

## Will Marine Show Trials End?

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The tarnished image of the Marine Corps continues to darken as more trials, more acquittals and more scandals corrode the brightly burnished steel that armors America's premier fighting force.

Defense attorneys and beleaguered Marines say their cherished Corps' surprise decision Friday to dismiss criminal charges against a Marine infantryman accused of mass murder at Haditha, Iraq, is just another billboard announcing the troubles plaguing Marine Corps morale today. Loyalty up and down the ranks, the bedrock on which the 232-year old fighting force was built, is under attack.

"First the Corps takes their innocence and then the enemy tries to take their life, and then when they finally come home the government tries to take their freedom," said James Culp, a military defense lawyer in Austin, Texas, who worked on the Haditha case for more than a year. "When does it ever end?"

It is an honest question.

The growing list of places in Iraq associated with allegations of Marine Corps misconduct continues to spread across the map like a malignant weed.

This reporter has spoken with dozens of seasoned Marines and soldiers who claim they would rather take a bullet than shoot the wrong person during mortal combat and possibly spend their life in jail. Hyperbole perhaps, but Marines are trained to make the other guy, the bad ones, take the bullet.

The situation of Lance Cpl. Stephen Tatum explains the morass the Marine Corps faces.

On Friday he was unexpectedly exonerated of all criminal charges leveled against him for serving at Haditha. The laundry list of charges that ranged from murder to bad judgment were dismissed by Lt. Gen Samuel Helland, the convening authority at Camp Pendleton and final arbiter in his case.

Without explanation Helland dismissed the criminal charges against Tatum just hours before he was to face a general court-martial. Tatum, of Edmond, Okla., is the third enlisted Marine from

3rd Platoon, Kilo Company, 3rd Battalion, 1st Marines originally charged with murder in the 30-month-old Haditha investigation that has been completely cleared of alleged misdeeds.

### **Cleared But Charged Anyway**

In the run-up to the Tatum court martial proceeding, there was clear evidence that military's case was based on a tissues of hearsay, face-saving and political expediency.

For example, in the case of another Marine also facing court martial, the military prosecutors tried to block the testimony of the intelligence officer, Lt. Jeff Dinsmore, who monitored the Haditha action via radio transmissions and overhead video surveillance drone. His testimony and the video evidence shows that the Marines did not lie when they said they received hostile fire from insurgents occupying civilian buildings.

When the Marines cleared the building using standard military procedures, both the insurgents and civilians were dead.

The Dinsmore evidence and testimony proved beyond a shadow of a doubt that claims by Time magazine and Congressman Jack Murtha, that a platoon of Marines went on a rampage in My Lai fashion after one of their fellow Marines, was killed was an out and out fantasy.

But efforts to prevent Dinsmore from testifying demonstrated the military want a Soviet-style show trial of a hero Marine. Fortunately, the presiding military judge ruled Dinsmore could testify. The prosecution "case" against Tatum began to crumble.

Though preliminary Article 32 hearings had cleared the Marines of most of the allegations, the military has been intent in making an example of them.

Nevertheless, two officers and the enlisted Marines were all charged with slaying civilians at Haditha and sent to court martial.

The military's floundering case has come to symbolize the Pentagon's tenacious efforts to turn warriors into policemen. Pointing out that our combat troops are engaged in a war zone makes many of their alleged misdeeds understandable.

But the Pentagon follows the administration line: American troops are simply helpers to the Iraqi civil government. American troops are not an occupying force. American troops are welcomed as liberators by the Iraqis. And so the spin-story spins and spins.

Fueled by specious media claims and driven by rapacious politicians more concerned with face time than preserving precious freedoms, the Marine Corps brass willingly served them up for prosecution rather than admit it was handed a mission it was never trained to perform and never intended to take, so the unfolding of the Haditha case has revealed.

Waiting on the wings of the malevolent stage where the Haditha investigation is still playing out, the Fallujah murder cases are being prepared to take over top billing. In that unrelated case three

enlisted Marine infantrymen from the same platoon that Tatum served in have been charged with murdering four Iraqi prisoners of war more than three years ago.

### **More Allegations, More Charges**

Several other former Kilo Company Marines anticipate they will face criminal charges for their still unspecified roles in the budding Fallujah debacle, Marines and defense lawyers familiar with the charges say.

While that gruesome play is being scripted still another scandal looms, one that reportedly dwarfs the other criminal investigations in proportion is quietly boiling behind a wall of official Marine Corps silence. A situationally unaware Marine Corps prosecutor inadvertently revealed one alleged miscreant's name, rank and deeds in a moment of indiscretion. Officially the Marine Corps has nothing to say.

"It will come out," said a Marine dodging a reporter's questions Friday morning at Camp Pendleton, "it always does."

It is the same situation Kilo Company's Marines found themselves in more than two years ago when Time magazine published an account of the alleged massacre of 24 civilians at Haditha in its March 19, 2006, edition.

The allegations started in January 2006 with insurgent planted rumors of atrocities took a life of their own. Hysteria overcame reason and a company of keenly trained, superbly disciplined Marine infantrymen was bulldozed under by the the wheels of military justice.

The handful of former and current military lawyers who have accepted the onerous task of taking on the Washington military establishment driving the prosecutor's bus say they are daily witnesses to the damage the parade of court-martials has inflicted on the morale and efficiency of the Marine Corps.

Jack Zimmermann, a retired Marine colonel and former military judge and prosecutor, is among the lawyers shaking their heads with dismay. On Friday Zimmermann blasted the government's decision to prosecute Tatum, who was excoriated for seven months after the military lawyer who heard the evidence during an Article 32 preliminary hearing recommend the Marine Corps drop its prosecution of his client.

"It was the most complex military case I have ever been involved in," Zimmermann said a few hours after Tatum was cleared. "The Rules of Engagement haven't changed since I commanded two artillery batteries in Vietnam. The basic principles are the same - what are hostile acts, deadly intent, the proper use of deadly force? What has changed is the interpretation."

Culp, a former Army paratrooper, agrees. He was part of a combined team of current and former military lawyers led by veteran defense attorney Gary Myers who successfully defended Justin Sharratt, a Kilo Company machine gunner exonerated last year of charges he murdered innocent Iraqis at Haditha.

Frequently described as the best machine gunner in the battalion, Sharratt served alongside Tatum at Haditha and the ferocious battle for Fallujah the year before. Tatum, Sharratt, and two other enlisted Marines from 3rd Platoon, Kilo Company, 3rd Battalion, 1st Marines were charged Dec. 21, 2006, with murdering 24 Iraqi civilians.

The charges against Sharratt were dismissed completely by Gen. James N. Mattis before he was promoted and transferred elsewhere.

Mattis decided late last summer the evidence failed to support the allegations. Sharratt engaged four Iraqis armed with AK-47 rifles with his pistol after his light machine gun jammed. He was initially charged with murder for managing to kill them.

In the same December indictment four officers were charged with covering up the alleged affair. Under the broad umbrella of dereliction of duty and disobeying orders Lt. Col Jeffrey Chessani, the battalion commander, Kilo Company's former commanding officer Captain Lucas McConnell, and two other officers were caught in the intrigues that followed.

The dereliction of duty charges against McConnell and the battalion lawyer, Capt. Randy Stone, were ultimately dismissed by Mattis, who said he found nothing in their conduct to warrant prosecution. Still waiting to be tried are Chessani and 1st Lt. Andrew Grayson, an intelligence officer attached to the battalion at Haditha.

Chessani is charged with dereliction for not adequately investigating and reporting the alleged Haditha massacre to higher headquarters and failing to update combat journal entries. Before being charged he had an unblemished record of service as an infantry officer. He had served in every active theater of operations the Marine Corps has been sent to during his 20-year career as an infantry officer.

Grayson is charged with ordering the destruction of critical photographic evidence and trying to fraudulently sneak out of the Marine Corps. The unrepentant intelligence officer argues he destroyed the photograph of dead civilians killed at Haditha in compliance with standing orders and was granted his discharge and then unlawfully recalled.

The Marine Corps admits Grayson was "accidentally" discharged after somehow slipping through the arduous process of obtaining an honorable discharge and obtaining his discharge certificate. Last summer Grayson refused to make a deal with prosecutors that would have released him from further jeopardy and then publicly condemned their actions.

Grayson's lawyer Joseph Casas said his client ordered the images destroyed in February 2006, before even a hint of suspected criminal behavior was indicated. In the meantime the government managed to find 200 of the critical photographs elsewhere. They were the subject of a motion hearing a week before Tatum was to go to trial.

While he waits for court-martial Grayson routinely criss-crosses the country between Camp Lejeune, N.C., where he is presently stationed and Camp Pendleton at taxpayer's expense answering prosecution inquiries and attending court proceedings.

During the acrimonious 15 months that have followed the stunning war crimes indictment Sgt. Sanick Dela Cruz led the way out of the legal minefield. At Haditha Dela Cruz was a rifleman in 3rd Platoon. Last April he was granted immunity from prosecution to testify against his former comrades.

His subsequent admission that he urinated on the opened skull of an Iraqi he had just shot immediately brought his credibility into question. The skeptical hearing officer that heard his testimony at his former squad leader's evidentiary hearing dismissed his account of the action as unreliable and Dela Cruz slipped into relative obscurity.

### **Wuterich Case Remains**

The remaining enlisted man still charged in the Haditha affair is Staff Sergeant Frank Wuterich, awaiting trial while the government pursues evidence it believes it still needs to gain a conviction. He was the squad leader and commander of the other enlisted Haditha Marines charged with crimes.

The youthful looking staff sergeant is accused of killing or wounding nine civilians during the assault he led on two houses at Haditha. Fourteen civilians, old men, women and children, died in an attack ordered by his platoon leader. Tatum was with him.

Wuterich gained notoriety during a candid interview on the CBS television show 60 Minute that was broadcast in March and August 2007. His appearance is the source of the current delay in his court-martial. It cannot begin while government prosecutors and CBS lawyers squabble over whether the military judge in his case should compel CBS to hand over the videotaped out takes – video never aired.

Wuterich's lead civilian attorney Neal Puckett said Friday that the entire process was a sham to ensure Tatum was court-martialed before his client. Puckett, a retired Marine Corps lawyer and military judge, reasoned that if Wuterich had said anything incriminating it would have wound up on television rather than the cutting room floor.

The real motive was that convicting Tatum first would have eased the government's way in successfully prosecuting Wuterich, Puckett said.

One lawyer close to the case recently said that CBS was going to "milk the government's motion like a Guernsey cow" before the argument is finally settled. Puckett disdainfully dismissed the prosecution's effort as a "fishing expedition" and a "sign of desperation" in the government's weakened case.

Zimmermann said Tatum is voluntarily staying in the Marine Corps for six months to remain available as a witness if he is called to testify in Wuterich's long delayed court-martial. Zimmermann emphasized repeatedly Friday that there were no deals made to gain his client's freedom, Tatum was cleared because he didn't do anything wrong.

Lawyers for Chessani say that if Wuterich is exonerated then the charges against his former battalion commander for failing to adequately investigate and report suspected war crimes are invalidated.

Brian Rooney, one of the civilian attorneys from the Ann Arbor – based Thomas More Law Center that represents Chessani said that it stands to reason that if his men are not guilty of war crimes then Chessani cannot be prosecuted for failing to report them. Rooney served at Fallujah in 2004 and left the Marine Corps with the express intent of representing Chessani because he didn't like what was happening in the ranks.

Chessani's defense team maintains that their client did everything possible to communicate the situation up and down the chain of command. Evidence already introduced in Chessani's pre-trial evidentiary hearings shows that Marine and Army commanders all the way to the Pentagon knew within a day or two that a large number of civilians had died at Haditha and did nothing about it.

The evidence shows that real time aerial imagery of the Al Qaeda-led complex attack at Haditha as well as combat narratives and a PowerPoint presentation detailing the events that transpired were almost immediately at their fingertips. Nobody in Chessani's chain of command all the way to Baghdad showed any interest until a looming Time magazine report stirred up a public relations disaster.

### **Fallujah: Another Haditha?**

In another courtyard across the way from where Tatum was set free Friday morning another Marine who served with Tatum at Fallujah sat pensively listening to his recorded murder confession.

Sgt. Jermaine Nelson, a thick-set, African-American Marine wearing parachute qualification wings on his neat desert camouflage blouse sat impassively while his recorded confession explaining how he gunned down an Iraqi prisoner of war at Fallujah with his rifle three years ago was played.

Occasionally he would look around without moving his head too much. Nelson faces possible life in prison if he is convicted. He told Naval Criminal Investigative Service Special Agent Mark Fox he reluctantly participated after his squad leader got the order to kill the Iraqis.

Nelson, a weapon specialist attached to 3rd Platoon at Fallujah, claims he was ordered by Sergeant Jose Nazario to kill a prisoner after Nazario received the order over his radio.

Nelson is one of three Marines who served with Tatum and Sharratt at Fallujah that are already waiting to be court-martialed for murdering four Iraqi prisoners of war on November 9, 2004, a year before the Haditha incident exploded into headlines.

Nelson was charged last December for the second time. In August 2007 he was charged and then quickly cleared because of procedural issues. His initial arrest coincided with the arrest and indictment of Nazario.

The very same Marines currently under charges earned immortality at the Marine Corps National Museum in Quantico, Virginia for their brilliant stand at Fallujah. They all fought at the infamous “Hell House” fight that has already passed into Marine Corps lore.

Twice in the spring of 2006 Nelson waived his right to legal representation to freely admit killing one of the prisoners his squad captured at Fallujah, audio tapes made by Fox revealed.

Three other prisoners were also killed that morning in Nelson’s presence, he confessed to Special Agent Mark Fox. The killings allegedly occurred a few hours after Kilo Company crossed the Line of Departure on November 9, 2004 to begin its celebrated attack on the ancient “City of Mosques” fortified by an Al Qaeda-led insurgent army.

Two others prisoners allegedly died under the gun of Nazario, Nelson confessed to Fox. The former Riverside, Calif. police officer was charged in federal court with voluntary manslaughter last August. He is expected to stand trial before a civilian jury on July, 2008, says Kevin McDermott, Nazario’s California-based attorney.

Another Iraqi, an old man, was allegedly shot to death by Sgt. Ryan Weemer, at the time a corporal in 3rd Platoon, Kilo Company. Weemer was recently recalled to active duty from the reserves to face murder charges he inadvertently initiated more than two years.

Weemer revealed the incident during a job interview for a uniformed Secret Service position in Washington, D.C. On March 19 the thrice-wounded Marine was charged with murder and dereliction of duty.

Nazario denies the event happened and Weemer initially claimed that he was merely a witness to the incident. He has not made a public statement about the event since the possibility of criminal charges boiled up last summer.

Another outstanding Marine pulled into the cauldron is Capt. Jesse Grapes, 3rd Platoon’s distinguished platoon leader when he was a lieutenant. Grapes exercised his Fifth Amendment protection against self incrimination last year and refused to testify at a federal Grand Jury hearing Nazario’s case, McDermott said.

He has since retained legal counsel and returned to civilian life. Several other senior Marines formerly in Kilo Company have also “lawyered up” in anticipation of potential criminal allegations against them, McDermott added.

It is unlikely that the four prisoners allegedly murdered by Nazario’s squad are counted among the 3,000 insurgents the Marine Corps claimed it killed during the savage month long Fallujah battle in 2004. Officially the Marine Corps maintains it knew nothing of their deaths until Weemer revealed his experience to the Secret Service. It still does not know their identities.

Meanwhile, deep in the shadows of Camp Pendleton simmers another brewing scandal, more murder, more death, more ruined Marine Corps careers, Marines who have heard snippets of information report.

“Marines are not policeman,” a senior Marine Corps officer said Friday night. He has served multiple tours in Iraq that show in his eyes.

“We are warriors. Occupation duty is the Army’s responsibility. The Marine Corps is our country’s blunt force instrument and we are destroying it – eating our young. Pray we still have Marines in the next war. Sometimes I am not so sure.”

But Fallujah may end up being nothing more than another Haditha where soldiers acted in combat in ways we might find totally unacceptable if they were members of the Los Angeles Police Department.

Two years, thousands of man hours and millions of dollars later nobody charged in the alleged Haditha massacre has been convicted of anything.

In the interim morale plummeted, the Marine Corps rewrote the manual on how it fights, and the Pentagon wants shorter leashes on its frontline troops.

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