The NEVER-ENDING WAR

THE GOOD
At 26, army staff sergeant Jess Cunningham had a bright future. He’d been handpicked for Alpha Company—nicknamed “Wolf Pack”—by its hard-driving, charismatic first sergeant, John Hatley. Then, in Iraq, during the surge of 2007, Hatley changed the rules. Dissecting a cold-blooded war crime, and the military’s response, WILLIAM LANGEWIESCHE reveals how a warrior fought to become something more: a better man.
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ess Cunningham was a staff sergeant in a mechanized unit of the U.S. Army—Alpha Company, First Battalion, 18th Infantry Regiment, First Infantry Division—during the intensified fighting that accompanied the surge of American troops in Baghdad in 2007. This was his second tour in Iraq, and his first with Alpha Company. He had been a high-school football star in Bakersfield, California, before heading off to war. He had excelled in the army, rising rapidly through the ranks. Now 26, he was strong, alert, and accustomed to battle. He had a bright future.

But he also had a problem. Although Alpha Company appeared from the outside to be like any other infantry unit, neatly integrated into the larger American force structure, on the inside it revolved around an unusual degree around a single personality—that of an imposing first sergeant, a hard-charging 18-year veteran named John Hatley, who dominated the company. Hatley was a burly Texan who spoke with a drawl. He carried his 240 pounds on a six-foot frame, and at the age of 40 still achieved a perfect 300 on the army’s physical fitness test. He had been the company’s first sergeant for three years and had delayed a promotion to sergeant major in order to return with his men to the fight. He reveled in his power. He made it clear that the rules of engagement that mattered were the ones he alone defined. Cunningham had never encountered such a sergeant before. He himself was a team player and not immune to Hatley’s leadership qualities, but over the first few months in Baghdad he began to struggle privately with doubts. The company called itself Wolf Pack and sometimes seemed to act like one. Cunningham did not question the war itself, but he wondered about the treatment of Iraqi detainees and the actions of certain gunners who seemed to be playing loose with their justifications for killing.

Alpha Company’s area of operations lay in southwest Baghdad, one of the most active battlefields in Iraq. Sunnis and Shiites were fighting over the neighborhoods, and insurgents from both groups were warring on American patrols. The U.S. mission was to promote stability. This boiled down to convoys of recent American high-school graduates lumbering around in Bradley troop carriers and armored Humvees from which they could barely see, struggling to distinguish combatants from civilians in an indecipherable city, and waiting to get attacked. Cunningham served as a squad leader in the company’s Second Platoon. They were based with Hatley’s headquarters platoon at a fortified combat outpost called Angry Dragon, which also housed the company’s Tactical Operations Center, an office and briefing room known as Wolf Den on the radios. Wolf Pack, Wolf Den, Angry Dragon—the bravura was probably useful, given the youth of the soldiers. The engagements were frequent and anything but child’s play. They resulted in uncounted numbers of Iraqi deaths. By contrast, the accounting of American losses was carefully done. During Alpha Company’s 14 months on the ground, six soldiers were killed and three were gravely wounded—a toll that amounted to a casualty rate of about 15 percent in Cunningham’s platoon alone. The first soldier died four months into the fight, on February 27, 2007. He was a tall, 22-year-old staff sergeant named Karl Soto-Pinedo, who was shot in the head by a sniper after he rose too high above the hatch of his Bradley. Three weeks later, on March 17, 2007, a 30-year-old specialist named Mario Guerrero was lost to a jerry-rigged land mine, an I.E.D.

Then, in late March or early April, on a date lost as much to obfuscation as to the blur of war, Cunningham was given a training task, to serve as the leader of a routine “presence” patrol. The patrol consisted of a pair of lead and tail-end Bradleys, with three Humvees in between. Around noon they rolled out of the combat outpost carrying about 20 soldiers and multiple top-mounted guns. Cunningham occupied the first Humvee, along with a crew that included the unit’s civilian interpreter, an Iraqi called “Dennis.” The second Humvee was the one that mattered. It belonged to Hatley, who had decided to attach himself to the patrol to evaluate Cunningham’s performance. Along with his regular driver and gunner, Hatley was accompanied by the two men closest to him—the company’s chief medic, Sergeant Michael “Doc” Leahy, 27, who rode with Hatley wherever he went, and the Second Platoon’s senior NCO, Sergeant First Class Joseph Mayo, 26, a careerist whose eagerness to impress Hatley seemed to know no bounds. In the privacy of Alpha Company at war, these three men—Hatley flanked by Leahy and Mayo—formed the unit’s triumvirate of power.

Their presence on the patrol frustrated Cunningham’s authority from the start but did not lessen his formal responsibility for the mission. The patrol rolled west. The patrol rolled south. It rolled into a neighborhood where Cunningham got out with the interpreter and asked about life on the ground. People said times were tough, and the patrol rolled on. Two hours after leaving the combat outpost, the patrol came under small arms fire. The vehicles had stopped on an empty street between shuttered houses. The rounds clanged against the armor and caused the top gunners to hunker down. Hatley radioed to Cunningham, “What’ve you got?” Cunningham suspected he had the usual—angry locals who could melt away at will. He did not get excited. He radioed, “Does anyone have anything? All White elements respond. Direction? Distance?” The gunner on the tail-end Bradley spotted the gunfire coming from a rooftop in a cluster of buildings to the south. He answered with a burst of his own. The shooting stopped. Cunningham ordered a move toward the position. With some difficulty the convoy turned around, but it was blocked by marshy land and had to detour to the east before navigating back to the vicinity from which the attack had come. By then the attackers had gone.

The soldiers continued with the patrol, working westward through a succession of neighborhoods with guns at the ready, spoiling for a fight. Word of the earlier engagement must have gotten around, because the streets were deserted. Then, after more than an hour and a mile, the patrol came upon an Arab man in the street. The encounter did not occur in the heat of battle. It had no obvious connection to the confrontation earlier that day, and was in a different part of town. The man was alone. He may or may not have been a fighter. He could have just stood there, waved in a friendly manner, or held up
his hands to demonstrate that he was unarmed. He could have shouted, “Mister, I love America!” Four years into the occupation, he probably knew that much English. But he was stupid. Startled by the patrol, he dashed across the street and disappeared into a doorway.

Don’t run if you want to look innocent. The convoy splayed into defensive positions, and soldiers sprang out. Hatley, Leahy, and Mayo were the first to go through the doorway, followed by Cunningham and others. On the inside they found a group of frightened women and children and five men of military age with their hands raised in submission, saying, “No, mister.” It was an ugly scene: the women were babbling and pleading in Arabic, a language known to some of the soldiers as “their native tongue.” The men were positioned facing the wall, professing their innocence. None was armed. A quick search turned up a single Kalashnikov assault rifle with two loaded magazines—the standard household allowance in Iraq. Unconvinced, the Americans began a more thorough search, lifting the carpets, pulling a refrigerator from the wall, shifting furniture, opening drawers and containers and spilling the contents onto the floors. They called this “flipping” the place. Eventually they discovered a green bag containing a bulletproof vest, a cell phone, some electrical wire, and belts of 7.62-mm. ammunition. Then, a few doors down the street, in an otherwise empty shop, they found the matching weapons—several machine guns.

The captured men denied any knowledge of the weapons, but it seemed obvious that they were lying. Whether all or any of them were insurgents was a more difficult question, particularly in a neighborhood riven by sectarian violence, but Hatley and his soldiers—including Cunningham—assumed that they were. The women pleaded for mercy in their native tongue. The men were flex-cuffed with their hands behind their backs, and were blindfolded with ACE bandages. At about that time Cunningham thought he heard Hatley saying to Mayo, “How do you feel about offing these guys?” Cunningham was not sure he had heard correctly. He was standing beside another sergeant, Charles Quigley, a quiet but articulate soldier from Rhode Island. Hatley and Mayo walked up. According to Cunningham, Mayo said, “You guys have an issue if we take these guys out?” Cunningham said, “What?”

“Offing them. Killing them. It’ll prevent us from seeing them again.”

Cunningham said, “No, man. I’m not going to do that.” Quigley also declined.

Mayo peered at them with disdain. Hatley said, “No one’s forcing you. I’ll do it myself.” He turned and walked away. Cunningham and Quigley exchanged looks. Hatley and Mayo began surveying the other soldiers, pulling them aside one by one; Cunningham doubted whether any of them would dare to refuse. He decided to put a stop to it. He ambled over to his Humvee and quietly asked the driver to call in a formal situation report to company headquarters—to include their location, the weapons seized, and especially the fact that they had taken prisoners. The report would be entered into the company log, and this might calm things down. Cunningham returned to Quigley’s side as if nothing had happened. A few minutes later, company headquarters radioed back, asking for an exact count of the detainees and an expected time of arrival at the combat outpost. The man who took that call was Hatley’s driver.

Hatley angrily demanded to know who had called in the report. When he got the answer, Cunningham says, he and Mayo stormed over in a rage. Mayo shouted at Cunningham, “What the fuck are you doing? You can’t fucking control your soldiers? Why’d you call up a sitrep? You fucking pussy! You piece of fucking shit!” Cunningham looked at him. He had never been good at verbalizing his thinking. That does not mean that he was not good at thinking. He thought, You’re supposed to be my platoon sergeant. You’re supposed to be the one shutting Hatley down. Why am I doing it? But Cunningham said none of what he thought. He stood there silently and, in army tradition, sucked up the abuse.

The rear ramp of the lead Bradley dropped down, and the five detainees, blindfolded and bound, were led into the troop compartment. The Bradley was commanded by a sergeant named Daniel Evoy. It had a driver and gunner as well, but otherwise was empty. The detainees were seated face-to-face on steel benches. Mayo assigned the job of guarding them to a private named Joshua Hartson, who was a newcomer and the lowest in the hierarchy of the patrol. He gave Hartson a nine-mm. Beretta pistol and said, “It’s your word against anyone else’s if something were to happen.” The message was clear, but Hartson was not the type to shoot these men. He sat in the back with them as the rear ramp clanged shut and the convoy set off through the streets.

II. Band of Brothers

Bakersfield, California, is an uneasy city, a gang-infested boom-and-bust oil town where a fast-growing Hispanic population is overflowing an established country-and-western core. Jess Cunningham and a nearly identical twin brother were born anchored into the Anglo community, with two sets of grandparents who were next-door neighbors and a large number of uncles, aunts, cousins, and friends constituting a network of what is locally known as good families—those instilled with the traditional values of athletics, honest work, and love of home. Cunningham’s father is a Caterpillar mechanic and former rodeo rider. His mother is a medical-billing clerk and devout churchgoer. The two were divorced when he was young, but they par-

THE GUNSHOTS TORE CUNNINGHAM’S WORLD APART.

HE SAT IN SHOCK.
participated equally in his upbringing and provided him with a happy childhood, full of team sports, outdoor activities, and moderate studies.

In October 1997, however, the dark side of California caught up with him. Cunningham was a junior in high school at the time. The star of his football team, a senior named Chad Yarbrough, who was the handsome scion of an outstanding family, was waylaid by two Mexican gang members after an argument at a party. They intercepted him after he had driven his girlfriend home, then forced him at gunpoint to take them to an orange grove, where they executed him with a shot to the head. One of the killers was soon arrested and subsequently sentenced to life in prison; the other was captured nine months later, and in 2001 was sentenced to death. His appeals continue, but, whatever his fate, he has been dealt with decisively—and good riddance. Yarbrough was 17 years old when he died. The horror of his murder marked Cunningham profoundly. He never mentioned the episode while in the army, but it was part of him every day in Iraq.

Cunningham graduated in 1999 and enrolled in Bakersfield College, where he played football for a year and flunked a course in American studies while earning an A in Mexican history, to the amusement of his friends. His horizons were near: he wanted to complete enough college to qualify for a civil-service job as a policeman, firefighter, or prison guard; he wanted a house and a family; and he wanted to stay in Bakersfield. He got a job as a maintenance man at an agricultural processing plant, and was there on the morning of September 11, 2001, when he watched the terrorist attacks unfold on television. Afterward he began to think about joining the fight—not in a patriotic rush but out of a growing curiosity about war. He had always liked John Wayne and had recently been impressed by the HBO series Band of Brothers and the movie Black Hawk Down. By the spring of 2002, with U.S. forces engaged in Afghanistan and the first reports of local boys dying in action, he began to see this as his generation’s war—the epic of his time. He did not want to become yet another regretful old man thinking, Darn, I wish, I wish I woulda. He visited an army recruiter, and three months later, after aptitude testing and the offer of safer military paths, opted for the boots-on-the-ground experience of infantry, because he wanted to know what the thick of things is about.

His parents were dismayed, but they learned too late to stop him. He was nearly 22 years old. He joined the army on June 18, 2002, and the next day flew off to basic and infantry training at Fort Benning, Georgia, where he flourished. After graduation he was assigned to a base in Germany. Five months later, in March 2003, he went to war in Iraq. His first unit was Bravo Company, Second Battalion, Second Infantry Regiment, of the First Infantry Division. It consisted largely of volunteers who had stepped forward after the 9/11 attacks, and in sufficient numbers to allow the army to set a relatively high standard for recruitment. In Bravo Company the quality showed. The soldiers were well intentioned, collaborative, and serious about their jobs. They did not hate Arabs and were not out to target people or inflict pain. Furthermore, they were led by a crew of pragmatic, evenhanded sergeants, and were over-
THE SOLDIERS START WITH DENIALS, THEN WAVER, THEN BARE THEIR SOULS.

seen by junior officers who were much the same. The mission was a fairly quiet one—to help secure an air base in Kirkuk, a city about 150 miles north of Baghdad, at a time during and just after the invasion, when the population was still subdued.

It was a one-year stint. The men camped on the tarmac for the first few months before being provided with shelters and a Chow hall. They ranged widely beyond the perimeter, walking through the streets, operating traffic checkpoints, and unearthing vast quantities of munitions from hidden stockpiles that littered the countryside. Some of the munitions they handled may have been chemical weapons, with long-term consequences to themselves. But they came under fire perhaps only twice, and they suffered no losses. So, it wasn’t like the movies. But it was war nonetheless.

Cunningham turned out to be good at it. His evaluation sheets rated his performance as excellent in every category and repeatedly recommended that he be promoted ahead of his peers. He rose rapidly to specialist, and soon enough to sergeant. By then the company was back in Germany, training for the next deployment. The war in Iraq was heating up. In June 2005, Cunningham came to the end of his initial commitment and re-enlisted for four more years. He thought he would remain with Bravo Company, but two months later the army deactivated the unit. Cunningham and several friends arranged to get themselves assigned to the First Battalion, 26th Infantry Regiment—the 1-26—which was based at a garrison in Schweinfurt, Bavaria, about three hours away. They got there after nightfall and mustered among other inbound soldiers. Suddenly a voice called Cunningham’s name.

A senior sergeant came up to him and said, “Sergeant Jess Cunningham? First Sergeant Hatley sent me to get you. You’re now in Alpha Company, 1-18.” Cunningham protested that he had to meet the morning roll call for the 1-26. The sergeant said, “Negative. That’s all been taken care of.”

In retrospect there is a whiff of destiny here. The drafting of Cunningham was entirely Hatley’s work—a fate he went out of his way to inflict upon himself. He had recently brought Alpha Company back from a year in Tikrit, Saddam Hussein’s hometown, where they had encountered determined resistance and lost some men to the fighting. In Germany, he was preparing the company for a scheduled return to Iraq, determined to make it the best infantry unit in the field, expressly as a reflection of himself. Within the U.S. Army in Europe, Hatley had his ear to the ground. When he heard of new arrivals, he called his network of friends, the first sergeants and sergeant majors who knew the score. He had a sergeant slot to fill in his second platoon, and he wanted the best soldier for the purpose—a go-getter, a team player, and a “PT stud” whose dedication to physical training could match his own. He said, “I want the pick of the litter.” And that is what he got.

Cunningham was surprised by the cult of Hatley and felt a little uncomfortable with it, but he was impressed by the man—and for good reason. Hatley was the alpha of alpha males. He was physically imposing and would get into people’s faces if he had to, but intimidation was not primarily the basis of his power—not yet. He was hard-charging, hands-on, versatile, verbal, experienced, politically connected, and obviously intelligent. He knew when to be serious and when to relax. He knew how to approach each individual soldier, and how to approach the group. Every morning, when the men assembled, he would stand in front of them and shout a war cry, and then “PT!,” and the company would enthusiastically reply. Because of Hatley, the esprit de corps was high. The mentality was “We’re the best!” Hatley preached it every day. And he gave credit easily. He said, “I’m the best because you’re the best! I’m the best because you platoon sergeants make me look good! You platoon sergeants are the best because your squad leaders make you look good! You squad leaders are the best because your soldiers make you look good! Wolf Pack!” Cunningham bought into it as all the soldiers seemed to. Hatley was invincible. He was the great protector who would keep everyone safe. Cunningham thought, What is not to love about this man? Because Cunningham was not clairvoyant. He did not anticipate the effect of the coming battle, where the power of life and death would be placed in Hatley’s hands.

Then it was early spring 2007. Iraq was up in arms, the fighting in Baghdad had become the sort of war that movies show, five Iraqi men had just been loaded into the back of a Bradley, and Hatley had voiced his intention to murder them. Cunningham was still nominally responsible for the patrol, but he had lost practical authority, and Hatley was now fully in charge.

John Edmond Hatley was born in 1968. He was raised in a dismal town in central Texas, where his father was a Baptist preacher and connections to the world were thin. He was disadvantaged by definition. He played some sports. He chased some girls. He dropped out of high school, then worked some menial jobs. He was apparently headed nowhere in life. But in 1989, when he was 21, he drove to Dallas and joined the army. The army was good for him. It did not care about his caste. It found in Hatley the material from which career soldiers are formed, and it gave him the means to elevate himself to a degree that civil society probably would not have allowed. Hatley was hungry for it. He turned out to be better, tougher, and smarter than his peers. At some early point he must have realized
this about himself. A certain insecurity never left him. He remained, for instance, painfully proud of his every decoration. Nonetheless the once inconsequential boy became a man who could not be ignored. The unlikelihood of his rise may help to explain his inordinate pride.

His rise looked like this: he went from rifleman to armored-vehicle crew member, to squad automatic-weapon gunner, machine-gunner, radio operator, team leader, squad leader, section leader, brigade master gunner, platoon sergeant, division master gunner, and divisional operations sergeant before becoming the imposing first sergeant of his beloved Alpha Company. He was stationed in the United States, Korea, and Germany, saw combat in the Gulf War, did peacekeeping in Bosnia and Kosovo, and returned to straight-up combat twice in Iraq. Along the way he completed airborne- and jungle-warfare training, excelled in multiple leadership and war-fighting schools, won a Ranger tab, completed high school with a general-equivalency diploma, and earned a year’s worth of college credits through a University of Maryland extension program, where he performed at a nearly straight-A level. The man was better than West Point. He seemed unstoppable, on a path to becoming a command sergeant major, and perhaps the senior NCO for all of the U.S. Army in Europe—the enlisted equivalent of a three-star general. He was married at the time to a Korean-American orphan named Kim, who was raised in New York and came to the marriage with a son. Hatley never had children of his own, but he loved his soldiers paternally and saw himself as their protector—there is no question about that.

It was at that stage in his life that Hatley came up with the idea of killing the Iraqi detainees. He was fighting a futile war against enemies who dressed in civilian clothes and routinely professed their innocence when captured. Furthermore, if he hoped to ensure their long-term detention—and thereby preserve the lives of his own men—he was saddled with stringent evidentiary requirements that generally could not be met. That was certainly true in this case, where the machine guns had been discovered in a separate house. Here was the deal: you could hold the detainees for money. Hartson reached across and gave him a puff, the first of several. Hartson grew curious. He asked the Big Guy if he made bombs and killed Americans. The Big Guy laughed in response, whether out of insolence or fear. The Bradley lurched into motion. Hartson continued to speak to the Big Guy. Cunningham asked why. He says Mayo answered, “Because we’re going to go drop these motherfuckers off.” Cunningham hesitated. Mayo read him correctly and yelled, “Just get in your fucking truck!”

Hatley and Mayo went into the Tactical Operations Center and stayed there for about 10 minutes. What happened inside remains unknown. Did they fix the paperwork to indicate their intention to release the detainees? If so, Cunningham was that easily circumvented. Inside the waiting Bradley, Hartson took it upon himself to give the detainees water. To do this he had to reach across them and hold a bottle to their lips, one at a time. He then lit a cigarette for himself, whereupon the Big Guy spoke up in broken English, asking for a smoke. Hartson reached across and gave him a puff, the first of several. Hartson grew curious. He asked the Big Guy if he made bombs and killed Americans. The Big Guy laughed in response, whether out of insolence or fear. The Bradley lurched into motion. Hartson continued to speak to the Big Guy and learned that he had two sons and six daughters. After a while, the Big Guy twisted his torso and offered Hartson a string of prayer beads that he had been fingering with hands bound behind his back. Hartson accepted the gift, but that was all he had the capacity to do.

The three-vehicle convoy moved slowly to the west, the Bradley in the lead, followed by Cunningham’s and Hatley’s Humvees. The Bradley’s commander, Sergeant Evoy, radioed Cunningham for directions. “Where are we going?” Cunningham had no idea. He answered, “An I.P. checkpoint.” “I.P.” stood for the Iraqi Police, to whom the patrol could turn over the detainees. This would have been standard procedure. Evoy radioed, “Which checkpoint?” Referring to Mayo and Hatley, Cunningham answered, “I don’t know. Call White 7, call Wolf 7.” At that moment the transponder for Hatley’s Blue Force Tracker switched off. The trackers were GPS-based moving maps in certain Humvees that showed the location of friendly forces. After Hatley’s was switched off, only Cunningham’s remained visible to represent the mission on the army’s screens. Cunningham reacted in anger with repeated calls to Hatley, none of which were answered. The silence was unusual. When finally Hatley had to get on the radio to give directions, he did so with brevity—go left, go right, push forward—and without identifying himself.

The ride lasted 30 minutes. Darkness gathered. Some of the soldiers switched to night-vision goggles. At the edge of the city they passed through a farming village called...
Hamdani, which was known to them from previous operations. Hatley directed the patrol into an open field, where he called for a halt by an irrigation canal whose edges were overgrown with reeds. The vehicles fanned out into routine defensive positions, dozens of yards apart, and waited there with the drivers at the wheels and the top gunners scanning sectors 360 degrees around. Cunningham was extremely edgy. After a few minutes, his gunner dropped down and said, “Hey, Sergeant Cunningham, they’re standing behind the truck.” Cunningham snapped, “Who the fuck’s behind the truck? You’re the fucking gunman! Why’d you let them get behind the truck? Why didn’t you pull security?” The gunner said, “No, it’s First Sergeant Hatley, Sergeant Mayo, and Doc Leahy.”

Cunningham got out of the truck and found them waiting with pistols drawn. According to Cunningham, Hatley said, “This is your chance. Do you want to help kill them?” Cunningham said, “No, I don’t. I already told you, I’m not down for this.” The three men turned and walked away. Cunningham climbed back into his Humvee. To the soldiers inside, he said, “You guys better see right now who’s in this vehicle, and remember who stayed in this vehicle. Hatley, Mayo, and Leahy then got into their Humvee. Hatley, Mayo, and Leahy took the detainees a few feet away to the edge of the canal and lined them up facing the water, beyond view of the soldiers in the Humvees. From atop the Bradley, wearing night-vision goggles, Evoy was the only one to witness the scene directly. He saw the men side by side in a line, still bound and blindfolded, with the company’s triumvirate directly behind them, raising pistols for the executions—Doc Leahy on the left, then Mayo, then Hatley. He did not distinguish between the detainees—which among them was the Big Guy, or Crybaby, or the boy. He saw Doc Leahy fire first, and the victim slumped unnaturally. Evoy dropped down into the Bradley to avoid seeing anything else. Sickenied, he heard other shots ring out.

Doc Leahy was a left-handed shooter. As the event was later reconstructed, he shot the man in front of him at close range in the back of the head. Unexpectedly, the man fell backward against him as he died. The Iraqi to his right flinched at the sound and turned his head to the left just as Leahy fired at him. The round entered his head around his left ear and exited through his face. He fell onto the ground, where he lay awkwardly on his back, gurgling and moaning. Almost simultaneously, Hatley shot and killed a man, and Mayo shot and killed another. Hatley then came over, looked down at Leahy’s gurgling victim, and dispatched him with two shots to the chest. The fate of the fifth man is unknown. Did he somehow escape, or was he, too, shot then and there? All that is certain is that at least four detainees died that night. After the shooting ended, Evoy went back up to see what was happening. The dead men’s blindfolds were removed, and the flex-cuffs were cut from their wrists. Evoy watched the three shooters kick the corpses into the canal.

The sound of the gunshots tore Cunningham’s world apart. He sat in shock, wondering about the consequences. Hartson sat behind him, terrified. He thought of the Big Guy, with whom he had been speaking just minutes before; he thought of the prayer beads in his pocket. No one in the vehicle said a word. The bloody blindfolds and flex-cuffs were thrown into the back of the Bradley. Hatley, Mayo, and Leahy then got into their Humvee. Hatley ordered the patrol to return to the combat outpost. When it got there, Hatley gathered the soldiers for a short talk. Memories of his exact words vary, but only to a small degree. According to Cunningham, Hatley said, “Hey, what we did was for Soto and Guerrero. For all our guys who have fallen. This is retaliation, and we won’t have to face these guys again. It stays in this group, this brotherhood, and we’re all on the same page. We dropped them off because we didn’t have the evidence. And don’t worry. If anything ever comes up, it’ll start with me and end with me. I’ll fall on the sword.” Many of the soldiers were impressed. Cunningham was not.

Hatley instructed a soldier to remove the flex-cuffs and blindfolds from the back of the Bradley, take them to the burn pit, and destroy them. Cunningham dropped his gear on his cot, grabbed a Gatorade, and went outside to sit on the hood of a Humvee. He was staring into the distance when Mayo came up and told him that Hatley wanted him to write the final patrol report, the so-called debrief.

“Why do I gotta do it?”

“Because you’re the fucking patrol leader. So get your ass inside.”

Cunningham suspected that they were trying to make him complicit by getting him to falsify the report. He should have refused to obey, but he was afraid of the fight that would ensue. He was afraid of unknowable consequences too. So he was not the Hollywood hero. He was a normal human being. He did as he was ordered, and under the close supervision of Hatley wrote a deceptive report. The report never went anywhere: apparently it was made to disappear. The paperwork exercise turned out to be a manipulative game. Afterward, Hatley may have thought that he had Cunningham where he wanted him. But Cunningham was deeply disturbed. The parallels with the murder of his friend Chad Yarbrough in the Bakersfield orange grove did not escape him.

The army takes the high road. It instructs its recruits on their solemn obligation to resist illegal orders, and to report war crimes if they occur. In the field it reminds them repeatedly about the rules of engagement—including that they are not allowed to target civilians, or to rape and pillage, or, for instance, to execute blindfolded suspects who have been lined up beside a canal. Furthermore, it maintains an “open door” policy, under which any soldier of whatever rank can go to his commanding-of-

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Hamdani, which was known to them from previous operations. Hatley directed the patrol into an open field, where he called for a halt by an irrigation canal whose edges were overgrown with reeds. The vehicles fanned out into routine defensive positions, dozens of yards apart, and waited there with the drivers at the wheels and the top gunners scanning sectors 360 degrees around. Cunningham was extremely edgy. After a few minutes, his gunner dropped down and said, “Hey, Sergeant Cunningham, they’re standing behind the truck.” Cunningham snapped, “Who the fuck’s behind the truck? You’re the fucking gunman! Why’d you let them get behind the truck? Why didn’t you pull security?” The gunner said, “No, it’s First Sergeant Hatley, Sergeant Mayo, and Doc Leahy.”

Cunningham got out of the truck and found them waiting with pistols drawn. According to Cunningham, Hatley said, “This is your chance. Do you want to help kill them?” Cunningham said, “No, I don’t. I already told you, I’m not down for this.” The three men turned and walked away. Cunningham climbed back into his Humvee. To the soldiers inside, he said, “You guys better see right now who’s in this vehicle, and remember who stayed in this vehicle.” Hatley, Mayo, and Leahy went over to the Bradley and ordered the commander, Evoy, to drop the rear ramp. When the ramp dropped, the light from the inside spilled onto Hatley, standing outside. Hatley told Hartson to switch off the light. Mayo and Leahy pulled the detainees outside. Mayo reclaimed his pistol from Hartson, who walked over to Cunningham’s Humvee and climbed into the back. Hatley, Mayo, and Leahy took the detainees a few feet away to the edge of the canal and lined them up facing the water, beyond view of the soldiers in the Humvees. From atop the Bradley, wearing night-vision goggles, Evoy was the only one to witness the scene directly. He saw the men side by side in a line, still bound and blindfolded, with the company’s triumvirate directly behind them, raising pistols for the executions—Doc Leahy on the left, then Mayo, then Hatley. He did not distinguish between the detainees—which among them was the Big Guy, or Crybaby, or the boy. He saw Doc Leahy fire first, and the victim slumped unnaturally. Evoy dropped down into the Bradley to avoid seeing anything else. Sickenied, he heard other shots ring out.

Doc Leahy was a left-handed shooter. As the event was later reconstructed, he shot the man in front of him at close range in the back of the head. Unexpectedly, the man fell backward against him as he died. The Iraqi to his right flinched at the sound and turned his head to the left just as Leahy fired at him. The round entered his head around his left ear and exited through his face. He fell onto the ground, where he lay awkwardly on his back, gurgling and moaning. Almost simultaneously, Hatley shot and killed a man, and Mayo shot and killed another. Hatley then came over, looked down at Leahy’s gurgling victim, and dispatched him with two shots to the chest. The fate of the fifth man is unknown. Did he somehow escape, or was he, too, shot then and there? All that is certain is that at least four detainees died that night. After the shooting ended, Evoy went back up to see what was happening. The dead men’s blindfolds were removed, and the flex-cuffs were cut from their wrists. Evoy watched the three shooters kick the corpses into the canal.

The sound of the gunshots tore Cunningham’s world apart. He sat in shock, wondering about the consequences. Hartson sat behind him, terrified. He thought of the Big Guy, with whom he had been speaking just minutes before; he thought of the prayer beads in his pocket. No one in the vehicle said a word. The bloody blindfolds and flex-cuffs were thrown into the back of the Bradley. Hatley, Mayo, and Leahy then got into their Humvee. Hatley ordered the patrol to return to the combat outpost. When it got there, Hatley gathered the soldiers for a short talk. Memories of his exact words vary, but only to a small degree. According to Cunningham, Hatley said, “Hey, what we did was for Soto and Guerrero. For all our guys who have fallen. This is retaliation, and we won’t have to face these guys again. It stays in this group, this brotherhood, and we’re all on the same page. We dropped them off because we didn’t have the evidence. And don’t worry. If anything ever comes up, it’ll start with me and end with me. I’ll fall on the sword.” Many of the soldiers were impressed. Cunningham was not.

Hatley instructed a soldier to remove the flex-cuffs and blindfolds from the back of the Bradley, take them to the burn pit, and destroy them. Cunningham dropped his gear on his cot, grabbed a Gatorade, and went outside to sit on the hood of a Humvee. He was staring into the distance when Mayo came up and told him that Hatley wanted him to write the final patrol report, the so-called debrief.

“Why do I gotta do it?”

“Because you’re the fucking patrol leader. So get your ass inside.”

Cunningham suspected that they were trying to make him complicit by getting him to falsify the report. He should have refused to obey, but he was afraid of the fight that would ensue. He was afraid of unknowable consequences too. So he was not the Hollywood hero. He was a normal human being. He did as he was ordered, and under the close supervision of Hatley wrote a deceptive report. The report never went anywhere: apparently it was made to disappear. The paperwork exercise turned out to be a manipulative game. Afterward, Hatley may have thought that he had Cunningham where he wanted him. But Cunningham was deeply disturbed. The parallels with the murder of his friend Chad Yarbrough in the Bakersfield orange grove did not escape him.

IV. Rebellion

The army takes the high road. It instructs its recruits on their solemn obligation to resist illegal orders, and to report war crimes if they occur. In the field it reminds them repeatedly about the rules of engagement—including that they are not allowed to target civilians, or to rape and pillage, or, for instance, to execute blindfolded suspects who have been lined up beside a canal. Furthermore, it maintains an “open door” policy, under which any soldier of whatever rank can go to his commanding-of-
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Corporal Michael Cunningham was a soldier with deep experience in the field, he believed that Hatley’s commanders at both the company and battalion level had effectively ceded authority to Hatley and would align with him in the event of an allegation.

In any case, Cunningham was at first too conflicted to contemplate reporting the murders. He withdrew into himself, became a chain-smoker overnight, and began to work out obsessively in the loneliness of the gym. After a month of this he asked a battalion medic for relief, without explaining why. The medic gave him Prozac, then doubled the dose, then graduated him to Effexor. He could not shake feelings of anger and anxiety. He became distant from everyone. He began to confront Mayo in private. The change was obvious to others, and a threat to some. Suddenly, Cunningham was an outcast, whom even lower-ranking soldiers dared to disrespect openly. The most blatant of them was Evoy, the sergeant who from atop the Bradley had witnessed the incident at the canal, and, according to Cunningham, had since taken to wising off to him, calling him a pussy to other soldiers, and saying to Mayo, “Look how I talk to him. He won’t do shit.” Cunningham finally had enough. One night, in the heat of an argument, he yanked Evoy out of the sleeping quarters and punched him full force in the mouth. Evoy fell back against a wall, and Cunningham followed, pulling him down and pummeling him on the ground. Evoy never stood a chance. Soldiers came out of their rooms and pulled Cunningham off.

Then came the surprise: Hatley let it slide. Cunningham received no formal warning or note in his record. This appears to have been a strategy intended to avoid a rupture. Eventually, Cunningham assaulted Doc Leahy as well—again with no repercussions. Repeatedly he asked Mayo for a transfer to another unit, and each time he was told no. He says Mayo asked him to consider his soldiers and their families: did he want to expose them to risk in the middle of a war by breaking up the team? Obviously he did not.

Several months after the murders, in the summer of 2007, Cunningham came down with pneumonia. He fought it at the combat outpost, blacked out, woke up in the combat-support hospital in the Green Zone, blacked out, woke up among soldiers in bloody bandages in the tent hospital at Balad Air Base, blacked out, and woke up in a U.S. military hospital in Germany. He lost 30 pounds and nearly died. Once in Germany he recovered quickly. On the day he got out of the hospital, a sergeant called him into an office and gave him some bad news: a Second Platoon patrol had hit a land mine, killing two soldiers and maiming another. Cunningham took it hard. He called his family in Bakersfield and said, “I failed. I was one of the strongest guys in the company, but my body let me down.” They thought he was talking about pneumonia. He did not dare to say that his greatest failure had occurred on the day of the murders. He had tried three times to resist the plan but had never gone far enough. He had allowed Hatley to outsmart him. He had failed his soldiers, failed himself, and failed the memory of Chad Yarbrough.

By now, Cunningham had decided to report the crime—and only once the company was safely clear of Baghdad and he himself was back in the United States, beyond the reach of Hatley. Meanwhile, however, there was this loss of three men in a single day. Cunningham felt that he should have been with the patrol—that maybe he would have done something differently. He wondered what was going to happen now. Would Hatley dispatch other patrols to seek revenge? Cunningham strained to get out of Germany fast, and two weeks later returned to Baghdad.

It was still summer, and searing hot. Two more soldiers in Alpha Company had been wounded, and two others were soon to die. Morale was low, and the working atmosphere was ugly. Word of the canal killings had seeped through the ranks. Hatley was still comporting himself as if nothing had changed, but among many of his subordinates the attitude toward him was drifting from devotion toward fear. A sergeant in Hatley’s headquarters platoon confided his own worries to Cunningham, expressing suspicions about wanton killings, particularly at night, by certain gunners who seemed to have joined the army for the express purpose of shooting Arabs. Some of the rumors may have been the result of ugly bravado, but as Cunningham probed he was disturbed by what he heard.

In particular there had been an incident in January of that year, several months before the killings at the canal. The story had come to him in significant detail. A remotely controlled land mine had exploded ineffectively beside the captain’s personal-security detail—a small armored detachment—and Hatley had rushed to the scene with Doc Leahy and a quick-reaction force. By the time they got there, the apparent triggerman had been brought down with a burst of machine-gun fire that nearly severed his leg but did not kill him. According to later eyewitness testimony, Hatley had him put onto a litter and loaded into the back of a Bradley, where Leahy worked to staunch the bleeding. Hatley announced that they would transport the prisoner to the combat-support hospital. But rather than taking them north and east toward the Green Zone, Hatley directed them west, and after 10 minutes called for a halt on an empty stretch of road. He then pulled the prisoner from the Bradley and, with Leahy’s help, dragged him down an embankment beside the road, where he shot him twice in the chest. He zipped him into a body bag and delivered him to an Iraqi checkpoint, no questions asked. In the Humvee, Leahy complained about the blood on his clothes.

By late summer of 2007, Cunningham trusted nearly no one. His was not the only dissenting mind. At around the same time an Alpha Company private named Scott Thomas Beauchamp sent an anonymous firsthand report to The New Republic, where his wife was a fact-checker. The magazine published the report under the title “Shock Troops.” It detailed various sorts of misconduct, including running over dogs, the mocking of a disfigured female soldier, and clowning around with a fragment of a child’s skull dug up from a grave. But the report turned out to be impossible to verify, and the magazine was forced into a retraction. Hatley sent an e-mail to a reactionary military blog, the Foxhole, in which he wrote, “I can assure you that not a single word of this was true. . . . My soldiers’ conduct is consistently honorable. . . . I’m proud of my soldiers and would gladly give my life for any one of them.” He signed it “Sincerely,” and probably did mean every word he wrote. But Beauchamp’s allegations paled in comparison to what was really going on.

Cunningham continued to act out. They had only a few months left to go before returning to Germany. But after a particularly angry confrontation with Mayo in the field, he entered the Tactical Operations Center and told Hatley he would not serve with Mayo any longer. Hatley must have known that it all went back to the killings. He ordered everyone out of the room. According to Cunningham, he said, “You don’t get to make those decisions. I do. I run this company, not the C.O., and not you. I’ve been putting up with your shit for months. And, Sergeant Cunningham, are you trackin’ that I’m not afraid to go to prison?”

“Roger, First Sergeant.”

“Do you know what that means?”

“Roger, First Sergeant.”

Cunningham took it as a threat. He left the encounter worried about his safety. Recently he said to me, “Did I think Hatley could have? Yes. Did I know about other cases of him executing and murdering people? Yes. Did I know of situations where he was in combat and shot people down? Yes. So, the temperament was there. Did I think he would really do it to a U.S. soldier?” He hesitated. He sighed. He did not know. He had certainly been frightened.

V. Article 15

Cunningham was now a pariah. He says warnings spread through Alpha Company to be careful about what was said around him. Thirteen men had been present at the killings at the canal site, and Cunningham was the one who could take them all down. For Cunningham it was a dangerous position to be in. Critics later blamed him for not coming forward at
once, but the army has no mechanisms in place that would have whisked him away and protected him. For precisely that reason, war crimes are more common than is generally supposed: they are simply too dangerous to report. A related truth is that some number of soldier suicides in combat zones are not suicides at all—they are murders committed to cover up crimes. At the highest level, American military leaders must be aware of the pattern. They could begin to remedy the problem if they chose to—just as they have in the case of sexual assaults within the ranks, where immediate protections are offered to accusers. But war crimes are different. The United States takes a serious hit every time one is reported. It seems that the leadership would rather not know about them than have to deal with every one that takes place. The consequence, however unintentional, is that soldiers who report war crimes are put in harm’s way. Had Cunningham come forward in Baghdad, he would have been exposed to a battlefield where there were a hundred ways to die. Even silent dissent was tricky for him now.

Cunningham tried but could not contain his rage. He was angry not just with Hatley and his sergeants but also with the company’s officers, whom he held ultimately responsible for the company’s actions. When the platoon’s new lieutenant, a fresh West Point graduate named Benjamin Boyd, pressed him one too many times about his attitude, Cunningham turned away from him abruptly, saying, “I have to get out of here before I rip your head off.” Boyd reported Cunningham to the company commander. This forced Hatley’s hand. He dredged up the two prior assault cases, added this case of insubordination, and drew up formal Article 15 charges. Article 15 is a non-judicial disciplinary proceeding by which a commanding officer may demote a soldier, restrict him to base, dock his pay, and require additional duty hours—potentially with career-ending consequences. According to Cunningham, Hatley called him in and showed him the paperwork. He tried to return Cunningham to the fold. He said, “Hey, look, I’m going to give you the answers to the test. You go seek amends. You go talk to Mayo. You apologize your ass off to Boyd. You’re not going to be a problem child anymore. This will all go away.” Cunningham refused. The situation was getting out of control, and Hatley was probably afraid. He had no choice but to send the paperwork up the chain of command.

Alpha Company left Baghdad in November 2007, after 14 months of combat, and returned to the standard hail-the-heroes homecoming at Schweinfurt. Soon afterward, Cunningham was summoned to the brigade commander’s office and formally presented with the Article 15 charges. Hatley and the Alpha Company commander were there. A line on the form allowed Cunningham to invoke his right to a full trial at which he could call witnesses and defend himself—a court-martial. He signed it. The commander was surprised.

He said, “Do you know what you just did?” “I demand a court-martial.”

No viable defense existed for the misconduct. Cunningham was charged with, and a conviction would follow him for the rest of his life. But he was defiant. He told me that this was “one of those ‘fuck you’ things.” He was going to force Hatley and Mayo onto the witness stand and make them squirm. He had been assigned an army lawyer, an inexperienced young captain named Richard Newman, to whom he had confided nothing. He had no intention of bringing up the killings—not here, not now. He wanted to go to court for no better reason than to put up a fight.

Hatley seems to have assumed otherwise, and logically so: why else would Cunningham call for a court-martial except to expose the murders? According to Cunningham, Hatley buttonholed him after they left the commander’s office and said, “It’s that fucking lawyer.” Cunningham denied it. In fact, Newman was as surprised as anyone by the court-martial request. Cunningham had a 2005 Chevy Malibu that he kept in pristine condition. He left the garrison and drove home to an apartment that he shared with another sergeant on the far side of town. Several nights later he found that two of its tires had been slashed. He read it as a warning from Hatley. But if the tire slashing was meant to silence him, it had the opposite effect. For Cunningham it was the last straw. He went to his lawyer and in the strictest confidence explained that the misconduct charges against him stemmed from a much larger problem—a multiple murder beside a canal.

Thus began a process, rare for our era, in which a serving soldier—not families, not victims, not the press—dragged the army into confronting a war crime. The path was convoluted. Cunningham says he had no intention of using the information to his advantage in the Article 15 case. He was too angry even to consider making deals with the authorities, and he never did. But Newman was intrigued by Cunningham’s claims. Amidst all the drunken-driving and bar-fight violations that junior military law enforcement young captain named Richard Newman, who then contacted Cunningham. Cunningham said that he wanted to come forward with the information. Realizing that Cunningham was at risk of being charged himself unless this was carefully handled, McGaha insisted that he withdraw the self-defeating court-martial request and take the Article 15 punishments. Newman was to gather the war-crimes information in writing and then send it to McGaha for modification into a document that could be presented without disclosing Cunningham’s identity. They would deal with the war-crimes allegations, but only after working out some protection. Cunningham agreed to the plan. The Article 15 hearing was duly held. Cunningham was put on probation and given some extra-duty days—a modest penalty that allowed him to retain his rank.

Newman, however, had run with the war-crimes story. In defiance of McGaha’s instructions, without the approval of Cunningham, and in violation of attorney-client privilege, he took a barely modified version of Cunningham’s written statement to the Schweinfurt office of the army’s Criminal Investigation Division, the C.I.D. He seemed to think the agents could give his client immunity—despite their explanation that they had no authority to do so. The agents took the written statement and outsmahted Newman into divulging Cunningham’s identity, with no protection in place. Newman had blundered. As Cunningham remembers, Newman came to him and said, “Hey, I think I fucked you.” McGaha eventually pulled Newman from the case and took it on himself, but the damage had been done.

In January 2008, the C.I.D. began calling in the Alpha Company soldiers to break them down and get them to talk. The interviews were recorded on video and became part of the public record. The agents’ tactics were convention: having advised the soldiers of their right to legal representation, they relied on the soldiers’ naïve reluctance to ask for it and urged them to man up and confess, which the agents claimed all the others had done. And the agents were sympathetic. They said, “Hey, we get it that those fuckers deserved to die, and Baghdad is tough duty, and we all make mistakes—so you might as well explain your side.” The videos are painful to watch. They show the soldiers proceeding in line to the slaughter. Only Hatley is smart enough to demand a lawyer and terminate the questioning. All of the others start with denials, then waver, then end up baring their souls. These are authentic records of an American tragedy. They are not for casual viewing. Mayo is pathetic, his ambitions shattered. Doc Leahy is forlorn. His initial lies are halfhearted. He seems to be utterly broken by the time he describes the killings.

The C.I.D. soon had a clear picture of the main events—the murders at the canal as well as the alleged execution of the wounded prisoner on a roadside. The agents never tried to question Cunningham, because he had a lawyer from the start and had already provided a statement—the original one. And the C.I.D. could read the winds. Cunningham may have done the right thing by informing the authorities—Army values! Soldier’s creed!—but he was a snitch nonetheless and had become the most hated man at the garrison. Ordinary soldiers mean-mugged him when he walked by. They stopped and stared. Under their breath they called him “rat” and “bitch.” In their own way, the army prosecutors were going to mean-mug him, too. There was no need for further con-
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vation. They thought they had him in a bag.

What they lacked, no matter whom they
went after, was corroborating evidence beyond
the statements they had gathered. The problem
was they had no patrol report from the killings
at the canal, no complaints from Iraqis, no
identities, no date, and no exact location. They
had multiple witnesses and confessions—includ-
ing from two of the people who had done the
shooting—but no bones, no bodies, no remains.
Much was later made of this by Hatley and his
supporters, as if therefore no crime had been
committed. But the likely explanation is either
that investigators were looking in the wrong
place—the killings had taken place in a remote
location and at night, more than a year earlier—or
that the bodies had been retrieved by friends
and family. Beyond that, it is hardly surprising if
residents did not want to cooperate with Ameri-
cans knocking on their doors.

In the summer of 2008, Hatley was
charged with pre-mediated murder for the
killing of the single prisoner beside the road
and the killing of four at the canal. With slight
variations, Leahy was charged with the same
crimes. Mayo was charged with pre-mediated
murder for his actions at the canal. Almost
everyone who had been on that patrol was
charged with violations of some kind. And
Jess Cunningham himself, who had tried to
prevent the crimes, was charged with conspira-
cy to commit pre-mediated murder.

VI. The Man from Texas

In Germany, Cunningham’s defense counsel,
Major McGaha, was rotated to a new assign-
ment, and another army lawyer appeared—a
young captain named Jessica Bossi, who knew
she needed help. Bossi advised Cunningham
to scrape his savings together and hire a civil-
ian defense counsel—the very best war lawyer
he could find. Cunningham did exactly that.
Within days he had engaged an attorney in
Austin, Texas, named James D. Culp, a former
paratrooper and army defense counsel who
is highly experienced in war-crimes cases and
widely considered to be one of the most effec-
tive military-trial lawyers in the field. Culp works
for pennies on the dollar, defending soldiers in
trouble worldwide. He is an impetuous bear of
a man, six feet four inches and physically pow-
erful, with a rapid-fire mind and a sense of hu-
mor that can be devastating in front of a jury.
He immediately flew to Germany to meet with
Cunningham, whom he took on as much as a
cause as a client. After looking into the case, he
decided that the charge of conspiracy was fa-
tally weak. In legal terms, conspiracy requires
a criminal state of mind, a meeting of minds, and
action in furtherance of the thinking by anyone
involved. Cunningham’s presence at the canal,
where by some measure he had guarded the
killers during the crime, could maybe be con-
strued as an “action” component, even if his
presence was imposed from above. But a crimi-
nal state of mind? A meeting of minds? All the
evidence pointed in the opposite direction. Culp
believed that the charge of conspiracy could not
withstand challenge in court. He flew home and
began sharpening his knives.

Late 2008, Hatley had long fantasized about
Norse warriors and had taken on the identity to the
degree of having himself tattooed with Ví-
kings symbols and images. But it was hard to
live up to that now. He had his own civilian
lawyer, a longtime resident of Germany named
David Court. Because Hatley insisted on plead-
ing innocent to the murder charges, Court had
difficult case on his hands. On his advice,
Hatley demanded a speedy trial. It was a gam-
ble. The idea apparently was to go through the
legal process before anyone else, so that the oth-
ers—because of constitutional protections against self-incrimination—could not be sum-
moned as witnesses. Cunningham was disgust-
ed by the attempt. To me he said, “He showed
his true colors right there. He could no longer
muscle and intimidate and put the fear into
somebody. All the air went out of his balloon.
‘Hey, Hatley, what happened? You were that
big saber-wielding, lead-from-the-front macho-
an alpha male. What happened to falling on
your sword? What happened to it starting and
ending with you? What happened to loving
your soldiers and thinking of them as your
sons?’ But, no, he and his lawyer demand a
speedy trial so he can get through everything.”

I didn’t work out that way. Cunningham
going first. Culp flew in and joined with Bos-
si, prepared to do battle over definitions of con-
spiracy. The court-martial was to take place at
the Vilseck garrison, near the Czech border.
Culp had already submitted a motion for dis-
missal, arguing that Newman’s unauthorized
delivery of Cunningham’s statement to the
C.I.D. rose to the level of ineffective counsel in violation of Cunningham’s constitutional rights, and that therefore the statement and the evi-
dence that resulted from it—meaning every-
thing—could not be used against him. The gov-
ernment had parried with arguments that Culp
thought must have seemed even to the prosecu-
tors to be a stretch. The decision would depend
on the presiding judge, Lieutenant Colonel Ed-
ward J. O’Brien. Culp had tried cases before
him in Korea and knew him from Iraq. He
told him that if he went after, was corroborat-
ing from two of the people who had done the
shooting—but no bones, no bodies, no remains.
Mayo was charged with pre-meditated
murder for his actions at the canal. Almost
everyone who had been on that patrol was
charged with violations of some kind. And
Jess Cunningham himself, who had tried to
prevent the crimes, was charged with conspira-
cy to commit pre-mediated murder.

Finally it was Hatley’s turn. He had entered
a plea of not guilty. The trial began on
April 13, 2009, and lasted three days—long for
a court-martial. Security was high, with mil-
itary police positioned around the courthouse.
Cunningham’s was not the only testimony
against Hatley; it was corroborated by a string of
other Alpha Company soldiers, including
Leahy and Mayo. The jury consisted of mid-
ranking officers and senior sergeants, none of
whom looked happy to be there. Hatley sat
straight-backed, chest out, in dress uniform—a
soldier’s soldier for all to see.

He did not testify in his own defense but
summoned about 40 character witnesses to
speak on his behalf. All of them said he was
a great soldier, a great leader, and the best the
army had to offer. This is known as the Good
Soldier defense, and it is unique to military jus-
tice. It allows jurors to hear evidence of good
military character in deciding whether a crime
has been committed. Congress has stripped
this defense from military sexual-assault trials
but has allowed it to remain in cases of mur-
der on the battlefield. Among those who pro-
vided testimony was Command Sergeant Ma-
jor Ralph Beam, the senior NCO of the U.S.
Army in Europe. In the end, after four hours of deliberation, the jurors found Hatley not guilty of murdering the single prisoner by the roadside, though why they did so is not known. No amount of praise for Hatley, however, could overcome the necessity to hold him account- able for the killings at the canal. The jail found Hatley guilty of pre-meditated murder, and he was sentenced to life in prison.

He rose to make a statement. The doors to the courtroom were opened, and soldiers crowded in. Accounts vary, but Hatley drew himself up and declared love for his soldiers and pride for having served with the best damned infantry unit in the United States Army. He did not give an inch. He called out the name “Wolf Pack!” The audience responded with “Hooah!” Hatley was led away in shackles. Later his sentence was reduced to 40 years. He joined Mayo and Leahy in the mili- tary’s maximum-security prison at Fort Leaven- worth, Kansas, where all three are held today.

VII. RETURN TO BAKERSFIELD

This is a story that should be taught in army schools. Better yet, it should be studied at a dedicated center for the study of war crimes, the equivalent of an aircraft-accident investigative board where narratives are written, independent of punitive channels. Alpha Company 1-18, Baghdad, the surge. What happened here? How could it have been detected in advance? What are the dangers of esprit de corps? When does a brotherhood become a gang? How does a good soldier turn bad? What is the nature of a good soldier? Is it the same as that of a warrior? What is the balance between narcissism and pride? And, after the fact, what obstacles exist to the reporting of crimes? These are essential questions best explored through history’s examples, but the army is so averse to negative publicity that it allows the memory of war crimes to fade, and tries to proceed just as be- fore. That is what happened here. With Hatley’s conviction and Cunningham’s departure, the story got wrapped into a bundle and dropped out of sight.

The protagonists, however, continue to live it. Having admitted to their crimes and expressed regret, Leahy and Mayo won approval in May for parole and will be released in the fall of 2015. Hatley is a different matter. He has become an Internet martyr for reactionaryists. They believe that he has been unjustly imprisoned for sav- ing American lives by killing terrorists in Iraq. This may indeed be what Hatley thought he was doing beside the canal. And he appreci- ates the support, as he repeatedly says. The problem with the narrative is that it runs counter to the story he tells, the starting point of which is that no crime was committed be- cause no prisoners were killed. This is what he has consistently maintained on an authorized Web site, and recently in a long letter to me. His version of events is that the patrol came under fi- re, pursued the aggressors until they were cap- tured, took them back to the combat outpost, then drove them to the canal and released them for lack of evidence; that Cunningham was a violence-prone malcontent; that when Cunning- ham was threatened with an Article 15 he tried to escape it by inventing the war-crimes story; and that the prosecutors entered into a complex conspiracy so effective that it forced all the wit- nesses into agreeing about the killing, persuad- ing Leahy and Mayo to confess to murders that never occurred, letting Cunningham off the hook in exchange for his fabricated testimony, and using their wiles to crucify Hatley.

So, he is innocent and will never admit to the crime. On that basis he filed a legal appeal, which was denied. He then filed a petition to a higher court, which was turned down, and another to the Supreme Court, which never stood a chance. If he serves his full term he will be released in 2049, when he is 80 years old. Chances are he won’t stay in that long. He is first eligible for parole in 2019, when he will be 50, still young enough to rejoin society. Recently he has submitted a petition to the army clemency-and-parole board, asking for special relief. He has been a model prisoner, of course. He has helped to ease tensions among black, white, and His- panic contingents, and has earned the respect of nearly everyone, including the guards. He has attended the Leavenworth Vocational Barber College and become a licensed barber in the state of Kansas. He has successfully completed 1,080 hours in the prison’s Em- broidery Technician Vocational Program. He is currently enrolled in an extension program of Upper Iowa University and hopes to earn an M.B.A. by December 2016. There is no doubt that he has behaved well. But there is a problem with his petition to the board. The require- ments for release are tied to the purposes of incarceration, which in the military include rehabilitation. Rehabilitation means a change of heart, demonstrative remorse, and owing up to misdeeds. Because Hatley maintains his innocence, he cannot provide this.

Two months after Hatley’s trial, Jess Cun- ningham came to the end of his enlistment. Honorably discharged from the army, he returned to Bakersfield and civilian life. The first years back were extremely difficult. He received volumes of hate mail through the Internet and found himself isolated from Bakersfield society—nearly the pariah that he had been in the army. Social media were not a help. Women he met looked him up, found the references to war crimes, and walked away. Many of his old acquaintances turned their backs. They no longer knew what to make of him, and did not have the patience to figure it out. At rodeos and football games, people would sometimes take him for his twin broth- er, then grow awkward when he explained, “Oh, so you’re the soldier one,” they would say, before easing away. Cunningham preferred it that way. He was an- gry and distrustful. He drank, until he stopped. He kept to himself, and still largely does. But it is getting better now. He has a good job as a rout- about at an oil refinery. He works out at a gym, shoots at a gun range, and sometimes hunts with his cousins in the mountains outside of town. He has an immaculate pickup truck and recently bought a house. But the problem of misunder- standing remains. In 2009, CNN ran a short se- ries on this case, focused largely on the suffering caused to the families of the imprisoned men. Cunningham agreed to talk, despite the advice of Culp. When the reporter came to interview him, she was so unformed that as a way of breaking the ice she said, as Cunningham recalls, “I have a message for you. Mrs. Hatley would like to say she forgives you.” To me Cunningham said, “I’ve never had one nightmare. I’ve never had one guilt issue about Leahy, Hatley, and Mayo. The only thing that really upsets me is that three times that day I failed to stop them.”

Every day he thinks about it. His parents tell him he has to let it go, but he cannot. He tells them they don’t understand. He is an extraordinary- ly gentle and courteous man. He loves the army and is proud to have served two combat tours. But he carries the killings inside his head. As long as he does, in Bakersfield he will always be the outsider, the loner, the soldier one.