

GIs go from informants to defendants

Defense lawyer claims soldiers unfairly faced hearing after helping investigators with case of four detainee deaths in Iraq

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It was after dark, but still early, on a night in April 2007 when 1st Sgt. John E. Hatley allegedly huddled with his troops in the motor pool of their grimy combat outpost in southwest Baghdad and told them not to talk about what just happened. He directed some of the junior guys to burn the blindfolds and plastic handcuffs and to wash the blood off the Bradley.

What they'd just done was for their fallen comrades, he said.

What they had just done — according to court testimony last week and documents obtained by Stars and Stripes — was shoot and kill four Iraqi detainees.

And for some nine months, the dozen or so soldiers out that night stayed quiet.

But in January, Staff Sgt. Jess Cunningham came forward to reveal the alleged crime committed by three members of Company A, 1st Battalion, 18th Infantry Regiment, 1st Infantry Division.

Sgt. Charles Quigley, who was also out that night, was the first person investigators ran to after Cunningham came forward. Quigley cooperated fully, waived his right to a lawyer and wore a wire for nearly three weeks so that agents could snoop on his comrades.

Now, according to one of the attorneys defending Cunningham, both men have been betrayed.

Last week, Cunningham and Quigley faced an Article 32 hearing to decide whether they will face a court-martial for their part in the alleged murder of four unarmed Iraqi detainees.

There are few facts that aren't disputed in the case, but this much was established in the Article 32: Four Iraqis are dead, allegedly shot by U.S. soldiers next to a canal in southwest Baghdad. Four soldiers are charged with

conspiracy to commit premeditated murder. None of the charged soldiers pulled a trigger, according to testimony.

The three soldiers who allegedly shot the detainees have yet to be charged, even though two of them admitted their roles to investigators.

The government alleges that Cunningham and Quigley — while not directly involved in the shootings — were part of a conspiracy to kill the detainees who were taken into custody after a brief exchange of fire and a search that turned up heavy weapons, ammunition and at least one sniper rifle.

‘Take care’ of them

During the Article 32, Pfc. Joshua Hartson testified that while the patrol searched the house where the Iraqis were captured, Hatley pulled him to the side and said that if they took the men to the detention facility, those men would be back on the street in no time. So, Hatley said, they were going to "take care" of them, Hartson testified.

In a statement given to a Criminal Investigation Command special agent on Jan. 11, Quigley wrote that while soldiers searched the property, Staff Sgt. Joseph P. Mayo — the platoon sergeant — made it clear that he and Hatley wanted to kill the detainees. Quigley's statement and other official documents submitted into the public record on Tuesday were provided to Stars and Stripes by a person who insisted on anonymity. That person also has an interest in the outcome of the legal proceedings.

The documents have not been made public by the military.

According to witness testimony during the proceedings, the four Iraqis were captured, blindfolded and their hands were bound behind their backs. They were ushered into the back of a Bradley fighting vehicle commanded by then-Sgt. Daniel Evoy. Hartson was given a pistol, and either Mayo or Hatley directed him to get into the Bradley to guard the detainees.

"I was nervous about what was going to happen," Hartson testified. He said he believed the first sergeant intended to kill the detainees, and as far as he knew, he was the only person who knew about it.

Soon after the patrol pulled away from the house, it returned to Combat Outpost Angry Dragon to drop off a vehicle that had broken down. Then the patrol got ready to head back out. Hartson, still in the back of the Bradley with the Iraqis, lit a cigarette and asked a detainee who spoke a little English some questions, he testified.

Did they make bombs or kill Americans?

The Iraqi understood the question. "He laughed," Hartson said. Hartson took that as a "yes," he testified.

The patrol rolled out to the west with Evoy's Bradley in the lead. Evoy testified that Hatley, who was in another vehicle, came over the radio and told him to push on to the canal.

'Pretty scared'

When they got close, Hatley got out of his vehicle and guided the Bradley to where he wanted them to stop, Evoy testified. Quigley, in his statement, said the Bradley "pulled away from our patrol out of sight." When the Bradley's ramp lowered, Hartson saw Hatley standing in the dark. Mayo took his pistol back, and they sent Hartson to sit in the Humvee with Quigley and Cunningham.

"At that point, I was nervous and pretty scared," Hartson testified.

According to Quigley's statement, Hatley, Mayo and Sgt. Michael Leahy, the company's senior medic, approached him and Cunningham and asked if the two wanted to come with them while they killed the detainees.

"Both I and SSG Cunningham declined and remained with the patrol," according to his statement.

Evoy, in the commander's seat of the Bradley, seems to have had the best view of what happened next.

"That's when I saw the four detainees on their knees," he testified. Three soldiers were lined up behind them, "Leahy, Mayo and Hatley."

He saw Leahy shoot, saw the detainee in front of him slump unnaturally, and dropped down into his vehicle in disbelief as more shots rang out. "It all happened in mere seconds," Evoy testified.

Cunningham, Quigley, Hartson and the two other soldiers riding in their Humvee were half a football field away from the scene, the truck's gunner, Pfc. Jonathan Shaffer, testified. They heard the shots. Initially, Shaffer thought they were taking fire, but soon realized where the shots came from.

In his statement to CID, Leahy wrote, "We then pushed the bodies into the canal and left."

Mayo also told CID of the killings.

Hatley hasn't made a statement.

After the meeting in the motor pool following the slayings, the soldiers were more or less tight-lipped, discussing the event only a handful of times.

But Cunningham became rebellious toward his leadership and asked to be moved to a different unit, his civilian defense attorney, James Culp, said during the Article 32. He got into trouble for his outbursts, and, as Culp alluded to during the Article 32 proceeding, received some form of administrative punishment.

Then, in early January, Cunningham confided in a lawyer, Culp said during his closing statement. Cunningham revealed the deaths to Capt. Richard Newman, an Army trial defense attorney.

According to Thomas Adkins, a senior CID special agent, Newman wanted to get immunity for his client before telling what he knew about soldiers killing four Iraqi detainees. Adkins testified he told Newman that CID wasn't authorized to give immunity, and referred him to an Army lawyer in the U.S. Army Europe's Office of the Staff Judge Advocate.

Newman, Adkins meet

Instead, Newman met alone with Adkins before arranging an immunity deal. Adkins was eager to get the ball rolling on the investigation, and wanted to meet Newman's client — a witness to an alleged homicide — as soon as possible, Adkins testified.

Eventually, Newman divulged his client's name and sent Adkins a statement of what his client would say, including the names of everyone involved and the details.

That was more than CID needed to carry out their investigation "whether they had Cunningham's involvement or not," Culp said.

Using the names and details provided by Newman, Adkins kicked off the investigation. "It was my decision that we should keep this thing under wraps and covertly find someone," Adkins testified by phone.

In consultation with his higher headquarters, they decided to start with Quigley because there was an idea or impression that Quigley was a middle-of-the-line noncommissioned officer who didn't appear to have any real involvement in the suspected conspiracy, Adkins testified.

According to special agent Kimani Richardson, Quigley cooperated fully.

Quigley agreed to wear a wire to help CID because, according to his defense attorney, Capt. Samuel Gregory, he had nothing to hide from investigators and hadn't been involved in the plot.

Even Richardson, who took Quigley's statement, said, "We didn't suspect him of conspiracy or anything like that, even after he divulged his role in the incident."

CID apparently sought statements from everybody who'd been on the patrol, except for Cunningham, according to Culp. Six soldiers were granted testimonial immunity from prosecution, but not Cunningham or Quigley. Culp insists the government has singled out his client.

In his statement, Mayo makes no mention of Quigley's presence at the canal, and mentions Cunningham only once, saying he thought Cunningham was in his vehicle when he left the outpost.

At the Article 32 hearing, Culp asked special agent Thomas McDevitt, who took Leahy's statement, whether or not he asked Leahy who was involved in the conspiracy.

"I'm fairly confident that I asked that question," McDevitt replied.

Leahy's statement makes no mention of either Cunningham or Quigley.

Another investigator involved in the case testified he specifically didn't ask about Cunningham's involvement when questioning another witness.

The reason for that omission, Culp said in his closing statement, is that if they asked the question, they would have known the truth: "Cunningham wasn't a part of this."

Culp told the investigating officer, Maj. Lobash, that his client was no hero for coming forward after the alleged slayings, and probably could have done something to try to stop them.

But, he said, "Failure to act like a hero doesn't make you a criminal."