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The Fog of War Crimes

Who's to blame when 'just following orders' means murder?

by Frida Berrigan; ITT; January 08, 2008

A Marine squad was on a dusty road in Iraq, far from home. Suddenly, a deadly roadside bomb explodes the early morning calm and kills a lance corporal and wounds two other Marines. The mission: tend to the wounded and find those who were responsible ... Or make someone pay? Three sleeping families awaken to the sound of grenades and guns.

By the end of the "operation," 24 people were dead, including three women and six children. Bullets, fired at close range, tore through bodies and lodged deep in walls. A one-legged elderly man was shot nine times in the chest and abdomen. A man who watched the violence from his roof across the road told The Washington Post that he heard his neighbor speak to the Marines in English, begging for the lives of his wife and children, saying, "I am friend. I am good." All the family was killed except one: 13-year-old Safa. Covered in her mother's blood, she reportedly fainted and appeared dead.

In a road nearby lay the bodies of five men-four college students and their driver.

On Nov. 20, 2005, a Marine spokesman reported: "A U.S. Marine and 15 civilians were killed yesterday from the blast of a roadside bomb in Haditha. Immediately following the bombing, gunmen attacked the convoy with small-arms fire. Iraqi army soldiers and Marines returned fire, killing eight insurgents and wounding another."

The only truth in that statement was that there was a roadside bomb and that a Marine-Lance Cpl. Miguel Terrazas, known as T.J. to the other men in his squad-was killed instantly. The rest was a lie. It took months for the truth to come out, and the search for justice is taking even longer. The 24 Iraqi bodies have since been buried in a cemetery in Haditha, a farming town beside the Euphrates River. But no one-from the commander on down-has been sentenced to prison, and the effort to hold Marines responsible for this crime has focused on a few men who are low on the chain of command.

Geoffrey Corn, a retired lieutenant colonel and a professor at Southern Texas College of Law, says the laws of war work because "for every case of atrocities that we read about, there are thousands of Marines and soldiers who act with restraint."

The Laws of Armed Conflict and the Geneva Conventions were designed as the basis for military conduct in times of war. Three central principles govern armed conflict: military necessity, distinction (soldiers must engage only valid military targets) and proportionality (the loss of civilian lives and property damage must not outweigh the military advantage sought). Among other things, the Geneva Conventions identify grave breaches of international law as the "willful killing; torture or inhuman treatment; willful causing of great suffering; and extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully or wantonly." An examination of the military's actions in the aftermath of Haditha reveals a clear unwillingness to apply these principles.

Whose neck is on the line?

"You stop war crimes by coming down on the ranking officer," says Ian Cuthbertson, a military historian and senior fellow at the World Policy Institute.

"All armies in all wars at all times have committed war crimes," he continues. "The question is: Does command authority condone or stop them? You can't just give an 18-year-old an automatic weapon and tell him, 'Don't shoot prisoners in the head.' You need an officer to rein him in. The officer needs to feel as though his own neck is on the line."

In the case of Haditha, Marines have not put officers' necks on the line. Maj. Gen. Richard Huck, who was in charge of Marines in Haditha in 2005, along with his chief of staff Col. Richard Sokoloski and Col. Stephen Davis, who headed the regimental combat team, all received letters of censure from the secretary of the U.S. Navy. The censure did not strip the men of their rank or salary, but they will be barred from future promotions, which could force them out of the Marines. According to Gary Solis, a military law expert and former Marine, censure is the Marine Corps' most serious administrative sanction.

But, as Cuthbertson points out, the generals are not being censured for letting Haditha happen. They are being punished for not investigating. This is a big difference.

Cuthbertson cites the Allied response to the Malmedy massacre in Belgium as one example of taking war crimes seriously up the chain of command. In 1944, German soldiers killed more than 70 unarmed U.S. prisoners of war. In war crimes trials after Germany was defeated, justice was swift and extended far beyond those who actually pulled triggers. "The commander of the regiment wasn't there. He was found guilty and sentenced to death," says Cuthbertson. "The general of the Army wasn't there. He was found guilty and sentenced to life in prison."

Unraveling the massacre

In January 2006-a month after the Haditha massacre-an Iraqi journalism student gave Time magazine a video of the bloody aftermath. Taher Thabet shot footage in the homes and at the morgue, recording the carnage in shaky frames. Time passed the footage on to the chief military spokesman in Baghdad, forcing the Marines to launch an investigation. Until the evidence was in their hands (and widely available on the Internet), they

appeared ready to accept as truth the flimsy, contradictory account of events cobbled together by the squad leader and his men.

Two months later, the investigation determined that Marines-not insurgents-killed the civilians, and Naval Criminal Investigative Services further concluded that the civilians were deliberately targeted. CNN reported on the investigations on March 16, and Time published a long article on March 27. President Bush, however, did not address the Haditha issue until June 1, when he called the allegations "very troubling for me and equally troubling for our military."

But it took until December 2006 for eight Marines to be charged: four enlisted men with unpremeditated murder, and four officers with dereliction for covering up or failing to report the killings. These indictments helped the Marines create the impression that those responsible for Haditha were rigorously prosecuted. Yet the four charged with murder were not the only four who pulled triggers that day. And the four officers charged in the cover up were not the only four who lied.

In handing down the eight indictments, the Marines also granted immunity to at least seven others who either participated in the killings or tried to hide what the squad had done. The military ultimately offered immunity deals to two of those charged with murder in exchange for their damning testimony. Charges against two of the officers were also dismissed after their "Article 32 hearings," a sort of a half trial, half grand-jury proceeding unique to military criminal proceedings.

At this point, criminal responsibility for 24 murders in at least four separate locations is being placed on two Marines: Staff Sgt. Frank Wuterich and Lance Cpl. Stephen Tatum. Of their squad of 13, they are the only two who face general court martial for the killings.

Tatum, from Edmund, Okla., is charged with involuntary manslaughter, aggravated assault and reckless endangerment. His trial date has not been set, but if found guilty of all three, Tatum could face a maximum 19 years in confinement, a dishonorable discharge and forfeiture of pay. During his July 24, 2007 military investigation hearing, the 25-year-old Marine choked back tears, saying, "I am not comfortable with the fact that I might have shot a child. I don't know if my rounds impacted anyone. ... That is a burden I will have to bear."

For his part, Wuterich, the Marine squad leader, was originally indicted with more than a dozen counts of unpremeditated murder, as well as soliciting another to commit an offense and making false official statements, which carry a maximum penalty of imprisonment for life. After his Article 32 hearing in August 2007, Investigating Officer Lt. Paul Ware recommended dismissing 10 murder charges and reducing seven others to negligent homicide. There has not been a determination on that recommendation, and a court martial date has not yet been set. Wuterich told CBS's "60 Minutes": "Everyone visualizes me as a monster-a baby killer, cold-blooded, that sort of thing." On the TV screen, he was handsome, polished and impossibly young looking.

Of the other four charged with the lesser offense of failing to report the incident, or obstructing the investigation-only two remain under indictment. One of them, Lt. Col. Jeffrey Chessani, is the most senior U.S. servicemen to face a court martial for action in combat since Vietnam. He is not being charged for allowing the crimes to happen, but for violating a lawful order and willful dereliction of duty for failing to report and investigate the deaths.

In cold blood?

The cases will hinge not on what happened or why, but how: Was it a rage-induced rampage or a by-the-book operation? The answer to that question depends on which side of the gun you're on.

Rep. John Murtha (D-Pa.), a former Marine who chairs the Subcommittee on Defense in the House Appropriations Committee, told reporters in May 2006 that the investigations would reveal that "our troops overreacted because of the pressure on them, and they killed innocent civilians in cold blood."

But soldiers are not supposed to kill in cold blood. "War is not a license," wrote Telford Taylor, a lead-prosecutor at Nuremberg, in Vietnam, an American Tragedy. "It does not countenance the infliction of suffering for its own sake or for revenge."

Thabet, the Iraqi journalism student who filmed the aftermath at Haditha, saw rage, telling Time: "They not only killed people, they smashed furniture, tore down wall hangings and when they took prisoners, they treated them very roughly. This was not a precise military operation."

Not so, says Wuterich. "We reacted to how we were supposed to react to our training and I did that to the best of my ability," he told "60 Minutes." "The rest of the Marines that were there, they did their job properly as well. We cleared these houses the way they were supposed to be cleared." Lt. William Kallop ordered Staff Sgt. Frank Wuterich to "clear" one of the homes. He was granted immunity from future prosecution in exchange for his testimony.

Another Marine, Lance Cpl. Humberto Manuel Mendoza, who was not indicted, told investigators that he shot at least two people: "I was following my training that all individuals in a hostile house are to be shot." Sgt. Sanick Dela Cruz, whose murder charges were dropped in exchange for his testimony against Wuterich, testified that after riddling dead bodies with automatic fire, he urinated on the head of one corpse. "I know it was a bad thing what I done, but I done it because I was angry T.J. was dead."

'I was just following orders'

Justifying crimes with assertions that “we reacted to how we were supposed to react to our training” is not new. It echoes Befehl ist Befehl-I was just following orders-words Nazi leaders accused of war crimes used to justify their actions. The Nuremberg Tribunals following World War II found many of them guilty, sentencing them to death or life in prison.

The tribunals placed the conscience of the individual above the will of military superiors. “In the military, there is a culture of compliance, fear, blind obedience, silence,” says Camilo Mejía, 32, who joined the Army when he was 19 and went to prison rather than return to Iraq. Mejía served in the Florida National Guard and went to Iraq as staff sergeant in 2003. “Behavior is suggested and implied. The expectation is that if everyone else is doing it, you should do it.”

At a detention facility in Al Assad, Mejía's unit was responsible for keeping prisoners awake for long periods of time in preparation for interrogation. In an interview, he described their job as “sleep deprivation with loud sounds, mock executions, treating them as sub-humans.” His unit performed this long enough to “see that this was a systematic problem from the very top,” says Mejía. “They had set the tone and the work. We just followed suit. No one sat us down and said, ‘We want you to commit war crimes.’ But they communicated what we were supposed to do, and that was war crimes.”

In June 2004, Mejía told CBS's “60 Minutes II” about the 12 or 13 Iraqis he and his men killed in Ramadi, mostly civilians caught in the crossfire. “Whether you want to admit it or not to yourself, this is a human being,” Mejía. “And I saw this man go down and I saw him being dragged through a pool of his own blood and that shocked me.”

In war, Mejía says, “committing war crimes is what you are expected to do.”

Hamdaniya

The month after the Haditha massacre became news, the Marines found themselves shamed by another atrocity. On April 26, 2006, Marines based in Hamdaniya dragged Hashim Ibrahim Awad, a 52-year-old man and father of 11 children, from his home in the middle of the night, bound his hands and feet and shot him to death. The Marines' plan was to snatch a suspected insurgent said to be behind a rash of roadside bombings and who had been repeatedly captured but released. When the Marines could not find him, they kidnapped and killed the man's neighbor instead. Later, they stole an AK-47 and staged the scene so that it appeared that Awad was caught while deploying a roadside bomb.

Seven Marines and a Navy corpsman-who became known as the Camp Pendleton Eight-were charged in the case. During the Article 32 hearings, defense attorneys said the Marines' superiors told them they were too soft. They had witnessed their superiors beating Iraqi suspects and felt pressured to be more aggressive in an environment where roadside bombs and attacks were constant and assailants melted in and out of the civilian population. Lance Cpl. Robert Pennington testified that the men were “sick of” their rules of engagement and decided “to write our own rules to keep ourselves alive.”

Trent Thomas, a corporal from East St. Louis charged in the case, appeared on “Anderson Cooper 360 Degrees.” When asked if he was ordered to kill Awad: “I really can't say,” Thomas responded, but later allowed, “I think your leadership plays a huge factor in what you do. That's all I can say.”

Thomas was demoted to private and received a bad conduct discharge.

Only two of the Camp Pendleton Eight remain in prison. Pennington is expected to serve eight years on a 14-year sentence after a plea agreement, and Sgt. Lawrence Hutchins was sentenced to 15 years. But Gen. James Mattis-the same convening authority who made determinations in the Haditha killings-is reportedly considering reducing both sentences.

Abu Ghraib

The world learned about Abu Ghraib from the photos. Piles of naked bodies. A man leashed like a dog. A hooded figure standing on a box with wires hanging from him. A menacing dog inches from a cringing man's face.

Assertions that the torture was the result of sadistic, bored or under-supervised soldiers have been widely discredited. “There is no way that a handful of low-ranking soldiers could have invented techniques all by themselves that, curiously enough, were used at Guantánamo and at other places in Iraq and Afghanistan,” says Stjepan Mestrovic, a sociologist at Texas A&M University.

After months of cover-up, the blame was laid at the feet of several low-ranked soldiers, pictured grinning and giving the thumbs-up. Pvt. Lynndie England and Spc. Charles Graner were tried, convicted and sentenced to three and 10 years, respectively. Seven others have been sentenced for abuse at Abu Ghraib.

Only 54 military personnel-a fraction of the more than 600 U.S. personnel implicated in detainee abuse cases throughout Iraq and elsewhere in the war on terror-have been convicted by court martial. And only 40 have been sentenced to prison time, many for less than a year, according to a 2006 analysis by the Detainee Abuse and Accountability Project. No U.S. military officer has been held accountable for criminal acts committed by subordinates under the doctrine of command responsibility.

International law limps into the breach

Military prosecutors have won convictions against soldiers and Marines in more than 200 cases of violent crimes, including murder, rape and assault against Iraqi civilians, according to a July 27, 2007 New York Times analysis. In some cases, these convictions may come with severe sentences. Federal prosecutors are said to be seeking the death penalty for former Pvt. Stephen Green, who is accused of raping and murdering a 14-year-old Iraqi girl, as well as slaying her parents and younger sister. He will be tried as a civilian because he was discharged before the crimes came to light. This horrific crime is the subject of Brian de Palma's new movie *Redacted*.

But seeking the death penalty for Green, sentencing Hutchins to 15 years or court-martialing Wuterich for multiple unpremeditated murders is not the same as seeking justice for war crimes. These three should be held responsible, but the scales of justice are tipped toward scapegoating the convenient foils. They have committed awful and criminal acts, but their guilt cannot be easily separated from those who are the architects of the war.

In November 2006, the Center for Constitutional Rights (CCR), a nonprofit legal and educational organization, filed a criminal complaint, asking a German federal prosecutor to open "a criminal prosecution that will look into the responsibility of high-ranking U.S. officials for authorizing war crimes in the context of the so-called war on terror," according to a CCR statement. On behalf of 12 Iraqi citizens whom the U.S. military detained and tortured at Abu Ghraib, the complaint names former Secretary of Defense Donald Rumsfeld and other high-ranking U.S. officials. The German court dismissed the case in April 2007, ruling that a U.S. court should hear the charges. But CCR-along with other groups-have filed similar charges in Sweden, Argentina and France.

"This is a case of universal jurisdiction," says Belinda Cooper, editor of *War Crimes: The Legacy of Nuremberg* and a professor of human rights and international law at New York University's Center for Global Affairs, "It's brought under the theory that any country can take jurisdiction of particularly heinous crimes, especially if the country that would normally prosecute them is unlikely to do so." She continues: "But can you imagine Bush being tried in the U.S. or Putin in Russia for, say, torture of detainees during their administrations? The new international criminal court is not going to touch a Putin or a Bush."

While these projects inch forward, soldiers are taking matters into their own hands. In March 2008, Iraq Veterans Against the War will convene new Winter Soldier hearings, modeled on the February 1971 meetings in a Detroit Howard Johnson's. In the shadow of the My Lai massacre revelations, the hearings provided a platform to more than 125 Vietnam veterans to describe the atrocities they participated in and witnessed. This effort could once again give the United States a chance to listen to soldiers and Marines as they break the silence, hold themselves and each other accountable and demand the same from the architects of the war.

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