The Military and the Media in Perspective: Finding the Necessary Balance

James P. Terry*

In reviewing the recent events in Iraq and the War on Terrorism vis-à-vis the media, the one obvious question asked by all Americans today, including those in military service, is who do the media represent. Do they represent the voice of the American people, or do they represent a defined elite concerned with a change in the political landscape in the United States?

Recent Background to Current Contentiousness

Two recent incidents, I believe, are indicative of the current unease between the military and the media and force us to reflect on who and what the media represents in their reporting on military activities. In early 2005, Newsweek, owned by the Washington Post Company, published a story by Michael Ishikoff claiming that a copy of the Koran had been flushed down a toilet by an American interrogator at Guantanamo, Cuba, in front of Muslim interviewees. When evidence was produced that showed it to be false, Newsweek belatedly retracted the story but only after much damage to the US military’s image occurred in those countries with whom we must cooperate in the War on Terrorism. More importantly, the rioting that followed resulted in 16 deaths in Afghanistan and elsewhere. Newsweek,

* Colonel, United States Marine Corps (Ret.).
The Military and the Media in Perspective: Finding the Necessary Balance

moreover, wanted no part of the White House's request that it help repair the damage. And, unfortunately, no journalist from any major news organization wrote that they should.

The current reporting of the Haditha story also bears mentioning. The rush to judgment of the Marines involved by the US media without waiting until the facts are determined has been viewed by many as simply reflective of the media's tendency to believe the worst. More significantly, the fact that the incident was reported immediately to superiors by the Marines involved, that those in command were made aware of the civilian deaths contemporaneous with the incident, and that the squad involved has consistently claimed that they followed their rules of engagement in clearing the buildings from which they took fire, have all been conveniently overlooked by the mainstream media in their reporting. More importantly, there has been no investigative reporting on standard procedures for clearing buildings from which fire is taken and no interest in reporting the context in which these deaths occurred.

What is most difficult to understand is why the press, most of whom have not served in the military, so often chooses to believe foreign sources proven incorrect in the past, and disregard the voices of fellow Americans who are daily placing themselves in harm's way for our nation's foreign interests. Military lawyers also ask why the press ignores the basic legal principles that apply in irregular belligerencies where unlawful combatants are engaged with national forces—in this case coalition forces and forces of the new Iraqi government. We must also ask why there is such a bent to discredit and criticize US efforts rather than understand the rationale behind coalition actions aimed at ensuring we can "stay the course" in Iraq and the reasons for the immediate actions in support thereof.

With that said, our charge must be to assess the relationship between the media and the military as it relates to an understanding and articulation of the legal parameters of the current conflict in Iraq as covered by the press—that is, Operation Iraqi Freedom. Our goal should be to increase mutual understanding at both the personal and institutional levels of what the legal regime actually represents with respect to the military's operational requirements in the War on Terrorism and the legal framework under which the current conflict is being pursued. One would hope that the effort here today can help lead to practical solutions to areas of friction in communication between the two. Finally, our ultimate quest must be how can we maintain a vibrant, robust freedom of expression while protecting the nation's capacity to fight our wars effectively.

The opinions shared in this paper are those of the author and do not necessarily reflect the views and opinions of the U.S. Naval War College, the Dept. of the Navy, or Dept. of Defense.
James P. Terry

The Legal Principles Underlying Irregular Belligerencies: Often Ignored in the Reporting on Iraq

The Nature of the Current Violence
As discussed below in detail, the media’s use of the now firmly ingrained term, “insurgents,” or “insurgency,” is both factually and legally incorrect and reflects the media’s misunderstanding of the conflict.

The Global War on Terrorism was clearly not contemplated when the four Geneva Conventions, addressing wars between national entities, were signed in 1949. The violence in Iraq currently perpetrated by al Qaeda and elements of the former regime is being spearheaded by individuals under no known national authority, with no command structure that enforces the laws and customs of warfare, and with no recognizable, distinguishing military insignia. More importantly, they represent no identifiable national minority in Iraq. Their attacks have injured and killed civilians of all ethnic groups, as well as more than 2,500 US military personnel attempting to assist the democratic government in Baghdad to succeed. Their use of children and women as lookouts and information gatherers is reminiscent of Vietnam and raises serious questions about the status of those individuals when acting on behalf of terrorist fighters in Iraq. The fact that this status is seldom, if ever, acknowledged by the press raises serious concerns for the military in their efforts to assure the public of our adherence to the law of war.

It is important to understand that terrorist violence provides no legal gloss for its perpetrators. The critical international law principles applicable to the violence in Iraq are found in the 1949 Geneva Conventions in Common Article 3 relating to internal armed conflicts and the principles enunciated in the two Additional Protocols to these Conventions negotiated in 1977. The minimal protections afforded by Common Article 3, for example, include prohibitions on inhumane treatment of noncombatants, including members of the armed forces who have laid down their arms. Specifically forbidden are “murder of all kinds, mutilation, cruel treatment and torture; taking of hostages; outrages upon personal dignity, in particular, humiliating and degrading treatment,” and extrajudicial executions. Provision must also be made for collecting and caring for the sick and wounded.

The 1977 Geneva Protocols had their roots in wars of national liberation following World War II. Colonial powers, to include the United States, France, Great Britain, and the Netherlands, had engaged these liberation movements militarily, often with little regard for the law of armed conflict. In the 1974 conference hosted by the Swiss government in Geneva, the need to regulate conflicts of a non-international character was addressed in Article 96(3) of Additional Protocol I and is the subject of Additional Protocol II. At the conference, the Swiss
Government invited members of national liberation organizations to participate, but not vote.

The participation of non-State actors helped shape the drafting of Article 96, paragraph 3 of Additional Protocol I. This section provides that a party to a conflict with a State army can unilaterally declare it wants the 1949 Geneva Conventions and the 1977 Protocols to apply. This would, of course, offer greater protection for members of national liberation movements. Under Article 96, however, parties authorized to make such a declaration had to establish that they were involved in “armed conflicts in which people are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination.”5 In Iraq, however, terrorists are trying to unseat the government that has been overwhelmingly approved by the people. Moreover, al Qaeda has made no statement that it desires the Geneva Conventions to apply.

These terrorists, or unlawful combatants, however described, have no juridical existence other than as common criminals. Additional Protocol I, Article I conflicts, or those between a nation and a recognized insurgency seeking a legal status, differ from the present terrorist violence in that participants in Article I conflicts opposing government forces are required to meet certain minimum requirements. These are: (1) that they operate under responsible command and are subject to internal military discipline; (2) that they carry their arms openly; and (3) that they otherwise distinguish themselves clearly from the civilian population.6 In return they are accorded certain protections when captured. It is doubtful that those perpetuating violence in Iraq today meet these criteria for the status of insurgent. Moreover, they are exploiting every ethnic group for their own vicious ends, without regard for these requirements.

The fact that these terrorists have no recognized and protected status under the Geneva Conventions or their Protocols, and employ methods completely banned by the laws of armed conflict, is likewise seldom articulated by mainstream reporters. In addition, al Qaeda’s failure to adhere to the most basic tenets of international law on the battlefield is never addressed. What is addressed is every claimed violation of the law by American service members, often responding to acts of savagery by Muslim extremists claiming to act on behalf of Allah, not on behalf of a national or sub-national entity. The fact that these claimed violations of the law of war by Americans are often subsequently found to be without substance seems to never appear in print.

The Status of the Al Qaeda and Other Anti-Government Participants
While the press today insists on calling these terrorists “insurgents,” the fact that they are the basest of criminals, and not insurgents with minimal juridical status
under Article I, Protocol I, as discussed above, is never recited. The fact that they do not represent even a significant minority of the Sunnis, Shiites or Kurds is never explained. (We know this because 70% from all sectors voted in the December 2005 elections for a democratic government.) And there is never a call in the press for the Iraqi people to stand up and denounce these perpetrators of violence who are even now sucking the lifeblood from the fledgling Iraqi Government.

The law of armed conflict is based largely on the distinction between combatants and noncombatants. Unfortunately, in Iraq, the clear distinction normally witnessed in conflict (i.e., belligerents on the one hand and the civilian populace on the other) is significantly blurred. Nor are all elements that are perpetuating the violence today working toward the same ends. Baathist operatives within the Sunni elite who were formerly within Saddam’s inner circle are trying to prevent the fledgling democracy from succeeding. The al Qaeda leadership is focused on driving the Western influences from Iraq and it is likewise targeting any supporters of the current coalition effort to help the new Iraqi government sustain democracy. Certain members of the Shiite leadership have used the turmoil as an opportunity to settle scores while at the same time refusing to commit completely to the new regime until it is determined that it can succeed. Shiite religious leaders like Sistani are remaining silent. The Kurds have opted to remain on the sidelines in the north and take a wait and see approach while at the same time ostensibly supporting the new regime. Then there are the local rivalries, and in Iraq, all politics are local. I saw that in Fallujah in late 2004 and in early 2005 when I was there on behalf of the Secretary of State.

The point is that the Marines under scrutiny at Haditha responded to attack in a very complex environment. The key question had to be whether they followed the legally scrubbed rules of engagement and, equally important, whether the rules of engagement followed, if in fact they were followed, actually applied to the facts on the ground as they presented themselves to the Marines involved. Major General Bargewell, the investigating officer, is now carefully examining these questions on behalf of the Secretary of Defense.

These cross currents, and the fact that our Marines and Army forces are dealing with a period of carefully orchestrated violence, need to be more accurately portrayed by the media. The fact that individuals, including women and children, who participate actively and directly in support of combat activities (such as providing combat intelligence, physically shielding combatants, etc.) themselves become combatants and are legitimate targets of attack, needs to be explained. That is why it is so critical that reporting on events such as the Haditha killings receive careful review and careful attention.
The Military and the Media in Perspective: Finding the Necessary Balance

Finding the Appropriate Military-Media Relationship

We must ask then, what is the appropriate balance in reporting in the current struggle in Iraq? How can the media report events in a more accurate way? What can the military do to provide the legal insights necessary for the media to fully understand the operational legal issues that have and will arise? There is no question that public perceptions of the law and, more specifically, perceived violations of the law shape national policy decisions. This was never more true than in Vietnam, where the My Lai murders helped to sour the Vietnamese public on our continued presence there, and the US public on our continued participation in that conflict.

In the present conflict in Iraq, the allegations concerning the alleged murders at Haditha and other similar incidents are even now shaping national policy decisions. It was no accident that when President Bush visited Baghdad on June 13, 2006 he met with the new Iraqi Prime Minister and expressed support for continued US presence on the one hand, while urging the Iraqis to move quickly to train their own forces and to take the lead in their own defense.

There is also no question that the climate under which the military and the media operate has intensified since September 11, 2001. A 2005 Gallup Poll found that large majorities of both the military respondents and the public believe that news stories about the military tend to be too negative. Members of all three groups, military, media and the public, however, believe that embedding the media within the operational forces enhances the public's understanding of the war, helps the morale of the troops, improves the public's perception of the military and improves the credibility of the media coverage. It is the understanding which flows from embedding, not mere information, which makes the difference between fair coverage and something less.

The Practical Effects of Embedding

It was during the Bosnian peacekeeping operation in 1995 that reporters were first authorized and assigned to accompany US forces as part of an authorized comprehensive program. This was short-lived, however, as a sensitive conversation between a commander and his men concerning racist attitudes of one of the Balkan parties to the conflict was reported by a Wall Street Journal reporter (Tom Ricks). The program was robustly adopted, however, by US military commanders in Operation Iraqi Freedom in 2003. The more than 600 reporters who were approved for the program received a week-long "boot camp" of sorts aboard ship and at sites such as Marine Corps Base Quantico, Virginia; Fort Dix, New Jersey; and facilities
James P. Terry

in Kuwait. New York Times journalist Andrew Jacobs found it to be “alternatively enlightening, entertaining, horrifying, and physically exhausting.”

While nearly all reporters involved in the program during Operation Iraqi Freedom believed it gave them a greater feel for the war and a better understanding of the military as a result of their training and experience, there were concerns by publishers that negative stories by embedded reporters never caught the public’s attention. These included stories of failed supply planning, civilian casualties, fratricide and theft. I believe that this lack of traction for negative stories can be largely attributed to the overwhelming success of the initial campaign and the belief on the part of most Americans that the coalition force had done a remarkable job, despite the reported negative events.

While the embedding program was not institutionalized during Vietnam and earlier, one only has to recall the excellent reporting of Ernie Pyle in the Pacific during World War II to understand that the embedding of individual reporters has a long and proud history. In Vietnam, Joe Galloway, who subsequently wrote We Were Soldiers Once, with Major General Hal Moore, spent 25 years traveling “up close and personal” with military units—primarily Marine and Army infantry commands. It was his reporting in the Ia Drang Valley (pronounced Na Trang) in November 1965 with an Army Battalion of the 1st Cavalry Division facing overwhelming odds which catapulted him onto the world stage. Galloway described his feelings on his reporting this way:

There, in the mud, is where war is most visible and easiest understood. There no one will lie to you; no one will try to put a spin on the truth. Those for whom death waits around the next bend or across the next rice paddy have no time and little taste for the games that are played with such relish in the rear. No one ever lied to me within the sounds of the guns.10

The commitment by the media to embedding their reporters in Iraq has now waned. While at one time several hundred reporters were assigned to operating units, today that number stands at no more than 25. More than 40 media personnel, to include reporters, cameramen and assistants, have perished in attacks during the War on Terror. When a new person is attacked, as has happened recently in the case of Bob Woodruff and others, the story becomes their injuries and their prognosis and not that of the American servicemen who may have died in service to his or her nation while providing them protection. That aspect of the military-media relationship and the related reporting has not been ignored by the American people.

What marked the initial success of the embedding process, in my view, was the fact that the additional experience and training provided these reporters enabled
them to turn the situation into an educational opportunity for their audience. Through their understanding of the events in the context of the operational requirements of the conflict, they were less likely to resort to quick criticism, “gotcha” reporting and wildly negative predictions. As Navy Commander Brendon McClane has suggested in an excellent recent article in *Parameters* magazine, the next step should be to bring trusted reporters into the operations center to gain a needed context for their stories. While this would have to be carefully tailored depending on the conflict and the sensitivity of the information, one can reasonably conclude that reporters like Rick Atkinson, Major Garrett and Ted Koppel, with a long history of trust by commanders, would be likely first candidates.

Access to the operations center would also give access to an understanding of the rules of engagement approved for and employed by the force involved. Rules of engagement, although highly classified, nevertheless provide the legal and operational roadmap for our military’s response to attack, both geographically and with regard to weapons systems and procedures. The understanding of these approved operational procedures, which are trained to by our forces, would preclude unfounded claims of violations, because these rules are drafted after careful review of the legal restrictions applicable and after a careful review of the combatant status of individuals engaged. When a civilian woman or child is acting as a combatant, the fact that the individual no longer enjoys civilian protections should be understood by every journalist reporting the story, even if that fact is personally distasteful. When a civilian family is harboring a terrorist in their house who is firing on US troops serving in Iraq and representing the interests of the democratically elected government, as is alleged to have happened at Haditha, the reporters need to know that the home is no longer a protected place but has become a safe haven for the enemy. These are the basics, but they often seem not to be within the lexicon used by the fourth estate.

When we have reporters who understand the law, have good judgment and have integrity, their reporting tends to be clear, more accurate and in context. When they do not exhibit these traits, their reporting can be misleading and worse, it tends to frustrate the military and, as we witnessed after Vietnam, preclude an effective dialogue in future military engagements.

**Notes**

1. See Howard Kurtz, *Media vs. the Military*, WASHINGTONPOST.COM, May 23, 2005, http://www.findarticles.com/p/articles/mi_m0NTQ/is_2005_May_23/ai_n13810168 for an insightful discussion of how this unfounded report and the similar inaccurate reporting by Dan Rather on 60 Minutes Wednesday in late 2004 concerning President Bush’s Air National Guard service have soured many Americans on the credibility of the press with respect to military reporting.

3. The text of Common Article 3 may be found in id. at 198.


6. DOCUMENTS ON THE LAWS OF WAR, supra note 2, at 423. Article 1(2) of Protocol I states that "civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience." Id.

7. The Gallup Poll conducted in 2005 showed a comparison of public perceptions and the changes that have occurred in the military-media relationship since a similar poll was conducted in 1999. The complete Gallup Poll results can be found at http://www.mccormicktribune.org/journalism/militarymedia2005.pdf?search=%22site%3Awww.mccormicktribune.org%22 (last visited Aug. 24, 2005).


