

GENERAL CONWAY BAILS

Bob Weimann | Saturday, June 20, 2009 | [printable pdf version](#)

Professionals that cannot change themselves from within, cannot respond to the needs of their constituencies while also inspiring the admiration and loyalty of their own members are in trouble.--"Tarnished Brass: Is the US Military Profession in Decline?" by Richard H. Kohn, *World Affairs*, Spring 2009

When General Conway took over as the Marine Corps Commandant, he went on the speech circuit talking about the "long war". One speech was made at the Marines' Memorial Association and World Affairs Council, in San Francisco, California on July 10, 2007. In that speech, General Conway stated, "we have a couple of incidents in Afghanistan and Iraq under investigation or engaged in trial" and he was going to "let those things play out". I [took exception](#) to that comment because it struck me that he was ducking the Haditha issue and, therefore, demonstrating a lack of leadership.

Similar "incidents" continued to occur in both Iraq and Afghanistan. An example is the expulsion of the newly created US Marine Special Operations (Fox) Company from Afghanistan for responding to a mobile IED attack and ambush. This case is very similar to Haditha except an Army General Officer (General Kearney), instead of Congressman Murtha, led the rush to judgment. Major Fred Galvin, the commanding officer, Captain Robert Olsen, the intelligence and executive officer, and Capt Vincent Noble, the platoon leader, were all brought before a Marine Court of Inquiry for the suspected killing of civilians. Late in 2008, the Inquiry Board found that no Marines should be charged criminally as a result of the ambush, however, the Inquiry Board still managed to charge these three officers with non-judicial punishment articles related to other "aspects" of the deployment. An interesting piece in the [Marine Times](#) regarding this case sums up as follows:

Having promised a full and open inquiry, the Corps held many hearings in secret session, held the findings secret, and released its decision on the disposition of the case on the Friday afternoon before Memorial Day, the perfect time to bury such news in a long holiday weekend.

The Corps wanted this to just go away because of the embarrassment it caused and the doubts it cast on the fledgling Marine Corps Special Operations Command.

Now, there are also lingering doubts over whether justice was indeed done, and worse, open questions about the credibility, honesty and professionalism of the institution.

What a shame.

In my opinion, the Haditha, the Fox Company, and other cases where Marines are prosecuted for performing their mission, call for active instead of inactive leadership. For the Commandant to shirk his duties with a boast of inaction is not the kind of leadership I expect of the general officer holding that prestigious office.

In the Haditha case, we seem to have created a dark legal slap-stick comedy called "Lawyers Gone Wild". These legal mistakes, besides supporting a rush to judgment, include prosecution grants of immunity to unreliable witnesses, the whimsical addition of charges against Marines, and a confirmed case of undue command influence that, if pursued further, can probably be [traced back](#) to the Commandant. In addition, let's not forget that the Marine Corps prosecutors are suing CBS in order to obtain evidence against SSgt Wuterich, the Haditha Marine squad leader. If they could not get the evidence they needed from the battlefield and a 65-member NCIS investigation team, why do they think they can get it from CBS?

A good example of the "lawyers gone wild" charges, and this has not been discussed, is seen in Lieutenant Grayson's court martial. The lieutenant is the only case that actually went to court martial proceedings and he was found "not guilty" on all charges. At one point in the case, before the Court Martial began, Lieutenant Grayson was discharged from the Marine Corps because his contact with the Marines reached its end of active duty date. This discharge is an obvious administrative error to any one who understands Marine Corps personnel administration system. The prosecutor, of course, brought the lieutenant back on active duty but then charged him with illegally discharging himself from the Marine Corps.

In the court martial, Lieutenant Grayson's lawyer simply called his current battalion commander to the stand and asked if he discharged Lieutenant Grayson. The battalion commander stated that he did discharge the lieutenant because he is required to do so in accordance with

his responsibility and authority derived directly from Marine Corps Orders and Directives. He also stated that if the prosecution had placed Lieutenant Grayson on legal hold (a simple matter of sending a letter to the Battalion CO), he would then have the authority to hold the Lieutenant past his end of active duty date.

Folks, what we have here is a Marine prosecutor that fails to place a high profile case defendant on legal hold, in other words, the prosecutor is responsible for the administrative error. Most Marine General Officers, who provide the legal authority for a court martial, would see this as a significant blunder committed by their Staff Judge Advocate Office. We then see the prosecutor, because of his own administrative failure, add a new charge against the Marine defendant. I am not sure what the legal term is for these shenanigans is but from the leadership prospective, it earns an unsatisfactory marking in the prosecutor's fitness report blocks of "Proficiency", "Setting the Example" and "Judgment" in my leadership book.

This legal maneuvering is yet another example of bad general officer leadership. General Mattis was given the legal disposition authority directly by the Commandant. The lawyers work and operate directly from the delegated command authority of the MEF Commander, General Mattis. The Court Martial judge and prosecutors are his direct representatives in the court room. When this legal maneuver started to play out, both General Mattis and Conway should have stepped in and let the Staff Judge Advocate, the prosecutor and assigned judge know in a "loud and clear" voice that this is not the kind of legal representation they will tolerate in the their Court Room because it creates the bad perception of unfairness.

When I heard that LtCol Chessani's case was referred to the US Marine Corps Commandant for final disposition, I start thinking, at last, we can bring an end to this surreal episode of bad general officer leadership that has deeply embarrassed the US Marine Corps that we all love and honor. LtCol Jeff Chessani and his family will finally be released form this moral, political, and legal nightmare that I know rips and tears at their spirits and hearts. This is the Commandant's opportunity to do the right thing, in the right way, for the right reason.

You can imagine my disappointment, when I received an email from a friend that contained the link to a news story that the Commandant had referred LtCol Jeff Chessani's case to Lieutenant General George Flynn, Commanding General, Combat Development Command (Quantico). The subject line of the email was "General Conway Bails".

By referring this matter to another General Officer, the Commandant seems intent on continuing the circus of mistakes and embarrassments. The Commandant is again not stepping up to the issue.

Looking at General Flynn's record, I am especially concerned about his credibility due to his lack of combat experience. General Flynn does have a tour as Deputy CG at MultiNational Corps-Iraq in 2008, but my worry is that because of this lack of combat experience, General Flynn will continue to use the Rules of Law in this case, instead of the Laws of War, which is the fundamental flaw in the approach to the Haditha incident from the start. The General's two-star picture on [his biography](#) page does not even display a Combat Action Ribbon. Can it be true that the Commandant picked a general, to determine the final disposition of this case, who has not served in combat as a battalion commander? This is a case about the decisions and actions a Marine Battalion Commander took in combat. This is not a case about the administrative staff actions taken by a "Military Assistant to the Executive Secretary to the Secretary of Defense" or a "Military Secretary to the Commandant of the Marine Corps" (both staff positions held by General Flynn) in the comfortable halls of the Pentagon or Headquarters Marine Corps.

Folks, I will be the first to admit that LtCol Chessani's case presents the Commandant with a tremendous dilemma. If he drops all charges, and does not issue a punitive administrative action, like a Letter of Censure, he will not please the political Washington, DC crowd. In fact, he will be admitting to all, the political and legal mistakes that have unfairly abused all the Haditha Marines.

If he does take punitive administrative action, he will please the politicians in both the Pentagon and Congress but lose a considerable amount of the leadership trust and confidence all Marines have in their Commandant. Either way, he loses, and that is why, in my opinion, he has deferred this decision to a subordinate general. He is distancing himself from the fallout of a lose/lose situation and that does not set the proper leadership example of doing the right thing, in the right way and for the right reason.

Unfortunately, I am afraid that the Commandant has already decided LtCol Chessani's fate. The Commandant can side with the political Washington powers or with his Marines. I would like to assume that he will side with his Marines but his history does not lend itself to that conclusion. Hopefully, we will be surprised.

What remains to be revealed to us is the political maneuvering and equivocation methods to achieve the decided end result. At this point, we need to remind the Commandant and Major General George Flynn, the [Marine Corps Fitness Report](#) definition of "Courage":

Moral and physical strength to overcome danger, fear, difficulty or anxiety. **Personnal acceptance of responsibility accountability placing conscience over competing interest regardless of consequences.** Conscience overriding decision to risk bodily harm of death to accomplish the mission or save others. The will to persevere despite uncertainty. (Emphasis added.)

We do this to reinforce to the Commandant and General Flynn that this decision is, in fact, a test of their courage.

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NOTE: An interesting comparison is to look at the general's ribbons [here](#) and LtCol Chessani's ribbons [here](#). And if you want a real eye opener look at Major Fred Galvin's (CO Marine Special Ops (Fox) Company) awards [here](#).



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Read more on the Haditha case by Bob Weimann:

[Sins of the Generals helped John Murtha rush Haditha Marines to injustice](#)

Many thanks to Tim Sumner of *9/11 Families for a Safe and Strong America* for the post and to Pat Carfagno of [Freedom Radio](#) for having Bob as her guest.

[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 Sins of Generals, Part Three: An open letter to General Peter W. Chiarelli, Commander of the Multi-National Corps in Iraq \(November 2005-February 2006\)](#), February 8, 2009

[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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