

UNITED STATES)
)
v.)
)
Eric Gilmet)
Chief Petty Officer)
U. S. Navy)
)

AFFIDAVIT
OF MAJOR KURT
SORENSEN

1. I, Major Kurt Sorensen, U.S. Marine Corps, have been asked to provide a statement in relation to my knowledge of certain events. I do declare:

2. On 18 November 2021, approximately between the hours of 1300 and 1500, at Building 64B-2 aboard Camp Lejeune, a meeting was held between Colonel Christopher Shaw and members of the Defense Services Organization Camp Lejeune Branch. The following people were present: Major Kurt Sorensen, Captain Matt Thomas, Captain Michael Blackburn, Captain Jon Bunker, Captain Laura Brewer, Captain Tom Persico, First Lieutenant Steven Trottier, and Captain Cameron McAlister.

a. Colonel Shaw opened the meeting by introducing himself and his position at Judge Advocate Division for being responsible for Community Development on behalf of Major General David Bligh. At some point during the meeting, he also told us he was responsible for finalizing the slate for PCS/PCA moves.

b. At one point, Colonel Shaw was informing the group of a proposal for O6 judge advocates to be the referral authorities for special victim cases. Captain Thomas asked what measures would be put in place to protect those O6 judge advocates from improper influences, whether it be from the chain of command, politics, or Congress. Captain Thomas referenced the present protection attorneys in the Defense Services Organization have, as their fitness reports are written by other attorneys within the Defense Services Organization. Colonel Shaw then sought to clarify this characterization of the protection of attorneys in the Defense Services Organization. Colonel Shaw described that arrangement as a “legal fiction” stating “you think you are protected, but that is a legal fiction. You may be shielded with that fitrep, but you are not protected...there are still promotion boards and the lawyer on that board is going to know you...it’s a small community and your name will be known. Bottom line, you are shielded, but you are not protected” or words to that effect. He even said specifically to Captain Thomas, “I know your name, I know what cases you are on, and you are not protected” or words to that effect. I believe he was speaking to Captain Thomas because of the eye contact he maintained while making that statement. During his answers to other questions, Colonel Shaw would change who he was looking at.

c. Later in the conversation, a Captain asked if there were going to be any changes to the length of time attorneys would spend in each billet. Colonel Shaw referenced two series of war crimes cases from the war in Iraq (he specifically said the words “Haditha” and “Hamdania”) and said that judge advocates spent “five, six years in Defense” for those cases and there were “secondary effects” or “consequences” to spending that much time in defense. Again, he

referenced promotion boards, our small community, and that fact that the lawyer on the promotion board “will know what you did” or words to that effect. He specifically said, “some people were not promoted who should have been promoted.”

3. During a conversation with Colonel Robert “Bob” Fifer—Officer-in-Charge, Legal Services Support Section (LSSS)-East—he informed me that Major General Daniel Lecce came to Camp Lejeune and had a conversation with the Chief of Staff of 2d Marine Division. As relayed to me, the conversation between Major General Lecce and the Chief of Staff was to ensure Major Nathan “Campbell” Thomas could remain on the “Erbil cases” even though he was set to execute orders in August 2021 outside of the LSSS to the billet of the deputy Staff Judge Advocate for 2d Marine Division. The purpose, as explained to me, was to ensure the government could keep Major Thomas, a 4409, on the case. My understanding of this conversation was also to ensure no one at 2d Marine Division would hold Major Thomas responsible for his absence relating to his obligations to the Erbil cases.

a. I do not remember the date that Colonel Fifer shared this information with me, but I know it was prior to 7 May 2021.

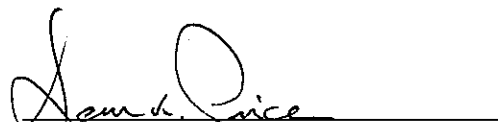
b. As background, typically a trial counsel who leaves the LSSS would not remain on a case after execution of a move, especially if continued participation would affect duties at the subsequent assignment. Furthermore, 4409 is a military occupational specialty (MOS) designated to those specializing in criminal law.

I swear under penalty of perjury that the above is true and complete to the best of my knowledge and belief.



Kurt Sorensen
Major, U.S. Marine Corps

At Camp Lejeune North Carolina, the forgoing instrument was signed, sworn, and acknowledged before me by Major Kurt Sorensen, this 6th day of December, 2021. He was identified by a(n) military ID (CAC)



Signature

SEAN V. PASCE, O-4, Major, USMC
Printed Name, Rank, Grade, Service

**UNITED STATES MARINE CORPS
GENERAL COURT-MARTIAL
EASTERN JUDICIAL CIRCUIT**

<p>UNITED STATES</p> <p>v.</p> <p>Eric Gilmet Chief Petty Officer U. S. Navy</p>	<p style="text-align:center">Defense Affidavit</p> <p style="text-align:center">Date: 6 December 2021</p>
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SWORN AFFIDAVIT

I, Captain Matthew Thomas, declare under penalty of perjury:

1. On Thursday, 18 November 2021 I attended the Company Grade Defense Service Office meeting with Colonel Shaw. The meeting was held in Building 64B-2, Camp Lejeune and started at 1300 and ended at approximately 1500. The Marines present for the entire meeting were: Colonel Christopher Shaw, Major Kurt Sorensen (Senior Defense Counsel for Camp Lejeune), Captain Michael Blackburn, Captain Steven Trottier, Captain Jon Bunker, Captain Tom Persico. Captain Laura Brewer was present for the majority of the meeting. Captain Cameron McAlister also attended a portion of the meeting, but was not present for the entire meeting.

2. Colonel Shaw commenced the meeting and introduced himself. During Colonel Shaw's introduction, he provided us a synopsis of his career to date. Colonel Shaw finished his career synopsis and explained that he currently was the Deputy Director for Judge Advocate Division (JAD) and was spearheading Community Development for the Staff Judge Advocate of the Marine Corps. Colonel Shaw explained that part of his responsibilities included billet and duty station assignments.


3. One of the first topics that Colonel Shaw discussed with the company grade attorneys was the proposed legislation and overall policy changes concerning sexual assault cases. Specifically, Colonel Shaw stated that the discretion to send sexual assault cases to court-martial would soon be taken away from the convening authorities and transferred to an entirely separate position held by an attorney. In response, I asked Colonel Shaw, "What is being done to protect the attorney in that position from outside influences such as political pressures, media pressure and general societal pressures?" or words to that effect. During my question I used the Defense Service Office's chain of command and reporting chain as an example of a measure put in place to protect the defense attorneys from outside influences. Before answering the question posed, Colonel Shaw spoke on the example I provided about the Defense Service Office's chain of command and reporting chain. Notably, Colonel Shaw stated that the defense attorneys "may think they are shielded, but they are not protected," and continued to say, "You think you are protected but that is a legal fiction." Colonel Shaw then directly squared his shoulders and chair towards me and he did not break eye contact with me for a significant period of time. During that time, Colonel Shaw specifically stated, "Captain Thomas I know who you are and what cases you are on and you are not protected." Colonel Shaw followed up by stating, "...the FitRep process may shield you, but you are not protected. Our community is small and there are promotion boards and the lawyer on the promotion board will know you." Colonel Shaw reiterated comments such as "shielded but not protected," multiple times.

4. Colonel Shaw then provided an example of the Defense Service Office's chain of command and reporting chain being fallible. Colonel Shaw referenced the attorneys that spent 4-5 years in the Defense Services Organization because they were detailed to the highly publicized and scrutinized Haditha cases. Colonel Shaw then stated that there were negative "secondary effects," and "consequences" for those attorneys that spent that much time in the Defense Service Organization because of those cases. Colonel Shaw explicitly stated that "some of the attorneys on those cases were good attorneys," and that on the promotion board our community is small enough that the attorneys "will know what you did." He closed out this topic by stating "some of those attorneys were good attorneys and did not get promoted even though they should have been promoted," or words to that effect.

5. I was detailed as CPO Gilmet's military defense counsel on 20 May 2020. I have spent over three years as a defense attorney in the Defense Service Office, in part, due to my representation of CPO Gilmet's case.


6. Colonel Shaw's comments during the meeting, which were made in his capacity as a representative of Judge Advocate Division, have made me concerned that my continued representation of CPO Gilmet and zealous advocacy of clients accused of sexual assaults may be detrimental to my career. My concern is, in part, because of Judge Advocate Division's ability to positively, or negatively effect my career and my family's well-being through manipulation of the billet assignment and PCS process. Additionally, Colonel Shaw's comments, and my resulting concerns identified above, have created a rift between CPO Gilmet and myself. His comments have made CPO Gilmet question my undevoted loyalty to him and his defense because they have created at least the appearance that I may have a personal interest in not defending him to the best of my ability.

7. This affidavit covers only a portion of the topics discussed at this meeting. Many other topics regarding sexual assault and the LSSS-E were also troubling.



Matthew J. Thomas
Captain
U.S. Marine Corps

Sworn to and subscribed before me this 6th day of December, 2021.



Name: James Z. Miller
Rank: Captain / O-3
Branch: USMC
10 U.S. Code § 1044a

SWORN AFFIDAVIT

I, Captain Steven M. Trottier, declare under penalty of perjury:

1. On 18 November 2021, I attended the DSO meeting between Colonel Shaw and the company grade defense attorneys. I attended this meeting with Major Kurt Sorensen, Captain Matthew Thomas, Captain Michael Blackburn, Captain Jon Bunker, and Captain Tom Persico. Captain Laura Brewer arrived late with her daughter due to her being on maternity leave. Captain Cameron McAlister and Colonel Fifer, the OIC of LSSS-E, also arrived late.

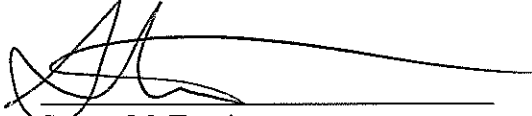
2. I had just come off a contested general court-martial for an Art. 120, UCMJ, violation resulting in an acquittal for my client. I was only vaguely aware of the purpose of the meeting which was to address coming changes to court-martials and issues within the judge advocate community. I had never previously heard of or met Colonel Shaw. He introduced himself as a representative from Judge Advocate Division (JAD) and was visiting different installations with judge advocates in each section.

3. Before opening up the room to questions, Colonel Shaw wanted to address some of the changes coming to trials as part of DOD mandates and as a result of the NDAA mandates. One of the biggest and most intriguing changes Colonel Shaw detailed was that the referral authority for sexual assault cases would be an entirely new entity known as the "special victim prosecutor." In part, he explained that this referral authority would be a separate and distinct entity that could make decisions without certain pressures that the current GCMCA's feel when making referral decisions.

4. In response to this, Captain Thomas asked Colonel Shaw what would be done to protect that special victims prosecutor from outside pressures of politics or influence of the chain of command. Captain Thomas went on to provide defense counsel as an example of how to set up certain protections for the special victims prosecutors, noting that defense counsel are shielded through their unique chain of command. Of note, the SDC and RDC are the ones who write on defense counsel for FitReps vice the usual battalion chain of command. Colonel Shaw responded that defense attorneys are not protected and that the shield around DSO attorneys is a legal fiction. Specifically, Colonel Shaw told Captain Thomas that "I know who you are and what cases you are on."

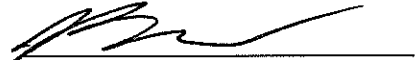
5. Related to the interaction with Captain Thomas, Colonel Shaw went on to talk about the Haditha trials and the defense counsel who were associated with them. Colonel Shaw noted that the Haditha trials garnered wide spread media attention and were very lengthy, spanning years. He noted that the defense attorneys who were detailed to those cases spent a long time in the DSO and as a result, suffered in their careers in regards to promotion, opportunities, and advancement within the judge advocate community. Colonel Shaw noted that it did not matter how good those attorneys were at litigating, they specifically were not promoted or seen in an adverse light because of their lengthy stay in the DSO while engaged on the Haditha trials.

6. I left this meeting highly concerned about the comments made by Colonel Shaw in regards to defense attorneys. To an extent, it makes me worried my representation of clients, especially in cases with media attention or other hot button issues, such as sexual assault, will carry a negative connotation for me personally and professionally.



Steven M. Trottier
Captain
U.S. Marine Corps

Sworn to and subscribed before me this 7th day of December, 2021.



Name: Brent Miller
Rank: Captain
Branch: USMC
10 U.S. Code § 1044a

**DEFENSE SERVICES ORGANIZATION
LEGAL SERVICES SUPPORT SECTION-EAST
MARINE CORPS INSTALLATIONS-EAST
MARINE CORPS BASE CAMP LEJEUNE NC**

SWORN AFFIDAVIT

I, Captain Michael E. Blackburn, declare under penalty of perjury:

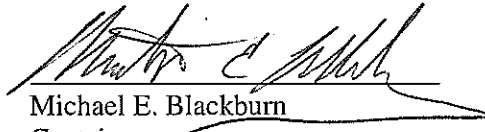
1. On 18 November, 2021, I attended a meeting for defense counsel to give feedback to Judge Advocate Division (JAD) that was hosted by Colonel Christopher Shaw. Col Shaw identified himself as being a member of JAD responsible for 44XX community development, and indicated he reports to Major General David J. Bligh. The meeting took place in building 64b-2 on Camp Lejeune. The meeting was also attended by Major Kurt Sorensen, the Senior Defense Counsel for Camp Lejeune, and Captain Matthew Thomas, Captain Steven Trottier, Captain Jon Bunker, Captain Tom Persico, who are all defense counsel. Captain Laura Brewer and Captain Cameron McAlister, also defense counsel, attended a portion of the meeting.
2. During the meeting, Col Shaw made several notable or unusual comments, including several regarding what I understand to be an ongoing investigation involving Major Grodi as well as a story about potentially criminal action by Col Shaw during his time as an infantry platoon commander. Explanation of those comments has been omitted from this Affidavit based on its specific purpose in support of a motion. The relevant comments made by Col Shaw regarding the DSO and litigating as a defense counsel included specifically:
 - a. Comments regarding the professional independence of defense counsel. Col Shaw stated that defense counsel “may be shielded, but they are not protected,”; “You think you are protected but that is a legal fiction”; and “we know who you are” in reference to defense counsel billets. Those remarks were in response to Captain Thomas, who was sitting directly behind me, after he asked if the new GCMCAs for Art 120 offenses would also be similarly shielded. Col Shaw’s response to Captain Thomas appeared to be a warning directed first at Captain Thomas, and then to all of us. He followed up by stating, words to the effect of “FitReps may shield you, but you are not protected. We have a small community and the lawyer on the promotion/competitive boards will know you.”
 - b. Comments regarding high profile cases and lengthy defense counsel tours. Col Shaw specifically mentioned the Haditha cases, and stated words to the effect of “we know who was on those cases” and indicated that their careers were negatively impacted for litigating those cases well or thoroughly. During the same statements he made multiple

comments about the negative impact lengthy tours in defense will have on our career paths.

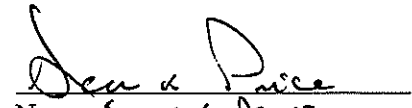
- c. Comments regarding deviant behavior. Col Shaw made several references to significant or pervasive “deviant behavior” in the Marine Corps. After Major Sorensen and I raised questions about Marines receiving possible felony level convictions for sexual harassment charges at a GCM, he asked me if I had ever been a TC or an SJA. When I responded in the negative, he explained to the group that without TC or SJA time, we could not understand some of the deviant behaviors in the Marine Corps, and that we all lacked perspective because of our defense counsel billets. He returned to this message that our professional experience as defense counsel was either useless or discounted relative to other billets a few times as we asked more challenging questions.
3. Based on my observations of his tone, demeanor and posture, Col Shaw appeared to be giving his sincere, unfiltered opinion on these topics while he was discussing them. He gave no indication whatsoever that he believed them to be notable or out of the ordinary in any way, or that they were made in jest. Moreover, as he was making these statements, they were not conveyed as his own personal opinion on each of these topics using language like “I think . . .” or “My view is . . .” Rather, he conveyed all of these statements in a matter of fact manner as part of his role in leadership at JAD with the implication that we were being counseled or let in on a secret about how the senior or supervisory members of our community really view these issues and our work in the DSO.
4. Additionally, based on the comments by Col Shaw while representing JAD, my perception is that the defense counsel providing statements on his comments should expect to be negatively impacted professionally. Whenever the Government makes an error in the military justice process, rather than the Government being held accountable, senior or supervisory members of our community appear to attribute those errors to some vaguely underhanded or unscrupulous action by defense counsel or the DSO in pursuit of some dubious purpose. I fully expect the DSO and its members will bear the blame in this instance as well for taking action in response to Col Shaw’s comments. As Col Shaw noted, it is no secret that the 44XX community is very small, and our cooperation and statements made in this matter are unlikely to remain unknown to senior or supervisory members of our community. While the senior or supervisory members of our community are legally sophisticated and unlikely to engage in any sort of overt retaliation, in the end, as a result of our actions I expect we will all experience some form of unseen “soft” retaliation in the form of being passed over for desirable future billets, deployments, competitive boards or extra collateral training opportunities; receive less favorable professional references or

less favorable PCS or PCA orders after this tour; be denied extension or administrative action requests; or receive reduced end of tour awards relative to our peers.

5. The potential for these adverse actions, which may ultimately be undetectable, fall below the level of outright retaliation or whistle-blower protections, or be impossible to prove, could have a negative effect on future litigation by defense counsel, discourage experienced defense counsel from remaining in this billet, or discourage talented 4402's from seeking defense counsel billets, all of which ultimately negatively impacts the Marines we represent and the reputation of our community.


Michael E. Blackburn
Captain
U.S. Marine Corps

Sworn to and subscribed before me this 7th day of December, 2021.


Name: Sean V. Price
Rank: Major
Branch: US Marine Corps
10 U.S. Code § 1044a

**UNITED STATES MARINE CORPS
GENERAL COURT-MARTIAL
EASTERN JUDICIAL CIRCUIT**

<p>UNITED STATES</p> <p>v.</p> <p>ERIC GILMET Chief Petty Officer U. S. Navy</p>	<p style="text-align:center">Defense Affidavit</p> <p style="text-align:center">Date: 10 December 2021</p>
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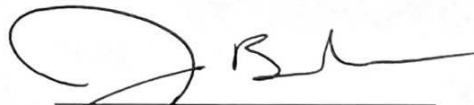
SWORN AFFIDAVIT

I, Captain Jonathan M. Bunker, declare under penalty of perjury:

1. I attended Colonel Christopher B. Shaw's meeting with the company grade defense attorneys. The meeting took place around 1300 on 18 November 2021. The following individuals were present at the meeting: Major Kurt Sorensen, Captain Michael Blackburn, Captain Thomas Persico, Captain Matthew Thomas, Captain Steven Trottier, Captain Cameron McAlister, Captain Laura Brewer, and Colonel Robert Fifer. Capt McAlister and Col Fifer were not present for the entirety of the meeting. The stated reason for the meeting was unclear other than passing updated information from Judge Advocate Division (JAD).
2. Col Shaw introduced himself as a representative from JAD and indicated that he was visiting different installations and meeting the judge advocates in each section (DSO, LA, TSO). Prior to opening the room to questions about JAD's role, Col Shaw discussed the possible changes in practice that would stem from Congress passing the NDAA. During this period, Col Shaw explained that Congress wanted to remove the authority to refer sexual assault cases from Commanding Officers (GCMCAs). He explained that the referral authority for sexual assault cases could be an entirely new entity that he termed "Special Victims Prosecutor" (SVP). Col Shaw explained that the SVP would be a separate and distinct entity that could make decisions without the political pressures that Commander's feel when making the decision on whether or not to refer sexual assault cases.
3. After detailing the role of the SVP, Capt Thomas asked Col Shaw if anything would be done to shield and protect the SVP from the outside pressures of politics or command influence. Capt Thomas went on to provide the defense counsel chain of command as an example of how to set up such protections. Capt Thomas explained how defense counsel are shielded through their unique chain of command due to their Fitness Reports being completed by the Senior Defense Counsel (SDC) and Regional Defense Counsel (RDC) rather than the unit Commander. Col Shaw responded by stating that defense attorneys are not protected and that the shield around defense attorneys is a "legal fiction." Col Shaw

then told Capt Thomas "I know who you are and what cases you are on." Col Shaw then went on to talk about the *Haditha* trials and the defense counsel detailed to the cases. Col Shaw noted that the *Haditha* trials garnered wide spread media attention and lasted over 4-5 years. He noted that the defense attorneys who were detailed to the *Haditha* cases spent a long time in Defense, and as a result, their careers were negatively impacted. Col Shaw explained that they particularly suffered with regards to promotion and advancement within the tight-knit judge advocate community. Col Shaw went on to say, "Our community is small and there are promotion boards and the lawyer on the promotion board will know you." He followed this statement by saying that this was the secondary effect for those who spend too much time in Defense. Later in the meeting, Col Shaw went on to say that JAD plays a role in higher-level assignments and PCS orders.

4. Throughout the entire meeting, Col Shaw would routinely pause and make statements like, "Let me think about how to say this" or "I need to make sure that I am saying this correctly," or words and statements to that effect. This left me with the impression that all of his answers to questions posed by defense counsel were fully contemplated and made with a complete understanding of the questions asked.
5. I spent significant time reflecting on this meeting in the days following. The meeting left me deeply concerned about how JAD, and the judge advocate community at large, view the defense community, particularly those who spend more time in defense than JAD believes reasonable or those who litigate high-profile cases. The meeting highlighted that those who represent the Constitutional rights of the Accused are, at the highest levels of this organization, viewed in a negative light and their careers are likely to suffer because of it.



Jonathan M. Bunker
Captain
U.S. Marine Corps

Sworn to and subscribed before me this 10 day of December, 21.



Name: Capt Brent Miller
Rank: Captain O-3
Branch: USMC
10 U.S. Code § 1044a

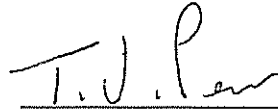
**UNITED STATES MARINE CORPS
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<p>UNITED STATES</p> <p>v.</p> <p>ERIC GILMET Chief Petty Officer U. S. Navy</p>	<p style="text-align:center">Defense Affidavit</p> <p style="text-align:center">Date: 6 December 2021</p>
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SWORN AFFIDAVIT

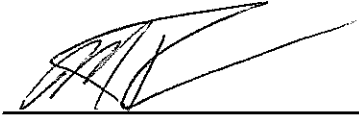
I, Captain Thomas J. Persico, declare under penalty of perjury:

1. I participated in the discussion held in late November with members of the Defense Office and Colonel Shaw, a leader at Judge Advocate Division (JAD). Major Sorensen, Captain Thomas, Captain Blackburn, Captain Bunker, then Lieutenant Trottier, Captain McAlister, Captain Brewer, and me at this meeting. Captain McAlister and Captain Brewer arrived late. Colonel Fifer also joined the discussion after the meeting had already gone on for more than an hour.
2. This meeting left me unconfident with the state of my MOS. Colonel Shaw would sometimes take ten seconds or more to pause and answer simple questions. I took this to mean he did not want to speak freely or that there were things to hide from the audience regarding the answers to our questions. I also left the meeting feeling that Col Shaw does not share my same high regard for judge advocates and my MOS.
3. Specifically, Captain Thomas asked Colonel Shaw what safeguards would be put in place to protect a special victim prosecutor so that he or she would not be swayed by public opinion or undue pressure. To illustrate this point, Captain Thomas discussed how Defense is carved out from the standard battalion chain of command, whereby the Senior Defense Counsel and the Regional Defense Counsel are the only individuals who write line-counsel fitness reports.
4. In response, Colonel Shaw spoke about how we may be “shielded, but we are not protected,” and that this was a legal fiction. Colonel Shaw mentioned he could look up Captain Thomas’s cases and update himself on what Captain Thomas was doing. That said, the transition from this last remark to then speaking about Defense Counsel on the courts-martial centering on the atrocities in Haditha was striking and unnerving. It was like Colonel Shaw was implying that those Defense Counsel are negatively remembered for being on that case.



Thomas J. Persico
Captain
U.S. Marine Corps

Sworn to and subscribed before me this 6 day of December, 2021.



Name: Michael C. Tibbits
Rank: 1stLt / O2
Branch: USMC
10 U.S. Code § 1044a

Lieutenant Colonel Christopher B. Shaw, U.S. Marine Corps

LtCol Shaw was born in Boston Massachusetts to Jamaican immigrant parents. He grew up in the city and graduated from Boston Latin School. After Latin School he obtained an appointment to the U. S. Naval Academy and majored in political science. After graduating from Annapolis, in 1994, he was selected to serve as a Marine Infantry Officer and lead Marines in Okinawa, Korean and in the Mediterranean Sea. After his first tour in the Marines he was assigned as the Marine Officer Selection Officer for the Eastern Massachusetts area. While on recruiting duty he recruited over 120 Marine Officer Candidates from colleges such as Boston College, MIT, Harvard and Brown University.

After recruiting duty, he was selected for the legal education program and attended Boston College law School. After graduating from law School, in 2004, he was promoted to major and assigned as the Senior Trial Counsel for legal Team Echo, the busiest trial shop in the Department of Defense. Legal Team Echo is located on Camp Pendleton in California. While at Legal Team Echo he prosecuted murder, rape and drug distribution cases and supervised 8 prosecutors. Also during this assignment he deployed to AI Anbar Province Iraq.

While in Iraq Major Shaw served as the Staff Judge Advocate to 1st Marine logistics Group (Forward). In that capacity he provided the general level command with legal advice, supported detention operations, lead the legal services team that serviced over 27 thousand service members stationed in AI Anbar province and provided law of Armed Conflict and Rule of law training to the Iraqi Army. After 13 months in Iraq, he returned to the Camp Pendleton and tried a number of high profile cases.

Next, Major Shaw was ordered to the University of San Diego School of law to obtain an LLM in international law (an advanced law degree). While assigned to USD, his paper, "The International Proscription against Torture and the United States Categorical and Qualified Responses" was published in the Boston College International and Comparative law Review in the Spring of 2009. After graduating from USD he was assigned to U.S. Marine Forces, Pacific as the Deputy Staff Judge Advocate and promoted to lieutenant Colonel. As the Deputy SJA, he provided legal advice to a Three-Star General whose area of responsibility encompasses all Marine Forces from Arizona to India. In 2012 he was assigned to Marine Corps Base Quantico as the Staff Judge Advocate. As the SJA, he provided legal and ethical advice to the Base commander and numerous tenant commands. After 8 months as serving as the SJA for MCB Quantico, in 2013, LtCol Shaw was selected by the Secretary of the Navy to serve as his special assistance for legal and legislative matters. LtCol Shaw has two children, Marcus and Thalia.

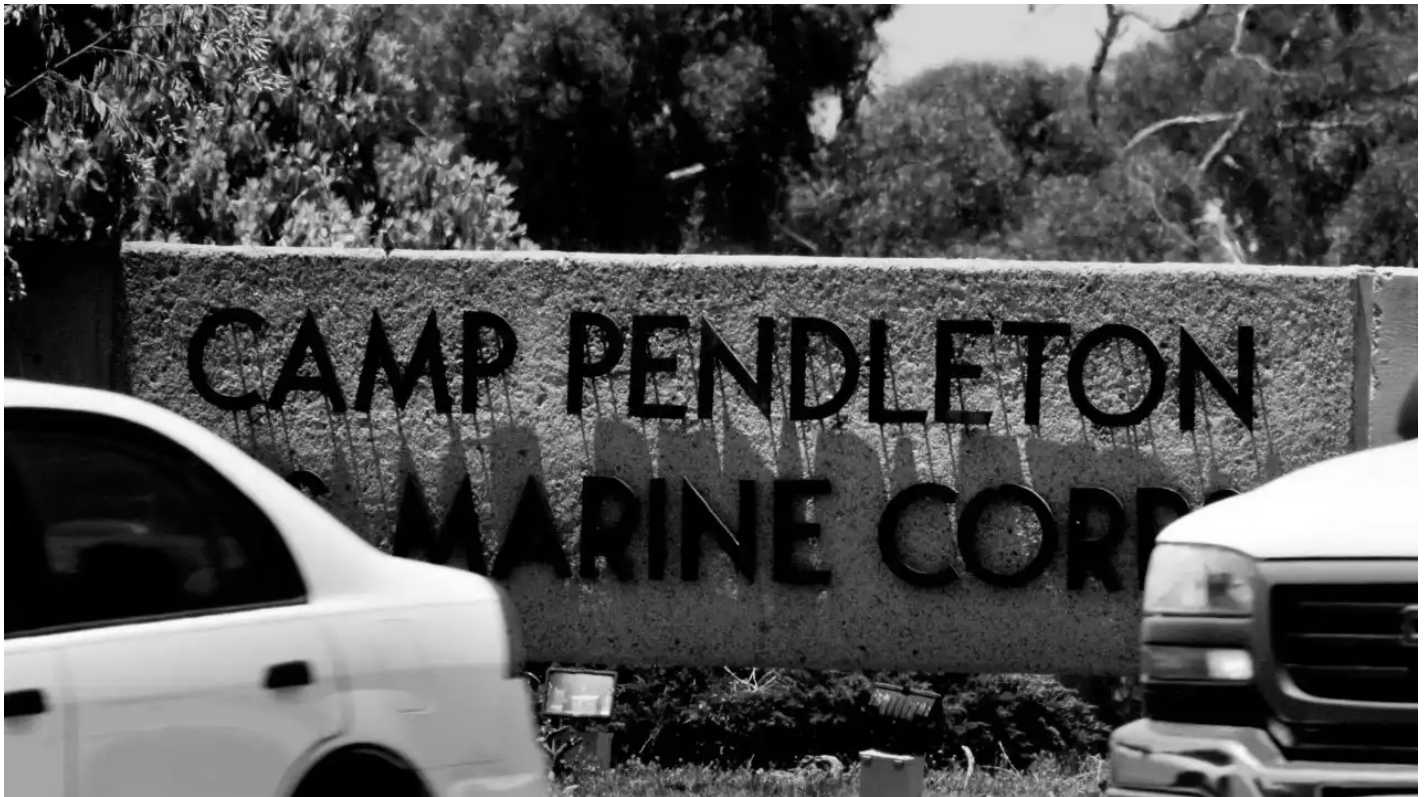
HAPPENING NOW

Appeals court hears arguments on Trump's bid to block release of presidential records. Listen live

Haditha Killings Fast Facts

CNN Editorial Research

Updated 10:00 AM EST, Mon March 1, 2021



Sandy Huffaker/Getty Images

(CNN) — Here's some background information about the 2005 killings of 24 civilians in Haditha, Iraq.

Facts

Haditha is a city on the Euphrates River northwest of Baghdad, [Iraq](#).

Eight US Marines faced charges in the deaths, but only one was convicted of a crime, that of negligent dereliction of duty.

Advertisement

Timeline

November 19, 2005 - A roadside bomb kills 20-year-old Lance Cpl. Miquel Terrazas in the

CNN World

LIVE TV



November 19, 2005 - At least 24 Iraqi civilians, including women and children, are killed. Suspicion falls on Marines from Kilo Company of the 3rd Battalion, 5th Marine Regiment.

March 19, 2006 - [Time.com first publishes the allegations of the killings](#). The story also runs in the March 27 issue of the magazine.

April 8, 2006 - The commander of the 3rd Battalion, 1st Marine Regiment and two company commanders are relieved of command and placed on staff duty during the investigation.

May 29, 2006 - Gen. Peter Pace, Chairman of the Joint Chiefs of Staff, tells CNN there are [two investigations](#) - one into what happened and one into why the military didn't know about the incident sooner.

December 21, 2006 - Eight Marines face criminal charges or administrative punishment in connection with the incident.

- Staff Sgt. Frank Wuterich, who led the detachment of Marines accused of involvement in the incident, is charged with 13 counts of unpremeditated murder, making false statements to investigators, and trying to persuade others to do the same. The murder charges include 12 counts of unpremeditated murder against individuals and one count of the murder of six people "while engaged in an act inherently dangerous to others."

- Lance Cpl. Justin Sharratt is charged with one count of unpremeditated murder, with three specifications (one for each fatality).

ENCL 9

- Lance Cpl. Stephen Tatum is charged with negligent homicide and assault.
- Sgt. Sanick Dela Cruz is charged with unpremeditated murder and making a false statement.
- Lt. Col. Jeffrey Chessani is charged with one count of violating a lawful order and two counts of dereliction of duty.
- Capt. Randy Stone is charged with dereliction of duty and violating a lawful order.
- Capt. Lucas McConnell is charged with dereliction of duty.
- First Lt. Andrew Grayson is charged with obstruction of justice, dereliction of duty and making a false statement.

January 6, 2007 - The Washington Post publishes photos and information pertaining to the Haditha incident. The photos show five dead Iraqi men near a taxi cab. Shortly after, attorneys for the charged Marines request a probe to determine who leaked the photos, claiming their clients will not be given a fair trial because of them. US criminal investigators say they have found no evidence to support the claim of the Marines that the five Iraqis were shot after trying to flee the scene. The investigators say that all five Iraqi men were shot no more than 18 feet from the taxi they were ordered to exit and within arm's length of each other.

April 2, 2007 - Charges against Sgt. Dela Cruz are dropped in exchange for his testimony.

August 9, 2007 - Charges against Lance Cpl. Sharratt and Capt. Stone are dropped after Lt. Gen. James Mattis rules that they did not act inappropriately under the circumstances.

August 23, 2007 - Lt. Col. Paul Ware, the investigating officer, recommends that all charges be dropped against Lance Cpl. Tatum, saying the evidence is too weak for a court-martial.

September 5, 2007 - Maj. Gen. Richard A. Huck, former commanding general of the 2nd Marine Division; Col. Stephen W. Davis, former commanding officer of Regimental Combat Team 2, 2nd Marine Division; and Col. Robert G. Sokoloski, former chief of staff of 2nd Marine Division (Forward) receive letters of censure from the secretary of the Navy in connection to the Haditha investigation.

September 18, 2007 - Lt. Gen. Mattis drops charges against Capt. McConnell.

October 4, 2007 - Lt. Col. Ware, the investigating officer, recommends that the murder charges be dropped from Staff Sgt. Wuterich's case, but that he should be tried for the lesser offense of negligent homicide.

October 19, 2007 - The Marine Corps announces that Lt. Col. Chessani and Lance Cpl.

October 19, 2007 - The Marine Corps announces that Lt. Col. Chessani and Lance Cpl. Tatum will face courts-martial.

December 31, 2007 - 1st Lt. Grayson is referred for court-martial on charges of making false official statements, obstruction of justice and attempting to fraudulently separate from the Marine Corps.

December 31, 2007 - The Marine Corps announces that Staff Sgt. Wuterich will face a court-martial on charges of voluntary manslaughter, aggravated assault, reckless endangerment, dereliction of duty and obstruction of justice.

March 28, 2008 - The US military announces that all charges are dropped against Lance Cpl. Tatum.

May 7, 2008 - "Battle for Haditha," a film dramatizing the events of November 19, 2005, opens.

June 4, 2008 - 1st Lt. Grayson is found not guilty on all charges.

June 17, 2008 - All charges against Lt. Col. Chessani are dropped after a judge rules that a general overseeing the case could have been improperly influenced by a prosecutor.

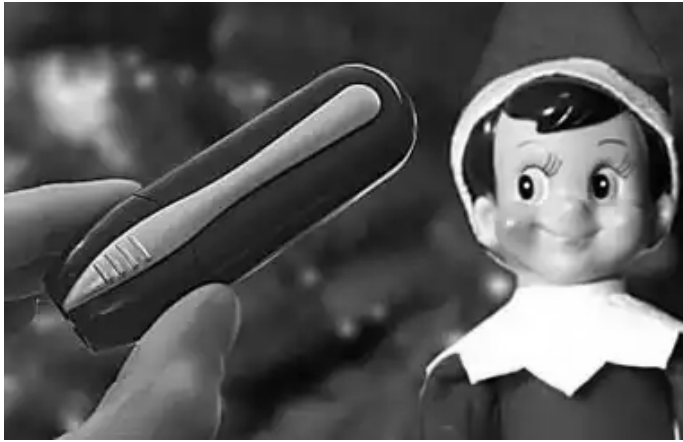
January 12, 2012 - After years of delay, the court-martial of Wuterich, the last of eight Marines charged, begins with jury selection. He is charged with nine counts of voluntary manslaughter and other offenses.

January 23, 2012 - Wuterich pleads guilty to one count of negligent dereliction of duty.

January 24, 2012 - Wuterich is sentenced to 90 days in prison and a reduction in pay and rank, from staff sergeant to private.

May 30, 2013 - A Defense Department panel appointed by Defense Secretary Leon Panetta and Pentagon general counsel Jeh Johnson issues its report on investigations and prosecutions of US troops implicated in the abuse or murder of civilians in war zones. The panel recommends that in the future, criminal proceedings should be handled by the senior commander in the theater of combat and not the accused soldier's military branch. The panel was established after the investigation of the Haditha massacre led to no serious consequences for the accused soldiers.

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An Iraqi Massacre, a Light Sentence and a Question of Military Justice

By Charlie Savage and Elisabeth Bumiller

Jan. 27, 2012

WASHINGTON — The collapse this week of the prosecution of a Marine for a civilian massacre in Haditha, Iraq — a striking outcome, even in a military justice system with a mixed record of charging soldiers for war crimes — has not only outraged Iraqis but also stunned some American military law specialists.

“It’s a travesty,” said Eric S. Montalvo, a former prosecutor and defense counsel in the Marine Corps who is now in private practice specializing in military law. “I don’t believe that justice was served.”

The 2005 massacre, which came after a roadside bombing of a Marine convoy, killed 24 Iraqis, including women, children and a man in a wheelchair.

People who followed the case say it collapsed largely because of prosecutors’ errors — including giving immunity to squad mates whose credibility as witnesses came into question, and tactical decisions that led to a lengthy delay before the trial got under way.

By the time of the trial last week, charges against six Marines had been dropped, and a seventh Marine had been acquitted in a court martial. After several days of spotty testimony about the last remaining defendant, Staff Sgt. Frank Wuterich, 31, who admitted telling his men to “shoot first and ask questions later” after the bombing, the military agreed to a plea deal allowing him to avoid prison time.

“It was a series of missteps, errors built upon mistakes, until the case was just untriable,” said Lt. Col. Gary D. Solis, a retired Marine Corps judge who now teaches military law at Georgetown University.

The Marine Corps rejected any claim of incompetence in the prosecution of the Haditha case.

“The case was handled in strict accordance with the Uniform Code of Military Justice,” said Lt. Col. Joseph Kloppel, a spokesman.

Some of the challenges that the prosecution faced dovetailed with the difficulties often encountered in efforts to prosecute troops for unlawful killings in combat zones. Collecting physical evidence and finding witnesses can be difficult because the killings often occur in unstable and dangerous areas, and the cases often come to light only after time has passed.

The Haditha case also fits another pattern: Many cases involving civilian deaths arise during the chaos of combat or shortly afterward, when fighters’ emotions are running high; they can later argue that they feared they were still under attack and shot in self-defense.

In those so-called fog-of-war cases, the military and its justice system have repeatedly shown an unwillingness to second-guess the decisions made by fighters who said they believed they were in danger, specialists say.

“There is a surprising pattern of acquittals,” said Eugene R. Fidell, who teaches military justice at Yale Law School. “I think there is an unwillingness in some cases of military personnel to convict their fellow soldiers in the battle space.”



Staff Sgt. Frank Wuterich at Camp Pendleton, Calif., after being sentenced in the 2005 massacre of 24 civilians in Haditha, Iraq. Alex Gallardo/Reuters

The limited data available suggests that even when the military has tried to prosecute troops for murder or manslaughter in a combat zone, the acquittal rate has been significantly higher than it is in the civilian context.

Over the last 10 years, the Army has court-martialed 43 people on murder or manslaughter charges in cases that occurred in Iraq or Afghanistan and that included both civilian victims and detainees. Twenty-eight were convicted and 15 acquitted.

That acquittal rate is more than twice as high as it is in civilian criminal cases, said Stephen A. Saltzburg, a law professor at George Washington University. But, he said, the gap is not surprising, given the chaos of combat.

“Those considerations mean there’s more likely to be a reasonable doubt, when you’re trying to figure out what happened,” he said.

The Marine Corps did not offer a detailed breakdown of its court-martial numbers, and even the numbers provided by the Army offer only a limited window into unlawful killings in the war zones. For example, they do not cover cases involving a lesser charge like negligent homicide, or those punished with administrative reprimands.

Some cases that have received prominent attention have never led to charges.

For example, in 2008 the military did not bring charges against two Marines who commanded a unit accused of firing indiscriminately at cars and bystanders along a 10-mile stretch in Afghanistan, killing 19 people and wounding 50. The shootings began after a suicide bomber attacked the unit, and the Marines said they were being shot at and had fired to defend themselves as their convoy fled.

By contrast, the justice system has been more likely to hand down convictions and lengthy sentences for killings detached from the chaos of combat.

One soldier was sentenced to life in prison — and another who testified against him received 24 years — in the “kill team” case in Afghanistan in 2010. In that case, the defendants were part of a drug-addicted platoon and were accused of deliberately going out with the goal of killing civilians at random — and collecting body parts as trophies.

Similarly, in 2006 an Army unit from a checkpoint in Mahmudiya, Iraq, gang-raped a 14-year-old girl who lived nearby and killed her and her family, with a plan to blame the deaths on insurgents — another premeditated crime that was not connected to combat. One soldier who had left the service by the time the case came to light was prosecuted in civilian court and sentenced to life, while three other soldiers received sentences of 90 to 110 years in a court-martial.

Colonel Solis also said that in the early years of the Afghanistan and Iraq wars, the military appeared to be particularly unwilling to hand out convictions to troops who killed civilians. But notwithstanding the Haditha case, he said, that generally changed over time, with more convictions and lengthier sentences in later years, including several involving the shooting of Iraqi prisoners.

Sarah Holewinski, executive director of the Campaign for Innocent Victims in Conflict, said it was impossible to know how many civilian deaths had occurred. She described bodies piling up in morgues with gunshot and shrapnel wounds or burns, but little way to find out who they were, who had killed them or whether they had been targets or caught in cross-fire.

“The fact that there was very little accountability for what happened in Haditha, that’s really frustrating,” she said. “We actually knew who these people were in Haditha. We knew their names. Usually we don’t even know who the civilian casualties were.”

Correction: Feb. 1, 2012

An article on Saturday about criminal cases arising from the wartime killing of civilians over the past decade, including one in which eight Marines were charged in connection with the killing of 24 civilians in Haditha, Iraq, in 2005 misstated the venue in which one of the Marines was acquitted. First Lt. Andrew A. Grayson was tried in a court martial, not in a civilian court.

A version of this article appears in print on , Section A, Page 17 of the New York edition with the headline: An Iraqi Massacre, a Light Sentence and a Question of Military Justice

Sections

Your Marine Corps

Two Marine Raiders and corpsman face manslaughter charges in retired Green Beret master sergeant's death

By **Todd South**

Dec 16, 2019



Decorations are displayed on the main square of the northern Iraqi city of Arbil, on December 29, 2013, two days ahead of the New Year's celebrations. (Safin Hamed/AFP/Getty Images)

Two Marine Raiders and a Navy corpsman with 3rd Raider Battalion face a general court-martial for charges related to the death of a retired Green Beret working as a Lockheed

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Martin defense contractor in Erbil, Iraq.

Gunnery Sgt. Joshua Negron, Gunnery Sgt. Daniel Draher and Chief Petty Officer Eric Gilmet face charges that include involuntary manslaughter, negligent homicide, obstructing justice and orders violations, according to Marine Corps Forces Special Operations Command.

Ad

The charges stem from an alleged fight outside of an Erbil, Iraq, nightclub in the early morning hours of New Year's Day, Jan. 1, 2019, that resulted in the death of Rick Anthony Rodriguez, a retired Army Special Forces master sergeant with multiple combat deployments who once served as operations sergeant for Operation Detachment Alpha Team 775.

“At this time, charges against three members of MARSOC in connection with the death of Mr. Rodriguez have been referred to a general court-martial,” according to a Marine Corps Forces Special Operations Command email statement. “During this process, it is imperative that the rights of the service members are protected, and the integrity of the military justice system is maintained. We are committed to ensuring this process is conducted in a fair and impartial manner.”

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Two Marines, Navy corpsman under investigation in Iraq death of contractor and former Green Beret

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The former Green Beret's death is the latest in a series of misconduct to hit the special operations community.

By **Shawn Snow**

Phillip Stackhouse, attorney for Draher, described statements and video footage presented at an Article 32 hearing in September; charges were referred in early December. Arraignments are being scheduled for each of the defendants.

Ad

“To me it’s overcharging for the circumstances that took place,” Stackhouse said.

Draher shared in a statement through his attorney with Marine Corps Times that while he and others involved acted in self-defense, Rodriguez’s death was nonetheless tragic and, “I wish his family and friends did not have to feel the pain and sorrow that I am sure they do.”

Attorneys for Negron and Gilmet did not immediately respond to requests for comment.

When Stackhouse spoke with Marine Corps Times he referred to both his client and the co-defendants only by their initials, due to the sensitive nature of the individuals’ work.

Ad

Based on what was shared at the September hearing, witnesses made statements and video evidence showed that Rodriguez and other defense contractors were celebrating the new year in the off-base nightclub.

Negron, Draher and Gilmet reportedly arrived at the club. Gilmet and Roridguez spoke initially. Later that night, security camera footage appeared to show Rodriguez visibly angry and shouting at Gilmet.

Rodriguez was escorted from the club by security, Stackhouse said, where he and his colleagues waited outside.

Outside of the club, Draher told the court in a statement, he, Negron and Gilmet approached Rodriguez to resolve the argument.

Ad

Draher allegedly walked up to Rodriguez, who lunged at him, Draher said he thought that Rodriguez was going to head-butt him so he shoved him back with one hand to the chest.

That's when Rodriguez made a wide swing at Draher, Stackhouse said. It's not clear whether the swing struck Draher, but Rodriguez then cocked back to swing again at Draher. Mid-swing, Negrón stepped in and punched Rodriguez once, knocking him to the ground.

Rodriguez was unconscious. The crowd began to back away. Gilmet reportedly checked on Rodriguez, turned him on his side because he'd been knocked out and appeared intoxicated.

Much of the rest of the people dispersed, Stackhouse said. Draher, Negrón and Gilmet loaded Rodriguez into their vehicle to take him back to their base.

Ad

"They basically checked him out, ensure he was breathing and everything looked okay with him," Stackhouse said. "(Gilmet) stayed with him quite a bit of time, the guy was clearly intoxicated. They didn't want him to aspirate on his own vomit."

They took him to temporary housing, where Gilmet observed him to ensure he was alright. He asked a roommate to keep an eye on him later that morning while he got food and changed clothes. A short time later, the roommate told Gilmet that something was wrong with Rodriguez.

They began immediate emergency medical procedures, Stackhouse said. And then loaded him on a truck to take him to a medical facility.

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Rodriguez was later transported to Landstuhl, Germany, and removed from life support a few days later.

Naval Criminal Investigative Service launched an investigation into the incident. Draher, Negron and Gilmet were sent home before the end of their tour.

This is the full statement provided to Marine Corps Times by Draher through his attorney:

“I am disappointed that my command decided to charge me and my colleagues with Mr. Rodriguez’s death. What happened on January 1, 2019 was an accident, not brought on by our actions – but unfortunately by the actions of Mr. Rodriguez. As we have said from the beginning, and is captured on video, Mr. Rodriguez attacked me in a drunken state. My colleagues and I reacted only in self-defense, once the fight was over it was me and my colleagues - not his friends- who took him back to our base for safety. The fact that Mr. Rodriguez passed away is nothing short of tragic and I wish his family and friends did not have to feel the pain and sorrow that I am sure they do. In the end, I have to trust the system in which I find myself. I would have much preferred to have had the trust and support of my command.”

Stackhouse said that the underlying allegation linked to the obstruction charge was likely because the men took Rodriguez to housing rather than immediately to a medical facility, and other charges included curfew violation for staying out past midnight and allegations of consuming alcohol while deployed in theater.

About **Todd South**

Todd South has written about crime, courts, government and the military for multiple publications since 2004 and was named a 2014 Pulitzer finalist for a co-written project on witness intimidation. Todd is a Marine veteran of the Iraq War.

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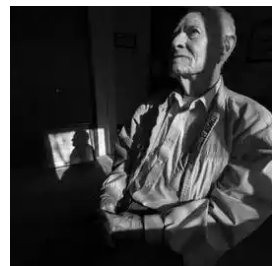
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Officials said they have now identified three Air Force housing communities, five Navy communities and two Army communities affected by the contamination.



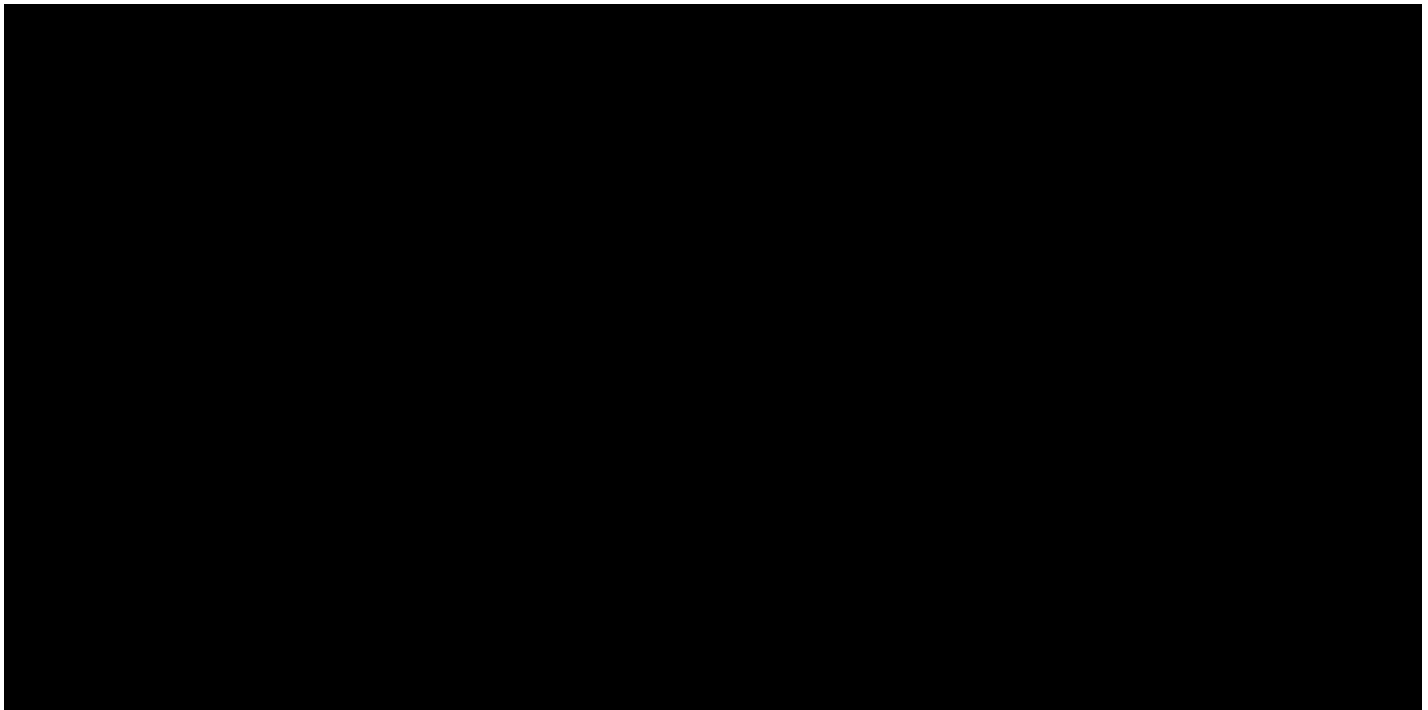
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A defense contractor died after a bar fight with Marines, and some see a crime. Others see an accident and overzealous prosecution.

By [Dan Lamothe](#)

August 3, 2020



The party was winding down around 4 a.m. when the fight erupted. The crowd at a bar in northern Iraq — including Special Operations Marines, defense contractors and civilians — had been drinking and dancing for hours, ringing in the new year.

A conversation between two Americans turned sour. A burly, bearded defense contractor speaking to a Navy corpsman screamed at least one profanity at him, witnesses later said. Bouncers ejected the contractor, an Army Special Forces veteran, who threatened to hurt the sailor when he came outside.

Bouncers told the sailor and two Marine friends to wait five minutes before leaving. But that did not de-escalate the situation.

The three men approached the contractor and his colleagues outside, and a brawl ensued. One of the Marines punched the contractor in the side of the head, and the contractor spun around and landed on the back of his head, suffering a nine-inch skull fracture, according to previously unreported military documents and security video reviewed by The Washington Post. He died a few days later, on Jan. 4, 2019.

The contractor's death is at the center of military trials of the sailor and the two Marines, all members of the elite Marine Forces Special Operations Command (MARSOC). It is one of several recent incidents that have raised concerns about the conduct of America's elite combat forces, including [an alleged sexual assault by a Navy SEAL in Iraq last summer](#), cocaine use, and the [strangulation of a Green Beret soldier in Mali in 2017](#).

The incidents prompted a review last year by Army Gen. Richard D. Clarke, chief of U.S. Special Operations Command, which found an erosion of leadership and ethics after nearly 20 years of war in Iraq, Afghanistan, Syria and beyond. The [resulting report](#) did not cite any specific case but said combat deployments have been “valued above all other things,” including professional development and personal maturity.

“We have often been too complacent as we build, train and certify our teams for the rigors of operating in a complex world,” Clarke said. “We are renewing emphasis on proper accountability and supervision, and setting conditions for leader presence in the right places.”

While military leaders say they are pursuing a culture change, they shielded details of the MARSOC case from public

The hearing went unannounced “in accordance with service regulations that prohibit including the name of accused in routine disseminations,” said Maj. Kristin Tortorici, a Marine spokeswoman. Hearings in such high-profile cases are typically disclosed.

The lack of transparency, as well as inaccurate rumors about the case that spread in the Special Operations community, has stoked suspicions that the Marine Corps is hellbent on obtaining convictions to send a message.

Ten other Marines were punished for “collateral misconduct” uncovered during the investigation, Tortorici said. She declined to describe the punishments, which have not previously been reported.

Some of the Marines punished administratively were present during the fight and have “credibility issues” after making false statements to investigators, according to a military report detailing the case, which was first reported last year by the New York Times.

As in several of the other recent cases, alcohol appears to have played a role, even though with few exceptions it is banned for deployed service members.

The contractor, Richard A. Rodriguez, 45, of Raeford, N.C., was a retired master sergeant and married father with four children. He served 21 years in the Army, deploying to Afghanistan four times and earning a Bronze Star with V for valor in combat in September 2009. At the time of his death, he was working for Lockheed Martin.

Charged in his death are Navy Chief Petty Officer Eric S. Gilmet, Marine Gunnery Sgt. Daniel A. Draher Jr. and Marine

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Rodriguez's sister said their mother was devastated by his death and died about a year later.

"I don't think her heart handled the sadness of losing one of her kids," Lori Rodriguez said.

The three service members declined interview requests, but their lawyers said they were acting in self-defense and helped Rodriguez after he was knocked out.

"The fact that a tragic accident happened here does not entail that a crime has been committed," said Brian Bouffard, Negron's attorney.

A night spirals out of control

Details in the case are laid out in a previously unreported 21-page document, dated last November, that includes the evidence reviewed at the hearing and recommendations for senior commanders.

The Americans gathered at the T-Bar, a pub that featured cocktail waitresses, loud music and a Christmas tree. U.S. personnel were allowed to go out for dinner if they got approval and signed out, but were expected to adhere to alcohol prohibitions and meet a midnight curfew.

It isn't clear when Rodriguez and his friends arrived, but video shows that they were in the bar shortly after midnight. The Marines — known as Raiders within the Special Operations community — and a sailor arrived an hour or two later, and can be seen on video greeting other patrons.

Gilmet said hello to Rodriguez, who worked on the same base. Rodriguez laughed at one point during their conversation.

The bar was emptying at 4:15 a.m. when Rodriguez appeared to struggle to get Gilmet's attention and erupted at the sailor before he was thrown out.

"The evidence establishes that Mr. Rodriguez initiated the situation that eventually escalated into the incident charged," the officer in charge of the Article 32 hearing, Col. Glen Hines, wrote in the report. Hines did not respond to interview requests.

The three service members approached Rodriguez outside a few minutes later.

Rodriguez asked, "Are we going to continue this?" or words to that effect, according to a contractor who was there with him, and Draher, one of the Marines, responded, "Yep," the report says.

Draher told investigators in an unsworn statement that Rodriguez poked him in the chest and was close enough that Draher could feel spittle landing on his face.

On video, it appears that Draher approached Rodriguez with his hands at his sides. Rodriguez then moved his head toward Draher, and Draher pushed him away. Rodriguez lunged and swung at Draher, and Negron moved in and punched Rodriguez in the left side of his face. Negron and Rodriguez, and possibly others, went down in a heap, video shows.

Draher, Gilmet and Negron took the contractor back to base in their pickup truck, as others out after curfew scattered, the report said.

Another contractor told investigators that the service members said they would have Rodriguez's injuries "looked at," which he thought meant they planned to take him to a nearby military hospital. But they took Rodriguez to his room, and Gilmet, who was trained in combat medicine, stayed with him overnight, the report said.

Negron told at least one other Marine the following morning that he had knocked Rodriguez out with one punch after the contractor became aggressive with Draher.

At 8:30 a.m., Gilmet asked another American to watch after Rodriguez. The contractor stopped breathing at 10:15 a.m. and was taken to a military hospital. The severity of his injury soon became apparent.

He was flown to Germany for additional care but died there with family members present.

Pending trial

After the hearing last fall, Hines recommended that the men face charges of involuntary manslaughter, negligent homicide and violation of a general order. A conviction on the first charge carries a sentence of up to 10 years.

While Rodriguez was an instigator that night, Hines concluded, the killing was "unlawful" and a "reasonable person" should have seen that his injuries were "serious enough to warrant immediate medical treatment."

But Hines also wrote that the service members could be acquitted if a jury finds they acted in self-defense.

Possession and consumption of alcohol, he added, "have always been prohibited, with a few narrow exceptions, none of which are applicable here."

MARSOC announced charges in December, adding obstruction of justice, and the trials are expected to begin this fall.

Inside the tightknit Marine Special Operations community, some believe the military has mishandled the case by pursuing criminal charges and telling others not to speak on the three men's behalf.

Aaron Vanderbeck, a Marine Raider veteran, said the accused have been ostracized within MARSOC for months, after inaccurate rumors circulated — and subsequently were reported in media accounts — that they had either pummeled or stomped Rodriguez to death.

"Danny, Josh and Eric, that could have been anyone of us," said Vanderbeck, who recently completed a cross-country bicycle ride to raise money for their legal defense. "How many of us have been in the wrong place at the wrong time?"

Rudy Reyes, a Marine veteran turned fitness celebrity, said he also initially heard the rumors that Negron, an old colleague, was accused of "boot-stomping" someone in Iraq.

"Then I find out that he was just defending his boys," Reyes said.

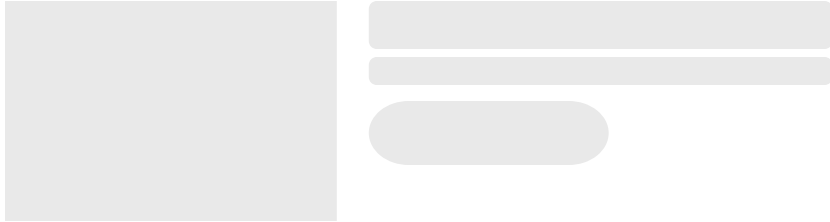
Lori Rodriguez called the allegations against her brother nonsense, describing him as a "protector" who would "never intentionally start a fight."

decided they were “not simply guilty, but also apparently unworthy of a fair trial,” Bouffard wrote.

A hearing on those allegations was held July 13, and the case was allowed to proceed. Tortorici, the Marine spokeswoman, said MARSOC is “committed to ensuring this legal process is conducted in a fair and impartial manner.”

Correction: An earlier version of this story incorrectly stated who fell to the ground in the fight on Jan. 1, 2019.

Julie Tate contributed to this report.





UNITED STATES MARINE CORPS
REGIONAL DEFENSE COUNSEL, EASTERN REGION
DEFENSE SERVICES ORGANIZATION
MARINE CORPS INSTALLATIONS EAST-MARINE CORPS BASE
BOX 20087
CAMP LEJEUNE, NORTH CAROLINA 28542-0087

5817
RDC/waw
28 SEP 19

From: Regional Defense Counsel
To: Captain Charles D. Strauss, U.S. Marine Corps

Subj: DETAILING IN THE CASE OF UNITED STATES V. CHIEF
PETTY OFFICER ERIC S. GILMET, USN

Ref: (a) MCO P5800.16A
(b) MARADMIN 336/13
(c) CDC Policy Memo 3.1B

1. Pursuant to the references, you are detailed to the following case:

- a) Name: Eric S. Gilmet
- b) Rank: Chief Petty Officer
- c) Unit: 3rd Marine Raider Battalion, Marine Raider Regiment, Marine Special Operations Command
- d) Charge: 92 x 2 (Violation Lawful General Order and Violation of Lawful Order), 119 (Involuntary Manslaughter), 131b (Obstruction of Justice) 134 (Negligent Homicide)
- e) PTC: N/A

2. Notice of representation will be filed with the trial counsel and you will meet with the client as soon as practicable.

3. Experienced civilian counsel is already representing the client, Mr. Colby C. Vokey, who can be reached at vokeylaw@colbyvokey.com or (214)697-0274. Please reach out to him at the earliest opportunity to coordinate your efforts in representing CPO Gilmet.

Subj: DETAILING IN THE CASE OF UNITED STATES V. CHIEF
PETTY OFFICER ERIC S. GILMET, USN

4. Questions or comments may be directed to the undersigned at
(910) 451-5996 or by e-mail at walter.wilkie@usmc.mil.

Lt. Col. W.A. Wilkie

W. A. WILKIE

Copy To:
SDC, DSO CAMP LEJEUNE
CIVILIAN DEFENSE COUNSEL
OIC, LSSS EAST
COMPLEX TRIAL TEAM, LSSS EAST
FILE



UNITED STATES MARINE CORPS
DEFENSE SERVICES ORGANIZATION
CAMP LEJEUNE BRANCH, EASTERN REGION
CAMP LEJEUNE, NORTH CAROLINA 28542-0125

IN REPLY REFER TO
5817
DSO/cds
25 Mar 20

From: Chief Petty Officer Eric S. Gilmet, U.S. Navy
To: Regional Defense Counsel
Via: (1) Trial Counsel
(2) Convening Authority

Subj: REQUEST FOR INDIVIDUAL MILITARY COUNSEL IN THE CASE OF UNITED STATES
V. CHIEF PETTY OFFICER ERIC S. GILMET, USN

Ref: (a) R.C.M. 506(b), MCM
(b) JAGMAN § 0131
(c) MCO 5800.16 (LSAM) Vol. 3, § 0112
(d) CDC Policy Memo 3.1C dtd 20 Jun 19

Encl: (1) Charge Sheet dtd 20191205

1. Pursuant to the references, I respectfully request that Captain (Capt) Matthew J. Thomas, U.S. Marine Corps, be assigned as individual military counsel (IMC).

- a. Duty Station: MCI-East - Camp Lejeune, North Carolina
- b. Phone number, e-mail address: 910-451-8025; Matthew.Thomas@usmc.mil

11. An attorney-client relationship does not exist with the requested Individual Military Counsel.

111. As demonstrated by enclosure (1), I had charges referred against me on 5 December 2019.

1V. I have already retained Mr. Colby Vokey as civilian defense counsel. I request that Capt Thomas be detailed to my case as an associate defense counsel. I understand that my currently detailed associate defense counsel, Capt Strauss, will ordinarily be excused although I can request he remain on the case. That request is a matter of discretion of the detailing authority pursuant to reference (a). I am requesting that Capt Strauss remains an associate defense counsel in addition to Capt Thomas. However, I agree to release Capt Strauss in the event my trial is continued past July 2020.

V. Due to the serious nature of the charges, the forum, and the particular experience, training, and education of Capt Thomas, I request that he be made available to serve as my IMC. Capt Thomas has been recommended to me as an experienced defense counsel assigned to the Defense Services Organization (DSO). Capt Thomas has experience defending both Marines and Sailors, and his experience extends to cases including charges such as rape, child pornography, felony-level drug trafficking and sexual assault. Capt Thomas' ability to handle cases of great complexity would greatly benefit my defense. Capt Thomas' schedule enables him to support my case and provide me with a formidable defense.



E. S. GILMET

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI) GILMET, Eric S.		2. EDIPI 1258680150	3. RANK/RATE CPO/HMC	4. PAY GRADE E-7
5. UNIT OR ORGANIZATION 2d Marine Raider Battalion, Marine Raider Regiment, Marine Corps Forces Special Operations Command, Camp Lejeune, NC		DOB: 19840317 EAS: INDEF	6. CURRENT SERVICE a. INITIAL DATE: 20131031 b. TERM: 5 Yrs 10 Mos	
7. PAY PER MONTH		8. NATURE OF RESTRAINT OF ACCUSED None	9. DATE(S) IMPOSED N/A	
a. BASIC \$4,609.80	b. SEA/FOREIGN DUTY \$0.00			

II. CHARGES AND SPECIFICATIONS

10. CHARGE I: **Violation of the UCMJ, Article 119**

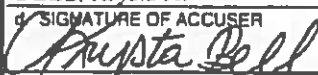
SPECIFICATION (Involuntary Manslaughter): In that Chief Hospital Corpsman Eric S. Gilmet, U.S. Navy, did, at or near Erbil, Iraq, on or about 1 January 2019, by culpable negligence, unlawfully kill the Mr. Richard A. Rodriguez, by failing to ensure that the said Mr. Rodriguez was transported to a medical facility in a timely manner.

CHARGE II: **Violation of the UCMJ, Article 134**


SPECIFICATION (Negligent Homicide): In that Chief Hospital Corpsman Eric S. Gilmet, U.S. Navy, did, at or near Erbil, Iraq, on or about 1 January 2019, unlawfully kill Mr. Richard A. Rodriguez, by negligently failing to ensure that the said Mr. Rodriguez was transported to a medical facility in a timely manner, and that said conduct was to the prejudice of good order and discipline in the armed forces and was of a nature to bring discredit upon the armed forces.

CHARGE III: **Violation of the UCMJ, Article 131b**

SPECIFICATION (Obstructing Justice): In that Chief Hospital Corpsman Eric S. Gilmet, U.S. Navy, did, at or near Erbil, Iraq, on or about 1 January 2019, wrongfully do a certain act, to wit: return the unconscious Mr. Richard A. Rodriguez to his quarters to avoid the command discovering the said Chief Hospital Corpsman Gilmet's alcohol consumption, curfew violation, and fight with an American contractor, with intent to obstruct the due administration of justice in the case of himself, Gunnery Sergeant Joshua S. Negron, U.S. Marine Corps, and Gunnery Sergeant Daniel A. Draher, U.S. Marine Corps, against whom the accused had reason to believe that there were or would be disciplinary proceedings pending.

11a. NAME OF ACCUSER (Last, First, MI) BELL, Krysta A.	b. GRADE GySgt	c. ORGANIZATION OF ACCUSER H&S Bn. MCIEAST. MCB, Camp Lejeune, NC
d. SIGNATURE OF ACCUSER 		e. DATE 20190918

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 18th day of September, 2019, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

W. P. PENDLEY
 Typed Name of Officer
Major, U.S. Marine Corps
 Grade and Service

 Signature

H&S Bn, MCIEAST, MCB, Camp Lejeune, NC
 Organization of Officer
Judge Advocate
 Official Capacity to Administer Oaths
 (See R. C. M. 307(b)—must be commissioned officer)

12. On September 20, 2019, the accused was informed of the charges against him/her and of the name(s) of the accuser(s) known to me. (See R.C.M. 308(a)). (See R.C.M. 308 if notification cannot be made.)

ELLIOT I. HERMAN

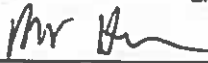
Typed Name of Immediate Commander

MARFORSOC, Camp Lejeune, NC

Organization of Immediate Commander

Captain, U.S. Marine Corps

Grade



Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13. The sworn charges were received at 1400 hours, September 19 2019 at MARFORSOC
Camp Lejeune, NC *Designation of Command or*

Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

FOR THE COMMANDING OFFICER

ELLIOT I. HERMAN

Typed Name of Officer

Legal Officer

Official Capacity of Officer Signing

Captain, U.S. Marine Corps

Grade



Signature

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY

b. PLACE

c. DATE

U.S. Marine Corps Forces Special Operations Command

Camp Lejeune, NC

DEC 05 2019

Referred for trial to the General court-martial convened by courts-martial convening order # 1-19

dated 27 February 2019, subject to the following instructions:² To be tried in conjunction with the additional charge preferred on 25 November 2019.

By XXXXXXXXXXXXXXXXXX of _____
Command or Order

D. D. YOO

Typed Name of Officer

COMMANDING GENERAL

Official Capacity of Officer Signing

Major General

Grade



Signature

15. On _____, 2019, I (caused to be) served a copy hereof on (each of) the above named accused.

W. P. PENDLEY

Typed Name of Trial Counsel

Major, U.S. Marine Corps

Grade or Rank of Trial Counsel

Signature

FOOTNOTES

- 1 - When an appropriate commander signs personally, inapplicable words are stricken.
- 2 - See R.C.M. 601(e) concerning instructions. If none, so state.

ORIGINAL

ENCL 10

CHARGE IV:

Violation of the UCMJ, Article 92

SPECIFICATION 1 (Violation of a Lawful General Order): In that Chief Hospital Corpsman Eric S. Gilmet, U.S. Navy, did, at or near Erbil, Iraq, on or about 1 January 2019, violate a lawful general order, which was his duty to obey, to wit: paragraph 2a of U.S. Central Command General Order 1C, dated 21 May 2013, by wrongfully consuming an alcoholic beverage.

~~**SPECIFICATION 2 (Violation of a Lawful Order):** In that Chief Hospital Corpsman Eric S. Gilmet, U.S. Navy, having knowledge of a lawful order issued by Commander, Special Operations Task Force-North, setting a curfew for off-base travel at 2359 hours, an order which it was his duty to obey, did, at or near Erbil, Iraq, on or about 1 January 2019, fail to obey the same by wrongfully remaining off base past the established curfew.~~

*With drawn
and dismissed
5 Dec 19
DHR*

ORIGINAL

ENCL 10

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI) GILMET, Eric S.		2 EDIPI 1258680150	3 RANK/RATE CPO/HMC	4 PAY GRADE E-7
5. UNIT OR ORGANIZATION 2d Marine Raider Battalion, Marine Raider Regiment, Marine Corps Forces Special Operations Command, Camp Lejeune, NC		DOB: 19840317 EAS: INDEF	6. CURRENT SERVICE a INITIAL DATE: 20131031 b TERM: 5 Yrs 10 Mos	
7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED	
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL	None N/A	
\$4,609.80	\$0.00	\$4,609.80		

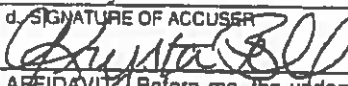
II. CHARGES AND SPECIFICATIONS

10.


ADDITIONAL CHARGE: Violation of the UCMJ, Article 92

SPECIFICATION (Dereliction in the Performance of Duties): In that Chief Hospital Corpsman Eric S. Gilmet, U.S. Navy, assigned to Special Operations Task Force-North, who knew of his duties at Forward Operating Base 762, Erbil, Iraq, to wit: to comply with the established curfew by returning from off base travel no later than 2359, was derelict in the performance of those duties on or about 1 January 2019, in that he willfully failed to follow the established off-base curfew by returning on base by 2359 hours, 31 December 2018, as it was his duty to do.

III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, MI) BELL, Krysta A.	b GRADE GySgt	c ORGANIZATION OF ACCUSER H&S Bn, MCIEAST, MCB, Camp Lejeune, NC
d. SIGNATURE OF ACCUSER 		e. DATE 20191125

AFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 25th day of November, 2019, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

W. P. PENDLEY
 Typed Name of Officer
Major, U.S. Marine Corps
 Grade and Service

 Signature

H&S Bn, MCIEAST, MCB, Camp Lejeune, NC
 Organization of Officer
Judge Advocate
 Official Capacity to Administer Oaths
 (See R.C.M. 307(b)—must be commissioned officer)

5817
DSO
20 Apr 20

THIRD ENDORSEMENT on CPO Gilmet's ltr 5817 DSO/cds of 25 Mar 20

From: Regional Defense Counsel – East
To: Chief Petty Officer Eric S. Gilmet, U.S. Navy

Subj: REQUEST FOR INDIVIDUAL MILITARY COUNSEL IN THE CASE OF
UNITED STATES V. CHIEF PETTY OFFICER ERIC S. GILMET, USN

Ref: (e) JAGMAN § 0145

1. Readdressed and returned.
2. After careful consideration, I have find that Captain Thomas is reasonably available to serve as your individual military counsel (IMC) and your request is therefore approved. Additionally, your request that Captain Strauss remain on the case as your detailed defense counsel is approved.
3. As is explained in reference (e), the Convening Authority is responsible for funding Captain Thomas's travel, per diem, and approved litigation expenses related to this case.



S. M. DEMPSEY

Copy to:
TC
DC
SJA
IMC
MJ

5817
RDC
20 Apr 20

From: Regional Defense Counsel - East
To: Captain Matthew J. Thomas, U.S. Marine Corps
Subj: DETAILING IN THE CASE OF UNITED STATES V. CHIEF PETTY OFFICER ERIC S. GILMET, USN
Ref: (a) MCO 5800.16
(b) CDC Policy Memo 3.1C
(c) CPO Gilmet ltr 5817 DSO/cds of 25 Mar 20 w/ endos

1. Pursuant to the references, you are detailed to the following case:
 - a. Name: Eric. S. Gilmet
 - b. Rank: Chief Petty Officer
 - c. Unit: MARSOC
 - d. Charge: 92, 119, 131b, 134
 - e. PTC: None
2. Notice of representation will be filed with the trial counsel and you will meet with the client as soon as practicable.
3. Questions or comments may be directed to the undersigned at (910) 451-5996 or by e-mail at suzanne.dempsey@usmc.mil.


S. M. DEMPSEY

Copy to:
SDC
DC
STC
File

**UNITED STATES MARINE CORPS
GENERAL COURT-MARTIAL
EASTERN JUDICIAL CIRCUIT**

<p>UNITED STATES</p> <p>v.</p> <p>ERIC GILMET Chief Petty Officer U. S. Marine Corps</p>	<p style="text-align:center">Defense Affidavit</p> <p style="text-align:center">Date: 6 December 2021</p>
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SWORN AFFIDAVIT

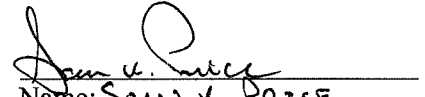
I, CPO Eric Gilmet, declare under penalty of perjury:

1. In early 2020, I sought out recommendations regarding experienced attorneys in the Defense Service Organization (DSO) to represent me in my court-martial.
2. After speaking to several different attorneys and Marines in the legal community, Captain Matthew Thomas was recommended universally.
3. As a result, I filed an Individual Military Counsel request in order for Captain Matthew Thomas to be assigned as my military defense counsel.
4. In April 2020, my request for Captain Thomas to serve as Individual Military Counsel was approved and shortly thereafter, he and I established an attorney-client relationship. He has been representing in this court-martial for the last approximately twenty months.
5. Captain Thomas's has represented me during numerous Article 39(a) sessions, countless R.C.M. 802 conferences, and most recently during the court-directed deposition of Major Benjamin Wiestra, a relevant witness in my case.
6. In the Spring of 2021, Captain Thomas and I had conversations about his possible departure from the DSO due to his projected billet rotation.
7. Despite Captain Thomas's projected billet rotation, I elected not to sever our attorney client relationship based on the trust and confidence that I had built with Captain Thomas.
8. Up until November 2021, I had confidence that his legal representation was unfettered from outside influence.
9. Up until November 2021, I was fully satisfied with Captain Thomas in all aspects and considered him qualified to represent me in my court-martial.
10. After being informed of the meeting between Colonel Christopher Shaw and Camp Lejeune's DSO, I believe that Captain Thomas has a personal interest that is inconsistent with his representation of me in this court-martial.
11. My belief is based on the comments made by Colonel Shaw to Captain Thomas during the DSO meeting and the impact those comments have on Captain Thomas.
12. I no longer believe Captain Thomas is able to provide legal representation without consciously or subconsciously being influenced by Colonel Shaw's comments and the possible impact that his continued representation would have on his career progression.
13. I have lost faith and confidence in the military justice system.



Eric Gilmet
Chief Petty Officer
U.S. Navy

Sworn to and subscribed before me this 10th day of December, 2021.



Name: SEAN W. PRICE
Rank: Major
Branch: US Marine Corps
10 U.S. Code § 1044a

**UNITED STATES MARINE CORPS
GENERAL COURT-MARTIAL
EASTERN JUDICIAL CIRCUIT**

<p>UNITED STATES</p> <p>v.</p> <p>ERIC GILMET Chief Petty Officer U. S. Navy</p>	<p style="text-align:center">Defense Affidavit</p> <p style="text-align:center">Date: 10 December 2021</p>
--	--

SWORN AFFIDAVIT

I, Captain J. Keagan Riley, declare under penalty of perjury:

1. On 22 November 2021, it was brought to my attention that there was an incident that occurred at the Company Grade Defense Service Office meeting with Colonel Shaw on 18 November 2021.
2. I was not present for the meeting because I was on leave.
3. However, I am aware that Col Shaw currently oversees Community Development with Marine Corps Judge Advocate Division, and that he is involved in billet and duty station assignments.
4. During the meeting, Col Shaw directly addressed Capt Thomas, my co-counsel, telling him that the Defense Service Office's chain of command was a legal fiction. He stated that Marine Defense Counsel are shielded, but not protected.
5. He specifically stated that he knew who Captain Thomas was, he knew what cases he was on, and that Captain Thomas was not protected. He elaborated that defense counsel are shielded in our FitRep process, but the legal community is small and the lawyer on promotion boards will know you.
6. He then gave an example, that attorneys on the Haditha cases, who spent 4-5 years in the DSO were good attorneys, but did not get promoted even though they should have.
7. While these comments were directly spoken to Capt Thomas, they seem to apply to me with equal force.
8. While I have only been assigned to the Camp Lejeune Defense Services Office for a little over a year, I take pride in zealously advocating for my clients. It is my ethical duty.

9. The fact that Col Shaw's statements were made directly to my military co-counsel, and that my civilian co-counsel, Mr. Vokey, who represented SSgt Wuterich in the Haditha cases, may have been one of the attorneys used as an example in Col Shaw's response is deeply concerning to me.
10. I fear that zealous advocacy of my clients, but most specifically Chief Gilmet, will put my standing and opportunities in the Judge Advocate Community at risk.
11. Further, I have looked up to Captain Thomas, who is one of our most senior defense counsel at Camp Lejeune, and respect his work at the DSO. I'm concerned that if Capt Thomas were to sever his attorney client relationship with Chief Gilmet, that I would then be left exposed to the direct pressure he is currently facing.
12. Most importantly, the implications of Col Shaw's message appear to have created serious questions in the mind of Chief Gilmet. He now questions the loyalty of his military defense counsel. I am not sure how I can rebuild his trust when it appears that acting in his best interest will be to my own detriment.



J. Keagan Riley
Captain
U.S. Marine Corps