipline that extend down through the chain of command. Consistent enforcement of standards by a commander equips subordinate leaders to enforce standards because even in the commander's absence subordinates know exactly how he would

act. When leaders uphold the standard, soldiers clearly understand to enforce standards amongst themselves.

Many leaders in Iraq must confront violations of discipline in varying extremes. Minor violations may include stealing, disrespect of civilian property, or disrespect of civilians. Major violations include murder, physical abuse of prisoners, or unlawful killing (killing someone not within the Law of Land Warfare.) Commander's must understand that failing to enforce punishment of minor violations can lead to major violations.

One platoon leader in Iraq discovered his soldiers stole twenty dollars from an Iraqi citizen's house during a raid. Immediately the soldiers were punished through Article 15 proceedings and removed from their company. The importance of the punishment was twofold: it showed the platoon that stealing is strictly punished, and it displayed that U.S. soldiers are expected to treat Iraqi citizens and their possessions with respect and dignity. If this violation went unpunished the soldiers in the platoon could have done something worse the next time. Because uncertainty reigns in war, discipline is the only means to maintain order among chaos.<sup>5</sup>

Supervision, another responsibility of the commander, is also a vital component of the disciplinary environment

that can prevent war crimes. Supervision allows a commander to view the activity that occurs under his command so that he can maintain discipline more effectively. Conducting inspections and simply talking to soldiers and subordinates are forms of supervision that affect command climate.

Abu Ghraib is an example of how a commander's lack of supervision contributed to the commission of war crimes. The soldiers guarding prisoners would have understood and enforced the intent of the commander if they knew the commander cared about what occurred in the detention cells. Lack of inspections and command interest in Abu Gharib caused the soldiers to follow their own agenda as opposed to doing specifically what their commander wanted. As stated in the Army Regulation 15-6 Investigation, "the leaders from these units located at Abu Ghraib...failed to supervise subordinates or provide direct oversight of this important mission."<sup>6</sup>

### **The Commander educates**

The fog of war, uncertainty, and chaos are a few words that describe the atmosphere of war. Routine events become impossible, and the obvious becomes unclear. Soldiers must be able to exercise relentless aggression towards the enemy and offer him quarter the second he gives up. Units have

problems when aggression continues past the moments when it is necessary. Soldiers often make war personal and want to continue to exploit the enemy after he has given up the will to fight.

To prevent unethical actions, the commander is responsible for educating subordinates on proper conduct in war. Commanders should instruct soldiers to think of possible scenarios in which they may have to make personal decisions on their actions. When is it okay to shoot? What should a soldier look for as a hostile act or hostile intent? What are some enemy activities that could be a threat to a soldier's safety? A commander's example is always the best influence on subordinates. The education a commander gives can prevent the possibility of a war crime because subordinates will emulate the commander's conduct. The subordinate will ask himself: What would my commander do now? The answer can determine whether his actions are ethical.

Commanders enforce the reading of Army and Marine Corps publications that provide subordinates with guidance on the conduct of warfighting. Field Manual 100-5 states that "laws of war are effective in reducing casualties and enhancing fair treatment of combatants and noncombatants alike so long as trained leaders ensure those laws are

obeyed."<sup>7</sup> An integral part of leading soldiers is educating them on the rules. Oftentimes, soldiers claim ignorance of the rules during war. Commanders must mandate that their subordinates know and understand the Law of Land Warfare and rules of engagement so that soldiers are equipped with the knowledge required to fight wars ethically.

Members of the 1<sup>st</sup> Battalion, 41<sup>st</sup> Infantry Regiment, 1<sup>st</sup> Infantry Division lacked proper education and guidance from their commanders. In fact, soldiers committed an array of crimes, including three murders in one company. These statistics clearly show the commander was not educating soldiers effectively. As recounted in the opening example, SGT Michael P. Williams was sentenced to life in prison for the murder of multiple Iraqi civilians. Both SPC Brent W. May and SSG Johnny M. Horne Jr. were sentenced to three years. Horne claimed to kill a man out of mercy because he was already dying, but mercy killings violate the Law of Land Warfare. As said by Gary Solis, West Point professor of law: "Any time you have multiple serious offenses in a single unit you immediately think about the leadership of that unit...[b]ecause the best-led units don't commit war crimes."<sup>8</sup>

## **Counterargument**

Some argue that soldiers can violate the Law of Land Warfare or a commander's orders because of individual evil nature. Despite the measures that a commander takes through education, discipline, and lawful orders a soldier may still violate laws during war. Nothing a commander does can prevent the soldier from being undisciplined. Soldiers will always break the rules; however, good commanders enforce punishment of small violations in order to prevent soldiers from committing large violations. If a commander puts extensive effort into developing programs to discipline and educate his subordinates then he will avoid violations of the Law of Land Warfare. The commander does not know his unit well enough if a soldier still violates the law after discipline and education training.

## **Conclusion**

Commanders at all levels impact the behavior of their soldiers. A commander should understand that his subordinates could commit war crimes if they are not properly prepared. Lawful orders, unit discipline, and education of the Law of Land Warfare are all command responsibilities that make command climate a contributing factor to war crimes. Commanders who understand the impact discipline and education has on their subordinates will

lead their units with the leadership it deserves.

Subordinates will feel empowered by their commander because they are prepared to meet the uncertainty war offers. When they are a part of a disciplined unit, soldiers will recognize that the unit is greater than any individual in it. This empowerment and sense of belonging will allow them to focus on their mission and not waver in the face of uncertainty.

Word Count: 1,937

## Notes

1. Sanders, *Troops' Murder Cases in Iraq Detailed*. Los Angeles Times, December 7, 2004.  
<<http://www.christusrex.org/www1/news/lat-12-7-04c.html>> (30 November 2005).
2. Raimondo, *The My Lai Massacre: A Case Study*.  
<<http://www.fsa.ulaval.ca/personnel/vernag/EH/F/cause/lectures/my-lai.htm>>(30 November 2005).
3. Raimondo.
4. LTC Steve Russell, interview by CPT Matthew Myer via e-mail, 22 November 2005.
5. Myer, Matthew, CPT, USA. The facts in this portion of the paper I used to draw from my personal experience in Iraq. I had a similar case in my platoon where two soldiers stole money during a raid in which they were punished under Article 15 proceedings and removed from the company and deducted one rank. I found this very effective in maintaining discipline in the platoon because there were no incidents of theft after the two soldiers were punished.
6. Jones, *AR 15-6 Investigation of the Abu Gharib Prison and 205<sup>th</sup> Military Intelligence Brigade*. An investigative report.
7. U.S. Department of the Army, *Operations: FM 100-5*. 2-3, 2-4
8. Vick, *Days in August Haunt Charlie Company*. Washington Post, December 14, 2004.  
<<http://www.washingtonpost.com/wp-dyn/articles/A62102-2004Dec13.html>> (30 November 2005).

## Bibliography

- Fay, MG George R. "AR 15-6 Investigation of the Abu Gharib Detention Facility and 205<sup>th</sup> Military Intelligence Brigade." An investigative report.
- Jones, LTG Anthony R. "AR 15-6 Investigation of the Abu Gharib Prison and 205<sup>th</sup> Military Intelligence Brigade." An investigative report.
- Martins, Mark S. "'War Crimes' During Operations Other Than War: Military Doctrine and Law Fifty Years after Nuremberg—And Beyond." of *Military Law Review* 149 (1995) (quoting Hague IV, *supra* note 27, pmb1.).
- Raimondo, Tony "The My Lai Massacre: A Case Study." Case study, Human Rights Program, School of the Americas, Fort Benning, Georgia.  
<<http://www.fsa.ulaval.ca/personnel/vernag/EH/F/cause/lectures/my-lai.htm>>(30 November 2005).
- Russell, LTC Steven D. Interviewed by CPT Matthew Myer. E-mail interview, November 24, 2005.
- Sanders, Edmund "Troops' Murder Cases in Iraq Detailed." *Los Angeles Times*, December 7, 2004.  
<http://www.christusrex.org/www1/news/lat-12-7-04c.html>> (30 November 2005).
- Smidt, Major Michael L. "[Yamashita, Medina, and Beyond: Command Responsibility in Contemporary Military Operations.](#)" Vol 164 of *Military Law Review* :155-233.  
<[http://www.au.af.mil/au/awc/awcgate/mil\\_law\\_rev/volume164\\_smidt.pdf](http://www.au.af.mil/au/awc/awcgate/mil_law_rev/volume164_smidt.pdf)> (30 November 2005).
- U.S. Department of the Army. Operations. FM 100-5. Washington D.C., Headquarters Department of the Army, 14 June, 1993.  
<[http://www.dtic.mil/doctrine/jel/service\\_pubs/fm100\\_5.pdf](http://www.dtic.mil/doctrine/jel/service_pubs/fm100_5.pdf)> (30 November 2005).
- U.S. Department of the Army *The Law of Land Warfare*. FM 27-10. Washington D.C., Headquarters Department of the Army, July 1956.  
<<https://www.doctrine.usmc.mil/signpubs/r5121a.pdf>> (30 November 2005).

*The Nuremberg Trials: Links, Bibliography & Newspaper Accounts.* 20 November 2005.  
<<http://www.law.umkc.edu/faculty/projects/ftrials/nuremberg/NurembergLinks.html>> (30 November 2005).

Vick, Karl "Two Days in August Haunt Charlie Company."  
Washington Post, December 14, 2004.  
<<http://www.washingtonpost.com/wp-dyn/articles/A62102-2004Dec13.html>> (30 November 2005).