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| **Feature Article - February 2000** | | | |
| **Scott L. Silliman is the Executive Director, Center on Law, Ethics and National Security, at Duke University School of Law.**        **"**  Just as disturbing is the film's wholly **inaccurate and biased** depiction of military law and the court-martial process.  **"**              **"**  In the larger context, the whole depiction of **military attorneys** in this film is somewhat demeaning to the professionalism and **rigid ethics** of those who have served and now serve their country.    **"** |  |  | **When The End Justifies the Means -- Rules of Engagement**  By Scott L. Silliman  *Rules of Engagement* is a deeply disturbing film in many respects--disturbing in its treatment of the law of war and also disturbing in its depiction of military justice and the court-martial process.     The movie opens with vivid scenes of a firefight between US Marines and the Viet Cong in 1968 during the Vietnam War, and its visual depiction of Marines being killed after being caught in an ambush by the Viet Cong (the scenes often being done in slow motion to exaggerate the agony of death) reminds one of the now-famous beginning segment in *Saving Private Ryan*. And as in that World War II movie, there is a very disturbing sequence in which a prisoner of war is summarily executed, clearly in violation of both the 1929 and 1949 Geneva Conventions. In *Saving Private Ryan*, it was the execution of several German POWs by the squad sent out to find Ryan, while in *Rules of Engagement* it is the execution by a then-Marine lieutenant (Childers) of a captured North Vietnamese radioman in the successful attempt to force a captured    North Vietnamese officer to radio Viet Cong under his control to break off an attack on another platoon of Marines (commanded by then-lieutenant Hodges) .     Although the sequence in *Saving Private Ryan* is shown with little consequence or attempt to justify what was done, Jim Webb's *Rules of Engagement* uses this 1968 incident (ironically the same year of Lieutenant Calley's massacre of Vietnamese civilians at My Lai) as a central thread running through the overall fabric of the entire film. In the closing scenes, at now-Colonel Childers' court-martial, where he is accused of killing more than 80 civilians during an evacuation of the American embassy in Yemen, the North Vietnamese officer is called to the stand in rebuttal by the prosecution to recount Childers' prior act of misconduct in 1968 as it bears on his (Childers') denial of ever having killed non-combatants.     What is troubling is not only the verbal exchange between Childers' defense attorney, now-Colonel Hays Hodges, and the North Vietnamese officer in which the latter acknowledges that he, were he in Childers' place in 1968 under those circumstances, would have done the same thing (executed a prisoner of war to save his own men), but the clear implication in the film that the end justifies the means--that one can violate the law of war if there is some perceived good that would come from it.     The fact that Childers is acquitted of killing the civilians, following the concession on the stand by the North Vietnamese officer, draws a subtle nexus which is worrisome to those of us who hold that adherence to the law of war is a unilateral obligation, regardless of the circumstances or what the enemy does. International Humanitarian Law cannot be situational as it is portrayed in this film, and to that extent the film does a disservice to those in uniform who train and fight under the rule of law.     Just as disturbing is the film's wholly inaccurate and biased depiction of military law and the court-martial process. For example, the film shows Colonel Childers learning for the first time about the charges against him when he is called in by his Marine major general convening authority to receive a copy of the report of the completed Article 32 investigation. Military law provides for any accused and his counsel to be present and participate in the Article 32 investigation, or to waive it, and even the article 32 investigation itself would procedurally follow a formal notification to the accused of the charges against him--the "preferral" of charges. To suggest, as the film does, that Childers is kept ignorant of the charges to be brought against him at a trial to start within two weeks is totally ridiculous.     Also disconcerting is the film's depiction of a major and a lieutenant colonel (both being junior in grade to the accused) as members of the jury panel sitting in judgment over Colonel Childers, something which is generally precluded by Article 25 of the Uniform Code of Military Justice. Lastly as to procedure, the film shows the military judge announcing the sentence in Childers' trial, rather than the president of the court-martial panel as is prescribed in the procedure guide for courts-martial.     These procedural inaccuracies in portraying a military trial do not disturb me as much as the clear message in the film that the military justice system can be used and abused to further a cover-up. A scene in which the military prosecutor (a Marine major) meets with the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, the Commandant of the Marine Corps, and the National Security Adviser, with the purpose being to ensure a successful conviction at the trial, no matter what tactics are used, portrays the military lawyer in an unfair light. In the larger context, the whole depiction of military attorneys in this film is somewhat demeaning to the professionalism and rigid ethics of those who have served and now serve their country.  *Rules of Engagement* may be a popular work of fiction which feeds upon the concerns of many moviegoers over our commitment of forces abroad in situations such as Somalia or Kosovo, where the distinction between combatants and innocent civilians tends to be blurred, but the film is very troubling and disturbing not only because of its inaccuracies, but also because of its portrayal of the rule of law as situational and not a firm and proper obligation on the part of all those who serve in uniform.  Scott L. Silliman is the Executive Director, Center on Law, Ethics and National Security, at Duke University School of Law.    *Posted May 30, 2000*  **Would you like to comment on this article? 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