
THE VIETNAMIZATION OF THE LONG WAR ON TERROR: AN ONGOING LESSON IN INTERNATIONAL HUMANITARIAN LAW NON-COMPLIANCE

Lesley Wexler*

I. INTRODUCTION	575
II. THE KILL TEAM	576
A. <i>Context</i>	576
B. <i>Attacks and Aftermath</i>	580
C. <i>Domestic Response</i>	582
III. THE POST VIETNAM MILITARY STILL HAS VIETNAM STYLE PROBLEMS	583
A. <i>Ineffective Sorting</i>	585
B. <i>Leadership Failures</i>	588
C. <i>Failures of External Checks</i>	591

I. INTRODUCTION

This essay rejects the conventional wisdom that post-Vietnam military reforms adequately addressed the problem of U.S. noncompliance with international humanitarian law. Just as My Lai and Son Thang defined the nadir of America’s counterinsurgency in Vietnam and the trio of Haditha, Abu Ghraib and Operation Iron Triangle¹ evoke our worst behavior in Iraq, so too the recent events of the 5th Stryker “kill team” brigade may come to symbolize our greatest failings in Afghanistan. The premeditated and deliberate killing of Afghani civilians reveals an indifference to human life that is utterly inconsistent with the premises of international humanitarian law and the deeply held values of the American military. In this short piece, I examine the Stryker kill team’s behavior to help build the knowledge and insight necessary to develop further reforms for military practices during the Long War.

The first part of this essay situates the 5th Stryker Brigade’s troubling behavior within the military’s recent shift to counterinsurgency and the specific challenges the brigade faced. This part also notes the military’s numerous failures to heed red flags over the course of the brigade’s participation in the Afghanistan conflict. It concludes with a review of the

* Professor of Law and Thomas Mengler Faculty Scholar, University of Illinois College of Law. Thanks to Lionel Serge for research assistance.

¹ For a brief description of this somewhat lesser known event, see *infra* note 106.

domestic response to the behavior, both in terms of court martials and investigations along with a snapshot of the international reactions to the U.S. military's behavior.

The second part uses the 5th Stryker Brigade to highlight the suboptimal compliance conditions likely to bedevil the Long War. Though the U.S. military successfully restructured its goals and reformed its behavior after Vietnam, at least three notable similarities remain between the current and Vietnam-era militaries. Specifically, the military (i) abandons effective sorting strategies to exclude high risk soldiers from active duty when demand for troops rises; (ii) lacks adequate safeguards against leadership failures that allow a culture of disrespect for human life to fester; and (iii) faces only weak checks on its actions as the result of domestic pressure. In identifying these factors, this essay seeks to help the military and other actors better target efforts to improve compliance with the laws of war.

II. THE KILL TEAM

A. Context

In the wake of the September 11th terrorist attacks and after reports of weapons of mass destruction, the United States military began fighting in both Iraq and Afghanistan. Pursuing both conflicts significantly taxed the military's resources and resulted in neither quick nor easy success. Along with military and intelligence efforts in Pakistan, Yemen and the Sudan, these conflicts have become known as the Long War.² After eight years of fighting in Afghanistan, the U.S. military adopted a new counter-insurgency approach to defeat the Taliban and other terrorist organizations. While the term "counterinsurgency" incorporates a variety of strategies,³ one fundamental principle is that troops must emphasize the safety of the local people. This prioritization of the wellbeing of civilians trumps all

² No consensus has been reached on what exactly constitutes the Long War. *See, e.g.*, BENJAMIN WITTES, *LAW AND THE LONG WAR: THE FUTURE OF JUSTICE IN THE AGE OF TERROR* 260 (2008) (describing the Long War as "a war that isn't quite a war, but isn't quite anything else, a war we have still not compellingly defined and may never fully define and yet will need to regulate and prosecute anyway"). Elements of the Long War include: "individual and group violence, the proliferation of dangerous and violent ideologies, and the destabilization of government and government control." CHRISTOPHER G. PERNIN, ET AL., *UNFOLDING THE FUTURE OF THE LONG WAR: MOTIVATIONS, PROSPECTS, AND IMPLICATIONS FOR THE U.S. ARMY* 12 (2008).

³ For instance, one U.S. field manual defines counterinsurgency as the "military, paramilitary, political, economic, psychological, and civic actions taken by a government to defeat and insurgency." DEP'T OF DEF., U.S. ARMY AND MARINE CORPS. *COUNTERINSURGENCY FIELD MANUAL*, 1-2 (FM 3-24/MCWP 3-33.5 2006) [hereinafter *Counterinsurgency Field Manual*].

other concerns, including efforts to kill the enemy.⁴ President Obama directed this change in counterinsurgency on the belief that U.S. forces could not succeed by just employing a traditional military approach.⁵

In operationalizing the new counterinsurgency strategy, U.S. Army General Stanley McChrystal set down a framework in August 2009 to minimize civilian casualties.⁶ The ensuing rules of engagement include provisions such as: no night or surprise searches, no firing at the enemy unless the enemy is preparing to fire first and no engaging the enemy in the presence of civilians.⁷ The hope was such restraint, which goes well beyond what the laws of war dictate,⁸ would enhance U.S. support among local populations and allow forces to hold on to and build areas already cleared of insurgents. The rules of engagement do not preclude more traditional clearing and other kinetic operations, but they limit the manner in which such operations can be conducted, and they deemphasize them as an overall strategy.

The 5th Stryker Brigade Second Infantry Division, which includes the now infamous “kill team,” became part of this counterinsurgency strategy. Despite spending the greater part of two years training for urban fighting in Iraq, they were reassigned to a new mission in Afghanistan as part of the Obama Administration’s troop surge.⁹ They initially operated near Kandahar in Southern Afghanistan in 2009. At first, the troops worked in an insurgent-heavy location with unfriendly terrain.¹⁰ After

⁴ DAVID KILCULLEN, *COUNTERINSURGENCY* 3-4 (2010).

⁵ ANTHONY CORDESMAN, *SHAPE, HOLD, CLEAR, AND BUILD: THE FULL METRICS OF THE AFGHAN WAR* 53 (2010). Cordesman notes that:

The US and NATO/ISAF continued to ‘win’ virtually every tactical clash, although rarely without civilian casualties and collateral damage, in ways that gave Afghan force a real role as partners, or in ways that provided any lasting security for the Afghan population. The Taliban and other insurgents were winning the war they fought to dominate the population and defeat the US and its allies through a war of political attrition. The US and its allies were winning largely meaningless tactical clashes while steadily losing the country and the people.

Id.

As the civilian death toll continued to increase, evidence suggested the U.S. military was losing the support of the Afghan people. *Id.* at 210.

⁶ Sara Carter, ‘Karzai 12’ Handicaps Army: US Troops Battling Taliban Frustrated by Afghan Rules, *WASH. TIMES*, Nov. 16, 2009, at A01.

⁷ *Id.* (noting the contours of the Rules of Engagement as the government classifies their exact content for troops).

⁸ Laurie R. Blank, *Rules of Engagement: Law, Strategy and Leadership* 11-12 (Emory Law Sch. Pub. Law & Legal Theory Research Paper Series, Research No. 11-168, 2012). available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1872505.

⁹ Sean Naylor, *Stryker Soldiers Say Commanders Failed Them*, *ARMY TIMES*, Dec. 21, 2009, http://www.armytimes.com/news/2009/12/army_afghanistan_mixed_signals_122109w/.

¹⁰ *Id.* (Arghandab’s terrain includes dense foliage and high mud walls).

failing to secure their objective, higher-ups transferred them to what they saw as a demoralizing “freedom of movement” mission.¹¹ The brigade was tasked with the objective of protecting locals and the flow of commerce along southern Afghan highways.¹² Because of poor security in the area, the military, rather than civilian aid workers and State Department officials, did the yeoman’s share of development work.¹³ While the brigade received extensive training in kinetic operations, they received little information on how to conduct the tasks to which they were reassigned.

Harry Tunnell, commander of the 5th Stryker Brigade’s 3,800 troops,¹⁴ developed a reputation for deploying tactics at odds with President Obama’s stated counterinsurgency goals.¹⁵ Commander Tunnell has repeatedly claimed that U.S. Army forces “are not organized, trained or equipped,” or “culturally suited” to carry out counterinsurgency operations.¹⁶ In line with this opinion, he told his newly formed brigade to follow counter-guerilla principles found in the U.S. Army’s 1986 Field Manual, which he later argued was complimentary to the Counterinsurgency Field Manual.¹⁷ His vocal opposition to following the Counterinsurgency Field Manual nearly led his brigade to fail a deployment certification, which would have been an almost unheard of failure in leadership.¹⁸ Nevertheless, rather than back down following admonishments, Tunnell continued to refuse to emphasize counterinsurgency principles, which resulted in a humiliating open lecture before in February 2009.¹⁹ Tunnell also stated he was seeking revenge for being shot in Iraq, and kept a metal rod from his injury on his desk as a reminder.²⁰

When his troops reached Afghanistan, Tunnell maintained his focus on kinetic and clearing operations rather than counterinsurgency or holding

¹¹ *Id.*

¹² Joshua Partlow, *In Afghanistan, Small Gains Are Bolstering Big Hopes*, WASH. POST, Feb. 9, 2010, at A10.

¹³ Carter, *supra* note 6.

¹⁴ Karin Assmann et al., *Report Reveals Discipline Breakdown in Kill Team Brigade*, SPIEGEL ONLINE INT’L, Apr. 4, 2011, <http://www.spiegel.de/international/world/0,1518,754952,00.html>.

¹⁵ Luke Mogelson, *A Beast in the Heart of Every Fighting Man*, N.Y. TIMES MAG., Apr. 27, 2011, <http://www.nytimes.com/2011/05/01/magazine/mag-01KillTeam-t.html?pagewanted=all>.

¹⁶ *Id.* Cf DOUGLAS E. STREUAND & HARRY TUNNELL, CHOOSING WORDS CAREFULLY: LANGUAGE TO HELP FIGHT ISLAMIC TERRORISM (2006) (suggesting a nuanced understanding of the cultural and religious dimensions of the War on Terror).

¹⁷ Naylor, *supra* note 9.

¹⁸ Craig Whitlock, *Army Probe: No ‘Casual Relation’ Between Commander, Killings*, WASH. POST, Apr. 5, 2011, at A6.

¹⁹ Naylor, *supra* note 9.

²⁰ Assmann et al., *supra* note 14.

approaches. He urged those under his command to relentlessly attack the enemy.²¹ This approach led to confusion and disunity when others at the platoon and company level tried to more actively embrace counterinsurgency approaches.²² Squad leaders have suggested the mixed messages prevented troops from properly employing counterinsurgency techniques.²³ In fact, some felt the need to pursue counterinsurgency goals, such as improving local government, in “semi-secret” to avoid Tunnell’s wrath.²⁴ Yet Tunnell and some others strongly rebuffed criticism, leading to a command climate where disagreement equaled disrespect.²⁵

Over the course of their year in Afghanistan, the brigade suffered thirty-five casualties and 230 wounded, a very high rate for such a deployment.²⁶ In its new outpost, the brigade carried out frequent patrols²⁷ and encountered numerous IEDs, but engaged in little actual combat.²⁸ After their extensive kinetic training, many of the commanders and front line soldiers seemed to find the absence of direct combat a disappointment.²⁹ They coped with the frustration, boredom and isolation of the assignment in a variety of unhealthy ways.³⁰ From this context, the kill team emerged.

²¹ Dixon Osburn, *Who is Responsible for the Kill Team?*, HUMAN RIGHTS FIRST BLOG (May 2, 2011), <http://www.humanrightsfirst.org/2011/05/02/whos-responsible-for-the-kill-team/>.

²² Naylor, *supra* note 9.

²³ *Id.*

²⁴ Osburn, *supra* note 21.

²⁵ Tunnell even removed Charlie Company Commander Joel Kassulke, who embraced population-focused missions and openly promoted General McChrystal’s principles. Tunnell removed Kassulke after he “expressed reservations” about brigade level offensive operations. Naylor, *supra* note 9.

²⁶ Mogelson, *supra* note 15. The numbers “amounted to a ten percent casualty rate in some units.” Anna Mulrine, *Pentagon Had Red Flags About Command Climate in Kill Team Stryker Brigade*, CHRISTIAN SCI. MONITOR, Oct. 28, 2010, <http://www.csmonitor.com/USA/Military/2010/1028/Pentagon-had-red-flags-about-command-climate-in-kill-team-Stryker-brigade>.

²⁷ John Goetz, *The Good Boy and the Kill Team*, SPIEGEL ONLINE INT’L, Mar. 31, 2011, <http://www.spiegel.de/international/world/0,1518,754141,00.html>.

²⁸ Mogelson, *supra* note 15.

²⁹ Naylor, *supra* note 9; Gene Johnson, *US Soldier Found Guilty in Afghan Thrill-Killings*, WASH. POST, Nov. 10, 2011, <http://www.washingtontimes.com/news/2011/nov/10/us-soldier-found-guilty-afghan-thrill-killings/> (noting testimony from Morlock that the infantrymen may have agreed to the kill team missions because they wanted action and firefights).

³⁰ Many turned to drug and alcohol use. Naylor, *supra* note 9. This widespread drug use predated Gibbs’ appearance in the platoon. Adam Ashton, *Lost Platoon’s ‘Leader of Trust’ Had Dark Side*, NEWS TRIB., Oct. 17, 2011, <http://www.thenews-tribune.com/2011/10/16/1867914/leader-of-trust-had-dark-side.html>.

B. *Attacks and Aftermath*

Over the course of five months, multiple members of the 5th Stryker Brigade allegedly killed unarmed civilians. Staff Sergeant Calvin Gibbs, who had previously provided a personal security detail for then-Colonel Tunnell,³¹ is thought to have been the kill team's mastermind. Accounts suggest Gibbs came to Afghanistan with an axe to grind over previous injuries sustained in Iraq³² and that he despised the Afghan people.³³ Despite trafficking in stereotypes,³⁴ he quickly gained most of his subordinates' trust and support.³⁵

The kill team's first attack occurred on January 15, 2010,³⁶ possibly as payback for injuries suffered by another squad leader.³⁷ Accounts suggest Gibbs directed Corporal Jeremy Morlock and Private Andrew Holmes to kill their first victim, unarmed fifteen-year-old farmer Gul Mudin.³⁸ In order to avoid detection, they tossed a grenade as cover, though evidence suggests others in the platoon knew of the plan.³⁹ After Mudin's death, the troops entered information about him into a database as required by Army regulations.⁴⁰ At this stage, both Holmes and Morlock posed with Mudin's corpse for trophy photos.⁴¹ Gibbs later con-

³¹ Editorial, *Led Into Depredation Our View * How Do a Dozen American Boys Turn Into a Kill Team*, ST. LOUIS POST-DISPATCH, Apr. 1, 2011, at A14 [hereinafter St. Louis-Dispatch Post Editorial]. Gibbs was one of twenty men on the security detail and had sustained personal interaction with Tunnell. Mulrine, *supra* note 26.

³² Assmann et al., *supra* note 14.

³³ Goetz, *supra* note 27.

³⁴ For instance, he gave bookish Adam Winfield the disdainful name "Winnie the Jew." After Winfield killed Marach Agna, Gibbs changed the name to "Bear Jew" after a blood thirsty character in Quentin Tarantino's *Inglorious Basterds*. *Id.*

³⁵ For example, Specialist Adam Kelly was quoted as saying "Gibbs [was] well liked in the platoon by his seniors, peers, and subordinates alike." *Behind the American 'Kill Team' in Afghanistan*, MSNBC, <http://news.mobile.msn.com/en-us/articles.aspx?aid=42304341&afid=1&pg1=18401> (last visited Apr. 15, 2012).

³⁶ Chelsea J. Carter, *Jury Selection Begins for Soldier Accused in Afghan Shootings*, CNN, July 7, 2011, http://articles.cnn.com/2011-07-07/world/afghanistan.sport.killings_1_jeremy-morlock-three-afghan-men-afghan-civilians?_s=PM:WORLD.

³⁷ Ellis Conklin, *Agence France Presse: Rogue US Army Leader Saw Afghans as 'Savages'*, GOOGLE NEWS, Oct. 31, 2011, at http://www.google.com/hostednews/afp/article/ALEqM5idayTCgSkKPZebKidIg4_Ap8JOA?docId=CNG.35f5ae608a85881eeb1b91d9639d25f8.1b1

³⁸ Mogelson, *supra* note 15.

³⁹ Mark Boal, *The Kill Team: How U.S. Soldiers in Afghanistan Murdered Innocent Civilians*, ROLLING STONE, Mar. 27, 2011, <http://www.rollingstone.com/politics/news/the-kill-team-20110327>.

⁴⁰ *Id.*

⁴¹ After the event, Morlock and Holmes widely disseminated photos of themselves happily posing with the corpse. See Mogelson, *supra* note 15.

fessed to cutting off Mudin's pinky finger⁴² and giving it to Holmes as a memento.⁴³

Between the photos and ensuing braggadocio, many platoon soldiers seemed to learn of the episode, but none immediately alerted their superiors.⁴⁴ One soldier, Private Adam Winfield, asked his father to contact the Army Inspector General regarding the events. Yet neither Winfield's father's inquiries,⁴⁵ nor the red flags raised by the unusual story of a single farmer ambushing multiple armed soldiers, nor the identification of the soldiers as the grenade throwers prompted an investigation.⁴⁶

The second attack occurred in February 2010. Gibbs, Morlock, and Specialist Michael Wagnon allegedly fired an AK-47 into a wall to create the appearance that local insurgents had fired upon them. Then they shot and killed Marach Agna, an unarmed civilian.⁴⁷ Lieutenant Roman Ligsay, who later moved the body to facilitate identification, quickly learned that Agna was a religious man who did not own or know how to shoot an AK-47.⁴⁸ Yet Ligsay pursued no significant investigation at the time, despite the odd profiles of the Mudin and Agna attacks.

On May 2, 2010, accounts emerged suggesting Gibbs, along with Morlock and Winfield, attacked Mullah Allah Dad, killing him and leaving his body badly disfigured.⁴⁹ After driving Mullah Dad out of town, Gibbs allegedly called out "Grenade," threw a grenade as cover and Morlock ordered Winfield to shoot Dad.⁵⁰ Gibbs then removed a pinky and a tooth from Mullah Dad.⁵¹ Winfield has since suggested that Gibbs involved him to prevent his speaking out about the prior killings.⁵²

A rather haphazard series of events brought at least some of the kill team's actions to light. After Private Justin Stoner complained to higher-ups about several soldiers using his room to smoke hashish in his absence,

⁴² Brad Knickerbocker, *Sergeant Seen as Kill Team Leader Found Guilty in Afghanistan Atrocities*, CHRISTIAN SCI. MONITOR, Nov. 10, 2011, <http://www.csmonitor.com/USA/Military/2011/1110/Sergeant-seen-as-kill-team-leader-found-guilty-in-Afghanistan-atrocities>.

⁴³ Mogelson, *supra* note 15.

⁴⁴ *Id.*

⁴⁵ His father claims he called the Army Inspector's General's Office, the Army's Investigative Agency and Florida Senator Bill Nelson. His father then made contact with the non-commissioned officer (NCO) on duty at Winfield's Installation Operation Center. He claims that the NCO said the situation could not be remedied and Winfield should keep quiet. *Id.* Tellingly, the call was neither logged nor revealed to anyone. *Id.*

⁴⁶ Boal, *supra* note 39.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Mogelson, *supra* note 15.

⁵⁰ Goetz, *supra* note 27.

⁵¹ *Id.*

⁵² *Id.*

several soldiers, including Gibbs and Morlock, attacked Stoner to intimidate him from further speaking out about their misconduct.⁵³ When Stoner complained a second time, this time revealing he was afraid to remain with his unit because he feared for his life, he revealed information about the killings and was subsequently thoroughly questioned.⁵⁴ A larger investigation ensued. Two outlets, *der Spiegel* and *Rolling Stone*,⁵⁵ are largely responsible for breaking and publicizing the story. Other outlets like the *New York Times Magazine*⁵⁶ have followed suit, although the kill team is hardly common public knowledge.

C. Domestic Response

In the wake of the subsequent investigation, the military has charged a dozen soldiers with participation in a plot to kill Afghan civilians and with contributing to the ensuing cover-up.⁵⁷ Five soldiers were charged with killing civilians, of whom three pled guilty to various offenses, receiving sentences from as low as three years for whistleblower Winfield to as high as twenty-four years for Morlock.⁵⁸ After a weeklong court martial, Gibbs was found guilty of fifteen charges against him, receiving life in prison.⁵⁹ Others still face trial.⁶⁰ The military did not charge anyone in a leadership position with a higher rank than Gibbs.⁶¹ As of publication, the Pentagon has not suggested any commanders are being actively investigated for potential charges.⁶²

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*; Boal, *supra* note 39.

⁵⁶ Mogelson, *supra* note 15.

⁵⁷ The U.S. government has also allegedly compensated the victims' families. Mogelson, *supra* 15 (noting they "reportedly each received \$11,300").

⁵⁸ Archive of Calvin Gibbs, N. Y. TIMES, http://topics.nytimes.com/top/reference/timestopics/people/g/calvin_gibbs/index.html (last visited Apr. 10, 2012).

⁵⁹ Nick Allen, *Leader of US Army Kill Team Guilty of Afghan Murders*, DAILY TELEGRAPH, Nov. 12, 2011, http://www.telegraph.co.uk/news/worldnews/north_america/usa/8885631/Leader-of-US-army-kill-team-guilty-of-Afghan-murders.html.

⁶⁰ For a description of the pleas and the convictions, see *Twelve Soldiers: A Status Report*, THE NEWS TRIBUNE, June 21, 2011, <http://www.thenewstribune.com/2011/06/21/1714342/twelve-soldiers-a-status-report.html>. For more recent updates, see Andrew Winner, *Agence France Presse: US Afghan 'Kill Team' Leader Faces Court Martial*, GOOGLE NEWS, Oct. 27, 2011, <http://www.google.com/hostednews/afp/article/ALeqM5jAq41Iaf35j7zNsK8lrTb3xLV2SQ?%20docId=CNG.b33612a193bb5d8c25a52dd7c42ac96f.3e1> (Private First Class Andrew Holmes received seven years as part of a plea bargain).

⁶¹ See *Twelve Soldiers: A Status Report*, *supra* note 60.

⁶² This is in spite of a secret U.S. Army investigation obtained by *der Spiegel* which puts at least part of the blame on Tunnell, the kill team brigade's commander. Assmann et al., *supra* note 14.

The military did commission General Stephen Twitty to conduct a top-to-bottom review of the 5th Stryker Brigade,⁶³ which included over eighty interviews with those serving in the brigade. The lengthy investigative report is still confidential.⁶⁴ Accounts suggest General Twitty's seven-hundred page report called for Captain Ligsay (who was promoted after his Afghanistan deployment) to receive a reprimand for a different instance of excessive force, for Captain Quiggle, the immediate superior of those involved in the kill team to receive two letters of concern⁶⁵ and for Colonel Tunnell to receive a letter of admonition.⁶⁶ That said, Tunnell is not expected to continue to rise in the military and was given a low-profile job after his Afghanistan tour ended.⁶⁷ The military has not made public whether it adopted any of Twitty's recommendations.⁶⁸

III. THE POST VIETNAM MILITARY STILL HAS VIETNAM STYLE PROBLEMS

What can the military do better to prevent such atrocities? How can the military improve its response when such events occur? What role can or should international law, military manuals and legal training play? While such a short essay cannot pretend to answer these questions, lessons drawn from the kill team incidents do suggest areas for further inquiry. Of course, one should be wary of reaching any conclusions from a single case. We do not know if incidents like the Stryker kill team are outliers or the tip of the iceberg. Many barriers to effective gathering of information exist. For instance, a low prosecution rate could speak to the rarity of incidents, to a disinclination to prosecute such cases or to the difficulties inherent in detecting wrongdoing. Similarly, data about civilian casualties is hard to access and of questionable reliability, as cover-ups might corrupt our data. Moreover, the military's secrecy about internal investigations compounds the outsider's ability to make effective assessments and suggestions.

All that said, cases such as the Stryker kill team can provide a sense of what information investigators should be looking for, and can suggest the existence of systemic problems the military faces in improving its compliance with the laws of war. Regardless of whether academics have perfect or even good evidence about across-the-board rates of compliance, the

⁶³ Mogelson, *supra* note 15.

⁶⁴ Craig Whitlock, *Probe: No 'Causal Relation' Between Army Commander, Afghan Killings*, WASH. POST, Apr. 4, 2011, http://www.washingtonpost.com/world/army-probe-no-causal-relation-between-commander-afghan-killings/2011/04/04/AFhAPFgC_story.html.

⁶⁵ This is a fairly mild form of administration discipline that is less significant than a letter of reprimand. Mogelson, *supra* note 15.

⁶⁶ *Id.*; Osburn, *supra* note 21.

⁶⁷ Mulrine, *supra* note 26.

⁶⁸ Osburn, *supra* note 21.

U.S. military continues to fight the Long War with no end in sight. One does not have the luxury of waiting until the conflict is over to begin thinking about what reforms are needed. Thus, I use this case study to highlight features of U.S. military noncompliance with international humanitarian law, and some areas where changes may be needed.

At first glance, comparisons to Vietnam might seem misplaced. After the divisive prosecution and pardon of Lieutenant William Calley over his role in the My Lai Massacre, the Winter Soldiers Investigations and the general discontent following the Vietnam War, the U.S. military vowed to do things differently.⁶⁹ It completely restructured its approach to international humanitarian law,⁷⁰ culminating in the 1974 Department of Defense Laws of War program directive. This directive initiated a comprehensive approach to effectively implement the laws of war,⁷¹ including deploying judge-advocates trained in the laws of war imbedded as parts of units,⁷² code of conduct training and field training exercises for laws of war issues.⁷³ Moreover, the emphasis on laws of war training, previously focused on what enemy forces could not do to U.S. troops and highlighted that the laws of war placed “unwarranted limits” on our ability to fight and win, shifted to focus on the laws of war’s consistency with and support for the “efficient [and] disciplined use of military force.”⁷⁴

In many ways, this new approach seems successful. American military and legal scholars generally agree that the military has substantially improved its compliance with the *jus in bello* aspects of the laws of war. For instance, in drawing comparisons between our fighting in Afghanistan and Iraq and our fighting in Vietnam and the Philippines, Professor Colin Kahl⁷⁵ notes the U.S. no longer engages in “widespread destruction of crops, buildings, civilian property, and entire villages,” nor does it engage in the mass use of incendiary bombs and toxic defoliants.⁷⁶ After

⁶⁹ This was part of a larger revolution in military affairs which affected training, doctrine and strategy. See KEITH L. SHIMKO, *THE IRAQ WARS AND AMERICA’S MILITARY REVOLUTION* 39 (2010) (discussing major changes in military training in the last several decades).

⁷⁰ STEPHANIE CARVIN, *PRISONERS OF AMERICA’S WARS* 129 (2010).

⁷¹ W. Hays Parks, *The United States Military and the Law of War: Inculcating an Ethos*, 69 SOC. RES. 981, 985 (2002).

⁷² *Id.* at 996.

⁷³ Major Thomas H. Barnard, *Preparing Interrogators to Conduct Operations Lawfully*, *ARMY LAW* 3, 7-8 (2007).

⁷⁴ Parks, *supra* note 71, at 1006.

⁷⁵ Professor Colin Kahl served as Deputy Assistant Secretary of Defense for the Middle East from February 2009 to December 2011. Presently, Kahl is associate professor in the Security Studies Program in the Edmund A. Walsh School of Foreign Service at Georgetown University. *Colin Kahl*, GEORGETOWN UNIVERSITY, <http://explore.georgetown.edu/people/chk34/> (last visited Apr. 15, 2012).

⁷⁶ Colin H. Kahl, *In the Crossfire or the Crosshairs? Norms, Civilian Casualties, and U.S. Conduct in Iraq*, 32 INT’L SECURITY 7, 14-15 (2007).

Vietnam, the military rejected a body bag mentality⁷⁷ and largely abandoned disastrous “free-fire” zones, in which troops could kill any person found within them as an enemy.⁷⁸ Doing a back of the envelope calculation, Kahl suggests that, as of 2006, civilian deaths were seventeen to thirty times lower during the Long War than in Vietnam.⁷⁹

Of course, other factors may partially explain these improvements. Since Vietnam, the U.S. has neither fought a war of attrition nor a war of annihilation, both of which call for large body counts. Likewise, no post-Vietnam conflict has approached the same number of troops on the ground or the same duration (with the exception of the War in Afghanistan) as that conflict. Changes in goals, strategy and technology have allowed the U.S. military to rely on an all-volunteer force rather than a draft military. Many believe this reliance on an all-volunteer force renders the military more professional.⁸⁰ At the very least, the government does not require anyone to enlist, and the military can more easily screen for those it thinks will serve well. Lastly, one might speculate that, because improvements in communication technology renders the actions of the U.S. military more visible to both the domestic and international public, they should be more compliant to avoid censure.⁸¹

A. *Ineffective Sorting*

Despite these sweeping reforms, some significant problems persist in the U.S. military. Military sorting is a delicate balance; unlike most employers, the military wants individuals with a significant tolerance for

⁷⁷ The United States has used body counts as a measure for success in many conflicts including the Civil War, the Korean War and the Vietnam War. Scott Sigmund Gartner & Marissa Edson Myers, *Body Counts and “Success” in the Vietnam and Korean Wars*, 25 J. INTERDIS. HIST. 377, 379, 381, 394 (1995). They also linked positive incentives like promotions, medals and time off the battle field to high body counts. *Id.* at 380, 387.

⁷⁸ A body count metric for measuring a conflict’s success and a resultantly high body count is not a per se violation of the laws of war. But the concern is that desire to inflict large number of casualties may encourage troops to impermissibly target civilians in addition to lawfully targeting combatants. Perhaps tellingly, both the Stryker kill team and Operation Iron Triangle operated in environments where leaders emphasized body counts as part of success. *See infra* note 106.

⁷⁹ Kahl, *supra* note 76 at 15 (adjusting for population size and duration of the conflict). More anecdotally, stories suggest that commanders and troops heading into combat believe that the U.S. is largely adherent with the laws of war. *See Parks, supra* note 71, at 997.

⁸⁰ *See, e.g., The Evolution of the All-Volunteer Force*, RAND CORP., http://www.rand.org/pubs/research_briefs/RB9195/index1.html.

⁸¹ Between embedded reporters, digital cameras, videophones and the internet, images and reports of the conflict can hypothetically be more easily gathered and disseminated.

risk-taking,⁸² but also with high preferences for obedience, rule following and tightly formed social groups. On the positive side of the ledger, the military needs to screen in some natural leaders, but many more followers. On the negative side, the military needs to sort out those likely to violate domestic law, the military code or international humanitarian law. Such violators can directly and indirectly hamper the military's ability to efficiently complete its missions,⁸³ as well as draw international censure⁸⁴ and incite counterattacks.⁸⁵

The 5th Stryker Brigade contained several problematic figures that helped create and motivate the kill team's behavior. In particular, both Gibbs and Morlock appear to be the sort of problematic figures that appropriate screening measures should have kept out or removed from the military. From the beginning, Morlock was a borderline candidate for military service, with numerous legal problems suggesting the likelihood of violent behavior⁸⁶ and a failure to respect rules and authority.⁸⁷ Similarly, despite Gibbs' service in Iraq, his behavior both before⁸⁸ and after joining the Stryker Brigade created a toxic environment that expressed a profound lack of respect for the Afghan people. Unfortunately, problematic individuals cannot be counted on to sort themselves out of situations such as that faced by the 5th Stryker Brigade, and they often know how to command respect and loyalty, which can convince others to join in their misconduct.

While no screening program can or should be expected to perfectly predict and eliminate the presence of all soldiers who will violate the laws

⁸² U.S. ARMY, HEALTH PROMOTION RISK REDUCTION SUICIDE PREVENTION REPORT 15 (2010) [hereinafter ARMY REPORT].

⁸³ This is not to say that any specific act of non-compliance per se impedes the mission, simply that as a result of U.S. membership in customary and treaty based international humanitarian law, it has rejected noncompliance as an efficient strategy. Moreover, as explained *infra*, the military believes that pervasive noncompliance is problematic particularly when pursuing counterinsurgency.

⁸⁴ Countries such as China have criticized the Stryker kill team, noting the incident in a report on U.S. human rights abuses. Daya Gamage, *Responding to US Human Rights Report, China Asks US Not to Interfere in Domestic Affairs of Other Nations*, ASIAN TRIB., Apr. 11, 2011, <http://www.asiantribune.com/news/2011/04/11/responding-us-human-rights-report-china-asks-us-not-interfere-domestic-affairs-other>.

⁸⁵ For instance, Aby Khalid Abdul-Latif, who was arrested in June 2011, planned an attack on a Seattle military office and claimed to be upset about the ongoing court martial proceedings against the Stryker kill team. Kim Murphy, *Pair Accused of Plotting Seattle Attack*, L.A. TIMES, June 24, 2011, <http://articles.latimes.com/2011/jun/24/nation/la-na-seattle-terror-20110624>.

⁸⁶ Goetz, *supra* note 27 (noting Morlock was described by those at home as having a "violent, impulsive temperament").

⁸⁷ Boal, *supra* note 39.

⁸⁸ Goetz, *supra* note 27 (noting Gibbs was expelled from junior high at fifteen).

of war,⁸⁹ demand for additional troops led the military to lower its standards in both Vietnam and Afghanistan. The U.S. military has reduced both entrance standards and administrative separation, and has sent troops on numerous combat tours as a result of the multiple conflicts and troop surges in the Long War. For instance, administrative oversight has allowed soldiers with multiple offenses to continue serving.⁹⁰ Alarmingly, approximately 1,000 soldiers who have committed two or more felony offenses still serve in the U.S. Army.⁹¹ Similarly, the military's reluctance to use administrative separation has allowed approximately 25,000 troops who would have been removed prior to the Long War to continue serving.⁹² In effect, this means high-risk soldiers have a better chance of both joining the military and staying in situations that raise laws of war compliance issues.

The widespread presence of drug and alcohol abuse may also contribute to a climate that fosters noncompliance with the laws of war. Drug use among American troops in Afghanistan is comparable⁹³ to its rampant use in Vietnam.⁹⁴ Widespread illegal abuse of prescription drugs is on the rise,⁹⁵ as is the use of hash and alcohol.⁹⁶ Due to a preexisting zero tolerance policy, which bars convicted drug users from enlisting,⁹⁷ as well as strong enforcement of the Uniform Code of Military Justice's criminalization of the use of controlled substances,⁹⁸ the military discharged 17,000 troops for drug use between 1999 and 2002.⁹⁹ However, with the Long War's high demand for troops, many soldiers who fail mul-

⁸⁹ Not all problematic individuals commit laws of war violations and not all laws of war violations are committed or instigated by problematic individuals. Violations may also be attributed to momentary heat of passion, the inability to detect or reject unlawful orders and ambiguity about legal standards, among other things.

⁹⁰ ARMY REPORT, *supra* note 82, at 36.

⁹¹ *Id.* at 56.

⁹² *Id.* at 41, 68.

⁹³ *Id.* at 27.

⁹⁴ See, e.g., Morris Duncan Stanton, *Drug Use in Vietnam: A Survey Among Army Personnel in the Two Northern Corps*, 26 ARCHIVES GEN. PSYCHIATRY 278, 282 (1972); ARMY REPORT, *supra* note 82.

⁹⁵ *Id.* at 44.

⁹⁶ *Department of Defense Surveys of Health-Related Behaviors Among Guard/Reserve Military Personnel*, RTI INT'L, http://www.rti.org/brochures/rti-tricare_dlap_reserve.pdf (last visited Apr. 15, 2012).

⁹⁷ DEP'T OF DEF., DOC. NO. 1332.14, ENLISTED ADMINISTRATIVE SEPARATIONS (2011), available at <http://www.dtic.mil/whs/directives/corres/pdf/133214p.pdf>

⁹⁸ See DEP'T OF DEF., OCLC DOC. NO. 456691262, MANUAL FOR COURTMARTIAL UNITED STATES (2008) at ¶ 37, IV-55-IV-58, available at http://www.loc.gov/tr/frd/Military_Law/pdf/MCM-2008.pdf.

⁹⁹ *Drug Use Increasing Among Military Personnel*, 14 ALCOHOLISM & DRUG ABUSE WEEKLY 7 (Aug. 19, 2002).

tiple drug tests continue to serve.¹⁰⁰ The problem may be even worse than these numbers reflect, as commanders have been insufficiently diligent in reporting violations.¹⁰¹

Several of the kill team members were heavy users of prescription and other drugs. At least two, Winfield and Morlock, testified that they smoked hash “almost every day while deployed.”¹⁰² Of course, not all drug users violate other laws and not all those who violate the laws of war abuse drugs.¹⁰³ But it comes as no surprise that many of the military’s problematic individuals are also drug users and that drugs play a role in their crimes.¹⁰⁴ The presence of widespread illegal drug use in the military is worrisome for a variety of reasons. Troops willing to engage in the unlawful acquisition and use of drugs demonstrate disregard for the law and military discipline. Moreover, drug use itself clouds judgment, lowers inhibition and may facilitate risk-seeking behavior.

Given the limited scope of this essay, I leave it to others to determine whether pressure for additional troops is causing the military to abandon effective screening and sorting tools and whether new tools are needed to supplement or supplant prior approaches. I can say that the military has begun to think about this problem in the context of reducing suicide rates and reducing criminal behavior generally.¹⁰⁵ Perhaps some of those approaches may be effective in tackling this issue as well.

B. Leadership Failures

While the prior section speaks to the role of problematic individuals, high-risk soldiers flourish and draw others into their noncompliant acts when their leaders fail to affirmatively create a culture that embraces and rewards discipline, compliance and respect for the principles of humanity that are foundational to the laws of war. Punishment and condemnation

¹⁰⁰ ARMY REPORT, *supra* note 82, at 36.

¹⁰¹ *Id.* at 59-60.

¹⁰² Adam Ashton, *After Wrenching Testimony, Jury Must Choose ‘Kill Team’ Verdict*, NEWS TRIB., Nov. 9, 2011, <http://thenewstribune.com/2011/11/09/1899565/after-wrenching-testimony-jury.html#storylink=misearch>. Of note, the platoon leader during the Operation Iron Triangle murders may have been abusing military issue Valium. Raffi Khatchadourian, *The Kill Company*, NEW YORKER, July 6, 2009, at 41.

¹⁰³ For instance, careful scholarly work has debunked the hype surrounding the use of marijuana and its direct link to the My Lai Massacre and other atrocities during Vietnam. JEREMY KUZMAROV, *THE MYTH OF THE ADDICTED ARMY: VIETNAM AND THE MODERN WAR ON DRUGS* 72-74 (2009).

¹⁰⁴ ARMY REPORT, *supra* note 82, at 73 (noting that, of the 64,022 felony and death investigations between FY2001 and FY2009, 72% were drug related).

¹⁰⁵ For instance, the military already has formal databases to track soldiers engaging in risky activity such as huffing, lack of helmet use and texting while driving. *Id.* at 38. But the military has not yet synchronized all these data collection systems. Nor has it satisfactorily addressed gaps in the Army’s “reporting, investigation, referral, discipline and separation policies.” *Id.* at 36.

of the worst abuses of the Long War, such as the Stryker kill team and Operation Iron Triangle,¹⁰⁶ often focus on problematic individuals and their followers.¹⁰⁷ Similarly, one convicted kill team member, Staff Sergeant David Bram, confessed that “[i]t was the actions of a few bad apples, myself included, that defaced the good work the [5th Brigade] did in Afghanistan.”¹⁰⁸ Such a perspective conveniently absolves the military of the responsibility to undertake more systemic reforms.

Yet the actions of the Stryker kill team suggest an obvious abdication of leadership at multiple levels. First, platoon leaders and their noncommissioned counterparts failed to enforce general standards of conduct and were disengaged from the platoon’s daily activities.¹⁰⁹ These problems predated Gibbs’s arrival and created a climate ripe for misdeeds. Those who have seen Twitty’s report note that “Tunnell’s inattentiveness to administrative matters . . . may have helped create an environment in which misconduct could occur.”¹¹⁰ Second, Tunnell’s views on counterinsurgency and his disdain for enhancing relationships with civilians seem to have filtered down to the lowest levels.¹¹¹ For instance, Tunnell gave a speech to the troops that a soldier summed up as

¹⁰⁶ During an operation in which a status-based Rule of Engagement allowed the killing of any proven member of designated terrorist activity at any time, troops gunned down three unarmed civilians. Khatchadourian, *supra* note 102. After a subsequent investigation, several low ranking soldiers pled or were found guilty. Stephen Lendman, *Targeting Lawyers: The Case of Paul Bergin*, ATLANTIC FREE PRESS, Dec. 25, 2009, <http://atlanticfreepress.com/news/1/12524-targeting-lawyers-the-case-of-paul-bergrin.html>. Yet here too, one of the leading officers, Colonel Steele, may have “created a dysfunction and intentionally hostile command environment . . . [He] constantly articulated his judgment and displeasure that [the] battalion was not being aggressive enough toward the insurgents.” *Id.* Steele was known for focusing on harsh physical training and eliminating Arab cultural awareness and language training. Khatchadourian, *supra* note 102. Steele rewarded troops with trophy knives for killing insurgents and used a “kill board,” which included civilian deaths in its scorekeeping. *Id.*

¹⁰⁷ Media coverage and trials have played up the problematic individual or “bad apple” aspect in portraying Gibbs as “an imposing sociopath with little respect for life, a man who gunned down dogs without provocation, threatened fellow soldiers, and who tallied his kills with skull tattoos on his calves.” Gene Johnson, *Soldier Denies Plot to Kill Afghans*, BOSTON GLOBE, Nov. 1, 2011, http://articles.boston.com/2011-11-01/news/30346603_1_kandahar-province-civilians-5th-stryker-brigade.

¹⁰⁸ Adam Ashton, *Stryker Sergeant Guilty of Assaulting Junior Soldier in 11th ‘Kill Team’ Case*, News Trib., Nov. 18, 2011, <http://blog.thenewstribune.com/military/2011/11/18/stryker-sergeant-calls-on-witnesses-who-say-he-was-framed-for-kill-team-misconduct>.

¹⁰⁹ Mogelson, *supra* note 15.

¹¹⁰ Assmann et. al, *supra* note 14.

¹¹¹ *Id.*

“Let’s kill those motherfuckers.”¹¹² Sociologist and defense witness Stjepan Mestrovic suggests that such leadership promoted a very aggressive climate. In one example, the brigade headquarters posted a body count board and troops understood they had to contribute to the numbers to get promoted.¹¹³ At a more basic level, reports suggest most members of the unit “disliked the Afghan people, whether it was the Afghan National Police, the Afghan National Army or locals.”¹¹⁴ It is safe to say leaders who were serious about counterinsurgency would not have allowed such a view to flourish because it made accomplishing counterinsurgency goals difficult if not impossible. Finally, several of Tunnell’s superiors suggested they had lost confidence in his leadership prior to the kill team incidents.¹¹⁵ In fact, multiple two-star generals voiced concern that “the brigade was going to end up on CNN for ‘all the wrong reasons.’”¹¹⁶ Yet Tunnell’s superiors neither removed nor transferred him, even though such measures were discussed.¹¹⁷

Regardless of whether the military’s higher command committed a crime in failing to investigate, or actively participated in a cover-up of the kill team incidents,¹¹⁸ the Stryker kill team’s leaders failed their troops and the Afghani civilians they were tasked with protecting. Military expert W. Hays Parks has drawn on empirical evidence and experience in Vietnam and other conflicts to demonstrate that effective leadership and adherence to general military discipline yields soldiers who “do not have or are less likely to have problems adhering to the law[s] of war.”¹¹⁹ Some early evidence in Iraq and Afghanistan shows the same thing.¹²⁰ Parks observes that “a commander’s express intolerance [of noncompliance] goes a long way toward minimizing the probability of miscon-

¹¹² Kerry Picket, *Kill Team Brigade Commander Given Wrist Slap*, WASH. TIMES, Apr. 5, 2011, <http://www.washingtontimes.com/blog/watercooler/2011/apr/5/kill-team-brigade-commander-given-wrist-slap/>.

¹¹³ Martin Kaste, *New Pictures of Kill Team Are Published*, NAT’L PUB. RADIO (Mar. 29, 2011), <http://www.npr.org/2011/03/29/134943158/Kill-Squad-Photos>.

¹¹⁴ Boal, *supra* note 39 (“Everyone would say [the Afghans] are savages.”).

¹¹⁵ Joe Gould, *Kill Team Brigade Commander Pushed Strike and Destroy*, MILITARY TIMES, Apr. 5, 2011, <http://militarytimes.com/blogs/outside-the-wire/2011/04/05/kill-team-brigade-commander-pushed-strike-and-destroy>.

¹¹⁶ Anna Mulrine, *Pentagon Had Red Flashes About Command Climate in Kill Team Stryker Brigade* CHRISTIAN SCI. MONITOR, Dec. 5, 2011, <http://accessnews.com/index.php/articles/show/id/21133>.

¹¹⁷ *Id.*

¹¹⁸ Boal, *supra* note 39.

¹¹⁹ Parks, *supra* note 71, at 983.

¹²⁰ Khatchadourian, *supra* note 102 (noting that when General Chiarelli took command of the Army’s day-to-day operations in Iraq, he was able to reduce checkpoint deaths 85% by emphasizing counterinsurgency principles and the value of restraint).

duct.”¹²¹ Furthermore, he concludes that “poor leadership of poorly trained, ill disciplined troops” is largely responsible for laws of war violations.¹²²

Part of the problem seems to be the military’s almost single-minded emphasis on combat readiness. While combat readiness is vitally important, so is institutional readiness in which leaders learn, value and emphasize good order and disciplined practices.¹²³ This is especially true when troops are expected to engage in counterinsurgency tasks as well as more traditional kinetic operations. The military itself has acknowledged that commanders and subordinate leaders have limited experience “taking care of soldiers” in these sorts of contexts and, as a result, their appreciation for the value of “good order and discipline[d] practices, . . . ceremonies and accountability formations ha[s] been lost.”¹²⁴

Regrettably, given this essay’s narrow focus, I again call on others to help promote measures that would encourage better leadership. Such leadership must be exercised at every stage of a deployment. Leaders set the tone; they send the message that compliance with international humanitarian law is not only desirable, it is expected and essential to mission success. Good leaders also act as a preventative measure for the existence and escalation of violations; some problematic individuals may be impossible to avoid entirely, but a well-led and well-disciplined unit is one in which problematic individuals face much more difficulty in recruiting other conspirators and maintaining secrecy.

C. Failures of External Checks

Finally, the combination of secrecy, voluntary non-disclosure and lack of interest may prevent public pressure from creating an effective external check on the behavior of American troops during the Long War. In many ways, the need for internal military reform is reminiscent of Vietnam and its aftermath. While the media provided substantial television and print coverage of Vietnam, along with some iconic images of misdeed,¹²⁵ new scholarly work convincingly debunks the conventional wisdom that such coverage contributed to the decline of public support for the war.¹²⁶ Television coverage was largely supportive of U.S. efforts,

¹²¹ Parks, *supra* note 71, at 985.

¹²² *Id.* at 984.

¹²³ ARMY REPORT, *supra* note 82, at 36.

¹²⁴ *Id.* at 37. These practices include measures such as “unannounced health and welfare checks in the barracks accompanied by Military Police Working Dog sweeps [and] unannounced 100% urinalysis tests.” *Id.*

¹²⁵ See SUSIE LINFIELD, *THE CRUEL RADIANCE: PHOTOGRAPHY AND POLITICAL VIOLENCE* 7 (2010).

¹²⁶ Michael Griffin, *Media Images of War*, 3 MEDIA, WAR & CONFLICT 13 (2010), available at <http://mwc.sagepub.com/content/3/1/7.full.pdf+html>.

even quite late in the conflict.¹²⁷ One reason is that reporters who printed or aired negative stories found themselves censored and black-listed.¹²⁸ While the press played a vital role in breaking stories such as Son Thang and My Lai, even the coverage of My Lai “focused on the legal issues in Lieutenant Calley’s trial rather than on the massacre itself.”¹²⁹ The general consensus regarding the terrible wrongs perpetrated in My Lai was formed long after they occurred. Similarly, the press and other outlets did not widely disseminate many of the most important and memorable images of loss, suffering and misdeeds until after the conflict.¹³⁰

Media coverage is even more circumscribed after Vietnam. During Vietnam, the military believed negative media coverage contributed to the U.S. defeat and, in response, it has since reduced independent media access to conflicts.¹³¹ The military has created official media pooling practices, which make it very difficult to get access to real-time information for anyone other than a select few journalists.¹³² Furthermore, troops are often prevented from speaking to the press or giving interviews, such a gag order applied to members of the Stryker Brigade.¹³³

In the Long War, the pictures from Abu Ghraib may be the exceptions that prove the rule. While the Abu Ghraib pictures sparked a nationwide debate about detention practices, the U.S. military has since redoubled its efforts to prevent any pictures of misdeeds being released to and disseminated by the press. Of all the major outlets, only Rolling Stone and der Spiegel were willing to print any of the Stryker kill team’s trophy pictures. No pictures of Operation Iron Triangle have emerged in the popular press. Though it’s possible respect for the victims and the fear of inflaming or creating insurgents may be guiding the press, the absence of pictures may also help explain the lack of any popular response. Or it may reflect a larger fatigue with negative coverage of the Long War.¹³⁴ People simply may not want to know or be confronted with the knowledge U.S. soldiers are capable of such acts. In such a limited space, I do not pretend to comprehensively explain why media coverage is so limited and why the public does not demand or engage more with these abuses. I use these observations simply to suggest the likelihood of a large-scale domestic push for military reform at this stage seems unlikely.

¹²⁷ *Id.* at 15.

¹²⁸ *Id.* at 14.

¹²⁹ D.C. HALLIN, *THE UNCENSORED WAR: THE MEDIA AND VIETNAM* 180 (1986).

¹³⁰ Griffin, *supra* note 126, at 13.

¹³¹ *Id.* at 24.

¹³² Martin Bell, *The Death of News*, 1 *MEDIA WAR & CONFLICT* 221, 224 (2008).

¹³³ Boal, *supra* note 39.

¹³⁴ Luis Ramirez, *US Soldier Sentenced to Life in Prison for Afghan Atrocities*, *VOICE OF AMERICA*, Nov. 11, 2011, <http://www.voanews.com/english/news/usa/US-Soldier-Sentenced-to-Life-in-Prison-for-Afghan-Atrocities-133719403.html>.

Lastly, even were the public interested in agitating for change, the secrecy surrounding the events makes it difficult to know where to begin the demand for change. While the media has been allowed access to the trials and evidence about the problematic individuals, the Twitty investigation remains classified. Without access to this report, there is little information with which to press for specific changes to the military's culture.¹³⁵ Nonprofits, such as Human Rights First, have repeatedly called on the military to make the Twitty Report public, to no avail.¹³⁶

While I have hesitated to make broader claims, I think a reasonable first step is to make the Twitty Report publicly available. Just as the Winter Soldiers Investigation following the Vietnam War allowed a public airing of the misdeeds of soldiers along with a larger sense of what situations and pressures the troops faced, publishing internal reviews of events like the Stryker kill team allows a fair outside assessment of the military's efforts to address noncompliance with the laws of war. Regardless of whether the public at large chooses to read the report, at the very least legal, military and organizational experts could offer their opinions and insights, as well as suggest avenues for further research. Rather than relying on speculation or sound bites from the report, a full vetting might reveal whether the military has conducted thorough investigations and whether it has responded appropriately. Similarly, more information might provide a better sense of how and why certain leaders are failing our troops and foreign civilians during the Long War.

¹³⁵ Osburn, *supra* note 21.

¹³⁶ *Id.*; Press Release, Human Rights First, Kill Team Sentence Only One Step in Full Accountability for Civilian Murders (Nov. 11, 2011), [http://www.humanrightsfirst.org/2011/11/11/"kill-team"-sentence-only-one-step-in-full-accountability-for-civilian-murders/](http://www.humanrightsfirst.org/2011/11/11/); Press Release, Human Rights First, Afghanistan Kill Team Whistleblower Plea Renews Calls for Report Release (Aug. 3, 2011), [http://www.humanrightsfirst.org/2011/08/03/afghanistan-"kill-team"-whistleblower-plea-renews-calls-for-report-release/](http://www.humanrightsfirst.org/2011/08/03/afghanistan-); Press Release, Human Rights First, Release of Army Investigation into Civilian Murders Sought (Apr. 19, 2011), <http://www.humanrightsfirst.org/2011/04/19/release-of-army-investigation-into-civilian-murders-sought/>.

