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HADITHA: The Sins of Generals, Part Three

An open letter regarding Haditha to General Peter W. Chiarelli, Commander of the Multi-National Corps in Iraq (November 2005-February 2006)

Bob Weimann | February 8, 2009 | Pdf version

"...an investigator should be unfailing in his quest for the truth. He should remember that his job is to conduct an impartial inquiry, designed to establish all the facts in the case, and not to perfect a case whether for the government or for the accused..."

--*Military Law*, Edward M. Byrne

General Chiarelli, as the Commander of the Multi-National Corps in Iraq and one of the Combat Commander's senior representatives in Iraq, I believe you are guilty of dereliction of duty by pandering to the Washington, DC political powers. In the U.S. Uniform Code of Military Justice (UCMJ), dereliction of duty is addressed within the regulations governing the failure to obey an order or regulation. It means that one willfully, through negligence or culpable inefficiency, fails to perform one's expected duties. The dereliction of duty is your failure to follow regulations and procedures in two investigations (the Watt and Bargewell Investigations) ordered by you, concerning the November 19, 2005 Haditha incident.

Your Watt report follows the traditional investigation template by first stating the findings of fact, then presenting opinions by answering the questions based on the allegations raised by Time reporter, Tim McGirk, and finishing with recommendations. The investigation questions, include the intentionally targeting civilians, failure to use PID (positive identification), and if the amount of force was proportional.

The investigation finds no violations to the Rules of Engagement. The opinions include statements of:

"No, there are no indications that CF (Coalition Forces) intentionally targeted, engaged and kill non-combatants..."

Anti-CF were indistinguishable from non-combatants...

The amount of force was proportional...appropriate in nature, scope and duration...

...hostile action set conditions that made it difficult for CF to PID/discriminate while executing offensive room clearing techniques..." [1]

In other words, the investigation findings state that SSgt Wuterich and his Marines followed their training and complied with the Rules of Engagement.

The Watt investigation "Recommendations" are as expected, except for the first lettered paragraph stating:

"Recommend further investigation by CID/NCIS, however given time lapsed, Solatia payments, RIP/TOAs [2], renovations to House #1 and House #2, obtaining more prosecutable evidence will be extremely difficult." [3]

This recommendation is remarkable not only because it is not supported by facts or opinions but also because it seems contradictory to the stated opinions. The above statement simply appears without comments or findings. For this reason, it smacks of undue command influence and that responsibility failure, as the convening authority, is yours, General Chiarelli.

At the completion of the Watt investigation you must make a decision; either refer the investigation to General Abizaid, the CENTCOM Combat Commander or referred it to Major General Zilmer (USMC) Component Commander, MNF-W (Multi National Forces – West). If you referred it to General Abizaid, it would have forced him to state that the Watt investigation found the Marines acted in accordance with ROEs. At that particular moment, that statement was not the answer the media, Congress or the Pentagon wanted. Instead you refer the investigation to your Marine subordinate commander, General Zilmer, who initiates two other investigations.

You referred that investigation to the senior Marine commander because you know your *"subordinate component commanders were reporting to, and no doubt influenced by, members of a committee in Washington composed of the Service Chiefs"* [4]. In this particular case, it is the Commandant of the Marine Corps. You knew and learned of this combat command issue years before, when working for General Wesley Clark, as his Executive Officer, during the NATO Kosovo war air campaign.

The first Zilmer investigation initiates NCIS actions to determine possible criminal misconduct. Again this is a surprise, because if the Watt investigation could not determine criminal conduct why would the Zilmer investigation be able to make a different determination?

The second investigation is initiated to examine and evaluate reporting procedures from squad to MNF-W Headquarters. On March 19, 2006, you start yet another investigation to review official reporting and Marine training regarding the ROE (Rules of Engagement) by appointing Major General Eldon Bargewell as the investigation officer.

Two days after referring the investigation to General Zilmer, NCIS (sent by the Marine Corps Commandant, General Hagee) arrives in country and starts their investigation. It is after NCIS's arrival that both Zilmer investigations are rolled into your Bargewell investigation. This "sleight of hand" administrative maneuver is important to focus on because it empowers the Bargewell investigation as the primary driver for the charges against the Haditha Marines. Another way to describe this action is; because you didn't get what you wanted in the Watt investigation, and afraid you were not going to get what you wanted from the Zilmer investigation; you exerted your influence to initiate another investigation to support the politically motivated rush to judgment by Congressman John Murtha and Marine Corps Commandant, General Hagee.

You know the primary purpose of an investigation is to establish the facts free of impartiality; yet, there is no "Finding of Facts" section, in the report. The Bargewell investigation does not follow a standard military investigation template and the majority of the paragraphs contain unsubstantiated opinion and conclusions. The investigation, instead of establishing the facts without prejudice, reads like a prosecutor's grand jury indictment.

Normally, in a civilian case, the prosecutor must convince the grand jury that there exists reasonable suspicion, probable cause, or a *prima facie* case that a crime has been committed. Suspicion and probable cause are a long way from an investigation requirement of presenting facts and evidence. Your investigator appears to be manipulating the system to support the rush to judgment created by Congressman John Murtha and the Pentagon.

Again, the Bargewell investigation rather than establishing the facts, instead states opinion. This approach is not surprising since one of the authors of the report, Col Ewers (a Marine lawyer), is later found responsible for "unlawful command influence" in Lt Col Chessani's Court Martial. The military judge found that Col Ewers unfairly tainted the case and dropped the charges against Lt Col Chessani, the 3/1 Battalion Commander. Col Ewers taint did not start months later while on General Mattis staff but here in the Bargewell investigation.

A good example of a pre-determined opinion can be found in the Bargewell investigation under the heading "Limitations". There it states:

"At the outset of this investigation the state of the evidence on the underlying events indicated that Iraqi civilian casualties suffered near the intersection of Routes Chestnut and Viper in Haditha on 19 November 2005, were caused by a negligent or, at worst reckless application of ROE by Marines from Company K, 3/1... The Watt investigation had made preliminary findings on those events and directly led to a NCIS investigation..." [5]

The Watt investigation does not state, or establish that evidence exists that the Iraqi casualties were due to negligent or reckless application of the ROE. In fact, Watt makes for a strong case against negligence and recklessness. Col Watt at worse, states in the investigation, for example:

"In House #1 and #2 hostile actions set conditions that made it difficult for CF to PID/discriminate while exercising offensive room clearing techniques in House #1 and #2. Under these conditions individual PID may have been unrealistic to expect." [6]

The NCIS investigation is recommended in the Watt investigation but without justification. When you compare the two investigations it appears that your investigating officer is stating that because an NCIS investigation is ordered, the accused must be guilty. This is an example of how the Bargewell investigation uses unfounded assumptions and perceptions instead of facts to prejudice the case against the Haditha Marines.

Most commanders, after reviewing an investigation like the Bargewell report, would have recognized that it does not establish the facts as required but instead presents opinion. Most leaders would have issue an immediate and loud verbal counseling [7] to the investigating officer for this failure. By endorsing this investigation with your approval you failed to exercise your proper responsibility as the investigation authority.

General Chiarelli, the Haditha Case has dragged on for more than three years and two Marines still linger in a legal limbo waiting for the completion of their cases. Your Bargewell investigation is the foundation of the Haditha case and it failed to establish the facts and instead sustains and enhances false assumptions and perceptions. Bad investigations lead to embarrassing legal proceeding. You let your investigating officers run amuck using perceptions instead of facts to manipulation the military legal system to satisfy the Washington cry for scapegoats. General Chiarelli, as a war fighter, you have failed in exercising your responsibilities and duties and that, sir, is a sin.

[1] [The Watt investigation report](#)

[2] Reduction in Personal/Transfer of Authority

[3] Watt Investigation; para. 5.a.

[4] General Wesley K. Clark , "Waging Modern War", 2001, PublicAffairs, New York; p. 424

[5] [Bargewell Investigation](#); para. 2.a.

[6] Watt Investigation; para.4.b.(1)

[7] “verbal counseling” politically correct term for a nasty and painful butt crewing

Bob Weimann
Defend Our Marines
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Bob Weimann, LtCol USMC Ret

***Bob Weimann** is former Commanding Officer, Kilo Co., 3/1 and a senior contributing editor to *Defend Our Marines*.*

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[The Sins of Generals, Part One: An open letter to General Michael Hagee, Commandant of the Marine Corps \(2003-2006\)](#), October 11, 2008

[The Sins of Generals Part Two: Undue Influence from the Start](#), October 30, 2008.

[The Case for a Squad Leader: SSgt Wuterich in Haditha](#) July 25, 2008.

[Huzzah! Huzzah! HUZZAHHH!](#), June 6, 2008.

[Open Letter to the Commandant of the United States Marine Corps concerning the 3/1 Haditha Marines](#), February 8, 2008.

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