

# The Inclination for WAR CRIMES

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PHOTO: Exhibit photo for the Peers Inquiry (Report of the Department of the Army Review of the Preliminary Investigations into the My Lai Incident). RON HAEBERLE, Former U.S. Army Photographer: "I happened upon a group of GIs surrounding these people and one of the American GIs yelled out, 'Hey he's got a camera.' So they kind of all dispersed just a little bit, and I came upon them and looking at the photograph I noticed the one girl was kind of frantic and an older woman trying to protect this small child and the older woman in front was just, you know, kind of pleading, trying to, beg, you know, begging and that, and another person, a woman was buttoning her blouse and holding a small baby. Ok, I took the photograph, I thought they were just going to question the people, but just as soon as I turned and walked away, I heard firing, I looked around and over the corner of my shoulder I saw the people drop. I just kept on walking. At the time I was just, you know, capturing a reaction, but when you look at it later on in life, you know, now that those people are dead, they were shot, it's just kind of an eerie type feeling that you, that goes over, you know, goes through your whole body and you think back, could I have prevented this? How could I have prevented this? And it's a question I still kind of, you know, ask myself today." (Library of Congress)



**D**O YOU THINK your unit cannot be involved in a war crime? How do you know? Most leaders believe it would never happen in their unit, yet one story after another concerning American Soldiers and Marines who allegedly participated in war crimes has been in the news. Abu Ghraib, Haditha, Hamandiya, and Mahmudiya

are now part of military history. Investigations are ongoing, and some courts-martial have been held, yet the questions haunting commanders of these Soldiers and Marines remain. What went wrong? Did I miss something? Could I have prevented this? Other commanders are thankful that war crimes did not happen in their unit. Some are convinced it could never happen in their organizations. While there are many differences between the incidents listed above, the tragedy for the military is not just that these acts were committed, but that groups of Soldiers or Marines committed or condoned them. Thus, in effect, none of the safeguards the military associates with cohesive groups worked in these units.

Leaders are now left searching for answers and wondering if it will happen again. Unfortunately, the record indicates that it will. How to identify the likelihood of a unit committing a war crime is a leadership concern. Part of the answer to that question may be in the findings of an inquiry conducted 39 years ago into another regretful and tragic event in American military history, the My Lai Massacre. The Army conducted an inquiry into why the My Lai tragedy occurred. The results of this inquiry are important. They give today's leaders ways to monitor and assess units to determine if they could possibly commit a war crime. Leaders can then implement preemptive measures to prevent this from happening.

## The Peers Inquiry

The words "My Lai" are synonymous with a significant breakdown in leadership. All too often, we dismiss events such as My Lai as isolated incidents, the actions of a rogue platoon or a failure of direct-level leadership. This simple analysis fails to grasp the depth, breadth, and complexity of the events and decisions associated with My Lai. Many people, although horrified with My Lai's magnitude, recognized a similar current and worried that My Lai

could happen again given the right circumstances. The Army recognized this as well and, much to its credit, attempted to find out why the events of 16 March 1968 occurred. Although few people realize it, in addition to the criminal investigation conducted into My Lai, the Army also investigated additional areas associated with the operations that day.

In November 1969, Army Chief of Staff General William C. Westmoreland selected Lieutenant General William Peers to conduct an inquiry into My Lai to determine—

- What had gone wrong with the reporting system.
- Why the commander of U.S. Forces in Vietnam, at the time, had not been fully informed.
- Whether the operation had been investigated.<sup>1</sup>

The investigation's official title was the "Department of the Army Review of the Preliminary Investigations into the My Lai Incident." But it was more commonly referred to as the Peers Inquiry. One of the most significant parts of the report is in the chapter discussing factors contributing to the tragedy. This chapter contains information of immense value to commanders today.

In deciding who would direct the investigation, General Westmoreland could not have selected a better-suited officer. William Peers was the chief of the Office of Reserve Components, had a reputation for objectivity and fairness, and had served in Vietnam as the 4th Infantry Division commander and the I Field Force commander. He had joined the Army immediately after graduation from UCLA in 1937 and served in Burma during World War II. Because Peers did not graduate from West Point, Westmoreland recognized no one could accuse him of loyalty or favoritism to fellow West Point graduates.

Peers had an unenviable task. The Army was essentially investigating itself and would be open to severe criticism if it did not handle the investigation properly. In addressing the members of the inquiry, Peers explained, "No matter what any of us might feel, it [is] our job only to ascertain and report the facts, to let the chips fall where they may. It [is] not our job to determine innocence or guilt of individuals, nor be concerned about what effects the inquiry might have on the Army's

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image, or about the press or public's reaction to our proceedings."<sup>2</sup> To ensure objectivity, Peers even went so far as to include two civilian lawyers on the panel, Robert MacCrate and Jerome Walsh, to serve as the "public conscience."<sup>3</sup>

The inquiry was under a time crunch from the start. It had to finish the investigation in four months because military offenses such as negligence, dereliction of duty, failure to report, false reporting, and misprision of a felony all had a two-year statute of limitation.<sup>4</sup> Under Peers's direction, the Soldiers and civilians of the inquiry completed their investigation in 14 weeks, interviewing over 400 witnesses, many of whom had separated from the service.<sup>5</sup> The inquiry members had to arrange travel, schedule the appearances of witnesses before the panel, and collect all the associated documents—which eventually comprised over 20,000 pages of testimony alone. In December 1969, barely two months into the investigation, Peers and several panel members traveled to Vietnam to get a firsthand look at the village of My Lai.

In the end, the inquiry members compiled a "list of 30 people who had known of the killing of non-combatants and other serious offenses committed



LTG William R. Peers, 10 December 1969, heading an Army panel investigating the My Lai massacre.

AP Photo

during the My Lai operation but had not made official reports, had suppressed relevant information, had failed to order investigation, or had not followed up on the investigations that were made.”<sup>6</sup>

When concluding the report, Peers asked panel members to draw some conclusions as to why My Lai occurred based on the evidence they had examined. Peers believed it was important to include findings detailing why and how the operation developed into a massacre. Several members argued against including conclusions because there appeared to be no single reason or pattern. Bob MacCrate, one of the two civilian attorneys working on the inquiry, argued that including the chapter could invalidate the entire report if readers found the conclusions faulty. Peers understood the risk, but believed that the chapter needed to be included “to not only highlight the deficiencies in the My Lai operation but also to indicate some of the differences between this operation and those of other units in South Vietnam.”<sup>7</sup> He also wanted to “point out problems of command and control that existed within the Americal Division, problems that would require vigorous corrective action by the Army in order to prevent repetition of such an incident in the future.”<sup>8</sup> Ultimately Peers was able to persuade the panel to include the chapter, and after much study, the panel determined that 13 factors contributed to My Lai.

This list of factors compiled by the Peers Inquiry provides commanders today with a way to assess their organizations and determine if Soldiers or small units in their command have an inclination to commit war crimes. Peers’ intuition to include the panel’s findings was correct and he unknowingly provided the Army a tool with far-reaching implications.

## Nine Factors

Although the official report listed 13 factors that contributed to My Lai, Peers pared the list down to nine in his 1979 book. In doing so, he seems to have combined several factors rather than eliminate any of the original 13. The nine factors Peers arrived at include—

- Lack of proper training.
- Attitude toward the Vietnamese.
- Permissive attitude.
- Psychological factors.
- Organizational problems.
- Nature of the enemy.

## *...the [Peers] panel determined that 13 factors contributed to My Lai.*

- Plans and orders.
- Attitude of government officials and leaders.
- Leadership.

Each of the nine factors deserves some explanation.

**Lack of proper training.** The inquiry determined that “neither units nor individual members of Task Force Barker and the 11th Brigade received the proper training in the Law of War, the safeguarding of noncombatants, or the rules of engagement.”<sup>9</sup> The inquiry determined the lack of training was due to an accelerated movement schedule, large turnover of personnel prior to deployment, and the continual arrival of new Soldiers to the unit.<sup>10</sup> However, the problem of lack of training was not so cut and dried. The investigation discovered that some Soldiers did receive Law of War training, but some could not remember it. The inquiry determined that part of the reason for this was that the training was conducted in a “lackadaisical” manner. Furthermore, higher headquarters passed out pocket cards and memoranda, but never explained or reinforced the information they contained.<sup>11</sup> Peers states, “Some panel members thought the MACV policy of requiring Soldiers to carry a variety of cards was nothing short of ludicrous. They might have served as reminders, but they were no substitute for instruction.”<sup>12</sup>

In today’s military, many leaders would argue that lack of training is not a problem because all units receive training on Law of War, safeguarding of noncombatants, and rules of engagement prior to deployment. However, the same problems that plagued the 11th Brigade in 1968 also plague units today. Accelerated movements, excessive personnel turbulence, turnover of small unit leadership, and new arrivals in theater all occur during operations today. The lesson for leaders at all levels is to ensure the quality of the training matches the subject’s importance and that they constantly conduct, integrate, and reinforce it. Assessing training quality and ensuring training is continuous and that Soldiers understand the rules provide the leader a check on the climate of his organization.

**Attitude toward the Vietnamese.** If Soldiers make derogatory or racial comments and seem to treat the local population as a lower form of human being or as beneath the status of an American, commanders should take notice. The low regard in which some unit members held the Vietnamese, routinely referring to them as “gooks,” “dinks,” or “slopes,” disturbed Peers.<sup>13</sup> One only has to talk with U.S. Soldiers and Marines today or read magazine and newspaper interviews to hear derogatory terms used to describe Iraqi citizens. Even if the commander does not actually hear it, it would be naïve to think some Soldiers in the command do not possess a negative attitude toward the local population. This problem is greater during an insurgency when the population’s loyalty is in question or there is a significant cultural gap, both of which are likely conditions in the contemporary operational environment.

To prevent this from occurring, leaders must assess their organization’s attitude, beliefs, and

operating norms toward the enemy and the local population. In addition, commanders must prevent junior leaders from condoning a derogatory attitude from their Soldiers and Marines toward the local population.

One of the historically tried and true ways armies have attempted to overcome their soldiers’ fear of killing others in combat was to dehumanize the enemy and get soldiers to hate them. Killing out of hate is a powerful motivator but can yield unintended consequences. For example, if we train a unit to hate insurgents and kill them in combat, and the unit finds it increasingly difficult to distinguish the insurgents from the population, in the minds of the Soldiers, the population may soon become the hated enemy and thus victims of unlawful conduct. To deter this, as leaders prepare their Soldiers and Marines for the realities of combat, they must emphasize positive rationales for killing the enemy.

**Permissive attitude.** Peers writes, “The Americal Division and the 11th Brigade had strong, well-designed policies covering the handling of prisoners, the treatment of Vietnamese civilians, and the protection of their property. However, it was clear that there had been breakdowns in communicating and enforcing those policies.”<sup>14</sup> In fact, incidents of mishandling and rough treatment of prisoners did not start at My Lai but were present for some time prior to the operation. Peers suggests that commanders failed to discover unlawful treatment was occurring or allowed it to occur by tacit approval. The result was that it quickly became part of the way the units operated. As operations continued in Vietnam, Soldiers suspected the local population of collusion with the enemy because of the population’s ability to avoid mines and booby traps.<sup>15</sup>

Historical examples of counterinsurgency operations have shown Soldiers and Marines will become frustrated by the ambivalence of the population they are trying to help and protect. This can frustrate Soldiers and Marines, and disrespect and rough treatment of the population can quickly follow. Incidents in Iraq have led to emphasis on the proper treatment of prisoners, detainees, and civilians, but in a stressful environment attitudes can quickly shift. Commanders must set the proper tone for the organization and assess how their units

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Scott Andrew Ewing

**Graffiti left in an Iraqi’s house after an American unit conducted a search, September 2005.**

are treating prisoners, detainees, and civilians and their property. Leaders at all levels must clearly articulate to their subordinates what behavior to tolerate and what not to tolerate and continually reinforce that guidance.

**Psychological factors.** When enlisted Soldiers at My Lai testified before the inquiry, Peers stated that they frequently used the words “fear,” “apprehension,” and “keyed up” to describe their emotions.<sup>16</sup> Soldiers from Charlie Company 1-20 Infantry in particular were apprehensive and frustrated by the number of casualties the unit had suffered from mines and booby traps and from their inability to establish any contact with the enemy. To the men of Charlie Company, seeing fellow Soldiers wounded or maimed on operations without any way to retaliate led to a mounting frustration.

In addition, commanders in the Americal Division and Task Force Barker had pressured units to “be more aggressive and close rapidly with the enemy.”<sup>17</sup> In the case of My Lai, Task Force Commander Lieutenant Colonel Frank Barker’s aggressive nature and his promotion of competition between companies put pressure on the Soldiers to gain contact with an elusive enemy.

Apprehension, frustration, and pressure from above are a volatile mix for any organization. Each of these elements in isolation can lead to troubles, especially in stability and support operations. As casualties mount from an unseen, elusive enemy, commanders need to be more visible and exert more influence and guidance. Leaders must assess and monitor the attitudes of their Soldiers and their small cohesive units to determine if there is an unhealthy level of pressure and frustration. In addition, commanders must set a climate in their organization that promotes open discussion of Soldiers’ emotions, especially fear.

**Organizational problems.** Peers writes that although “organizational problems existed at every level, from company through task force and brigade up to the Americal Division headquarters,” the problems could be found in every major unit in Vietnam.<sup>18</sup> Task Force Barker was an ad hoc battalion with one company from each of the battalions assigned to the brigade. The commander was actually the 11th Brigade operations officer and he took his staff “out of hide” by pulling a minimum number of personnel out of the brigade staff to assist him. Peers opined that although organizational

problems contributed, they could not be “cited as the principal cause.”<sup>19</sup>

We can see many of the organizational problems the units encountered at My Lai in organizations today. Small staffs, ad hoc organizations, temporary attachments, and shortages of personnel are still issues some organizations face. Leaders struggle with the “troops-to-task” ratio associated with fighting an insurgency. Determining if units have enough men to accomplish their missions without fracturing their chain of command or group cohesion is an important consideration. To alleviate any potential problems associated with organizational structure, unit commanders should assess the impact their organizational structure has on operations as well as the effect new organizations have on the original organization when they join the unit.

**Nature of the enemy.** Much as it is with operations today and will probably be for the near future, it was difficult to distinguish combatants from noncombatants in Vietnam. Peers wrote that in “traditional communist strongholds and VC [Viet Cong] dominated areas..., it could be fairly well assumed that every male of military age was a VC of some form or another.”<sup>20</sup> However, this was not the case throughout the country.

Commanders will face situations like this in the future and must consider the nature of the enemy when assessing their units. Because the enemy has little or no respect for the Law of Land Warfare, does not play by what we consider “the rules,” and will constantly test our commitment to morality, it becomes tempting for stressed troops to respond in kind. Enemy forces will continue to use this tactic to their advantage. In an environment like this, commanders must appreciate the effect the enemy’s tactics are having on their own troops and assess the impact on the organizational climate and small-unit operating norms.

**Plans and orders.** Peers observed that in My Lai, “as Barker’s orders were passed down the chain

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of command, they were amplified and expanded upon, with the result that a large number of Soldiers gained the impression that only the enemy would be left in My Lai 4 and that everyone encountered was to be killed.<sup>21</sup> The problem was exacerbated due to a command climate in which subordinates were afraid to question or to ask for clarification on any instructions provided by the company commander, Captain Ernest Medina, by TF commander Barker, or by the division commander Major General Samuel Koster.<sup>22</sup> In addition to setting a climate where Soldiers believe they can ask questions, commanders must ensure all personnel in their units or attached to their organizations believe subordinates can approach them at any time with any kind of information. In ambiguous, fluid situations, leaders must ensure they and their subordinates issue clear orders that units at all levels understand. Furthermore, although training and institutional schooling emphasize the importance of clarity in orders and plans, leaders do not always stress the importance during actual operations, where time and familiarity affect the process. Leaders must continually ensure that all personnel, especially those in attached organizations, clearly understand their orders or instructions.

**Attitude of government officials.** The United States will not always have the luxury of working with national and local governments that have a high regard for human life. Peers writes that the local Vietnamese officials believed anyone living in the area of My Lai was either Viet Cong or a Viet Cong sympathizer, and therefore considered it a free-fire zone, automatically approving any request to fire in the area.

Leaders could encounter similar situations today where a local government does not value the lives of its citizens or is using the area for political purposes such as controlling opposition party support through military operations. At the time of My Lai, the attitude of the South Vietnamese officials rubbed off on some American Soldiers, who soon began to view the population as expendable. If the government is nonchalant about civilian casualties, U.S. forces can also become nonchalant and careless in reducing noncombatant casualties, as happened at My Lai.<sup>23</sup> As commanders assess their units they must take into account the beliefs, attitudes, and customs of the local and national govern-



Haberle, Library of Congress

**U.S. Soldier burning domestic agricultural items at My Lai, Vietnam, 1968. Such acts are war crimes.**

ments toward their citizens. If a nonchalant attitude exists, they need to ensure their subordinates do not adopt a similar attitude. It will be difficult but critical to determine if the attitude exists at the local government level.

**Leadership.** The Peers Inquiry determined that, above all, a lack of leadership was the main cause of the massacre.<sup>24</sup> Failure to follow policies, lack of policy enforcement, failure to control the situation, failure to check, failure to conduct an investigation, and lack of follow up were all present. The panel members determined that, although Barker used mission-type orders, he failed to check to determine if his subordinates carried out his orders properly.<sup>25</sup> In addition, the command climate throughout the organization did not foster open communications. In the task force, Barker did not have “a close working relationship with his subordinates.”<sup>26</sup> Thus, no one questioned his orders. It was much the same situation with the Charlie Company commander, Ernest Medina, whom his Soldiers and subordinates held in high regard. The inquiry commented, “Nobody questioned his authority or his judgment.”<sup>27</sup> Major General Samuel Koster further exacerbated this situation by creating a command climate in which his staff was afraid to approach him with bad news or a problem.<sup>28</sup> Thus, when information began to come forward about what happened at My Lai, no one on the division staff had the courage to tell the commanding general. Instead, members of the chain of command ignored the information.

The inquiry concluded that Charlie Company platoon leaders identified more with their men than they did with higher headquarters. The lieutenants wanted to fit in with the men of their platoons and be one of the boys. Peers concluded that because they were young and inexperienced, they did not take positive corrective action to correct wrongdoings.<sup>29</sup>

Failure to foster the right climate and enforce standards is bad enough, but it falls short of being the comprehensive reason for a leadership failure. Among the My Lai massacre's principal causes is the fact that a cohesive unit's values and norms tolerated committing these crimes and also ensured loyalty to the group rather than to the institution, thus condoning silence about the crimes. In the case of My Lai and some recent incidents, it took the courage of individuals outside the organization to report what happened, because no one inside the unit did. Cohesion was too strong.

Leaders often assume their Soldiers and Marines will place loyalty to the organization above loyalty to their comrades. Historian Richard Holmes' research proves otherwise. Holmes writes, "There is every chance that the group norms will conflict with the aims of the organization of which it forms a part."<sup>30</sup> A sobering conclusion for any leader—but one to heed. Findings from the Center for Army Lessons Learned (CALL) validate Holmes' conclusion that one of the challenges small-unit leaders face is identifying too much with the men with whom they are living and sharing the dangers of operations. CALL cautions that the mission rather than relationships should be the key element of decision-making.<sup>31</sup>

## Implications for Today

Commanders today have to assess unit climate to determine if their subordinates feel that they can question ambiguous or unclear instructions or take bad news to higher headquarters. It is equally as important for commanders to assess the climate of subordinate units. Leaders must recognize that values can change during significant emotional events such as combat, and assess small unit cohesiveness and the underlying values present in such groups. Commanders make a mistake in assuming that once inculcated, every unit forever

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retains good organizational values. Values need constant reinforcement, and commanders must monitor the values of small groups in their organization to determine if they meet the standards of their institution.

The most significant lesson these latest incidents in Iraq have taught us is that war crimes can still happen, even in a professional, disciplined military. Commanders have to remain vigilant and realize it could indeed happen in their units. Understanding the areas to assess in their organizations may give them an edge in identifying incipient problems and attitudes. William Peers and his commission did the Nation a service by identifying areas military commanders should monitor and assess. Sustained vigilance and commensurately focused education will help future commanders prevent a war crime from occurring. **MR**

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### NOTES

1. LTG W.R. Peers, *The My Lai Inquiry* (New York and London: W.W. Norton and Company, 1979), 3.
2. *Ibid.*, 10.
3. *Ibid.*, 20.
4. *Ibid.*, 50.
5. *Ibid.*, 11.
6. *Ibid.*, 212.
7. *Ibid.*, 229-230.
8. *Ibid.*, 230.
9. *Ibid.*
10. *Ibid.*
11. *Ibid.*
12. *Ibid.*
13. *Ibid.*, 230-231.
14. *Ibid.*, 232.
15. David L. Anderson, *Facing My Lai: Moving Beyond the Massacre* (Lawrence: University of Kansas Press, 1998), 100.
16. Peers, 234.
17. *Ibid.*
18. *Ibid.*, 235.
19. *Ibid.*
20. *Ibid.*, 236.
21. *Ibid.*
22. Anderson, 126.
23. Peers, 237.
24. *Ibid.*, 232.
25. *Ibid.*, 233.
26. *Ibid.*
27. *Ibid.*
28. Anderson, 126.
29. Peers, 233.
30. Richard Holmes, *Acts of War: The Behavior of Men in Battle* (New York: The Free Press, 1985), 323.
31. Center for Army Lessons Learned, *Leader Challenges: Initial Impressions Report* (Fort Leavenworth, KS, December 2005), 14.