DISCIPLINE, PUNISHMENT, and COUNTERINSURGENCY

Scott Andrew Ewing

JUST AS COMMANDERS are responsible for the climate in their units, so the Army as an institution is responsible for the moral climate it fosters. In this article, I will outline some of the contradictions and ambiguities in Army regulations (ARs) and field manuals (FMs) that make it difficult for leaders to understand the distinction between corrective training and punishment. I will argue that ARs, case law, the Office of the Inspector General, and higher-echelon commanders have, nonetheless, made it clear that such a distinction exists and must be respected. Failure to recognize and respect this distinction can and often does lead to illegal abuses of authority. These abuses of authority within the Army's ranks, and the cultural undercurrents that condone these patterns of behavior, cripple efforts to wage an effective counterinsurgency (COIN) campaign by fostering a mentality of paternalistic tyranny rather than good stewardship. The moral implications of this mentality are neither consistent nor compatible with counterinsurgency doctrine, which requires support of, and thus respect for, the local population.[1]

In July of 2005, while serving in Iraq, I began a search for the regulations that authorized a noncommissioned officer (NCO) to order a private to do painful, humiliating, or fatigue-inducing exercises as a means of addressing alleged misconduct or minor deficiencies. Such practices are commonly referred to as "smoking" a Soldier.[2] An instance of a Soldier being ordered to do pain-inducing exercises as a response to alleged misconduct or minor deficiencies is called a "smoke session." The practice is ubiquitous in the Army. It is also illegal.

To correct this situation, two things need to occur. First, several ARs and FMs need to be revised to clarify the difference between corrective training and punishment. Additionally, company and field grade officers and senior NCOs must enforce these regulations, and their interpretation, in accordance with judicial findings and the memoranda of higher-echelon officers.

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PHOTO: A Soldier in Iraq getting "smoked." When such sessions cross the line into abuse, they become illegal. If unchecked, paternalistic behaviors among leaders can also translate into contempt for their Soldiers and others. Abuse of authority is not consistent with good stewardship. (courtesy of author)

Paternalism Gone Awry

Sergeants smoke Soldiers in the Army every day. Unfortunately, it is not easy to discern the legal boundary between corrective training and punishment by reading regulations. In my experience, NCOs and lower enlisted Soldiers are almost never aware of the location and content of the wording that addresses practices colloquially referred to as "smoke sessions." Indeed, the term "smoke session," while a part of the everyday lexicon of enlisted Soldiers, is nowhere to be found in ARs or FMs.

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Legal guide. The terms, "corrective training," "extra training," "extra instruction," and "punishment" are discussed, but there is considerable ambiguity in their definitions. The clearest distinction between extra training and punishment is in FM 27-1, *Legal Guide for Commanders*: "Do not use extra training and instruction as punitive measures. You must distinguish extra training and instruction from punishment or even the appearance of punishment."[3] This passage exhorts a distancing of the definitions and practices of punishment vis-à-vis extra training.

Such a distinction is important because punishment is illegal when it is administered prior to an Article 15 or a court martial.[4] There is no provision anywhere in the Army that allows NCOs to preside over a court martial, and FM 27-1 explicitly states that NCOs are not authorized to impose nonjudicial punishment on Soldiers "under any circumstances."[5] An NCO's summary decision to punish a Soldier is unauthorized. Smoke sessions, when punitive, are therefore unauthorized.

NCO guide. Unfortunately, FM 7-22-7, *The Army Noncommissioned Officer Guide*, does not specifically state that NCOs must not punish Soldiers. This publication gives some guidelines, shared with AR 600-20, *Command Policy*, for acceptable extra training, or "on-the-spot" corrections: "The training, instruction, or correction given to a Soldier to correct deficiencies must be directly related to the deficiency . . . Such measures assume the nature of the training or instruction, not punishment . . . All levels of command should take care to ensure that training and instruction are not used in an oppressive manner to evade the procedural safeguards in imposing nonjudical punishment."[6] Here, the wording, "such measures assume the nature of the training or instruction, not punishment," merely declares that corrective training measures will be viewed as training, and *not* punishment, when they are directly related to the deficiency. But there is no statement in this passage that prohibits such training from being essentially punitive in nature.

In FM 7-22-7, a section on command authority states, "The chain of command backs up the NCO support channel by legally punishing those who challenge the NCO's authority."[7] This statement also fails to make it clear that NCOs do not have the legal right to impose punishment. Instead, the wording simply recognizes the obvious fact that the chain of command may use legal measures to punish Soldiers.

FM 7-22-7 then also implies that punishment was historically the means by which NCOs controlled their subordinates, and leaves open the question of where the boundaries between corrective training and punishment lie. The Army began to define NCO duties explicitly during the late 19th and early 20th centuries. The five or six pages of instructions provided by Frederick William Augustus, Baron Von Steuben's *Regulations for the Order and Discipline of the Troops of the United States* in 1778 grew to 417 pages in the 1909 *Noncommissioned Officers Manual*.[8] FM 7-22-7 explains that, although this was an unofficial publication, it was widely used, and the chapters describing the duties of the first sergeant and sergeant major include common forms, a description of duties, what to do and not do, and customs of the service.[9] This 1909 manual also included a chapter on discipline that stressed the role of punishment in achieving discipline. The manual stated that the purpose of punishment was to prevent the commission of offenses and to reform the offender. Notably though, this manual stressed that treatment of subordinates should be "uniform, just, and in no way humiliating."[10]

Although FM 7-22-7 discourages humiliating treatment by reference to the unofficial 1909 manual, this more recent and fully official Army publication does not explicitly state that NCOs lack the authority to punish Soldiers. It almost seems to be an intentional obfuscation of the issue, an underhanded attempt to condone, without really sanctioning, the essentially punitive measures that NCOs traditionally use to control their subordinates.

Another section in FM 7-22-7 reinforces the idea that the routine duties of an NCO include punishing soldiers: "The day-to-day business of sergeants

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U.S. Military Academy cadets undergoing physical training in July 2008 as part of Cadet Basic Training. When such training becomes punishment, it is a violation of the Uniform Code of Military Justice. A clearer articulation of the differences between training and punishment can help prevent abuses of authority.

and corporals included many roles. Sergeants and corporals instructed recruits in all matters of military training, including the order of their behavior in regard to neatness and sanitation. They quelled disturbances and *punished perpetrators*" (emphasis added).[11] To administer punishment, the NCOs of the company established the "company court-martial," which was not recognized by Army doctrine or official procedures (which leads one to ask why FM 7-22-7 even mentions it). This institution allowed the NCOs to informally enforce discipline without lengthy proceedings. In the days before the summary court martial, "it proved effective to discipline a man by the company court-martial and avoided ruining his career by bringing him before…officers of the regiment."[12] This argument continues to be used by contemporary NCOs to justify the practice of smoking a Soldier as a sort of kindness, because there is no written record of the incident.

In the passage above, the first sergeant and other NCOs established and presided over this means of enforcing discipline *without* involving commissioned officers. But the summary court martial referenced as the modern-day descendent of the "company court martial" is presided over by a commissioned officer, not an NCO. In a discussion that covers a span of time from the Revolutionary War through the War on Terror, FM 7-22-7 mentions punishment in three separate cases as the legitimate duty of NCOs. Astonishingly, nowhere in this manual is it explicitly stated that NCOs do not have the authority to punish soldiers in today's Army.

Constitutional Guidelines

The Fifth Amendment to the U.S. Constitution states: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law."[13] Note *only* the grand jury indictment requirement is waived in "cases arising in the land or naval forces . . . when in actual service in time of War or public danger." If the authors of

the Fifth Amendment had wanted due process to be completely withheld from military members during wartime service, they would have written the amendment that way. But they did not, and therefore, a Soldier's "life, liberty, and property" are protected under this amendment.

There is, however, no constitutional prohibition against pain-inducing *corrective training*, since the Eighth Amendment only prohibits "cruel and unusual punishment."[14] This semantic tug-of-war continues with the Sixth Amendment, which provides details of due process when a crime has been committed: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."[15] The semantic issues thus move the mechanics of law beyond an NCO's reaction. One must first consider the Soldier's action and whether it is in fact a crime. Military law is written so as to allow virtually any form of misbehavior imaginable to be construed as a crime that can be prosecuted. But the procedural safeguards alluded to in the Sixth Amendment are nowhere to be found when an NCO smokes a Soldier.

Crime and Punishment

In AR 600-20, *Command Policy*, commanders are warned that: "Care should be taken at all levels of command to ensure that training and instruction are not used in an oppressive manner to evade the procedural safeguards applying to imposing non-judicial punishment."[16] So, when an NCO chooses to address a behavior that could be construed as a crime, he cannot use "smoke sessions" *to evade due process.* Also, punishment must not be conflated with extra training because as soon as punishment is sought, and criminal behavior is being prosecuted as such, due process must be involved.

Ordering a Soldier to do a "reasonable number of authorized exercises," however, is a form of extra training, not punishment, according to AR 600-20, which states: "When authorized by the chain of command and not unnecessarily cruel, abusive, oppressive, or harmful, the following activities do not constitute hazing:

(a) The physical and mental hardships associated with operations or operational training.

(b) Administrative corrective measures, including verbal reprimands and a reasonable number of repetitions of authorized physical exercises.

(c) Extra military instruction or training.

(d) Physical training or remedial physical training.

(e) Other similar activities."[17]

In this section, smoke sessions are construed as "not hazing" and are implicitly "corrective measures," as long as they are not, "unnecessarily cruel, abusive, oppressive, or harmful." The point at which a smoke session crosses this line is not given though, and in many cases, only the NCO and Soldier witness this arbitrary judgment. Even when others are present, smoke sessions are almost never challenged, regardless of their severity.

Despite the fact that FM 27-1 asserts the necessity for commanders to make a clear distinction between corrective training and punishment, several other regulations, when read together, bring ambiguity back to the issue by giving unclear guidelines about what is acceptable corrective training. AR 600-20, *Command Policy*, addresses corrective training in the following way:

> "One of the most effective administrative corrective measures is extra training or instruction (including on-the-spot correction). For example, if Soldiers appear in an improper uniform, they are required to correct it immediately; if they do not maintain their housing area properly, they must correct the deficiency in a timely manner. If Soldiers have training deficiencies, they will be required to take extra training or instruction in subjects directly related to the shortcoming.
>
> (1) The training, instruction, or correction given to a Soldier to correct deficiencies must be directly related to the deficiency."[18]

The passage gives two examples of extra training or instruction. First, a Soldier may be told to correct a deficiency such as an improper uniform. Second, training deficiencies may be overcome through "extra training . . . directly related to the shortcoming."

This wording is then undermined by FM 27-1, which provides the following examples of proper corrective training:

> "A Soldier appearing in improper uniform may need special instruction in how to wear the uniform properly.
>
> A Soldier in poor physical shape may need to do additional conditioning drills and participate in extra field and road marches.
>
> A Soldier with unclean personal or work equipment may need to devote more time and effort to cleaning the equipment. The Soldier may also need special instruction in its maimtenance [*sic*].
>
> A Soldier who executes drills poorly may need additional drill practice.
>
> A Soldier who fails to maintain housing or work areas in proper condition or abuses property may need to do more maintenance to correct the shortcoming.
>
> A Soldier who does not perform assigned duties properly may be given special formal instruction or more on-the-job training in those duties.
>
> *A Soldier who does not respond well to orders may need to participate in additional drink* [sic] *and exercises to improve*."[19] (Emphasis added.)

This last sentence from FM 27-1, along with AR 600-20 paragraph 4-20, essentially sanctions the practice of smoking Soldiers. But wearing a uniform improperly, not cleaning equipment, executing drills poorly, failing to maintain a tidy barracks room, and not performing assigned duties—*any misbehavior or deficiency at all*—can be, and often is, construed as not responding well to orders. Thus, this last corrective training example obviates all of the previous ones in theory and practice. It dilutes the idea that training should be directly related to the deficiency, and "additional drink [*sic*] and exercises" has become the ubiquitous, *almost exclusive* form of extra training.[20]

Crossing the line. The number of "reasonable repetitions of authorized physical exercises" used when smoking Soldiers must *not*, in order to comply with the regulations, assume the nature of punishment.[21] Furthermore, the number of repetitions must *not* "be unnecessarily cruel, abusive, oppressive, or harmful."[22] To determine whether smoke sessions are generally consistent with these criteria it may help to look more closely at what a typical smoke session entails.

To be fair, there are many times when a Soldier is ordered to do twenty pushups, two minutes of flutter kicks, or some other relatively mild amount of exercise. But there are far too many cases where Soldiers are smoked for misconduct in a way that would be considered abusive and defined as improper punishment by any informed observer.

For example, one NCO in my troop smoked two enlisted Soldiers particularly harshly in the blazing heat of Kuwait after they missed an accountability formation. Afterward, our platoon sergeant told the NCO involved that the Soldiers had been given permission to miss the formation in order to eat. By then, the administration of pain-inducing exercises had been wrongfully imposed and the Soldiers simply accepted it, as did all who witnessed the corrective training.

In another instance, a private suffered second-degree burns on his hands after an NCO made him do pushups in the hot gravel in front of our C-huts in Iraq. Late in the deployment, a staff sergeant in my troop stood outside the C-huts one hot afternoon screaming into a private's ear while the Soldier did pushups facing a pool of his own vomit. When we returned from Iraq, a Soldier who returned late from leave was smoked by multiple NCOs for hours, despite the fact that he explicitly requested an Article 15 so that he could have a chance to justify his late return in front of the commander.

In one of my units, the acting commander, a major, posted a memorandum at the staff duty desk that explicitly forbade smoke sessions, counseling in the front leaning rest, and other common practices

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deemed abusive. The NCOs in this unit (including one who was pending a medical discharge for PTSD and was heavily medicated) persisted in smoking soldiers for trivialities even after this was brought to their attention. In one particularly memorable platoon meeting, the platoon sergeant explicitly told his subordinate NCOs that they should smoke Soldiers behind the building, so the battalion commander would not interfere.

Virtually any enlisted Soldier in a combat unit could, if given the opportunity, cite similar instances of abusive and illegal "smoke sessions." This is an entrenched part of Army culture, not a few isolated incidents of misconduct by capricious NCOs. Due process is nowhere to be found in the practice of smoking Soldiers. There is no legal hearing, no appeals process, and no evidence needed for an NCO to gratuitously order a Soldier to engage in jumping jacks or pushups until the Soldier passes out from exhaustion.[23]

As I tried to determine when smoke sessions crossed the line between corrective training and punishment, I found that AR 27-10, *Military Justice*, contained a vapid passage of circular reasoning that states: "*Nonpunitive measures* usually deal with misconduct resulting from simple neglect, forgetfulness, laziness, inattention to instructions, sloppy habits, immaturity, difficulty in adjusting to disciplined military life, and similar deficiencies. These measures are primarily tools for teaching proper standards of conduct and performance and *do not constitute punishment*. Included among nonpunitive measures are denial of pass or other privileges, counseling, administrative reduction in grade, administrative reprimands and admonitions, [and] extra training."[24]

Here again, as in AR 600-20 paragraph 4-6, the regulation begs the question of what distinguishes corrective training from punishment by asserting that, "nonpunitive measures . . . do not constitute punishment." This doublespeak seems to want to override our normal understanding of the reality of punishment. For reference, the Merriam-Webster dictionary defines the word "punishment" as follows:

1 : the act of punishing

2 a : suffering, pain, or loss that serves as retribution b : a penalty inflicted on an offender through judicial procedure

3 : severe, rough, or disastrous treatment.[25]

Notably, suffering and pain are included as examples of punishment. Also, it is, "a penalty inflicted on an offender through judicial procedure." Such judicial procedures exist in the Army, and nonjudicial procedures are also available and afford some protections to the accused. When such punishment is "improper," it falls under Article 93 of the Uniform Code of Military Justice (UMCJ), *Cruelty and Maltreatment*, which states, "Assault, improper punishment, and sexual harassment may constitute this offense."[26] When smoke sessions are illegal, presumably they are also "improper."

Improper punishment is a criminal offense that may result in the following punishment: "Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 1 year."[27] I have never witnessed any NCO charged under the UCMJ for the improper punishment of a subordinate Soldier despite the existence of clear cases where such charges should have been sought.

AR 27-10 provides guidelines about punishments that may be imposed after a guilty verdict in a court martial: "Hard labor without confinement will...

(2) Focus on punishment and may include duty to induce fatigue...

(4) Not include duties associated with maintaining good order and discipline, such as charge of quarters and guard duties . . . "[28]

This section of AR 27-10 emphasizes that punishment may include "duty to induce fatigue" but may *not* include "duties associated with maintaining good order and discipline." Yet, FM 27-1 states that "additional drink [*sic*] and exercises," which can certainly be described as a "duty to induce fatigue," may be used as corrective training to maintain order and discipline.[29] To my layman's sensibility, this ambiguity is confusing at best, and perhaps a serious contradiction. This type of inconsistency sets conditions for criminal abuses

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of Soldiers, and similar attitudes towards prisoners and noncombatants.

An NCO who orders a private to do pushups, flutter kicks, iron mikes, and low crawls through the mud means, at the very least, to induce pain and fatigue. NCOs in my units have also openly admitted that some of their techniques are meant to humiliate the Soldier in question. For instance, the "star man" exercise involves crouching down and then springing up while flinging one's arms outward, repeating the words "star!" and "man!" upon each repetition. The "little man in the woods" involves crouching down and doing miniature jumping jacks. NCOs sometimes discussed which exercises were most humiliating to privates, and thus the most entertaining to watch.

Sadistic humor and creativity are not uncommon features of corrective training in the Army. A good overview of fairly typical strategies used by NCOs to "effectively" smoke soldiers can be found on a Blog by "Reaper" at: http://www.fatalfitness.com/how_to_smoke_somebody.

Although this is not an official site, it accurately describes (and endorses) many of the techniques used by NCOs, which will be familiar to most enlisted soldiers. Among other things, forcing a soldier to drink water and exercise until they puke is advocated. In general, a smoke session is described as a: "deomoralizing [*sic*] session of physical activity in which the subject[s] are most often times in trouble for something... punishment--if done correctly can be an effective training tool to help mold an individual's character, or to deter some action."[30]

There is no effort made to pretend that a smoke session is not punishment. Although it is important to remember that many NCOs do not abuse their authority and generally act in a responsible manner, the guidelines given on this web site are entirely consistent with practices that I frequently observed.

There is no question that NCOs sometimes use exercise repetitions "in an oppressive manner to evade the procedural safeguards applying to imposing nonjudicial punishment."[31] But the point at which this becomes a violation of Article 93 (*Cruelty and Maltreatment*) is difficult to determine from the regulations alone. This ambiguity enables an Army culture that accepts, indeed encourages, summary judgment and the use of painful and humiliating inducements to subordinates to behave in a desired manner.

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Put to the test. One final contradiction regarding the imposition of punishment follows, this time in the *Manual for Courts-Martial*:

> "Pretrial restraint is not punishment and shall not be used as such. No person who is restrained pending trial may be subjected to punishment or penalty for the offense which is the basis for that restraint. Prisoners being held for trial shall not be required to undergo punitive duty hours or training, perform punitive labor, or wear special uniforms prescribed only for post-trial prisoners. *This rule does not prohibit minor punishment during pretrial confinement for infractions of the rules of the place of confinement*."[32] (Emphasis added.)

According to this paragraph, "minor punishment" may be imposed "for infractions of the rules of the place of confinement." This wording then clearly authorizes pretrial punishment, which is, everywhere else, strictly prohibited. With no further clarification about where to draw the line between "minor" punishment and normal punishment, the inclusion of the words "minor punishment" in the above passage is unnecessarily confusing and adds to the ambiguity of the wider issue.

This vagueness is especially problematic when pretrial confinement is of such a nature that the accused is housed with Soldiers convicted and sentenced in a court martial. In *United States vs. Bayhand*, a Soldier was initially "found guilty by general court-martial of willful disobedience of a superior officer and willful disobedience of a noncommissioned officer."[33] The Soldier was accused of committing these offenses while in pretrial confinement, "awaiting trial on charges which were subsequently dismissed." The Soldier, a private first class, refused to do labor alongside a prisoner who had already been convicted in court martial proceedings. After a detailed discussion of

the matter, the judges in this case found that it was unlawful pretrial punishment to force the Soldier who had not yet stood trial to perform the same duties on the same work detail as the convicted prisoner. This was after an acknowledgement that such duties might normally be legitimate routine labor such as cutting grass or digging ditches.[34]

The judge wrote in his decision: "By our holding in this case, we do not mean to suggest that unsentenced prisoners must remain unemployed . . . we are certain persons awaiting trial can be required to perform useful military duties to the same extent as a Soldier available for troop duty. However, it appears to us that when a man who is presumed innocent is ordered to work on a rock pile, in company with those who have been tried and sentenced for crime, the presumption is worth little, for he is already being punished."[35] With regard to the orders to conduct duties that are tantamount to punishment, the judge states, "We conclude the orders were illegal as a matter of law."[36] In his ruling, the Honorable George W. Latimer quotes from a discussion of the original authors of the 1949 *Manual for Courts-Martial* to make clear their intent: "A Soldier cannot be punished, other than by confinement, prior to the time his sentence is approved by the reviewing authority."[37]

In this context, the judge sought specifically to address the matter of Soldiers awaiting trial being assigned to the same work detail as Soldiers already convicted of a crime. However, in so doing, he also makes it clear that a Soldier that refuses an order to perform duties that are tantamount to punishment is not remiss for doing so. It follows then that an NCO who orders a Soldier to perform duties that are tantamount to punishment is giving an unlawful order. When the Soldier in question follows this unlawful order, and is thus subjected to punishment, it is "improper," and therefore constitutes a violation of Article 93, *Cruelty and Maltreatment*.[38]

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A 2002 Inspector General newsletter from the Fort Knox Inspector General's office gives the following example for clarification: "A Soldier who failed to show up for formation and was instructed to stay after duty hours and mop floors would be an example of improper corrective training. This would be considered punishment and does not relate directly to the Soldiers [*sic*] deficiency."[39]

We can return to the argument that failing to show up for formation (or any other infraction of the rules) is a result of not following orders well. Corrective training, therefore, might consist of "extra drink [*sic*] and exercises," that is, smoking the Soldier. But if we accept this reasoning, then we should also accept the reasoning that mopping floors is a means of instilling discipline. Through mopping the floors after duty hours, one may argue, one is training the Soldier to follow orders. After all, an arduous back and forth motion with a

U.S. Air Force, SSGT Ashley S. Brokop

A Soldier pats down an Iraqi detainee at the Baghdad Correctional Facility in Abu Ghraib, June 2004.

mop is not so different than an arduous trip up and down the same hallway doing iron mikes, holding a forty-pound weight.

It stands to reason then, that the standard given by the Inspector General's office at Fort Knox would disqualify iron mikes or any other arduous random exercise as suitable corrective training for being late to formation. This would not only be the case because such training could pose a health hazard to the Soldier, but also because it is not sufficiently related to the deficiency to comply with AR 600-20, paragraph 4-6.

There are provisions in the *Manual for Courts-Martial* that allow an NCO to lawfully smoke a Soldier. All an NCO needs to do is recommend to a commander that a Soldier be given an Article 15. Once the process is completed, if the commander decides punishment is warranted, extra duties meant to induce fatigue are clearly authorized.[40] The commander could, for instance, impose a punishment of a single day (or a single hour) of extra duty, instead of the maximum. The crucial elements, though, are command involvement and due process.

The regulations surrounding corrective training and punishment need to be rewritten in clear language that any Soldier can understand. If "smoke sessions" are to be allowed, some guidance needs to be given to set a reasonable standard. If smoke sessions are to be prohibited, they should be prohibited explicitly, using the vernacular of the enlisted Soldiers to whom these issues are relevant.

The Iraq Connection

There are several ways in which this issue is important to the current conflict in Iraq. First, these common practices teach junior enlisted Soldiers and NCOs to treat those people over whom they have control with a lack of respect, and often with unethical or illegal cruelty. The idea that arbitrary punishments are informal tools for behavior modification fosters a careless sense of entitlement and

courtesy of author

U.S. Soldiers searching Iraqi house on 21 September 2006 in Tal Afar.

creates opportunities for physical and verbal abuse. Thus, by pure extension of intellectual habit and moral misconception, this illicit aspect of Army culture condones unproductive, punitive actions toward Iraqi civilians.

Yet Soldiers' actions and attitudes do not need to reach the headline grabbing levels of Abu Ghraib to seriously affect our ability to win the support of the local population. We can interact with Iraqi citizens and military personnel with professional courtesy or, alternatively, with a contemptuous air of superiority. Even when the most egregious abuses are avoided, the latter approach insults the honor of the people whose support we are trying to gain. The cultural currents that permit the widespread unlawful punishment of Soldiers in the Army have contributed to attitudes and actions that fuel the insurgency and cost us lives.

In September 2006, during a major campaign in Tal Afar dubbed Operation Restoring Rights, my platoon was told to search aggressively in an evacuated neighborhood to teach the residents a lesson. In essence, we were instructed to punish civilians, against whom we had no evidence of wrongdoing, for having lived in a neighborhood in which insurgents were purported to have staged missions.

Lieutenant Colonel Christopher Hickey, the Sabre Squadron Commander, is quoted in *The Washington Post* as saying, "If we go in there and tear these people's homes apart, we lose these people."[41] This sentiment made sense to me, given my modest understanding of counterinsurgency doctrine and the dictates of common sense. Our actions, however, were not consistent with this statement. In recent email correspondence with LTC Hickey, I asked him what his view was of the aggressive search techniques we had used and he replied, "The way you describe being 'aggressive in our search' I would characterize as being disrespectful and counterproductive to what we were trying to do. I do not support tactics that ransacked homes."[42]

I also asked him what the squadron's policy was on smoking soldiers, and he responded, "Smoking sessions [*sic*] are wrong and, as you correctly state, against Army regulation. The squadron would never have a policy approving of such actions."[43] There is no question that we ransacked homes, and did so in a punitive manner.

There is also no question that soldiers were smoked in every unit I served with, again, in a punitive manner. The obvious question that remains is: Why?

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It should be relatively easy for commissioned officers to educate and control the actions of the NCOs under their command with regard to corrective training and punishment. The fact that this is not well regulated leads me to consider several possibilities:

- Commanders are oblivious to the conduct of their subordinates.
- Commanders are unwilling to enforce these regulations, perhaps because of the ambiguity.
- Commanders are unable to control the actions of their subordinates.

None of these possibilities bodes well for the counterinsurgency campaign in Iraq or future peacekeeping missions. My view is that commanders and NCOs are in some sense victims of a system that is highly resistant to change. I understand that it is difficult within the system to go against accepted cultural norms, but that is precisely why Army culture needs to be fundamentally changed and such changes subsequently supported at all levels.

There are three correlates with the assertions I have made thus far:

- The U.S. Army is culturally handicapped in its ability to occupy Iraq in a humane manner. The systemic acceptance of such illegal practices as "smoke sessions" is part of a mind-set that has crippled our attempts to implement effective counterinsurgency campaigns.
- The regulations surrounding corrective training, punishment, and "smoke sessions" are confusing and need to be rewritten.
- The problem must first be fully understood by high-ranking officers. To this end, the Army ought to investigate this matter in a substantive way, and encourage Soldiers to candidly testify about these practices without fear of reprisal or prosecution. ***MR***

NOTES

1. David Galula, *Counterinsurgency Theory and Practice*, (New York: Praeger, 1964); John A. Nagl, *Learning to Eat Soup with a Knife: Counterinsurgency Lessons from Malaya and Vietnam*, (Westport, CT: Praeger Publishers, 2002); U.S. Army Field Manual (FM) 3-24, *Counterinsurgency* (Washington, DC: Government Printing Office (GPO), 2006); Brigadier Nigel Aylwin Foster, "Changing the Army for Counterinsurgency Operations," *Military Review*, November-December, 2005, 4.
2. For a reasonably accurate description of the practice, see Reaper, "How to Smoke Somebody," Reaper's Blog, <http://www.fatalfitness.com/how_to_smoke_somebody> (24 July 2008).
3. FM 27-1, *Legal Guide for Commanders,* (Washington, DC: GPO, 2006), 7-2.
4. *US vs. Hoover*, 24 M.J. 874, (1987); *US vs. Bayhand*, 6 U.S.C.M.A. 762, (1956).
5. FM 27-1, 4-0.
6. FM 7-22-7, *The Noncommissioned Officer's Guide,* (Washington, DC: GPO, 2002), 2-11.
7. Ibid., 2-9.
8. Ibid., 1-4.
9. Ibid.
10. Ibid., 1-10.
11. Ibid., 1-4.
12. Ibid., 1-6.
13. Cornell University Law School, "Bill of Rights," United States Constitution, <http://www.law.cornell.edu/constitution/constitution.billofrights.html#amendmentiv> (24 July 2008).
14. Ibid.
15. Ibid.
16. AR 600-20, *Command Policy,* (Washington, DC: GPO), 22.
17. Ibid., 29.
18. Ibid., 22.
19. FM 27-1, *Legal Guide for Commanders*, (Washington, DC: GPO, 2005), 7-2.
20. It may be that this was originally meant to be "drill and exercise" but was changed to "drink and exercise" through a typographical error that persisted in the literature. Note that "commander" is also misspelled "commandeer" just two sentences later. If this is the case, then a typo has likely been the impetus for the traditional practice of forcing soldiers to drink excessive amounts of water while getting "smoked."
21. AR 600-20, 29.
22. Ibid.
23. Note that both of these practices were cited as abusive in reports of detainee mistreatment at Abu Ghraib. See Eric Schmitt, "3 in 82nd Airborne Say Beating Iraqi Prisoners Was Routine," *New York Times,* 24 September 2005.
24. AR 27-10, *Military Justice*, (Washington, DC: GPO, 2005), 3.
25. Merriam-Webster online dictionary, <www.merriam-webster.com/dictionary/punishment> (24 July 2008).
26. *Manual for Courts-Martial* (MCM), (Washington, DC: GPO, 2008), IV-25.
27. Ibid., IV-26.
28. AR 27-10, 35.
29. FM 27-1, 7-2.
30. Reaper.
31. AR 600-20, 22.
32. *MCM*, II-21.
33. *U.S. vs. Bayhand*, 6 U.S.C.M.A. 762, (1956).
34. Ibid.
35. Ibid.
36. Ibid.
37. Ibid.
38. *MCM*, IV-25.
39. <http://www.knox.Army.mil/center/ig/fort_knox_ig_newsletter> (4 July 2007).
40. *MCM*, V-5.
41. Jonathan Finer, "Informants Decide Fate of Iraqi Detainees: U.S. Military Relies on Guidance of 'Sources' in Tall Afar," *The Washington Post*, A01, 13 September 2005.
42. LTC Christopher Hickey, email message to author, 1 October 2007.
43. Ibid.

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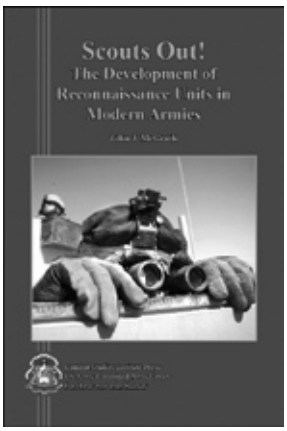

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