next speaker is the Honorable Richard Wiley, General Counsel for the Department of Defense, who is the professional supervisor of some 5,500 lawyers. I will let him tell what his programs are to implement the programs that the first three speakers have said they are just bound to get.

The Department of Defense Program to Assure Compliance with the Laws of War

RICHARD A. WILEY

I might say at the outset, that the Department's programs are not so much my programs, as they are General Vague's programs; and assuring compliance will be the responsibility, in large part, of all the lawyers in the Department, particularly the three Judge Advocates General and the members of their respective corps.

Let me discuss the three major elements of the Department of Defense Program to assure compliance with the laws of war. They involve, first, indoctrination and training in application of the laws of war, second, the development of rules applicable to the weapons development process (an area which has not received much publicity), and, finally, the adoption of regulations called the "Rules of Engagement" that apply to actual combat situations. There is another area that does not receive much publicity, that I will just mention as a footnote. Under legislation enacted last year, the Department of Defense is for the first time required to submit arms control impact statements directly to the Congress on new weapon systems which are under development. This obviously will have a direct effect on the problem which we are discussing this afternoon.

The laws of war have been the subject of education and training in the Department of Defense for years. However, as a result of the Vietnam experience, this area has recently received substantial attention. The present policies and directives, involving both the laws of war generally and weapons development in particular, are found in directives and instructions that were rewritten completely and published in 1974.

With regard to the laws of war, generally, there are three policies and objectives: first, to insure observance and enforcement by the armed forces; second, to establish preventive programs; and third, and this is most significant as a result of the Vietnam experience, to insure prompt reporting, thorough inves-
tigation and appropriate corrective action, respecting alleged violations either by or against U.S. or allied military or civilian personnel.

The organization of responsibility for assuring compliance with the laws of war, is about what you would expect: In the Office of the Secretary of Defense, the Assistant Secretaries for Manpower, International Security Affairs, and Public Affairs have appropriate responsibilities, but the primary responsibility is in the Office of the General Counsel. This office is responsible for overall legal guidance and coordination regarding all programs and is in contact with other agencies in this area. The three Secretaries of the Military Departments have their responsibilities, and here again the lawyers, the three Judge Advocates General, have a significant role in all aspects of the execution of these policies, particularly in the area of preparation and dissemination of laws of war training materials. The three Judge Advocates General also have the primary responsibility for the identification of training requirements and key resource material. An illustrative publication was put out in March by the Army Judge Advocate General’s School and is called “Your Conduct in Combat Under the Law of War.” It is intended for general distribution and use within the Army. It is set up in a cartoon text form, which, based on my own experience with training of enlisted personnel, should be very appropriate for that particular environment. There are many similar publications, and more will be prepared by each of the services. The areas of emphasis have been explained by the previous speakers: the problem of unlawful orders, rules governing conduct of hostilities, probable results of acts of violence, inhumane treatment of personnel, and especially, again, the necessities for reporting promptly and thoroughly alleged violations.

Now with regard to the latter, the directives published by the Department of Defense require that a report of a violation be made to the immediate commander. If he is suspected of involvement in the violation, or of covering up the violation, the obligation is to report to the next higher level of command. An interesting problem is created, as there was in certain circumstances in Vietnam, when there is a failure to report up through several levels of command channels. Here, quite frankly, the directives of the several services are not completely consistent. Two of the three services require that a legal officer in the field becoming aware of a violation of the laws of war not only report to his immediate client, the commander to whom he reports himself, but also send an immediate report directly up through professional legal channels to the Judge Advocate General in Washington. The third service does not directly require that independent reporting up the line. The policy of the first two is most significant because, in addition to any other required local and immediate reporting to inspectors general and the next higher level of chain of command, it seeks assurance at the outset that the report will reach the most senior levels in Washington and will be dealt with from the top of the chain of command if,
for any reason, that report does not come up through the chain. All of the policy directives further contemplate that violations of the laws of war by American personnel will be dealt with directly under the Uniform Code of Military Justice, prosecuted through the court-martial system. The Judge Advocates General of the services are supposed to collect reports and to conduct investigations of violations by U.S. personnel of the laws of war. There is a special program established of inspections and periodic reviews by senior level teams, including JAG officers, to review alleged violations, to inspect U.S. detention facilities for POWs, and to supervise and review training programs. Finally, the Office of the Secretary of Defense and of each of the Military Departments, the Joint Chiefs of Staff, and the Unified and Specified Commanders, those who will actually be responsible for the conduct of combat operations, also have responsibilities to carry out and implement these policies and the necessary training.

Finally, I would like to speak about the so-called Rules of Engagement. The terminology is used somewhat loosely within the Department of Defense itself and, what is sometimes called the Rules of Engagement is sometimes called the "Operating Authorities." The development of the Rules are the primary responsibility of the Joint Chiefs of Staff, the Joint Staff, and the Unified and the Specified Commands: in effect, the combat arms of the department. The Rules of Engagement delineate the circumstances and limitations under which United States forces will initiate or continue combat. The Rules of Engagement lay down the policy applicable to conflicts in general terms regarding tactics which can and cannot be employed to insure compliance with both United States domestic law and with obligations under the international laws of war. The Joint Chiefs of Staff and the Unified and Specified Commands are given specific training and documentation responsibilities in this special area. The Joint Chiefs of Staff have their own legal staff, presently composed of four lawyers, which consults with our office on any questions arising in connection with the development or interpretation of the Rules of Engagement.

The Operating Authorities are somewhat more specific. These are developed as far as possible in advance, and if this is not possible, they are developed in the course of a particular conflict to guide field commanders down to the lowest operating level as to the restrictions imposed upon their operations, their selections of targets, and their use of weapons in a particular combat situation. In Vietnam the American forces, in many cases to their dismay, had to operate under very close restrictions drawn from the Rules of Engagement and the Operating Authorities. A number of the limitations set forth in that conflict were derived from political or policy considerations, but a number of the restrictions were derived directly from what was understood to be the United States' obligations under the international law of war. The restrictions in the Rules and in the Authorities take both a geographic character and involve definitions in terms of the types of weapons and the degree of force which can be used in a particular combat environment.