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Marines Dispute Accounts of Excessive Force in Afghans' Deaths

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When a suicide bomber struck a convoy carrying special operations marines along a highway in northeastern Afghanistan in March, the blast killed one bystander and wounded one marine and three Afghans in a nearby vehicle, a military police report said.

What came next a lethal response by the Marine platoon along a seven-mile stretch of road that American military commanders say killed about a dozen civilians caused outrage among Afghan villagers and criticism from high-ranking Afghan officials about the rising civilian toll in American military operations.

American commanders and an investigation from the Afghanistan independent Human Rights Commission were uniformly critical of the special operations unit, calling its gunfire indiscriminate. Senior American officers went so far as to publicly apologize and pay consolation money to the victims' families after their preliminary inquiry found no evidence that the unit had come under any gunfire that would have warranted its deadly reaction.

But as a Marine general is mulling whether to bring charges against a handful of the 30 Americans involved in the episode, lawyers for two of the marines, including a company commander riding in the convoy, are disputing the official military and Afghan descriptions of their actions that morning.

In interviews with The New York Times, the lawyers offered the first public account by the marines, giving what amounts to a preview of any legal defense. They said that their clients and other platoon members had responded appropriately to what they described as continual small-arms fire after the bombing, and that they had fired only at people who had fired at them first or posed a legitimate threat under the unit's rules of engagement.

Mark Waple, a lawyer for Maj. Fred Galvin, the senior officer on the scene, and James D. Culp, a lawyer for the enlisted marine who operated a heavy machine gun in the turret of the convoy's lead Humvee, said the six Humvees in the convoy were on their way to their base near Jalalabad on March 4 when the suicide bomber swerved his van into the second vehicle in line.

The platoon, part of a new Marine Special Operations battalion that had been in the country for just a few weeks, stopped and immediately came under small-arms fire from nearby vehicles and hillside positions, the lawyers said.

Mr. Culp's client a Sergeant Brooks whose full name has not been made public killed only people who fired first, he said. Mr. Waple said that Major Galvin did not fire his weapon during the attack and that he would probably not be charged.

"There was a firefight that took place between gunners and people," as the convoy idled in the road, Mr. Culp said. He said his client did not fire on or kill civilians, but that "he did intentionally kill individuals who were firing at his position, primarily from vehicles to the southwest."

Those assertions are at odds with the Afghan human rights commission, which left open the possibility that there could have been brief, initial gunfire against the marines, but said there was none farther down the road. The assertions may also conflict with an initial inquiry by the American military, which found no evidence that the marines were under fire after the bombing.

Detailed accounts from many witnesses and families of the dead, either presented in the Afghan report or in interviews immediately after the attack, said marines had fired the only shots. Among the dead the Afghan report put the toll at 12 and American accounts say there were at least 10 killed and as many as 19 were a 16-year-old girl walking through a field and a 75-year-old man, both far from the scene of the initial bombing. Photographs showed vehicles torn apart by the Americans' bullets at various points along the highway.

The military police report on the attack, which has not been made public and was obtained by The Times, noted the presence of a bullet-riddled taxi and sport-utility vehicle in the convoy's westbound path. And it said an investigative team inspecting the scene the day after the attack found casings only from American rounds from assault rifles and machine guns along the road.

The report also said investigators discovered evidence of 13 mortar-base sites near the scene of the suicide blast.

Mr. Waple and Mr. Culp said the marines took sporadic small-arms fire from hills and fields on both sides of the road as they continued to drive toward their base. "They were firing under fire, and they were firing on the move," Mr. Culp said.

Mr. Waple and Mr. Culp said that after the explosion, the westbound convoy quickly encountered vehicles driving toward it that disobeyed hand signals and warning shots by the marines to pull over, causing a rapid "escalation of force" against at least two vehicles.

Mr. Culp said his client, an Iraq combat veteran in his mid-20s, fired rounds from his machine gun into the bed of a pickup truck that pulled up beside the Humvee. The marine also fired into

the engine block of an oncoming car that had failed to obey his arm signals and warning shots, he said, but did not fire directly at any person during either of the encounters.

At the beginning of August, Lt. Gen. James N. Mattis, the commander for American forces in the Middle East and Afghanistan, received a report from the Naval Criminal Investigative Service summarizing its investigation of the episode. Lawyers under General Mattis's command are reviewing it to determine whether to recommend criminal charges, according to Lt. Col. Sean Gibson, a spokesman.

Publicly, the military has been apologetic and critical of the marines involved. In late March, their unit, the Second Marine Special Operations Battalion, was sent back to the United States just six weeks after arriving in the country. The Marine Corps made a \$2,000 condolence payment to each surviving family.

In May, Col. John Nicholson, an Army brigade commander, publicly apologized to the relatives of the dead and wounded for the marines' actions, saying he was "deeply ashamed," a phrase that has incensed the platoon members and led the Marine Corps commandant, James T. Conway, to criticize the apology.

But in a sign of the tension that scrutiny of the shootings has placed on the members of the special-operations platoon, at least six marines, including two officers from the platoon, have hired private lawyers.

Mr. Waple, the company commander's lawyer, said the military's quick apology may have had a lot to do with recently heightened sensitivities over civilian deaths, which have made American forces deeply unpopular with many Afghan citizens. "When an Afghan is killed or injured, it creates political problems for the coalition forces," he said.

"If this had happened in 2002," he added, "we wouldn't be talking, and the marines wouldn't have been pulled out."