

A COMBAT COMPANY COMMANDER HAS CERTAIN UNIQUE DUTIES

A COMPANY COMMANDER IS RESPONSIBLE FOR CONTROLLING AND SUPERVISING HIS SUBORDINATES DURING COMBAT OPERATIONS

It has long been a custom of the service that, in general, a commander is responsible for the actions of his subordinates in the performance of their duties. This service custom was judicially underscored by Judge Latimer who stated in a concurring opinion, 'Military law recognizes no principal which is more firmly fixed than the rule that a military superior is responsible for the proper performance by his subordinates of their duties.' . For indeed, the responsibility of a commander for controlling and supervising his subordinates is the cornerstone of a responsible armed force. A commander must 'give clear, concise orders' and must 'be sure they are understood.' 'After taking action or issuing an order, 'a commander' must remain alert and make timely adjustments as required by a changing situation.'

A commander keeps informed on the situation at all times and goes where he can best influence the action.' 'Without undue harassment, he supervises his unit by checking on its progress in accomplishment of actions and orders.' Stated succinctly, 'The successful commander insures mission accomplishment through personal presence, observation, and supervision.' The custom of the Armed Forces regarding command responsibility is well stated in FM 22-100, supra, para. 22: "The military commander has complete and overall responsibility for all activities within his unit. He alone is responsible for everything his unit does or does not do." This command responsibility does not, of course, extend to criminal responsibility unless the commander knowingly participates in the criminal acts of his men or knowingly fails to intervene and prevent the criminal acts of his men when he had the ability to do so.

Military commanders may also be responsible for war crimes committed by their subordinates. 'When troops commit massacres and atrocities against the civilian population of occupied territory or against prisoners of war, the responsibility may rest not only with the actual perpetrators but also with the commander. Such a responsibility arises directly when the acts in question have been committed in pursuance of an order of the commander concerned. The commander is also responsible if he has actual knowledge, or should have knowledge, through reports received by him or through other means, that troops or other persons subject to his control are about to commit or have committed a war crime and he fails to take the necessary and reasonable steps to insure compliance with the law of war or to punish violators thereof.'

In addition to controlling and supervising his subordinates, an Army officer, due to his superior rank and senior position, must conduct himself in an exemplary manner. In CM 374314, Floyd, 18 CMR 362, 366 (1955), (Pet. den.) the Board of Review stated: " As a commissioned officer of the United States Army. Colonel Keith, whether the senior American officer present in the particular camp or not, and although deprived of many of the functions and prerogatives of his office by his Communist captors, had the responsibility and duty to take such actions as were available to him (and if the senior officer present to exercise such command as he was able) to assist his fellow prisoners, to help maintain their morale, and to counsel, advise and, where necessary, order them to conduct themselves in keeping with the standards of conduct traditional to American servicemen.'

A COMPANY COMMANDER HAS CERTAIN RESPONSIBILITIES AS AN INDIVIDUAL, REGARDLESS OF HIS COMMAND POSITION

A combat commander has a duty, both as an individual and as a commander, to insure that humane treatment is accorded to noncombatants and surrendering combatants.

Article 3 of the Geneva Convention relative to the Treatment of Prisoners of War specifically prohibits violence to life and person, particularly murder, mutilation, cruel treatment, and torture. Also prohibited are the taking of hostages, outrages against personal dignity and summary judgment and sentence. It demands that the wounded and sick be cared for. These same provisions are found in the Geneva Convention Relative to the Protection of Civilian Persons in Time of War. While these requirements for humanitarian treatment are placed upon each individual involved with the protected persons, it is especially incumbent upon the commanding officer to insure that proper treatment is given.

Additionally, all military personnel, regardless of rank or position, have the responsibility of reporting any incident or act thought to be a war crime to his commanding officer as soon as practicable after gaining such knowledge. Commanders receiving such reports must also make such facts known to the Staff Judge Advocate. It is quite clear that war crimes are not condoned and that every individual has the responsibility to refrain from, prevent and report such unwarranted conduct. While this individual responsibility is likewise placed upon the commander, he has the additional duty to insure that war crimes committed by his troops are promptly and adequately punished.