

 The North County Times - Californian

## MILITARY: Marine Corps knew it faced long odds in Wuterich prosecution

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For years, the Marine Corps knew its chances of winning a homicide conviction against Staff Sgt. Frank Wuterich in the slayings of two dozen Iraqi civilians were dicey.

Wuterich, 31, agreed Monday to plead guilty to dereliction of duty in the 2005 incident that sparked worldwide outrage. And that outcome was all the Marine Corps was ever likely to get, the service was told more than four years ago.

That opinion came from Lt. Col. Paul Ware, an experienced Marine Corps prosecutor and judge who presided as the investigative officer over hearings for Wuterich and two members of his Camp Pendleton squad.

The fact that the prosecution ultimately agreed to a plea of negligent dereliction of duty still leaves many scratching their heads: How did the Marine Corps ---- which originally charged Wuterich and three other enlisted men with murder, and four battalion officers with crimes tied to failing to investigate the incident ---- achieve only one minor conviction?

The Marine Corps forbids its prosecutors from commenting, so their explanation for why they pursued the case remains shrouded.

The hearings conducted by Ware ---- exhaustive examinations of what occurred in the city of Haditha ---- were conducted to decide whether charges would stand against the Marines, who killed six children and four women along with 14 other civilians in a hunt for insurgents after a roadside bombing in which one Marine died.

"No trier of fact can conclude that Staff Sgt. Wuterich formed the criminal intent to kill," Ware wrote in his October 2007 report. "The evidence is contradictory, the forensic analysis is limited and almost all witnesses have an obvious bias or prejudice."

Ware went on to write that he believed prosecutors "will fail to prove beyond a reasonable doubt that Staff Sgt. Wuterich committed any offenses other than dereliction of duty."

### False theory?

Two weeks after Wuterich's trial started at Camp Pendleton on Jan. 9 ---- and with a parade of witnesses defending Wuterich and his squad ---- prosecutors must have finally sensed the same thing.

They agreed to a deal allowing him to avoid any jail time in exchange for pleading guilty to what amounts to a misdemeanor. There was no finding that the Connecticut native on his first combat assignment was directly responsible for any of the deaths.

When Wuterich's squad leader, former Marine 1st Lt. William Kallop, testified during the trial that he gave the order to "clear" houses where 19 of the Iraqis died, the case was effectively over, according to Gary Solis, a military law expert.

Kallop testified that his order gave the Marines permission to use grenades and handguns against anyone inside the homes declared hostile because of the belief that insurgents were using them as a base of attack.

"That killed the government's case right there," said Solis, a former Marine prosecutor and judge who writes and lectures extensively on military law.

Neal Puckett, Wuterich's lead attorney, said Thursday that the defense drew up papers two years ago that would have had his client pleading guilty to negligent dereliction of duty. They offered to do so again last year, he said.

Puckett said prosecutors rejected the offer because they wanted Wuterich to plead guilty to willful dereliction, which carries a longer jail sentence and would have required an admission that he purposely ignored his responsibilities.

But defense attorneys say the case got to court because prosecutors zealously pursued an incorrect theory based on a flawed investigation that crimes were committed and a cover-up was attempted.

Prosecutors did so, the attorneys and others argue, under pressure from the Pentagon and service brass, while trading dismissal of charges against several defendants in exchange for their testimony.

### **Wuterich**

Wuterich, a Murrieta resident and single father of three girls, has for years been considered the man responsible for what much of the world and media call a "massacre" at Haditha.

That label stuck in large part because of the deaths of six children and four women, killed when he and his Marines assaulted nearby homes after a roadside bomb detonated.

Many of the victims, all unarmed and with no known ties to the Iraqi insurgency, were found dead inside bedrooms.

Wuterich, who went on trial after years of legal wrangling, was charged with nine counts of voluntary manslaughter, assault and dereliction of duty ---- all felonies that could have landed him behind bars for decades.

Universally described by prosecution and defense witnesses as an intelligent, good leader, the high school honors student always maintained that he and his men responded in keeping with their training after the roadside explosion.

The squad was returning from a short resupply mission when the bomb was triggered, killing Lance Cpl. Miguel Terrazas, injuring two other Marines and destroying one of four Humvees in their convoy.

Marines there that cold November morning reported a smattering of small-arms fire after the explosion, and at least one said he saw a man dressed in typical insurgent garb running near one of three homes.

Ware's report noted that "almost to a Marine, the understanding is that once a house is declared hostile, no further positive identification is necessary to lead an assault with grenade and gunfire."

Wuterich maintained that the tragedy that resulted wasn't from his doing. He told the court, in a statement delivered before his sentencing, that he never pointed nor shot his weapon at any women or children.

That's at odds with the prosecution theory and some of his squad mates. Puckett said that version of events is simply wrong and that the squad mates were lying.

### **'A little more control'**

Puckett said Wuterich was an inexperienced squad leader whose first exposure to combat came when he and his men were attacked that day.

"He deferred much of the room-clearing and techniques that were used to members of his team who had experience in Fallujah," he said, referring to one of the major battles of the Iraq war that took place in 2004. It involved several days of brutal house-to-house fighting.

"Maybe if Frank had taken a little more control of the situation and a more cautious approach, none of this would have happened," he said.

Wuterich apologized to the survivors of the Iraqi victims, saying, "I cannot express my sorrow for the loss of your loved ones."

He also said in a statement to the court that the dead Iraqis and Terrazas were "the real victims of Nov. 19, 2005."

Under the plea agreement, Wuterich was also reduced in rank to private.

Puckett said his client was never guilty of murder or manslaughter. The five men Wuterich admitted shooting after they drove up in a car right after the bombing were killed because he believed they were part of the attack. Marines had been trained that roadside bomb explosions were often followed by armed insurgent attacks from vehicles.

"That was, for lack of a better term, a good shoot," Puckett said. "Unfortunately, they were at the wrong place at the wrong time in a bad situation."

Wuterich, he said, never took part in shooting any of the people inside the homes.

What he has always acknowledged was his directive to his men to "shoot first and ask questions later." That served as the basis of his guilty plea and the finding that he "lost control" of his squad.

"Even with the best intentions, sometimes combat actions can cause tragic results," Wuterich said Tuesday. "I ... take responsibility for whatever measures my words or direction contributed to the tragedy."

Allegations that the Marines "killed in cold blood," as the late Pennsylvania Congressman John Murtha said when the killings came to light, have never been borne out. Ware dismissed that in his report as "simply unsupported by the evidence."

### **Final action**

Camp Pendleton Lt. Gen. Thomas Waldhauser will sign off on the plea deal and sentence within days, and Wuterich is expected to leave the Marine Corps a short time later. He intends to pursue a career in computer technology.

Yale military law professor Eugene Fidell said he believes that when Waldhauser, who oversaw the case as its "convening authority," issues the final paperwork, the three-star general should also issue a statement addressing complaints from Iraqis about the Wuterich case result.

"I think some explanation is due to the Iraqi public and the people in this country," Fidell said. "There still needs to be some accounting of all this."

On Thursday, an Iraqi government official said that some form of civil legal action may be pursued against the U.S. for the civilian deaths at Haditha.

The rules of engagement for troops in Iraq and now in Afghanistan is perhaps a major result of the killings at Haditha. In their immediate aftermath, the U.S. military tightened the rules to require firm positive identification of an enemy before using lethal force.

That was a victory for the insurgencies in both countries, who used Haditha as a propaganda weapon, said Maj. Jeffrey Dinsmore, an intelligence officer for the 3rd Battalion at Haditha, who has staunchly defended Wuterich and the other accused Marines.

"Unfortunately, the long Haditha case and its result have awarded the enemy one of their greatest campaign victories," Dinsmore wrote in an essay published on the website [warchronicle.com](http://warchronicle.com) after Wuterich was sentenced.

"Al-Qaida effected more changes in our combat training and rules of engagement than if they had been on the staff at Marine Corps Combat Development Command," he wrote.

For his part, Wuterich is ready to move on, Puckett said.

"It feels like the first day of freedom," the attorney quoted his client as saying when they dined together at a local pub Wednesday evening.