



Ethics – Investigations & Accountability

BG Tom Ayres

8 March 2012



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Tuesday, May 08, 2007



Marine legal adviser charged with misreporting Haditha
faces Article 32 hearing

Mike Rosen-Molina at 5:09 PM ET

[JURIST] A US Marine legal adviser charged with failure to properly report and investigate the killings of 24 Iraqi civilians at [Haditha](#) [JURIST [news archive](#)] appeared before a military panel Tuesday that will decide whether the charges should go to court-martial.

August 9, 2007

Statement from Lt. Gen. James Mattis concerning his decision to drop all charges against Capt. Randy Stone in the Haditha murder case. The Marine Corps released his remarks Thursday:

"I have thoroughly reviewed and considered all of the evidence surrounding the Haditha incident and Captain Stone's conduct with respect to command reporting of and response to the incident. It is clear to me that any error of omission or commission by Captain Stone does not warrant action under the Uniform Code of Military Justice.

"The Article 32 Investigating Officer recommended that the case not be tried at court-martial. I am aware of the line that separates the merely remiss from the clearly criminal, and I do not believe that any mistakes Captain Stone made with respect to the incident rise to the level of criminal behavior.

"In determining the appropriate disposition of this case, I have also considered Captain Stone's conduct and performance in full context. During the time period at issue, Captain Stone was in his first assignment serving as a Marine judge advocate under difficult circumstances as a staff member of an infantry battalion engaged in combat operations. He willingly volunteered for this assignment and took on challenging duties with enthusiasm. Similarly, his attentiveness to training the Marines in the law of war and rules of engagement and willingness to share their hardship to better appreciate the challenges facing them are notable. By patrolling alongside the infantrymen in his Battalion, he helped them embrace the imperative of ethical behavior in combat. In this manner, he directly contributed to our Nation's effort to fight a shadowy enemy who hides among and endangers innocent people and does not comply with any aspect of the law of war.

"Captain Stone and his fellow Marines served in the most ethically challenging combat environment in the world. Nonetheless, Marines are expected to withstand the extreme and fatiguing pressures inherent in counterinsurgency operations, protecting the innocent, while tirelessly fighting the enemy with relentless vigor. I have no doubt that he now understands the absolute necessity for objective inquiry into the combat actions of our Marines in such an environment, especially when innocent lives are lost.

"Captain Stone's experience in this incident offers many hard learned lessons that I am confident will serve him well in the future. It is incumbent on him to ensure that the lessons he has learned provide guidance for future judge advocates who may serve under similar circumstances in an infantry battalion in combat.

"I have impressed upon Captain Stone the fact that the Marine Corps' investigation into the Haditha incident has been driven solely by the interests of justice. Now that his case is resolved, I know that he will continue to serve with motivation and dedication, and with the understanding that he has much to contribute to the success of his unit and the Marine Corps."

- "The events of November 19, 2005 have been exhaustively reviewed by Marine, Army, and Naval Criminal Investigative Service investigators. An independent Article 32 Investigating Officer has considered all the facts and determined that the evidence does not support a referral to court-martial for LCpl Sharratt. Based on my review of all the evidence in this case and considering the recommendation of the Article 32 officer, I have dismissed the charges against LCpl Sharratt.

"LCpl Sharratt has served as a Marine infantryman in Iraq where our Nation is fighting a shadowy enemy who hides among the innocent people, does not comply with any aspect of the law of war, and routinely targets and intentionally draws fire toward civilians. The challenges of this combat environment put extreme pressures on our Marines. Notwithstanding, operational, moral, and legal imperatives demand that we Marines stay true to our own standards and maintain compliance with the law of war in this morally bruising environment.

"The experience of combat is difficult to understand intellectually and very difficult to appreciate emotionally. One of our Nation's most articulate Supreme Court Justices, Oliver Wendell Holmes, Jr., served as an infantryman during the Civil War and described war as an 'incommunicable experience.' He has also noted elsewhere that 'detached reflection cannot be demanded in the face of an uplifted knife.' Marines have a well earned reputation for remaining cool in the face of enemies brandishing much more than knives. The brutal reality that Justice Holmes described is experienced each day in Iraq, where Marines willingly put themselves at great risk to protect innocent civilians. Where the enemy disregards any attempt to comply with ethical norms of warfare, we exercise discipline and restraint to protect the innocent caught on the battlefield. Our way is right, but it is also difficult.

"With the dismissal of these charges LCpl Sharratt may fairly conclude that he did his best to live up to the standards, followed by U.S. fighting men throughout our many wars, in the face of life or death decisions made in a matter of seconds in combat. And as he has always remained cloaked in the presumption of innocence, with this dismissal of charges, he remains in the eyes of the law – and in my eyes – innocent."



Cpl. Jeremy Morlock lifts up the head of a 15-year-old boy he murdered in Afghanistan. (From Rolling Stone)



Major General Abed
Hamed Mowhoush

Torture on Trial - HRF Observes Court Martial of Army Officer Accused in Death of Iraqi Major General

**Human Rights First will observe the Fort Carson, Colorado,
trial of Chief Warrant Officer Lewis Welshofer, charged
with the murder of Iraqi Major General Abed Hamed
Mowhoush, who died after being forced inside a sleeping
bag during interrogation.**

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Accountability

Criminal Misconduct

v.

Negligence (Gross/Culpable or Simple)

v.

**Dereliction of Duty (Neglect or Culpable
Inefficiency)**

v.

Developmental Mistake



Specific Ethical Challenges

- Who is the Client?
- Diligence
- Discovery
- Conflicts
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