

**B461. "Soldiers Need Clear Orders." The National Law Journal, (August 16, 2004) p. 22.**

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Courts-martial of American soldiers accused of having tortured or killed Iraqis and Afghans continue. The soldiers often claim that they merely followed orders. This claim was made most recently by Pfc. Lyndie England, on trial for prisoner abuses in Iraq. But some say that for soldiers such as her, this is no longer an adequate defense under the Nuremberg Principles. Adopted in 1950 following the Nuremberg trials, the principles provide that individuals are responsible if they commit acts that are crimes under international law; acting pursuant to an order is no excuse "provided a moral choice was in fact possible." Indeed, a large number of talking heads, who have never been fired on, argue that these soldiers should have refused to obey orders that are illegal on their face. I can tell you, from firsthand experience, that unless one strongly believes that abusing prisoners is immoral, and these beliefs are reinforced by clear training, it is absurd to expect young people in combat to follow Nuremberg principles on their own.

I served as an Israeli commando in what today might be called Special Forces. While we were fighting to keep Jerusalem from being overrun by Jordanian troops and local Palestinian fighters, all of my friends-and many of my acquaintances-were killed or maimed. It is an experience that does not leave you in a very benign mood. And when you hear that "the other side" is using anti-personnel mines, the purpose of which is not so much to kill but to terrorize you-they are said to shoot a shaft between your legs-it makes you feel vulnerable and angry.

Soldiers spend much of their training learning to kill more efficiently. And then you and all those around you practice what you have been taught, with knives and guns-for a year or longer. And the more effective a killer you are, the more you are appreciated. One day, you catch some of "them." You are badly in need of information about the enemy. You see some others who taunt the prisoners and slap them around a bit. After all, you are quick to rationalize, if killing is acceptable, then a bit of humiliation and coercion is chicken feed. You tell yourself that those who are maltreated will still return to their loved ones and lead full lives-unlike your friends, whom "they" have slaughtered. And you are bone tired, much more inclined to search for a hot meal and a shower than you are to ponder prisoners' rights. Above all, soldiers are drilled that their duty is not to ask questions but to follow orders. To disobey is considered a betrayal.

Soldiers need firm guidance.

To prevent soldiers from crossing the line between legitimate interrogation of prisoners and abuse, soldiers must believe that the other side is human, too; otherwise they will be inclined to treat prisoners in an inhumane way.

Clear markers are required to clarify the difference between interrogation and torture. Otherwise, one thing leads to another. Some sleep deprivation, for instance, does not seem inherently inhumane; we were deprived of sleep by mortar shells that fell among us and by constant commands to attack here and rush there. Ordering that prisoners cannot be deprived of sleep any more than the interrogators is one way to proceed. Soldiers must also be ordered not to lay their hands on those who have been arrested, unless the detainees use force against them.

Details can vary, not all circumstances can be foreseen, but the sharper the line that separates permissible behavior from banned behavior, the more likely it is that a culture of basic respect for the humanity of the enemy will persist. Experiences speak louder than words. When we took part in role-playing exercises, in which we learned to withstand interrogations, we were screamed at, threatened and pushed around. When we captured prisoners, we recalled the ennui and fear (felt even in mock captivity) and it helped to keep us in check.

Also important are the orders. When one of us, whose girlfriend (another soldier) was crippled by a mortar fragment, threatened to kick the daylight out of a prisoner who would not talk, our captain merely called his name in a warning way-he got the point. On another occasion, the captain beckoned to a soldier to join him outside the tent. We did not hear what was said, but the message was clear. These cues served as reminders that the "others" were also God's children, and that when all the shooting stopped, we would have to live together-just about the opposite of the signals that intelligence officers have given the military police in Iraq and Afghanistan.

If soldiers must disobey orders-and draw on Nuremberg principles-to prevent torture, then something is very rotten, and it is not in Denmark.