Leaders On the Ground: Command Influence on War Crimes in the Armies of France and the United States

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LEADERS ON THE GROUND: COMMAND INFLUENCE ON WAR CRIMES IN THE ARMIES OF FRANCE AND UNITED STATES

A Thesis
Presented to
the Graduate School of
Clemson University

In Partial Fulfillment
of the Requirements for the Degree
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by
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Accepted by:
Dr. John Andrew, Committee Chair
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ABSTRACT

Utilizing torture during the Battle of Algiers, the My Lai Massacre, and torture at Abu Ghraib as specific case studies, this thesis contends that negligence or dereliction of duty by the brigade, battalion, and company commanders were the primary factors. Additional factors included commanders stressing rapid results, and external stressors in the soldiers’ immediate environment. War crimes are defined as violations of the 1907 Hague Convention which was supported by the 1949 Geneva Protocols, and negligence is defined in the legal sense.¹

Contrary to the existing narrative, this thesis contends that lower-level commanders did more to create the conditions required for war crimes than higher level policies. The final main factor was a series of external stressors and trauma that created a sense of hatred or revenge toward the people on whom the war crimes were later committed which was encouraged by the commanders. The central difference between this paper and existing scholarship is the focus on leaders directly above the soldiers committing the crimes rather than larger policies.

¹ Violations of Regulations Respecting the Laws and Customs of War on Land. These include Section 1, Chapter 1, Article 1; Section 2, Chapter 1, Articles 22, 23, and 25. Negligence as defined in the legal sense to be used in a Military Court Martial: “a failure to behave with the level of care that someone of ordinary prudence would have exercised under the same circumstances. The behavior usually consists of actions, but can also consist of omissions when there is some duty to act (e.g., a duty to help victims of one's previous conduct).”
DEDICATION

I dedicate this thesis first and foremost to the men and women of the United States Military; thank you for your service and for ensuring the legacy of this great nation. I also want to dedicate this to my son, Mark Everett Hood, may you grow up not having to understand why this discussion matters.
ACKNOWLEDGEMENTS

I would like to thank my Committee Chair, Dr. Rod Andrew for his unceasing support and help in spite of his very busy schedule. I also owe my other committee members Dr. Edwin Moise and Dr. Alan Grubb for their help. Thank you also to my fellow graduate students for providing feedback and an amazing atmosphere in the graduate office. I also want to thank my wife, Avery Hood, for her unceasing support and encouragement, I could not have done this without you. I would finally like to thank my parents, Mark and Lisa, thank you for your constant encouragement and faith in me.
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INTRODUCTION

Beginning on April 24th, 1863 with the adoption of the Instructions for the Government of Armies of the United States in the Field, General Orders No. 100, the United States has maintained a position that deplores and criminalizes war crimes in its armed forces. Known as the Lieber Code, General Orders No. 100 was one of the first modern attempts to codify limits on soldiers’ actions during campaigns while applying military power against civilians, civil property, and prisoners of war. The Lieber Code was adopted by most European nations in the following years and led to several Hague Conventions discussing the treatment of enemy prisoners and civilians during times of war.

In the aftermath of World War II and the revelation of the horrors perpetrated by the Nazis, 51 nations met in San Francisco in June 1945 to sign and adopt what became the Charter for the United Nations (UN). Of the 51 signatories, the United States adopted the Charter in June, while France adopted it in October of 1945. The ratification of the UN Charter and the following Geneva Convention in 1949 committed the signatories to agree that “even in the midst of hostilities, the dignity of the human person, universally acknowledged in principle, shall be respected.” The words of the two documents attempted to curtail torture and minimize civilian suffering in the spirit of the previous conventions, going back to the Lieber Code. Since their signing, they have been the moral touchstones of policy for France and the United States when waging war, at least in theory. In reality, the United States and French militaries have violated

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both the letter and the spirit of the Geneva Convention and the UN Charter and the Declaration of Human Rights (UDHR) on several occasions, as have most other signatories to varying degrees.

Looking at war crimes by the French Army and United States Army and utilizing the following three cases studies of French torture during the Battle of Algiers (1957), the My Lai Massacre (1968), and torture at Abu Ghraib (2003-2004), what commonalities and differences are there across three distinct cases of war crimes? What factors created the conditions, or allowed the war crimes to occur? This thesis considers war crimes defined as violations of the 1907 Hague Convention which was supported by the 1949 Geneva Protocols. This thesis contends that negligence by unit commanders above the echelon torturing but below the theater level is the primary factor, followed by commanders stressing rapid results, and an emotional response to factors related to but not part of the crime in each case (recent loss of friends, high operational tempo, or unit and national pride) as a third significant factor.

Contrary to the current narrative that higher level policies from theater level commanders or the Executive branch enabled torture or a massacre, this thesis contends that policies published and enforced by brigade commanders (colonels or brigadier generals) and below, coupled with a failure to follow higher level directives are what allowed war crimes to happen.

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6 Violations of Regulations Respecting the Laws and Customs of War on Land. These include Section 1, Chapter 1, Article 1; Section 2, Chapter 1, Articles 22, 23, and 25.
7 Negligence as defined in the legal sense to be used in a Military Court Martial: “a failure to behave with the level of care that someone of ordinary prudence would have exercised under the same circumstances. The behavior usually consists of actions, but can also consist of omissions when there is some duty to act (e.g., a duty to help victims of one's previous conduct).” Theater is defined by FM 1-02.1 for the United States Army, “The geographical area for which a commander of a geographic combatant command has been assigned responsibility.” In other words, a specified area given to a commander. For the case of this thesis, Vietnam and Iraq are the specified theaters. These theaters were under command of GEN William Westmoreland and GEN Ricardo Sanchez respectively at the times of the My Lai and Abu Ghraib war crimes.
8 In the case of the French Army, the 10th Parachute Division is used as the command element rather than a Brigade, as the French Manning and force structures differ from the United States Army, and it was a division level operation.
Where national or theater policies left gaps or gray areas, lower-level leaders acted to fill in the void with their own methods in order to complete what they viewed as their mission.

The current narrative as published on why torture occurred during the Battle of Algiers focuses on the French government’s ideological reasons for trying to keep Algeria French at any cost. In addition to a perceived cultural superiority, the French army and government considered it vital to win in Algeria to avoid further shame after their recent defeat in Vietnam. Rita Maran writes in *Torture: The Role of Ideology in the French-Algerian War* that French views of themselves as civilizers gave Frenchmen a sense of inherent superiority over the Algerians which led to torture becoming the tool of the government. She argues that ideology rather than tactical necessity was the driving influence in the French use of torture. Strategic decisions followed from an ideological need to “civilize” the Algerians rather than from a coherent policy rooted in political discourse. As the war in Algeria became more violent and as the “less civilized” Muslim Algerians continued to fight, the French began to use any means necessary to win. In *La Torture et L’Armée Pendant la Guerre d’Algérie*, Raphaëlle Branche discusses the French Army and describes a slow descent into torture. Branche writes that, after the defeat in Indochina and in response to the increasing violence of the FLN, the French Army and government adopted a “win at any cost” policy based on ideology rather than tying it to concrete tactical methods. According to Branche, the French government in Algeria viewed the Battle of Algiers as a battle that could influence the UN decision to recognize the legitimacy of the FLN and therefore authorized whatever measures were necessary. Branche and Maran both focus on large scale analysis of France and the French government as a whole to describe the implementation of policies that allowed “whatever means necessary” for the army to win in Algeria.

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The current narrative describing why the My Lai massacre occurred is exemplified by Nick Turse’s *Kill Anything That Moves*, Michael Bilton and Kevin Sim’s *Four Hours in My Lai*; and Howard Jones’ *My Lai*. Turse points to military basic training and command policies at the highest levels in Vietnam as the major factors contributing to the My Lai massacre.\(^{10}\) By command policies, Turse means the use of air strikes and artillery, or the ability to trigger ambushes without positively identifying enemy in “free fire zones.”\(^{11}\) Turse also stresses that basic training encouraged soldiers to kill and to blindly obey all orders, thereby creating soldiers who were predisposed to massacre.\(^{12}\) Turse focuses on initial infantry training designed to train soldiers to kill, as well as the use of “free-fire zones” when discussing policies that contributed to war crimes. The burden of responsibility as written by Turse falls on army leaders like General William Westmoreland and the drill sergeants training new soldiers.

Bilton and Sim argue that General Westmoreland’s attrition strategy encouraged men to become killers. Additionally, like Turse, Bilton and Sim blame the military command directive known as “body counts” where units were assessed on how many dead North Vietnamese Army (NVA) or Viet Cong (VC) they killed.\(^{13}\) In a military organization where effectiveness is key to promotion, body counts were inflated, or civilians killed and counted toward the unit total. Bilton and Sim focus on how General Westmoreland and the policies enacted by Military Assistance Command, Vietnam (MACV) influenced the soldiers who committed the massacre rather than actions taken by Colonel Oran Henderson or Lieutenant Colonel Frank Barker who were much

\(^{11}\) Free fire zones indicate areas where American troops could engage anyone encountered without first identifying whether they were civilians or enemies. Anyone remaining in a free fire zone after the civilians were initially evacuated was considered enemy and therefore a legitimate military target. As such, troops did not first have to identify the individuals as civilians or enemy.
\(^{13}\) Michael Bilton, and Kevin Sim, *Four Hours in My Lai*, (New York: Viking, 1992), 18, 32, 38.
more involved with planning and supervising the operation. Henderson and Barker are the focus of the cover up rather than how their orders enabled the massacre.

Jones provides analysis of the legal framework that should have prevented My Lai, but then continues the focus on training and Army-level policy when determining contributing factors in the My Lai massacre. Jones focuses on the desensitization of American soldiers through routine use of racial slurs relating to the Vietnamese.¹⁴ Jones examines how casualties impacted the mindset of Charlie Company and how Lieutenant Calley’s inept leadership played a role in the massacre but focuses the majority of his work on the events themselves and the following trials.

Analysis of Abu Ghraib follows a similar narrative as that of My Lai: in general, the Bush administration’s revocation of Geneva Protections for Al-Qaida and Taliban is linked to Guantanamo Bay, Afghanistan, and the transfer of information and interrogators between those locations and Iraq, which is shown as an inevitable path to torture at Abu Ghraib. Other narratives simply claim that the soldiers in Abu Ghraib were “bad apples” under stress and not representative of the brigade as a whole.¹⁵ Tara McKelvey in *Monstering: Inside America’s Policy in Secret Interrogations and Torture in the Terror War*, focuses on the United States’ entire War on Terror, not just Iraq. McKelvey stresses the influence of Guantanamo Bay interrogators who worked under a different set of legal standards than the soldiers at Abu Ghraib. McKelvey also details that overcrowding led to fears of insurrection among the Military Police (MPs), and that ensuring the prisoners were shamed and kept in no condition to fight back allowed the Military Police soldiers to feel in control in spite of larger numbers of prisoners.

McKelvey considers the torture a response to the feeling of powerlessness the soldiers felt in response to attacks on the prison as well, with Military Police soldiers using torture to cope with their stress.

Mark Danner’s *Torture and Truth: America, Abu Ghraib, and the War on Terror*, contains copies of the official Army Commander’s Inquiry which led to the larger Army investigation known as the Taguba Report, and subsequent Senate investigations into both Abu Ghraib and CIA facilities in Guantanamo Bay and around the world. All of the above accounts focus on the Executive level decisions made to allow torture and then discuss how junior soldiers applied those rules. The commentary only tangentially addresses the brigade, battalion, or company level leaders and how they implemented or failed to implement the regulations and supervise their soldiers.

Contrary to the existing narrative, this thesis attempts to show that lower-level commanders did more to create the conditions required for war crimes than executive policy or theater wide directives. Battalion and brigade commanders added imperatives to existing guidance, and encouraged faster results regardless of the cost or legality. Because they had increased contact with the soldiers interacted with them on a daily basis, the brigade and battalion commanders influenced the actions of their soldiers more so than policy.

This thesis will also argue that the commanders were negligent in that they *failed to behave with the level of care that someone of ordinary prudence would have exercised under the same circumstances*. These commanders either knowingly violated existing regulations, or failed to supervise their soldiers and thereby allowed war crimes to happen through negligence. Between the theater and Executive levels issuing broad guidance or policies, the brigade, battalion, and even company commanders interpreted, distorted, or ignored policies to fit their
mission as they saw fit. The 10th Division Parachutistes in Algiers was ordered to arrest tens of thousands of men and women legally, but General Massu and Colonel Bigeard then intentionally disregarded the due process required. In Vietnam, Lieutenant Colonel Barker ordered Charlie company to destroy wells and livestock in direct violation of published orders. Captain Medina repeatedly urged his men to kill anything left in My Lai while carrying multiple directives in his pocket stating those actions were illegal. Brigadier General Janice Karpinski knowingly left prior violators of military regulations in charge of Abu Ghraib, refused to remove known violent offenders, and visited Abu Ghraib one time in her 4 months in command of the prison.

The desire for results created an “anything goes” mentality that allowed for war crimes. In Algeria in 1957, General Massu, Colonel Bigeard, and Major Aussaresses interpreted aspects of the French Special Powers Act of 1956, and ignored key aspects requiring trials for anyone arrested. In Vietnam in 1968, Colonel Henderson, Lieutenant Colonel Barker, and Captain Medina repeatedly ordered soldiers to destroy property and livestock in direct violation of multiple directives from the Army and the Military Assistance Command, Vietnam (MACV). The commanders insisted during planning that the only people remaining in the village were “VC or VC sympathizers,” and incited Charlie Company to be more aggressive. At Abu Ghraib, interrogators were repeatedly ordered to hurry and provide accurate information, and further pressured by communiques stating that a lack of results directly contributed to their fellow soldiers dying.

20 Greenberg, and Dratel, eds., The Torture Papers: The Road to Abu Ghraib, 448-449.
The final main reason for war crimes in the three above cases was an emotional response by the troops on the ground when faced by either the death of their friends or maiming of civilians for which they were not prepared. The external stressors and trauma created a sense of hatred or revenge toward the people on whom the war crimes were later committed that was encouraged by lower-level commanders. In Algiers, General Massu was ordered to break the FLN before a critical UN vote on recognizing the FLN’s fight for independence.\(^{21}\) In Vietnam, Colonel Henderson and Captain Medina accused Charlie Company of a lack of aggression that led to the death of their comrades on previous operations around My Lai.\(^{22}\) At Abu Ghraib, repeated prison riots, escape attempts, and regular shelling created a sense of isolation and desperation that Lieutenant Colonel Jerry Phillabaum and Brigadier General Karpinski knew nothing about as they failed to visit or even ask about conditions in the prison.\(^{23}\)

The central difference between this thesis and existing scholarship is the focus on leaders directly above the soldiers committing the crimes rather than larger policies. The importance of this research is that, while not absolving the perpetrators of guilt, it will show that soldiers were not blindly executing vague policies issued by men and women thousands of miles from the battlefield. On the contrary, soldiers were encouraged, harangued, lied to, or ignored by their commanders; men and women the soldier knew and usually respected. When the leaders the soldiers had served with or knew directly ordered or failed to intervene in a series of ever escalating crimes or actions, soldiers then committed crimes under the direct influence of leaders on the ground. While all soldiers are individuals responsible for their own actions, familiar faces and authority figures much more involved in their lives played a larger role in creating

\(^{23}\) Greenberg, and Dratel, eds., *The Torture Papers: The Road to Abu Ghraib*, 425-429.
conditions for war crimes, a fact that both civilians and soldiers should consider when discussing war crimes, drafting policy, committing soldiers to combat, or when leading soldiers on a daily basis.
CHAPTER ONE

LEGAL FRAMEWORK FOR THE CONDUCT OF FRENCH AND UNITED STATES’ ARMIES


In 1863 at the height of the Civil War, President Abraham Lincoln published General Orders No. 100, “Government of Armies of the United States in the Field.” These regulations governed the conduct of Union troops in the occupied South and created one of the first codes of conduct for a military at war. The Lieber Code, named after its author Francis Lieber, was adopted by almost every European country in the next 3 years and became the foundation for several human rights conventions at the Hague in 1899, and 1907.

The Lieber Code begins by stating in Section I that while an occupying force may implement martial law, martial law is not a tool of oppression, and that “it is incumbent upon those who administer it to be strictly guided by the principles of justice, honor, and humanity.” From there the Code proscribes cruelty, and unnecessary property destruction, and confirms that “men who take up arms against one another in public war do not cease on this account to be moral beings.” The Code continues to outline conduct by military personnel and Section II, Article 44 specifically prohibits:

All wanton violence committed against persons in the invaded country, all destruction of property not commanded by the authorized officer, all robbery, all pillage or sacking, even after taking a place by main force, all rape, wounding, maiming, or killing of such inhabitants.

27 Ibid., Article 15-16, 38.
28 Ibid., Article 44.
The penalty for the above actions is death, or any other fitting penalty deemed appropriate by the commander in the area where an incident may occur.\(^{29}\) Section III of the Code deals with prisoners of war and specifies humane treatment of enemy combatants, civilians who spontaneously resist when first occupied, civilians who accompany the enemy, nurses or aid workers, and enemy government officials as those entitled to prisoner rights.\(^{30}\) Section IV extends humanitarian protections to partisans and scouts as prisoners of war if they remain in uniform. Section IV does however allow execution for armed civilians who violently resist “with intermitting returns to their homes and avocations, or with the occasional assumption of the semblance of peaceful pursuits, divesting themselves of the character or appearance of soldiers.”\(^{31}\) The remaining sections of the Code deal with spies, prisoner exchanges, surrender, and other military actions such as repatriation of prisoners.\(^{32}\) The Code maintains that even if rebels or insurrectionists are captured, they are entitled to humane treatment and that treating them as prisoners in no way implies an acknowledgement of the rebellious government by the state.\(^{33}\)

With the creation of the Lieber Code and its adoption by several countries, in August 1898 Czar Nicholas II called for an international peace conference to be held in 1899 to limit future arms races and establish means of avoiding wars in the future.\(^{34}\) The Hague Convention of 1899 was attended by 28 nations and dealt with 3 major issues, each supervised by a “commission:” the creation of an international court of arbitration, limitations on armaments, and

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\(^{29}\) Lieber, “Instructions for the Government of Armies of the United States in the Field,” Article 44.

\(^{30}\) Ibid., Article 49-53.

\(^{31}\) Ibid., Article 82.

\(^{32}\) Ibid., Sections VI-X.

\(^{33}\) Ibid., Article 153-154.

the laws of war.\textsuperscript{35} While the arms limitations talks failed completely, and the international court remained an ineffective Secretariat, the most profound impact of the 1899 convention was the “Martens Clause,” named after Fyodor F. Martens:

Until a more complete code of the laws of war is issued, the high contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles on international law, as they result from the usages established between civilized nations, from the laws of humanity, and the requirements of public conscience.\textsuperscript{36}

The Martens Clause is cited at the beginning of the 1949 Convention documents and remains a regular citation in most International Humanitarian Law (IHL) and Law of Armed Conflict (LOAC) cases in current international courts.\textsuperscript{37} The other significant contribution of the 1899 Convention was its list of rules for war under Convention II.\textsuperscript{38}

Just 6 years after the 1899 Hague Convention, President Theodore Roosevelt called for a second peace conference, which was held from June to October 1907 in The Hague. Forty-seven of the 54 recognized nations in existence participated in the 1907 convention and again attempted to create an international court of arbitration and readdressed the rules and weapons of war.\textsuperscript{39} The 1907 Convention mandated that all contracting Parties disseminate the regulations and text of the

\textsuperscript{35} Solis, \textit{The Law of Armed Conflict: International Humanitarian Law in War}, 52.
\textsuperscript{36} Solis, \textit{The Law of Armed Conflict: International Humanitarian Law in War}, 53.
\textsuperscript{37} Ibid., 22-23, 53. IHL falls under the umbrella term “humanitarian law” which seeks to limit human suffering in war, while LOAC governs the comportment of soldiers and armies during armed conflict. While IHL and LOAC were initially intended to govern different aspects of conflicts, with advent of the Geneva Protocols in 1949, the terms have generally the same meaning today; this thesis will use LOAC for simplicity.
\textsuperscript{38} Ibid., 54.
\textsuperscript{39} Ibid.
documents to their militaries to ensure understanding, a clause which is repeated on all following Geneva Protocols and echoed in military regulations.\textsuperscript{40}

The 1907 Convention updated the 1899 Convention II rules and republished them as Annex IV, commonly referred to as Hague Regulation IV. Hague Regulation IV formed the basis for the 1949 Convention and contains the first penalties against a contracting Party for violating the agreements which consisted of a monetary fine, while allowing individuals accused of the crime to be prosecuted under their own nation’s laws or military regulations.\textsuperscript{41} Finally, Hague Regulation IV specifies that an enemy simply being behind the lines in nonmilitary clothes was not automatically a spy and therefore not immediately subject to execution, allowing escaped prisoners or trapped soldiers a chance to return to their own lines.\textsuperscript{42}

The above attempts to codify laws and limit the destruction of war or the conduct of soldiers during war formed the foundations of the Geneva Conventions of 1949 and established precedent for international courts to develop LOAC. The most tangible gains were international agreements to treat prisoners humanely and to define what a prisoner was, while also acknowledging that if in doubt, all Parties should treat anyone in their hands humanely. France and the United States signed all of the above agreements and were parties to all of the above Conventions.

\textsuperscript{40} Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, (The Hague, 1907), 1.
\textsuperscript{41} Solis, The Law of Armed Conflict: International Humanitarian Law in War, 54.
\textsuperscript{42} Ibid., 55.
II. The UN Charter, the Universal Declaration of Human Rights, and the Geneva Convention of 1949.

With the revelation of the Holocaust and the published accounts of Japanese atrocities against China and prisoners of war from around the world, 51 nations met in San Francisco to sign the Charter of the United Nations. By signing the UN Charter in 1945, the nations pledged to respect the dignity of the human person even during times of war or armed conflict. The UN Charter established councils for security and began the process of establishing international arbitration courts for the prosecution of war crimes and wars of aggression. The words of Article 55 state that UN members will acknowledge “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”\(^{43}\) The UN Charter establishes the International Court of Justice (ICJ) in order to arbitrate disputes and advise the security council. The ICJ, critically, has the ability to hear non-members and non-states as it deems fit in cases presented to it, as well as the ability to apply international law and customs.\(^{44}\) Customs are defined as “international obligations arising from established international practices, as opposed to obligations arising from formal written conventions and treaties,” and are a key component to the enforcement of LOAC as not all prohibitions are written, but are merely a matter of custom established over years of mutual agreement and practice.\(^{45}\) Both France and the United States were original signatories to the UN Charter and ratified it on October 24\(^{th}\), 1945.

Following the UN Charter, the UN adopted the United Nations Declaration of Human Rights (UDHR) on December 10\(^{th}\), 1948, which reaffirms the dignity of the human person and

\(^{44}\) Charter of the United Nations, Chapter II, Article 38.
“the promotion of universal respect for and observance of human rights and fundamental freedoms,” for all UN Members.46 The UDHR further clarifies in Article 2 that no discrimination will be made on the basis of national sovereignty during rebellions, whether a state or group is independent, under trusteeship, or under any other limitation of sovereignty.47 In other words, the national status (whether a nation is independent or under trusteeship of another, or if there is an internal rebellion in a country) is not a discriminatory factor in the treatment of prisoners, supporters, or civilians. Article 5 states “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”48 Article 9 states that no one shall be subject to arbitrary arrest, detention, or exile.49 Article 30 states that nothing in the UDHR “may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.”50

The UDHR was adopted as a resolution on 10 December, 1948 which made it obligatory to all Parties signing the UN Charter, including France and the United States.51

In 1949, in response to the outcome of the Nuremberg trials and revelations of the scope of Japanese atrocities against Chinese civilians and enemy combatants, 55 nations ratified Geneva Protocols I-IV.52 The United States and France ratified the Geneva Conventions of August 12th, 1949, the major impact of the convention being its prescriptions regarding the treatment combatants and civilians under Protocol IV, Relative to the Treatment of Prisoners of War (hereafter referred to as GPW).53 The GPW begins with commitments by the signatories

46 Universal Declaration of Human Rights, 10 December 1948, 1.
47 Ibid., Article 2.
48 Universal Declaration of Human Rights, 10 December 1948, 3.
49 Ibid.
50 Ibid., 8.
51 The UDHR is considered customary law rather than a binding treaty signed by all parties.
53 Geneva Convention Relative To The Treatment Of Prisoners Of War Of 12 August 1949, 1.
that they will disseminate the contents to their respective armed forces, as in the past.

Additionally, signatories cannot suspend GPW simply because the other belligerent does not support the GPW or abide by it if the other party is a High Contracting Party.\textsuperscript{54}

The GPW states under Article 3 that during conflicts of a non-international character “occurring in the territory of one of the High Contracting Parties” any individual “taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed \textit{hors de combat} by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely.”\textsuperscript{55} In addition, Article 3 prohibits the following against persons meeting the above criteria, and without distinction to race, gender, sex, religion, or faith:

- violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- \textit{b)} taking of hostages;
- \textit{c)} outrages upon personal dignity, in particular, humiliating and degrading treatment;
- \textit{d)} the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensables by civilized peoples.\textsuperscript{56}

The above clearly proscribes torture of any kind. Additionally, it delineates a legal process that requires a constituted court in order to pass sentences of executions. This clearly prohibits summary execution of any kind in addition to any “field expedient” interrogation, when the enemy surrenders. Article 4 of the GPW defines prisoners of war as meeting any of the following criteria:

1) Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces.

\textsuperscript{54} Ibid., Article 2.
\textsuperscript{55} Geneva Convention Relative To The Treatment Of Prisoners Of War Of 12 August 1949, Article 3.
\textsuperscript{56} Ibid.
2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions:
   a) that of being commanded by a person responsible for his subordinates;
   b) that of having a fixed distinctive sign recognizable at a distance;
   c) that of carrying arms openly;
   d) that of conducting their operations in accordance with the laws and customs of war.

3) Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.\(^57\)

The definitions of Article 4 clearly protect combatants in both conventional and militia forces with any kind of command structure, therefore any individual meeting the above criteria is entitled to the humane treatment previously described. Additionally, Article 4 outlines the following in regards to support personnel and civilians who resist spontaneously:

4) Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour \([sic]\) units or of services responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model.

5) Members of crews, including masters, pilots and apprentices of the merchant marine and the crews of civil aircraft of the Parties to the conflict, who do not benefit by more favourable \([sic]\) treatment under any other provisions of international law.

6) Inhabitants of a non-occupied territory who, on the approach of the enemy, spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.\(^58\)

Further specifying who is entitled to humane treatment, the above details that all civilian support personnel are to be treated humanely. All of the specifications above aim to ensure humane

\(^{57}\) Geneva Convention Relative To The Treatment Of Prisoners Of War Of 12 August 1949, Article 4.

\(^{58}\) Ibid.
treatment of surrendering individuals, or of civilians who are captured by an enemy. Critically, none of the above specifications negate the basic tenets of humane treatment, and Article 5 specifically states that if a Detaining Power is in doubt of the status of an individual, “such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal.”\(^ {59}\)

In order to ensure humane treatment, the GPW specifies in Article 6 that the GPW cannot be amended by the signatories to allow them to torture or violate the human rights of a POW, while also establishing in Article 135 that the GPW supersedes all previous Hague and Geneva Conventions in regards to treatment and definitions of POWs, civilians, and enemy combatants.\(^ {60}\) Article 17 specifies that when an enemy is captured “No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind.”\(^ {61}\)

The 1949 Convention also created Protocol IV, Relative to the Protection of Civilian Persons in Time of War of 12 August 1949. Protocol IV establishes “as a minimum,” identical treatment for all civilians as those given to POWs in Article 2 of Protocol III.\(^ {62}\) Article 4 of this Protocol separates civilians of non-signatory states or of neutral states they are not under the specific protections of the Convention, however the default treatment remains as defined in all previous articles, as well as the default to humane treatment status for non-international conflicts where civilians are captured or detained.\(^ {63}\) Other than the Article 4 caveat, Protocol IV repeats all

\(^{59}\) Ibid., Article 5.  
\(^{60}\) Geneva Convention Relative To The Treatment Of Prisoners Of War Of 12 August 1949, Articles 6, 135.  
\(^{61}\) Ibid., Article 17.  
\(^{63}\) Ibid., Protocol IV, Article 3.
major protections for civilians that are members of belligerent states or groups, while Part II of Protocol IV describes protections against consequences of war.

Article 16 of Protocol IV specifies the protection of mothers, the sick, and the infirm during combat as far as military necessity allows.\(^6^4\) The remaining articles of Part II deal with protecting hospitals and their staffs. Part III of Protocol IV assigns protected persons as outlined in Article 4 the same humane treatment as POWs, as well as reiterating that protected persons receive humane treatment when under occupation by any signatory power.\(^6^5\) Article 51 protects children specifically, while Article 53 specifically prohibits the destructions of civilian property unless as military necessity.\(^6^6\) The caveat for military necessity mirrors all other proscriptions in that only when it is militarily necessary should people be displaced or property destroyed, and that the power exercising the use of military necessity has the burden of proof as to why whatever action was militarily necessary.

In light of the atrocities committed around the globe during the Second World War, and building upon previous conventions, treaties, and customary laws, the GPW and the 1949 Geneva Convention attempted to further specify codes of conduct and remove gray areas relating to the status of captured personnel. By defining POWs, civilians, and militias as well as dictating humane treatment when in doubt of the status of any person captured or detained, the Convention sought to remove any potential confusion as to whether anyone captured deserved humane treatment. The Convention attempted to limit wanton destruction or a recourse to area bombing of civilian centers as seen in the Second World War by specifically limiting property destruction and continuing to emphasize that under any sort of confusion, the signatory Parties should revert

\(^{6^4}\) Ibid., Article 16.
\(^{6^6}\) Ibid., Article 51, 53.
to humane treatment and not resort to torture, summary execution, or destruction of livelihood and property.

III. French Laws and Military Regulations in effect in 1957.

In addition to the 1949 Geneva Convention, the UN Charter, and the UDHR, the French constitution of 27 October 1946 (the constitution in effect during the Battle of Algiers in 1957) affirms in its preamble “that each human being, without distinction of race, religion or creed, possesses sacred and inalienable rights.”67 The preamble clarifies that these rights are “the rights and freedoms of man and the citizen enshrined in the Declaration of Rights of 1789 and the fundamental principles acknowledged in the laws of the Republic.”68

The Declaration of Rights of Man and The Citizen was a founding document of the French Revolution and it outlines the fundamental principles of the Revolution under Article 1: “Men are born and remain free and equal in rights. Social distinctions may be based only on considerations of the common good.”69 Article 9 of the Declaration further elaborates from Article 1 “every man is presumed innocent until he has been declared guilty, if it should be considered necessary to arrest him, any undue harshness that is not required to secure his person must be severely curbed by Law.”70 Any police or military personnel acting in police capacity were bound by the above Articles in principle based on their affirmation in the Constitution of 1946. In addition to the above support for humane treatment of French citizens and enemy

70 “The Declaration of the Rights of Man and of The Citizen,” Article 9.
personnel that were detained, the French Penal Code of 1832, Section 5, Article 344 describes significant punishment for torture.\textsuperscript{71} The punishment under the penal code for the arresting and submitting “the persons arrested, detained, or sequestered…to bodily tortures,” is death.\textsuperscript{72}

By 1957 during the Battle of Algiers, the French government had published the State of Emergency Law 55-385 on April 3\textsuperscript{rd}, 1955. In Article 1, the Law specifies that it applied to both Metropolitan France and all territories, including Algeria.\textsuperscript{73} As France considered Algeria an integral part of France and not an outer colony, the law applied. Article 5 allows local prefects and governors-general the ability to impose random stops, to implement curfews, and to confine citizens to their homes for up to 24 hours.\textsuperscript{74} The law specifically states that those arrested still maintain rights, cannot be tortured, and prohibits the establishment of any kind of camps for holding them. Article 6 states that any resort to execution or extended detention requires a verdict by a court, and that the Minister of the Interior is the approving authority to impose longer terms of house arrest, although he could (and did) devolve this power to the Governor General.\textsuperscript{75}

Further specific powers for Algiers came from Governor-General Pierre Lacoste, in control of the government of Algeria in 1957, who handed police powers to the 10\textsuperscript{th} Division to restore order, which was allowed under Law 55-385. By transferring police powers to the 10\textsuperscript{th} Division, Lacoste put the military in charge of police actions, and at no time was the 10\textsuperscript{th} Division commander nor were his subordinates given leave to violate the French laws above.

The French “\textit{Code de justice militaire pour l'armée de terre}” (Code of Military Justice for the

\textsuperscript{71} Maran, \textit{Torture: The Role of Ideology in the French-Algerian War}, 39. \\
\textsuperscript{72} Ibid., 40. \\
\textsuperscript{73} “Loi n° 55-385 du 3 Avril 1955 Relative à L’état D’urgence, https://www.legifrance.gouv.fr/loda/id/JORFTEXT0000006953501, Article 1. Of note, Algeria was considered a department of metropolitan France rather than an overseas colony which is why 55-385 specified Metropolitan France as well as its colonial possessions. \\
\textsuperscript{74} “Loi n° 55-385 du 3 Avril 1955 Relative à L’état D’urgence, Article 5. \\
\textsuperscript{75} Ibid., Article 6.
Army) specifies that the Army can try anyone above the age of 18 in a military court if arrested in a combat zone; which was upheld by Law 55-385. Critically, at all junctures French law states that each individual is still required to be tried and convicted whether the court be military or civil. According to French military law, soldiers charged with anything other than a purely military offense were subject to the French penal codes rather than military codes. In other words, soldiers would be charged under the French penal code outlined above should they be accused of violating the State of Emergency Law 55-385 if they wrongfully imprisoned citizens or residents or subjected them to torture.

In summary, by the time the Battle of Algiers began in January 1957, France was committed both externally and internally to a policy of humane treatment of persons arrested or captured during their combat in Algeria. Repeated international pledges and internal laws upheld for over 100 years dictated that anyone arrested could not be tortured and imposed severe penalties on those found to have tortured prisoners. Even when the military was assigned a judicial role to prosecute those arrested in Algiers, it fell under French civil justice, and therefore was bound to treat anyone in its custody humanely. The French government signed, ratified, and agreed to all of the UN stipulations on June 18th, 1951, three full years before the war in Algeria. The UN Charter, UDHR, GPW, and the French Penal code applied to the conflict in Algeria under the State of Emergency Law as France considered Algeria one of its departments, not a foreign country until 1962 at the conclusion of the war. Police powers only shifted the burden of trial to military courts or civil courts with military prosecution, and did not allow the military to bypass a trial in theory.

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IV. American Laws and Military Regulations in Effect in 1968.

The United States signed all of the above international documents and approved the UDHR Resolution for the treatment of civilians, detainees, and enemy prisoners of war and were bound by them during the Vietnam War. In addition to the above commitments, the United States Army was subject to executive order 10631 enacted under President Eisenhower, which established a Code of Conduct to which American soldiers “were expected to measure up” during both combat and captivity.\(^79\) The final paragraph of the Code of Conduct states “I will never forget that I am an American fighting man, responsible for my actions, and dedicated to the principles which made my country free…”\(^80\) In 1968, the Uniform Code of Military Justice (UCMJ) of 1956 as outlined under Title 10 and 32 of the U.S Code was in effect.\(^81\) The punitive Articles of the 1956 UCMJ include prohibitions on torture, murder, and many other actions from desertion to cowardice. Articles 90 and 91 define insubordination as a punishable article if a soldier threatens an officer, non-commissioned officer, or warrant officer with a weapon, or disobeys a *lawful* order.\(^82\) Article 118 establishes the threshold for murder as when a soldier:

1. has a premeditated design to kill;
2. intends to kill or inflict great bodily harm;
3. is engaged in an act which is inherently dangerous to others and evinces a wanton disregard of human life; or
4. is engaged in the perpetration or attempted perpetration of burglary, sodomy, rape, robbery, or aggravated arson;\(^83\)

The above Article allows the death penalty for those convicted. The UCMJ defines manslaughter in Article 119 as:

\(^{79}\) Executive Order No. 10631, (1954).
\(^{80}\) Ibid.
\(^{81}\) Title 32, U.S.C 81 (1956), 3-6.
\(^{82}\) Ibid., Article 90-91.
\(^{83}\) Ibid., Article 118.
(a) Any person subject to this chapter who, with an intent to kill or inflict great bodily harm, unlawfully kills a human being in the heat of sudden passion caused by adequate provocation is guilty of voluntary manslaughter and shall be punished as a court-martial may direct.
(b) Any person subject to this chapter who, without an intent to kill or inflict great bodily harm, unlawfully kills a human being—
(1) by culpable negligence; or
(2) while perpetrating or attempting to perpetrate an offense, other than those named in clause (4) of section 918 of this title (article 118), directly affecting the person; is guilty of involuntary manslaughter and shall be punished as a court-martial may direct.\textsuperscript{84}

Article 119 clearly describes crimes of passion or negligence of soldiers as reasonable causes for a charge of manslaughter, adding to Article 118’s premeditated actions. The UCMJ is published at all levels of the United States Army and all soldiers, regardless of rank, are expected to understand it since they are subject to it. The final Article of the UCMJ is Article 134, which reserves punishments for all soldiers whose conduct can be considered prejudicial to “good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital.”\textsuperscript{85} Article 134 can be used to punish any actions that discredit the army or anything not specifically outlined in other Articles but which degrades discipline.

After the baseline UCMJ, the army published Field Manual (FM) 27-10, “The Law of Land Warfare,” in 1956. FM 27-10 outlines soldier conduct and contains complete extracts from the Geneva Conventions. Along with FM 27-10, the army published Department of the Army Pamphlet (DA PAM) 27-1, “Treaties Governing Land Warfare,” as a short version of FM 27-1 with extracts of key sections of all conventions necessary for soldiers. Both FM 27-10 and DA PAM 27-1 are to be used in conjunction with Technical Manual (TM) 27-251, “Treaties Governing Land Warfare,” published in 1944 which has direct translations from the official

\textsuperscript{84} Title 32, U.S.C 81 (1956), Article 119.
\textsuperscript{85} Ibid., Article 134.
French language Geneva and Hague protocols before 1949. For simplicity, this thesis will use FM 27-10 as the wording is more complete than TM 27-251, and DA PAM 27-1 and none of the documents contradict each other.

FM 27-10, begins chapter 1 by establishing that the purpose of the manual is to “to provide authoritative guidance to military personnel on the customary and treaty law applicable to the conduct of warfare on land,” and to safeguard the human rights of both combatants and noncombatants while sparing them from unnecessary suffering. The manual further states that “military necessity” is not an excuse to, nor defense for violating established international law in that the laws were specifically designed with military necessity in mind, while specifying that the laws of land warfare are applicable to both states and the individuals in the armed forces of those states. FM 27-10 continues by stating unequivocally that even if a state rejects or withdraws from the Geneva Protocols, all parties are still bound by human decency and, and those states still party to the convention must still follow it. In other words, even if the enemy violates or withdraws from the GPW and abuses or tortures US personnel, the US Army is still bound to follow all Geneva protocols and laws of land warfare. FM 27-10 echoes the 1949 Convention by restating that all Protocols must be disseminated to the armed forces of all belligerents and that soldiers should know and understand them.

Specific to the massacre at My Lai, FM 27-10 declares property destruction illegal, unless buildings are destroyed for fortifications, landing zones, fields or fire or for dire need of fuel for the army. Wanton property destruction, or destruction for revenge is still outlawed by

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87 Ibid., 3.
88 Ibid., 4.
89 Ibid., 6.
90 Ibid., 11.
91 Ibid., 24.
the Geneva Convention and is reiterated by FM 27-10, along with the seizure of personal property unless it is a military imperative. FM 27-10 states unequivocally in Paragraph 65 that citizens resisting initial occupation are entitled to GPW rights, whether they are in a distinct uniform or not and it allows them to be taken prisoner, which would require them to be subject to the GPW if they are captured. In Paragraph 72, the manual states that if a soldier is in doubt as to the status of a combatant or individual in a combat area, the default is the GPW until a military tribunal can decide the status of the individual.

Further considerations of hostile acts “behind the lines” all require a military tribunal and a trial before an individual captured or identified may be executed, as stated in Paragraph 80 and 81 of the manual. To further safeguard surrendered or detained individuals, Paragraph 85 prohibits executing prisoners for the sake of maintaining speed or for expediency during a military operation, while Paragraph 89 states that reprisals are also prohibited. If an individual is captured, they cannot be tortured for information, nor do they forfeit their rights under the GPW for having committed prior crimes (for example if a soldier captures an enemy who confessed to planting a mine or setting a trap several days prior to the current engagement, that enemy is still protected under the GPW). FM 27-10 in Paragraph 509 specifically states that following illegal orders is not a defense against prosecution and that soldiers cannot be expected, in conditions of war discipline, to weigh scrupulously the legal merits of the orders received; that certain rules of warfare may be controversial; or that an act otherwise amounting to a war crime may be done in obedience to orders conceived as a measure of reprisal. At the same time it must be borne in mind that members of the armed forces are bound to obey only lawful orders.

93 Ibid., 31.
94 Ibid., 33.
95 Ibid., 35-36.
96 Ibid., 37, 63.
97 Ibid., 182-183.
The key phrase above is the expectation that soldiers do not have time to “weigh scrupulously,” under combat conditions, what is and is not a legal order. It is implied therefore, that soldiers should be able to recognize an egregiously illegal order and not have to question it under combat conditions. In summary, FM 27-10 categorically supports the GPW and maintains that in all circumstances anyone captured or detained in or around a battlefield has the right to humane treatment and cannot be summarily executed.

All soldiers deploying to Vietnam were issued with wallet cards entitled “NINE RULES: For Personnel of US Military Assistance Command, Vietnam,” which contain rules to treat all Vietnamese with respect and that all soldiers are responsible for their official and personal actions while in Vietnam.98 All officers were issued with additional cards entitled “THE ENEMY IN YOUR HANDS,” which state:

1. Handle him firmly, promptly, but humanely…
2. Take the captive quickly to security…
3. Mistreatment of any captive is a criminal offense. Every soldier is personally responsible for the enemy in his hands.
4. Treat the sick and wounded captive as best you can.
5. All persons in your hands, whether suspects, civilians, or combat captives, must be protected against violence, insults, curiosity, or reprisals of any kind.99

In addition to those stipulations which each carried further details on treatment, the card states that “[a]s a member of the US military forces, you will comply with the Geneva Prisoner of War Conventions of 1949 to which your country adheres.”100 The card ends by ordering soldiers to “ALWAYS TREAT YOUR PRISONER HUMANELY.”101 These cards were inspectable items,

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100 Ibid., 41.
101 Ibid.
meaning that any commander could demand his soldiers or subordinates produce them on command for inspection with the threat of punishment if the soldier could not.

Outside of these regulations, each unit was given a short, “Vietnam Our Host” briefing before deploying which included “do not insult the women, do not assault the women,” and to be polite.102 Once each unit arrived in Vietnam, it went through an initial 6 day “in-country orientation” which ended with a live patrol in order to ensure incoming units were prepared for combat operations.103 The first day of orientation was “devoted to the handling of prisoners of war (PW’s) and the provisions of the Geneva Conventions,” while several days were also devoted to small unit leadership and patrolling.104 In addition to the above initial training, the 11th Brigade, and the units that later perpetrated the My Lai massacre also conducted training within the division to further emphasize how to handle enemy prisoners in the months before the operation.

At the battalion level, FM 7-20, “Infantry, Airborne Infantry, and Mechanized Infantry Battalions” was the tactical manual that guided commanders on how to execute their tasks and properly employ their units. According to the manual, battalion commanders were “responsible for everything the battalion does or fails to do,” and were expected to have “a thorough understanding of the tactical and technical employment and capabilities and limitations of all organic elements and of arms and services that may be associated with the battalion.”105 A battalion commander further “insures [sic] that his standards are maintained by personal visits and inspections by himself and his staff coupled with followup [sic] action,” while “combat

effectiveness of the unit can only be determined by a continuous evaluation of the indications of leadership.” Battalions commanders were required to know their units’ capabilities and limitations and to take personal initiative to ensure the unit is trained and prepared for combat. The actions of the battalion were a reflection of the commander and were entirely his responsibility.

FM 7-10, “Rifle Company, Infantry and Airborne Battle Groups” laid out the same standards for company commanders:

The company commander alone is responsible for what his company does or fails to do. He is responsible for the training, discipline, control, tactical employment, administration, and welfare of his company and for all aspects of its performance in garrison and in combat.

Company commanders established and enforced their standards through their platoon leaders and noncommissioned officers, and were personally responsible for inspecting and ensuring that the standards were followed, in the same way that battalion commanders were. Company commanders were responsible for training their subordinate leaders and a commander “takes positive action to correct any deficiencies.” In combat, the company commander “by his personal actions and by directing and supervising his subordinate leaders, in-sures [sic] that a continuous and effective effort is made to attain the highest possible standard,” and to ensure his subordinates operated within his intent. A company commander was required to understand, train, and supervise his men and junior leaders to ensure they followed his orders, and any failures by his company were his responsibility. A platoon leader was “responsible for the

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108 Ibid., 8.
109 Ibid.
110 Ibid., 9.
discipline, training, welfare, control, and tactical employment of his platoon,” and to ensure his men knew and understood the company commander’s intent as well.\textsuperscript{111}

As shown above, from the highest levels and international treaties down through the Army, MACV, division, and down to the soldier level, many different safeguards existed to ensure soldiers knew and understood what was expected of them as far as conduct. In regards to prisoners and captives of any kind, the Army published hundreds of pages of regulations which all repeat that anyone detained or captured by United States soldiers was entitled to humane treatment. MACV published cards for both leaders and soldiers, as well as facilitated multiple iterations of training for incoming personnel to ensure soldiers were aware of what to do with prisoners. The Americal Division conducted further training to ensure soldiers were further educated. At the lowest levels of leadership, battalion and company commanders, and platoon leaders all had access to all necessary information and explicit instructions on what to do with prisoners. If the members of Charlie Company thought they were in fact dealing with Viet Cong and not civilians, they were still obligated to treat the enemy in accordance with the above guidance.


Following the 1949 Geneva Protocols, the United States also ratified Additional Protocol I on 8 June 1977. The Additional Protocol dealt with further increasing Geneva Protections, reaffirming previous Geneva Protocols, and dealt with command responsibility.\textsuperscript{112} Article 86.2

applied to military commanders who failed to take reasonable measures to prevent subordinates from committing war crimes or failed to prosecute or stop actions already committed or in progress:

The fact that a breach of the Conventions or this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility…if they knew, or had information which should have enabled them to conclude the circumstances at that time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach.113

In addition to the above Protocol, international case law has created seven avenues to establish command responsibility in the case of grave breaches of the Geneva Conventions or Protocols:

1. A commander commits a war crime himself.
2. A commander orders a subordinate to commit war crimes.
3. A commander disregards war crimes by a subordinate of which he should be aware, or for knowing about them and taking no action.
4. A commander incites war crimes.
5. A commander fails to control his troops who commit war crimes.
6. A commander permits or acquiesces to war crimes committed by subordinates.
7. A commander passes on manifestly illegal orders to his subordinates.114

These seven avenues broadened the ability to prosecute commanders for the actions of their subordinates, and are influenced by the wars in Vietnam, the Rwandan Genocide, and the wars in the Balkans during the breakup of Yugoslavia. The UN also added a Convention Against Torture, ratified on December 10th, 1984.115

The Convention Against Torture (CAT) defined torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession,” and further includes any

114 Ibid., 393-394.
115 Convention against torture, and other cruel, inhuman or degrading treatment or punishment, No. 2481, 1987.
coercion or intimidation, any of which meets the threshold for torture when committed by a government official or anyone acting in an official capacity.116 Article 2.2 and 2.3 specify that there are no exigent circumstances to commit torture and that following orders from a superior is not a justification.117 The CAT further bound all member nations to prosecute torture under their own established laws as a criminal act and to disseminate the CAT in the same way they did the Geneva Protocols.118 Article 11 required that the laws governing torture were periodically reviewed to ensure compliance and to reflect any updates, and that each nation was required to enforce the CAT in all areas under their jurisdictions.119 The United States ratified the CAT and it entered into force in 1987.

As a reaction to the My Lai massacre and the Vietnam War Crimes Working Group investigations into war crimes and atrocities in Vietnam, the United States Army conducted several informal and internal attempts to ratify an officer’s creed and a set of ethics to guide its soldiers. In 1978, the Army published its first specific ethical standards for soldiers and continued to update these throughout the end of the 20th Century.120 The Army began with an “Officer’s Creed” in 1970 before also encompassing a Noncommissioned Officer’s Creed and culminating in FM 100-1 in 1978 which states “the Army reflects the character of the nation’s institutions, values, and motivations.”121

FM 100-1 was updated in 1981 to reflect that the Army needed a set of enduring ethical principles to ensure the Army remained in line with the Unites States “heritage and linked to our

116 Convention against torture, and other cruel, inhuman or degrading treatment or punishment, No. 2481, Article 1.1.
117 Ibid., Article 2.2-2.3.
118 Ibid., Article 4.1, 10.1.
119 Ibid., Article 11, 16.1.
120 Frank Licameli, “A Brief History of the Army Values,” (Kansas: Center for the Army Profession and Ethic), 2018, 2.
121 Licameli, “A Brief History of the Army Values,” 2.
national goals and objectives,” and defines those principles as: loyalty to the institution, loyalty to the unit, personal responsibility, and selfless service.\textsuperscript{122} The 1981 manual further defines 4 “Professional Soldierly Qualities:” commitment, competence, candor, and courage, but failed to dictate the frequency of training on these or specify training goals.\textsuperscript{123} The 1983 Army Regulation on mandatory training for the Army (AR 350-1) established “Morals and Ethics” training as a duty of the unit Chaplain, but not until April 2003 did AR 350-1 finally specify training on ethics for basic trainees and at the Command and General Staff College. From 1983-1999 the Army added, reordered, and reworded its ethic and soldierly qualities until it published FM 22-100 “Army Leadership-Be, Know, Do,” on 31 August 1999, and FM 1 “The Army,” published on 14 June, 2001.\textsuperscript{124} Both of these manuals were in force during the 2003 invasion of Iraq. FM 22-100 lists 7 Army Values that are directly linked to the Warrior Ethos. This Warrior ethos refers to the professional attitudes and beliefs that characterize the American soldier. At its core, the warrior ethos grounds itself on the refusal to accept failure…The warrior ethos concerns character, shaping who you are and what you do. In that sense, it’s clearly linked to Army values such as personal courage, loyalty to comrades, and dedication to duty… You build character in subordinates by creating organizations in which Army values are not just words in a book but precepts for what their members do.\textsuperscript{125}

The Army Values have remained unchanged since this publication and are: Loyalty, Duty, Respect, Selfless-Service, Honor, Integrity, and Personal Courage. These values set the stage for follow on doctrine as shown in FM 1, which further clarifies:

American Soldiers remain the centerpiece of our formation. Their character and our values are the threads from which we make whole cloth…. Army professionalism is moral because the capability to wield tools of destruction in a brutal environment carries with it a moral responsibility. Our professional moral imperative derives from ancient ethical and religious standards. The Law of Land Warfare, the Uniform Code of Military Justice, and the Code of Conduct give

\begin{footnotes}
\item[122] Licameli, “A Brief History of the Army Values,” 3-4.
\item[123] Ibid., 5.
\item[124] Ibid., 34.
\item[125] Ibid., 35.
\end{footnotes}
structure to the moral imperative. The moral and ethical tenets of the Constitution, the Declaration of Independence, and Army values characterize The Army’s professional ideals.\textsuperscript{126}

This formulation of military ethics links the Army Values to other ethical standards, like the Law of Land Warfare which specifically prohibit torture of enemy prisoners, civilians, and detainees. The Law of Land Warfare specifically cites all Geneva protocols and states that all American military personnel will “comply with the law of war during all armed conflicts, however such conflicts are characterized, and in all other military operations.”\textsuperscript{127}

For Military Police soldiers who would guard detainees, internees, and Enemy Prisoners of War (EPWs) at Abu Ghraib, their duties and responsibilities were outlined in Army Regulation 190-8, “Enemy Prisoners of War, Retained Personnel, Civilian Internees and Other Detainees,” published October 1, 1997.\textsuperscript{128} AR 190-8 states in the first chapter that:

(1) All persons captured, detained, interned, or otherwise held in U.S. Armed Forces custody during the course of conflict will be given humanitarian care and treatment from the moment they fall into the hands of U.S. forces until final release or repatriation.
(2) All persons taken into custody by U.S. forces will be provided with the protections of the GPW until some other legal status is determined by competent authority.
(3) The punishment of EPW, CI and RP known to have, or suspected of having, committed serious offenses will be administered IAW due process of law and under legally constituted authority per the GPW, GC, the Uniform Code of Military Justice and the Manual for Courts Martial.\textsuperscript{129}

The same paragraph prohibits the photographing of any individuals except for the purposes of intelligence gathering, and Chapter 2 specifies that while Military Police soldiers may interrogate

\textsuperscript{126} Licameli, “A Brief History of the Army Values,” 36.
\textsuperscript{129} Ibid., 2.
enemies “in the combat zone,” torture, physical, or mental coercion, or any other threat or degrading measures to compel an enemy to divulge information is also prohibited.\textsuperscript{130} Paragraph 3-2 states explicitly “[t]he operation of all EPW internment facilities is governed by the provisions of the Geneva Conventions,” and that copies of the Geneva Convention will be posted in all languages necessary for the prisoners to understand.\textsuperscript{131} Paragraph 3-7 mandates that any punishment of EPWs is governed by the UCMJ and Manual Courts Martial, while chapter 4 mandates sanitary conditions and outlines basic care and rights for anyone detained, retained, or captured. Chapter 5 mandates that even if the individual is a detainee, retained person, or a civilian internee, they are subject to Geneva Protections.\textsuperscript{132} The UCMJ and Manual Courts Martial will be detailed below.

Significantly with regards to the War on Terror, War in Iraq, and events at Abu Ghraib, the Bush administration spent months debating whether Taliban and al Qaeda fighters were subject to the GPW. On February 7, 2002, President George W. Bush signed a memorandum for the Department of Defense, Secretary of State, the Chairman of the Joint Chiefs of Staff, and several other department heads in which he stated:

I accept the legal conclusion of the Department of Justice and determine that none of the provisions of Geneva apply to our conflict with al Qaeda in Afghanistan or elsewhere throughout the world because, among other reasons, al Qaeda is not a High Contracting Party to Geneva…Based on the facts supplied by the Department of Defense and the recommendation of the Department of Justice, I determine that the Taliban detainees are not lawful combatants and, therefore, do not qualify as prisoners of war under Article 4 of Geneva. I note that, because

\textsuperscript{130} Army Regulation 190-8, “Enemy Prisoners of War, Retained Personnel, Civilian Internees and Other Detainees,” 2, 4.
\textsuperscript{131} Ibid., 5-6.
\textsuperscript{132} Ibid., 14-18, 32. Paragraph 3-15 defines “retained personnel” as medical orderlies, chaplains or other nongovernment volunteers such as the Red Cross. Civilian Internees are “a civilian who is interned during armed conflict or occupation for security reasons or for protection or because he has committed an offense against the detaining power.” A detainee is anyone captured “or otherwise detained by an armed force.”
Geneva does not apply to our conflict with al Qaeda, al Qaeda detainees also do not qualify as prisoners of war.\textsuperscript{133}

The memorandum further stated that in spite of the above conclusion, “[a]s a matter of policy, the United States Armed Forces shall continue to treat detainees humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva.”\textsuperscript{134} The above memorandum very obviously does not apply to Iraqi Army EPWs or any individuals detained in Iraq unless that individual is a member of the Taliban or al Qaeda. Even if an individual is determined to be a member of either organization, the United States military is still bound under Geneva both by the above and by the UCMJ.

The UCMJ in effect during 2003 is described in the 1995 Manual Courts Martial, which is based verbatim on the 1969 manual, and as such this thesis will quote from the 1969 manual in regards to the punitive Articles as they relate to soldiers at Abu Ghraib.\textsuperscript{135} Article 92 applies punishment for failing to follow an established order or regulation, defined as:

General orders or regulations are those orders or regulations generally applicable to an armed force which are properly published by the President or by the Secretary of Defense, of Transportation, or of a military department, and those orders or regulations generally applicable to the command of the officer issuing them throughout the command or a particular sub-division thereof which are issued by an officer having general court-martial jurisdiction, a general or flag officer in command, or a commander superior to one of these.\textsuperscript{136}

It would be reasonable to interpret the Geneva Protocols, and AR 190-8 as general orders when it comes to detainees and EPWs at Abu Ghraib in 2003. Article 118 defines murder as killing another human being “when done without justification or excuse… Whether death occurs at the

\textsuperscript{133} Karen Greenberg, and Joshua Dratel, eds., \textit{The Torture Papers: The Road to Abu Ghraib}, (Cambridge: University Press, 2005), 134-135.

\textsuperscript{134} Greenberg, and Dratel, eds., \textit{The Torture Papers: The Road to Abu Ghraib}, 134-135.


time of the accused's act or omission, or at some time thereafter, it must have followed from an
injury received by the victim which resulted from the act or omission.” 137 In addition to murder,
Article 128 defines assault as “an attempt or offer with unlawful force or violence to do bodily
harm to another, whether or not the attempt or offer is consummated,” which allows even the
threat of bodily harm to be considered assault.” 138

Under the above published, established regulations, the expectation for military members
is the ethical and humane treatment of enemy prisoners and detainees. Military Police
specifically maintain, supply, and run prisons and are not interrogators nor intelligence
personnel. Even when defining torture or interrogation techniques during the first days of the
War on Terror, the Bush administration specifically stated that Department of Defense (DoD)
personnel, which includes all military branches, would still follow all GPW regulations even if
the CIA or designated interrogators would not. 139

As shown above, there is a long international history of published and consensus law
regarding the humane treatment of prisoners or detainees. Both the United Nations and the
International Red Cross published and propagated numerous international treaties that bound
both France and the United States to humane treatment of any individuals that fell into the hands
of their armed forces. From 1945 onwards both France and the United States were bound to, in
any case, treat prisoners, civilians, or any other detainees humanely and neither nation could
derogue their obligations to the UN or the Geneva Protocols.

138 Ibid., 353.
139 Mark Danner, Torture and Truth: America, Abu Ghraib, and the War on Terror, (New York: Review of Books,
2004), 106.
Internally, France has based its military codes and prosecutions on its founding revolutionary document the “Declaration of the Rights of Man and The Citizen.” France maintained through the Battle of Algiers that its soldiers were subject to their Penal Code in all matters not directly related to military infractions. Even with devolved police powers, all executions and punishments, by France’s own military system, required a trial before passing a sentence. In no cases did France’s military and internal state of emergency laws allow for summary execution or torture for expediency.

In Vietnam, from General Westmoreland down through the division and brigade commanders, policies were established and repeated in regards to the treatment of prisoners. The UCMJ unequivocally stated that torture, maiming, and murder were illegal, and that the destruction of property outside of direct necessity was forbidden. Higher level policy supported the UN, UDHR, and Geneva Protocols and systems were in place for leaders at all levels to train their soldiers to behave humanely. In-country training discussed how to treat prisoners, and all soldiers were issued with inspectable cards to ensure their understanding of the GPW and Army Regulations. Leaders at the battalion and company level had manuals at their disposal to ensure they understood their duties and responsibilities both in regards to their subordinates and the enemy.

By 2003, with the experiences in Vietnam and the aftermath of My Lai, the Army focused on building and promulgating a system of ethics to ensure war crimes did not happen. The Military Police at Abu Ghraib were specifically bound under all policies to uphold GPW protections and the UN CAT no matter what classification of detainee or EPW fell into their hands. Interrogations were never authorized for the military police themselves, as their jobs were specifically to guard and maintain the prison itself per regulation. Army regulations and
executive polices both combined to theoretically ensure that while certain individuals conducted interrogations that could be classified as torture, Army personnel were still bound by Geneva Protocols.

In all three cases, the preponderance of evidence shows that policies were established and updated to maintain humane treatment for prisoners. These established systems are only as effective as the men and women who read, understand, and support them and that is where these systems failed. Commanders on the ground failed to emphasize, failed to train, or manifestly ignored guidance from higher echelons and contributed directly to war crimes during the Battle of Algiers, My Lai, and Abu Ghraib.
CHAPTER TWO
TORTURE DURING THE BATTLE OF ALGIERS

I. The Battle of Algiers, January to October 1957.

Following World War II, France and the United States followed two different agendas: the United States publicly committed to decolonization while France maintained a commitment to its overseas empire. As a result of France’s pursuit of empire, the French government fought a protracted counterinsurgency campaign in Algeria against the Front de Liberation Nationale (FLN) from November 1st 1954 until the signing of the Evian Accords on March 19th 1962. A pivotal battle of the War in Algeria was the Battle of Algiers in 1957 due to the fact that after the battle, allegations of widespread torture were levelled against the French government by native Algerians and French citizens. While sometimes referred to as the First and Second Battles of Algiers due to a lull, in this thesis both “battles” will be treated as a single event lasting from January 7th to October 8th 1957. The battle was preceded by months of assassinations and bombings of nightclubs by the FLN, as well as backlash from the French colonists known as pieds noirs, leading to the deaths of hundreds of European and native Algerian civilians.

By mid-1956, the FLN had established an “autonomous zone” of 5,000 men and women working for the FLN in the city of Algiers to combat French operations. The head of the FLN, Saadi Yacef, utilized a network of 1,400 local Algerians centered in the old city of Algiers known as “the Casbah.” These Algerian men initially gunned down forty-nine civilians from June 21st to 24th 1956 as a response to the execution of several FLN operatives. By the fall of 1956, Yacef

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managed to establish a robust bomb making network in the Casbah and began bombing popular European night clubs and bars. Yacef convinced three Algerian college aged girls to plant bombs in the Milk Bar, the Cafétéria, and in the Air France terminal of the airport. The Milk Bar and Cafétéria bombs went off at 6:30pm while the Air France bomb failed, but the carnage caused by the two successful explosions shocked the city. The Milk Bar located across the street from a major French Army regional headquarters, had its plate glass window turned into lethal shrapnel, killing three and wounding 50, many with limbs so mangled they required amputation. This sparked mob retribution by the pieds noir, which led to the counter bombing of a house in the Casbah that killed 70 Muslim civilians, most of whom were not FLN guerrillas. The back-and-forth violence culminated with the murder of the mayor of Algiers, Amédée Froger, by a gangster turned FLN assassin named Ali la Pointe in December of 1956.

On January 7th, 1957 Governor General Pierre Lacoste requested the 10th Division Parachutiste to augment the Algiers police, and gave them orders to restore and maintain order in the city. The 4,600 men of the 10th Division, under command of General Jacques Massu occupied Algiers on January 14th, 1957 and divided the city into four zones with the Casbah belonging to the 3e Régiment Coloniale de Parachutistes (3rd RPC) under Colonel Marcel Bigeard. The night before the paratroopers’ occupation, French army personnel seized all police intelligence files on FLN suspects in Algiers, enabling them to conduct mass arrests as they occupied the city. The 10th Division proceeded to take a census of all residents of and issue identity

146 Ibid., 188.
147 Ibid., 190.
cards to the entire Casbah and establish a clandestine intelligence desk to run local Algerian agents (this organization was known as the Dispositif de Protection Urbain or DPU).  

All entrances to the Casbah turned into checkpoints run my military units and not police, and each block of the Casbah was numbered and overseen by a pro-French Algerian previously screened by the DPU. The Casbah was divided into quadrants which had soldiers on patrol day and night, and each was separated from the other by barbed wire and checkpoints, which required anyone leaving to be questioned and show a valid identification card. The next task for the 10th Division was to break an eight-day general strike which the FLN had called for January 28th in order to garner UN attention to force an international discussion of the war and eventually Algerian independence.

On the morning of January 28th, the 10th Division attempted to use leaflets and loudspeakers to cajole the local Algerian population to return to work, and when that failed General Massu deployed armored cars to simply tear the shutters off Algerian shops and owners had to return to work or risk their stores being looted, and they were threatened with imprisonment if they left. While stores were reopened, soldiers hustled other strikers into military trucks and forced them back to work. By January 29th, the military even trucked Algerian students back to school, and any FLN resistance crumbled as most operatives were arrested before the strike began in the 10th Division’s initial roundup. As security tightened, Saadi Yacef returned to using women as bomb carriers, and followed the failed general strike with a series of larger bombings.

The three targets for Yacef’s new bombing campaign in January of 1957 were European student bars: the Otomatic, the Cafétéria (again), and the Coq-Hardi. All three bombs exploded

\[148\] Ibid.
\[150\] DiMarco, *Concrete Hell: Urban Warfare from Stalingrad to Iraq*, 116.
within minutes of each other killing 5 and wounding 60. Two weeks after the bar bombings, two more bombs exploded in separate stadiums in Algiers, both planted by teenaged girls, killing ten and wounding 45.\textsuperscript{152} Yacef relied on girls and young women to carry his bombs as all men leaving the Casbah were thoroughly searched while women were usually ignored and simply ogled by the soldiers. After the second bombing wave, soldiers began using mine detectors on women leaving the Casbah, which proved too slow so the soldiers simply searched the women using “less chivalrous means.”\textsuperscript{153} A bombmaker picked up by Colonel Bigeard’s men broke after three days of interrogation and gave up the address of Yacef’s bombmaker (the other having blown himself up by accident in October of 1956), and on February 8\textsuperscript{th} the 10\textsuperscript{th} Division missed apprehending the men by minutes.\textsuperscript{154} The following week, the 10\textsuperscript{th} Division arrested Yacef’s chief bomb transporter and his chief architect and forced the location of the FLN’s stockpile out of them. The soldiers used helicopters to land on various roofs of the Casbah and seized 87 bombs, 5,210 detonators, 70kg of explosives, and the names of the remaining bomb makers in Yacef’s network.\textsuperscript{155} On February 25\textsuperscript{th}, 1957 acting on a tip, the paratroopers arrested Larbi Ben M’Hidi who had close ties to FLN leadership in the city. One week later, Ben M’Hidi allegedly committed suicide by jumping from a balcony in prison, setting off a public outcry from many in France at the methods the army was using to win in Algiers.\textsuperscript{156} By the end of March 1957, the 3\textsuperscript{rd} Regiment was reassigned as Yacef’s network was all but destroyed and no bombs exploded for several weeks.

When Colonel Bigeard’s soldiers left, Yacef rebuilt his network, including bringing in Ali La Pointe, and in May 1957 two of his men gunned down two paratroopers in the city on leave.

\textsuperscript{152} Ibid., 192.
\textsuperscript{154} Ibid.
\textsuperscript{155} Ibid., 193-194.
\textsuperscript{156} Ibid., 195.
In response to the deaths, several paratroopers machine-gunned 80 Algerians in a Turkish bath; none of the men responsible were arrested or charged.\textsuperscript{157} During the first week of June, 1957, Yacef’s network placed bombs in several streetlamps, and six days later in The Casino club on a Sunday at peak hours. The bombings claimed 11 dead and 175 wounded, with many at The Casino losing legs as the bomb was placed under the orchestra stage.\textsuperscript{158} The French citizens rioted in response, requiring General Raoul Salan, Commander in Chief of all French forces in Algeria, to plead with them to disband but only after fifty Algerians were killed.\textsuperscript{159} The 3\textsuperscript{rd} Regiment was recalled and by July 22\textsuperscript{nd} had reestablished control of The Casbah.\textsuperscript{160}

In contrast to the large sweeps and mass arrests of the spring, the 10\textsuperscript{th} Division now leveraged tens of former FLN terrorists and Casbah workers that worked for the DPU, disguised in standard workers blue dungarees. These men would later be known as “\textit{la bleuite},” or “the blues,” and they immediately identified the hideout of Yacef’s two primary bombmakers.\textsuperscript{161} The two men were surrounded, blew up a bomb after pretending to surrender, but were shot trying to escape, on August 26\textsuperscript{th}, 1957. By September 1957, Yacef’s renewed offensive had sputtered out, and his organization was in shambles. Yacef left his safehouse in the Casbah disguised as an old woman and carrying a submachinegun under his voluminous robes.

On September 22\textsuperscript{nd}, 1957 Yacef ordered his men to split up and moved his safehouses while he wrote a letter to other FLN leaders. Yacef’s courier was arrested immediately by the 10\textsuperscript{th} Division acting on a tip and gave up the safehouse location on September 23\textsuperscript{rd}. By 5am on September 25\textsuperscript{th}, 1957, the 10\textsuperscript{th} Division had the safehouse surrounded.\textsuperscript{162} The commander of the 1\textsuperscript{st

\begin{thebibliography}{99}
\bibitem{157} Ibid., 208-209.
\bibitem{158} Horne, \textit{A Savage War of Peace: Algeria, 1954-1962}, 210-211.
\bibitem{159} Ibid.
\bibitem{160} Marcel Bigeard, \textit{Pour Une Parcelle de Gloire}, (Paris: Carrere, 1980), 303.
\bibitem{161} Horne, \textit{A Savage War of Peace: Algeria, 1954-1962}, 212.
\bibitem{162} Ibid., 215-217.
\end{thebibliography}
Regiment Étrangère de Parachutistes (1st Foreign Legion Parachute Regiment, 1st REP) threw a demolition charge into the house and lit a fuse, telling Yacef the explosive would detonate in ten minutes unless he surrendered. Fearing for the lives of his girlfriend and other operative across the street in the second safehouse, Yacef surrendered.163

By the end of September, only Ali la Pointe remained at large but was soon identified by a bleu and the 1st Regiment surrounded his hideout at dusk on October 8th, 1957. Inside La Pointe’s safehouse with him were another bombmaker and Yacef’s 12-year-old nephew, Omar.164 The paratroopers took no chances and placed three shaped charges at the base of the house, demanded Ali la Pointe surrender, and upon receiving no response, detonated the charges. The explosives set off a bomb cache under the house and the ensuing explosion leveled the safehouse and collapsed four neighboring houses, killing 17 Algerians (including four children), and wounded four paratroopers.165 With the emphatic death of Ali la Pointe and the destruction of the safehouse, the FLN ceased all operations in the city and fled to the outlying areas to continue their fight. The French claimed victory in the Battle of Algiers, and the 10th Division was gradually redeployed to continue their war in the countryside.

While the Battle of Algiers was a convincing military victory for the French army, the death of Ben M’Hidi put a spotlight on the methods the army used during the battle and led to a public relations nightmare with serious evidence of widespread torture, extrajudicial killings, and strange “disappearances” of prisoners.

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164 Ibid., 218.
165 Ibid.
II. Methods of Torture and Intelligence Gathering.

The parachutists, regarded as an elite unit within the French army, received no police training, and in fact were told by Massu, “the ends justify the means,” in pacifying Algiers.\(^\text{166}\) As the police and judges were unable to efficiently or practically arrest, process, or convict FLN operatives and suspects, the 10\(^{th}\) Division would “replace both the policemen and the judges.”\(^\text{167}\)

Upon occupying the city, the 10\(^{th}\) Division established a curfew with orders to shoot anyone out after the curfew and left the bodies in the street for the people to see.\(^\text{168}\) General Massu labeled each house and issued all residents of the Casbah with distinct identity cards. Each block had an appointed warden and that individual compiled a list of residents by house, including any “missing” or “out of town” residents whose houses were then rechecked randomly by patrolling soldiers.\(^\text{169}\)

In addition to patrols twenty-four hours a day,

- Policemen, gendarmes, CRS, and even soldiers were used to carry out this task under the guise of the *Département de protection urbaine* (DPU).
- Under the supervision of the officers on the Prefecture’s staff lists of names were established. They would ask the oldest dweller of a house to name each person who was living there. That information was crosschecked with statements made by the neighbors so that those who were absent thus became suspects. When they returned they were automatically questioned.
- The results of the interrogations and comparisons of various sources allowed the patrols to set up reliable lists of persons we should be looking for.\(^\text{170}\)

General Massu attached two men from each regiment in the 10\(^{th}\) Division at the city police Prefecture and utilized them to collect, process and prioritize tips from civilians in the city.\(^\text{171}\)

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\(^{168}\) Ibid., 89.
\(^{171}\) Ibid., 95.
identification cards, and arrest anyone not specifically assigned to work at a specific location or who failed to have a valid reason for their presence. After limiting access and finishing the census of local inhabitants, General Massu established 180 permanent patrols of 6 men during the daylight and 30 motorized patrols at night to ensure compliance and stop movements after curfew. Each city block was numbered as were all houses in the Casbah, and each block was assigned to platoons and companies of paratroopers who collated the lists outlined above and conducted the random searches and patrols.

General Massu established an intelligence section that liaised with the civil police as well as a “parallel” secret staff that was secret and run by Lieutenant Colonel Roger Trinquier and Major Paul Aussaresses. The “parallel” staff was run by Lieutenant Colonel Trinquier, but Major Aussaresses was the “implementation officer” and charged with using the intelligence gathered by Trinquier. Major Aussaresses was specifically requested by General Massu as he had previously dismantled an FLN cell in Philippeville, Algeria, using torture and terror in 1955. Aussaresses’ previous experience eliminating FLN cells quickly convinced General Massu to order him to Algiers.

Trinquier and Aussaresses compiled a list of local police and government officials with whom they traded information and utilized the police files seized during the initial occupation to build up a network of informants and potential suspects. Aussaresses deputized 20 soldiers and non-commissioned officers (NCOs) that were unassigned and split them into two separate groups.

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172 Ibid., 109.
174 Ibid.
175 Ibid., 88-89.
177 Ibid., 76.
Each 10-man cell operated at night and in a different area as “a safety net should someone in authority seek to find out what [they] were doing.” Each night, Major Aussaresses and his deputy, Lieutenant Garcet, would compile a list of suspects from previous interrogations, intelligence from the 10th Division units, and the civilian police. After compiling this list of suspects Aussaresses would delegate less dangerous captures or interrogations to Garcet before beginning his own missions.

Our team would start at 8 p.m. and we’d be sure to return before midnight with the suspects to proceed with the questioning. Throughout the night the regiments kept me informed of the arrests they were making and often would wait for me to arrive to decide the fate of the prisoners. I was responsible for the decisions regarding all the suspects arrested inside the city of Algiers—as to those who should be interrogated immediately and those who were to be sent directly to the camps because they were less important to us…We would hold on to the others who were either positively dangerous or thought to be so and make them talk quickly before executing them.

Aussaresses would then take his prisoners to the Villa des Tourelles where his interrogations took place if he determined the individual to have intelligence. Aussaresses “never handled more than half a dozen suspects at any one time. The mere fact that they were at the villa des Tourelles meant they were considered so dangerous that they were not to get out of there alive.” Aussaresses never waited more than 24 hours, if possible, to ensure the intelligence was accurate and that anyone named did not have the time to escape.

The 10th Division conducted its own interrogations separate from, and sometimes before handing over suspects to Major Aussaresses and his “parallel staff.” Detachments Operationnels de Protections (DOP) would be on standby to “resort to violence” as necessary to acquire

178 Ibid., 92.
179 Ibid., 111.
181 Ibid., 113.
These DOPs, the primary interrogation units set up under Massu, were attached to all 10th Division units, and commanded by captains who “were known to their superiors.”

Once suspects had confessed, they were handed over to Aussaresses for execution:

Most of the time my men traveled about twenty kilometers outside Algiers to some “remote location” where the suspects were shot with submachine guns and then buried. Executions were never held in the same spot twice. I asked my deputy, Garcet, to pick the men for the job. I was also handed additional unwanted prisoners who had been questioned by other units and had talked.

Aussaresses would compile daily information gained, of the locations, names, and occupations of further suspects daily in a book he called his “manifold” and brief General Massu. Aussaresses sent one copy of the “manifold” to General Massu, one to General Salan, commander of all French forces in Algeria, and to Robert Lacoste the inspector general for Algeria.

The methods used by Aussaresses “were always the same: beatings, electric shocks, and, in particular, water torture, which was the most dangerous technique for the prisoner. [The session] never lasted for more than one hour and the suspects would speak in the hope of saving their own lives. They would therefore either talk quickly or never.” Other suspects, sent to prisons or detention centers, were chained together, stripped naked, and beaten. Upon arrival prisoners would be stripped, handcuffed naked to a board, verbally insulted, and asked rapid-fire questions to elicit information before the soldiers would then move on to the physical torture.

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184 Ibid.
186 Ibid., 114.
187 Ibid., 119.
One prisoner, Henri Alleg, a French citizen and Communist, was told “do you know the Gestapo? This is the Gestapo…this is the 10th DP doing this to you.”\(^{189}\)

Suspects who did not break initially were attached to the gégène.\(^{190}\) The gégène operated by attaching alligator clips at the end of telephone wires to each earlobe, or the tongue, or attaching electrodes to the suspect’s genitals before a current was run through the individual using a hand crank on the telephone itself.\(^{191}\) The amount of electricity was regulated via the dials on the telephone base, the range or volume raised or lowered by the interrogators to be more or less painful. The 10\(^{th}\) Division also used several models of field telephone of varying strengths -- the “big gégène,” and the standard gégène.\(^{192}\)

Waterboarding was done by attaching the prisoner to a chair or wooden plank and wrapping the suspect’s head in a cloth or shirt. Following this, the prisoner was reclined until their feet were above their head and then water from a hose or faucet was run over the cloth, with the subject’s nose held closed and a piece of wood inserted between their lips to ensure they had to inhale through their mouth.\(^{193}\) Paratroopers instructed prisoners to “wiggle their fingers” when ready to talk as the individuals could not ask for help or cry out for risk of choking.\(^{194}\)

Lieutenants, sergeants, and corporals conducted the interrogations in the prisons, much the same way they did for Aussaresses at his sites. Upon completion of the interrogation, suspects were then shot and buried in the “remote locations” described above if the suspects had taken part in attacks; others “committed suicide,” or were quietly released outside the city after the battle if found to be innocent or they talked quickly. While successful at getting information,

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\(^{189}\) Ibid., 22.
\(^{190}\) Alleg, La Question, 18-20.
\(^{191}\) Ibid., 20.
\(^{192}\) Ibid., 22.
\(^{193}\) Ibid., 23.
\(^{194}\) Ibid.
Massu states that he had to frequently rotate troops on interrogation duty as they would burn out or “feel soiled.” Relying on the DPU, the DOPs, and informants captured exclusively during nights raids, the French arrested 24,000 people, one quarter of the Casbah’s population, during the battle and tortured 80 percent of them. Of the 24,000 people arrested, over 13,000 were sent to detention camps, and 3,000 “disappeared,” that is, killed extrajudicially.

III. Negligence by Massu, Bigeard, and Company Level Officers.

Massu, the division commander, established interrogation cells, charged his subordinates with retrieving information no matter the cost, then allowed them to commence interrogations on any people they arrested. Massu justified his use of the “gégène” by noting that he himself had been subjected to it briefly, before stating that it was an “acceptable” method of interrogation.

According to Major Aussaresses, General Massu was right in a sense: if you have neither experienced nor been subjected to torture, it’s impossible to talk about it. But Massu was not crazy and he had carefully picked his torturers among his most devoted courtiers. Had I been doing the torturing he would have been subjected to the exact same treatment as the one we handed to the suspects. He would have remembered and would have understood that torture is much more unpleasant to the victim than to the torturer.

General Massu knew French government policy, and he was daily briefed on the activities of his men by all of his regimental commanders and his “parallel” staff. General Massu issued his General Order number 109 upon taking over Algiers, and in it he exhorted his men to cooperate with local police, use their “intelligence and habitual generosity,” and share the “the fruits of

195 Massu, La Vraie Bataille d’Alger, 166.
196 Rejali, Torture and Democracy, 482.
197 Ibid.
198 Ibid.
experience that you acquired over a year of service in all Algerian sectors.”

Massu repeated in his memoirs that French law required all prisoners to be turned over within 24 hours, and that if he wanted to, he could extend the house arrest of anyone “by a previously fixed deadline.”

He also knew that by law he was allowed to put suspects in “triage” camps in order to decide whether they should be released, imprisoned or subject to house arrest. In these camps “interrogators common to the army and police” worked to discover who should be sent where.

By his own admission he received updates from his intelligence officers daily, met daily with his regimental commanders, and messages from Major Aussaresses. He also received written reports that detailed the names, locations, and actions of the men under him who were torturing and summarily executing suspects. General Massu in his memoirs also corroborates Major Aussaresses assertions of the “parallel staff,” which means he knew and authorized torture. Moreover, in spite of General Massu’s claim that torture was “neither institutionalized nor codified,” he published orders specifying when and how to use the gégène and when it was acceptable to beat prisoners.

General Massu admits that “questioning became part of the job” for his captains and lieutenants during the battle, and he also ordered the creation of the DOPs at the company level across the 10th Division.

The Prosecutor for Algiers ceded his powers to General Massu, using the State of Emergency Law to put anyone arrested in front of a military tribunal. General Massu quotes the State of Emergency Law, which implies he knew he was required to try anyone before execution and that torture was specifically forbidden. He thus authorized torture both verbally and in

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201 Ibid., 101.
202 Ibid.
203 Ibid., 129.
204 Ibid., 167, 148.
writing instead, citing “military expediency.” Considering that General Massu ordered Major Aussaresses onto his staff, his denials of torture being widespread seem disingenuous. General Jacques de Bollardière, a brigade commander initially assigned in Algiers resigned in protest of the wanton arrests and brutality, while also issuing specific orders to his own subordinates that torture would do more damage to the French cause than the information it might provide.

General de Bollardière complained in person to General Massu, who rebuffed him by asserting that the 10th Division must protect the innocent “no matter the price.” General de Bollardière refused to sanction torture and resigned his commission, an option that General Massu had but Massu chose otherwise.

Below Massu, Colonel Bigeard who commanded one of the regiments within the 10th Division, the 3rd Regiment de Parachutistes Colonial (RPC) issued orders to show the enemy the French were “ready to eliminate him at all costs,” and that “classical methods” of warfare would not work. Bigeard protested that his men were not police when ordered to return to Algiers after the first battle, but Massu replied “you will do as you are ordered without discussion.” Bigeard stated in his memoirs that the 3rd Regiment “benefitted greatly from previous experience” in January of 1957, and as such their second deployment to Algiers was short. The DOPs of each regiment were the interrogators and as such Colonel Bigeard benefitted from the intelligence his men gathered. 10th Division personnel garrisoned the prisons where torture occurred, and according to Major Aussaresses, the regimental commanders like Colonel Bigeard competed in front of General Massu to show who made the most arrests or had the newest piece of information.

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209 Ibid., 64.
210 Ibid., 68.
Colonel Bigeard authorized and utilized the DOPs in the 3rd Regiment so he clearly knew how they operated. In addition to the DOPs, Colonel Bigeard attempted to protect Ben M’Hidi from execution after his capture. Colonel Bigeard and Ben M’Hidi had several late-night conversations in which Bigeard would chat with him while fishing for information. Colonel Bigeard eventually turned Ben M’Hidi over to Major Aussaresses who ordered his section to throw Ben M’Hidi off a balcony, but Bigeard’s reluctance to hand over the lawyer illustrates that he must have suspected Ben M’Hidi’s fate.211

While there is little evidence Colonel Bigeard was present during torture by his men, the use of the DOPs and the garrisoning of the various prisons by his men of the 3rd Regiment could not have escaped his notice. He also attended the daily intelligence briefings where intelligence gained from torture was updated and lists of arrests were given out. Colonel Bigeard may not have encouraged torture but he certainly allowed it to happen and did nothing to curb its use, whatever his personal objections. Rather Colonel Bigeard appears to have accepted General Massu’s orders to use any means necessary to win, and so simply states in his memoirs that “interrogations” happened under his command.212

The captains andlieutenants incommand of the DOPs and in charge of the transient camps and prisons bore the brunt of the work of torture. Each of the company level officers had the ability to refuse unlawful and unethical orders, but few, if any, refused. Major Aussaresses’ aide, Lieutenant Garcet eagerly assisted in summary executions and torture.213 General Massu “decentralized to the lowest level” the police powers he’d been granted and relied entirely on young men in command to carry them out.214 While General Massu claims in his accounts to have

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214 de Bollardièreme, Bataille d'Alger, Bataille de l'Homme, 91.
published his restrictions on torture, witness accounts from the prisons and Major Aussaresses’
memos show that there was no “limited” torture practiced. The paratroopers interrogated
everyone as viciously as possible to get the information they needed as fast as possible in order to
achieve victory.\footnote{Massu, \textit{La Vraie Bataille d’Alger}, 148.} As Alistair Horne notes, the young soldiers “tackled these methods, rather new
to them, first with reluctance, then whole-heartedly.”\footnote{Horne, \textit{A Savage War of Peace: Algeria, 1954-1962}, 201.}

As shown above, in spite of denials from Massu, and justifications from Bigeard, torture
was not only practiced but absolutely encouraged and institutionalized. Lacoste’s vague orders to
restore order left ample room for Massu to interpret them as he saw fit. Lacoste’s chief of police,
Paul Teitgen, resigned during the battle because he knew torture was “unofficially” being used by
the 10\textsuperscript{th} Division. While nowhere in the orders issued in writing from Lacoste, Massu, or Bigeard
specifically order the use of torture, the verbal orders and daily briefings show that both men knew
exactly what they were authorizing and that it was wrong. General Massu’s “restrictions” and
desire to use “limited” torture were vague and provided ample room for interpretation at lower
levels, and no junior leaders were tried for torture or exceeding their orders under General Massu.

General Massu’s and Colonel Bigeard’s organization of the DOPs show that torture was,
in fact, codified in that these units were encouraged to resort to violence in the name of speed.\footnote{Massu, \textit{La Vraie Bataille d’Alger}, 165.} Massu also states he received daily briefings from his intelligence chief detailing updates and
preparations for the following night’s use of the DOPs.\footnote{Ibid., 129.} Aussaresses’ personal accounts show
further that from Massu down, arrests, torture, and execution were ordered, expected, and
condoned. Massu’s admonishment that “nothing can stick” also shows that he knew he was
authorizing something that was illegal.

\footnote{Massu, \textit{La Vraie Bataille d’Alger}, 148.}
\footnote{Horne, \textit{A Savage War of Peace: Algeria, 1954-1962}, 201.}
\footnote{Massu, \textit{La Vraie Bataille d’Alger}, 165.}
\footnote{Ibid., 129.}
Career soldiers like Massu and Bigeard, bowing to pressure of winning before the UN vote in early February, authorized torture, terror, and mass arrests. Soldiers followed orders, those like General Massu who claimed to do it grudgingly, or those like Major Aussaresses who stated he would do all of it again in the service of France. In this case, the French army willingly eschewed its moral codes for expediency. While Lacoste’s orders were vague, Massu, Bigeard, and Aussaresses consciously chose to order and participate in, or at the least condone, torture and mass arrests. All three of the men show mild regret at most, and even then, the regret is more for the bad publicity toward their units than for the actual acts of torture. While Aussaresses continued to arrest, execute, and torture for the French intelligence across Algeria, Bigeard and Massu reverted to standard military operations.

IV. Pressure From the French Government.

The above accounts show that during the Battle of Algiers, military commanders from Massu and down knowingly and intentionally violated the ethical codes of their government. That government, intentionally and unintentionally made it easier and at several levels encouraged torture. The French government did not want the UN to involve itself in the war in Algeria and therefore issued the orders to General Massu to pacify Algiers and break the strike immediately. France reeled from its defeat in Indochina in 1954, and the loss of departments considered to be integral parts of “Metropolitan France” as opposed to an overseas colony would only further embarrass the nation. In 1956, in cooperation with the British government, French paratroopers participated in the Suez Canal reoccupation but abandoned it after diplomatic pressure from the United States and the Soviet Union. Coming on the heels of successive international and very public displays of weakening power, France vowed to keep “Algérie Française.”
In addition to the public humiliation of the loss of Indochina and Suez, the government of Prime Minister Guy Mollet faced the Algeria problem. Mollet saw the previous regimes of Pierre Mendès-France and Edgar Faure topple due to their inability to pacify Algeria.\(^{219}\) Mollet, a Socialist, faced immediate pressure from the right-wing press and the *pieds noirs* to ensure that Algeria remained French. *Pieds noirs* in Algiers mobilized the entire non-Muslim population and many of the neutral Algerians to protest Mollet’s government on his first visit to Algeria in January 1956. In response to the protests, Mollet ordered an increase in troop strength to 500,000 across all of Algeria and sent Robert Lacoste to Algiers to open a “second front” against the FLN.\(^{220}\) Mollet also approved the extension of the Special Powers Law that enabled Pierre Lacoste to employ the French army as police to restore order in Algiers. Mollet needed the FLN rooted out of Algiers quickly to show both members of the French government and the UN that France was winning the war.

Pierre Lacoste, Governor-General of Algeria, issued the order to create the DPU, which evolved into General Massu’s “parallel staff.”\(^{221}\) Even after Lacoste turned over judicial powers to General Massu, and as shown above by the judicial codes and regulations published, all prisoners were supposed to be turned over to magistrates and prosecutors; soldiers could only hold them for a limited period. The lead prosecutor for Algiers divested himself of these powers, telling General Massu “if, for operational reasons, you want to hold on to a prisoner arrested by the P.J [Police], don’t put me in a [bad] situation, keep the arrest secret.”\(^{222}\) The government may not have officially condoned or encouraged torture, but by divesting itself of all ability to control the Army or check excesses it certainly allowed room for torture to occur.

\(^{220}\) Ibid., 150-151.
\(^{221}\) Ibid., 199.
General Massu, upon requesting Major Aussaresses work on his parallel staff informed the major, “we are going to knock them off very quickly and by every possible means. These are the government’s orders. Since you weren’t volunteering for the job you’re well aware that this is not an assignment for the choirboys.”223 In other words, whether expressed in writing or not, the soldiers on the ground thought the French government wanted the strike broken and Algiers pacified by any means necessary.

The French government wanted the Battle of Algiers over quickly and efficiently. As the local police force didn’t have the manpower nor the firepower necessary to root out the FLN in the Casbah, Lacoste used the army. At no point did Lacoste order General Massu to torture any of his prisoners, nor did he authorize Massu to hold prisoners indefinitely. What Lacoste and Mollet did do was inform General Massu that he had less than two weeks to break a strike that could change the outcome of the UN discussion on the war and then left loopholes in the State of Emergency Law that enabled Massu to do all of the above. When Lacoste’s deputy and head of police Paul Teitgen attempted to resign in March 1957 after seeing widespread reports of torture, Lacoste at first asked him to stay and act as a watchdog instead.224 Teitgen eventually resigned in September of 1957 after Lacoste failed to stop the widespread abuses.

While the French government did not specifically demand the army torture, they did impose severe deadlines and pressure to succeed at all costs. The rhetoric from Lacoste to General Massu was one of desperation to maintain order and keep the UN out of the discussion. On top of the pressure to pacify Algiers, Lacoste willfully ignored reports of torture and allowed General Massu to violate both the letter and spirit of the State of Emergency Law. While not specifically authorizing torture, both the State of Emergency Law and Lacoste’s ceding of judicial authority to

the 10th DP and failing to then control the army allowed a large gray area where General Massu could conduct his operations in any way he chose provided he was successful.

V. External Pressure on the 10th DP and 3rd RPC.

The French Army in 1957 was starkly divided between conscripts and hardened veterans. The men in the 10th Division almost universally were veterans: General Massu, Colonel Bigeard, and Major Aussaresses all had experience in both the Resistance and conventional forces during World War II. Following on the heels of the Second World War, General Massu pioneered some of the first paratrooper units in the French Army, suppressed a series of mining strikes in France and was promoted to general in 1955 in Indochina.225 General Massu led the 10th Division during the Suez operation before being forced to withdraw and return to Algeria, where his troops patrolled the countryside until he was called to destroy the FLN.226

Colonel Bigeard enlisted prior to World War II, was captured at the Maginot Line and escaped the German army, and made his way to the Free French forces before being commissioned as a lieutenant in 1943.227 In Indochina Bigeard was promoted to major, given a battalion, and jumped into Dian Bien Phu with his colonial paratroopers. Bigeard was promoted to lieutenant colonel during the battle and after the French surrender became a prisoner of the Vietminh until the peace accords were signed later in 1954.228 Colonel Bigeard was given the 3rd Regiment in 1955, was the reserve for the Suez operation on Cyprus, and led pacification operations in the hills of Algeria before going to Algiers.229

226 Ibid., 189.
227 DiMarco, Concrete Hell: Urban Warfare from Stalingrad to Iraq, 111.
228 Ibid.
229 Massu, La Vraie Bataille d’Alger, 111.
Major Aussaresses joined the Free French special services in 1942, and remained with them throughout the war.\textsuperscript{230} He participated in the Jedburgh operations behind German lines and then founded the 11\textsuperscript{th} Shock Division, which was a military unit in France’s foreign intelligence service the SDECE.\textsuperscript{231} He led colonial Vietnamese troops of the 3\textsuperscript{rd} RPC (not the same regiment as Colonel Bigeard) prior to Dien Bien Phu and participated in an overland march behind enemy lines in an abortive attempt to relieve the beleaguered garrison.\textsuperscript{232} Following the French surrender in Indochina, he was stationed in Algeria with the 1\textsuperscript{st} RPC as an intelligence officer until summoned by General Massu.

All of these officers came to Algeria after experiencing the pain of the French defeat in 1940, the revitalization of the French military with American equipment in the years following, and then watched as the United States and the Soviet Union became superpowers. After World War II France suffered defeat after humiliating defeat in Indochina, and the soldiers then sent to Algeria would have been shamed by two major defeats in twenty years. As the war in Indochina was also an insurrection and a \textit{guerre revolutionnaire}, the use of torture and summary executions by the Vietminh Communists would greatly affect the mood of these soldiers.\textsuperscript{233} Lieutenant Colonel Roger Trinquier, General Massu’s chief of staff, was also an Indochina veteran and later wrote the French manual on \textit{guerre revolutionnaire}.\textsuperscript{234}

All of the soldiers during the battle, veterans and conscripts alike, would have felt that French national pride had been damaged as a result of World War II, the loss of Indochina, and then the failed Suez operation. Added to that national shame was the exhortation from their

\textsuperscript{231} Ibid., 31.
\textsuperscript{232} DiMarco, \textit{Concrete Hell: Urban Warfare from Stalingrad to Iraq}, 111.
\textsuperscript{233} Horne, \textit{A Savage War of Peace: Algeria, 1954-1962}, 168.
\textsuperscript{234} Massu, \textit{La Vraie Bataille d’Alger}, 113.
officers or superiors to protect further their military honor by not being defeated by a bunch of “gangsters” like Ali La Pointe. Further fueling the martial pride in the soldiers themselves was the fact that the paratroopers considered themselves an elite force. As hand-picked men, with special camouflaged uniforms, they were a distinct force recognized across the army.

The pieds noirs pressed General Massu to end the terror in Algiers by threatening to cleanse the Casbah themselves. A delegation approached General Massu shortly after his arrival and informed him that if the bombings did not stop that they intend to replace the police and military forces if these are still incapable of resolving the situation. They intend to begin with a spectacular event because they’re convinced that the geographic nerve center of the FLN is located inside the Casbah. They are not wrong in that assumption. The Casbah is on an incline and at the top there is a wide avenue. They want to bring a truck convoy filled with gasoline, have the first truck stop and tighten the line of the other trucks, bumper to bumper, and then they’ll open the gaskets. Once the gasoline has washed deep into the Casbah they’ll set it on fire. According to my estimate about 70,000 people will die.

General Massu apparently took the threat seriously enough to advise Major Aussaresses and then proceeded to root out the FLN as described above. Both the government and the local French citizens applied pressure to the paratroopers sent to the city.

The bombings added the final piece of pressure to send the soldiers to pacify Algiers. FLN terrorists would themselves routinely torture and kill prisoners or wounded soldiers during the hill fighting that the soldiers had participated in in 1956, and indiscriminate bombings of civilian targets were things most of the men had never experienced. The sight of women and teenagers at the Milk Bar with legs mangled and the wrought iron tables turned to shrapnel added a layer of pressure to the soldiers to stop the killing. General Massu himself cites a “cruel

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necessity” to continue torturing in order to stop attacks “one hundred times more atrocious because the victims were innocent.”

The men of the 10th Division had seen over twenty years of warfare where their nation had been defeated first by the Nazis, then had to rely on help from the Allies to reclaim their homeland. Following the victory of World War II, more defeats were heaped on France by the upstart Vietminh in an unfamiliar style of brutal, revolutionary warfare for ten years. Immediately after the humiliating defeat at Dien Bien Phu, France faced a new war in what the soldiers viewed as part of the nation proper, not an overseas colony. Redeployed from Indochina, many of these men fought a war where the FLN routinely mutilated Muslims and colonial French alike, slicing off noses, lips, and genitals of those who supported France. In the midst of another war of brutality these men faced a brief moment of glory when they recaptured the Suez Canal only for the United States and Soviet Union to ignominiously force France to return it to Egypt. Upon their return to Algeria, the 10th Division were thrust into a battle for which they were untrained, only to witness men, women, and children indiscriminately blown apart during their hours of leisure.

These conditions may not excuse in any way the actions of the soldiers who committed routine torture, rape (in many cases the female bombers, when captured, were raped in an attempt to get them to confess), and murder. Instead, the conditions into which these men were forced to conduct their “interrogations” offer an insight into the pressure, the fear and anger these men likely had. The Battle of Algiers thus became one battle that had to be won “by any means” to preserve the French Republic, to assuage years of defeat and end the brutality by the FLN.

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238 Ibid., 332-333.
VI. Conclusion

The leaders of the 10th Division were never ordered to torture. There were laws in place that required the paratroopers, acting as police officers, to try and convict anyone arrested before any form of imprisonment or execution. Nowhere in French civil or military law was torture authorized; in fact, it was specifically forbidden. The situation in Algiers was perilous, tense, and difficult, but General Massu, Colonel Bigeard, Major Aussaresses, and their subordinates with service in Indochina were hardened soldiers. The leaders knew their soldiers were under pressure and saw the carnage that Ali La Pointe and Saadi Yacef unleashed. The leaders likely also felt the collective shame of the years or public defeats in World War Two, Indochina, and Suez.

Instead of maintaining the values of liberty, equality, and brotherhood that the French Republic was founded on General Massu elected to take the expedient route and win the Battle of Algiers at any cost.

In spite of the example of General Bollardière who employed methods of reconciliation in his own command before coming to Algiers, and over the protests of the same man, General Massu ordered his men to torture. General Massu authorized Major Aussaresses’ parallel staff and supported his methods of torture and execution. General Massu was undeniably successful, but he forced his soldiers to commit atrocities that scarred them. In the words of one soldier of the 2nd Regiment, “I felt myself becoming contaminated. What was more serious, I felt the horror of all these crimes, our everyday battle, was losing force daily in my mind…I felt ashamed.”

By not supervising or controlling leaders further down his chain of command, General Massu allowed his alleged limits on torture he published to be violated regularly and flagrantly. General

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Massu’s public statements about the gégène also encouraged his men to use it, and Major Aussaresses’ comments on General Massu’s single use of the machine speak for themselves.

Colonel Bigeard may have personally opposed torture or summary execution as shown by his reluctance to hand over Ben M’Hidi to Major Aussaresses, but there is no evidence he limited his DOPs in their use of torture to extract information. There is also no evidence that Colonel Bigeard ordered his men to cease torturing prisoners any of the prisons they guarded. Colonel Bigeard was responsible for most of the Casbah and his men willingly turned over thousands of suspects to Major Aussaresses and imprisoned them where they suffered beatings, waterboarding, and the gégène.

Company level officers who led the DOPs bowed to the pressure of their commanders. Captains and lieutenants, instead of following the rules and regulations or upholding the laws of their country, bowed to the need to quickly destroy the FLN. Junior leaders willingly upheld the orders to interrogate and execute prisoners. General Massu quickly replaced officers unwilling to torture by his own admission and left only those who wanted results. Bowing to pressure from above, and believing that the only way to preserve their honor, junior leaders embraced the gray areas of the State of Emergency Law and General Massu’s orders for internment and interrogation. If General Massu or Colonel Bigeard would not punish anyone who tortured why would a captain refuse and risk being the only leader with bad intelligence, slow reports, or with a new bomb exploding in his sector?

General Massu, Colonel Bigeard, and the other regimental commanders were hardened veterans and celebrities in the French army. The French commanders led a mix of conscripts and highly experienced veterans who were consistently told that as paratroopers they were the elite. The leaders took these men into a hostile city where they were outnumbered by an enemy who
killed at random and were given a job the soldiers were not trained to do: police work. Instead of instilling rigid discipline and ethical standards, their leaders encouraged rapid results, any means necessary, and the skirting of justice to ensure that the army won.
CHAPTER THREE

WAR CRIMES AT THE MY LAI HAMLETS

I. Murders, Torture, and Rape March 16th 1968 in My Lai (4), Son My, and My Khe (4).

At 7:50 a.m. on March 16th, 1968, Charlie company of the 1st Battalion, 20th Infantry Regiment began clearing the villages and sub-hamlets of My Lai (4), Son My, and My Khe (4). By 10:30 a.m. Charlie company cleared My Lai and murdered 200-400 men, women, and children in the village and perpetrated multiple rapes. Charlie company belonged to Task Force Barker, of the 11th Brigade from the “Americal” Division. Task Force Barker was named after its commander, Lieutenant Colonel Frank Barker and was an ad hoc unit composed of companies not normally assigned together, all from different battalions in the 11th Brigade (A Company 3rd Battalion 1st Infantry, B Company 4th Battalion 3rd Infantry, and C Company 1st Battalion 20th Infantry). The operation at My Lai was a search and destroy operation “for the purpose of seeking out and destroying enemy forces, installations, resources, and base areas.”

Following a short artillery barrage Charlie company would enter and clear the My Lai 4 sub-hamlet of the Son My village (the Vietnamese referred to the village as Son My, and the Americans to the specific village as My Lai 4 or the nickname “Pinkville”, for simplicity it will be reduced to My Lai for the remainder of the thesis unless the unit specifically went into another sub hamlet). Charlie company would clear the village from west to east, while Alpha company blocked enemy retreat north, and Bravo company waited to reinforce Charlie company.

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242 Ibid., 29.
243 Ibid., 73.
244 Ibid., 30.
if Charlie ran into heavier resistance than expected. Charlie company would have 2nd Platoon clear the north half of the village, while 1st Platoon cleared the southern half before the platoons would stop on the eastern side of the village to begin preparing night time defensive positions. Alpha and Bravo companies would move back to Charlie company to complete the night time position once My Lai was clear. On March 17th, Task Force Barker would finish clearing the other sub hamlets, if necessary, before boarding helicopters to return to their base. The goal of the operation was the destruction of the Viet Cong 48th Battalion which intelligence estimates placed in the area around My Lai.

Before Charlie company landed on the western edge of My Lai a five-minute artillery barrage preceded them, along with several strafing missions by support helicopter gunships armed with machine guns and rockets. Neither the artillery nor the gunship attacks had dedicated observers to ensure the rounds impacted where they were supposed to and the barrage fell on houses in My Lai as planned. At 7:30 a.m. the 1st Platoon, company command group, and part of 2nd Platoon landed and established positions facing My Lai before both platoons began to fire into the village and at fleeing Vietnamese. The second wave of Charlie company soldiers consisting of the remainder of 2nd Platoon, and 3rd Platoon landed at 7:38 a.m. and established themselves facing west to provide security to the rear of the company. During the entire operation no aircraft received enemy fire and only Captain Medina described the landing zone as “hot,” meaning his men took enemy fire. Once the entire company completed the perimeter,

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245 “Report of the Department of the Army Review of the Preliminary Investigations Into the My Lai Incident,” 130-131. For simplicity, Charlie company will have its subordinate platoons referred to in detail, while Alpha and Bravo companies will not, as Alpha and Bravo were not responsible for the bulk of the killings. As such, any platoons described are from Charlie company unless otherwise noted.

246 Bilton, and Sims, Four Hours in My Lai, 109.


248 Ibid., 116-117.

249 Ibid., 115.
Captain Medina ordered the platoons to begin their sweeps of My Lai. The men moved into the village, “firing at anything that moved.”

As Charlie company moved through the village, 1st Platoon began firing on civilians and “mercy killing” wounded Vietnamese. One soldier grabbed a wounded man, threw him into a well and followed that with a grenade. Between 8:45 and 9:00 a.m., 1st Platoon herded 20-50 old men, women, and children into a rice paddy south of My Lai and shot them. Following the shooting at the paddy, one squad of 8 soldiers searched My Lai a second time, rounding up ten villagers who hid in their homes. The ten villagers were placed in a ditch with 60-70 other old men, women, and children before 1st Platoon opened fire with rifles and a machine gun between 9:00 and 9:15 a.m., killing or wounding everyone in the ditch.

Between 9:15 and 9:30 a.m., one of the reconnaissance helicopters flying above My Lai landed east of 1st Platoon’s position around the ditch to discuss the bodies they’d seen in the ditch next to 1st Platoon. Warrant Officer Hugh Thompson, the pilot, exited his aircraft and saw several wounded Vietnamese. Warrant Officer Thompson asked a 1st Platoon soldier what to do with the wounded and the soldier replied the only way to help them was to kill them. Warrant Officer Thompson returned to his aircraft and resumed his reconnaissance, while his crew chief reported seeing several soldiers firing into the ditch. 1st Platoon sent one squad of eight soldiers back into My Lai to assist 3rd Platoon clearing the village at approximately 9:30 a.m. while the rest of the Platoon remained by the ditch. The soldiers who returned to the village randomly killed of 6-12 more civilians while assisting 3rd Platoon.

251 “Report of the Department of the Army Review of the Preliminary Investigations Into the My Lai Incident,” 120.
252 Bilton, and Sims, *Four Hours in My Lai*, 112.
253 “Report of the Department of the Army Review of the Preliminary Investigations Into the My Lai Incident,” 120.
254 Ibid., 30-31.
255 Ibid., 125.
256 Ibid.
For the next hour, 1st Platoon maintained their position at the ditch with the exception of the squad helping 3rd Platoon. 1st Platoon did not receive the order to stop shooting or killing until approximately 10:30 a.m., and continued sporadic shooting into the ditch and any bunkers and houses nearby in the village until they did receive the order.\(^{257}\) 1st Platoon followed the company to the nighttime defensive positions without further murders.

2nd Platoon killed every Vietnamese civilian they found during their movement through My Lai. 2nd Platoon “neither sought to take nor did they retain any prisoners, suspects, or detainees while in My Lai,” and perpetrated 2 rapes.\(^{258}\) The soldiers methodically killed all of the livestock, threw hand grenades into bunkers, and gathered any villagers they found into groups of five to ten at a time before shooting them or herding the groups to rice paddies just north the village itself. 2nd Platoon killed between 50 and 100 villagers consisting exclusively of “old men, women, children, and babies.”\(^{259}\) 2nd Platoon completed their initial movement through My Lai by 8:30 a.m and moved north of the village to search two alleged Viet Cong killed by helicopters earlier in the attack. Throughout the entire movement from the landing zone to the eastern edge of My Lai, 2nd Platoon took no casualties and received no enemy fire.\(^{260}\)

Captain Medina ordered 2nd Platoon northwest to search Binh Tay at 8:45 a.m. where the platoon “continued the pattern of burning, killings, and rapes” before moving a group of 10-20 villagers into a clearing and forcing them to squat in a circle.\(^{261}\) Once the villagers stopped, several soldiers fired grenades into the center of the villagers before shooting any survivors. Members of 2nd Platoon gang-raped one Vietnamese girl and perpetrated several other

\(^{257}\) “Report of the Department of the Army Review of the Preliminary Investigations Into the My Lai Incident,” 130.
\(^{258}\) Ibid., 121.
\(^{259}\) Ibid.
\(^{260}\) Ibid., 122.
\(^{261}\) Ibid., 123.
rape/killings before 9:15 a.m. when Captain Medina ordered Lieutenant Brooks to “stop the killing” and finish burning the houses before returning to My Lai.\textsuperscript{262} \textsuperscript{2}nd Platoon rounded up the 50-60 remaining residents of Binh Tay and ordered them to depart southwest.\textsuperscript{263} By 10:00 a.m., \textsuperscript{2}nd Platoon occupied the northern edge of My Lai before moving their nighttime defensive positions.

\textsuperscript{2}nd Platoon attempted to shoot 12-16 more civilians at approximately 10:15 a.m., but Warrant Officer Thompson landed his helicopter nearby and asked the soldiers to get the women and children out. A \textsuperscript{2}nd Platoon soldier replied the only way to get the Vietnamese out of the bunker was “with a hand grenade,” but Warrant Officer Thompson convinced the soldiers to wait while he made several trips to evacuate the civilians.\textsuperscript{264}

Upon \textsuperscript{3}rd Platoon’s landing at approximately 7:30 a.m., Captain Medina ordered them to send one squad to search for two Viet Cong killed by gunships south of My Lai. The detached squad along with the platoon leader Lieutenant LaCross, moved toward a position where the helicopters marked the bodies while the remainder of the platoon established security for the landing zone oriented west. Lieutenant LaCross and his squad moved further south following reports of more dead Viet Cong before shooting at a group of 15 Vietnamese, followed by executing a woman and child hiding in the grass south of My Lai.\textsuperscript{265} The squad collected one weapon and began to return to the rest of the platoon, along the way they shot and killed two individuals one of whom was positively identified as a child.\textsuperscript{266} The squad returned to the rest of

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{262} “Report of the Department of the Army Review of the Preliminary Investigations Into the My Lai Incident,” 123, 125.
\item \textsuperscript{263} Ibid., 125.
\item \textsuperscript{264} Ibid., 128.
\item \textsuperscript{265} Ibid., 119.
\item \textsuperscript{266} Ibid.
\end{enumerate}
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the platoon by 8:45 a.m. and the entire platoon began following behind 1st and 2nd Platoons to burn the village.

3rd Platoon moved through the village behind the others and methodically burned the houses while killing whatever livestock still lived. 267 3rd Platoon soldiers methodically burned houses and executed 5-6 Vietnamese wounded as mercy killings to “put them out of their misery.” 268 Between 9:45 a.m. and 10:45 a.m., members of 3rd Platoon grouped several women together and attempted to rip off their blouses but stopped when they noticed a Public Information Office (PIO) cameraman watching. 269 3rd Platoon moved to the northeastern edge of the village and upon seeing groups of dead women, children, and babies Lieutenant LaCross attempted to contact Captain Medina to determine the “reason for all of the killing.” 270 Lieutenant LaCross walked south to speak to Captain Medina face to face before returning to his platoon to complete their sweep of the village. Sometime between 10:30 a.m. and 10:45 a.m. 3rd Platoon received the order to stop shooting and they complied. 271 3rd Platoon did not participate in any further crimes and moved into nighttime defensive positions with the rest of the company during the afternoon.

Captain Medina’s command group landed with the first elements of Charlie company at approximately 7:30 a.m. and reported that the company did not receive enemy fire. According to Captain Medina, an unidentified pilot cut across his transmission and declared the landing zone was “hot” and that there was enemy fire. There is no evidence to support Captain Medina’s statement, but Captain Medina relayed the “hot” transmission to his platoon leaders. 272 Captain

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268 Ibid., 124.
269 Ibid.
270 Ibid., 127.
271 Ibid.
272 Ibid., 115.
Medina maintained his position at the landing zone until approximately 8:45 a.m., while informing Lieutenant Colonel Barker that 15 Viet Cong had been killed during the initial artillery and gunship attacks. Captain Medina moved into the western edge of My Lai around 8:45 a.m. after 2nd Platoon swept the area.

The command group followed 3rd Platoon as they moved east into My Lai between 8:45 and 9:00 a.m. Captain Medina issued an order to “stop killing” between 9:15 and 9:30 a.m. but only 2nd Platoon received it as outlined above. The command group moved southeast to the southern edge of My Lai at approximately 9:30 a.m. after being told by Lieutenant Colonel Barker there were marked Viet Cong bodies in that area. During the movement toward the marked bodies, Captain Medina shot and killed a fleeing woman. Captain Medina searched the area for bodies but did not find any and returned north toward 3rd Platoons location in My Lai. Upon finding Lieutenant LaCross, Captain Medina stopped and gave his order for 3rd Platoon to finish their sweep of the village. During Captain Medina’s conversation with Lieutenant LaCross, “various members of the command group strayed from Medina's location and were involved in random killing of wounded Vietnamese,” including “a small child who was standing, crying, in the midst of [a] group of bodies.” After sending Lieutenant LaCross back to his platoon, Captain Medina moved the command group east, observing several groups of bodies in the paddies to the south of My Lai.

Between 10:00 and 10:15 a.m. Captain Medina received word that a 1st Platoon soldier accidentally shot himself in the foot while attempting to clear his pistol. Captain Medina radioed

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274 Ibid., 125.
275 Ibid., 127.
276 Ibid., 128.
the report to Lieutenant Colonel Barker, who landed his helicopter and evacuated the wounded soldier to the task force base.\textsuperscript{277} At approximately 10:30 a.m. Captain Medina received an order from Major Calhoun of the task force headquarters to “stop the killing,” or “stop the shooting,” which Medina repeated and which finally stopped most of the killing by 1\textsuperscript{st} and 3\textsuperscript{rd} Platoons.\textsuperscript{278} Captain Medina moved his command group north to the edge of My Lai before calling a lunch break and meeting with his platoon leaders at 11:45 a.m. when he reissued his order to stop any “unnecessary killing.”\textsuperscript{279} The command group moved into the nighttime defense position with the rest of the company, where at least one Viet Cong suspect was tortured by South Vietnamese police in view of Captain Medina and several other officers before being executed along with 1-7 other suspects.\textsuperscript{280}

Bravo company landed south of Charlie at 8:15 a.m. and only members of its 1\textsuperscript{st} Platoon committed any crimes.\textsuperscript{281} Between 8:45 a.m. and 9:00 a.m., 2\textsuperscript{nd} Platoon suffered the loss of its platoon leader, Lieutenant Cochran to a booby trap as well as four other soldiers wounded, all of whom were evacuated.\textsuperscript{282} 2\textsuperscript{nd} Platoon and 3\textsuperscript{rd} Platoon were so demoralized by the severe casualties immediately after landing that they simply stopped searching the village they were assigned and waited until the afternoon to link up with Charlie company.\textsuperscript{283} 1\textsuperscript{st} Platoon heard the casualty report and explosion from the booby trap before entering My Khe 4.

Between 9:30 and 9:50 a.m., 1\textsuperscript{st} Platoon reported receiving sniper fire from My Khe 4 and advanced across a bridge separating the village from the rest of the hamlets. 1\textsuperscript{st} Platoon opened fire with rifles and machineguns into the village for four to five minutes while villagers,

\textsuperscript{277} “Report of the Department of the Army Review of the Preliminary Investigations Into the My Lai Incident,” 129.
\textsuperscript{278} Ibid.
\textsuperscript{279} Ibid., 131.
\textsuperscript{280} Ibid., 133.
\textsuperscript{282} Ibid., 157.
\textsuperscript{283} Ibid.
“mostly women and children, were cut down as they ran for shelter or attempted to flee over the ridge of higher ground toward the beach.”

The volume of fire was so intense that a naval swift boat offshore reported hearing a heavy volume of fire before the platoon leader ordered a cease fire, likely in response to the initial Task Force Barker order to stop killing. The soldiers killed 80-90 civilians moving from west to east through the village of My Khe 4 before establishing a platoon defensive position east of the rest of the company for the night. The rest of Bravo moved to nighttime defensive positions with Charlie and linked up with them at approximately 2:20 p.m. on March 16th, 1968.

Alpha company landed northwest of Charlie and Bravo and established blocking positions the day prior to the operation to ensure no Viet Cong escaped after the other companies swept the villages. There no evidence of widespread killing or rapes by Alpha company during the operation and they received only scattered mortar and small arms fire during the mission, resulting in the light wounding of one soldier who did not require evacuation.

From 7:25 a.m. until 10:30 a.m. on March 16th 1968, Charlie and Bravo companies killed approximately 300 unarmed civilians. By the time the operation was over, anywhere from 200-400 civilians were dead, 2 sub hamlets were destroyed, all livestock in the area of operations was killed, and 3 confirmed VC operatives were found. The soldiers of 2nd Platoon, Charlie company perpetrated several rapes, and soldiers killed women, children, old men, and babies in cold blood while also executing wounded civilians. The initial report for March 16th 1968 stated:

- a total of 128 VC killed, 3 weapons captured, assorted mines, boobytraps and equipment captured and destroyed, and friendly casualties of 2 killed and 11

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285 Ibid., 105.
286 Ibid., 88.
287 Ibid., 32.
288 Ibid., 33.
wounded from the first day's action in the Son My operation. With the possible exception of one man, slightly wounded, from A Company, none of the TF Barker casualties was inflicted by direct enemy fire.\textsuperscript{289}

II. Makeup and Training of Task Force Barker and Charlie Company.

How did a United States army unit that was supposed to be protecting and aiding the South Vietnamese government, and allegedly safeguarding the civilians against the Viet Cong, come to destroy and murder an entire village? Unlike the Battle of Algiers, the Americans at My Lai were normal troops, not elite but not a new unit. The “Americal” Division under which Charlie and Bravo companies operated arrived in Vietnam in 1967 but did not assume control of the 11th Brigade (under Colonel Henderson) until September 1967. The 11\textsuperscript{th} Brigade itself arrived in Vietnam in December 1967, understrength by 700 soldiers.\textsuperscript{290}

Before deploying to Vietnam, the brigade entered the Jungle Warfare Training Center (JWTC) in Hawaii and each element under the brigade received a three-day course which included how to enter, clear, secure, and search a Vietnamese village. The course was taught by instructors finishing their tours in Vietnam.\textsuperscript{291} To compensate for their shortened training in Hawaii, the 11\textsuperscript{th} Brigade received an additional three day course in Vietnam upon arrival where they simulated a helicopter insertion and instructors demonstrated typical Viet Cong concealment, booby-trap methods, and village search techniques.\textsuperscript{292} The brigade received an influx of reinforcements after both training events, which according to an official report, “was

\textsuperscript{289} Ibid., 93. This report was an initial Combat Action Report after the operation in accordance with the brigade and division standard operating procedures. The numbers given were based on reports by Captain Medina and helicopter pilots compiled by Lieutenant Colonel Barker, and shows the confusion evident in the operation. Later investigations would show how inaccurate this Combat Action Report is, and it appears Barker omitted the initial 20-40 civilian casualties reported intentionally.

\textsuperscript{290} “Report of the Department of the Army Review of the Preliminary Investigations Into the My Lai Incident,” 64.

\textsuperscript{291} Ibid.

\textsuperscript{292} Ibid., 65.
not an uncommon occurrence for many of the units deployed to Vietnam who performed effectively despite this difficulty.”

The 11th Brigade created Task Force Barker including members of the brigade staff, making the staff less efficient, and allocated the task force one company from each of the battalions in the brigade. Each company assigned to Task Force Barker “was considered by the brigade commander to be the best company in its battalion.” From January to the start of the My Lai operation, the task force suffered over 100 casualties, of which 40 occurred in and around the My Lai area.

Captain Ernest Medina initially took command of Charlie company in December 1966, and commanded the company through the pre-deployment and on ground training described above. Just before arriving in Vietnam, Charlie company required replacements for approximately 50 percent of its soldiers and thus entered the operation understrength with only 120 of the authorized 156 soldiers. The My Lai operation was to be the first combat action for the soldiers of Charlie company although the unit suffered four killed and 38 wounded from mines and booby traps during patrolling around their base from January to March 1968. The officers and noncommissioned officers of the company were not different from any other army unit in Vietnam in regards to draft status or combat experience, but they were more educated than the average army unit, having a higher percentage of high school and college degrees. Official documents indicate that “taken as a whole, the personnel composition of Company C

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294 Ibid.
296 Ibid., 67.
297 Ibid.
contained no significant deviation from the average and there was little to distinguish it from other rifle companies.”

What is more significant than education level or draft status is the confidence and ability of leaders like Captain Medina and the platoon leaders. Captain Medina was described as almost unanimously respected by his men and by his superiors and was, in their opinion, an outstanding company commander who held the welfare of his men as one of his primary concerns. His no-nonsense approach to his mission and single-mindedness of purpose in achieving that mission caused him to be the object of respect, but in some cases fear, by some of his men and by his platoon leaders.

In other words, prior to My Lai neither his superiors or subordinates had reason to question Captain Medina or his orders. In addition to the above, Captain Medina was viewed by some as a “strict authoritarian” who “adopted a condescending and sometimes disparaging manner in dealing with his platoon leaders…his principal leadership weakness prior to [My Lai] was in not exercising firm control over the actions of his men toward Vietnamese.” While “callousness was not a part of his attitude toward his own men, whose welfare was apparently of primary concern to him,” he appeared to regard the Vietnamese as a lower class of person. On the other hand, one soldier from Charlie company stated Medina was “the finest officer I’ve ever known.”

In contrast to Captain Medina, each platoon leader, “with the exception of [Lieutenant] Calley, was considered a "nice guy" by many of his men. The implications of this classification are substantiated by evidence which indicates that each lacked any real internal system for control and discipline of his platoon.” Lieutenant Calley reportedly could not even read a map.

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298 Ibid.
299 “Report of the Department of the Army Review of the Preliminary Investigations Into the My Lai Incident,” 188.
300 Ibid.
301 Ibid.
302 Olson and Roberts, My Lai: A Brief History with Documents, 13.
In light of the lack of personal leadership ability and inability to maintain discipline at the platoon level, all discipline “emanated from the company commander.”

III. Negligence by COL Henderson, LTC Barker, CPT Medina, and Platoon Leaders

Negligence by leaders at all levels during the My Lai massacre falls under Article 92 of the UCMJ as dereliction of duty. A soldier is considered “derelict” when he

willfully or negligently fails to perform [these duties], or when he performs them in a culpably inefficient manner. When the failure is with full knowledge of the duty and an intention not to perform it, the omission is willful. When the nonperformance is the result of a lack of ordinary care, the omission is negligent.

Looking at the leaders in command during My Lai, all of their actions fall under dereliction of duty, either willfully or from negligence as is clear. A battalion or company commander is responsible for everything his unit does or fails to do, according to the training manuals that Colonel Henderson, Lieutenant Colonel Barker, and Captain Medina had access to. By definition, all three officers were derelict by being culpably inefficient, not perform their duty, or by lacking ordinary care.

The official Army inquiry shows that unlawful command influence began with Colonel Henderson and ended with the platoon leaders. Colonel Henderson briefed the leaders in Task Force Barker the day before the operation, where he encouraged them to “press forward aggressively” in their operation to destroy the Viet Cong in My Lai. Colonel Henderson criticized the soldiers, stating they had previously allowed “men, women, or children, or other

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304 Olson and Roberts, My Lai: A Brief History with Documents, 158.
305 Ibid.
307 Ibid.
VC in the area,” to get away through a lack of aggression.\textsuperscript{308} It is telling that Colonel Henderson included women and children as acceptable targets in order to destroy the Viet Cong. Colonel Henderson’s intelligence staff also told the men of the task force that “most of the civilians would be away from the hamlet,” leaving only Viet Cong or Viet Cong sympathizers in the village.\textsuperscript{309}

Colonel Henderson observed the initial landing of Charlie and Bravo companies during the operation before returning to the task force headquarters at approximately 9:30 a.m. to drop off two suspected Viet Cong he picked up. While at the headquarters, Colonel Henderson spoke to Lieutenant Colonel Barker about the status of the operation before leaving for a meeting in another village with the South Vietnamese leaders in the area. Colonel Henderson stated he returned to the village in the afternoon and orbited My Lai several times as well as making several trips to the task force headquarters to receive updates from Lieutenant Colonel Barker.\textsuperscript{310}

At 3:30 p.m. on March 16\textsuperscript{th} he received a report of civilian casualties higher than he had initially believed and directed Charlie Company to return to My Lai from their defensive positions to determine how many civilians had been killed. The division commander, Major General Koster, countermanded the order and Colonel Henderson made no further attempts to ascertain the number of dead.\textsuperscript{311}

Colonel Henderson returned to the My Lai area to speak with Captain Medina for “10-30 minutes” on March 18\textsuperscript{th} 1968, then returned to the brigade headquarters.\textsuperscript{312} It is likely that the discussion with Captain Medina referred to a report submitted by Warrant Officer Thompson

\textsuperscript{308} Ibid., 76.
\textsuperscript{309} “Report of the Department of the Army Review of the Preliminary Investigations Into the My Lai Incident,” 29.
\textsuperscript{310} Ibid., 90, 92.
\textsuperscript{311} Bilton, and Sims, \textit{Four Hours in My Lai}, 146.
\textsuperscript{312} “Report of the Department of the Army Review of the Preliminary Investigations Into the My Lai Incident,” 95.
(the Thompson Report) in which he referred to seeing many more bodies than had been reported by Medina, and in his report Warrant Officer Thompson described having to rescue women and children from a bunker before 2nd Platoon killed them with grenades. Following the My Lai operation, the Americal Division commander ordered Colonel Henderson to investigate claims that Task Force Barker had murdered civilians, the accusations stemming from the Thompson Report.

Colonel Henderson’s investigation lasted two days and filled two written pages. He interviewed Warrant Officer Thompson and two other aviators before flying to Task Force Barker’s headquarters where he interviewed Captain Medina before asking 30-40 soldiers collectively whether they had witnessed atrocities to which the reply was universally negative. After these initial interviews, “Colonel Henderson’s actions appear to have been little more than a pretense of an investigation and had as their goal the suppression of the true facts concerning the events.” When Colonel Henderson completed his investigation on March 19th 1968, he “deliberately misrepresented both the scope of his investigation and the information he had obtained. He reported that while 20 civilians had been killed by artillery and/or gunships, there was no basis in fact to the allegations made by W01 Thompson.”

In light of the above actions, it seems that initially Colonel Henderson simply wanted his troops to be more aggressive in pursuing the enemy, which in and of itself is neither illegal nor immoral in military law, especially considering that he had departed before Lieutenant Colonel Barker and Captain Medina exhorted their men to kill everyone and destroy the

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314 Ibid., 35-36.
315 Ibid., 35.
village. Colonel Henderson’s criticism of the company’s lack of aggressiveness unfortunately thus put pressure on Charlie company and Task Force Barker leading up to the operation.

Colonel Henderson’s actions during the operation show not only negligence as had he received multiple reports of civilian casualties, but at a minimum as the ranking officer on the ground with his subordinates conducting the operation it was Colonel Henderson’s responsibility to ensure the correct conduct of those troops in addition to the fact that division policy required all reports of civilian casualties to be investigated and confirmed. Colonel Henderson had multiple conversations with Lieutenant Colonel Barker who knew of the orders to stop the killing and Colonel Henderson in any event also should have been monitoring the radio and heard that Barker, or whoever issued the order sent it to Captain Medina. The Army investigations found therefor “a general lack of affirmative command and control throughout the 11th Brigade, and particularly in TF Barker at the time of the [My Lai] operation,” the responsibility for which rests directly with Colonel Henderson. Henderson bears responsibility for the artillery barrage as he stated it violated his brigade policy, and he did nothing to enforce the policy or stop the firing.

By the end of March 16th, it seems unlikely that Colonel Henderson remained ignorant of, at a minimum, a high number of civilian casualties of not the methodical killing and rape that actually happened. Certainly, when Henderson received the Thompson Report and then investigated it, he knew Task Force Barker committed war crimes to some degree. According to the Peers report after the massacre: “[s]ignificant information concerning irregularities in the operation and the commission of war crimes by C/1-20 Inf was known to the commanders [sic] 316 Ibid., 76.
and staff officers of both TF Barker and the 11th Brigade on 16 March but was never transmitted to…Division.”  

During the operation Colonel Henderson showed culpable negligence by failing to verify the conflicting reports of civilian casualties, while intentionally being derelict of his duty in falsifying his investigation after the fact.

Lieutenant Colonel Barker conducted the official mission briefing on March 15th 1968. According to multiple witnesses, he ordered soldiers to burn the village, kill the livestock, and close the wells while significantly “[n]o instructions were issued as to the safeguarding of noncombatants” in the area. Barker approved an intelligence summary that placed the headquarters of the Viet Cong 48th Battalion in My Lai and told his soldiers to expect 200-250 Viet Cong in the village. Barker also reiterated that most of the villagers should be out of the village by the time the operation began, and classified the civilians remaining in the area as “active sympathizers to the VC.”

Barker personally selected the landing zone for Charlie company as well as specifying “the artillery preparation to be fired onto the LZ for Company C and into the western and southwestern -portions of My Lai (4) without prior warning to the inhabitants.”

Lieutenant Colonel Barker admitted that civilians might be present in the village but prioritized the safety of his soldiers over them, which in light of the intelligence assessment of enemy fighters is not illegal, though the veracity of the intelligence does not appear to have been verified, which is negligent on Barker’s part.

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319 Ibid., 37.
322 Ibid., 80.
Barker also did fail “to make any distinctions, during the briefing or in his subsequent instructions, between dwellings, livestock, and foodstuffs of noncombatants versus those belonging to the VC…since he and his staff apparently acted upon the intelligence assessment that virtually the entire Son My area was controlled and inhabited by VC and VC sympathizers.”\textsuperscript{324} In addition to the lack of coordination for personal property no specific plans or arrangements were made for the handling of any noncombatants found in the Son My area. Further, the testimony of persons who were present at the 15 March briefing indicates strongly that LTC Barker did not issue any instructions pertaining to the problem of collecting and processing noncombatants who might be encountered during the planned operation.\textsuperscript{325}

In light of what happened at My Lai these oversights seem critical since the briefing therefore left the soldiers to assume that anyone in the village was an enemy and they had no orders or guidance on what to do with civilians which implied there would not be any. As the task force commander, Lieutenant Colonel Barker was responsible for everything his men did or failed to do and not planning for civilians constitutes negligence on his part. The Peers inquiry states this succinctly in light of the overall orders given:

\begin{quote}
    it seems reasonable to conclude that LTC Barker's minimal or nonexistent instructions concerning the handling of noncombatants created the potential for grave misunderstandings as to his intentions and for interpretation of his orders as authority to fire, without restriction, on all persons found in the target area.\textsuperscript{326}
\end{quote}

Without question Lieutenant Colonel Barker showed gross negligence during the operation itself. When asked by the gunships supporting the landings which areas were off limits to door gunners (soldiers with machine guns in the helicopters), Barker replied there were no restrictions.\textsuperscript{327} Barker observed and coordinated the landings of all of his companies before

\begin{footnotes}
\item \textsuperscript{324} Ibid.
\item \textsuperscript{325} Jones, \textit{My Lai: Vietnam, 1968, and the Descent into Darkness}, 172.
\item \textsuperscript{326} “Report of the Department of the Army Review of the Preliminary Investigations Into the My Lai Incident,” 81.
\item \textsuperscript{327} Ibid., 88.
\end{footnotes}
returning to the headquarters to refuel at approximately 8:35 a.m., before returning around 9:00 a.m. to the operation area. Captain Medina informed him that Charlie company had killed 84 Viet Cong before Barker returned for fuel. Barker remained over the area from 9:00 a.m. until approximately 9:45 a.m. when he picked up the Bravo company wounded described above and returned them to the task for headquarters for medical attention at 10:00 a.m.

Barker remained at the headquarters until early afternoon, but would have had access to the battalion radios to monitor progress. Assuming radios were working Barker should have heard Major Calhoun, his operations officer, issue the order to “stop the killing,” between 1030-1045 a.m. which Captain Medina acknowledged. Barker therefor exhibited gross negligence for not attempting to determine why his subordinate was issuing orders to stop killing and it seems incredible that even if he was unable to fly back to My Lai that he did not at least ask why that order was given. It took Lieutenant Barker over an hour to issue an order “to make sure there was no unnecessary killing/burning or words to that effect,” which was apparently triggered by the initial reports from Warrant Officer Thompson describing dead civilians and his interactions with 2nd Platoon. In compliance with division policy, Lieutenant Colonel Barker submitted a Combat Action Report, dated 28 March 1968, concerning his unit's operations on 16 March. The report significantly omitted any reference to noncombatant casualties and other irregularities, falsely depicted a hotly-contested combat action, and appears to have been an outright effort to suppress and mislead.

At an extreme minimum Lieutenant Colonel Barker should have initiated some sort investigation when Captain Medina informed him of yet another 10-12 dead civilians at 3:55 p.m. At this point in the operation, Barker heard or issued multiple orders to stop killing,

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328 Ibid., 122.
330 Ibid., 130.
331 Ibid., 38.
received multiple conflicting reports on civilian casualties, which increased as the day went on, and yet did not intervene or return to the area to see for himself or speak to his soldiers. Barker was derelict of his duty under Article 92 by commanding the My Lai operation with culpable inefficiency. Failing to confirm any reports of civilian casualties, and failing to verify whether civilians were in range of the initial artillery barrage and gunship targets also constitutes negligent dereliction since Barker was the commander on the ground and therefore responsible for the fires and actions of his men.

Captain Ernest Medina had perhaps the largest command influence on the events at My Lai. Medina added an “element of revenge” and “embellished” Lieutenant Colonel Barker’s orders to destroy the village and livestock during his orders to his company on March 15th. Medina reminded his company of previous operations around the village where both Charlie company and others in the task force had taken heavy casualties. Captain Medina further stated to his men “there will be heavy casualties,” and that the enemy would outnumber the Americans 2 to 1. Captain Medina reiterated that the key to the operation was momentum and they should “go in rapidly and neutralize everything. To kill everything.” When pressed about women and children explicitly, Captain Medina reiterated to his men, “I mean everything” and he finished by stating that when the operation finished, he “didn’t want to see anything living but GIs,” and that “there were no innocent civilians in My Lai,” including women and children. Most importantly, Captain Medina’s briefing

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335 Calley, Lieutenant Calley: His Own Story, 89.
336 Ibid., 90.
left little or no doubt in the minds of a significant number of men in his company that all persons remaining in the My Lai (4) area at the time of combat assault were enemy, and that C Company’s mission was to destroy the enemy. 337

Multiple soldiers testified that Captain Medina’s briefing explicitly called for the destruction of My Lai and any Vietnamese that remained at the start of the mission.

Once the operation began, Captain Medina was both negligent in the command of his men and culpable in multiple killings himself. As described above, Captain Medina informed his platoon leaders that the landing zone was hot even though he received no enemy fire while landing with the initial assault elements. He remained at the landing zone for command and control while his platoons began clearing the village until 8:45 a.m. when they followed 3rd Platoon through the western edge of My Lai. Following 3rd Platoon, Captain Medina would have seen the soldiers slaughtering the livestock and burning the village, and it seems incredible that Captain Medina could have missed seeing the bodies of the villagers shot down by his platoons during their movement but only 2nd Platoon, now north of the company in Binh Tay, received an order to stop between 9:15 and 9:30 a.m. 338

Moving south through the village, Captain Medina’s command group shot “a fleeing Vietnamese” they later determined to be a woman, and who Medina later admitted to shooting himself. 339 At this point any reasonable officer should have known that something was amiss. There was no enemy fire, and yet soldiers were shooting. There were, at this point, three bodies positively identified as Viet Cong amidst many others, and no weapons yet recovered. Instead, Captain Medina went to find Lieutenant LaCross and while conversing with LaCross, members of the command group apparently wandered off to execute wounded Vietnamese in the

339 Ibid., 127.
immediate area where Medina was talking to LaCross. At this point Medina can no longer be accused of negligence and instead must be considered an accomplice.

Following the murder of a child, Captain Medina moved his command group east where he observed the initial group of 20-50 civilians shot by 1st Platoon earlier in the rice paddies south of My Lai. While Captain Medina counted the dead, a member of Medina’s command group shot and killed a child who was “standing, crying, in the midst of a group of bodies.” The soldier later considered it a mercy killing, as the child had a broken arm. Captain Medina testified afterward that he considered the dead to be “innocent civilians,” but did not order his men to stop shooting until he received the order from Major Calhoun almost an hour later. Captain Medina then moved his command group to the eastern edge of My Lai, approximately 150 meters from where 1st Platoon murdered 60-70 civilians in the ditch, and called a lunch break. At one point, his interpreter asked why there were so many dead civilians as they walked through the village, to which Medina told him “don’t ask anything-those [are] the orders.” At 11:45 a.m. Maj Calhoun repeated the order to stop unnecessary killing and Captain Medina relayed it to his platoon leaders, but made no attempt to determine why a third order to stop killing was issued. At this point any reasonable officer would know that at least some civilians had been murdered especially since Captain Medina’s immediate group was responsible for several killings near him. The only reasonable conclusion is that by at least the time of his conversation with Lieutenant LaCross, Captain Medina knew of and was actively ignoring the war crimes happening around him.

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341 Bilton, and Sims, *Four Hours in My Lai*, 128.
342 Ibid., 128.
343 Ibid., 126.
Further evidence that Captain Medina knew of at least some of the crimes committed by his men comes from testimony from several soldiers after returning to the task force headquarters Captain Medina,

assembled his men after the operation and advised them not to discuss the incident because an investigation was being conducted, and he advised one individual not to write to his Congressman about the incident. He also made a false report that only 20-28 noncombatants had been killed and attributed the cause of death to artillery and gunships.345

Finally, due to the leadership weaknesses of the platoon leaders, “the company was essentially a one-man show run by CPT Medina who, regardless of his intentions, was incapable of exercising single-handed control of 100-plus soldiers.”346 Captain Medina showed intentional dereliction of his duty to command his men under the Geneva Convention and the Law of Land Warfare. A top-rated commander like Medina would also have read his Rifle Company Manual and known he was responsible for everything his men did or failed to do. As such, his unwillingness to enforce discipline constituted gross negligence in the legal sense and a flagrant dereliction of his duty under Article 92 of the UCMJ as provoking his men to kill everyone was a further intentional abuse of his command authority.

The final leaders that should have made an effort to stop the massacre and rapes were the platoon leaders. Lieutenants LaCross, Brooks, and Calley attended the mission brief with Captain Medina but not a single one, nor any of their sergeants, voiced any objection to their orders.347 The Peers Inquiry states unequivocally it became apparent that if on the day before the Son My operation only one of the leaders at platoon, company, task force, or brigade level- had foreseen and voiced an objection to the prospect of killing non-combatants, or had mentioned the problem of noncombatants in their preoperational orders and instructions, or if adequate re-straining orders-had been issued early on the following day, the Son

346 Ibid., 191.
347 Ibid., 187.
My tragedy might have been averted altogether, or have been substantially limited and the operation brought under control.\textsuperscript{348}

The platoon leaders failed to question the orders issued, and instead Lieutenant Calley actively participated while Lieutenant Brooks and LaCross each turned a blind eye to what was happening.

When interviewed before his trial in 1970, Lieutenant Calley stated that “they are all VC,” regarding the villagers and that his paramount mission in My Lai was to secure the village and not allow any enemy units to “get behind him” to ambush his men.\textsuperscript{349} Calley also admitted that when he observed one of his soldiers with a group of villagers by the eastern drainage ditch, he ordered the man to “[g]et rid of them...Waste them.”\textsuperscript{350} His defense was that his men were close to their objective of securing the village and the Vietnamese were “in the way,” and that Captain Medina was calling for 1\textsuperscript{st} Platoon to hurry up and secure their side of the village.\textsuperscript{351} When the platoon finished murdering the villagers, Captain Medina asked for a body count, including civilian casualties to which Lieutenant Calley replied “they’re all VC. Or they’re all civilians.”\textsuperscript{352}

At no point did Lieutenant Calley attempt to stop his men, and in fact according to several witnesses, when soldiers refused he “didn't bother to order anyone to take the machine-gun...He simply manned it himself.”\textsuperscript{353} Lieutenant Calley repeatedly told his men to hurry up and kill the civilians in the ditch so the platoon could move faster.\textsuperscript{354} Lieutenant Calley stated that he knew Captain Medina’s order was wrong but that since no one stepped up to question it,
he followed it. Calley also stated that by the time of My Lai he assumed all Vietnamese were Viet Cong.  

Several soldiers refused to follow Calley’s orders to herd villagers into the ditch and execute them, while one of them, Private First Class Meadlo, cried while he complied and told Lieutenant Calley that the Army was going to “get him” for ordering the killings.  

Lieutenant Calley also grabbed a toddler attempting to escape the ditch, threw it back into the bottom, and shot it.  

Lieutenant Brooks of 2nd Platoon and Lieutenant LaCross of 3rd Platoon could not have remained ignorant of the actions of their men, as both leaders followed their elements to maintain control. The group murder by 2nd Platoon north of My Lai at a minimum should have been enough for Lieutenant Brooks to issue more concrete orders to stop the killing, but he only ordered his men to stop when they were specifically ordered to do so by Captain Medina after over an hour of rapes and murder. Lieutenant LaCross’ men had fewer civilians alive to kill since they followed the two other elements, but LaCross also did not attempt to stop the mercy killings or to stop his men using grenades on houses or bunkers until he was specifically ordered at approximately 10:30 a.m. In summary, leaders in Task Force Barker failed to supervise properly the planning of the [My Lai] operation. This gave rise to a loosely conceived plan with a poorly defined purpose. These failures resulted in the issuance of ambiguous, illegal, and potentially explosive orders by LTC Barker and CPT Medina…who failed either deliberately or unintentionally, to provide in their plans and orders for the possibility that noncombatants might be found in the objective areas. Implementation of these orders ultimately became the task of generally weak and ineffective leaders at the platoon level and below. Collectively, these factors had a pronounced impact on the [My Lai] operation.  

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355 Ibid., 79.
356 Calley, Lieutenant Calley: His Own Story, 113.
357 Bilton, and Sims, Four Hours in My Lai, 122.
IV. External Pressure on Charlie Company

In spite of training, the repeated losses to booby traps, and incorrect intelligence estimates of supposedly large enemy forces in My Lai created an atmosphere of trepidation and anger against the villagers in My Lai. The Brigade as whole had suffered over 100 casualties in the weeks leading up to the My Lai operation, of which approximately 40% had come in the My Lai area. Charlie company was authorized 175 men, but had lost 4 killed and 38 wounded by March 16th 1968, of which 90% of the deaths and wounds resulted from mines and booby traps. Significantly, Lieutenant Calley led a patrol in the vicinity of My Lai several days before the operation during which a soldier was killed by sniper fire from the village. The memorial service for the soldier was held shortly before the My Lai operation, and led by Captain Medina.

Colonel Henderson and the leaders under him who repeatedly emphasized aggression, reminded the soldiers of comrades lost in the area, and stressed past failures added fuel to the fire of rage. Pressuring their troops to be more aggressive backfired by convincing the soldiers to randomly murder instead of correctly identify and engage the enemy. Colonel Henderson stressed aggression, which is not unique in an organization that is on a mission to destroy an enemy they rarely see before they encountered an ambush or a booby trap. Henderson in fact publicly chastised the task force for allegedly not being aggressive enough, and he specifically added that the soldiers allowed old men, women, and children to steal weapons from the battlefield and return them to the Viet Cong.

Lieutenant Colonel Barker issued an illegal order to destroy the village, an order that was repeated and exaggerated by Captain Medina. Medina repeatedly stated that everything and everyone in the village was to be destroyed or killed, and issued an illegal order to do so. Lower-
level leaders like Captain Medina who repeatedly ordered murder and wanton killing that created the conditions for the atrocity. Lieutenant Calley was a weak leader who was unable to control his soldiers, and he was in also awe of Captain Medina and followed his orders.361

Task Force Barker was composed of regular soldiers with regular training whose officers made conscious decisions that pushed their men to murder. The men of Task Force Barker had been trained to the same standards as other units in the army in Vietnam at the time, and the unit was within normal range for personnel, leaders, and organization. The only difference between Task Force Barker and other units was that its leaders knowingly and unknowingly incited their men to aggression without providing any sort of mitigating factors such as clear guidance on what to do with civilians or prisoners. This, coupled with the pressure from Colonel Henderson and the repeated casualties from mines, booby traps, and unseen snipers, put Task Force Barker’s men into a state of pent-up aggression that was then unleashed on a village they had been told was most likely sympathetic to the Viet Cong, and possibly manned by 200-250 hardened enemy soldiers responsible for the deaths of many of the soldiers’ friends.

With regard to the impact that Colonel Henderson, Lieutenant Colonel Barker, and Captain Medina had on their soldiers prior to the operation, the report concluded

The men of C Company who participated in the [My Lai] operation testified, without exception, that their actions in and around My Lai (4) were "different" from anything they had ever been involved in before and from anything that they were ever in-volved in afterwards. From their testimony it is clear that a large part of the difference derived from their understanding of the nature and purpose of the operation.362

Before the My Lai massacre, several of the soldiers in Charlie company had committed single murders, rapes, or abuses without punishment.363 The lack of discipline and punishment led to an

361 Ibid., 40-41.
363 Ibid.
attitude of permissiveness in Charlie company, which was exacerbated by the failed patrols in the My Lai area. The final factor to pressure the soldier into war crimes came from Captain Medina, who according to the investigation:

"painted the picture" too vividly, and exercised no discrimination and little restraint in his implementing orders…[Captain] Medina, like his commander, issued illegal orders to burn and destroy property in the target area, failed to provide in his briefing for the possibility that non-combatants might be found in the area, and further influenced the events to follow by failing to make any distinctions in his orders concerning the treatment to be accorded armed combatants.364

By themselves, no single leadership failure may have caused the My Lai massacre, but together the failures combine to form a staggering amount of negligence from combat experienced leaders at the brigade, battalion and company levels. These failures compounded with the already weak leadership in the platoons led to an operation that spiraled out of control and one of the worst atrocities committed by United States soldiers. Lieutenant General Peers summarized:

No single factor was, by itself, the sole cause of the incident. Collectively, the factors...were inter-dependent and somewhat related, and each influenced the action which took place in a different way…It also points up the potential dangers inherent in these operations, which require constant vigilance and scrupulous attention to the essentials of discipline and the unique responsibilities of command.365

The soldiers of Task Force Barker were under a high degree of emotional stress and incited to high degrees of violence by their commanders who chose to follow illegal orders.

365 Ibid.
CHAPTER FOUR

PRISONER ABUSE AND TORTURE AT ABU GHRAIB


The United States invaded Iraq in 2003 and toppled the government of Saddam Hussein by May 1st, 2003. Upon the defeat of the Iraqi army, the United States occupied and reopened Abu Ghraib prison.\textsuperscript{366} On April 28, 2004 CBS broadcast photos from the prison showing American soldiers humiliating, torturing, and abusing prisoners in United States custody, which \textit{The New Yorker} published several days later.\textsuperscript{367} Between the reoccupation of the prison in June 2003 and February 2004, soldiers of the 205\textsuperscript{th} Military Intelligence Brigade, with soldiers from the 320\textsuperscript{th} Military Police Battalion systematically abused hundreds of prisoners, directly resulting in the deaths of several.\textsuperscript{368} How did the military’s police and intelligence units, who were supposedly trained to interrogate and guard prisoners humanely descend into a situation of brutality, violence, into a situation where “the worst human qualities and behaviors came to the fore, and a perversive [sic] dominance came to prevail.”\textsuperscript{369}

The 205\textsuperscript{th} Brigade under the command of Colonel Thomas Pappas and the 320\textsuperscript{th} Battalion under the command of Lieutenant Colonel Jerry Phillabaum both fell under the 800\textsuperscript{th} Military Police Brigade commanded by Brigadier General Janis Karpinski.\textsuperscript{370} The 800\textsuperscript{th} Brigade was

\textsuperscript{368} Danner, \textit{Torture and Truth: America, Abu Ghraib, and the War on Terror}, 440.
\textsuperscript{370} Karen Greenberg, and Joshua Dratel, eds., \textit{The Torture Papers: The Road to Abu Ghraib}, (Cambridge: University Press, 2005), 415.
assigned 17 prisons across Iraq and initially conducted prisoner of war and detainee operations during and immediately after the invasion in 2003. Brigadier General Karpinski assigned the 205th Brigade to Abu Ghraib to conduct interrogations and the 320th Battalion to establish security and conduct day-to-day prison operations. The 800th maintained control of the 16 other prison facilities assigned to other units, and no other facilities had any infractions during the same time frame as the Abu Ghraib incidents.

Arriving at Abu Ghraib in June 2003, the soldiers found a bewildering array of tents and buildings for specific groups of detainees,

Camp Ganci and Camp Vigilant were two tent prisons within the compound reserved for ‘common criminals.’ The Hard Site [a wing of the prison] was further subdivided as follows: Tier 1A was for ‘MI Holds’ (prisoners to be interrogated) and the ‘mentally unstable.’ Tier 1B was for ‘females and juveniles.’ Tiers 2 through 4 housed more ‘common criminals.’

The soldiers themselves slept in prison cells inside the original prison of Abu Ghraib itself, where conditions were considered austere. The entire compound was “‘deplorable,’ ‘filthy…over-populated’…and ‘overflowing with feces.’” Upon arrival, the prison held approximately 1,000 inmates, which increased to 6,000 by September 2003. The 320th Battalion was understrength when it arrived, and by September the soldiers conducted prison operations with double the number of prisoners officially recommended for a battalion. The problems of manning the prison increased throughout the year as more soldiers rotated home on

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371 “Testimony of Former Brigadier General Janis Karpinski, the Former Head of Abu Ghraib, for the German criminal procedure against DOD Donald Rumsfeld and others,” (2005, German Criminal Court), 3. https://ccrjustice.org/home/what-we-do/our-cases/accountability-us-torture-germany.
372 “Testimony of Former Brigadier General Janis Karpinski, the Former Head of Abu Ghraib, for the German criminal procedure against DOD Donald Rumsfeld and others,” 3.
374 Ibid., 106.
375 *The Ghosts of Abu Ghraib*, directed by Rory Kennedy, (2007; New York: Home Box Office, 2022), HBOMax.com. The “Hard Site” at Abu Ghraib was a location within the concrete prison buildings that the Military Intelligence soldiers used to interrogate prisoners.
376 Greenberg, and Dratel, eds., *The Torture Papers: The Road to Abu Ghraib*, 433.
regular Army Reserve rotations, since the reserve system did not replace them, the 320th Battalion continued to shrink as their prisoner population grew. Further exacerbating the situation, the leaders on the ground allocated the hard site prison six or seven Military Police guards per shift to control, feed, and escort over 1,000 prisoners.\(^\text{377}\)

Abuse at Abu Ghraib began immediately after the opening of the prison and was already noted by the International Committee of the Red Cross (ICRC) during a surprise visit on October 6th 2003. Detainees were routinely hooded with elastic bands to keep the eyes covered, but which routinely slipped and impeded breathing. Detainees were beaten with rifles, rods, fists, and had their faces forced into the dirt by soldiers’ boots.\(^\text{378}\) Detainees were often stripped naked, kept in isolation in very hot or very cold rooms, and “paraded naked outside their cells in front of other persons.”\(^\text{379}\) Detainees were left in stress positions such as a squat or holding up their arms until they were unresponsive. Detainees in isolation were left alone or had loud music blasted into their cells for days at a time until they showed signs of mental disorders.\(^\text{380}\)

On November 19th, 2003 General Sanchez ordered the commander 205th Brigade to assume responsibility for Abu Ghraib and assigned all soldiers on the compound to him.\(^\text{381}\) This order confused an already murky command structure with the two separate units operating without a clear commander on the compound. Dogs began being used in interrogations to scare the detainees on November 20th, 2003, or, as the soldiers described it, “fear up” prisoners and frighten them before interrogations.\(^\text{382}\) At no point was the 800th Brigade directed to “set conditions” for Military Intelligence soldiers by General Sanchez or Brigadier General

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\(^{378}\) Danner, Torture and Truth: America, Abu Ghraib, and the War on Terror, 260.
\(^{379}\) Ibid., 262.
\(^{380}\) Ibid., 263.
\(^{381}\) Greenberg, and Dratel, eds., The Torture Papers: The Road to Abu Ghraib, 434.
\(^{382}\) Danner, Torture and Truth: America, Abu Ghraib, and the War on Terror, 459.
Karpinski. No written orders were issued by Colonel Pappas nor by Lieutenant Colonel Phillabaum to this effect either.\textsuperscript{383}

The soldiers and leaders of the 205\textsuperscript{th} Brigade also requested, encouraged, and condoned further abuse by military policemen, specifically those on the night shift who were part of the 372\textsuperscript{nd} Military Police Company under the command of Captain Donald Reese.\textsuperscript{384} Of 44 incidents of abuse initially investigated, 16 were found to have been by military police who were unauthorized to participate in interrogations, and 11 were perpetrated by the military intelligence soldiers who violated established procedures for interrogation. Of the 160 security personnel, 45 interrogators, and 18 linguists at Abu Ghraib, 54 soldiers and contractors were found to have “responsibility or complicity” in the torture and abuse.\textsuperscript{385} By the time the investigations were complete in 2004 with the 205\textsuperscript{th} Brigade and 320\textsuperscript{th} Battalion rotating back to the United States, 105 prisoners died within the compound, 37 of which the Army classified as homicides.\textsuperscript{386}

All of the above abuses occurred in addition to those shown in photographs released where detainees are shown with untreated wounds, soldiers leading detainees around like pets on leashes, and soldiers handcuffing multiple detainees together in sexual positions while naked (the specific cases relating to the pictures will be detailed in the following section). The pictures were taken in the “Tier 1” unit used for the highest value prisoners during the night shift, and documented from October to December 2003.\textsuperscript{387} Other abuses were systemic and systematic from the reoccupation of Abu Ghraib until February 2004, stopping only when the army began

\begin{footnotes}
\item[383] Greenberg, and Dratel, eds., \textit{The Torture Papers: The Road to Abu Ghraib}, 412.
\item[384] Danner, \textit{Torture and Truth: America, Abu Ghraib, and the War on Terror}, 416.
\item[385] Ibid., 442.
\item[386] \textit{Taxi to the Dark Side}, directed by Alex Gibney, (2008; New York: Thinkfilm, 2022), Amazon Prime.
\item[387] Mark Danner, \textit{Torture and Truth: America, Abu Ghraib, and the War on Terror}, 331-332.
\end{footnotes}
formal investigations into allegations by the ICRC and several soldiers from Abu Ghraib who claimed that detainees were being abused at the prison.\textsuperscript{388}

II. \textbf{Torture and abuse by Military Intelligence soldiers and Military Police soldiers.}

While routine abuse became commonplace by December 2003 with Military Police “setting conditions” for interrogations, testimony suggests torture by Military Intelligence soldiers began almost immediately after the visit of Major General Geoffrey Miller in September 2003.\textsuperscript{389} Major General Miller commanded Guantanamo Bay prison at the time and advocated utilizing “Tiger Teams” of both Military Intelligence and Military Police soldiers as well as advocating more advanced interrogation techniques used against Al-Qaida and Taliban prisoners in Afghanistan. Major General Miller’s direct recommendations to intelligence soldiers on the ground, coupled with negligent leadership led to interrogators using methods that violated Field Manual 34-52 \textit{Intelligence Interrogations}, the Uniform Code of Military Justice, and the Geneva Conventions.\textsuperscript{390} Intelligence soldiers would strip prisoners naked, then order the military police to take away mattresses, blankets, and clothes. Soldiers tripped new inmates several times upon arrival and forced the prisoners to wear women’s underwear to “break them down.”\textsuperscript{391} One contractor testified that intelligence soldiers coordinated with the military police to force prisoners to crawl on the ground naked, called the prisoners “gays,” and implied they were all homosexual.\textsuperscript{392}

\textsuperscript{388} Ibid., 217-224.
\textsuperscript{389} Greenberg, and Dratel, eds., \textit{The Torture Papers: The Road to Abu Ghraib}, 409-410.
\textsuperscript{390} Greenberg, and Dratel, eds., \textit{The Torture Papers: The Road to Abu Ghraib}, 412. It is not within the scope of this thesis to discuss the legality or morality of the Bush administration’s decision to waive Geneva Protocol III protections for Al-Qaida and Taliban detainees except in how confusion over that decision impacted leaders at Abu Ghraib. It is also not within the scope of this thesis to discuss the morality of harsh interrogation techniques in general unless those techniques violate existing manuals and military law.
\textsuperscript{391} Ibid., 419.
\textsuperscript{392} Ibid.
The specific incidents photographed that led to criminal charges for nine soldiers began on October 25th, 2003. Three prisoners, one of whom the soldiers accused of rape, were handcuffed together on the floor of the “Hard Site” and forced to crawl on their stomachs. None of the prisoners involved in this incident were detained for intelligence value but for to criminal activity. Corporal Graner then handcuffed the prisoners together while naked and photographed them all on top of each other. Soldiers harassed and sexually taunted the naked prisoners before returning them to their cells.

On November 4th, 2003, a prisoner nicknamed “Gilligan” was hooded, forced to stand on a box, and had electrical wires attached to his fingers. Soldiers told “Gilligan” he would be electrocuted if he stepped off or fell off the box and questioned him about the death of several American soldiers. “Gilligan’s” interrogation was the only example of the Military Police soldiers actively participating in questioning a prisoner, rather than “softening up” prisoners for interrogation by the Military Intelligence soldiers.

On November 7th, 2003, seven inmates involved in a prison riot for better food were stripped naked and brought to the “hard site.” The prisoners were filmed being forced into sexually explicit positions, and being forced to masturbate while being humiliated by soldiers. Following this, the seven men were stacked on top of one another while hooded in a human pyramid. At no point were the seven prisoners questioned, they were simply abused in response to the prison riot.

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396 Ibid.
397 Ibid.
III. Make-up of the 800th Military Police Brigade and the training of the soldiers at Abu Ghraib.

From the beginning of the War on Terror, the Bush administration sent several memorandums defining which GPW and Geneva Articles applied to Taliban and Al-Qaida detainees, specifically in regard to treatment during interrogation. The administration decided that while the United States would not consider Taliban and Al-Qaida detainees as prisoners of war or enemy combatants, the military would continue “to treat detainees humanely, and to the extent appropriate and with military necessity, in a manner consistent with the principles of Geneva.” This decision was not applied to Iraqi detainees, which meant that they should have been afforded all the protections of the Geneva and UN protocols unless they were identified as members of Al-Qaida or the Taliban.

The 800th Military Police Brigade while suffering from manning shortages, reflected the same issues that other Army Reserve and National Guard units on long deployments suffered during the initial phases of the invasion of Iraq in 2003-2004. Brigadier General Karpinski failed to forecast manning problems, and she, along with her staff “did a poor job allocating resources across Iraq.” Specific leadership issues contributing to torture at Abu Ghraib appeared almost immediately upon the United States’ arrival in Iraq and involved the specific leadership of elements of the 205th Military Intelligence Brigade, and the 320th Military Police Battalion and their subordinate units.

399 Greenberg, and Dratel, eds., *The Torture Papers: The Road to Abu Ghraib*, 433.
400 Ibid.
The 205th Brigade who was responsible for intelligence and interrogation at Abu Ghraib, contained several companies transferred from Afghanistan. The 519th and 377th Military Intelligence Companies arrived at Abu Ghraib in July of 2003, where they implemented harsher procedures from Afghanistan that were not authorized in Iraq. Captain Carolyn Wood commander the 519th and her soldiers had previously killed two detainees in their custody at Bagram Air Force Base. Captain Wood’s soldiers were not punished nor investigated for the deaths until 2004, and Captain Wood continued to use techniques from Afghanistan in Iraq, by her own admission. The Commander of the 205th, Colonel Pappas, communicated directly with General Ricardo Sanchez, the commander of all forces in Iraq, instead of with Brigadier General Karpinski under whom he was placed upon his arrival in Iraq. Other than the 519th Company and the commander reporting to higher authorities than his immediate superior, the 205th Brigade was within norms for an intelligence unit.

The commander of the 320th, Lieutenant Colonel Jerry Phillabaum, commanded the battalion when several detainees suffered abuse at Camp Bucca, Iraq in May of 2003. Brigadier General Karpinski supported a Criminal Investigative Division recommendation to court-martial four soldiers but failed to prosecute, and there is no evidence that any of the soldiers were punished or transferred or that the battalion conducted any training to ensure that such an incident did not happen again. Phillabaum was briefly sent to Kuwait in October of 2003 “to

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402 "Testimony of Former Brigadier General Janis Karpinski, the Former Head of Abu Ghraib, for the German criminal procedure against DOD Donald Rumsfeld and others,” 5-6.
403 Officially, the 205th was under “Tactical Command” of the 800th Military Police Brigade. Tactical Command is defined as “command authority over assigned or attached forces...that is limited to the detailed direction and control of movements or maneuvers within the operational area necessary to accomplish assigned missions or tasks.” In other words, the 205th worked for the 800th in regards to Abu Ghraib and everything that went on in the prison. As such, it is exceedingly odd that Colonel Pappas failed to report regularly to Brigadier General Karpinski.
404 Greenberg, and Dratel, eds., The Torture Papers: The Road to Abu Ghraib, 419.
give him some relief from the pressure he was experiencing” at Abu Ghraib. 

Lieutenant Colonel Phillabaum routinely fought with his operations officer, Major DiNenna, and allowed two other members of his staff, Major Hinzmann and Major Green to become so antagonistic that it was noticed by soldiers across the compound and “had a detrimental effect on the Brigade Staff’s effectiveness and morale.”

The soldiers of the 320th testified to a man that they received “on the job training” upon their arrival at Abu Ghraib but received no formal training whatsoever in the detainee operations they were assigned to conduct. While detainee operations are a Military Police task, and with several soldiers serving as correctional officers in civilian jobs (CPL Graner and SSG Ivan Frederick specifically), the 320th failed to conduct training on detainee tasks prior to their deployment. One soldier testified that “no one could tell me what was or wasn’t allowed,” in regards to the Military Police’s role in interrogations. The behavior of Specialist Charles Graner prior to his deployment was noted. His spouse had accused him of domestic violence and assault on two separate occasions in 1997 and 2001, and one of Graner’s prisoners in civilian prison accused him of putting a razorblade into his food during mealtimes. Several coworkers of Graner’s stated they would all beat up civilian inmates as a form of control. None of these allegations resulted in charges, and there is no evidence that the 320th Military Police leadership did anything about the incidents in regards to Specialist Graner.

405 Ibid., 435.
406 Greenberg, and Dratel, eds., The Torture Papers: The Road to Abu Ghraib, 436.
408 Greenberg, and Dratel, eds., The Torture Papers: The Road to Abu Ghraib, 419.
The units involved in the torture and abuse at Abu Ghraib were initially within normal training range for their tasks, but command negligence, confusion about the chain of command, and unclear guidance combined to exacerbate minor problems as is shown below.

IV. Negligence by Brigadier General Karpinski, Colonel Pappas, Lieutenant Colonel Phillabaum, and officers in command at Abu Ghraib.

The commander of the 800th MP Brigade charged with Abu Ghraib operations was Brigadier General Janis Karpinski. The brigade initially believe it would redeploy home in May 2003 but instead was diverted to establish the prison. As a result, “morale suffered and…there did not appear to have been any attempts by the Command [BG Karpinski] to mitigate this morale problem.”

Brigadier General Karpinski knew that her unit was untrained in their basic police and internment abilities but again, prior to the assumption of the post at Abu Ghraib. She did nothing to retrain or correct the known deficiencies. Karpinski testified that she previously commanded a military police unit that conducted prisoner of war operations, and as such should have trained her soldiers on prison operations before deployment.

Once the 800th Brigade was placed in charge of the Abu Ghraib complex, all actions occurring inside the complex became Karpinski’s responsibility. As stated above, the tactical command of the 205th Brigade ensured Karpinski’s command authority over the intelligence soldiers. Karpinski testified that while Abu Ghraib was “under my control” there were no instances of torture or abuse, but that once General Sanchez assigned Colonel Pappas to

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412 “Testimony of Former Brigadier General Janis Karpinski, the Former Head of Abu Ghraib, for the German criminal procedure against DOD Donald Rumsfeld and others,” 1.
command the compound, things devolved quickly.\footnote{Ibid., 4.} In spite of Karpinski’s assertions, after the order by General Sanchez was issued, “there was little, if any recognition of this…order by the 800th MP Brigade or the 205th MI Brigade.”\footnote{Greenberg, and Dratel, eds., \textit{The Torture Papers: The Road to Abu Ghraib}, 434.} Military Police soldiers “continued to function as if they were responsible for the security, health and welfare, and overall security of detainees,” while also continuing to set conditions for the intelligence soldiers.\footnote{Greenberg, and Dratel, eds., \textit{The Torture Papers: The Road to Abu Ghraib}, 434.}

In her testimony Karpinski also blamed Major General Miller for attempting to “gitmo-ize” the prison and indicated that he was responsible for the torture by bringing in civilian interrogators and employing unauthorized techniques.\footnote{“Testimony of Former Brigadier General Janis Karpinski, the Former Head of Abu Ghraib, for the German criminal procedure against DOD Donald Rumsfeld and others,” 6.} She repeatedly stated that Colonel Pappas only communicated with General Sanchez and Major General Miller in spite of the fact that Pappas remained in her chain of command and that Miller had no command authority in Iraq or at Abu Ghraib.\footnote{Ibid., 11.}

Regardless of the order to place the 320th under Colonel Pappas and the 205th Brigade, both units fell under the command of Karpinski. As the overall commander she therefore maintained responsibility for the prison no matter who ran day-to-day operations unless otherwise ordered, and she was not ordered to give up the prison. Given the situation, she should have issued orders to specify what responsibilities each element had, and if there was confusion she should have intervened. In spite of her testimony that she visited the prison regularly, soldiers stated they rarely if ever, saw her or their battalion commander Lieutenant Colonel Phillabaum there.\footnote{Mark Danner, \textit{Torture and Truth: America, Abu Ghraib, and the War on Terror}, 317-318.}
Brigadier General Karpinski also routinely failed to discipline her soldiers both before and during her command of Abu Ghraib. While she issued a letter of reprimand for Lieutenant Colonel Phillabaum on November 10th 2003 for failing to update security procedures in relation to prisoner escapes, she neither relieved him nor asked for a replacement for him. She also failed to relieved Major Dinenna after he was issued a letter of reprimand to him in May 2003 for failing to report soldiers consuming alcohol; and she further filed another reprimand in November for the same reasons she disciplined Phillabaum.419 Karpinski filed three separate reprimands for leaders in her brigade due to soldiers negligently discharging their weapons but did not relieve anyone nor did she institute any retraining or specific directives to solve the problems. She also issued four other reprimands to leaders for drinking on duty, taking nude photographs of subordinates, and failing to follow orders, but again she did not relieve nor replace any of them.420

Most concerning regarding the abuse, there is no evidence that Brigadier General Karpinski issued, or refined any guidance regarding the operation of Abu Ghraib itself. During training before their deployment, training occurred “at the company level with little or no direction or supervision from Battalion or Brigade.”421 There were 27-32 prisoner escape attempts from August to December 2003 across the brigade, and at no point did Karpinski complete an investigation or update any procedures despite several detainees having been shot and several soldiers wounded in the escapes.422 With previous command experience in prisoner operations it seems unbelievable that after the first several escape attempts she could have failed to realize she had a serious problem with the training and execution of duties by her soldiers.

419 Greenberg, and Dratel, eds., The Torture Papers: The Road to Abu Ghraib, 437.
420 Ibid., 436-438.
421 Ibid., 433.
422 Ibid., 425.
Instead, Karpinski simply blamed her higher chain of command for trying to move her away from her soldiers and attempting to keep information and resources from her, while simultaneously blaming her subordinates and Colonel Pappas for giving her soldiers “ideas” that encouraged abuse.\(^{423}\)

Further confusing Karpinski was the fact that in October of 2003, the commander of all units in Iraq signed a memorandum authorizing interrogation techniques reserved for Al-Qaida and Taliban detainees when these methods violated the Geneva protocols still being applied to Iraqi detainees.\(^{424}\) General Sanchez rescinded the memorandum less than a month after its initial approval, but the techniques continued to be used by Military Intelligence personnel. Given Karpinski’s failure to update procedures or issue clear guidance, it seems unlikely that General Sanchez’s memorandum was widely distributed to her soldiers or had any immediate impact on the Military Police operations in the prison.

The commander of the 205th Colonel Thomas Pappas initially commanded the interrogators at Abu Ghraib. After November 19th, Colonel Pappas allegedly commanded all of Abu Ghraib but, as shown above, he failed to change any command directives or the dynamics at the prison. When working with the 320th Military Police Company, there was “no clear delineation of responsibilities…little coordination at the command level, and no integration of the two functions.”\(^{425}\) Pappas failed to exercise any command authority over the military police he commanded after November 19th, and failed to “properly supervise his soldiers working [in] Tier 1 of the Hard Site.”\(^{426}\)

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\(^{423}\) “Testimony of Former Brigadier General Janis Karpinski, the Former Head of Abu Ghraib, for the German criminal procedure against DOD Donald Rumsfeld and others,” 13.

\(^{424}\) Greenberg, and Dratel, eds., *The Torture Papers: The Road to Abu Ghraib*, 460-461.

\(^{425}\) Ibid.

\(^{426}\) Greenberg, and Dratel, eds., *The Torture Papers: The Road to Abu Ghraib*, 440.
He failed to instruct his interrogators on the directives of the Geneva Convention and
applicable army regulations that govern all detainee treatment and interrogation methods.\textsuperscript{427} Colonel Pappas lived at Abu Ghraib and it seems incredible that he would have had no
knowledge of Captain Wood, her previous experience in Afghanistan, and the techniques she
used in her interrogations there. Regardless, Pappas failed to publish, train, or enforce any
interrogation rules in direct violation of FM 34-52.\textsuperscript{428} Both before and after Major General
Miller’s visit in August and September of 2003, Colonel Pappas failed to reliably report anything
to Brigadier General Karpinski and instead chose to communicate his intelligence directly to the
intelligence personnel in charge of all Military Intelligence in Iraq.\textsuperscript{429} Finally, Colonel Pappas
along with every other leader at Abu Ghraib, failed to “properly supervise his soldiers working a
‘visiting’ Tier 1 of the Hard Site” and simply allowed his company commanders free reign.\textsuperscript{430}

Lieutenant Colonel Phillabaum, in addition to being briefly replaced due to stress and
having already failed to prosecute any of his soldiers for prisoner abuse before he arrived at Abu
Ghraib also failed to inspect or supervise his soldiers at all. He failed to investigate over twenty
prisoner escapes as well as multiple prisoner shootings and riots.\textsuperscript{431} Lieutenant Colonel
Phillabaum also failed to implement the recommendations provided by Brigadier General
Karpinski on the few investigations she actually conducted, and he failed to ensure that his
soldiers understood the protections afforded prisoners at Abu Ghraib under the Geneva
Conventions and AR 190-8.

\textsuperscript{427} Mark Danner, \textit{Torture and Truth: America, Abu Ghraib, and the War on Terror}, 321.
\textsuperscript{428} Greenberg, and Dratel, eds., \textit{The Torture Papers: The Road to Abu Ghraib}, 439.
\textsuperscript{429} “Testimony of Former Brigadier General Janis Karpinski, the Former Head of Abu Ghraib, for the German
criminal procedure against DOD Donald Rumsfeld and others,” 16.
\textsuperscript{430} Greenberg, and Dratel, eds., \textit{The Torture Papers: The Road to Abu Ghraib}, 440.
\textsuperscript{431} Ibid.
Lieutenant Colonel Phillabaum also failed to conduct any retraining for his soldiers once he realized their mission had changed and failed to reorganize his soldiers to better accomplish the new mission at Abu Ghraib. Compounding the total confusion as to what interrogators could and could not do, as the commander of Abu Ghraib until November of 2003, Phillabaum failed completely to “enforce basic soldier standards, proficiency, and accountability,” as well as to coordinate with the interrogators to ensure operations being conducted inside his area of responsibility were legal. As the commander, Phillabaum maintained responsibility for the actions of his subordinates.

The company commanders living at Abu Ghraib all failed to follow Army regulations and either actively encouraged illegal actions (Captain Wood), or simply failed to supervise their soldiers (Captain Reese). No soldiers interviewed by the investigation had any knowledge of the regulations governing detainee operations, or of specific training. No training was done for civilian detainee supervision or detention.432 The responsibility for training soldiers falls on the company commanders, and, as shown above, coordination was made only at the company level and below due to friction and negligence by higher echelons. Captain Wood arrived at Abu Ghraib with a history of abuse and continued to use harsh techniques. Military Police soldiers testified repeatedly that they had no idea what Military Intelligence soldiers could or could not do to prisoners, therefore they assisted when asked.433 Captain Wood admitted to using illegal interrogation techniques at Abu Ghraib but was neither relieved nor punished and she continued to use the harsh methods until her company left the compound in 2004.434

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Captain Reese, like all of the leaders above him, failed to regularly inspect his soldiers, visit the Hard Site, or enforce AR 190-8 and the Geneva Conventions.\textsuperscript{435} Multiple soldiers, like Sergeant Ken Davis and Sergeant Javal Davis, reported the abuse to their supervisors. The uniform reply was to tell soldiers to “do [your] job.”\textsuperscript{436} As the company commander responsible for the Hard Site and guard operations, Captain Reese was responsible both for the security of the detainees and the action of his soldiers. It again seems incredible that he never knew of multiple concerns about the treatment of prisoner, which soldiers testified they knew was morally wrong.\textsuperscript{437}

Leaders at all levels responsible for Abu Ghraib failed to do the bare minimum. Basic negligence and failing to conduct minimal checks on their soldiers could easily be construed as dereliction of duty and gross negligence, and indeed the Army relieved each of the above individual commanders except Captain Wood.\textsuperscript{438} Officers at Abu Ghraib simply did not ask what their soldiers in a stressful environment were doing, and by not investigating or supervising those soldiers allowed the abuse to happen.

V. External Pressure on the Military Police at Abu Ghraib

The 800\textsuperscript{th} was understrength and due to internal personnel mismanagement, Abu Ghraib operated at one seventh the normal required strength, which increased the stress on the individual soldiers who came under more and more enemy fire from October to December 2003 as terrorists began fighting the American troops.\textsuperscript{439} The soldiers at Abu Ghraib were outnumbered

\textsuperscript{435} Greenberg, and Dratel, eds., \textit{The Torture Papers: The Road to Abu Ghraib}, 441.
\textsuperscript{436} Mestrovic, \textit{The Trials of Abu Ghraib: An Expert Witness Account of Shame and Honor}, 155.
\textsuperscript{437} Greenberg, and Dratel, eds., \textit{The Torture Papers: The Road to Abu Ghraib}, 418.
\textsuperscript{438} Greenberg, and Dratel, eds., \textit{The Torture Papers: The Road to Abu Ghraib}, 440-442.
\textsuperscript{439} Danner, \textit{Torture and Truth: America, Abu Ghraib, and the War on Terror}, 313.
by the inmates in the compound 75:1. In the Hard Site itself, six to seven Military Police worked twelve-hour shifts escorting, feeding, and ensuring the safety (allegedly) of over 1,000 prisoners. Soldiers testified to feeling terrified of the fact that if the prisoners rioted the soldiers could be overrun by the sheer number of prisoners.

Escapes and prisoner shootings became commonplace, further adding to the already stressed soldiers. As described above, groups of prisoners attempted escape nearly 30 times, in addition to several riots requiring the use of nonlethal weapons like rubber bullets and bean bag rounds from soldiers. Compounding the sense of siege was the fact that mortar rounds impacted the complex daily. Riots and mortar attacks wounded several soldiers and killed several more, contributing to an atmosphere of being under siege. Soldiers lived inside the prison in conditions similar to actual inmates, and the temperature inside the complex as a whole regularly reached 120 degrees Fahrenheit. The complex was awash in human feces, running water was scarce, and adequate lighting for night time patrols never arrived as requested. The prison as a whole itself therefore added to the stress of the overworked soldiers.

Higher leaders like Colonel Pappas also contributed to the stress of the soldiers. Pappas pressured interrogators to get information quickly in order to ensure timely intelligence. The overall attitude from Military Intelligence personnel on the ground at the prison was one of pressure to succeed. Unlike Guantanamo Bay where detainees could be interrogated over longer periods due to the assumption they had strategic intelligence like the location of Osama bin Laden, prisoners at Abu Ghraib were deemed to have tactical intelligence which was much more time sensitive. As such, interrogators felt they had to break their prisoners more quickly and

440 Mestrovic, The Trials of Abu Ghraib: An Expert Witness Account of Shame and Honor, 158.
441 Greenberg, and Dratel, eds., The Torture Papers: The Road to Abu Ghraib, 426-429.
442 Greenberg, and Dratel, eds., The Torture Papers: The Road to Abu Ghraib, 448.
resorted to unauthorized methods and asking the Military Police soldiers to help “soften up” the prisoners.⁴⁴⁴

VI. Conclusion

At lower levels, soldiers conducting interrogations made conscious, personal decisions to use techniques they observed from civilian contractors, other government agency personnel (CIA), and one unit transferred to Abu Ghraib from Afghanistan (519th Company under Captain Wood). Soldiers copied the techniques that were legal in certain cases but not in Iraq. Proper training could have mitigated some of these issues, along with adequate leader supervision. Almost no leaders within the 800th, the 320th, or the 205th, or any of their subordinate units conducted visits, and those lower-level leaders present at the prison did not oversee the Tier 1 unit where the worst abuses took place. Leaders knowingly or out of ignorance allowed their soldiers to take matters into their own hands when army leadership increased pressure for more, accurate intelligence. Compounding leader negligence and confusing, contradictory, or vague guidance on interrogation techniques was the fact the MP and MI units were activated Reserve elements. The reservists train 1 weekend each month and 2 weeks in the summer which further reduced what little training they received prior to deployment to Iraq.

Leaders admitted their soldiers were not trained but then failed to train them. Additional evidence for the leadership failure unique to the soldiers of the 800th and the 320th and 205th specifically is that there were units in Iraq operating under the same confusing guidance, with limited training, in austere conditions that did NOT commit abuse and torture. There were other working dog teams in Abu Gharib that refused to commit abuse. There were other units in the

800th that served as long in Iraq as the 320th that did not commit atrocities. The major discriminating factor for the differences is leadership, and failures thereof. In the words of Sabrina Harman’s defense lawyer at her Court Martial trial, “do you really believe the Army relieved a general officer because of six soldiers? Not a chance.”

CHAPTER FIVE

SIMILARITIES ACROSS THE THREE CASES

Looking at the three above cases, each one is unequivocally a tragedy. Each case altered both the war and the military involved. The Battle of Algiers and the allegations of torture that surfaced divided France and world opinion afterward dogged the French Army for the rest of the war in Algeria. The My Lai massacre changed how the United States army trained leaders and directly influenced the creation of an ethical standard for all soldiers. The torture at Abu Ghraib changed how Military Police operations occurred and had a lasting impact on the liberation of Iraq.

In all three cases, official policy handed down by the executive branch of both the French and American governments specifically forbade torture. Circumstances differed in each case, but three clear similarities emerge. Each case showed negligence or dereliction by commanders, each case showed commanders applied pressure to get rapid results at the expense of following the rules, and each case shows how external factors that added to the pressure on the soldiers.

The evidence suggests that the critical factor in all three cases was poor leadership from the company to the brigade level. Though other studies have suggested other causes and explanations, my argument is that the critical factor was leadership failure at the brigade, battalion, and company levels. Negligent leaders failed to supervise or control their troops, commanders applied undue pressure to get results, and external factors in the immediate area surrounding the events provided the impetus for the crimes committed.
I. **Differences in Units, Government Policy, and Command Echelons.**

A primary difference between the cases deals with the quality of the soldiers involved. The 10th Division Parachutiste was an elite, combat experienced unit that was hand-picked for its performance to pacify Algiers. General Massu and Colonel Bigeard were well liked and respected by both the government and their soldiers who were willing to do whatever they were ordered to do. An elite unit like the 10th Division would be expected to operate at a professional, expert level and follow rules and regulations. As leaders, General Massu, Colonel Bigeard and Major Aussaresses leveraged their soldiers’ loyalty to order illegal things.

At My Lai, Colonel Henderson, Lieutenant Colonel Barker, and Captain Medina were combat veterans but who had not all served together before. On the other hand, Lieutenant Calley was rated unexceptional to poor, and several of his sergeants expressed a lack of faith in his leadership. In Task Force Barker was an amalgamation that had little integrity and a short history, but was on paper rated as combat ready. Charlie company was understrength with almost 50% of its soldiers being on their first combat operation in My Lai. In light of this, Lieutenant Colonel Barker and Captain Medina should have taken extra precautions to supervise their men and to provide extra clear guidance and objectives to control their inexperienced troops.

At Abu Ghraib, the Military Police and Military Intelligence soldiers were poorly trained, poorly led, and set up for failure. Lacking a clear mission, clear orders, and any kind of leadership from their commanders, soldiers took the expedient method. The Military Intelligence soldiers were pressured for more information, and to get it faster while the Military Police soldiers were encouraged to help. Leaders at all levels at Abu Ghraib failed to even visit the interrogation section and hard site regularly. Brigadier General Karpinski, Colonel Pappas, and Lieutenant Colonel Phillabaum knew and testified that their soldiers were untrained in the tasks
required to run the prison. Leaders testified that the prison was undermanned and undersupplied but then knowingly failed to supervise their overworked and undertrained soldiers.

A second major difference between the cases was the threat to each nation at the time. In Algiers, the mantra was to defend French territory and to sustain the honor of France. Soldiers grew up being taught that Algeria was simply another department of France (equivalent to an American state). Leaders used the excuse of an existential threat to the nation to pressure soldiers for results and to use whatever means necessary to defeat Algerian rebels. No one at My Lai was briefed that the mission was a struggle for the honor of the United States or that the Viet Cong or North Vietnamese Army were an existential threat to America. Leaders instead used personal pride, personal performance and outright personal survival as motivation to commit the atrocity. The war in Iraq was a war of liberation, not a war to maintain the integrity of America. What guidance and leadership the soldiers at Abu Ghraib received was to increase productivity to protect their fellow soldiers. Leaders stressed that accurate intelligence could save the lives of the soldiers in Iraq. Leaders stressed that to press for quick results rather than painting the Iraqi army as an existential threat to the United States. While soldiers at Abu Ghraib felt under siege due to daily mortar attacks and regular escape attempts, this translated to intense personal stress rather than being reinforced as an existential threat by leaders.

A third major difference was the level of commanders involved. The French Army command structure and unit deployments differ from the United States therefore the 10th Division is a slightly higher echelon than its American counterparts used in the other examples. In the context of this thesis the difference is negligible, as both the American units and the French units operated in similar situations in that they were assigned distinct missions to execute. All units described in the thesis had large amounts of autonomy that allowed their commanders
great influence over their men, with minimal interference from higher echelons in day-to-day operations of the units.

The final major difference is a matter of interpretation between whether torture in Algiers and at Abu Ghraib were matters of policy instead of violations of policy. My Lai was clearly a violation of United States policy. In Algiers, critically, torture was never explicitly authorized by the French government. No official documents or orders were sent to General Massu allowing torture; rather, he instituted policies in order to fulfill the mission given to him. At Abu Ghraib, Military Policemen vented personal stress and abused prisoners for entertainment, not as a matter of United States policy. The Military Intelligence soldiers violated established United States policy by using interrogation techniques authorized in Afghanistan and Guantanamo Bay but not in Iraq. Leaders used their influence to pressure soldiers to use illegal methods and torture Iraqi detainees in direct violation of United States policy and Army Regulations in effect at the time. My Lai was clearly a violation of the Geneva Conventions, United States policy and Army Regulations.

II. Commonalities in Command Negligence and Dereliction of Duty.

During the Battle of Algiers, the governor general in Algeria handed police power to the military and then did not enforce limits to this power. Commanders on the ground in Algiers interpreted the need to “win” the Battle of Algiers as a reason which led to General Massu’s adoption of torture. The State of Emergency law used by Pierre Lacoste to transfer powers to General Massu specifically required trials before punishment, and that anyone arrested was entitled to humane imprisonment. French Penal laws specifically required humane treatment of anyone incarcerated. The military became, in effect, an extension of the police and Gendarmerie
in Algiers, but the justice system by the letter of the law was still in effect in terms of trying and convicting individuals. General Massu simply circumvented the justice system and falsified records of prisoners while issuing explicit orders to his men to torture.

In other words, General Massu exploited an admittedly gray area in the French law, but he did still violate the law by ordering and encouraging torture. Massu used a technicality to extend the imprisonment and “house arrest” of any suspects by an indeterminate amount of time to ensure anyone captured was interrogated and then killed if necessary. In short, General Massu knew, and quoted the State of Emergency Law in his orders, that then allowed his soldiers to violate those laws. By Major Aussaresses own testimony, General Massu and Colonel Bigeard were briefed daily on the intelligence staff’s methods and about new captures or critical intelligence obtained. General Massu requested Major Aussaresses by name and then empowered him specifically to do whatever was necessary. In spite of French policy, and the subsequent resignation of General Bollardière, General Massu continued to order his men to imprison and torture.

In Vietnam, Task Force Barker specifically ordered the destruction of property which violated specific GPW and Geneva protocols. The orders to destroy My Lai came not from the commander of American forces in Vietnam, but from Lieutenant Colonel Frank Barker, who was then followed up by Captain Medina who exhorted his men to kill everyone. Lower-level commanders again interpreted and issued orders that explicitly violate American policy. As shown above, leaders and soldiers were trained on the Geneva Conventions, at least to a basic degree in training before and after arrival in Vietnam. Cards were issued to all leaders and soldiers specifically delineating the rules for prisoners and civilians in Vietnam. Leaders had the
moral and ethical responsibility to ensure their soldiers were able to understand the rules governing their conduct on operations.

In spite of the training and safeguards, leaders instead chose to incite their untested soldiers to violence under the guise of being more aggressive. As shown in Chapter 1, battalion and company commanders are responsible for everything their units do or fail to do and both Lieutenant Colonel Barker and Captain Medina knew the quality of their soldiers and junior leaders. As such, the minimum ethical requirement should have been to stress control and proper target identification for the first combat test of their men. Instead of doing the right thing, Colonel Henderson expressed disappointment in the aggression of Task Force Barker, Lieutenant Colonel Barker allowed an unverified intelligence report to be issued to his men, and Captain Medina repeatedly told his men to kill anything that moved in the village.

Colonel Henderson, Lieutenant Colonel Barker, and Captain Medina were all veterans of at least one deployment to Vietnam and all were rated above average as combat leaders. They knew the rules and chose to violate them by ordering the villages of My Lai destroyed and then failing to control their soldiers. Colonel Henderson had multiple opportunities to investigate conflicting claims of civilian casualties. Lieutenant Colonel Barker had the duty to investigate increasingly higher reports of civilian deaths and he should have been able to see and hear a distinct lack of enemy fire from his position above the villages and listening to the radios. Captain Medina absolutely knew what was happening and chose both to participate in murder and then failed to do anything to control his soldiers for over two hours.

All three leaders issued orders either to be aggressive, to destroy civilian infrastructure, or to kill women and children. The fact that the soldiers from Charlie company did not commit other atrocities during their deployment shows the impact that the leaders had in the massacre.
The drive to inflate body counts is mentioned only by Lieutenant Calley, and not as an impetus to kill, but simply to lie about the number of “enemy” killed. Captain Medina, as the only competent leader and most experienced, used his command of the company to push his men to shoot first and ask questions later, which was a direct violation of policy and the cards every man carried. Leaders made conscious decisions to encourage aggressive action, and then leaders at all levels either failed to control that aggression or actively participated in the massacre.

At Abu Ghraib, Brigadier General Karpinski, Colonel Pappas and Lieutenant Colonel Phillabaum gave almost no guidance to their interrogators, failed to supervise the Military Police, and the officers on the ground in the prison took it into their own hands to get results. Interrogators used illegal interrogation techniques which were copied by soldiers who were not trained to know better, and they were similarly unsupervised by their leaders. Captain Carolyn Wood herself admitted to using techniques from Afghanistan which were explicitly prohibited in Iraq. Company commanders on the ground at Abu Ghraib were fired for negligence in every case except for Captain Wood.

Colonel Pappas and Lieutenant Colonel Phillabaum rarely spoke to each other and took no active measures to coordinate their efforts even though they repeatedly complained about security at the prison. Neither leader toured the prison or checked on their soldiers. No company or platoon-level leaders at Abu Ghraib made anything more than cursory inspections and no one ensured that their soldiers even followed basic protocols such as wearing their uniforms correctly.

The Military Police were asked to “help” the interrogators and then used that request as an excuse to abuse prisoners for their own entertainment. Neither the Military Intelligence Soldiers nor the Military Policemen were following any published policy or orders from anyone
outside of the prison. Brigadier General Karpinski repeatedly blamed the problem on several “bad apples” in the Military Police unit and on Major General Miller. Considering that her own leaders on the ground were barely impacted by an explicit order moving authority from one to the other (Phillabaum to Pappas) and that Karpinski failed to relieve several leaders for previous instances of abuse, it seems less likely that Miller and a few “bad apples” were the problem at Abu Ghraib. If the two men in charge could not be bothered to read orders relating to who commanded, why would the soldiers under them read any official orders or published interrogation doctrine?

More telling in all of the abuse is the failure of leadership. At Abu Ghraib no leader above the rank of sergeant bothered to enforce or report the abuse and illegal interrogations that were happening at the prison. No leader above the rank of Sergeant for the Military Police bothered to even inspect the night shift, even after acknowledging that they were undermanned and underequipped. Brigadier General Karpinski even visited the prison except to take an official tour with Major General Miller. Leaders routinely failed to do the bare minimum to ensure that rules were followed by their subordinates. In all three cases it was negligence and dereliction of duty by commanders that played a major role in the commission of war crimes. Without the impetus from General Massu, would Colonel Bigeard have turned over prisoners to Major Aussaresses? Would Aussaresses have been called to Algiers at all? Massu, Bigeard, and Aussaresses directed soldiers to commit war crimes they did not commit in other theaters where they served. In My Lai, Colonel Henderson, Lieutenant Colonel Barker, and Captain Medina deliberately exhorted their soldiers to be more aggressive, and implied that their fellow soldiers died due to Charlie company’s failure to pursue the enemy. Lieutenant Colonel Barker and Captain Medina repeatedly stated that there would not be civilians in the village, and Medina
exhorted his soldiers to kill anyone and everyone they saw. Charlie company’s otherwise clean
record outside of the massacre was besmirched by their commander’s intent and their influence.

At Abu Ghraib, Colonel Pappas, and Lieutenant Colonel Phillabaum failed to conduct
any kind of coordination, issue any coherent strategy, or inspect their troops at any time or in any
regular fashion. This gross negligence allowed an attitude of anything goes to spread among both
the interrogators and Military Police soldiers. Even though they knew of the deplorable
conditions in the prison, low manpower, and of previous prisoner abuse, no commander at Abu
Ghraib punished a soldier, updated regulations or standard procedures, nor did they conduct any
follow-on inspections. Moreover, in spite of weekly prisoner escapes, consistent prison riots, and
multiple prisoner shootings, Brigadier General Karpinski failed to allocate more resources,
complete any investigations, or inspect the prison to ensure her orders were followed.
Considering that other units under her command never abused prisoners or had the same issues,
it seems that the major factor in prisoner abuse at Abu Ghraib was leader negligence.

III. Emphasis on Rapid Results and Expedience

Another similarity between the cases is the reliance on expedience by the commanders to
justify illegal orders or practices. In Algiers, Major Paul Aussaresses was ordered to break the
FLN in three weeks, no matter the cost. The battle began after months of indiscriminate
bombings and assassinations by the FLN of noncombatants. The French government, specifically
Governor-General Lacoste, wanted the general strike broken before the United Nations met to
discuss the Algerian crisis. General Massu was brought in to solve the crisis quickly. In response
to the government’s pressure to get results, Massu ordered his men to use any and all means
available. Major Aussaresses used the carte blanche from General Massu to torture thousands of
suspects, and Colonel Bigeard had his paratroopers arrest anyone unable to produce identification papers or who were in neighborhoods they did not normally frequent. While undeniably effective, the French army’s tactics shocked people, including the French.

Major Aussaresses justified his brutal tactics by stating that information is only valuable when acquired and acted upon quickly. Rapid, actionable intelligence is key to successful counterinsurgency, but it is not a reasonable basis for flagrant and institutionalized violations of national and international law. Framed as an existential threat to the sovereignty of France, Major Aussaresses was unapologetic for his actions during the battle, even going so far as to say he had no regrets and would repeat his actions in the defense of France again. The reliance upon speed and the need for rapid victory became the justification of the French army’s actions. Under such pressure, General Massu and Colonel Bigeard ordered their junior leaders to push harder, arrest more people faster, and destroy the FLN cells in Algiers no matter the consequences.

During the orders briefing before the operation in My Lai, both Colonel Henderson and Lieutenant Colonel Barker reinforced to Charlie company that they had previously failed to be aggressive enough or move fast enough to effectively combat the Viet Cong. In response to those accusations Captain Medina followed with the exhortation to kill anything that moved in My Lai. During the operation, Charlie company was ordered to be more aggressive and Lieutenant Calley was repeatedly exhorted to hurry up and clear the village. Captain Medina repeatedly ordered Calley to finish whatever he was doing and reach his objectives without actually asking what Calley was doing. The overarching message imparted to Charlie company from leaders was that the soldiers lacked aggression which was why they failed previously.

At Abu Ghraib the 800th Brigade and its component units were under similarly pressure to deliver timely intelligence to theoretically save the lives of their fellow soldiers. Major
General Miller, although not in the chain of command, specifically stressed to military interrogators that their quick intelligence would save lives and that if they failed, deaths of their fellow soldiers would be on them. Several Military Police soldiers asked to help by intelligence soldiers stated they thought they were assisting the interrogators and therefore saving lives. The soldiers who tortured detainees for the Military Intelligence unit at Abu Ghraib used techniques developed in Afghanistan specifically to break prisoners faster.

In all three cases, leaders used the excuse of rapid results to encourage their soldiers to quickly complete their mission. Algiers needed to be pacified to ensure a positive United Nations vote within three weeks. My Lai had to be cleared quickly and violently to ensure the Viet Cong 48th Battalion did not escape as they had previously. Prisoners and detainees at Abu Ghraib needed to be broken quickly to save the lives of more American soldiers across Iraq. In each case, exhorting troops to achieve results faster is not in and of itself wrong, but leaders then either introduced further illegal orders or failed to then observe and control the men they had encouraged. In Algiers, General Massu encouraged rapid results and thus introduced “acceptable” torture techniques. At My Lai, Captain Medina failed to provide any real oversight to the troops he knew were poorly led and on their first operation. At Abu Ghraib, leaders failed to provide any real structure, operating procedures, or oversight and simply ordered their troops to get more, valuable intelligence quickly. In all three cases the decisions to stress quick victory by any means thus directly contributed to war crimes.

IV. External Factors

In Algiers, college students died and were maimed by bombs repeatedly in the weeks leading up to the deployment of the 10th Division. Innocent children suffered debilitating wounds
from bombs placed by unseen assailants. The mayor of Algiers was gunned down by masked assassins, and the non-Muslim population of Algiers felt besieged in their own city. Even by the bloody standards of the War in Algeria, the troops sent to Algiers were shocked. The FLN was not simply mutilating informants or pro-French Algerians. The FLN deliberately targeted students and civilians, something which even hardened veterans of World War II and the war in Indochina were unused to.

On top of the indiscriminate violence was the unfamiliarity with the Algerian Muslim culture, the patriarchal nature of the society and the veiling of women. All of those factors added to the external pressure on the soldiers suddenly patrolling the narrow alleys of the Casbah where anyone could hide bombs, grenades, or submachineguns. When it became clear that women had planted several bombs, the soldiers then had to assume that literally everyone they encountered could work for the FLN. Into this atmosphere of confusion and random attacks, soldiers were told that they alone had the ability to stop the killing. When faced with these external pressures, soldiers were then ordered to use whatever means they could to elicit confessions which could save both civilians and their fellow soldiers, so it comes as no surprise that they immediately began using whatever methods they could to combat the FLN.

Charlie company was relatively unfamiliar with Vietnam, but had seen friends and fellow soldiers from across their battalion and brigade wounded and killed by booby traps, mines, and snipers in the area around My Lai. The guerrilla tactics and ability of the Viet Cong to flee, or take wounded and dead with them added a sense that the enemy was invisible. Added to that were the previous orders to be more aggressive and work faster. In the weeks preceding the massacre, soldiers saw friends blown apart by booby traps laid by an enemy they rarely saw. The intelligence given to the soldiers attacking My Lai stated that this faceless enemy who had
already killed and wounded Americans, would outnumber the Charlie company soldiers almost two to one.

Into the charged atmosphere of a potentially hostile village already proven capable of killing soldiers, Charlie company was accused of failing to be aggressive enough. Added to the inexperience of the soldiers and the implication that they’d previously failed, the soldiers were unleashed on a village where they were told anyone could be Viet Cong.

At Abu Ghraib, the prison was mortared consistently which kept soldiers on edge, unsure if an unseen explosive would explode in their compound. The Military Police and Intelligence soldiers were largely undermanned and undertrained, facing riots and escape attempts weekly, and sometimes daily. Compounding the lack of manpower, Abu Ghraib prison repeatedly reached temperatures of 115 degrees Fahrenheit, and the soldiers lacked adequate latrines, water, and food. The soldier lived in the concrete prison block in some of the cells in the same buildings as the prisoners.

On top of the deplorable living conditions, the tens of thousands of prisoners came from a culture most of the soldiers had zero experience with and few of the soldiers spoke the language. The Arab culture differs from that of the average American and as such the soldiers had little to empathize with the prisoners. This lack of empathy compounded the stress, leading soldiers to dehumanize the prisoners and making it much easier for them to abuse them. Leaders failing to address the supply problems or provide adequate rest and down time further increased the soldiers’ sense of isolation. Leaders could have alleviated any of these conditions and mitigate the effects of those they could not by simply being visible and checking on their soldiers.
CONCLUSION

The soldiers who participated in the Battle of Algiers, the My Lai Massacre, and detainee abuse and torture at Abu Ghraib committed terrible acts. Individual soldiers chose to torture, murder, and abuse other human beings and to follow illegal orders. While individuals retain responsibility for their own actions, those actions did not occur in a vacuum. Leaders at the division, brigade, battalion, and company level failed to educate, control, or supervise their soldiers thereby enabling the atrocities and, in some cases, they encouraged and participated in the atrocities themselves. In recent times France and the United States published hundreds of pages of treaties and manuals to educate leaders and soldiers on the treatment of prisoners, civilians, and enemy combatants. The United States took lessons from My Lai and intentionally created an ethical framework for soldiers and leaders to attempt to mitigate war crimes and increase understanding across the Army.

Broad, generic, higher-level policies only impact soldiers however mid-level leaders enforce them. General Massu quoted some of the very law he violated when he ordered his soldiers to torture. All of the leaders and soldiers in Charlie Company and Task Force Barker had cards in their pockets dictating how to treat civilians and prisoners. Military Intelligence and Military Police soldiers at Abu Ghraib also had multiple manuals, plus several months of experience to demonstrate the right answer. That soldiers failed to understand any of the Conventions, Army Regulations, State of Emergency Laws, or the myriad of other orders falls directly on leaders who interacted with those soldiers every day. In order to prevent instances like this, leaders should take several steps to increase their soldiers’ understanding of the rules of modern war: training for unit commanders and by unit commanders on the governing
regulations, emphasis on what constitutes illegal or immoral orders for junior leaders and soldiers, and increased latitude for commanders to push back when pressed to get results faster.

Specific training for unit commanders at the Brigade, Battalion, and Company levels that focuses on command responsibility and stresses personal leadership and accountability can reinforce the laws and regulations in place. The common thread in the three cases shows that leaders failed to properly supervise and engage with their troops. General Massu stated he never ordered his men to torture but his chief of intelligence admitted to daily briefings discussing torture. General Massu clearly knew the law but did not seem to understand why violating it would harm both his men and the French cause, even though he successfully destroyed the FLN in Algiers by those means. Colonel Henderson, and Lieutenant Colonel Barker certainly knew something wrong happened at My Lai while they listened to the radio reports, but failed to intervene. Captain Medina incited his troops to violence, or simply failed to control them depending on whose testimony is accurate. At a minimum increased supervision of troops he knew were stressed and inexperienced could have reduced the scale, if not prevented the massacre. Captain Medina also owed it to his junior leaders to educate them and supervise them rather than simply consolidate all command power in himself. Any leader at Abu Ghraib could have walked through the prison to observe the gross breaches of discipline and abuse. Leaders in 2003 had access to over 70 years of Geneva Conventions regulations and they simply failed to enforce them.

A focus on personal supervision and personal accountability for soldiers could help leaders be more involved and understand the consequences of their actions. The key for the leader training would be that those commanders would then brief their units themselves. Creating
an environment where leaders personally educate their soldiers on regulations and the laws of war would create a sense of shared purpose and increase accountability.

Training given by brigade and below leaders on what constitutes illegal and immoral orders to junior leaders and soldiers would drastically increase understanding and accountability. The key is to foster trust and a sense of shared responsibility as members of a team. Illegal and immoral orders are clearly defined in military regulations and international law, and allowing commanders time with their men to discuss and illustrate those concepts would lead to increased trust. More trust and accountability increase the effectiveness of the supervision required by leaders, especially under the intense stress of combat. With a collective foundation, units could function more cohesively and it would lower the personal burden of company, battalion, and brigade commanders overall.

The final, and most difficult mitigation for war crimes would be for commanders to address the “success no matter what,” attitude. General Massu had to break the strike and eliminate the FLN within three weeks. Charlie company had to be more aggressive and rapidly seize the village of My Lai. The soldiers at Abu Ghraib had to get more intelligence and get it faster. In all three cases leaders pushed for more speed regardless of how it happened as long as the mission succeeded. Commanders owe it to their men and the civilians in their environment to mitigate risk, both in terms of the risk to their men and the mission.

Would taking more time to break the FLN in Algiers have damaged France’s position? Maybe, but it is unlikely to have damaged it more than the torture did when it came to light, and the soldiers themselves would certainly have been better for it. Would Charlie company have successfully cleared My Lai without being told to hurry, be more aggressive, and kill anything that moves? Absolutely, considering there were not, in fact, any Viet Cong in the village. Could
interrogators at Abu Ghraib have used proper techniques and still completed their mission, specifically without asking for help from the Military Police to “soften up” prisoners? Considering the prisoners abused were criminals and not terrorists, and those being tortured were not leaders of major units or terrorist cells, absolutely. While hindsight provides much more clarity, all of the leaders had the ability to execute each of their operations within the bounds of regulation and law, and all still likely would have succeeded.

As shown above and in previous chapters, rather than broad sweeping strategic policy or executive orders, the men and women directly in charge of soldiers have the most impact on the conduct of those soldiers. Leadership at the brigade level and below remains the critical juncture between large scale policy and the implementation of it by soldiers. Soldiers are people, and engaged, personal leadership by men and women they see every day makes the difference between success and failure. Individuals will always have the choice to disobey illegal orders, but creating an environment where soldiers understand and trust the leaders giving those orders drastically reduces the chance of those orders being given, much less followed. Leaders being engaged, understanding their soldiers, and giving their soldiers adequate time can go a long way to preventing war crimes in the future.
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