

American sniper hung out to dry

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On a mountain ridge in Afghanistan in June 2005, on a mission to capture or kill a Taliban commander, the four Navy SEALs were discussing ... the American media. Three shepherds, including a 14-year-old, had crossed their path, and the SEALs had to decide what to do: kill them, or let them go and risk exposure to Taliban forces.

On elevated ground near Iskandariyah, Iraq, two years later, American snipers faced the same dilemma: kill or release two civilians who had discovered their hideout, Genei Nesir Khudair al-Janabi and his 17-year-old son, Mustafa.

The SEALs and snipers, facing stunningly similar situations, would make radically different choices - with radically different results.

In Afghanistan, fearful the media would report the killing of unarmed Afghan farmers and worried they might be charged with murder,

the SEALs let the shepherds go. The shepherds then alerted the Taliban, who returned with about 100 warriors.

The four SEALs fought valiantly down the sheer mountain. Three, including Michael Murphy of Patchogue, L.I., died in the firefight.

Meanwhile, the Taliban downed a U.S. rescue helicopter carrying 16 special operations fighters, killing all aboard. Marcus Luttrell, one of the initial four, was the operation's lone survivor, as he recounts in his book of the same name.

In Iraq, the snipers released Mustafa - but their section leader, Staff Sgt. Michael Hensley, considered it too dangerous to release the elder al-Janabi.

Hensley, worried that noise by al-Janabi would attract the possibly armed, military-aged men he said he saw about 100 yards away, ordered Sgt. Evan Vela to shoot al-Janabi. Vela did.

President Bush pinned a Navy Cross on Luttrell in July 2006. Vela was court-martialed. Last month, a military panel found him guilty of murder without premeditation; he has begun serving a 10-year prison sentence.

Americans should be deeply disturbed by the contrast. If Luttrell and his fellow SEALs had done what Vela did, they all probably would be alive today. The media and our military, with the latter quick to charge murder, are impeding the judgment, mission and survival of our fighters.

One of Vela's court-martial prosecutors, Maj. Charles Khufahl, argued, "It was murder, plain and simple. United States soldiers do not kill unarmed, detained individuals." But is it so simple?

The Uniform Code of Military Justice prohibits killing an unarmed civilian detainee - unless he represents an imminent threat. But how can we expect a soldier to determine, in a split second, what represents such a threat? Does a civilian who, if released, might bring back armed fighters qualify?

Yes, says the creator of the Navy's counterterrorism SEAL Team Six, retired Cmndr. Richard Marcinko.

"I'd have killed them," he said, referring to the shepherds in Afghanistan. He told me the code is "like the Ten Commandments, short and sweet and subject to interpretation." And rules of engagement vary from theater to theater and according to mission, set by the commander for the overall operation.

Smaller units require more flexible rules because they cannot hold a detainee. Hensley testified at Vela's trial that, under the rules governing them, the snipers were permitted to kill if they felt threatened.

Yet Vela, Hensley and another sniper, Spec. Jorge Sandoval, were charged with murder.

Hensley, who ordered the kill and admitted to placing an AK-47 near al-Janabi's body, was convicted of lesser charges, as was Sandoval. Their light sentences included short prison time or confinement and demotion.

"The strictly correct military decision would ... be to kill them ... because we could not know their intentions," Luttrell writes in his book. But he feared "the liberal media ... and the prospect of many, many years in a U.S. civilian jail alongside murderers and rapists."

Most recruits are highly motivated to defend our country and way of life. They don't sign up to be murderers. The media would have them always give civilians the benefit of the doubt. If only we would extend the same benefit of the doubt to our fighters.

On today's battlefield, facing an enemy without uniforms and children who could be suicide bombers, our military deserves this understanding more than ever.

"The government has chased some of the finest men out of the army" by not supporting them, Vela's father, Curtis Carnahan, told me.

Our military should have told the Iraqi government "that sometimes there are hard choices that have to be made" and that civilians will sometimes be killed, Vela's attorney, James Culp, told me.

At the very least, Vela deserves the same light sentence given to Hensley and Sandoval. Evan Vela made a wrenching but necessary decision. He is not a murderer.