

Restrepo¹

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I. Introduction

Many judge advocates have deployed to a combat theater one or more times. Substantially fewer, however, have had the opportunity to spend lengthy periods of time in a truly austere location, far from the mega-Forward Operating Bases (FOBs) provisioned with steak and lobster, air-conditioned trailers, and laundry service. *Restrepo* provides a window into how the other half lives, following an infantry platoon through a harrowing deployment, where these men lived and died near a small outpost they scratched out of the side of a mountain in the middle of the night.

Restrepo provides more than just empathy, however. Judge advocates will draw important professional lessons and perspective from the film. As the viewer follows the platoon through their deployment, he or she will develop a greater awareness for the effects that fear, exhaustion, and confusion can have on a Soldier's decision-making process. This awareness—of what life is like for the Soldier at the tip of the spear—is invaluable to the judge advocate who seeks to provide legal services that are relevant and realistic under combat conditions. This movie review will examine that premise in detail, focusing on some of the key functional areas in which the deployed judge advocate commonly practices.

II. Background

In May 2007, the 2d Battalion (Airborne), 503d Infantry Regiment deployed from its post at Caserma Ederle, Vicenza, Italy, to Afghanistan.³ This battalion, known as "Task Force Rock" or "The Rock," would serve the next fifteen months in the "remote, austere, undeveloped, and contested Kunar Province . . . adjacent to Pakistan in the Hindu Kush mountains,"⁴ which includes the Korengal Valley. During the long deployment, the task force

conducted approximately 9500 combat patrols and scores of named combat operations, ultimately sustaining twenty-six killed in action and 143 wounded in action.⁵ Indeed, the deployment turned out to be one of the most arduous in recent memory, marked by numerous ferocious combat engagements and incredible heroism. By the end of the deployment, the paratroopers of "The Rock" had been nominated for three Medals of Honor (one of which was recently awarded to Staff Sergeant Salvatore Guiunta,⁶ one is pending, and one was awarded as a Distinguished Service Cross).⁷ Additionally, during this deployment, paratroopers of The Rock were awarded two Distinguished Service Crosses, twenty-seven Silver Stars, ninety-one Bronze Stars with "V" device, and over 300 Army Commendation Medals with "V" device.⁸

Restrepo focuses upon Second Platoon of B (Battle) Company of Task Force Rock. As the film opens, Battle Company takes over their sector from the outgoing unit at a company-sized FOB called Korengal Outpost (the KOP), which is located on the west side of the valley, surrounded by high peaks and ridges. Immediately upon arrival, the company takes enemy fire from the high ground and the new arrivals scramble to take cover behind HESCO barriers⁹ as the KOP is raked with fire from the surrounding high ground. Battle Company is in frequent enemy contact thereafter and, only six hours after their transfer of authority (TOA), Battle Company's youngest paratrooper, Private First Class Timothy R. Vimoto, is killed in action.¹⁰ Within seventy days another Soldier is killed and nine more are wounded—one loses an arm.¹¹ The company commander, Captain (CPT) Kearney, therefore decides to drastically change the dynamic of the fight in the Korengal Valley by seizing a key piece of enemy-held terrain overlooking the KOP.¹² Given the volume of enemy fire and activity,

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¹ RESTREPO (Outpost Films 2009). The filmmaker, Sebastian Junger, also wrote a book about the same deployment, which goes into far greater detail about the events depicted in the film, as well as the science and psychology behind human behavior and interaction under combat conditions. See SEBASTIAN JUNGER, WAR (2010).

³ Colonel William B. Ostlund, *Tactical Leader Lessons Learned in Afghanistan: Operation Enduring Freedom VII*, MIL. REV. July-Aug. 2009, at 2-3.

⁴ *Id.* at 3.

⁵ *Id.* at 9.

⁶ Craig Whitlock & Greg Jaffe, *Obama Awards Living Soldier Salvatore Guiunta the Medal of Honor*, WASH. POST, Sept. 10, 2010, www.washingtonpost.com/wp-dyn/content/article/2010/09/10/AR2010091002712.html.

⁷ Ostlund, *supra* note 2, at 9; E-mail from Colonel William B. Ostlund, U.S. Army, to author (Jan. 10, 2011, 9:29 EST) (on file with author) [hereinafter Ostlund e-mail].

⁸ Ostlund e-mail, *supra* note 6.

⁹ "Hescos are wire baskets with a moleskin lining that the U.S. military uses to build bases in remote areas. They measure eight feet cubed and can contain roughly twenty-five tons of rock and sand." See JUNGER, *supra* note 1, at 63.

¹⁰ Private First Class Vimoto is also the son of the Brigade Command Sergeant Major. Ostlund e-mail, *supra* note 6.

¹¹ *Id.*

¹² Captain Kearney describes the outpost as "a huge middle finger pointed at the Taliban fighters in the valley." *Id.* at 62.

Second and Third Platoons infiltrate the site in the middle of the night and begin to dig into the side of the mountain under the cover of darkness. Over the next couple of weeks, the Soldiers take turns working in an exhausting cycle of building up their position and fighting off the enemy. Third Platoon later returns to the KOP, leaving Second Platoon to occupy the position alone. Ultimately, Second Platoon names the outpost Restrepo, in honor of Juan “Doc” Restrepo, the second Soldier killed in the valley. The film follows Second Platoon through the remainder of their deployment, providing an first-hand view of the life of a front-line combat Soldier under extremely difficult conditions.

III. Analysis

Restrepo is primarily a real-life examination of how Soldiers in a small unit cope with hardship, combat, and loss over a long deployment. Beyond that, however, *Restrepo* is instructive to judge advocates because it provides a window into how core legal disciplines translate into the real world. Indeed, practically all judge advocates can teach a rule of engagement (ROE) class or legally review an investigation into a lost piece of equipment. Even so, a judge advocate that has a realistic understanding of what front-line Soldiers experience can provide a more relevant ROE class and produce a more substantively thorough legal review. The following paragraphs examine how the film provides greater insight into core judge advocate competencies.

A. Claims

One of the film’s more lighthearted scenes involves a visit to Outpost (OP) Restrepo by local elders, who are demanding payment for a cow that was caught in the concertina wire surrounding the outpost and then killed by the Soldiers. Of course, after the Soldiers killed the cow, they butchered and barbecued it to supplement their ordinary rations of Meals-Ready to Eat, so the necessity of shooting the cow is somewhat questionable.¹³ In any event, the platoon sergeant flatly refuses to pay for the cow, much to the aggravation of the locals.¹⁴ Consequently, in a war where the winning of “human terrain”¹⁵ is essential, the

¹³ See JUNGER, *supra* note 1, at 199–202. In his book, Junger goes into greater detail regarding how the cow came to its unfortunate end.

¹⁴ The platoon sergeant instead offers to compensate the villagers with “HA” or humanitarian aid, in an amount equal to the weight of the cow. The villagers are not satisfied with this offer and continue to demand cash compensation. *Id.* at 201.

¹⁵ “Human terrain” is a term used in counterinsurgency (COIN) operations to express the idea that the military objectives are usually not hilltops or population centers but, rather, “the path to victory in a counterinsurgency (COIN) runs through the indigenous population.” Lieutenant Colonel Jack Marr, Major John Cushing, Major Brandon Garner & Captain Richard

United States probably took a couple of steps back when this apparently meritorious claim was summarily denied.

This scene underscores the importance of ensuring that all Soldiers—particularly those regularly interacting with local nationals—are thoroughly trained in how to address local nationals presenting claims. Judge advocates must ensure not only that Soldiers are trained, but that there are realistic and effective systems in place for adjudication and payment, since a claim that is not promptly adjudicated is almost as bad as one that is never even taken. Here, the leadership of Second Platoon was apparently unaware of the claims process and that failure may have had a negative impact on the local population. It has often been said that in a counterinsurgency fight, that money is a “weapons system,”¹⁶ and there are few places where the United States gets more bang for its buck than in the prompt payment of meritorious claims.¹⁷ Judge advocates should therefore be mindful that a well-developed claims operation can greatly contribute to mission success. Indeed, this practice area should be proactively developed, and not merely considered as an afterthought.

B. Investigations

Restrepo graphically details the extremely rough conditions under which many combat Soldiers live, as well as the incredibly harsh terrain where they fight. Several scenes illustrate the extreme confusion that ensues during firefights. Soldiers must often move quickly from one position to another, during daylight or darkness, in order to counter a threat. All of these factors contribute to a greater likelihood of equipment being lost, damaged or destroyed. Indeed, one of the most gripping scenes in the film occurs when a Soldier is killed during a combat operation, and the enemy uses his body as a fighting position and subsequently steals his weapon and other equipment.¹⁸ The camera later cuts to CPT Kearney, who works feverishly to coordinate his forces to recover the stolen equipment.

Thompson, *Human Terrain Mapping, A Critical First Step to Winning the COIN Fight*, MIL. REV., Mar.-Apr. 2008, at 18.

¹⁶ Warfighters at brigade, battalion, and company level in a COIN environment employ money as a weapons system to win the hearts and minds of the indigenous population to facilitate defeating the insurgents. Money is one of the primary weapons used by warfighters to achieve successful mission results in COIN and humanitarian operations. CTR. FOR ARMY LESSONS LEARNED, U.S. ARMY COMBINED ARMS CTR., HANDBOOK 09-27, COMMANDER’S GUIDE TO MONEY AS A WEAPONS SYSTEM HANDBOOK intro. (Apr. 2009).

¹⁷ Even so, judge advocates must safeguard against the payment of meritless claims, as this too can negatively impact the mission. Indeed, the battalion commander observed that “gratuitous and unfounded claims create an unrealistic expectation, a welfare mentality, and potentially fund the insurgency.” Ostlund e-mail, *supra* note 6.

¹⁸ See also JUNGER, *supra* note 1, at 110 (providing a detailed recounting of the equipment the enemy managed to strip off dead and wounded Soldiers during the firefight); Ostlund e-mail, *supra* note 6.

While the scene previously described is an extreme example caused by enemy action, *Restrepo* nevertheless underscores the premise that in order to fairly decide what action to take in response to a loss or some other incident, the decision maker must fully understand the circumstances under which the triggering event occurred. The investigation is the vehicle by which this information is captured and transmitted. Judge advocates must therefore ensure that every investigation provides a well-developed description of the circumstances. While combat does not excuse all negligence or lapses in discipline, excusal or mitigation of responsibility is sometimes appropriate. The conditions portrayed in *Restrepo* repeatedly illustrate that point.

C. ROE Development and Training

Second Platoon encounters the enemy in a remarkable variety of circumstances, from extremely long-range firefights across mountain valleys, to near ambushes where the enemy is literally close enough to touch. By far the most challenging scenarios, however, are the ambiguous encounters where the Soldiers enter villages that may be either friendly or hostile, and every civilian that approaches must be instantaneously assessed to determine whether he or she presents a threat. Also common are circumstances where a lone military-aged male is spotted on the side of a mountain and the Soldiers must decide whether to attack. For example, can the Soldiers engage an unarmed man carrying a hand-held radio? What about a man observing the outpost with binoculars? These are the type of questions that the Soldiers in Second Platoon must answer in the film, and where the consequences for making the wrong choice can be dire.

Judge advocates can greatly assist Soldiers like those in Second Platoon by developing ROE training that gives them the confidence to make quick and correct decisions about when to employ deadly force. In order for the ROE training to be fully effective, however, judge advocates must have a realistic understanding of the likely scenarios that Soldiers will encounter. This understanding allows the judge advocate to make the training realistic and relevant to the conditions. After viewing *Restrepo*, judge advocates will quickly grasp that a canned “off the shelf” ROE class is only a starting point. For example, ROE training tailored to forces assigned to man traffic control points in a built-up area will probably not be particularly helpful to a unit

patrolling the mountains of Afghanistan. It follows that the thoughtful development of relevant and realistic ROE training is an area where a judge advocate can greatly contribute to the goals of limiting civilian casualties while ensuring Soldiers confidently engage the enemy where they find him.

D. Targeting

A particularly sad scene in *Restrepo* involves Second Platoon searching a partially-destroyed house after CPT Kearney ordered it attacked in an air strike. When the Soldiers enter the house, they discover that the air strike killed not only several local national men, but also badly wounded several women and small children. The footage of the children’s blackened faces and burned flesh literally shows the face of collateral damage, and the heavy burden a Soldier must shoulder when ordering fires that may kill or injure civilians.¹⁹ The raw footage in *Restrepo* certainly strikes a much more visceral chord than viewing the aftermath of an air strike on a grainy unmanned aerial vehicle feed or reading about it in a report. Ultimately, this scene provides judge advocates with a sober perspective from which to operate when participating in future targeting involving possible civilian casualties.

IV. Conclusion

Restrepo offers a stark view of what war is like for the Soldier at the very tip of the spear. Beyond that, it shows how these men cope with incredible hardship and loss under combat conditions. For judge advocates, *Restrepo* also illustrates a more subtle point. While most judge advocates are far removed from platoon-level combat operations on a daily basis, their work can have a significant impact—either good or bad—at that level. After viewing *Restrepo*, judge advocates should take a fresh look at the services they provide to their commands. Are legal services canned and “off the shelf,” or have they been tailored to the real-world situation? Are there realistic and efficient systems in place to process claims and investigations? Are Soldiers trained and equipped to access them? Does every Soldier receive thorough and realistic ROE training? The judge advocate who carefully addresses these questions can greatly contribute to the mission accomplishment of Soldiers like those in Second Platoon, even from hundreds of miles away, in the Land of Steak and Lobster.²⁰

¹⁹ Captain Kearney’s remorseful reaction demonstrates how seriously he took his responsibility to limit civilian casualties. See Ostlund e-mail, *supra* note 6.

²⁰ The battalion commander confirmed that “Task Force Rock was well supported . . . and training, not only pre-deployment but while deployed, was enhanced by their brigade judge advocate.” *Id.*