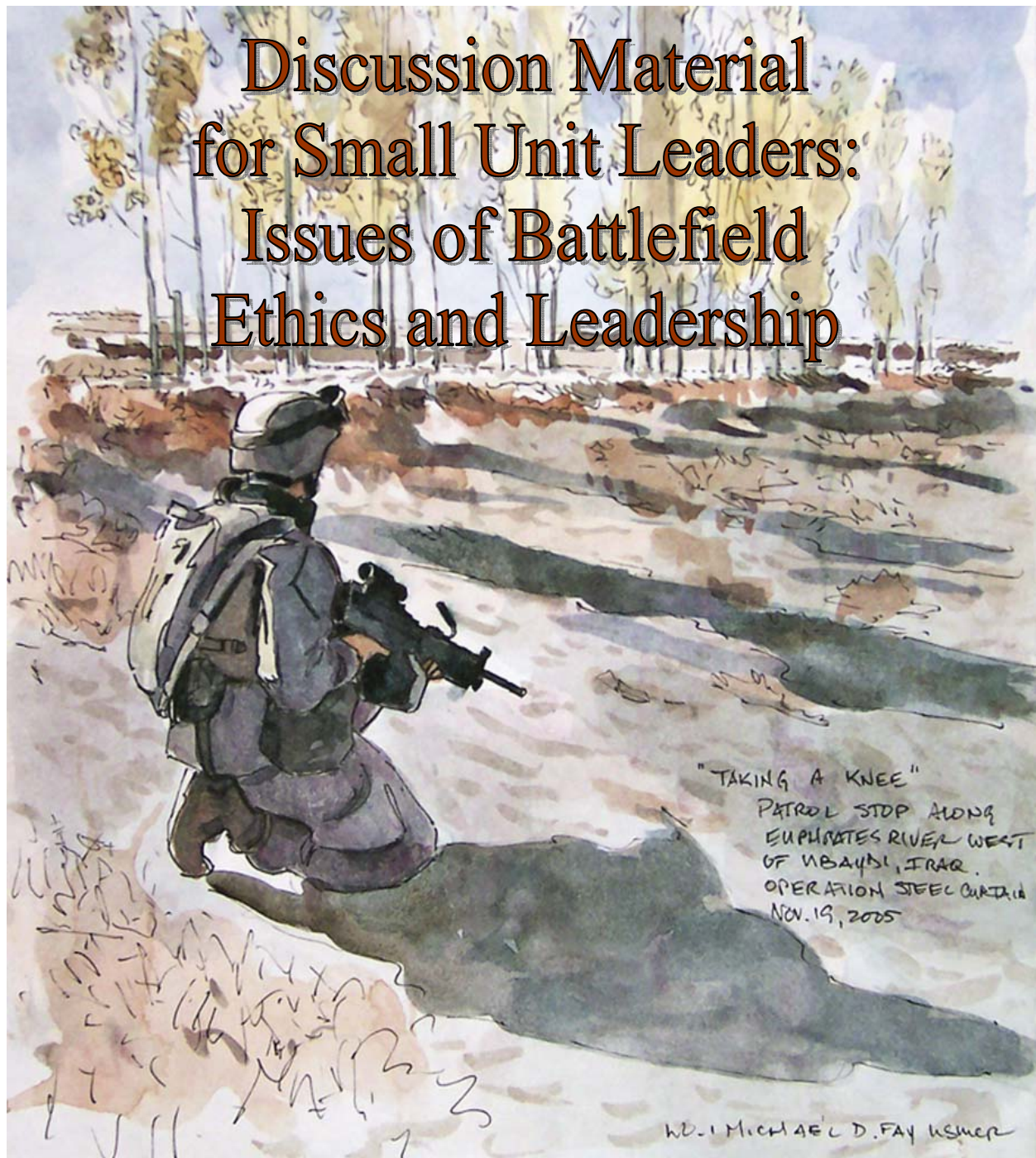


Discussion Material for Small Unit Leaders: Issues of Battlefield Ethics and Leadership



2008

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Chapter 1: Marines Fight Only Enemy Combatants

1.1 Combat and Risk

Introduction

During the fall of 2005, units of I Marine Expeditionary Force (I MEF) were assigned responsibility for stability operations in Iraq's al-Anbar province and the Euphrates River Valley towns of Ramadi, Fallujah, Hit, and Haditha. The I MEF Marines were there to protect the Iraqi citizens against a complex mix of insurgent groups consisting of Saddam Hussein's former regime elements, foreign fighters traveling the Euphrates River Valley from Syria, and the Jordanian-born Al Qaeda in Iraq (AQI) leader Abu Musab al-Zarqawi. A Rifle Company from Camp Pendleton operated from a Forward Operating Base (FOB) together with the other companies from their parent battalion.

The Incident

The Rifle Company Commander assigned a squad-sized element, mounted in four Up-Armored HMMWV's, to conduct a logistics run to an observation post about three miles and fifteen minutes away from the FOB.

The Marines completed the supply run and using reverse routing, began to return to the FOB. The squad proceeded north along "River Road" and made a left turn onto the Main Supply Route (MSR). After proceeding about 1 kilometer, a massive Improvised Explosive Device (IED) detonated under the fourth and last vehicle in the convoy.



As the Marines dismounted their vehicles, they began to receive sporadic and ineffective fire from the south side of Route Texas. The Rifle Squad executed their immediate action drills. While some Marines took up security, other Marines from the first three vehicles moved to the last vehicle and began assisting the casualties. Of the four Marines on board, one was killed, two were critically injured and one was slightly injured, but disoriented.

The Squad Leader ensured first aid was begun and coordinated for the Reaction Platoon and for a MEDEVAC.

The Marines providing security searched for the source of the small arms fire but could not locate it. They thought it originated from a two-story house about 100 meters south of the road.

The Reaction Platoon arrived and the Company XO took command of the scene. Visibly angry, he shouted at the Squad Leader to take some Marines and “clear out those shooters.” The Squad Leader spoke to his Marines quickly and determined to assault the house that was the suspected source of the fire.

Moving in a single stack formation, the Rifle Squad moved to the suspect house. They conducted a dynamic breach, clearing the house with grenades and rifle fire. All rooms were cleared and the Rifle Squad consolidated in the living room area.

After the action, a more detailed search of the house was conducted. A middle-aged woman, holding two children, a boy of four years old and an infant girl, were found dead. They were hiding between the bed and the wall of the back bedroom. They had been struck and killed by small arms fire and grenade fragments.

No weapons, spent ammo casings or other evidence of the shooter was discovered.

Questions

1. What basic rules of the Law of War from MCO 3300.4 *Marine Corps Law of War Program* and MCWP 3-33.5 *Counterinsurgency* may be at issue in this scenario?

- a. Marines destroy no more than the mission requires.
- b. Marines fight only enemy combatants.
- c. Marines treat all civilians humanely.
- d. Both a and b.
- e. All of the above.

Correct answer: d

Discussion: Answer “d” is the best answer because this situation addresses three of the four overarching principles of the Law of War: military necessity, proportionality and discrimination or distinction. In this scenario, the Marine clearing operation severely damaged the home and killed three civilian noncombatants. The principle of *military necessity* prohibits combatants from killing or harming noncombatants or destroying or seizing civilian property, unless such destruction or seizure is demanded by the necessities of war. The Law of War generally prohibits the intentional targeting of noncombatants under any circumstances while civilian property is protected from intentional attack or destruction, so long as it is not being used for military purposes, or there is no military necessity for its destruction or seizure. Civilian property may become a legitimate military objective if the situation requires an attack. In this scenario, enemy snipers are using civilian property to attack the Marines, however the source of the small arms fire could not be determined and they only thought it came from the house. The principle of military necessity must also be applied with the other principles of proportionality and discrimination.

IAW MCWP 3-33.5 *Counterinsurgency*, the principle of *proportionality* requires that the anticipated loss of life and damage to property that may result from attacks must not be excessive in relation to the direct military advantage expected to be gained, in this case capturing or killing the snipers. Proportionality and *discrimination* require combatants not only to minimize the harm to noncombatants but also to make positive commitments to preserve noncombatant lives by limiting the damage they do and assume additional risk to minimize potential harm. Marines must take all feasible precautions when choosing means and methods of attack to avoid and minimize loss of civilian life, injury to civilians, and damage to civilian property. In counter-insurgency (COIN) environments, the number of civilian lives lost and property destroyed needs to be measured against how much harm the targeted insurgent could do if allowed to escape. If the target in question is relatively inconsequential, then proportionality requires Marines to forego severe action, or seek non-combative means of engagement. In this case the enemy fire was sporadic and ineffective. Discrimination also requires combatants to differentiate between enemy combatants, who represent a threat, and noncombatants, who do not. The Marines could not have known in advance that civilians occupied the house but it is also reasonable to assume that there may be civilians present. In COIN

operations, it is difficult to distinguish insurgents from noncombatants. It is also difficult to determine whether the situation permits harm to noncombatants. Two levels of discrimination are necessary: 1) deciding between targets; 2) determining an acceptable risk to noncombatants and bystanders as well as Marines. Additionally, discrimination applies to the means by which combatants engage the enemy. The COIN environment requires Marines to not only determine the kinds of weapons to use and how to employ them but also establish whether lethal means are desired—or even permitted. Marines must understand the effects of their actions and weapons on all aspects of the operational environment.

Answer “c” is not a reasonable answer in this case because the Marines did not have prior knowledge of the presence of civilians nor have them in custody.

2. Was the attack on the house, and the manner it was carried out, justified?

- a. No, the fire was sporadic and ineffective and the Marines could not positively locate the source. They estimated it came from the target house.
- b. Yes, based on information reasonably available to the Squad Leader at the time of his decision.

Correct Answer: a

Discussion. Answer “a” is the best answer because the fire was sporadic and ineffective and the Marines could not positively locate its source. Attacking the house using the greatest lethal force available was the safest method with regard to the Marines but ignored the real possibility that civilians may be in the house. Clearing the house using a lower level of force would have placed the Marines at greater risk but in the absence of a positively identified threat might have prevented the deaths of the civilians. The principles of discrimination in the use of force and proportionality in actions are important to Marines for practical reasons as well as for their ethical or moral implications. Force that causes unnecessary harm or death to noncombatants may create more resistance and increase civilian sympathy for the insurgents and their cause especially if the populace perceives a lack of discrimination in their use by Marines or other local forces. The use of discriminating, proportionate force as a mindset goes beyond the adherence to the rules of engagement. Proportionality and discrimination applied in COIN require leaders to ensure that their units employ the right tools correctly with mature discernment, good judgment and moral resolve.

3. What factors may have contributed to this incident?

- a. The Marines have no sympathy for Iraqi civilians and therefore were not concerned if the level of force may have been excessive.
- b. The Marines were poorly trained and inexperienced.
- c. The Marines were poorly disciplined.
- d. The orders to the Squad Leader were unclear and recent casualties led to

high levels of frustration and anger.

Correct Answer: d

Discussion: While it may be a contributing factor, there is no evidence in this scenario to indicate the Marines willfully disregarded the safety of the civilians or were poorly trained and disciplined. What is clear is that the XO gave unclear orders in simply saying, “clear out those shooters.” The recent loss of fellow Marines contributed to the desire to quickly locate, kill or capture the enemy insurgents responsible for planting the IED and engaging with small fire. With emotions running high and with no confirmed enemy targets, frustration can contribute to the temptation to achieve some immediate results even in the absence of adequate intelligence. The XO should have provided more definitive guidance in this situation of uncertainty and lead by example; lowering the emotional threshold and regaining a sense of calm through deliberate well reasoned judgment. The Squad Leader should have asked for the XO to clarify his orders seeking better guidance than the open ended and vague instructions to “clear out the shooters.”

4. Should this incident be reported to the Chain of Command?
 - a. Yes, while it may or may not be a war crime, the loss of civilian life should be reported and the possibility that a war crime was committed must be reported.
 - b. No, there is no evidence of intent to harm the civilians and therefore no war crime. Their deaths, while tragic, represent the unfortunate costs of war.
 - c. Yes, the Marines violated the Law of War by using excessive lethal force.

Correct answer: a

Discussion: While there was no apparent intent to cause civilian deaths, the level of force may have been excessive and unnecessary since the source of the enemy fire was unknown. A reportable incident is any *possible, suspected or alleged* [emphasis added] violation of the Law of War. Marines are also obligated to report any actual or suspected violation as soon as practical. Doing so as soon as possible ensures that the incident is investigated quickly, crucial evidence can be preserved and memories are fresh. Ignoring the incident could subsequently lead to similar incidents and/or be discovered later leading to accusations of a “cover-up.” Collectively, these consequences could result in serious criminal charges not only against the Marines who committed the offense but also against the Chain of Command for failing to report and thoroughly investigate the incident. There are numerous examples where such an incident and its consequences destroyed the morale and cohesion of military units. Knowledge of the incident by the local populace could lead to the loss of local support for the Iraq Government and the Marines, and generate local support for the insurgents. It could also make the conflict last longer and cost more lives--US and Iraqi. Public knowledge of the incident could reduce support for the conflict at home and abroad, seriously damaging the image and hard won reputation of the Marine Corps.

Conclusion: Marine Corps leaders emphasize that on the battlefield the principles of honor and morality are inextricably linked. Leaders do not allow subordinates to fall victim to the enormous pressures associated with prolonged combat against elusive, unethical, and indiscriminate foes. The environment that fosters insurgency is characterized by violence, immorality, distrust, and deceit; nonetheless, Marine Corps leaders continue to demand and embrace honor, courage, and commitment to the highest standards. They know when to inspire and embolden their Soldiers and Marines and when to enforce restraint and discipline.

Leaders at every level establish an ethical tone and climate that guards against the moral complacency and frustrations that build up in protracted COIN operations. Leaders remain aware of the emotional toll that constant combat takes on their subordinates and the potential for injuries and illegal conduct resulting from combat stress. Such injuries can result from cumulative stress over a prolonged period, witnessing the death of a comrade, or killing other human beings.

1.2 Airpower

Introduction

During the fall of 2005, units of the I Marine Expeditionary Force (I MEF) were assigned responsibility for stability operations in Iraq's al-Anbar province and the Euphrates River Valley towns of Ramadi, Fallujah, Hit, and Haditha. The I MEF Marines were there to protect the Iraqi citizens against a complex mix of insurgent groups consisting of Saddam Hussein's former regime elements, foreign fighters traveling the Euphrates River Valley from Syria, and the Jordanian-born Al Qaeda in Iraq (AQI) leader Abu Musab al-Zarqawi. A Rifle Company from Camp Pendleton operated from a Forward Operating Base (FOB) together with the other companies from their parent battalion.

The Incident

A Marine Battalion was conducting combat operations in the provincial capital. Insurgents were fighting from well-established positions in houses and from rooftops. Despite the MEF's best efforts to encourage the noncombatants to depart and avoid heavy fighting, many of the buildings in the Area of Operations were still inhabited. Compounding the difficulty for the MEF, the terrorized inhabitants hid from Marines so their presence was difficult to detect.

A Company from the Battalion was engaged in heavy combat, clearing insurgents from their zone, using a combination of infantry attacks, tanks and armored bulldozers to reduce enemy positions.

The Company made steady progress, moving building by building down both sides of a street. At the end of the street was a "T" intersection. At the "T" was a large, concrete two-story house that the enemy had turned into a fortified position. Windows and firing ports in the front of the house provided the insurgents with excellent fields of fire as the Marines worked their way down the street. The insurgents concealed their position until the Marines had worked their way to within 25 meters. Then they initiated mass, well aimed, surprise fires on the Marines in the street. Several Marines were wounded.

Marines quickly established a base of fire and attempted to suppress the enemy fire. One group of Marines moved into position to assault the house. They conducted a dynamic breach of the garden gate and rushed into the front yard in preparation of assaulting the

house itself. As they neared the front door, the insurgents command detonated an Improvised Explosive Device (IED) buried in the yard, killing or wounding six Marines.

The Company Commander ordered his Marines back into covered positions where they continued suppressive fire into the façade of the building. The Commander was determined to get to his casualties and extract them to safety. Every attempt resulted in withering fire from the insurgents in the house, preventing the Marines from reaching the injured.

The Company Commander called forward a tank to assist in suppressing the enemy fire. Using the tank's smoke, main gun and the co-axial machine gun, the Company finally reached the injured Marines and moved them to safety, but the enemy continued to resist.

The Company Commander, furious at the enemy tactics and frustrated with his inability to reduce the enemy position, called the Forward Air Controller (FAC) forward. The Company Commander and the FAC coordinated close air support to destroy the enemy position.

The FAC coordinated with on-station Marine F-18 Hornets and conducted a laser-designated air strike. A Hornet dropped a single 1,000-pound bomb through the roof of the fortified house, leveling it. Enemy fire immediately ceased.

The Marine Company moved quickly through rubble of the target house and confirmed eight insurgents Killed In Action (KIA). At the rear of the house, in a small building crushed by the collapsed home, the Marines also found four bodies presumed to be the residents who were apparently forced into the building by the insurgents. The bodies included a man, a woman, and two young children.

Questions

1. What Basic Principles of the Law of War may apply in this case?
 - a. Marines fight only enemy combatants.
 - b. Marines never attack medical, agricultural, civilian, or religious personnel, facilities, or equipment.
 - c. Marines destroy no more than the mission requires.
 - d. Marines do not kill or harm civilians intentionally or unintentionally.
 - e. All the above.
 - f. Both a and c above.

Correct Answer: f

Discussion: This scenario involves three fundamental concepts of the Law of War, *military necessity*, *proportionality*, and *discrimination*. Together with the fourth concept-*minimize unnecessary suffering*-the nine Basic Principles of the Law of War are derived and guide all Marines in conflict and war.

- i. Military necessity forbids destroying or seizing the enemy's property unless its destruction or seizure is a necessity of war.
- ii. Proportionality states that anticipated unavoidable and unintentional loss of life and collateral harm or damage to property caused by seizing or destroying a military objective must not be excessive in relation to the value of the objective to the success of the operation.
- iii. Discrimination links the principle of noncombatant immunity with the obligation that combatants must discriminate among targets and avoid killing noncombatants and destroying protected property indiscriminately; applying force only against enemy forces and military objectives.

Together, proportionality and discrimination require combatants not only to minimize the harm to noncombatants but also to make positive commitments to: 1) preserve noncombatant lives by limiting the damage they do; and 2) assume additional risk to minimize potential harm. Based on these concepts, the correct answer is "f." Marines are permitted to attack protected property if the enemy chooses to use the property as part of their defense (answer "b"). It is a brutal reality of war that no matter how careful and

measured the application of force may be, noncombatant casualties and collateral damage occur. Therefore, combatants may engage the enemy knowing they might unintentionally cause noncombatant injuries and death (answer 'd'). However, the inevitability of noncombatant harm and destruction of protected property cannot be exploited as a loophole to use indiscriminate and unconstrained force.

2. Was the attack on the home a violation of the Law of War?

- a. No, the presence of enemy soldiers who used it to engage the Marines caused it to forfeit its protected status.
- b. Yes, civilian property is protected under Law of War as well as all those who inhabit the property.
- c. Yes, employing a tank and dropping a 1,000 lb bomb is disproportionate to the threat. Its destruction is not a military necessity to defeating the insurgents.
- d. Both b and c above.

Correct Answer: a

Discussion: Answer "a" is most correct in this scenario. In this case, the objective was to kill or capture the insurgents. They used civilian, or "protected property", in their defense. The enemy's choice to defend from protected property caused it to forfeit its status as protected. The level of enemy resistance made it necessary to use greater levels of lethal force in order to subdue the insurgents, accomplish the mission, and prevent the loss of additional Marine lives. There is no requirement that a Marine must sacrifice his life in order to comply with the Law of War. The loss of civilian lives is highly possible in this scenario. Their deaths were not intentional but occurred despite a deliberate attempt by the Company Commander to use a graduated response. When using the tank failed to defeat the insurgents, the commander then called in the F-18.

In the case of counter-insurgency (COIN) operations, civilian casualties resulting from the use of lethal force by US forces, no matter how unintended, may lead to the loss of popular support locally and in the US. Therefore, especially in COIN operations, the unintended effects of escalating the use of lethal force must always be considered when weighing the possible costs to Marines and noncombatants.

3. Who may have violated the Law of War in this incident?

- a. No one. This incident is not a violation of the Law of War.
- b. The Company Commander for employing indiscriminate force in the form of the tank and the close air support.
- c. The Tank Commander and crew participating in the indiscriminate attack.
- d. The pilot of the aircraft for dropping a 1,000 lb bomb that was disproportionate to the threat.
- e. Answer b, c and d.

Correct Answer: a

Discussion: Based on the analysis of the previous question, the Company Commander prudently weighed the costs to his Marines in taking the objective and the level of lethal force necessary to defeat the insurgents. The Commander incrementally applied the level of lethal force available and required to accomplish the mission. In urban combat operations, the unintentional deaths of civilians are a tragic but very likely outcome; but in this scenario, the level of enemy resistance required greater force be applied.

4. Should the civilian deaths be reported to the Chain of Command?

- a. No. While tragic, their deaths were unintentional. They are collateral damage that occurred as the result of an attack on a legitimate target and reports are only required when civilian deaths are the result of possible war crimes.
- b. Yes, when the death of a noncombatant occurs it should always be reported.

Correct Answer: b

Discussion: While there may not be a violation of the Law of War, the death of noncombatants should be reported. In spite of the Commander's initial attempt at restraint, the loss of civilian lives may harm efforts to win local support and may adversely impact the COIN campaign. Discovered later and allowed to surface through US, international or local media sources could result in distortions of the incident and lead to accusations of a cover-up. Additionally, local authorities should be informed so they can recover the remains of the noncombatants and inform next of kin. Great care should be taken to preserve the dignity of the civilian casualties consistent with local customs. Additionally, the Chain of Command should provide as comprehensive an explanation of the engagement as the situation allows, demonstrating remorse for the unintended deaths in order to mitigate some of the negative consequences.

Discussion. This scenario demonstrates the difficult balance between mission accomplishment, avoiding Marine and noncombatant casualties, and collateral property damage. In conventional combat operations, *proportionality* is measured in less complicated terms of civilian lives lost versus enemy killed and objectives seized. In COIN operations there are additional considerations:

... advantage is best calculated not in terms of how many insurgents are killed or detained, but rather which enemies are killed or detained. If certain key insurgent leaders are essential to the insurgents' ability to conduct operations, then military leaders need to consider their relative importance when determining how best to pursue them. In COIN environments, the number of civilian lives lost and property destroyed needs to be measured against how much harm the targeted insurgent could do if allowed to escape. If the target in question is relatively inconsequential, then proportionality requires combatants to forego

severe action, or seek noncombative means of engagement. (MCWP 3-33.5, Counterinsurgency, p. 7-6)

Similarly, in conventional operations, discrimination means that combatants cannot intend to harm noncombatants. However, in COIN, it is difficult to distinguish between insurgents and noncombatants therefore it's difficult to determine whether the situation and the means will cause harm to noncombatants;

The COIN environment requires counterinsurgents to not only determine the kinds of weapons to use and how to employ them but also establish whether lethal means are desired—or even permitted. (FM 27-10 discusses forbidden means of waging war.) Soldiers and Marines require an innate understanding of the effects of their actions and weapons on all aspects of the operational environment. Leaders must consider not only the first order, desired effects of a munition or action but also possible second- and third-order effects—including undesired ones. For example, bombs delivered by fixed-wing close air support may effectively destroy the source of small arms fire from a building in an urban area; however, direct-fire weapons may be more appropriate due to the risk of collateral damage to nearby buildings and noncombatants. The leader at the scene assesses the risks and makes the decision. Achieving the desired effects requires employing tactics and weapons appropriate to the situation. In some cases, this means avoiding the use of area munitions to minimize the potential harm inflicted on noncombatants located nearby. . .The principles of discrimination in the use of force and proportionality in actions are important to counterinsurgents for practical reasons as well as for their ethical or moral implications. Fires that cause unnecessary harm or death to noncombatants may create more resistance and increase the insurgency's appeal— especially if the populace perceives a lack of discrimination in their use. The use of discriminating, proportionate force as a mindset goes beyond the adherence to the rules of engagement. Proportionality and discrimination applied in COIN require leaders to ensure that their units employ the right tools correctly with mature discernment, good judgment and moral resolve. (MCWP 3-33.5, Counterinsurgency, p. 7-7)

1.3 Proportionate Response

Introduction

The Rifle Company Commander had been conducting operations in a town in al Anbar province for three days. An uprising initiated by the forces loyal to Moqtada al Sadr that had started in al Kut and al Najaf had now spread to his Area of Operations. There was very significant combat on going in Najaf and in Baghdad.

The company was conducting daily mounted and dismounted patrols through towns in the Area of Operations. These were conducted in a distributed fashion, departing from and recovering to the Forward Operating Base (FOB) and under the tactical command of Platoon Commanders and Squad Leaders.

The Marine Rifle Company operated in a very uncertain environment. Patrols could not predict the reaction of the inhabitants of the towns and villages they drove through.

There were patrols that resulted in very significant combat and others that were uneventful. The threat posed by Improvised Explosive Devices (IED) was constant.

The Incident

The company was conducting motorized patrols throughout the area as part of its counter-IED campaign, and as part of a “presence” effort. On this day, the patrol consisted of a reinforced Rifle Squad. The Company XO accompanied the squad on this mission, a chance for the XO to get off the FOB.

The squad conducted the patrol in a town known for a high level of insurgent activity. There was an active and lethal al Qaeda cell in the area. As the patrol maneuvered through the narrow streets, an IED hidden under a pile of garbage detonated, destroying the number three vehicle in the column, killing one Marine and very seriously wounding the other occupants. As the Marines conducted their immediate action drill, they were taken under fire from the south.

The Company XO took charge of the action. Marines continued to receive fire from a gunman on the roof of a building to their south. Apparently using a Dragunov sniper rifle, the insurgent was able to deliver unusually accurate fire at the Marines, wounding one. Marines began to return fire and the volume and accuracy of their fire quickly increased as they identified his location from the muzzle flashes. The insurgent’s fire slackened, but there was also sporadic fire from a row of buildings about 100 meters to the north of the Marines’ location. The XO felt that the squad was unable to maneuver due to the fire, and that it would be unsafe to bring in a MEDEVAC until the enemy fire was fully suppressed. Concerned about the injured Marines, the XO decided to use supporting arms to attack the enemy.

The XO switched to the Battalion Conduct of Fire net and requested fire support. The Battalion Operations Officer came on the net and asked for a quick situation report (SITREP). The Company XO described the scene and emphasized that there were critically wounded Marines. The Operations Officer approved the use of supporting arms. He told the XO that a Forward Air Controller (Airborne) (FAC (A)) would contact him.

The Company XO turned to the Squad Leader and told him, "Let's shut this guy up." The FAC (A) came up on the net. The XO told him the situation and gave him a nine line brief. The FAC (A) passed the mission to Marine F-18 Hornets on station. Within minutes, a laser-guided bomb destroyed the building from which the sniper was firing. The blast of the bomb collapsed the targeted building and seriously damaged the buildings on either side. One of those buildings was the local electrical power relay and its destruction cut electrical power to ten city blocks. The sniper was killed.

Questions

1. What Basic Principles of the Law of War may apply in this case?
 - a. Marines fight only enemy combatants.
 - b. Marines never attack medical, agricultural, civilian infrastructure, or religious personnel, facilities, or equipment.
 - c. Marines destroy no more than the mission requires.
 - d. All the above.
 - e. Both a and c above.

Correct Answer: e

Discussion: This scenario involves three fundamental concepts of the Law of War, *military necessity*, *proportionality*, and *discrimination*. Together with the fourth concept-*minimize unnecessary suffering*-the nine Basic Principles of the Law of War (*Marines' Rules*) are derived and guide all Marines in conflict and war.

- i. Military necessity forbids destroying or seizing the enemy's property unless its destruction or seizure is a necessity of war. The target must be a legitimate military objective.
- ii. Proportionality states that anticipated unavoidable and unintentional loss of life and collateral harm or damage to property caused by seizing or destroying a military objective must not be excessive in relation to the value of the objective to the success of the operation. Proportionality does not require the use of similar or like force when responding to an enemy threat. Normally, apply enough force to neutralize the threat but no more.
- iii. Discrimination links the principle of noncombatant immunity with the obligation that combatants must discriminate among targets and avoid killing noncombatants and destroying protected property indiscriminately; applying force only against enemy forces and military objectives.

Together, proportionality and discrimination require combatants not only to minimize the harm to protected property but also to make positive commitments to: 1) preserve protected property by limiting the damage they do; and 2) assume additional risk to minimize potential harm. Based on these concepts, the correct answer is "e." Marines are permitted to attack protected property if the enemy chooses to use the property as part of their defense. It is a brutal reality of war that no matter how careful and measured the application of force may be, noncombatant casualties and collateral damage to property occurs. Therefore, combatants may engage the enemy knowing they might unintentionally cause damage to protected property. However, the inevitability of destruction of protected property cannot be exploited as a loophole to use indiscriminate and unconstrained force.

Other answers explained:

Answers “a” and “c” are each correct but are not correct alone. This scenario addresses both of these issues.

Answer “b” is incorrect because Marines are permitted to attack protected property if the enemy chooses to use the property as part of their defense. Because answer “b” is not correct then answer “d” cannot be correct.

2. Was the attack on the home a violation of the Law of War?

- a. No, the presence of sniper who used it to engage the Marines forfeited its protected status.
- b. Yes, civilian property is protected under the Law of War as well as all those who inhabit the property, including combatants.
- c. Yes, employing a laser-guided bomb is disproportionate to the threat. The destruction of the home is not a military necessity to killing the sniper.
- d. Both b and c above.

Correct Answer: a

Discussion: Answer “a” is most correct in this scenario. In this case, the objective was to kill or capture the insurgents. They used civilian, or “protected property,” in their defense. The enemy’s choice to defend from protected property forfeited its status as protected. The level of enemy resistance made it necessary to use greater levels of lethal force in order to subdue the sniper, accomplish the mission, and prevent the loss of additional Marine lives. There is no requirement that a Marine must sacrifice his life in order to comply with the Law of War. Similarly, proportionality does not require the use of similar or like force when responding to an enemy threat. In an urban counter-insurgency (COIN) environment, the destruction of private and public property is highly possible. The destruction of the house in order to kill the sniper was a direct but unavoidable result of the requirement to kill the sniper. After taking serious casualties, and unable with organic firepower to neutralize or destroy threat, the Company XO called in the F-18.

In the case of COIN operations, destruction of property resulting from the use of lethal force by US forces, no matter how unintended, may lead to the loss of popular support locally and in the US. Therefore, especially in COIN operations, the unintended effects of escalating the use of lethal force must always be considered when weighing the possible costs to Marines and property. It is not known whether additional forces could have assisted the isolated squad but the XO reported the squads’ situation to the Battalion Operations Officer who approved the CAS mission.

Other answers explained:

Answer “b” is incorrect because the enemy’s use of the protected property in his defense forfeited its protected status.

Answer “c” is incorrect because it does not weigh the situation facing the squad and the Company XO. In this scenario, the enemy threat level required greater force be applied than was available to squad after suffering serious casualties and threatened from multiple directions.

Because answers “b” and “c” are incorrect then answer “d” is incorrect.

3. Who may have violated the Law of War in this incident?
- a. No one. This incident is not a violation of the Law of War.
 - b. The Company XO for employing indiscriminate force in the form of close air support.
 - c. The Battalion Operations Officer for approving the air support request.
 - d. The pilot of the aircraft for launching the laser bomb that was disproportionate to the threat.
 - e. Answer b, c and d.

Correct Answer: a

Discussion: Based on the analysis in the previous question, the Company XO and Battalion Operations Officer prudently weighed the costs to his Marines in taking the objective and the level of lethal force necessary to defeat the insurgents. The XO applied the level of lethal force available and required to accomplish the mission. In urban combat operations, the destruction of property is an unfortunate but very likely outcome. In this scenario, the enemy threat level required greater force be applied than was available to the squad after suffering serious casualties and being threatened from multiple directions.

Other answers explained:

Answers “b” and “c” are incorrect because the XO and Battalion Operations Officer rationally assessed the threat to the squad, and then applied the level of lethal force available and required to accomplish the mission. In this scenario, the enemy threat level required greater force be applied than was available to the squad after suffering serious casualties and being threatened from multiple directions.

Answer “d” is incorrect because the pilot was following a tasking order for what he believed was a legitimate target approved by his FAC (A). The FAC (A) is responsible for such assessments.

4. Should the property damage be reported to the Chain of Command?
- a. No. The collateral damage occurred as a result of an attack on a legitimate target and reports are only required when destruction is caused by indiscriminate and excessive use of force.
 - b. Yes, when destruction of protected property occurs it should always be

reported.

Correct Answer: b

Discussion: While there may not be a violation of the Law of War, the destruction of protected property should be reported; particularly because of the consequences to public services. The destruction of the relay station may harm efforts to win local support and may adversely impact the COIN campaign. Discovered later and allowed to surface through US, international or local media sources could result in distortions of the incident and lead to accusations of a cover-up. Additionally, local authorities should be informed so they can begin to restore power and repair the facility. There may be health and safety risks to the population that must be addressed. Additionally, the Chain of Command should provide as comprehensive an explanation of the engagement as the situation allows, demonstrate regret for the destruction, and offer to help restore services in order to mitigate some of the negative consequences.

Other answers explained:

Answer “a” is correct in that there was no violation of the Law of War in this scenario. The laser-guided bomb may seem excessive when used against a lone sniper. However, the squad had suffered casualties, the squad could not maneuver to neutralize the threat due to small arms fire from another direction, no other assistance was available, a CASEVAC was needed, and there was no certainty that only one insurgent was in the building. Based on an assessment of the situation, the XO, and Operations Officer both believed the air strike was not excessive and disproportionate force. Therefore answer “a” is incorrect.

Conclusion. This scenario demonstrates the difficult balance between mission accomplishment, avoiding Marine and noncombatant casualties, and collateral property damage. In conventional combat operations, proportionality is measured in less complicated terms of civilian lives lost and private property destroyed versus enemy killed and objectives seized. In COIN operations there are additional considerations:

. . . advantage is best calculated not in terms of how many insurgents are killed or detained, but rather which enemies are killed or detained. If certain key insurgent leaders are essential to the insurgents’ ability to conduct operations, then military leaders need to consider their relative importance when determining how best to pursue them. In COIN environments, the number of civilian lives lost and property destroyed needs to be measured against how much harm the targeted insurgent could do if allowed to escape. If the target in question is relatively inconsequential, then proportionality requires combatants to forego severe action, or seek noncombative means of engagement. (MCWP 3-33.5, Counterinsurgency, p. 7-6)

Similarly, in conventional operations, discrimination means that combatants cannot intend to destroy protected property. However, in urban COIN, it is difficult to engage insurgents that deliberately attack from or near protected property without damaging or destroying it:

The COIN environment requires counterinsurgents to not only determine the kinds of weapons to use and how to employ them but also establish whether lethal means are desired—or even permitted. (FM 27-10 discusses forbidden means of waging war) Soldiers and Marines require an innate understanding of the effects of their actions and weapons on all aspects of the operational environment. Leaders must consider not only the first order, desired effects of a munition or action but also possible second- and third-order effects—including undesired ones. For example, bombs delivered by fixed-wing close air support may effectively destroy the source of small arms fire from a building in an urban area; however, direct-fire weapons may be more appropriate due to the risk of collateral damage to nearby buildings and noncombatants. The leader at the scene assesses the risks and makes the decision. Achieving the desired effects requires employing tactics and weapons appropriate to the situation. In some cases, this means avoiding the use of area munitions to minimize the potential harm inflicted on noncombatants located nearby. . .The principles of discrimination in the use of force and proportionality in actions are important to counterinsurgents for practical reasons as well as for their ethical or moral implications. Fires that cause unnecessary harm or death to noncombatants may create more resistance and increase the insurgency's appeal— especially if the populace perceives a lack of discrimination in their use. The use of discriminating, proportionate force as a mindset goes beyond the adherence to the rules of engagement. Proportionality and discrimination applied in COIN require leaders to ensure that their units employ the right tools correctly with mature discernment, good judgment and moral resolve. (MCWP 3-33.5, Counterinsurgency, p. 7-7)

Chapter 2: Marines Do Not Harm Enemy Soldiers Who Surrender

2.1 Uncertain Environments and Deadly Force

Introduction

During the spring of 2004, units of the I Marine Expeditionary Force (I MEF) were assigned responsibility for stability operations in Iraq's al-Anbar province and the Euphrates River Valley towns of Ramadi, Fallujah, Hit, and Haditha. The I MEF Marines were there to defeat a complex mix of insurgent groups but also had to respond to the challenges of the uprising of the Moqtada al Sadr militias. A Rifle Company from Camp Pendleton operated from a Forward Operating Base (FOB) together with the other companies from their parent battalion.

The Incident

The Platoon was ordered to act as the Reaction Force for the Battalion. Mounted in a combination of Up-Armored HMMWVs and 7-ton trucks, they were on call to respond to requests for assistance from other Battalion units conducting mounted and dismounted patrols in the Battalion Area of Operations

The Platoon Commander positioned himself in the Battalion Command Post where he heard a request for the React Force and for an urgent MEDEVAC. One of the squads from another company had suffered serious casualties from an Improvised Explosive Device (IED). The Platoon Commander issued a hasty frag order to his Squad Leaders and the Platoon mounted their vehicles.

The movement to the site of the IED took 11 minutes. During that time, the Platoon Commander heard that the squad hit by the IED was taking sporadic small arms fire. Fearing a complex ambush, the Platoon Commander prepared for the worst. He passed the word to his Platoon to be ready for contact on arrival at the scene.

Arriving at the scene, the Platoon dismounted their vehicles. As the Platoon Commander went to the damaged HMMWV to assess the situation, the Platoon Sergeant directed the Rifle Squads to establish a hasty perimeter including hasty (Snap) Vehicle Checkpoints on either side of the damaged vehicle. Sporadic, ineffective small arms fire continued to crack overhead.

As the Platoon Commander conferred with the Squad Leader, he noted that the MEDEVAC had been requested and the helicopter was en route. While the Platoon Commander directed his attention to determining the source of the small arms fire, from the west he heard shouts and then a brief period of high volume small arms fire.

Running to the scene, the Platoon Commander saw a white taxicab with five Iraqi Military Aged Males (MAMs) sprawled in various positions several yards from the rear of the cab. All were dead of multiple gunshot wounds in the back, fired from close range.



The Platoon Sergeant was on the scene and reported that while the Marines were establishing the hasty Vehicle Checkpoint as part of the perimeter security, the taxicab

approached. When the driver saw the Marines, he tried to quickly reverse direction to avoid them. Marines shouted for him to halt. When the taxi stopped, the Marines pulled all five of the occupants from the vehicle. The Platoon Sergeant reported that the MAMs tried to flee and were shot. A search of the vehicle discovered several small arms including pistols and AK-47s with full magazine.

Questions

1. What is the primary tool for regulating the application of deadly force?
 - a. The Uniform Code of Military Justice (UCMJ)
 - b. Marine Corps Order (MCO) 3300.4, *Marine Corps Law of War Program*
 - c. The Geneva Conventions of 1949
 - d. The Rules of Engagement (ROE)

Correct answer: d

Discussion: The ROE are the primary tools for regulating the use of force in military operations. They provide guidance for the use of force to deployed Marine units. They may restrict the engagement of certain targets, the use of particular weapon systems in order to prevent escalation of hostilities or to prevent angering the local populace. They balance the right and obligation of self defense with mission accomplishment. They must be easily understood, remembered and readily applied under the stress of military operations.

Other answers explained:

Answer “a” is incorrect. The UCMJ is the foundation of military law for all those who serve in the uniformed services of the United States. It is contained within the current *Manual for Courts Martial*. Marines who commit a war crime have been historically charged under a specific article of the UCMJ. The UCMJ does not regulate the use of force, but rather provides the basis to charge those who improperly or illegally use deadly force.

Answer “b” is incorrect. MCO 3300.4, *Marine Corps Law of War Program*, is the program implemented by USMC to ensure that all Marines and civilian members of the Marine Corps comply with the Law of War. It establishes requirements, doctrine and training in the Law of War that apply across the spectrum of Marine Corps activities during peacetime and combat operations. The program addresses the subject but does not regulate the use of force.

Answer “c” is incorrect. The Geneva Conventions of 1949 are one of several international agreements to which the United States is a signatory that address the treatment of noncombatants and POWs. Collectively these international agreements comprise the Law of War that governs the conduct of hostilities. They do not affect the use of weapons in war, which are covered by the Hague Conventions of 1899 and 1907 and the Geneva Protocol on the use of gas and biological weapons of 1925.

2. Did the Marines correctly apply the deadly use of force in this incident?

- a. Yes, small arms fire in the vicinity and the discovery of weapons in the vehicle is clear evidence of hostile intent.
- b. No, the wounds on the Iraqi detainees indicate they were shot in the back and therefore they were not shot in self-defense.
- c. No, simply running away is not a hostile act or evidence of hostile intent.
- d. There is no way to know for sure. There were no eyewitnesses except the Platoon Sergeant and the other Marines on the scene and only circumstantial evidence to indicate what may have happened.

Correct Answer: c

Discussion: There is no way to know for sure without questioning the other Marines if the Platoon Sergeant is telling the truth. The fact that the detainees were shot in the back only suggests that the Marines may have committed a war crime. However, even if the Platoon Sergeant report is true and the MAMs were shot while attempting to flee, trying to run away, even when ordered to halt, is not a hostile act or evidence of hostile intent. A hostile act is: 1) an attack or other use of force against coalition forces or coalition nationals; or 2) force used that directly precludes or impedes the mission of coalition forces. Hostile intent is the threat of imminent use of force. Imminent does not necessarily mean immediate or instantaneous. It requires an honest and reasonable belief that a hostile act will occur unless prevented. There was no indication of imminent use of force in this case. The MAMs should simply have been apprehended and secured instead. The other important key to resolving this situation is the level of trust that exists between the Platoon Commander and his Platoon Sergeant and his Marines. Honorable behavior is the “bedrock of our character” and establishes the trust between superior and subordinate. This level of trust is established everyday by the Platoon Sergeant’s actions and decisions. That the Platoon Sergeant did not maintain control of the Marines indicates a breakdown that can lead to other acts of ill discipline.

Other answers explained:

Answer “a” is incorrect in this scenario because small arms fire in the vicinity and MAMs fleeing Marine apprehension are not evidence of a hostile act or evidence of hostile intent. Employment of deadly force is not justified. Had they threatened or attacked the Marines, deadly force would have been justified.

Answer “b is incorrect in this scenario because there is no conclusive evidence that the Platoon Sergeant is lying and the Marines executed the detainees.

3. Is there sufficient indication of a violation of the Law of War to report the incident to the Chain of Command?

- a. Yes, based on the immediate evidence and the Platoon Sergeant’s suspicious explanation, it is possible that the Marines may have executed the MAMs.
- b. Yes, based on the Platoon Sergeant’s explanation, the MAMs were only fleeing; there was no hostile act and no hostile intent.
- c. Both a and b.
- d. No, without a conflicting account of the events, there is only circumstantial evidence and there must be eyewitnesses to a war crime before it should be reported.

Correct answer: c

Discussion: A reportable incident is any *possible, suspected or alleged* violation of the Law of War. Marines are also obligated to report any actual or suspected violation as soon as practical. Doing so as soon as possible ensures that the incident is investigated quickly, crucial evidence can be preserved and memories are fresh.

Other answers explained:

Answers “a” and “b” are each correct by themselves and alone are justification for reporting them to superiors but answer “c” is most correct.

Answer “d” is incorrect because a reportable incident is any *possible, suspected or alleged* violation of the Law of War. Judging the adequacy of the evidence or lack of a conflicting witness is not the job of the Platoon Commander. A thorough investigation will help determine whether this was murder or failure to properly determine hostile intent.

4. Who should the incident be reported to?

- a. The Company Commander
- b. The Battalion Commander
- c. The Company First Sergeant
- d. The nearest Chaplain or Judge Advocate
- e. All of the above

Correct answer: e

Discussion: All of the answers in this question are correct. Normally, suspected violations are reported to the immediate commander, in this case the Company Commander. The Battalion Commander is also possible. The key is to report it promptly so that an investigation can begin as soon as possible while evidence is fresh and

memories clear. In circumstances making other means of reporting impractical or untimely, report the matter to a chaplain, an Inspector General representative, Judge Advocate or military police investigator if more readily available, who shall then report the matter as directed in MCO 3300.4.

Other answers explained:

Answers “a” through “d” are only partially correct in that they each represent only one of the possible persons that the Marine Platoon Commander could report a possible or suspected violation of the Law of War.

5. Which of the nine Basic Principles of the Law of War (*Marines’ Rules*) may have been violated here?

- a. Marines destroy no more than the mission requires.
- b. Marines do not torture or kill prisoners of war or detainees.
- c. Marines treat all civilians humanely.
- d. Marines will properly dispose of enemy Killed In Action.

Correct answer: b

Discussion: Answer “b” is the answer most applicable in this case. The detainees should have been promptly secured preventing escape according to the five “Ss and T”: search, silence, segregate, safeguard, speed to the collection point, and tag the detainee and any documents. Had this been done properly when they were removed from the taxi, then the incident as described by the Platoon Sergeant would have been prevented. At best, this is critical breakdown in tactical unit discipline and at worst it could be an execution.

Other answers explained:

Answers “a” and “c” are each one of the nine Basic Principles of the Law of War (*Marines’ Rules*) but they do not apply in this scenario.

Answer “d” is not one of the *Marines’ Rules*.

Conclusion: Marines are disciplined in combat and other military operations short of combat. Violating the Law of War dishonors our Nation and the Marine Corps. Compliance ends the conflict more quickly. Far from weakening our enemy’s will to fight, disobeying the Law of War strengthens it. Mistreatment of Enemy Prisoners of War (EPWs) and detainees may encourage the remaining enemy soldiers and insurgents to fight harder and resist capture. Following the Law of War enhances public support of our military mission; violations of the Law of War seriously reduce the support and respect that Marines have historically enjoyed, not only from the US public, but also from people in other countries. Compliance not only helps to end the conflict earlier but it also reduces the waste of our resources in combat and the costs of reconstruction after the conflict ends. Most importantly, it reduces the number of our Marines and civilians who

are killed or wounded. Disobeying the law of war is also a crime punishable under the Uniform Code of Military Justice. Additionally, killing (or executing) the detainees possibly prevented the gathering of valuable intelligence on the insurgents that could save other Marine and Iraqi Lives.

It is a matter of character and competence. It is important for all Marines to remember the “5-3-5” Tenets of Force Protection: Combat Actions, Habits of Action and Habits of Thought.

Combat (pre/post) Action

- Pre-combat Checks/Inspections
- Rehearsals
- Confirmation Briefs
- After Action Reports
- Debriefs

Habits of Action

- Guardian Angel
- Geometry of Fires
- Unity of Command

Habits of Thought

- Sturdy Professionalism
- Make Yourself Hard to Kill
- No better friend, no worse enemy
- First, Do No Harm
- Be professional, be polite; have a plan to kill only the enemy that hides amongst the people we are here to protect

Chapter 3: Marines Do Not Torture or Kill Enemy Prisoners of War or Detainees

3.1 Judge and Jury

Introduction

During the spring of 2004, units of the I Marine Expeditionary Force (I MEF) were assigned responsibility for stability operations in Iraq's al-Anbar province and the Euphrates River Valley towns of Ramadi, Fallujah, Hit, and Haditha. The I MEF Marines were there to defeat a complex mix of insurgent groups in addition to responding to the challenges of the uprising of the Moqtada al Sadr militias. A Rifle Company from Camp Pendleton operated from a Forward Operating Base (FOB) together with the other companies from their parent battalion.

The Incident

The Platoon was ordered to conduct a dismounted patrol through an area of dispersed houses and light agricultural operations. They were searching for insurgents who had been firing mortars at the FOB over the last week. Q-36 counter-battery radar data had indicated an area of four or five houses as the likely source. Because of the numerous non-combatant residents, counter-battery fire was not employed.

The Marines moved to the area by vehicle and then dismounted approximately 1000 meters south of the target area. Using a two up, one back formation, the Platoon moved north, straddling a road that led to the suspected houses. The scheme of maneuver was to establish a loose cordon, and then search the suspected houses. Second Squad was to be on the left, move north, and then establish the western half of the cordon. First Squad was to be on the right, move north and establish the eastern half of the cordon. Third Squad was to move north along the road and be the search element. The Platoon Commander moved with Third Squad, the Platoon Sergeant moved with First Squad.

The Platoon deployed and maneuvered as briefed. The two squads who were to establish the cordon moved first. The Platoon Sergeant reported that the cordon was set and Third Squad began to maneuver north. As Third Squad approached the area with the target houses, a brown Toyota Corolla sedan exited the yard of one of the houses in the suspect area and departed hurriedly to the north, away from the Marines.



The Platoon Commander heard Marines from First Squad yell for the driver to halt the vehicle, and then he heard three shots. He broke into a run and approached the brown sedan. First Squad had fired some warning shots, forcing the driver to a halt. When the Platoon Commander arrived, First Squad Marines had taken the driver and passenger (both military aged males) from the vehicle and had them in the prone position about ten meters from the car. The Platoon Commander kept his Radio Operator with him and had two of the First Squad Marines remain. He had the rest return to the First Squad position.

The Platoon Commander had the two military aged males searched and flex cuffed. Their car was searched. In the trunk, aiming stakes for a mortar and two 82mm mortar rounds were discovered.

The Platoon Commander ordered the First Squad Marines to cut off the detainees flex cuffs. He then ordered the First Squad Marines and the Platoon Radio Operator to check on the status of the search of the target houses.

As the three Marines retraced their steps back towards Third Squad, they heard 10-12 rounds being fired. They ran back to the Platoon Commander and saw that the two detainees had been shot and killed at close range. The Platoon Commander said “They came after me so I shot them.” The Platoon Commander then departed towards the Third Squad location to check on the house search. The Radio Operator and the First Squad Marines inspected the bodies and clearly saw that wounds on the dead Iraqi detainees indicated that they were both shot in the back.

Questions

1. What is the primary tool for regulating the application of deadly force?
 - a. The Uniform Code of Military Justice (UCMJ)
 - b. Marine Corps Order (MCO) 3300.4 *Marine Corps Law of War Program*
 - c. The Geneva Conventions of 1949
 - d. The Rules of Engagement (ROE)

Correct answer: d

Discussion: The ROE are the primary tools for regulating the use of force in military operations. They provide guidance for the use of force to deployed Marine units. They may restrict the engagement of certain targets, the use of particular weapons systems in order to prevent escalation of hostilities or to prevent angering the local populace. They balance the right and obligation of self defense with mission accomplishment. They must be easily understood, remembered and readily applied under the stress of military operations.

Other answers explained:

Answer “a”. The Uniform Code of Military Justice is the foundation of military law for all those who serve in the uniformed services of the United States. It is contained within the current *Manual for Courts Martial*. Marines who commit a war crime have been historically charged under a specific article of the UCMJ. The UCMJ does not regulate the use of force, but rather provides the basis to charge those who improperly or illegally use deadly force.

Answer “b”. Marine Corps Order (MCO) 3300.4, *Marine Corps Law of War Program*, is the program implemented by USMC to ensure that all Marines and civilian members of the Marine Corps comply with the Law of War. It establishes requirements, doctrine and training in the Law of War that apply across the spectrum of Marine Corps activities during peacetime and combat operations. The program addresses the subject but does not regulate the use of force.

Answer “c”. The Geneva Conventions of 1949 are one of several international agreements to which the United States is a signatory that address the treatment of non-combatants and POWs. Collectively these international agreements comprise the Law of War that governs the conduct of hostilities. They do not affect the use of weapons in war, which are covered by the Hague Conventions of 1899 and 1907 and the Geneva Protocol on the use of gas and biological weapons of 1925.

2. Did the Platoon Commander correctly apply the deadly use of force in this incident?
 - a. Yes, there is no indication that Platoon Commander is not telling the truth; the detainees attacked him and the Platoon Commander shot them in self-defense.

- b. No, the wounds on the Iraqi detainees indicate they were shot in the back and therefore they were not shot in self-defense.
- c. There is no way to know for sure. There were no eyewitnesses except the Platoon Commander and only circumstantial evidence to indicate what may have happened.

Correct Answer: c

Discussion: There is no way to know for sure if the Platoon Commander is telling the truth. The fact that the detainees were shot in the back only suggests that he committed a war crime. The real key is the level of trust that exists between the Platoon Commander and his Marines. Honorable behavior is the “bedrock of our character” and establishes the trust between superior and subordinate. This level of trust is established everyday by the Platoon Commander’s actions and decisions. That he directed the flex cuffs to be removed and then ordered his Radio Operator and the two Marines from First Squad to check on the search of the target house leaving him alone with the detainees immediately casts suspicion on both his judgment and intentions.

3. Is there sufficient indication of a violation of the Law of War to report the incident to the Chain of Command?
- a. Yes, based on the events and the Platoon Commander’s suspicious conduct it is possible that the Platoon Commander may not have shot the detainees in self-defense.
 - b. No, without eye witnesses, there is only circumstantial evidence and there must be eyewitnesses to a war crime before it should be reported.

Correct answer: a

Discussion: A reportable incident is any *possible, suspected or alleged* violation of the Law of War. Marines are also obligated to report any actual or suspected violation as soon as practical. Doing so as soon as possible ensures that the incident is investigated quickly, crucial evidence can be preserved and memories are fresh.

4. Who should report the incident?
- a. Any of the three Marines involved can report the incident.
 - b. The Platoon Radio Operator because he knows the Platoon Commander better and is a better judge of whether or not he is being truthful.
 - c. Either of the two Marines from First Squad, because they searched the suspects and flex cuffed them and therefore are better judges of the detainee’s intent to attack the Platoon Commander.

Correct Answer: a

Discussion: If they suspect a possible violation of the Law of War, all three Marines are obligated to report the incident. It is a good idea for the three Marines together to discuss what they saw and believe to have happened. It can be very intimidating to report a possible violation committed by a superior Officer or NCO. Fear of being wrong and/or retaliation by the Platoon Commander is a very real concern. Reporting the incident may negatively affect unit morale especially if the Platoon Commander is highly respected. It is important to remember also that there are serious negative consequences in not reporting. If knowledge of the incident surfaces later, the three Marines could also be charged with violations of the UCMJ. Knowledge of the incident by the enemy could encourage them to execute captured Marines and harden their resistance, making the conflict last longer. Public knowledge of the incident could reduce support for the conflict at home and abroad, seriously harming the image of the Marine Corps. In the previous conflict in the Gulf, favorable treatment of EPWs encouraged mass surrenders by Iraqi soldiers and helped end the war faster

5. Who should the incident be reported to?

- a. The Platoon Commander, he is the immediate commander for all three Marines involved in the incident.
- b. The Company Commander.
- c. The Company First Sergeant.
- d. The nearest Chaplain or Judge advocate.
- e. Answer b, c and d.

Correct answer: e

Discussion: Normally, suspected violations are reported to the immediate commander. In this case that would be the Platoon Commander. It is clear that confronting the Platoon Commander with their suspicions may be impractical and may also result in future reprisals. Once again the key is the level of trust and respect they have for the Platoon Commander. If they trust and respect him, they may feel comfortable approaching him and asking for clarification of the incident. Because they did not witness the incident, the Platoon Commander may be able to provide a plausible explanation. If confronted immediately, the Platoon Commander may even be able to demonstrate what happened. If the explanation is not believable or they feel they cannot report the violation to the Platoon Commander, then they can make the matter known to an officer or SNCO (normally in the chain of command) if the Marine has an honest and reasonable belief that the immediate commander is, or may be, involved in violating or concealing a violation of the law of war. In circumstances making other means of reporting impractical, report the matter to a chaplain, an Inspector General representative, Judge Advocate or military police investigator who shall then report the matter as directed in MCO 3300.4.

6. Which of the nine Basic Principles of the Law of War may have been violated here?

- a. Marines destroy no more than the mission requires.
- b. Marines do not torture or kill prisoners of war or detainees.

- c. Marines treat all civilians humanely.
- d. Marines will properly dispose of enemy KIA.

Correct answer: b

Discussion: Answer “b” is the answer most applicable in this case. Each of these answers is one of the nine Basic Principles of the Law of War except for answer “d.”

Conclusion: Marines are disciplined in combat and other military operations short of combat. Violating the Law of War dishonors our Nation and the Marine Corps. Compliance ends the conflict more quickly. Far from weakening our enemy’s will to fight, disobeying the Law of War strengthens it. Mistreatment of Enemy Prisoners of War and detainees may encourage the remaining enemy soldiers and insurgents to fight harder and resist capture. Following the Law of War enhances public support of our military mission; violations of the Law of War seriously reduce the support and respect that Marines have historically enjoyed not only from the U.S. public but also from people in other countries. Compliance not only helps to end the conflict earlier but it also reduces the waste of our resources in combat and the costs of reconstruction after the conflict ends. Most importantly, it reduces the number of our Marines and civilians who are killed or wounded. Finally, disobeying the law of war is also a crime punishable under the Uniform Code of Military Justice.

3.2 Mercy Killing

Introduction

During the fall of 2005, units of I Marine Expeditionary Force (I MEF) were assigned responsibility for stability operations in Iraq's al-Anbar province and the Euphrates River Valley towns of Ramadi, Fallujah, Hit, and Haditha. The I MEF Marines were there to protect the Iraqi citizens against a complex mix of insurgent groups consisting of Saddam Hussein's former regime elements, foreign fighters traveling the Euphrates River Valley from Syria, and the Jordanian-born Al Qaeda in Iraq (AQI) leader Abu Musab al-Zarqawi. A Rifle Company from Camp Pendleton operated from a Forward Operating Base (FOB) together with the other companies from their parent battalion.

The Incident

The Rifle Company Commander had been conducting operations in western al Anbar Province for over three months.

The Company was conducting daily mounted and dismounted patrols through towns in the Area of Operations. These were conducted in a distributed fashion, departing from and recovering at the FOB and under the tactical command of Platoon Commanders and Squad Leaders.

The Battalion was tasked to conduct a series of deliberate attacks into a fortified area of a major provincial capital. The Battalion zone was a densely populated residential area. The buildings were typically two-story masonry construction, with a walled garden area at the front and rear of each residence. Houses faced the narrow dirt streets while the rear of the houses faced an even narrower alley.

The Battalion was briefed that the insurgents in the area were hard core AQI fighters, likely to lure the Marines into ambush and to fight to the death. Noncombatants in the area had generally evacuated, although the Battalion expected that there would be some that remained behind.

The Battalion operation order assigned the city train station as an objective for one of the Rifle Companies. Preparations for this major operation kept most of the Marines up for the 24 hours prior to kicking off the operation. Heavy emphasis was placed on ensuring

prompt medical care for casualties. The expected fighting precluded the use of helicopter medevacs in the company zone, but an Army Armored Ambulance Platoon was in support. The Battalion Surgeon had the BAS set up near a traffic circle so the ambulances had the shortest and most direct route.

The train station had a large station building, approximately 100 meters long, with an attached loading dock and warehouse complex. The Rifle Company crossed the Line of Departure, supported by a platoon of tanks.

Encountering heavy small arms and RPG fire, the Company used its supporting arms and continued to press the enemy. Attacking with two platoons up, the fight quickly turned into a Squad Leader's fight, with numerous independent actions as the Marines cleaned out successive insurgent positions. The tanks moved through the area, using main gun and co-axial machine gun (MG) fire to support the infantry attacks.

Behind the train station building, there were a series of utility sheds, some with wooden fences around them. One of the rifle squads was working their way through this rabbit warren of small buildings and clearing each in turn.



A second squad became engaged with three insurgents who opened with a volley of fire on the rear of the squad, causing two casualties. The Squad Leader, using his squad radio, called for one of the tanks to move forward to support the retrieval of the injured Marines.

Moving quickly in response to the call for assistance, one of the tank commanders directed his driver to roll through one of the wooden fences and move into the street beyond, a maneuver that would put the tank between the casualties and the insurgents.



The driver spun the tank and roared through the fence and continued moving into position to support the injured Marines. On the other side of the fence were two insurgents, hiding from the Marines.

Taken by surprise, the first insurgent was able to leap out of the way, but the second opened fire on the tank with his AK-47. Seeing the insurgent but unable to engage him with his co-axial MG, the Tank Commander ordered the Gunner to run over the insurgent with the tank. Screaming in pain, he called for the other insurgent to come help him. The injured insurgent had been run over across the back of his thighs; both legs were crushed near his hips. Alerted by the screams, Marines raced around the corner. Seeing the uninjured insurgent raise his weapon, the Marines shot him. The Marines rolled the injured insurgent over and, unsure what to do for such a catastrophic injury, screamed for a Corpsman. The injured insurgent was able to hoist himself up, and resting on his elbows, saw the extent of his injuries. The initial shock was starting to wear off; the insurgent was clearly in unbearable pain. He screamed to the Marines in Arabic, “kill me, kill me, kill me.” The Marines, none of whom spoke Arabic, seemed to understand what the critically injured man wanted. They looked into the insurgent’s eyes and then looked at his massive injuries. The Marines looked at one another, nodded in agreement, and then one of them took the muzzle of his M-16 and put it against the insurgent’s head and pulled the trigger. Just then, the Platoon Sergeant came around the corner of the building, noticed the three Marines standing over the dead Iraqi, one still had smoke coming from the barrel of his weapon. Upon closer inspection, he saw that the Iraqi had been shot in the forehead at point blank range. A pained look came over the Platoon Sergeant’s face as he observed the startled expression on the three Marines.

Questions

1. Did the Tank Commander and Gunner commit a war crime by running over the insurgent with the tank rather than shooting him?
 - a. Yes, the Tank Commander and Gunner both committed a war crime. It was an illegal use of a lawful weapon. It was inhumane to run over the insurgent with the tank causing unnecessary suffering and serious injury.
 - b. No, the insurgent was identified as a combatant that threatened the tank and crew.

Correct Answer: b

Discussion: This prohibition generally addresses weapons that are intended to cause unnecessary suffering such as certain kinds of ammunition (hollow point, projectiles with glass), poison, and biological weapons. These are unlawful weapons. Under the Law of War, any lawful weapon may be used unlawfully, such as using an M-16 to murder an Enemy Prisoner of War (EPW). In this case the insurgent was a combatant that threatened the tank and its crew and with the tank's other weapons unavailable, the commander was justified in using the tank itself in self-defense. There are no requirements that a Marine must sacrifice his life in order to comply with the Law of War.

2. Upon finding the wounded insurgent, was there an obligation to provide medical care?
 - a. No, it was obvious he was going to die anyway.
 - b. No, while he did appear to need medical attention, as a possible enemy insurgent he is not entitled to medical care under the Law of War. He wore no uniform that identified him as a legitimate combatant and therefore was not entitled to medical care. Providing him medical care may prevent or delay other Marines from getting adequate medical attention.
 - c. Both a and b.
 - d. Yes, one of the rules of the Law of War is that "Marines collect and care for wounded, whether friend or foe."

Correct Answer: d

Discussion: Whether or not the suspected insurgent will benefit from medical treatment is the call of properly trained medical personnel. In addition to being part of the Law of War to provide medical care to both friend and foe, one of the hallmarks of Marines throughout our history is our compassion and care for the sick, injured and wounded both friendly and enemy. It is this generous treatment of the enemy and the local population that has contributed in the past to winning the "hearts and minds" of the people and led the enemy to surrender in anticipation of good treatment.

3. Did one of the three Marines commit a war crime by shooting the wounded insurgent?"

- a. Yes, regardless of the apparent severity of his wounds, the insurgent was no longer a combatant and Marines do not kill noncombatants, EPWs or detainees.
- b. No, he was going to die anyway from his massive injuries. Rather than causing increased suffering, the Marines complied with the request of the injured insurgent and did the most humane thing by ending his suffering.

Correct Answer: a

Discussion: The concept of a "mercy killing" is not an exception within the Law of War. While the Marines may feel genuine compassion for the severely wounded insurgent, as addressed in the previous question, his medical condition and chances of survival must be left to competent medical professionals. It must also be assumed that other insurgents or local Iraqi civilians observed the incident. A key part of any insurgent's strategy is to attack the will of the domestic and international opposition. One of the insurgents' most effective ways to undermine and erode political will is to portray their opposition as untrustworthy or illegitimate. These attacks work especially well when insurgents can portray their opposition as unethical by the opposition's own standards. To combat these efforts, Marines must treat wounded detainees, insurgents and EPWs humanely, according to American values and internationally recognized human rights standards. In counter-insurgency (COIN) operations, preserving noncombatant lives and dignity is central to mission accomplishment. This imperative creates a complex ethical environment. Knowledge of the incident by the enemy could also encourage them to mistreat captured Marines and harden their resistance, making the conflict last longer and cost more lives--US and Iraqi. Public knowledge of the incident could reduce support for the conflict at home and abroad, seriously damaging the image and hard won reputation of the Marine Corps. Conversely, it is the generous compassionate treatment of the enemy and the local population by Marines in the past that has contributed to winning the "hearts and minds" of the people and led the enemy to surrender in anticipation of good treatment. Finally, by rendering first aid to this wounded insurgent, it might be possible to extract actionable intelligence that could also save Marine and Iraqi lives.

4. Was there any other violation of the Law of War?

- a. No, the Marines collectively did the most humane thing possible--they ended the wounded insurgent's misery.
- b. Yes, the Marines should have reported the tank crew to the Platoon Sergeant for causing great suffering and serious injury to the insurgent.
- c. Yes, the Marines not involved in the shooting failed to prevent the execution of the wounded insurgent.

Correct Answer: c

Discussion: An affirmative responsibility of all Marines is to do their best to prevent violations of the Law of War. In this case, in spite of the Iraqi's serious injuries, the Marines should have taken care of each other by preventing the one from committing a war crime by this "mercy killing," no matter how well intentioned.

5. Is the Platoon Sergeant required to report this incident?

- a. Yes, even though he did not witness the incident, a "reportable incident" is a possible, suspected or alleged violation of the Law of War.
- b. No, the Marines believed they were doing a greater good. The Iraqi was probably going to die anyway and reporting it could lead to the loss of three valuable, well-intentioned Marines.

Correct Answer: a

Discussion: Because there is a possible violation of the Law of War, the Platoon Sergeant is obligated to report this to the Chain of Command no matter how it might have pained him to do so. Ignoring the incident could subsequently lead to similar incidents and/or be discovered later leading to accusations of a "cover-up." Collectively, these consequences could result in serious criminal charges not only against the Marine who committed the offense but also against the Chain of Command for failing to report and thoroughly investigate the incident. There are numerous examples where such an incident and its consequences destroyed the morale and cohesion of military units. Knowledge of the incident by the enemy could also encourage them to mistreat captured Marines and harden their resistance making the conflict last longer and cost more lives--US and Iraqi. Public knowledge of the incident could reduce support for the conflict at home and abroad, seriously damaging the image and hard won reputation of the Marine Corps.

Conclusion: As military professionals, it is important that we take time to reflect on the Marine values that separate us from our enemies. Marine Corps leaders emphasize that on the battlefield the principles of honor and morality are inextricably linked. Leaders do not allow subordinates to fall victim to the enormous pressures associated with prolonged combat against elusive, unethical, and indiscriminate foes. The environment that fosters insurgency is characterized by violence, immorality, distrust, and deceit; nonetheless, Marine Corps leaders continue to demand and embrace honor, courage, and commitment to the highest standards. They know when to inspire and embolden their Soldiers and Marines and when to enforce restraint and discipline.

Leaders at every level establish an ethical tone and climate that guards against the moral complacency and frustrations that build up in protracted COIN operations. Leaders remain aware of the emotional toll that constant combat takes on their subordinates and the potential for injuries and illegal conduct resulting from combat stress. Such injuries can result from cumulative stress over a prolonged period, witnessing the death of a comrade, or killing other human beings.

To fight the effects of combat on the “moral compass” of Marines, effective Marine leaders ensure that Marines are properly trained and educated. Such training includes moral-ethical preparation for the operational environment. In the complex moral environment encountered in COIN operations, it is often counterproductive to use forces that are poorly trained or unfamiliar with how the Law of War is applied. COIN forces aim to mobilize the good will of the people against the insurgents. Therefore, the populace must feel protected, not threatened, by COIN forces’ actions and operations. Proper training repeatedly integrates many possible ethical scenarios into the tactical exercises in preparation for the COIN environment. Education and training must prepare Marines to deal with the unexpected and unknown.

What leaders can do specifically:

- “Set the right tone” by encouraging and rewarding honesty, integrity, and professionalism.
- Take every opportunity to talk to subordinates about important topics like values, duty, integrity, and character.
- Before every operation, as part of the orders and rehearsals process, address the Law of War issues Marines will likely encounter.
- Help subordinates understand that professionalism and discipline contribute to mission success.
- Reaffirm values after friendly casualties immediately; don’t let them impact professionalism and discipline.
- Lead by example!

What we all can do as Marines:

- Conduct ourselves as professionals at all times—do the right thing even when no one is looking.
- Encourage values and high standards in fellow Marines.
- Never accept or tolerate bad behavior by other Marines.

Chapter 4: Marines Collect and Care For the Wounded, Whether Friend or Foe

4.1 Taking No Chances

Introduction

During the fall of 2005, units of the I Marine Expeditionary Force (I MEF) were assigned responsibility for stability operations in Iraq's al-Anbar province and the Euphrates River Valley towns of Ramadi, Fallujah, Hit, and Haditha. The I MEF Marines were there to protect the Iraqi citizens against a complex mix of insurgent groups consisting of Saddam Hussein's former regime elements, foreign fighters traveling the Euphrates River Valley from Syria, and the Jordanian-born Al Qaeda in Iraq (AQI) leader Abu Musab al-Zarqawi. A Rifle Company from Camp Pendleton operated from a Forward Operating Base (FOB) together with the other companies from their parent battalion.

The Incident

The Rifle Company Commander had been conducting operations in al Anbar Province for over five months.

The Company was conducting daily mounted and dismounted patrols through towns in the Area of Operations. These were conducted in a distributed fashion, departing and recovering at the FOB and under the tactical command of Platoon Commanders and Squad Leaders.

The Battalion was tasked, as part of a Regimental operation, to conduct a deliberate attack into a fortified area of a major provincial capitol. The Battalion zone was a densely populated residential area. The buildings were typically two-story masonry construction, with a walled garden area at the front and rear of each residence. Houses faced the narrow dirt streets while the rear of the houses faced an even narrower alley way.

The Battalion was briefed that the insurgents in the area were hard core AQI fighters, likely to lure the Marines into ambush and to fight to the death. Noncombatants in the area had generally evacuated, although the Battalion expected that there would be some that remained behind.

The Battalion operation order assigned a zone to the Rifle Company that was three residential blocks in width and terminated at the city bus station. Preparations for this

major operation kept most of the Marines up for the 24 hours prior to kicking off the operation.

The Rifle Company crossed the line of departure with the Battalion at 0230. Supported by Marine Tanks and Amtracs, the Rifle Company initially made rapid progress. Using supporting arms and direct fire, they were able to reduce several fortified positions and to keep moving. The Company fought through the urban area all day.

Clearing one house, the Marines discovered what appeared to be an al Qaida torture chamber. There were makeshift cells in the basement, swords and knives with blood on them, and other signs that the house had been used to terrorize the local population. Two Marines were wounded severely by the booby-trapped body of an Iraqi civilian.

Moving to the next building, a mosque, the Marines were taken under fire from insurgents who had hidden themselves under the floor. Waiting for the Marines to walk on the floor above them, they fired at the Marines from below, inflicting several casualties. When other Marines moved to assist the casualties, they discovered they were in the kill zone of a prepared ambush. The Marines retreated and organized a deliberate effort to retrieve the casualties. This effort, using a full Rifle Squad, was able to generate enough suppressive fire to enable the casualties to be retrieved, although at the cost of two more wounded Marines. Marines used supporting arms to destroy the mosque and kill the insurgents.

Exhausted by their efforts over the previous several days, the Squad that had just cleared the mosque moved into another house they knew had been cleared earlier in the fighting in order to briefly rest and reorganize after losing a Fire Team's worth of Marines. While there, the Platoon Sergeant came in to check on the Squad's status. One of the Marines told him, "Sergeant, these guys are animals, shooting at us while we try to get an injured guy. They won't get a chance to surrender if I have my way." The Platoon Sergeant, as exhausted as the other Marines, let the comment pass.

The Rifle Company continued its attack until sunset, when the remnants of the Rifle Squad reoccupied the same house they had used to reorganize. They set up a defense for the night on the second floor and roof. Ammo and water was brought forward and the Marines broke out some chow. As they were eating, one of the Marines jumped up and shouted, "There's someone in the corner!"

The Marines quickly reacted and found a critically injured Iraqi, with severe stomach and chest wounds hiding under a mattress and bedding. He appeared to have military style field dressings covering the wounds. Most likely an insurgent wounded when the house was cleared earlier, the Squad Leader directed two Marines to search and secure the insurgent and for the rest of the Marines to double check the house to make sure there were not any additional insurgents. One of the two Marines remarked, "This guy isn't long for this world."

The Squad Leader was on the stairs heading to the first floor to make sure the rooms there were thoroughly searched. As he headed down, he heard one of the Marines watching the insurgent yell, “Watch his hands, watch his hands!” and then three rapid-fire shots from an M-16. The Squad Leader ran up the stairs where he found the two Marines turning the insurgent over, dead from three gunshots to the chest. He heard one Marine tell the other, “I’m not taking any chances with these guys any more. Not after today.”

The Squad Leader asked the two Marines what happened. The senior of the two Marines reported, “I thought this guy had something in his hand. I wasn’t going to take a chance.” A search of the suspected insurgent found no weapons or explosives on the body.

Questions

1. Was it a violation of the Law of War to attack and destroy the mosque?
 - a. Yes, religious facilities, schools, hospitals, and civilian homes and businesses are among those places classified as “protected property” under the Law of War and are therefore “sanctuaries.” When occupied by the enemy, they become protected persons under the Law of War and may not be attacked.
 - b. No, when the enemy uses protected property it loses its protected status and may be attacked.

Correct Answer: b

Discussion: The enemy used the mosque as a fortification and “defended place” therefore it lost its protected status. Although the insurgents may be engaged, the aim if at all possible should be to neutralise/defeat/destroy them while causing the least possible damage to the museum. A graduated response using the range of weapons available to you would be appropriate. However, the effort to protect the mosque does not require the Marines to accept increased risk to themselves. Also, the Law of War normally requires that an effective advance warning should be given to the enemy to stop their action or face the consequences. In this case however, the circumstances would not appear to be appropriate for such a warning and the Marines would not be held accountable if they decided to do without it.

2. What Basic Principles of the Law of War may be at issue here?
 - a. Marines do not torture or kill Enemy Prisoners of War (EPW) or detainees.
 - b. Marines do not harm enemy soldiers who surrender.
 - c. Marines collect and care for wounded, whether friend or foe.
 - d. All of the above.
 - e. None of the above.

Correct Answer: d

Discussion: The known facts are that the Iraqi was found in a house that had been previously cleared, he was gravely wounded, was subsequently killed by the Marines, and no weapons were found during the search after he was killed. However, it is not clear in this scenario whether the wounded Iraqi is a civilian bystander, wounded unintentionally when Marines initially cleared the house; an insurgent who was wounded, captured, treated and left behind by advancing Marines; or an insurgent who was wounded and treated by his comrades and left behind when they withdrew and was either overlooked during the previous search or ignored because of his wounds. Because of these unanswered questions, answer “d” is the most correct answer in this case. One or more of the preceding principles could apply here.

3. How should the Platoon Sergeant have responded to the Marine's comment, "They won't get a chance to surrender if I have my way."

- a. Nothing, he was right to let it pass. It was a remark made under the stress of combat and reflects what most Marines were feeling that day after hours of frustrating combat with many friendly losses.
- b. He should have relieved the Marine on the spot, disarmed him and sent him to the rear for possible Uniform Code of Military Justice (UCMJ) punishment.
- c. He should have corrected the Marine, warned him that such actions could be violation of the Law of War, and advised his Squad Leader to keep an eye on him.

Correct Answer: c

Discussion: The stress of combat, especially at close quarters, generates anger and frustration in even the most resilient of Marines. It is precisely these conditions of a poorly defined enemy, high number of friendly casualties, fatigue, and high levels of frustration that lead to violations of the Law of War. The Platoon Sergeant should not have let the remark pass but instead realized it was an indicator that his Marines were at risk of violating the Law of War. He should have immediately reminded the Marine that such conduct was not in keeping with values of the Marine Corps. It is not who we are or what we do. In addition to possible charges under the UCMJ, it would tarnish the image of the Marine Corps, could alienate the population and make the enemy fight harder leading to more Marine casualties.

4. Upon finding the wounded insurgent, was there an obligation to provide medical care?

- a. No, it was obvious he was going to die anyway and all that could be done for him had been done.
- b. No, while he did appear to need medical attention, as a possible enemy insurgent he is not entitled to medical care under the Law of War. He was likely an enemy insurgent who may have killed or wounded other Marines and providing him medical care may prevent or delay other Marines from getting adequate medical attention.
- c. Both a and b above.
- d. Yes, one of the Basic Principles of the Law of War is "Marines collect and care for wounded, whether friend or foe."

Correct Answer: d

Discussion: Whether or not the suspected insurgent will benefit from medical treatment is the call of properly trained medical personnel. In addition to being part of the Law of War to provide medical care to both friend and foe, one of the hallmarks of Marines throughout our history is our compassion and care for the sick, injured and wounded, both friendly and enemy. It is this generous treatment of the enemy and the local

population that has contributed in the past to winning the “hearts and minds” of the people and led the enemy to surrender in anticipation of good treatment.

5. Was there a violation of the Law of War?

- a. No, this is clearly a judgment call made in the “heat of battle.” The Marines believed they were in imminent danger. The Iraqi was probably an insurgent and every Marine has the right to self-defense.
- b. Yes, no attempt was made by the Squad Leader to provide medical care by his own Marines or to call for a Corpsman.
- c. Yes, the Marines shot and killed the suspected insurgent who was clearly not a threat to the Marines.
- d. Both b and c above.
- e. It is not possible to determine based on the information presented here. There were no witnesses except for the two Marines directly involved.

Correct Answer: e

Discussion: This is a difficult situation to judge from the details presented here. Every Marine has the absolute right to self-defense and conversely, there are no circumstances that require a Marine to sacrifice his life to comply with the Law of War. The intensity of battle can present Marines with the requirement for split second decisions where the correct answers are not obvious. Earlier losses to booby-trapped bodies and an ill-defined enemy who cannot be readily distinguished from the local population increases the level of uncertainty. The Marine’s reaction to a perceived threat is consistent with the situation. Yet there are indications that the Marines may have “executed” the Iraqi. Only an investigation may lead to a better determination.

6. Is the Squad Leader required to report this incident?

- a. Yes, even though he did not witness the incident, a “reportable incident” is a possible, suspected or alleged violation of the Law of War.
- b. No, this is clearly a judgment call made in the “heat of battle.” The Marines believed they were in danger. The Iraqi was probably an insurgent and every Marine has the right to self-defense.

Correct Answer: a

Discussion: Because there is possible violation of the Law of War, the Squad Leader is obligated to report this to the Chain of Command. Ignoring the incident could subsequently lead to similar incidents and/or be discovered later leading to accusations of a “cover-up.” Collectively, these consequences could result in serious criminal charges not only against the Marine who committed the offense but also against the chain of command for failing to report and thoroughly investigate the incident. There are numerous examples where such an incident and its consequences destroyed the morale and cohesion of military units. Knowledge of the incident by the enemy could also

encourage them to mistreat captured Marines and harden their resistance making the conflict last longer and cost more US and Iraqi lives. Public knowledge of the incident could reduce support for the conflict at home and abroad, seriously damaging the image and hard won reputation of the Marine Corps.

Conclusion: The vast majority of Marines perform their jobs magnificently every day:

- They do their duty with honor under extremely difficult circumstances.
- They exhibit good judgment, honesty, and integrity.
- They display patience, professionalism, and restraint in the face of a treacherous enemy.
- They do the right thing even when no one is watching.

As military professionals, it is important that we take time to reflect on the Marine values that separate us from our enemies.

Almost without exception, the men and women who make up our coalition live their lives and do their duty with honor every day often in life threatening situations.

Unfortunately, there are a very small number of individuals who choose the wrong path:

- Some think that because we are at war, the rules that normally govern their conduct no longer apply.
- Some view *all* Iraqis as the enemy. As a result they treat every Iraqi with contempt.
- Some simply fail to do the right thing, even when they know they should. Often this is a result of fear, stress, or peer pressure.

The challenge is to make sure the actions of a few do not tarnish the good work of the many.

What leaders can do:

- “Set the right tone” by encouraging and rewarding honesty, integrity, and professionalism.
- Take every opportunity to talk to subordinates about important topics like values, duty, integrity, and character.
- Before every operation, address the Law of War issues Marines will likely encounter as part of the orders process.
- Help subordinates understand that professionalism and discipline contribute to mission success.
- Reaffirm values after friendly casualties; do not let them impact professionalism and discipline.
- Lead by example!

What we can do as Marines:

- Conduct ourselves as professionals at all times—do the right thing even when no one is looking.
- Encourage values and high standards in fellow Marines.
- Never accept or tolerate bad behavior by other Marines.

Chapter 5: Marines Destroy No More Than The Mission Requires

5.1 Car Crushers

Introduction

During the spring of 2003, upon completion of the initial combat phase of Operation Iraqi Freedom, units of the I Marine Expeditionary Force (I MEF) were assigned responsibility for security operations in Najaf and other towns in the South Central Sector. A Rifle Company from Camp Pendleton operated from a Forward Operating Base (FOB) together with the other companies from their parent battalion.

The Incident

The Marine Rifle Company operated in a very uncertain environment. Iraqi police had disappeared. The Iraqi Army had “disbanded itself.” Iraqis loyal to Moqtada al Sadr challenged the authority of the Marines, but did not openly engage in violence against them.

Due to operating in such an uncertain environment, I MEF ordered its units to fill the void in Najaf and conduct presence patrols.

With the sudden breakdown of power of the Iraqi regime, local Iraqis went on a spree of looting.

Initially tolerant of early expressions of joy and relief by the Iraqis, the Marines eventually recognized the need to establish an atmosphere of law and order.

Marines were put into a difficult position, with guidance that did not cover all of the situations they faced every day. One Rifle Squad, patrolling through a residential area, stopped a taxicab loaded with furniture and boxes of food.

The Squad Leader, looking to stop the looting in his area, and frustrated by the lack of tools available to him, ordered the Iraqis out of the car. He called an Amtrac maintaining overwatch from up the street. The Squad Leader conversed with the vehicle commander and then ground guided the Amtrac as it drove over the hood of the Iraqi taxi.

Questions

1. Which of the Basic Principles of the Law of War listed below may apply in this case?
 - a. Marines fight only enemy combatants.
 - b. Marines do not attack medical, agricultural, civilian or religious personnel, facilities, or equipment.
 - c. Marines destroy no more than the mission requires.
 - d. None of the above.

Correct Answer: c

Discussion: There was no need to destroy the taxicab, therefore answer “c” is correct. There were no enemy combatants in this scenario (answer a) and answer b is not a Law of War principle. This scenario addresses one of the fundamental concepts of the Law of War, *distinction* and *discrimination*. Together with the other three concepts, *military necessity*, *proportionality*, and *minimize unnecessary suffering*, the nine Basic Principles of the Law of War are derived, which guide all Marines in conflict and war. Distinction and discrimination links the principle of noncombatant immunity with the obligation that combatants must discriminate among targets and avoid killing noncombatants and destroying protected property indiscriminately; applying force only against enemy forces and military objectives not civilians or their property. If the enemy uses civilian property as part of his defense then the property loses its protected status.

Note: In this scenario, the Amtrac Commander should have refused the request/order to destroy the taxi. This would have prevented the violation of the Law of War. This is an additional principle that applies in this scenario but will be discussed later in question 3.

2. Was the destruction of the civilian taxi a violation of the Law of War?
 - a. No, not in this case. The driver was clearly carrying items that had been looted and the Squad Leader prevented him from getting away.
 - b. Yes, civilian property is protected under the Law of War unless it loses its protected status by being used by the enemy.
 - c. Yes, there was no proof the driver was engaging in unlawful activity. In a similar incident, the driver was merely moving his possessions to safety to avoid looters.
 - d. Both b and c above.

Correct Answer: b

Discussion: Answer “b” is most correct in this scenario. Even though the taxi driver was probably guilty of looting and the Marine Squad Leader had good intentions, he could not be sure the taxi driver was a looter and rather than merely confiscating the items he destroyed the taxi. While the Iraqi taxi driver may have initially welcomed the presence

of US military forces, he probably does not now and will likely share his experience with others. Therefore, the Squad Leader's actions may hurt US efforts to gain popular local support and reestablish order and the rule of law. In counter-insurgency (COIN) operations the actions of very junior Marines can have far reaching consequences.

3. Who may have violated the Law of War in this incident?

- a. No one. This incident is not a violation of the Law of War.
- b. The Squad Leader for ordering the destruction of the taxi.
- c. The Amtrac Commander and crew for participating in destruction of the taxi.
- d. Answer b and c above.

Correct Answer: d

Discussion: The destruction of the taxi is what is termed a "simple breach" of the Law of War rather than a "grave" breach (MCRP 4-11.8 B, *War Crimes*, pp. 3-4). The designation of a violation as simple or grave is not intended to reflect the gravity of the violation or the appropriate level of disciplinary action. The squad leader erred in requesting the Amtrac Commander destroy the taxi. By willingly destroying the taxi, the Amtrac Commander also violated the Basic Principle of the Law of War that Marines do their best to prevent violations. There is no indication that the Squad Leader had command authority over the Amtrac Commander, but even if he did, the Amtrac Commander is still obligated to refuse an unlawful order. Those members of the crew involved or knowledgeable of the request from the Squad Leader, such as the driver are likewise obligated to refuse the order and should have advised the vehicle commander to do likewise.

4. Should the destruction of the taxi be reported to the Chain of Command?

- a. No, while a mistake in judgment, it should not be the cause for ending the Squad Leader's career with a criminal conviction.
- b. Yes, incidents such as this one, especially in a COIN environment, should always be reported.

Correct Answer: b

Discussion: While this breach or violation of the Law of War is not a grave one, not reporting the incident could later result in accusations of a cover-up. If it is discovered later or surfaces through US, international or local media sources, the results could distort the facts of the incident, strengthen the forces of resistance and possibly endanger other Marines. In this case, the circumstance may be new to the Squad Leader. It is early in the conflict, civil authority has disappeared and the Squad Leader may not have been adequately prepared to deal with the situation he and his Marines faced. This situation illustrates the importance of integrating moral-ethical dilemmas into training exercises in order to prepare Marines and their leaders for the inevitable complexities of conflict.

Conclusion: The problems Marines will face in future conflicts are more than tactical ones and are likely to be more complex than this scenario. Leaders and their Marines must be able to transition from conventional combat operations to peacekeeping and peacemaking sometimes in the space of a few moments or few blocks (“Three Block War”). Adequately preparing Marines for complex contingencies must include the inevitable moral ethical dilemmas that surface in conflict. Realistic ROE understood and integrated into mission orders and rehearsals are essential to ensure thorough understanding by all Marines. Thorough preparation also hardens our Marines to the effects of stress, increases their resilience, improves their self-confidence and their abilities, and strengthens individual moral and unit cohesion. Addressing only tactical preparations places our Marines at risk. They must be as adept at moral reasoning as they are at solving the complex problems of attack and defense.

5.2 Hasty Vehicle Checkpoint: Escalation of Force (EOF)

Introduction

During the spring of 2005, units of the I Marine Expeditionary Force (I MEF) were assigned responsibility for stability operations in Iraq's al-Anbar province and the Euphrates River Valley towns of Ramadi, Fallujah, Hit, and Haditha. The I MEF Marines were there to defeat a complex mix of insurgent groups. A Rifle Company from Camp Pendleton operated from a Forward Operating Base (FOB) together with the other companies from their parent battalion.

The Incident

The Platoon was ordered to operate with another unit from the Company in a Cordon and Search of an area of small farms. The Platoon was to establish Snap (or Hasty) Vehicle Checkpoints (VCP) as part of the far cordon in support of the operation. Moving to the predetermined locations in Up-Armored HMMWVs and 7-Ton trucks, the Platoon deployed its squads along hard surface roads to isolate the objective area.

First Squad established the VCP on an east-west hard surface road, oriented to the west to stop eastbound traffic. Some Marines established security while others used road cones and debris to slow and canalize the flow of traffic while others put out warning signs written in Arabic ordering drivers to slow down and prepare to stop. Two 7-Ton trucks were parked across two of the three traffic lanes to ensure compliance. The ring mount .50-caliber machinegun was manned and ready.



The Marines were operating under the Rules of Engagement (ROE) that required the following: a series of warnings to approaching drivers prior to using lethal force, warning signs and pen flares as a signaling device.

A white Toyota sedan was the first vehicle to approach the VCP. As it approached the VCP, the driver maintained his speed. When the vehicle continued to approach without slowing, the Squad Leader fired the pen flare as a warning to the driver, without effect. The Squad Leader then fired three warning shots with his M-4, again without apparent effect. The Squad Leader made the decision that they had run out of time and he called to the Marine manning the ring mount M-2 to engage the vehicle.

The gunner walked two bursts into the approaching Toyota, which slewed to the left and came to a halt.

Marines ran to the vehicle and found the driver and a middle-aged woman in the passenger seat dead and a ten-year-old girl in the back seat wounded. She said in English that her Dad had lost his glasses and was too proud to not drive. He could not read the signs and could not understand what was going on.

Questions

1. Did the Marines employ the correct sequence of EOF measures?
 - a. No, the Marines should also have shouted out a vocal warning in Arabic for the vehicle to stop.
 - b. No, the Squad Leader should have called his immediate higher commander for permission to engage the vehicle.
 - c. No, the Marine Gunner should have been instructed by the Squad Leader to first shoot to disable the vehicle (tires, engine block).
 - d. Yes, there were sufficient warnings in the short time available that included audible and visual warnings before the Squad Leader instructed the gunner to engage the vehicle with deadly force.

Correct Answer: d

Discussion: EOF is defined as sequential actions which begin with nonlethal force measures (visual signals to include flags, spot lights, lasers, and pyrotechnics) and graduate to lethal measures (direct action) to include warning, disabling, or deadly shots in order to defeat a threat and protect the force. While the ROE and EOF procedures used by the Marines in this scenario are not clearly specified, proper procedures should include:

- Use audible warning to warn (horn, air horn, loudspeaker, flash/bang device, siren).
- Use visual aids (lights, laser pointers, flares, colored flags, signs).
- Show weapon and demonstrate intent to use it.
- Attempt nonlethal means (stop strips, physical barrier, vehicle, visual/audio signal, signs).
- Fire warning shots (in vicinity of threat).
- Use disabling fire (tires, engine block, windows).
- Use deadly force commensurate with the situation.

The Squad Leader could have given instructions to first disable the vehicle but he made the judgment call that the driver of the vehicle was approaching too rapidly to try any other EOF measures and ordered the application of deadly force. While tragic, the Marines followed the approved ROE. Answer “a” is an audible signal but in this case unlikely to have been heard except by pedestrians. Marines conducting VCP operations are routinely required to make split-second, life-and-death decisions. VCP personnel must decide whether vehicles or pedestrians pose a significant force protection threat. Marines manning VCPs face a tough and dangerous mission. Commanders, at all levels, know they must provide the required resources, sound ROE and EOF procedures to empower Marines to do their best and make the appropriate decisions. Unless specified in the ROE or EOF procedures, there is normally insufficient time in this type of scenario to ask for authorization to engage threatening targets. Good ROE and EOF procedure are designed to provide the flexibility to Marines to make these decisions while still complying with the Law of War.

2. Which of the Basic Principles of the Law of War may the Marines have violated in this incident?

- a. Marines fight only enemy combatants.
- b. Marines destroy no more than the mission requires.
- c. It is a violation of the Law of War to engage personnel targets with an M2 HMG.
- d. Marines treat all civilians humanely.
- e. None of the above. No violations of the Law of War occurred in this incident.

Correct Answer: e

Discussion: Answer “e” is most correct in this scenario. However, as question #1 demonstrated, shooting to disable may have given the Marines more opportunity and time to determine hostile intent. VCP personnel must have adequate time to decide whether vehicles or pedestrians pose a significant force protection threat. The circumstances on the ground can initially appear ambiguous and confusing. Vehicles may approach a VCP at a high rate of speed or drive in an erratic or unpredictable manner. Some drivers may approach a location with no hostile intent but will be defiant. They simply may not want to pull over for a variety of reasons. They may not respond well to directions from US military personnel, who they may perceive as occupiers in their country. Local nationals fitting this category see this stop as an unreasonable request and a waste of time because they have no hostile intent and only want to proceed with their business. They may initially be compliant, but they may also grow angry, and that anger can quickly escalate to evasiveness or hostility. They may decide not to stop or may attempt to bypass or even turn around to avoid a VCP. They may not understand or may pretend to not understand posted and verbal instructions and warnings. This type of driver is the most difficult to assess when determining potential hostile intent and the corresponding EOF response. Properly trained and patient Marines can normally diffuse defiant, but non-hostile vehicle occupants with clear, consistent, and repeated instructions. However, if the driver refuses

to obey instructions and warnings but has not yet displayed overt hostile intent, Marines must begin to consider appropriate EOF measures.

Leaders at all levels should teach and reinforce tactical restraint to all Marines operating a VCP. A driver approaching a TCP with hostile intent creates a serious and dangerous situation. This event usually develops rapidly, and Marines have limited reaction time. This scenario often develops into actions on contact. Marines must make it the Iraqis' decision to comply or not comply, and give the Marines more time to react. Marines must put the decision to comply squarely on the shoulders of the driver of the vehicle through a series of control measures like those identified above. Finally, after all warnings are issued properly, lethal force may be needed under the fundamental provision that all Marines have the inherent right to defend themselves and other noncombatants. There is no requirement that a Marine must sacrifice his life in order to comply with the Law of War.

3. Who may have violated the Law of War in this incident?

- a. All the Marines may have violated the Law of War because they all participated in the operation that resulted in the death of two civilian noncombatants. Marines are required to prevent violations of the Law of War.
- b. The Squad Leader only, because he gave unclear orders to engage the vehicle and the Gunner was only following orders.
- c. Only the Gunner, because he failed to ask for clarification of the Squad Leader's order and engaged the vehicle with lethal force.
- d. Both the Squad Leader and the Gunner.
- e. None of the above. There is no violation of the Law of War in this incident.

Correct Answer: e

Discussion: Based on discussion of question #1, "e" is the most correct answer to this question. The loss of innocent lives is a tragic event, but the Marines manning this VCP complied with the EOF procedures as well as they could in the limited time available. In combat, tragic events occur. It is the nature of a chaotic and uncertain operating environment, made more so by an adaptive enemy who operates outside of the laws of armed conflict. While there were tragic results in this situation, the Marines in this case performed properly and there is not violation of the Law of War.

4. Should the Squad Leader report this incident?

- a. Yes, when the death of a noncombatant occurs it should be reported.
- b. No, it was a justified use of lethal force. Only a "possible, suspected or alleged violation of the Law of War" must be reported.

Correct Answer: a

Discussion: While there may not be a violation of the Law of War, the death of the noncombatants may cause an adverse impact on US efforts to obtain popular support. Therefore it should be reported. Discovered later and allowed to surface through US, international or local media sources could result in distortions of the incident and lead to accusations of a cover up. Additionally, in reporting the incident, medical care should be requested to treat the wounded girl and recover the remains of the noncombatants. Finally, local authorities should be informed so that next of kin can be notified.

Chapter 6: Marines Treat All Civilians Humanely

6.1 Teaching the Kids A Lesson

Introduction

During the spring of 2005, units of I Marine Expeditionary Force (I MEF) were assigned responsibility for stability operations in Iraq's al-Anbar province and the Euphrates River Valley towns of Ramadi, Fallujah, Hit, and Haditha. The I MEF Marines were there to defeat a complex mix of insurgent groups. A Rifle Company from Camp Pendleton operated from a Forward Operating Base (FOB) together with the other companies from their parent battalion.

The Incident

The Platoon was ordered to conduct a dismounted “presence” patrol in the provincial capital. Two Squads would conduct the patrol with the third squad tasked to be the React Squad in case of contact.

The provincial capital was a city of 50,000 mostly Sunni Iraqis. Its buildings were typically two-story masonry, lining narrow streets. The population was unfriendly, but not openly hostile. Small, very lethal groups of insurgents operated throughout the area sometimes with support from the local people. The area’s infrastructure was devastated by combat operations, sewage ran in the street and garbage filled the vacant lots. Schools had not operated for months, so children played in the streets.

The Platoon moved to their dismount point in vehicles. The vehicles then repositioned to be able to pick the Marines up in an emergency and to support their return to the FOB upon completion of the patrol.

Marines of one squad patrolled along a street that paralleled the main thoroughfare of the town. The lead Marine, despite the amount of trash and litter, saw something that looked out of the ordinary. He called the Squad Leader forward who agreed that it might be an Improvised Explosive Device (IED) hidden in a garbage pile. The Marines backed off, established security around the suspect IED and called Explosive Ordnance Disposal (EOD).

EOD arrived and examined the suspect device. Constructed of a 122mm artillery round, EOD discovered the blasting cap had fallen out of the shell. EOD secured the blasting cap, removed the round and then returned to base. Earlier in the week, a similar device had killed two Marines in another company.

The Squad began moving to the Platoon rally point to link up and return to the FOB. While moving away from the site of the IED, the Squad noticed six children watching them from a side street. When the Squad came abreast of the side street, the children threw garbage and rocks and then ran away down the street. Without asking the squad leader, three Marines suddenly started chasing after them. They caught and detained four of them, all boys. They were about 50 meters from the rest of the squad. The Marines took the four boys 20 meters further down a side street to a vacant lot, out of sight from the rest of the squad. They had them kneel down with their hands on top of their heads. The Marines flex cuffed and blindfolded the children. The Marines then pretended to engage in a loud and violent argument. After a period of several minutes, the blindfolds and flex cuffs were removed from all of the children except for one 12-year-old boy. All the children were told to remain on their knees except for the 12-year-old boy. He was pulled to his feet and moved to the rear of the other children.

About this time the rest of the squad caught up with the three Marines in the vacant lot. One of the three Marines then said, "This is what you get for not warning us of the IED," and fired two rounds from his M-16 into the air. The other children, fearing their friend had been executed, screamed with terror. The 12-year-old boy collapsed to the ground in

panic and tears, screaming not to be hurt. The three Marines, laughing, removed the blindfolds and the flex cuffs from the panicked 12-year-old boy and departed for the Platoon rally point.

The squad returned to the rally point, linked up with the rest of the Platoon and prepared to move back to the FOB. The Platoon Commander asked about the shots he heard. The Squad leader said the Marines were teaching the children the meaning of “No better friend, no worse enemy.”

Questions

1. What should the Squad Leader have done when he saw what his Marines were doing to the children?
 - a. He should have stopped them immediately and released the children.
 - b. In order not to embarrass his Marines publicly, he should have counseled his Marines after they returned to the FOB about the proper treatment of civilians.
 - c. Nothing, the Marines were not harming the children physically and it allowed the squad to release some of the stress built up over the course of the operation.

Correct Answer: a

Discussion: The Squad Leader should have stopped them immediately and ordered them to release the children. Allowing it to continue cannot be justified by the desire to avoid publicly embarrassing the Marines who exercised poor judgment. As often happens, when you cross the threshold from acceptable to unacceptable conduct, the situation can spiral out of control with unforeseen consequences. It would be naïve that there were no Iraqi witnesses to this incident. Word of the incident would likely spread quickly and perhaps add more strength and support to insurgents. Therefore, this incident ultimately may have placed these and other Marines in greater danger.

2. Was the treatment of the children a violation of the Law of War?
 - a. No, it was a harmless prank and a way to teach the kids a lesson about the failure to cooperate with and provide valuable information to Marines who are there for their protection.
 - b. Yes, it violates one of the nine Basic Principles of the Law of War that, “Marines treat civilians humanely.”

Correct answer: b

Discussion: The Marines were treating these children inhumanely, which is a violation of the Law of War. Inhumane treatment is broadly defined as causing physical or mental suffering, serious injury to body or health. This treatment can also be classified as “Executing physical or mental coercion toward an Enemy Prisoner of War (EPW) or civilian while in custody to induce him to provide information,” chargeable under the Uniform Code of Military Justice (UCMJ). The Marines are clearly threatening to harm the children if they continue to withhold warnings of IEDs or other insurgent activity. Even if the Marines never intended to carry out the threats, the children do not know this and they are clearly frightened. Finally, this conduct is inconsistent with what it means to be a Marine and what Marines stand for. Marines are currently in Iraq and Afghanistan to provide protection and safety to those who are the victims of oppression and cruelty. Marines have an obligation to use force responsibly and not arbitrarily to intimidate those who cannot defend themselves.

3. Should this incident be reported?

- a. Yes, while no physical harm came to the children, the mistreatment of the children is reportable as a violation of the Law of War.
- b. No, in-house counseling of the Marines involved is sufficient. No real harm came to the children so there is no need to involve the Chain of Command in a useless and time-consuming investigation. The incident may even convince other Iraqi children to cooperate more fully with Marines in the future.

Correct answer: a

Discussion: Yes, this incident must be reported. It is important to remember that there are serious negative consequences in not reporting. The fact that no physical harm to the children resulted from Marine misconduct does not lessen the seriousness of the violation. It severely undermines good order and discipline. That a member of the squad believed he could behave in this manner suggests that the Squad Leader may be ineffective in controlling his Marines. What might these Marines do when operating away from the remainder of the squad? If the Marines are not corrected immediately for this violation, the next incident might lead to more serious misconduct. If knowledge of the incident surfaces later, the Marines who are aware could also be charged with violations of the UCMJ for failing to report the incident. There are numerous examples where such an incident and its consequences destroyed the morale and cohesion of military units. Knowledge of the incident by the enemy could also encourage them to mistreat captured Marines and harden their resistance, making the conflict last longer and cost more lives, both US and Iraqi. Public knowledge of the incident could reduce support for the conflict at home and abroad, seriously damaging the image and hard won reputation of the Marine Corps. In the previous conflict in the Gulf, favorable treatment of EPWs encouraged mass surrenders by Iraqi soldiers and helped end the war faster.

4. If the incident should be reported, who is obligated to report the incident?

- a. All of the Marines who witnessed or were involved are obligated to report the incident.
- b. It is the Squad Leader's responsibility to report the incident. No one else is obligated to come forward.

Correct Answer: a

Discussion: A reportable incident is a possible, suspected or alleged violation of the Law of War. IAW with DOD, Joint and Department of the Navy policy, the Law of War obligations of the United States are enforced by all the military Services. All reportable incidents must be promptly reported, thoroughly investigated, and where appropriate, remedied by corrective action. All Marines who witnessed or have knowledge of this incident have the obligation to report it. This includes Marines who were not there to

witness the incident but may hear of it later. It is not acceptable to leave responsibility to the senior Marine present, especially if he may have committed the violation.

5. Should the Platoon Commander ask for clarification of the Squad Leader's answer?
- a. No, that would demonstrate distrust and hurt the morale within the squad and the platoon.
 - b. Yes, immediately. The explanation is vague and does not adequately answer the Platoon Commander's question.
 - c. Yes, but later, back at the FOB in private. A public confrontation is not a good leadership technique and would be disloyal to the squad leader.

Correct answer: b

Discussion: The Squad Leader's explanation is clearly vague and inadequately explains what occurred. While the Platoon Commander does not know that a violation of the Law of War occurred nor necessarily suspects a violation occurred, asking for further clarification will force the Squad Leader to provide a full and accurate report. In a counter-insurgency environment where the actions of a single Marine can have a significant impact on US efforts, small unit leaders must ensure all Marines are held accountable for their actions. Trust is a two way street and it is earned on both sides by consistently and scrupulously honorable conduct. All subordinates must unequivocally understand this expectation. There is a good chance that reporting this incident early could result in minimal corrective action to the Marines involved but that can only happen if the incident is reported promptly and investigated thoroughly. Delays can only lead to accusations of a cover up and possibly to more severe penalties as the incident casts a wider net of suspicion. Time that should be devoted to the mission is lost to investigations that harm the morale and cohesion of the unit.

6.2 Shields

Introduction

During the fall of 2005, units of the I Marine Expeditionary Force (I MEF) were assigned responsibility for stability operations in Iraq's al-Anbar province and the Euphrates River Valley towns of Ramadi, Fallujah, Hit, and Haditha. The I MEF Marines were there to protect the Iraqi citizens against a complex mix of insurgent groups consisting of Saddam Hussein's former regime elements, foreign fighters traveling the Euphrates River Valley from Syria, and the Jordanian-born Al Qaeda in Iraq (AQI) leader Abu Musab al-Zarqawi. A Rifle Company from Camp Lejeune operated from a Forward Operating Base (FOB) together with the other companies from their parent battalion.

The Incident

The Rifle Company Commander had been conducting operations in western al Anbar Province for over three months.

The company was conducting daily mounted and dismounted patrols through towns in the Area of Operations (AO). These were conducted in a distributed fashion, departing from and recovering to the FOB and under the tactical command of Platoon Commanders and Squad Leaders.

One of the platoons typically operated using a combination of foot and motorized patrols. Their AO was particularly dangerous due to Improvised Explosive Devices (IED). The Marines suspected a master bomb builder was operating in their AO as several new types of devices were discovered there.

The platoon took their first casualties in their third month in theater. An IED detonated as an Up-Armored HMMWV went by, injuring two Marines, one seriously. Two weeks later, a second unit HMMWV was hit, this time with no casualties. A week later, another IED hit a HMMWV, this time killing one platoon member and injuring another.

The Platoon Commander, frustrated by the casualties and his inability to counter the insurgent cell, briefed his Platoon Sergeant and Squad Leaders. Tired of taking the casualties, he was more frustrated knowing that the local residents must know what was

going on. Someone had to see the IEDs being planted or someone had to know who was doing it.

The Platoon Commander told his Marines that from now on, whenever they left the FOB, each patrol would pick up a Military Aged Male (MAM) as a “translator”. They would hold onto the “translator” as they conducted their patrols. If the locals knew where the IEDs were planted, they would certainly alert the Marines about their locations if a fellow local was in the vehicle or walking with the Marines.

The Platoon Commander looked at each of his leaders and asked, “Anyone have a problem with this?”

Questions

1. Which of the *Marines’ Rules* (Basic Principles of the Law of War) may be violated here?

- a. Marines fight only enemy combatants.
- b. Marines treat all civilians humanely.
- c. Marines do not torture or kill enemy prisoners of war or detainees.

Correct Answer: b

Discussion: Answer “b” is correct because the Platoon Commander’s instructions require Marines to force MAM civilians to accompany each patrol. This is a violation of the Law of War against taking hostages even if they may have knowledge that would benefit the Marines. It is also a violation to force civilians to act as a guide. They cannot be used to assist in mission accomplishment; this is similar to forcing civilians to walk ahead of a patrol as “shields” into a known or suspected minefield. The Marines are exposing the MAMs to danger rather than protecting their safety and dignity. Therefore, this is an unlawful order.

Other answers explained:

Answer “a” is incorrect because in this incident the Marines are not being ordered to attack civilians they are being ordered to take them as hostages.

Answer “c” is incorrect because in this incident the Marines are not being ordered to torture or kill Enemy Prisoners of War (EPWs) or detainees, they are being ordered to take civilians as hostages even though this might result in their death or injury.

2. What actions should the Platoon Sergeant and/or Squad Leaders take immediately?

- a. Report the incident to the Company Commander.
- b. Acknowledge the instructions and inform the Marines of the new procedures.
To do otherwise is to be disloyal to the Platoon Commander and the platoon.
- c. Request the Platoon Commander clarify his orders.

Correct answer: c

Discussion: Answer “c” is correct because Marines have the *obligation* to try and prevent violations of the Law of War. When given an unlawful order, it is an obligation to refuse to comply and to prevent other Marines from complying. The Platoon Leader’s instructions are clearly illegal orders.

Other answers explained:

Answer “a” is partially correct but not the best answer. Marines must try to prevent violations of the Law of War and report the suspected violations as soon possible. The Platoon Commander is clearly frustrated by losses of fellow Marines to insurgent-planted IEDs. He is motivated by the desire to prevent further losses. His frustration has clouded his judgment. By asking for clarification, the Platoon Commander may realize that the unit’s subordinate leaders recognize the illegal order for what it is and are suggesting he reconsider his instructions.

Answer “b” is incorrect because Marines have the *obligation* to try and prevent violations of the Law of War *and* to refuse to obey unlawful orders. Although loyalty to the Platoon Commander is important, there is a higher loyalty here than the one that requires subordinates to follow orders. Loyalty to the commander does not override our duties to support and defend the Constitution and our way of life. Every Marine has a duty under the law and UCMJ to prevent violations of the Law of War. By asking for clarification, the Marines *are* demonstrating loyalty to the Platoon Commander and their fellow Marines by firmly suggesting his course of action is unacceptable and allowing him the opportunity to remember that he is a Marine officer and a professional who does not violate the Law of War or order his Marines to do so either.

3. If the Platoon Commander does not change his instructions, what actions should the Platoon Sergeant and/or Squad Leaders take?

- a. Follow the instructions given by the Platoon Commander.

- b. Refuse to follow the orders because they are illegal.

Correct answer: b

Discussion: Answer “b” is correct because Marines have the *obligation* to try and prevent violations of the Law of War. When given an unlawful order, it is an obligation to refuse to comply and to prevent other Marines from complying. The Platoon Leader’s instructions are clearly illegal orders.

Other answers explained:

Answer “a” is incorrect for the same reasons cited above. Marines have the *obligation* to try and prevent violations of the Law of War *and* to refuse to obey unlawful orders.

4. If the Platoon Sergeant and Squad Leaders carry out the Platoon Commander’s Instructions, have they violated the Law of War?

- a. Yes, by complying with the Platoon Commander’s unlawful order they have also violated the Law of War.
- b. No, in issuing the unlawful order, the Platoon Commander assumes full responsibility.

Correct answer: a

Discussion: As mentioned previously, Marines are obligated to refuse to obey unlawful orders. The Platoon Commander’s instructions are clearly illegal orders. By obeying they are complicit in his decision and not only place their Marines at risk but also place the mission to defeat the insurgency at risk. Such treatment of civilians is not only a violation of the Law of War; it will certainly alienate the population and risk local support. The people are not the enemy. If, while serving as a forced “interpreter,” they are attacked by insurgents or IEDs, local civilians could be killed or wounded, further alienating the population.

Other answers explained:

Answer “b” is incorrect because it is never a defense in violations of the Law of War to claim you were only “following orders.” The Platoon Commander is responsible and accountable for the unlawful order and in following them; the Marines also violate the Law of War.

Conclusion: This scenario demonstrates how honor, courage and commitment can be lost on the field of battle if Marines succumb to frustration and emotions. Marines are disciplined in combat and other military operations short of combat. Every Marine has a legal and moral obligation to disobey a plainly obvious unlawful order as demonstrated in this scenario. If faced with a suspected unlawful order, Marines must:

- Get the order clarified
- Get your superior to confirm the order
- Challenge the unlawful order
- Get the order changed
- Report it

Following the Law of War enhances public support of our military mission; violations of the Law of War seriously reduce the support and respect that Marines have historically enjoyed not only from the U.S. public but also from people in other countries. It is the generous and compassionate treatment of the enemy and the local population by Marines in the past that has contributed to winning the “hearts and minds” of the people. Compliance not only helps to end the conflict earlier but it also reduces the waste of our resources in combat and the costs of reconstruction after the conflict ends. Most importantly, it reduces the number of our Marines and civilians who are killed or wounded. Finally, disobeying the Law of War is also a crime punishable under the Uniform Code of Military Justice (UCMJ).

What leaders can do specifically:

- “Set the right tone” by encouraging and rewarding honesty, integrity, and professionalism in Marines and allies.
- Take every opportunity to talk to subordinates and allies about important topics like values, duty, integrity, and character. Use “teachable moments” to reinforce expectations.
- Before every operation as part of the orders and rehearsals process, address the Law of War issues Marines will likely encounter.
- Help subordinates and superiors understand that professionalism and discipline contribute to mission success.
- Immediately reaffirm values after mistakes are made; do not let them impact professionalism and discipline.
- Lead by example!

What we all can do as Marines:

- Conduct ourselves as professionals at all times—do the right thing even when no one is looking.
- Encourage values and high standards in fellow Marines and allies.
- Never accept or tolerate bad behavior by, and never accept illegal orders from, other Marines, *including superiors*.

6.3 Friendly Fire

Introduction

During the spring of 2005, units of the 26th Marine Expeditionary Unit (26 MEU (SOC)) were assigned to support the Joint Force Commander in conducting anti-terrorist operations in the mountainous region of eastern Afghanistan.

The Battalion Landing Team was operating in an extremely mountainous area marked by steep terrain, high elevations and extremely narrow mountain defiles.

The Incident

The Battalion ordered one of its Platoons to move from the Forward Operating Base (FOB) to a local village to support a MEDCAP/DENCAP initiative. The Platoon moved in a column of Up-Armored HMMWV's with the medical and dental teams. They arrived at the village and conducted the mission. Approximately 2 hours prior to sunset, the mission was terminated.

As they prepared to return to the FOB, one of the Up-Armored HMMWVs suffered a mechanical failure and had to be towed. The Marines planned to tow the disabled vehicle with a tow bar and another Up-Armored HMMWV. Reorganizing the Platoon march order, the Platoon Commander felt his priority was to get the medical personnel back to the FOB. He established a serial march with the medical personnel and a second with the disabled vehicle under tow.

The medical serial, under command of the Platoon Sergeant, departed and recovered to the FOB without incident. Considerably delayed, the second serial followed under command of the Platoon Commander, slowed by the vehicle under tow. Slowed to a crawl while negotiating a long steep up-slope in a narrow defile, the serial came under small arms and RPG fire from the military crest of the ridgeline to their right front. The enemy fire was intense, but relatively ineffective. While several of the vehicles were hit by small arms fire, none sustained significant damage. The gunner in the third HMMWV in the march order saw an insurgent silhouetted against the setting sun and opened fire

with his M-2 .50 cal heavy machinegun (MG). The first several bursts went wildly high; the third burst was on target and effectively suppressed the insurgent.

The serial continued through the defile and then crested the ridge. Proceeding down the reverse slope, the serial continued on the narrow road. As they reached the bottom of the hill, they drove through a small collection of mud huts. Residents were wailing and there appeared to be numerous casualties. The Platoon Commander dismounted his vehicle and conducted a hasty investigation. He noticed numerous Afghan's with large caliber wounds, some dead, but as many as half a dozen wounded. He surmised they may have been struck by the errant first bursts from the M-2 but also felt it was just as likely they were wounded by stray fire from the insurgents. He decided if they were wounded by Afghan fire, it was an Afghan problem.

With the medical personnel in the other serial unavailable to assist and probably already nearing the FOB, and with impending darkness, the Platoon Commander remounted his vehicle and the march serial returned to the FOB. Upon his return, he did not report the encounter with the wounded Afghans.

Several days later, the Company Commander summoned the Platoon Commander to the company command post and showed him Xeroxed copies of several international news agency reports of an incident in the town the Platoon passed through describing how Marine small arms and MG fire had wounded 10-15 Afghan civilians and that the Marines on the scene refused to provide or call for medical attention.

Questions

1. Which of the *Marines' Rules* may have been violated here?

- a. Marines fight only enemy combatants.
- b. Marines collect and care for the wounded, whether friend or foe.
- c. Marines treat all civilians humanely.
- d. Marines do their best to prevent violations of the Law of War, and report all violations to their superiors.

Correct Answer: c

Discussion: While it is callous and cruel to leave wounded civilians on their own to obtain medical care, even if unintentionally wounded by friendly fire, it is not a violation of the Law of War. The Platoon Commander's conduct does conflict, however, with the intent of the *Marines' Rule*, "Marines treat all civilians humanely." Clearly the civilians were not intentionally targeted and Marines are not required to interrupt their mission to care for the civilian sick and wounded. However, Marines also do the right thing. It is irrelevant who caused the wounds; the Marines could and should have assisted as long as the unit was not in danger and did not interfere with the mission. When civilians are injured, Marines will secure the site, render first aid, and either request a civilian ambulance or call for a CASEVAC (if required), report, and coordinate condolence payment.

Other answers explained:

Answer "a" is incorrect in this scenario because the Marines legitimately engaged an enemy target. The wounds caused to the Afghan civilians were incidental and unintended.

Answer "b" is incorrect because the rule applies to enemy combatants not civilians.

Answer "d" is incorrect because the Marines legitimately engaged an enemy target. The wounds caused to the Afghan civilians were incidental and unintended. While there was no violation of the Law of War and therefore no requirement to report a violation, common decency dictates that the Platoon Commander should have provided first aid and assisted in obtaining medical attention. Finally, good judgment and common sense should have led him to report the incident to his superiors. In addition to the humanitarian concern, Marine efforts to gain local support from the population were immeasurably harmed by his failure to assist the wounded Afghans.

2. Should this incident be reported?

- a. Yes, while not a violation of the Law of War, any incident involving wounds and injuries to civilian noncombatants should be reported to superiors.
- b. No, the wounds caused to the Afghans were unintentional and incidental to

legitimate military action against enemy combatants, are not a violation of the Law of War, and therefore there is no requirement to report them.

Correct answer: a

Discussion: Good judgment and common sense should have led the Marine Commander to report the incident to his superiors. In addition to the humanitarian concern, Marine efforts to gain local support from the population were immeasurably harmed by his failure to assist the wounded Afghans. It is important to remember that there are serious negative consequences in not reporting. The fact that the wounds and injuries were not intentional was lost when the Marine Commander refused to offer help. Public knowledge of the incident that resulted from the news stories could reduce support for the conflict at home and abroad, seriously damaging the image and hard won reputation of the Marine Corps. It may also turn the Afghans against the Marines, shutting down a valuable source of intelligence. Far worse could result if the village turned against the Marines and actively supported the insurgents and/or joined the insurgency by supplying villagers as active fighters.

Other answers explained:

While answer “b” is technically correct, it conflicts with Marines’ core values and most likely local Standard Operating Procedures.

Conclusion: As military professionals, it is important that we take time to reflect on the Marine values that separate us from our enemies. Marine conduct must be guided by our values and a compassion for those we are there to protect. The people are not the enemy but can be made so by careless as well as deliberate acts that indicate indifference to their needs. In the complex moral environment encountered in counter-insurgency (COIN) operations, concern for the welfare of the population is an important factor in defeating the insurgency. COIN forces aim to mobilize the good will of the people against the insurgents. Therefore, the populace must feel protected, not threatened, by COIN forces’ actions and operations. Proper training repeatedly integrates many possible ethical scenarios into the tactical exercises in preparation for the COIN environment. Education and training must prepare Marines and deal with new and complex situations. We must conduct ourselves as professionals at all times—do the right thing even when no one is looking.

Chapter 7: Marines Do Not Steal; They Respect Private Property and Possessions

7.1 Baksheesh

Introduction

During the fall of 2005, units of the I Marine Expeditionary Force (I MEF) were assigned responsibility for stability operations in Iraq's al-Anbar province and the Euphrates River Valley towns of Ramadi, Fallujah, Hit, and Haditha. The I MEF Marines were there to protect the Iraqi citizens against a complex mix of insurgent groups consisting of Saddam Hussein's former regime elements, foreign fighters traveling the Euphrates River Valley from Syria, and the Jordanian-born Al Qaeda in Iraq (AQI) leader Abu Musab al-Zarqawi.

A Provincial Reconstruction Team was located nearby and the Marines tried to keep a close relationship with them in order to maintain unity of effort.

The Incident

The battalion had been conducting operations in western al Anbar Province for just over a month.

The company was conducting daily mounted and dismounted patrols through towns in the Area of Operations. These were conducted in a distributed fashion, departing from and recovering to the Forward Operating Base (FOB) and were under the tactical command of Platoon Commanders and Squad Leaders.

Reconstruction efforts had finally begun to take hold and employment was rising. There was a slow turning of the local population away from the insurgents and toward the Iraqi Security Forces and Marines. The local inhabitants began to see that their future looked to be much brighter throwing their support behind the Government of Iraq and their own security forces.

The focus of the Marines remained on pursuing AQI and insurgents, but a larger and larger portion of their attention was devoted to supporting the Provincial Reconstruction Team. I MEF used Commander's Emergency Response Program funds to support the overall efforts, funding numerous small projects, typically police stations and other facilities related to the Iraqi Security Forces. Each battalion had a Civil Affairs Officer who distributed those funds to local contractors.

A Battalion Civil Affairs Officer, a Marine Major, was to make a \$75,000 payment to an Iraqi contractor who had refurbished a local police station. The Major organized a three HMMWV patrol to visit the site and inspect the work. If the work was satisfactory, the contractor would be paid; if it was not, it was hoped that the sight of the American cash would properly motivate the contractor to bring the work up to speed.

The Major rode in the second HMMWV. The patrol arrived at the police station and the contractor was there. The Major's driver got out and followed him into the police station. The Major and contractor walked around and seemed to conduct a very perfunctory inspection. They finished in the entry courtyard of the police station. The Major counted out \$50,000 in US currency and handed it to the contractor. The contractor said, "The contracted price was \$75,000." The Major responded, "There is a handling fee, baksheesh."

The Major and driver got back in their HMMWV and headed back to the FOB with the other vehicles. The Major counted out \$1000 and put it next to the driver. "Nobody knows where this money goes."

Questions

1. Which of the *Marines' Rules* may have been violated here?
 - a. Marines do not steal; they respect private property.
 - b. Marines do their best to prevent violations of the Law of War, and report all violations to their superiors.
 - c. Marines are obligated to refuse unlawful orders.
 - d. None of the above.

Correct Answer: d

Discussion: The correct answer is “d” because this scenario does not address violations of the Law of War. In the context of this scenario the act of stealing the money is not theft from protected persons or theft from/of property as defined in the Law of War. However, theft and corruption has an impact on the conflict. This is the theft of funds provided by American taxpayers to assist with the reconstruction of Iraq. These projects contribute directly to erasing those conditions such as unemployment and lack of public services (trash collection, power, water, electricity, education, police and fire protection) that fuels the insurgency. When that money is siphoned away by corrupt government and military officials or contractors then projects cannot be completed or completed properly. Therefore the theft by the Civil Affairs Officer indirectly impedes efforts to defeat the insurgency, bring democratic government to the Iraqi people and prolongs the US presence in Iraq, which can cost more Coalition and Iraqi lives.

Other answers explained:

Answers “a” through “c” are incorrect because they do not apply in this scenario. They are each one of the *Marines' Rules*, which are designed to guide Marine conduct in order to prevent violations of the Law of War. They enable Marines to win America's wars while keeping our honor clean.

2. Is the Marine driver obligated to report the incident?
 - a. No, it is not a violation of the Law of War therefore there is no obligation to report it.
 - b. No, bribes are the way things are done in Iraq and its best to “go along to get along.”
 - c. No, as long as he does not take the money, the driver has committed no wrongdoing and is not obligated to report the wrongdoing of the Civil Affairs Officer.
 - d. Yes, a violation of *Marines' Rules* “Marines do not steal” requires the driver to report the incident to Marine superiors.
 - e. Yes, while it is not a violation of the Law of War, Marines are duty bound to report violations of Uniform Code of Military Justice (UCMJ).
 - f. None of the above.

Correct answer: e

Discussion: Answer “e” is correct because in the context of this scenario the act of stealing the money is not theft from protected persons or property as defined in the Law of War. Marines have an affirmative obligation to report violations of the UCMJ. Marines willingly accept this obligation when we take the Oath of Enlistment or the Commissioning Oath: “...to support and defend the Constitution of the United States against all enemies foreign and domestic.” This obligation is a “duty,” and an essential element of that duty is the obligation to report wrongdoing and violations of the UCMJ. The Civil Affairs Major has clearly compromised his honor and integrity and violated articles of the UCMJ by stealing and offering the driver a bribe to keep him quiet.

Other answers explained:

Answer “a” is incorrect in that this incident occurred during war, but it is not a violation of the Law of War. However, the Marine is honor bound and has an obligation, a duty to report this to his superiors. Failure to do so is dereliction of this sacred duty and not only risks punishment under the UCMJ but also tarnishes the reputation of the driver and USMC. The Marines will remain a respected professional organization only as long as its members maintain the standards of duty and honor. It will require great moral courage to turn in the Major. He will certainly deny the accusation and may even accuse the driver of the wrongdoing. However, courage is one of the Marines’ core values and it is moral courage that the driver is required to demonstrate in this scenario.

Answer “b” is incorrect because it is never ok to justify wrongdoing by stating the “everybody does it.” It remains wrong no matter how many people do it. One essential means to demonstrate to the Iraqis that a military force in a democracy must be trustworthy and serve the people is to model that behavior in all that we do.

Answer “c” is incorrect because it is not acceptable to simply comply with standards of conduct; Marines cannot tolerate the wrongdoing of other Marines. We must hold one another accountable for our actions. This may be difficult for young Marines to grasp because we grow up accepting the expectation among youth that you never “snitch” on or “call out” a friend. Marines are no longer children. We live by a higher code that recognizes that Marines cannot fulfill their obligations to the American people by ignoring or tolerating the wrongdoings of other Marines. Marines will find themselves held to standards of behavior, which exceed what their civilian counterparts are expected to comply with. Others may lose money, face, or faith through the actions of a dishonest car salesman or investment broker, corrupt public official, or hypocritical televangelist. But Americans instinctively sense that cheating, stealing, lying, incidents of gross sexual impropriety, untruthful reporting of military operations or expenses, and attempted cover-ups of the same, pose an intolerable threat to our continued existence as a nation of free and independent men and women. This burden of ethical behavior does not seem to be equally distributed on civilian and military shoulders. But Americans do seem to believe that this disproportionate moral burden is both reasonable and necessary. What Abraham

Lincoln said about turning a blind eye is a good guide in this case: "To sin by silence when they should protest makes cowards out of men."

Answer "d" is incorrect because the reason the Major must be reported is not because he violated the Law of War; it is because he violated the articles of the UCMJ. Violations of the Law of War are punishable through the UCMJ but this is not such a violation.

Answer "f" is not correct because there is a correct answer. The correct answer is "e."

Conclusion: The bedrock of our character rests sometimes on what we do as Marines when no one is watching. It is this quality that guides Marines to exemplify the ultimate in ethical and moral behavior: never to lie, cheat, or steal; to abide by an uncompromising code of integrity; to respect human dignity; to have respect and concern for each other. The quality of maturity, dedication, trust, and dependability that commits Marines to act responsibly; to be accountable for actions; to fulfill obligations; and to hold others accountable for their actions.

These qualities are expected in war, operations other than war, and while training for war. In each of these environments, Marines can expect to confront moral dilemmas that are complex and ambiguous and where the correct answers are not always evident or obvious. It may be a choice between two rights like loyalty to a fellow Marine vice loyalty to the Corps. It may involve circumstances where it appears that no one will suffer the consequences of wrong doing such as in this case where in the millions expended on this war, one will hardly notice the loss of a few thousand. We cannot expect rules to cover every situation because every situation is unique. This is why the Marine Corps is not a rules-based organization but a values-based profession--part of the distinguished and time honored Profession of Arms. While rules are necessary to set minimum standards and expectations, Marines are primarily men and women of character whose conduct is guided by deciding what is right and then having the courage to do the right thing. We are what we do and only by practicing Marine virtues can we retain the right to call ourselves Marines--a title respected worldwide because of the qualities demonstrated by those Marines who went before us and those who serve today. One of the most important expectations of every Marine is to protect and maintain that legacy.

7.2 War Trophies

Introduction

During the spring of 2003, upon completion of the initial combat phase of Operation Iraqi Freedom (OIF), units of the I Marine Expeditionary Force (I MEF) were assigned responsibility for security operations in Najaf and other towns in the South Central Sector. A Rifle Company from Camp Pendleton operated from a Forward Operating Base (FOB) together with the other companies from their parent battalion.

The Incident

The Marine Rifle Company operated in a very uncertain environment. Iraqi police had disappeared. The Iraqi Army had “disbanded.” Iraqis loyal to Moqtada al Sadr challenged the authority of the Marines, but did not openly engage in violence against them.

Operating in such an uncertain environment, I MEF ordered its units to fill the void in Najaf and conduct presence patrols.

With the sudden breakdown of the power of the Iraqi regime, local Iraqis went on a spree of looting.

Initially tolerant of early expressions of joy and relief by the Iraqis, eventually the Marines recognized the need to establish an atmosphere of law and order.

Marines frequently entered private homes and government buildings as part of their normal patrol activities. One squad entered a former Iraqi Army facility. There they discovered a box of 12 new Belgian Browning High Power Pistols.

The Squad Leader secured the pistols and carried them back to the FOB so they wouldn’t fall into the wrong hands. There he gave one to the Platoon Commander, one to the Platoon Sergeant, kept one for himself and turned nine in to the Chain of Command.

Questions:

1. Which of the basic rules of the Law of War listed below may apply in this case?
 - a. Marines do not destroy or confiscate the personal property of enemy soldiers who surrender.
 - b. Marines do not steal; they respect private property and possessions.
 - c. Marines destroy or confiscate no more than the mission requires.
 - d. None of the above.

Correct Answer: d

Discussion: This scenario addresses issues of domestic law and command policy rather than the Law of War. The Law of War authorizes the confiscation of enemy military property. War trophies or souvenirs confiscated as enemy military property is legal under the Law of War. Personal retention of war trophies by an individual Marine, however, is restricted under US law. Confiscated enemy military property is property of the US. The property becomes a war trophy — and capable of legal retention by an individual Marine as a souvenir — only as authorized by higher authority. US law requires that all enemy material captured or found abandoned shall be turned in to “appropriate” personnel. The law allows members of the Armed Forces to request enemy items as souvenirs subject to implementing directives and service regulations. The request would be reviewed by the Chain of Command “consistent with military customs, traditions, and regulations.” The law authorizes the retention of captured weapons as souvenirs if rendered unserviceable and approved jointly by DoD and the Bureau of Alcohol, Tobacco, and Firearms (BATF) (but is not currently authorized in OIF or OEF).

For example, in current USCENTCOM policy for personnel deployed to OIF, a “war souvenir” is any item of enemy public or private property utilized as war material (i.e., military accouterments) and includes the following items: 1) helmets and head coverings; 2) uniforms and uniform items such as insignia and patches; 3) canteens, compasses, rucksacks, pouches, and load-bearing equipment; 4) flags; 5) some types of knives and bayonets; 6) military training manuals, books, and pamphlets; 7) posters, placards, and photographs; 8) currency of the former regime; or (9) other items that clearly pose no safety or health risk, and are not otherwise prohibited by law or regulation. A war souvenir does not include weaponry except for the permitted bayonets and knives.

Other answers explained:

Answers “a” and “b” are incorrect because they both address the issue of confiscating the private property of Enemy Prisoners of War (EPW) and civilians, which is prohibited in most cases and not at issue in this scenario.

Answer “c” is incorrect because this scenario does not involve the permissible destruction or confiscation of protected property in the conduct of military operations.

2. What should the Squad Leader have done?

- a. Turned the abandoned weapons over to the Chain of Command immediately.
- b. Retained one weapon for himself but turned in the rest until the unit nears redeployment and then request he be allowed to retain one. If he turned them all in right away he might not get one back as a rightful war souvenir he earned.

Correct Answer: a

Discussion: Answer “a” is correct in this scenario. Retaining the weapons not only violates the law, it sets a poor example for the other Marines. It is likely common knowledge in the squad and platoon (or will be soon) that the Squad Leader, the Platoon Commander and the Platoon Sergeant are all violating the law by retaining these weapons. Doing so undermines their credibility as leaders. It will be more difficult in the future to maintain discipline or to discipline subordinate Marines when all know they are violating the law/regulations. Even if they were authorized to keep the weapons, the Squad Leader’s actions appear like he is currying favor with his leaders and is taking care of himself by keeping weapons that, if authorized to keep, should have been shared with the other members of the squad.

Other answers explained:

Answer “b” is incorrect because retaining one weapon violates the law, established policy and regulations. It is conflicts with Marine values and service before self.

3. What should the Platoon Commander and Platoon Sergeant have done?

- a. Turned in the nine weapons and retained three until the unit neared redeployment and then request that each be allowed to retain one. If they turned them all in right away they might not get one back one as a hard won war souvenir they earned.
- b. Turned them all in to the Chain of Command right away.

Correct Answer: b

Discussion: Answer “b” is correct in this scenario. Retaining the weapons not only violates the law, it sets a poor example for the other Marines. It is likely common knowledge in the squad and platoon (or will be soon) that the Squad Leader, the Platoon Commander and the Platoon Sergeant are all violating the law by retaining these weapons. Doing so undermines their credibility as leaders. It will be more difficult in the future to maintain discipline or to discipline subordinate Marines when all know they are violating the law/regulations. Even if they were authorized to keep the weapons, the Squad Leader’s actions appear like he is currying favor with his leaders and is taking care of himself by keeping weapons that, if authorized to keep, should have been shared with the other members of the squad. Additionally, they should privately counsel the Squad

Leader or his poor judgment for even suggesting this illegal and unethical course of action. Finally, they should review the provisions and purpose of the War Souvenir Policy with all Marines in the platoon.

Other answers explained:

Answer “a” is incorrect because retaining the weapons violates the law, established policy and regulations. It conflicts with Marine values and service before self.

Conclusion: Marines do the right thing. They are servant leaders who take care of their Marines’ welfare and set the proper example for the Marines under their command. Marines are professional and part of the world’s most feared and trusted force. Their service is for the sake of country and corps, not for self-preservation or reward.

Additionally, the key to a clear and workable War Souvenir Policy is to publicize it before deployment, work it into all exercises and plans, and train with it. An effective War Souvenir Policy integrates the following considerations:

- Does the policy make sense?
- Can it be understood at the lowest level?
- Is the policy disseminated through all command information means available (unit bulletin boards, dining facilities, post newspaper, etc.)?
- Is the policy standardized across all levels of command?
- Are there proper inspection procedures prior to and after redeployment?

One of the prime purposes of a War Souvenir Policy is to limit Marines from exposing themselves to danger (in both Panama and the 1991 Persian Gulf War, US military personnel were killed or seriously injured by exploding ordnance encountered when they were looking for souvenirs).

Chapter 8: Marines Do Their Best To Prevent Violations of the Law of War, and Report All Violations To Their Superiors

8.1 Vigilante Justice

Introduction

During the fall of 2005, units of the I Marine Expeditionary Force (I MEF) were assigned responsibility for stability operations in Iraq's al-Anbar province and the Euphrates River Valley towns of Ramadi, Fallujah, Hit, and Haditha. The I MEF Marines were there to protect the Iraqi citizens against a complex mix of insurgent groups consisting of Saddam Hussein's former regime elements, foreign fighters traveling the Euphrates River Valley from Syria, and the Jordanian-born Al Qaeda in Iraq (AQI) leader Abu Musab al-Zarqawi. A Rifle Company from Camp Pendleton operated from a Forward Operating Base (FOB) together with the other companies from their parent battalion.

The Incident

The Rifle Company Commander had been conducting operations in al Anbar Province for over five months.

The company was conducting daily mounted and dismounted patrols through towns in the Area of Operations. These were conducted in a distributed fashion, departing from and recovering to the FOB and under the tactical command of Platoon Commanders and Squad Leaders.

There was a high tempo of operations and the battalion had taken many casualties from Improvised Explosive Devices (IED) and insurgent attacks, including a very popular and highly respected Platoon Sergeant.

Several members of one of the rifle squads, including a Squad Leader, began to express frustration that they would often detain suspected IED triggermen only to have them released from detention. After one particularly notorious suspected IED triggerman was released from detention by an Iraqi judge for the third time, they conceived a scheme to “Deal with him once and for all.”

During a night patrol in the neighborhood where the suspected triggerman lived, the squad deviated from the patrol route and went to his house. Kicking in the door, they forced entry. Initially, finding only his terrified wife and her two small children, the Marines searched the home throwing objects onto the floor, damaging possessions but

find no one and no IED making materials. Furious that they missed him again, the Marines went out into the street where they theorized the triggerman might be hiding in an adjacent house.

The Marines kicked in the door of the adjacent house, and finding a Military Aged Male (MAM) inside, dragged him out into the street where the Squad Leader quickly shot him. They then disposed of the body in pool of raw sewage in an open lot next to the house.

The Marines continued their patrol and recovered to the FOB joining the rest of the platoon. The Squad Leader reported negative contact in the post-op debrief. Later that week, as the Platoon Commander briefed his Marines that there had been no IED attacks for five days (the number of days since the Squad Leader shot the MAM), one of the Marines in the squad called out, “Well I guess that was him then. He got what he deserved.”

Questions

1. Which of the nine *Marines' Rules* (Basic Principles of the Law of War) may have been violated here?

- a. Marines fight only enemy combatants.
- b. Marines do not torture or kill prisoners of war or detainees.
- c. Marines treat all civilians humanely.
- d. Marines do their best to prevent violations of the Law of War, and report all violations to their superiors.
- e. All the above.

Correct answer: e

Discussion: All of the selections are correct and therefore answer “e” is the correct response. This case is a classic example where Marines took matters into their own hands, disregarding Marine values, the *Marines' Rules*, and the Law of War. Historically several common factors contribute to the commission of War Crimes. The factors evident in this scenario include high friendly casualties, a breakdown in small unit disciplinary standards, the lack of a clearly defined enemy, and a high frustration level among troops. Using the rationale often employed by frustrated troops, “the ends justify the means,” the Marines, led by their Squad Leader, violated several of the *Marines' Rules* and committed several war crimes. They include willfully killing the suspected insurgent, destroying private property, and causing inhumane suffering to the family of the suspected insurgent.

Other answers explained:

Answer “a” is a correct answer because the Marines unlawfully and without orders entered the two houses with no evidence that they contained enemy combatants. This indiscriminant use of force without a Positive Identification (PID) or a reasonable certainty that the houses contained a legitimate military target violates the Rules of Engagement (ROE). Reasonable certainty is more than “maybe” or “might be.” Simply identifying someone as a MAM is not a PID. They had no reasonable belief that the MAM was their suspected triggerman; only a suspicion. He was not engaged at that time in any criminal activity nor was he on any list of suspects.

Answer “b” is a correct answer because Marines killed the detainee rather than securing him and returning him to the FOB.

Answer “c” is a correct answer because the Marines failed to treat the suspected insurgent’s family and their property with respect and dignity. The Marines treatment of the family was dehumanizing and caused them great psychological and emotional suffering.

Answer “d” is a correct answer because no one in the squad tried to prevent the violations of the Law of War or report them afterwards.

2. What Marines may have violated the Law of War?

- a. All the Marines for their actions during the patrol including the shooting of the suspected insurgent.
- b. The Squad Leader only. He was in command and all violations committed are his responsibility alone. The other Marines simply followed orders.

Correct Answer: a

Discussion: Even though the Squad Leader was in command of the patrol all that occurred during the patrol involved the members in the squad. As *Marine Rule #9* states, “Marines are to do their best to prevent violations of the Law of War.” In this scenario it appears that the members of the squad willingly participated, or at a minimum acquiesced, in the actions that occurred. While the Squad Leader shot the insurgent, the other members of the squad participated in the unlawful actions. Marines have an obligation to prevent such acts, either in fellow Marines or by others, civilian or military.

Other answers explained:

Answer “b” is incorrect because the justification that the Marines were “just following orders” is never a defense for violating the Law of War. If given an unlawful order to commit a criminal act or Law of War violation, Marines are obligated to seek clarification of the order, and ultimately refuse the unlawful order.

3. What should the Platoon Commander do when hearing the Marine’s comment, “Well I guess that was him then. He got what he deserved.”?

- a. Nothing. He has no indication or suspicion of any wrong doing and starting an inquiry may hurt unit trust and morale.
- b. He should question the Marine and if he suspects a possible violation then he must report it to his superiors.

Correct answer: b

Discussion: The comment should suggest to the Platoon Commander that something may have happened that he is unaware of. At the very least, he should look into the intelligence aspect. The Marine who made the comment seems to have made a linkage to the drop in IED incidents with some individual. As a responsible leader, he should follow that up because it may help the larger interests of defeating the local insurgency. Further questioning will likely result in discrepancies in the Squad Leader’s report or an unwillingness by the Marine to explain his comment. If during his questioning he gets an indication that Marines in his platoon may have been involved in a violation of the Law of War or some other unlawful act, he must report it to his superiors. A reportable

incident is any *possible, suspected or alleged* violation of the Law of War. Marines are also obligated to report any actual or suspected violation as soon as practical. Doing so as soon as possible ensures that the incident is investigated quickly, crucial evidence can be preserved and memories are fresh.

Other answers explained:

Answer “a” is incorrect because the Platoon Commander should at the very least follow up to determine what the Marine meant. As mentioned above, the comment indicates the cause in a reduction of IED incidents that the Platoon Commander is likely unaware of. The Marine appears to know something about the cause. That questioning the Marine might harm the trust and morale in the unit is irrelevant especially if a crime was committed. In contrast, this crime is an indication of poor leadership and discipline within the squad that will negatively impact the competence and morale of the unit. Over time, the weight of the crime on the Marines in the squad may undermine their combat effectiveness endangering the lives of other Marines. If knowledge of the incident surfaces later, the Marines who participated will be charged with violations of the Uniform Code of Military Justice (UCMJ) for their role in the incident. There are numerous examples where such an incident, and its consequences, destroyed the morale and cohesion of military units.

4. Who should the incident be reported to?

- a. The Company Commander.
- b. The Battalion Commander.
- c. The Company First Sergeant.
- d. The nearest Chaplain or Judge Advocate.
- e. All of the above.

Correct answer: e

Discussion: All of the answers in this question are correct. Normally, suspected violations are reported to the immediate commander, in this case the Company Commander. The Battalion Commander is also possible. The key is to report it promptly so that an investigation can begin as soon as possible while evidence is fresh and memories clear. In circumstances making other means of reporting impractical or untimely, report the matter to a chaplain, an Inspector General representative, Judge Advocate or military police investigator if more readily available, who shall then report the matter as directed in MCO 3300.4.

Other answers explained:

Answers “a” through “d” are only partially correct in that they each represent only one of the possible persons that the Marine Platoon Commander could report a possible or suspected violation of the Law of War.

Conclusion: Marines are disciplined in combat and other military operations short of combat. Taking matters into their own hands in a form of “vigilante justice,” the Marines violated the Law of War, and dishonored our Nation and the Marine Corps. Every Marine has a legal and moral obligation to disobey a plainly obvious unlawful order as demonstrated in this scenario. If faced with a suspected unlawful order, Marines must:

- Get the order clarified
- Get your superior to confirm the order
- Challenge the unlawful order
- Get the order changed

It must also be assumed that the incident may have been observed and certainly the wife of the suspected insurgent will spread news of it. Far from weakening our enemy’s will to fight, disobeying the Law of War strengthens it. Killing detainees and mistreating civilians only fuels the insurgency. One of the insurgents’ most effective ways to undermine and erode political will is to portray their opposition as criminals, untrustworthy or illegitimate. These attacks work especially well when insurgents can portray their opposition as unethical by the opposition’s own standards.

Another key part of any insurgent’s strategy is to attack the will of the domestic and international opposition. To combat these efforts, Marines must treat detainees, civilians, insurgents and Enemy Prisoners of War (EPW) humanely, according to our core values and internationally recognized human rights standards. In counter-insurgency (COIN) operations, preserving noncombatant lives and dignity is central to mission accomplishment. This imperative creates a complex ethical environment. Public knowledge of the incident could reduce support for the conflict at home and abroad, seriously damaging the image and hard won reputation of the Marine Corps.

Following the Law of War enhances public support of our military mission; violations of the Law of War seriously reduce the support and respect that Marines have historically enjoyed, not only from the US public, but also from people in other countries. It is the generous and compassionate treatment of the enemy and the local population by Marines in the past that has contributed to winning the “hearts and minds” of the people. Compliance not only helps to end the conflict earlier but it also reduces the waste of our resources in combat and the costs of reconstruction after the conflict ends. Most importantly, it reduces the number of our Marines and civilians who are killed or wounded. Finally, disobeying the Law of War is also a crime punishable under the UCMJ.

What leaders can do specifically:

- “Set the right tone” by encouraging and rewarding honesty, integrity, and professionalism.
- Take every opportunity to talk to subordinates about important topics like values, duty, integrity, and character.

- Before every operation, as part of the orders and rehearsals process, address the Law of War issues Marines will likely encounter.
- Help subordinates understand that professionalism and discipline contribute to mission success.
- Reaffirm values after friendly casualties immediately; do not let them impact professionalism and discipline.
- Lead by example!

What we all can do as Marines:

- Conduct ourselves as professionals at all times—do the right thing even when no one is looking.
- Encourage values and high standards in fellow Marines.
- Never accept or tolerate bad behavior by other Marines.

8.2 Detainee Handling

Introduction

During the fall of 2005, units of the I Marine Expeditionary Force (I MEF) were assigned responsibility for stability operations in Iraq's al-Anbar province and the Euphrates River Valley towns of Ramadi, Fallujah, Hit, and Haditha. The I MEF Marines were there to protect the Iraqi citizens against a complex mix of insurgent groups consisting of Saddam Hussein's former regime elements, foreign fighters traveling the Euphrates River Valley from Syria, and the Jordanian-born Al Qaeda in Iraq (AQI) leader Abu Musab al-Zarqawi. A Reserve Rifle Company from Massachusetts operated from a Forward Operating Base (FOB) together with the other companies from their parent battalion.

The Incident

The Rifle Company Commander had been conducting operations in western al Anbar Province for over three months.

The company was conducting daily mounted and dismounted patrols through towns in the Area of Operations often in conjunction with both the Iraqi Army and Iraqi Police. These were conducted in a distributed fashion, departing and recovering at the FOB and under the tactical command of Platoon Commanders and Squad Leaders. On a recent patrol with the local police, a suspected insurgent discovered with traces of explosives on his hands was detained and taken into custody by the police for further questioning.

The Platoon Commanders conducted regular visits to the Iraqi police, to coordinate as well as to mentor. The 1st Platoon Commander regularly visited the Iraqi police station in one of the small towns in the Hasabayah area. He enjoyed these visits. These police were led by a very aggressive and professional leader who had made significant progress in helping root out insurgents as well as making significant strides in getting local crime under control as well. On this visit, the Platoon Commander wanted to find out if the detainee provided any actionable intelligence he could use to develop potential targets.

Additionally, the Platoon Commanders, as part of their duties, regularly cross checked the logs of detainees with the actual detainees and inspected the detainees for signs of abuse. The 1st Platoon Commander occasionally discovered discrepancies in the logs, but

the Police Commander always had a good excuse. There were never signs of abuse of the detainees in his custody.

On one of their regular visits to this police station, the Platoon Commander, his interpreter and his Platoon Sergeant, a Boston police officer, checked the logs and did an inspection of the detainees.

The Platoon Sergeant, based on his experience as a cop, felt that something was wrong. The detainee who had traces of explosives on his hands was acting very strangely. His hair was soaking wet, he was very agitated and tried to talk to the Platoon Commander. A quick visual examination of his arms and legs revealed distinct rope burns on his wrists and ankles. The Iraqi police commander translated that the detainee was “complaining about the food.” The Platoon Commander’s “terp” indicated with his facial expression that the Police Commander’s explanation was not truthful.

The Platoon Sergeant looked around the station and found in a room adjacent to the police commander’s office he had never seen before. In it was a table, ropes, blindfolds, wet cloths, buckets, a large book wrapped with duct tape and other suspicious materials. The Platoon Sergeant advised the Platoon Commander of his discovery, clearly there was more going on in this police station than the police commander was letting on.

The Platoon Commander summoned the police commander and quietly but firmly demanded to know what was going on. The police commander replied “Lieutenant,

every time you visit, you tell me about the importance of getting information. Trust me, we Iraqis know how to get information. I have been doing it for years. Am I not your best source of intelligence?”

Questions

1. Is there evidence of a violation of the Law of War?
 - a. No, even though there are signs of detainee abuse, the Law of War only applies to military personnel. Because the detainee is in the custody of civilian police, there is no violation of the Law of War.
 - b. No, this is a human rights abuse not a Law of War abuse.
 - c. Yes, the Law of War applies to both military and civilian personnel.

Correct Answer: c

Discussion: Both military and civilian personnel are bound by the Law of War, which encompasses all international law and regulates the conduct of armed hostilities. War crimes are most often associated with members of the armed forces, but civilians and civil authorities have been known to violate the rights of individuals protected by both the Geneva and Hague Conventions. The fact that the civilian is not a member of the military will not exempt him from prosecution in an appropriate forum for law of war violations. As an “Allied” power in this conflict and a signatory to the Law of War Conventions and international human rights treaties, Iraq is also obligated to comply. Additionally, as “Allied” powers in the conflict, each party is obligated to ensure the other complies.

Other answers explained:

Answer “a” is incorrect because the Law of War does apply to civilians as well as military personnel.

Answer “b” is incorrect because even though this answer is partially correct in stating that the torture of detainees is a human rights abuse, it is also a violation of the Law of War.

2. Which of the *Marines’ Rules* (Basic Principles of the Law of War) may be violated here?

- a. Marines do not torture or kill Enemy Prisoners of War (EPW) or detainees.
- b. Marines treat all civilians humanely.
- c. Marines do not harm enemy soldiers who surrender. Marines disarm them and turn them over to their superiors.
- d. Marines do their best to prevent violations of the Law of War, and report all violations to their superiors.

Correct Answer: d

Discussion: Marines have the *obligation* to try and prevent violations of the Law of War *and* to report all possible, suspected or alleged violations. In this scenario, it was not possible to prevent the possible mistreatment and torture of the detainee because the Platoon Commander and his Platoon Sergeant arrive after it happened; but the evidence strongly suggests that the detainee was mistreated and tortured and therefore it must be reported.

Other answers explained:

Answer “a” is incorrect because in this incident the Marines did not participate in mistreating or torturing the detainee but learned of it after the fact.

Answer “b” is incorrect because in this incident the Marines are addressing detainee treatment not the treatment of civilians.

Answer “c” is incorrect because this incident does not involve the surrender of combatants directly to the Marines. They found the detainee already in the custody of the Iraqi Police.

3. What actions should the Platoon Commander take?

- a. Report the incident to his superiors.
- b. Praise the Police Commander in public but in private firmly insist that he not repeat these unlawful interrogation techniques in the future.
- c. Remove the detainee from Iraqi custody and turn him over to superiors.
- d. Nothing, the detainee is in Iraqi Police not Marine custody and it is an Iraqi Police matter.
- e. Both a and c above.

Correct answer: e

Discussion: Marines have the *obligation* to try and prevent violations of the Law of War *and* to report all possible, suspected or alleged violations. In order to prevent further acts of mistreatment and torture, the Marines must remove the detainee from Iraqi Police custody. Soldiers and Marines have undertaken raids on alleged police torture facilities in Iraq to free detainees when evidence surfaced of unlawful treatment of detainees.

Other answers explained:

Answer “a” and “c” are each only partial correct. The Marines must both report the suspected violation *and* remove the detainee from custody in order to remove the threat of future detainee abuse.

Answer “b” is incorrect because the Marines fail to report the incident and fail to safeguard the detainee. While it is important in Iraqi culture to “save face” and not embarrass the commander in front of his subordinates, the obligation to comply with the Law of War is of greater importance. Praising the Iraqi Commander in public for obtaining important intelligence will only serve to legitimize his conduct and encourage further abuse.

Answer “d” is incorrect Marines have the *obligation* to try and prevent violations of the Law of War *and* to report all possible, suspected or alleged violations. As “Allied” powers in this conflict and signatories to the Law of War Conventions and international human rights treaties, Iraq and the US are both obligated to comply. Additionally, as “Allied” powers in the conflict, each party is also obligated to ensure the other complies.

4. Is the Platoon Commander obligated to prevent these interrogation methods in the future?

- a. Yes, even when detainees are in Iraqi Police custody, Marines have an obligation to try and prevent violations of the Law of War.
- b. No, when already in Iraqi Police custody, it is an Iraqi civil matter and is therefore, outside of Marine jurisdiction.

Correct answer: a

Discussion: As mentioned previously, the Marine Platoon Commander is obligated to prevent violations of the Law of War. Marines are required to protect detainees from abuse. In taking custody of the detainee away from Iraqi Police, it is possible that the Iraqi police could keep future detainees elsewhere or take more care to disguise the physical signs of abuse. Clearly the Iraqi Police commander believed he was pleasing the Marines and that the Marine Platoon Commander condoned his actions because they produced results.

Answer “b.” Answer “b” is not correct because the Marines fail to report the incident and fail to safeguard the detainee. Although the Iraqi Police has the authority to detain, in the future the Marine Platoon Commander and Platoon Sergeant should check more detainees frequently and more carefully. Until assured that detainee abuse will not continue to occur, it may be wise not to turn detainees captured by Marines over to these Iraqi Police.

Conclusion: As military professionals, it is important that we take time not only to reflect on the Marine values that separate us from our enemies, but also to ensure that allies comply as well. Marine Corps leaders must emphasize to our allies that on the battlefield, the principles of honor and morality are inextricably linked. Leaders do not allow themselves to fall victim to the philosophy that “the ends justify the means” The environment that fosters insurgency is characterized by violence, immorality, distrust, and deceit; nonetheless, Marine Corps leaders continue to demand and embrace honor, courage, and commitment to the highest standards among subordinates and allies and work to help instill those values at every opportunity.

Marine Leaders at every level establish an ethical tone and climate that guards against the moral complacency and frustrations that build up in protracted counter-insurgency (COIN) operations. Leaders remain aware of the emotional toll that constant combat takes on their superiors and subordinates alike, and the potential for injuries and illegal conduct resulting from prolonged exposure to combat.

To combat the factors that can lead to the commission of War Crimes requires effective leadership and training of our Marines and allies. Host nation and allied forces must know that Marines will not tolerate unethical conduct among Marines and allies alike. Such training includes moral-ethical preparation for the operational environment. In the complex moral environment encountered in COIN operations, it is often counter-productive to use methods that violate the Law of War no matter how effective they may seem in the short term. COIN forces aim to mobilize the good will of the people against the insurgents. Therefore, the populace must feel protected, not threatened, by COIN forces' actions and operations. Proper training repeatedly integrates many possible ethical scenarios into the tactical exercises in preparation for the COIN environment. Education and training must prepare Marines and host nation forces to deal with frustrating and complex situations.

What can leaders do specifically?

- “Set the right tone” by encouraging and rewarding honesty, integrity, and professionalism in Marines and allies.
- Take every opportunity to talk to subordinates and allies about important topics like values, duty, integrity, and character. Use “teachable moments” to reinforce expectations.
- Before every operation, as part of the orders and rehearsals process, address the Law of War issues Marines will likely encounter.
- Help subordinates and allies understand that professionalism and discipline contribute to mission success.
- Immediately reaffirm values after mistakes are made; do not let them impact professionalism and discipline.
- Lead by example!

What we all can do as Marines:

- Conduct ourselves as professionals at all times—do the right thing even when no one is looking.
- Encourage values and high standards in fellow Marines and allies.
- Never accept or tolerate bad behavior by other Marines or allies *including superiors*.

8.2 Responsible for All That Happens

Introduction

During the spring of 2005, units of the I Marine Expeditionary Force (I MEF) were assigned responsibility for stability operations in Iraq's al-Anbar province and the Euphrates River Valley towns of Ramadi, Fallujah, Hit, and Haditha. The I MEF Marines were there to defeat a complex mix of insurgent groups. A Rifle Company from Camp Pendleton operated from a Forward Operating Base (FOB) together with the other companies from their parent battalion.

The Incident

The Platoon was ordered to conduct a cordon and search in a village south of the provincial capital in conjunction with a Platoon of 20 Iraqi soldiers. Two Marine Squads would establish the cordon with the third squad tasked to conduct the search with the Iraqis.

The village was small with a population of approximately 5,000 people. Its buildings were typically two-story masonry construction lining narrow streets. The population was unfriendly, but not openly hostile. Small, very lethal groups of insurgents operated throughout the area. The area's infrastructure was devastated by combat operations, sewage ran in the street and garbage filled the vacant lots. Schools had not operated for months, so children played in the streets.

The two platoons moved to their dismount point in vehicles to begin the mission.

Marines of one squad patrolled along the main thoroughfare of the town with a squad of Iraqi soldiers.

From their front, the Marines and Iraqis began to take automatic weapons and small arms fire. They quickly deployed and returned fire. The Marines patrolling on the adjacent street moved to flank the insurgent shooters. Three armed Iraqi insurgents broke from cover, and ran away from the flanking unit, directly into the position of the third squad who quickly surrounded and detained them. Each was searched and flex cuffed. The

Platoon Commander arrived and recognized one of the three as a suspected insurgent who had been detained and released numerous times before.

The Marine Platoon Commander directed the three detainees be moved into an abandoned building. He signaled for the Iraqi Platoon Commander to meet him there.

The Marine Platoon Commander told his Platoon Sergeant that he was tired of the “catch and release” of insurgents and that he was going to turn the detainees over to the Iraqis because “they know how to deal with these guys.”

With the Platoon Sergeant and Radio Operator at his side, the Marine Platoon Commander explained through the interpreter what had occurred and told the Iraqi Platoon Commander that he was in charge of the detainees and to “take care of them.” All Marines departed the scene and moved down the street. After a few minutes, there was the sound of three pistol shots, spaced 30 seconds apart. The Iraqi Platoon Commander exited the building and rejoined the Marine Platoon Commander. He reported to him that the “problem was taken care of.” Upon hearing this, the Platoon Sergeant went into the building and found Iraqi soldiers dumping the three detainees in the back. Each was killed with a shot to the back of the head. Their hands still were still bound by the flex cuffs his Marines had placed on them. When he informed his Platoon Commander, he was told it was an Iraqi responsibility, not theirs.

Questions

1. What did the Platoon Commander mean when he turned over the detainees and told the Iraqi Platoon Commander to “take care of them”?
 - a. He wanted the Iraqis to process the Iraqi detainees. He was tired of doing so because in the past the detainees were later released. Giving the detainees to the Iraqis might ensure they are finally taken off the streets for good and put in jail.
 - b. He wanted the Iraqi Platoon Commander to execute the detainees or otherwise make them “disappear” permanently “no questions asked,” so they could not harm any more Marines.

Correct Answer: b

Discussion: The Marine Platoon Commander is clearly frustrated in finding a suspected insurgent back out on the street again as a threat to his Marines. His fellow detainees are also likely insurgents if they were apprehended with him. They too might also be released soon after capture. Frustration is one of the factors that contribute to violations of the Law of War. Unlike US forces, the Marine Platoon Commander believes the Iraqi Platoon Commander is not concerned with or constrained by adhering to the Law of War; he believes the Iraqi Platoon Commander shares his desire to simply execute the detainees as a far more efficient and effective way to remove them permanently as a threat to both Marines and Iraqi forces.

2. Were the Platoon Commander’s actions acceptable?
 - a. Yes, in the spirit of supporting Iraqi self reliance, these were Iraqi detainees and should have been released to their control. It was the Iraqi Platoon Commander’s decision to execute the detainees.
 - b. No, The Marine Platoon Commander’s instructions to the Iraqi Platoon Commander were vague and clearly implied that he wanted the detainees executed.

Correct Answer: b

Discussion: The Marine Platoon Commander’s instructions to the Iraqi Platoon Commander were vague and clearly implied that he wanted the detainees executed. Unclear orders are another of the factors that contribute to violations of the Law of War. In this case, the unclear orders were deliberately vague so he could probably later deny any subsequent accusations that he ordered or requested the Iraqis to execute the detainees. He clearly assumed that eliminating these detainees would make his Marines safer. However, as often happens, when you cross the threshold from acceptable to unacceptable conduct, the situation can spiral out of control with unforeseen consequences. It would be naïve to believe that there were no Iraqi witnesses to this incident. Word of the incident could spread quickly and perhaps add more strength and

support to the insurgents cause. Therefore this incident is placing these and other Marines in greater danger rather than less.

3. What Basics Principles of the Law of War did the Platoon Commander violate?

- a. Marines only fight enemy combatants.
- b. Marines do not harm enemy soldiers who surrender. Marines disarm enemy soldiers and turn them over to superiors.
- c. Marines do not torture or kill Enemy Prisoners of War (EPW) or detainees.
- d. Marines do their best to prevent violations of the Law of War.

Correct answer: d

Discussion: Marines legitimately caught and detained the Iraqis because of justifiable suspicions that they were insurgents. Similarly, no Marines were directly involved in executing the detainees. However, the Marine Platoon Commander's actions led directly to their execution. If he knew about, and even counted on, Iraqi indifferent adherence to the Law of War, then he clearly contributed to, rather than prevented, their execution, a violation of the Law of War.

4. What actions should the Platoon Sergeant have taken?

- a. He should have immediately requested that his Platoon Commander clarify his instructions to ensure the Iraqi Platoon Commander did not understand them to mean to execute the detainees.
- b. Reported the executions to the Company Chain of Command.
- c. Nothing. His Platoon Commander was correct. It is an Iraqi responsibility not his.
- d. Both a and b above.

Correct answer: d

Discussion: As mentioned previously, the Marine Platoon Commander's instructions to the Iraqi Platoon Commander were vague and clearly implied that he wanted the detainees executed. Unclear orders are another factor that contributes to violations of the Law of War. In this case, the unclear orders were deliberately vague so he could probably later deny any subsequent accusations that he ordered or requested the Iraqis to execute the detainees. The Platoon Sergeant has an obligation to try and prevent this from happening. The first step is to request clarification. If the vagueness of the orders was unintentional then this ensures that the Marine Platoon Commander clarifies them. If they were intentionally vague then the Platoon Sergeant's request for clarifications sends the clear signal that he understands what the Platoon Commander intends and that he will not allow his intentions to go unchallenged. To ensure this, the Platoon Sergeant should also take the Platoon Commander aside and make it clear that he will not allow any harm to come to the detainees, to include retaining custody and turning them over to his Marine superiors. Finally, if the Iraqis had executed the detainees, in spite of the Platoon

Sergeant's efforts, then he must report the incident. This is especially the case since he believes his Platoon Commander's actions contributed to their deaths.

5. Should this incident be reported?

- a. Yes, the actions of Platoon Commander led directly to the executions.
- b. Yes, while no Marines participated in the executions, it is a possible violation of the Law of War and must be reported.
- c. Both a and b above.
- d. No. He is required to report possible violations of the Law of War only when Marines commit them, not others.

Correct answer: c

Discussion: Yes, this incident must be reported. A reportable incident is "a possible, suspected, or alleged violation of the Law of War" (MCRP 4-11.8B, *War Crimes*). This includes those committed by those serving with or accompanying US Armed Forces. Both the actions of the Marine and Iraqi Platoon Commanders are reportable incidents. It is important to remember that there are serious negative consequences in not reporting this incident. That the Platoon Commander essentially assisted and sanctioned the execution of detainees can have serious consequences for the other Marines in the platoon. What might other Marines do when operating away for the remainder of the platoon? The Iraqis may assume that the Marines do not care if they adhere to the Law of War and will disregard them. If knowledge of the incident surfaces later, the Marines who were aware could also be charged with violations of the Uniform Code of Military Justice (UCMJ) for failing to report the incident. There are numerous examples where such an incident, and its consequences, destroyed the morale and cohesion of military units. Knowledge of the incident by the enemy could also encourage them to mistreat captured Marines and Iraqi soldiers and harden their resistance, making the conflict last longer and cost more lives--US and Iraqi. Public knowledge of the incident could reduce support for the conflict at home and abroad, seriously damaging the image and hard won reputation of the Marine Corps. In the previous conflict in the Gulf, favorable treatment of EPWs encouraged mass surrenders by Iraqi soldiers and helped end the war faster.

Conclusion: As military professionals, it is important that we take time to reflect on the Marine values that separate us from our enemies. Marine Corps leaders emphasize that on the battlefield, the principles of honor and morality are inextricably linked. Leaders do not allow themselves to fall victim to the pressures associated with prolonged combat against elusive, unethical, and indiscriminate foes, which can cloud judgment. The environment that fosters insurgency is characterized by violence, immorality, distrust, and deceit; nonetheless, Marine Corps leaders continue to demand and embrace honor, courage, and commitment to the highest standards. They know when to inspire and embolden their Soldiers and Marines and when to enforce restraint and discipline.

Leaders at every level establish an ethical tone and climate that guards against the moral complacency and frustrations that build up in protracted counter-insurgency (COIN) operations. Leaders remain aware of the emotional toll that constant combat takes on their superiors and subordinates alike, and the potential for injuries and illegal conduct resulting from prolonged exposure to combat.

To combat the factors that can lead to the commission of War Crimes requires effective leadership and training. Such training includes moral-ethical preparation for the operational environment. In the complex moral environment encountered in COIN operations, it is often counter-productive to use forces that are poorly trained or unfamiliar with how the Law of War is applied. COIN forces aim to mobilize the good will of the people against the insurgents. Therefore, the populace must feel protected, not threatened, by COIN forces' actions and operations. Proper training repeatedly integrates many possible ethical scenarios into the tactical exercises in preparation for the COIN environment. Education and training must prepare Marines to deal with the unexpected and unknown.

What leaders can do specifically:

- “Set the right tone” by encouraging and rewarding honesty, integrity, and professionalism.
- Take every opportunity to talk to subordinates about important topics like values, duty, integrity, and character.
- Before every operation as part of the orders and rehearsals process, address the Law of War issues Marines will likely encounter.
- Help subordinates understand that professionalism and discipline contribute to mission success.
- Immediately reaffirm values after friendly casualties; don't let them impact professionalism and discipline.
- Lead by example!

What we all can do as Marines:

- Conduct ourselves as professionals at all times—do the right thing even when no one is looking.
- Encourage values and high standards in fellow Marines.
- Never accept or tolerate bad behavior by other Marines *including superiors*.

8.3 Joint Patrol

Introduction

During the fall of 2007, units of the I Marine Expeditionary Force (I MEF) were assigned responsibility for stability operations in Iraq's al-Anbar province and the Euphrates River Valley towns of Ramadi, Fallujah, Hit, and Haditha. The I MEF Marines were there to protect the Iraqi citizens against a complex mix of insurgent groups consisting of Saddam Hussein's former regime elements, foreign fighters traveling the Euphrates River Valley from Syria, and the Jordanian-born Al Qaeda in Iraq (AQI) leader Abu Musab al-Zarqawi.

The Marine units had slowly transitioned to more of an overwatch role, allowing the Iraqi Security Forces to take a greater role in security and stability operations. Joint patrols were common.

The Incident

The battalion had been conducting Joint operations with Iraqi Security Forces in western al Anbar Province for just over a month.

The company was conducting daily mounted and dismounted patrols through towns in the Area of Operations, generally with Iraqi forces. These were conducted in a distributed fashion, departing from and recovering to the Forward Operating Base (FOB) and under the tactical command of Platoon Commanders and Squad Leaders.

Reconstruction efforts had finally begun to take hold and local civilian employment increased. Slowly but perceptibly, the local population turned away from the insurgents and toward the Iraqi Security Forces and Marines. The local inhabitants began seeing that their future looked much brighter by throwing their support behind the Government of Iraq and their own security forces. The local residents were gaining greater respect and trust in their nation's soldiers and police.

The focus of the Marines remained on pursuing AQI and insurgents, but they devoted a larger and larger portion of their attention to developing the capacity of the Iraqi Security Forces to operate independently.

The company habitually operated with the same Iraqi unit. The Iraqi Army (IA) soldiers provided a mixed capability. Some were superb, bright, capable soldiers focused on supporting the development of a new Iraq. Some were disappointments; lethargic and

reluctant to act. A few concerned the Company Commander. They were secretive and avoided contact with the Americans.

Operating out of the FOB in a six-vehicle patrol, Marine and IAs conducted a patrol through a small village. The vehicles maintained their dispersion, the Marines and IAs maintained good lookout doctrine. These patrols, unlike previous months, became almost routine as the violence in Anbar province declined. The senior Marine was a SSgt, the senior Iraqi, a Lieutenant (LT).

As the patrol passed through a market area, an Improvised Explosive Device (IED) detonated next to the third vehicle in the patrol. The occupants, all Marines, escaped serious injury, but there were minor injuries and the vehicle was completely destroyed.

The Marines quickly established security and began rendering first aid to the injured. The Iraqi soldiers under the leadership of an aggressive young LT rapidly dismounted their vehicles and began questioning witnesses. A young girl, approximately eight years old, pointed to two strangers in their village. The Iraqi soldiers started to move toward the two strangers. Seeing this, the strangers took off running. Seeing the IAs starting to follow after them, the SSgt called for two Marines to come with him. The three Marines followed the IAs to provide support. The Iraqis conducted a foot pursuit through narrow alleyways, finally catching one of the two suspects, hiding behind a fence.

As the SSgt and Marines turned the corner, they observed the Iraqi LT place his pistol against the suspect insurgent's head. The SSgt shouted and the LT turned to him. The SSgt asked what was going on and the Iraqi LT showed him the two cell phones the suspect insurgent had. The LT, clearly agitated, said, "This is the one who detonated the IED. He used this cell phone to do it."

By now a few civilians Iraqis could be seen watching from the windows. The LT began to shout at the suspected insurgent and to wave his pistol at him. The suspected insurgent responded to the LT in a clearly disrespectful tone. The LT, using his pistol, struck the suspected insurgent several times. The suspected insurgent fell to the ground; the LT continued to strike him.

The SSgt, unsure how to respond, called to the LT, "Hey Sir, knock it off. He's down." The LT responded, "Don't you ever speak that way to me in front of my men." He then struck the suspected insurgent two more times. The insurgent then collapsed to the ground. The SSgt moved to the suspected insurgent's side. He observed him to be bleeding from the ears and his eyes rolled back in his head. The SSgt then took his pulse and was unable to find signs of life. He turned to the LT and said "He's dead, Sir."

Questions

1. Which of the *Marines' Rules* (Basic Principles of the Law of War) may have been violated by the SSgt?
- a. Marines only fight enemy combatants.
 - b. Marines do not harm enemy soldiers who surrender. Marines disarm enemy soldiers and turn them over to superiors.
 - c. Marines do not torture or kill Enemy Prisoners of War (EPW) or detainees.
 - d. Marines do their best to prevent violations of the Law of War.

Correct answer: d

Discussion: Answer “d” is correct because Marines have the *obligation* to do their best to prevent violations of the Law of War. The Marine SSgt arrived on the scene just as the IA LT apprehended the suspected insurgents. In IA custody, they are now noncombatants and entitled protections under the Law of War. While the IA LT may have been correct concerning their involvement in detonating the IED, his treatment of the detainees violated the Law of War. The IA LT is clearly angry and frustrated. In order to prevent further acts of mistreatment, the Marines should have immediately removed the detainee from IA custody. Intervening in this situation requires strong moral and physical courage. Doing so could be interpreted by the IA LT as disrespectful in front of his soldiers and heighten tensions between the IAs and the Marines. It could also undermine their growing level of cooperation between the two allies. As an “Allied” power in this conflict and a signatory of the Law of War Conventions and international human rights treaties, Iraq is also obligated to comply. Additionally, as “Allied” powers in the conflict, each party is obligated to ensure the other complies. In Operation Iraqi Freedom (OIF), Soldiers and Marines have undertaken raids on alleged police torture facilities in Iraq to free detainees in Iraq custody when evidence surfaced of unlawful treatment, torture and executions.

Other answers explained:

Answers “a” through “c” are not correct in this case not because they do not apply, but because they do not apply to the Marine SSgt. Once detained, the suspect became a noncombatant and was entitled to protection. The Marine SSgt correctly recognized the IA LT’s actions violated the Law of War and attempted to intervene.

2. What actions should the SSgt now take?
- a. There is nothing to do. The detainee is dead. It is a matter for the Iraqi authorities to address.
 - b. Report the incident to the company Chain of Command after returning to the FOB.
 - c. Secure the dead detainee and report the incident to his superiors, immediately asking for assistance.

- d. Apprehend the IA LT for killing the detainee and take him back to the FOB as a possible war criminal.

Correct answer: c

Discussion: Answer “c” is correct because the IA LT committed a possible war crime. It must be reported in accordance with Marine Rule # 9 that states, “Report all violations to [their] superiors.” It is important to secure the remains, both out of respect, and to secure the evidence. It is also Department of Defense, Joint, and Department of the Navy policy that all "reportable incidents" committed by or against members of, or “persons serving with or accompanying the US Armed Forces,” must be promptly reported, thoroughly investigated, and, where appropriate, remedied by corrective action. On-scene commanders shall ensure that measures are taken to preserve evidence of reportable incidents pending turnover to US, allied or other appropriate authorities.

Local civilians observed this incident and the Marine response will also be observed. Doing the right thing preserves the moral position of the United States and the Marines and will assist in maintaining local popular support. It is essential that the Marines help the IA and other security forces recognize this as well.

Other answers explained:

Answer “a” is incorrect because the Marine SSgt cannot simply ignore the incident. He is obligated to take action when he suspects a war crime was committed either by US, Iraqi or other forces.

Answer “b” is incorrect because the Marine SSgt must report the incident properly in order to preserve evidence; and in this case to obtain assistance if threatened by the IAs. Calling for assistance and letting the IA LT know it will likely ensure his Marines are not threatened.

Answer “d” is incorrect because the Marine SSgt’s capabilities and authority do not extend to apprehending the IA LT. Attempting to apprehend the IA LT could force a show down that would threaten his Marines. As an Allied force serving with the Marines it is sufficient to secure the scene and the body, and call for assistance.

Conclusion: As military professionals, it is important that we take time to not only to reflect on the Marine values that separate us from our enemies, but also to ensure that allies comply as well. Marine Corps leaders must emphasize to our allies that on the battlefield, the principles of honor and morality are inextricably linked. The environment that fosters insurgency is characterized by violence, immorality, distrust, and deceit; nonetheless, Marine Corps leaders must continue to demand and embrace honor, courage, and commitment to the highest standards among subordinates and allies and work to help instill those values at every opportunity. Our mission in Iraq includes the development of Iraqi Security Forces.

Marine Leaders at every level establish an ethical tone and climate that guards against the moral complacency and frustrations that build up in protracted counter-insurgency (COIN) operations. Leaders remain aware of the emotional toll that constant combat takes on their superiors and subordinates alike, and the potential for injuries and illegal conduct resulting from prolonged exposure to combat.

To combat the factors that can lead to the commission of War Crimes requires effective leadership and training of our Marines and allies. Host nation and allied forces must know that Marines will not tolerate unethical conduct among Marines and allies alike. Such training includes moral-ethical preparation for the operational environment. In the complex moral environment encountered in COIN operations, it is often counter-productive to use methods that violate the Law of War no matter how effective they may seem in the short term. COIN forces aim to mobilize the good will of the people against the insurgents. Therefore, the populace must feel protected, not threatened, by COIN forces' actions and operations. Proper training repeatedly integrates many possible ethical scenarios into the tactical exercises in preparation for the COIN environment. Education and training must prepare Marines and host nation forces to deal with frustrating and complex situations.

What leaders can do specifically:

- “Set the right tone” by encouraging and rewarding honesty, integrity, and professionalism in Marines and allies.
- Take every opportunity to talk to subordinates and allies about important topics like values, duty, integrity, and character. Use “teachable moments” to reinforce expectations.
- Before every operation as part of the orders and rehearsals process, address the Law of War issues Marines will likely encounter.
- Help subordinates and allies understand that professionalism and discipline contribute to mission success.
- Immediately reaffirm values after mistakes are made; do not let them impact professionalism and discipline.
- Lead by example!
- Encourage the prompt reporting of all possible, suspected and alleged violations of the Law of War by US and allied forces and civilians.

What we all can do as Marines:

- Conduct ourselves as professionals at all times—do the right thing even when no one is looking.
- Encourage values and high standards in fellow Marines and allies.
- Never accept or tolerate bad behavior by other Marines or allies, *including superiors*.



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