

Officer recommends dropping last murder charges in Haditha massacre

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8 October 2007

Not a single Marine involved in the massacre of 24 Iraqi civilians two years ago in Haditha, Iraq will be charged with murder based upon last week's recommendations by an investigating officer.

The investigator, Lt. Col. Paul Ware, recommended on October 3 that murder charges be dropped against Staff Sgt. Frank Wuterich, the Marine who led his squad in the mass killings of November 19, 2005. Such recommendations are routinely confirmed by military judges.

Charges against two other Marines had already been either reduced or dropped, and the largest prosecution of American military personnel for war crimes in Iraq has effectively been aborted.

Wuterich currently faces 17 counts of unpremeditated murder in connection with the massacre. Ware, the investigating officer in the Camp Pendleton, California proceedings, said on Thursday that the evidence was not strong enough to try Wuterich for murder. Ware instead recommended charges of negligent homicide in the deaths of five children and two women. These charges—the lightest possible for such a crime—carry a maximum sentence of three years in prison.

"I believe after reviewing all the evidence that no trier of fact can conclude Sgt. Wuterich formed the criminal intent to kill," Ware wrote in a statement obtained by the San Diego *North County Times*. "When a Marine fails to exercise due care and civilians die, the charge of negligent homicide, and not murder, is appropriate."

"The evidence is contradictory, the forensic analysis is limited and almost all the witnesses have an obvious bias or prejudice," Ware wrote. "The case against Staff Sgt. Wuterich that he committed murder is simply not strong enough to prove beyond a reasonable doubt. What the evidence does point to is that Wuterich failed

to exercise due care in his own action or in supervising his Marines."

Ware predicted that the prosecution would fail to return a guilty verdict even for the reduced charges. "I believe the government will fail to prove beyond a reasonable doubt that Staff Sgt. Wuterich committed any offenses other than dereliction of duty."

By dropping all murder charges, the military would effectively reduce the case from one involving war crimes to one indicting a single, low-ranking individual for failure to "exercise due care" during deployment. Former military prosecutor Tom Umberg told *Al Jazeera* news that Ware could have proposed manslaughter charges instead. "This is a major blow to the prosecution," he said. "Negligent homicide is at the lowest end of the spectrum."

In addition, Ware also recommended dropping charges against Wuterich of making a false official statement and soliciting another squad member to do the same. Wuterich had lied to an investigator that, following a roadside bomb attack on their convoy and the death of a squad member, the squad came under insurgent gunfire. Wuterich claimed that five men ordered out of a taxi and killed had fired at the Marines. Wuterich also told investigators that the men were shot dead by Iraqi Army soldiers.

According to witnesses and testimony from other Marines, the five men were unarmed and trying to surrender to the Marines. In unsworn testimony last month, Wuterich continued to maintain that the men "were not complying and, in fact, they were starting to run." Combat regulations at the time allowed Marines to kill anyone attempting to flee the scene of an attack. Notwithstanding this allowance, Wuterich's subsequent false statements reveal that there was no evidence the killings were justified.

After shooting the men in the street, Wuterich ordered the squad into three nearby houses, where 19 more civilians were slaughtered over the course of several hours. Wuterich insisted throughout his hearings that the squad was fired on from the houses. “Engaging was the only choice,” he told the military court. “The threat had to be neutralized.”

However, the US government’s investigations as well as those conducted by independent human rights and media organizations have established that none of the victims were armed, and that many were shot at close range, execution-style, suggesting they were attempting to surrender.

Immediately after the killings, the Marine Corps reported that 15 of the civilians had been victims of the roadside bomb, and that another eight of the dead had been insurgents engaging in a firefight with the squad. The entire chain of command took active steps to destroy evidence inconsistent with this version of events, including photographs taken of the scene. Investigations into the massacre were deliberately stalled.

Charges against officers for failing to investigate have already been dropped. Of twelve Marines implicated in the killings and cover-up, eight have been granted immunity. Three officers were given administrative letters of censure for dereliction of duty for not investigating and for destroying evidence. None face criminal charges.

However the hearings proceed against Wuterich, it is clear that the primary concern of the military in this case is not justice for the survivors in Haditha, but rather covering up for the criminality of the top brass and the Bush administration. The outcome of the hearings may set a precedent in how future war crimes trials and disciplinary actions are administered. The course of the case over the past year suggests the military hearings will serve both as a continuation of the whitewash under investigation, and ultimately as a justification of the massacre.

The rationale Ware has repeatedly put forward for dropping charges has been a lack of evidence. Yet, with its destruction of evidence, fabrication of stories, and waiting fully 13 months to begin an official investigation into the events at Haditha, it is the military itself that is to blame for any such absence. Moreover, the central purpose of an Article 32 hearing

is not to amass conclusive evidence, but simply to establish whether reasonable grounds exist to pursue charges via a military court martial.

Nevertheless, following Ware’s recommendation in August, the military dropped murder charges against Lance Cpl. Justin Sharratt, and is considering the exoneration of another Marine involved in the shooting, Lance Cpl. Stephen Tatum.

Following Tatum’s pre-trial hearing, Ware wrote that, although Tatum was clearly involved in the killing of innocent women and children, evidence was insufficient to suggest that the Marine did anything other than follow orders and military rules of engagement. Within the houses, Ware wrote, “Tatum’s real life experience and training on how to clear a room took over and his body instinctively began firing while his head tried to grasp at what and why he was firing. By the time he could recognize that he was shooting at children, his body had already acted.”

Indeed, the brutal methods of operation employed in Iraq sanction all manner of atrocities. These rules of engagement reflect the attitude of the war’s planners and military leaders, who regard the slaughter of civilians as part of the cost of doing business. The criminal and colonialist character of the occupation fosters in troops suspicion, dehumanization, and a “shoot first, ask questions later” approach to the Iraqi population that inevitably led to Haditha and to many more such massacres for which no one has ever been charged.



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