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THE LTCOL CHESSANI CASE: GOOD NEWS AND BAD NEWS... MOSTLY BAD

Bob Weimann | Saturday, September 5, 2009 | [printable pdf version](#)

“So is this justice? Not really. 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.”

--*Marine Times* editorial, [No Justice in Secrecy](#), concerning the Court of Inquiry into the actions of Marine Special Operations (Fox) Company responding to a suicide attack in Afghanistan on their convoy on March 4, 2007.

When I read in [the LA Times](#) that LtGeneral Flynn had decided to refer LtCol Jeff Chessani's case to a BOI (Board of Inquiry), I felt embarrassed and ashamed as a Marine.

I say this because with all the Haditha investigations (the [Watt Investigation](#), the [Bargewell Report](#), the NCIS Investigation, all the [Article 32 investigations](#) conducted on the accused) and the mountain of other published material and evidence, I cannot understand why General Flynn did not have enough information to simply end the circus by exonerating LtCol Chessani.

A military Court or Board of Inquiry is essentially an investigation or administrative fact finding procedure that has been around for a long, long time. Major Reno received a Board of Inquiry after the General Custer Massacre. The significant difference between a Board of Inquiry and a Court Martial is that the defendant basically loses the “beyond a reasonable doubt” right for a “preponderance of evident” procedure. Another way to say that is instead of being absolutely sure, the members of the board can apply the 50% to 90% rule. This is a definite disadvantage for the defendant.

Another interesting fact is the Marine Corps, except in the case of Marine Special Operations (Fox) Company mentioned above, has not used this procedure since 1956. The Fox Company incident is similar to the Haditha incident in that a platoon from Fox Company was ambushed in Afghanistan and was then accused of killing civilians. That rush to judgment was lead by then Army Col. John Nicholson and General Francis H. Kearney, both commanders in Afghanistan at the time.

Both Army officers have since been promoted despite a congressional directed investigation of General Kearney for [undue command influence](#). This investigation not only looked at the Fox Company incident but also the charges Kearney brought against an Army Special Forces Captain and Master Sergeant for killing a known terrorist. I mention this because of the eight Fox Company Marines investigated, none have been promoted and many are not in the Marine Corps today. The stress these investigations create for our Marines and their families is enormous. When speaking of the Fox Company Eight, many Marines will tell you, the price both they and their families paid can be measured in the cases of cancer, diabetes, divorce, financial loss and their destroyed careers.

The 1956 Court of Inquiry was convened for the famous Parris Island Ribbon Creek Incident. A Marine Drill Instructor led his platoon of 74 recruits into the swamps of Parris Island on a Sunday for “night maneuvers”. As they waded down the creek bed they hit deep water and panic ensued probably starting with some of the non-swimmers. Six of the recruits drown. The subsequent court martial found the drill instructor guilty of negligence but he was also acquitted of manslaughter and oppression. (For more, see John Steves, *Court Martial at Parris Island: The Ribbon Creek Incident*, University of South Carolina Press, 1999.)

One important difference between the Ribbon Creek and LtCol Chessani's coming Board of Inquiry is that the Ribbon Creek Inquiry was convened the day after the incident. In addition, the Board of Inquiry established the facts for the court martial. In LtCol Chessani's case, we seem to be putting the cart before the horse. This BOI raises the question, why the change in normal procedure? I believe that in the Ribbon Creek incident the Marine Corps was trying to establish the facts compared to the LtCol Chessani BOI where the generals are covering their own political butts.

Another notable difference is that both the Commandant of the Marine Corps, General Randolph Pate, and LtGeneral Chesty Puller, the Marine Corps' most highly decorated officer, testified for the defense. My, my, how things have changed!

There are a number of reasons why these two generals testifying for the defense. The defense attorney's pre-trial legal maneuvering was exceptional and, as in the Haditha case, there was a media frenzy spilling false information onto the public. General Pate was convinced to testify by the defense attorney to help avoid a congressional investigation on the incident and Chesty had issues with the false press reports. Chesty was actually pulled out of retirement for the court martial. When this occurred, Mrs. Puller protested to her husband citing previous trouble and controversy in Puller's career. [Puller told her](#), "...The important thing is the Marine Corps. If we let 'em, they'll tear it to pieces. Headquarters won't speak up. It's my duty to do it."

As punishment, the drill instructor received a \$270 fine (\$30 for nine months), nine months of confinement at hard labor, rank reduced to private and a bad conduct discharge. The Secretary of Navy would reduce this sentence to three months in the brig (time served), reduction to private with no discharge and no fine. The drill instructor went back on active duty but never regained his rank. I should note that the entire episode, from incident to court martial to Secretary of Navy final disposition took less than six months from April 8, 1956 to October 5, 1956. If Jeff Chessani's Board of Inquiry moves into this November, the Haditha incident will pass the four year mark and we still have yet to resolve SSgt Frank Wuterich's proceedings.

Part of the bad news for Jeff Chessani is that each time one general passes this case to the next, they not only distance themselves from the responsibility but also extend the time line. Some people might accuse General Conway of trying to win this case by attrition. The attrition part takes the form of an oppressive stress and falls on Jeff Chessani's shoulders and his family.

The Navy-Marine Corps Court of Criminal Appeals released its unanimous three-judge decision, upholding the dismissal of charges on the grounds of unlawful command influence, in March 2009. General Conway passed the final decision to LtGeneral Flynn on June 16, 2009. It took six weeks (June 16 to August 27) for LtGeneral Flynn to initiate the Board of Inquiry. The Fox Company Inquiry was initiated in May 2008 and finally wrapped up the end of January 2009 (8 months). I see no quick end here.

The other bad news is that the board is limited to what it can consider. General Flynn actually defines the limits in his Board of Inquiry (BOI) Notification. The good general really starts to tighten the screws on the scope of the board with this gem from paragraph 1 of [the BOI Notification](#):

"a Board of Inquiry will be convened to make a recommendation on your retention in the U.S. Marine Corps based on the information contained in reference (d) and (e), as well as the allegations articulated in enclosure (1)."

Reference (d) is "LtCol Chessani DC fitrep 20060401-20060407". In other words, the fitness report that LtCol Chessani received for the period of April 1 to 7, 2006. By the way, the "DC", is the U.S. Marine Corps Fitness Report Code for "Directed by Commandant" for adverse action. So reference (d) is the adverse action fitness report that LtCol Chessani received before the Bargewell investigation was complete on June 15 that relieved Chessani from his battalion command. I am sure there are a lot of favorable comments in that career ending document. In addition, I would really like to see who signed that fitness report as his reporting senior and what justification was cited, again, since the Bargewell investigation was still not complete.

Reference (e) is the Article 32 Investigation prepared for his court martial. Yep, that is basically the investigation that was thrown out for undue command influence and upheld by the Navy-Marine Corps Court of Criminal Appeals. A couple of one-word questions here about this document: Fair? Unbiased?

Enclosure (1) is "Haditha Reporting/Investigating Allegation". I am not sure which investigation this is but if it is the Bargewell Investigation, as I suspect, it is a monument to a staff officer's loyalty to his own developed administrative reporting system. I am talking about Col Ewers, who was one of the authors of the Bargewell investigation and the principle party responsible for the undue command influence finding against General Mattis. (I have already said a lot about the unprofessionalism of this document [here](#).)

Now here is the icing on this BOI cake. Paragraph 2.c. of the BOI Notification states:

"Because you are a retirement-eligible officer, if your retirement is recommended, the Board shall also recommend whether you should be retired in the current grade or a lesser grade. The Board must recommend the grade in which you last served satisfactory."

My interpretation is that General Flynn is telling the board: if you find any misconduct, make this go away forever by retiring LtCol Chessani out of the Marine Corps as a Major.

The BOI Notification lists the charges that will be considered by its members. All the allegations are essentially focused on Article 92 of the UCMJ; Failure to obey an order or regulation. All the allegations state that he "willfully failed to report" or "investigate".

This is where they will get LtCol Chessani.

The reason they will get him is that because the combat reporting at the battalion level and below is never good. The focus in combat is never, and should never be, on reporting. The focus needs to be on the enemy, on your Marines, on support arms, on casualties, on re-supply, on prevention of friendly fire, and the list can go on and on.

Reporting procedures are never good because good commanders pick up the radio hand set and tell each other what is happening. Formal

reporting is a backup system to one-on-one communications between commanders. I have never heard or observed a battalion combat operations center do formal reporting near perfectly, much less well, in combat.

One of the worse combat reports ever communicated over a radio, because of its lack of detail, is also one of the most famous for its courage. On the beaches of Tarawa, at D+1, while wounded, and desperately attempting to organize Marines from shattered amphibious assault waves and broken boat teams, Col Shoup, radioed a situation report to 2D Marine Division Headquarters, "Casualties many. Percentage dead not known. Combat efficiency — we are winning." Col Shoup would win the Medal of Honor at Tarawa and later become the Commandant of the Marine Corps. He received that award for his valor and not his reporting procedures.

I am sure that LtCol Chessani and his defense team were gearing up for the "mother of all" court battles back in May of this year when the government case fell apart. The stake in the heart of the government case was the finding of undue command influence and the case dismissal.

I believe that the General Flynn BOI steals not only the soul of Jeff Chessani's defense strategy but also any vestige of fairness. Flynn has effectively taken away the undue command influence issue. He also preserved an administrative fault that he knows all battalion commanders are inadvertently guilty because of the pressing urgency of combat operations. What the generals could not get in a court room, they are trying to get in an administrative maneuver called the Board of Inquiry. This administrative maneuver is like the Pirates of the Caribbean movie, where Captain Barbossa, after violating the spirit of "parley", states that the Pirate's Code is more like general guidelines instead of rules. The circus continues.

The good news, in my opinion, is that by referring this case to a Board of Inquiry, General Flynn, has passed the responsibility to three of LtCol Chessani's peers. The test of courage is now theirs. The board composition requires three officers senior to the LtCol Chessani and that probably means a one star general and two colonels (three colonels if he is lucky). I say peers because if Hadiitha didn't happen, LtCol Chessani, in all probability, would now be a Colonel.

The Marine Corps is a relatively small organization and an officer's professional reputation is always known. Chessani's professional reputation will count unofficially with these officers. Hopefully, these officers will be former battalion commanders, with Iraq combat experience, during the years between the 2003 invasion and the "Surge" in 2007. This time period is important because the generals failed to develop an effective strategy in Iraq leaving battalion commanders to figure it out themselves. Bing West in *The Strongest Tribe* and LtCol Nathan Sassaman in *Warrior King* both point out the lack of strategic guidance in their books. Hopefully, the Chessani Board of Inquiry will recognize that combat reporting is never perfect and always subject to the friction and fog of war.

Now this is where the "mostly bad" part comes in. General Conway continues to try to save face and again is trying to preserve his personal reputation at the expense of the Marine Corps and its Marines. The Commandant probably feels he has found an out for the politically thorny problem that the Hadiitha Marines prosecution presents him every day it goes unresolved. The Board of Inquiry covered him in the Fox Company case. It will cover him in LtCol Chessani's case and I believe he will use it again in SSgt Wuterich's case. The same undue command influence that taints LtCol Chessani's case also taints SSgt Wuterich's case. For that reason, SSgt Wuterich's lawyers better break out the books on military law and the Board of Inquiry.

We need to maintain the support for LtCol Jeff Chessani and SSgt Frank Wuterich and their families. Everyone needs to do whatever they can for these two Marines, whether it is commenting on a blog, writing a letter, or reaching into our pockets to help with their defense funds. They need to know there are a lot of people on their side that recognize their loyalty and dedication.

Semper Fi.

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Read more on the Haditha case by Bob Weimann:

[General Conway bails](#), June 20, 2009

[Mister Secretary, it's time to end the double standard](#), May 16, 2009

Hear the latest interview with Senior Contributing Editor, Bob Weimann, at the [link](#). Many thanks to Tim Sumner of 9/11 Families for a Safe and Strong America.

[Two Awards, One *Semper Fi*](#), April 10, 2009.

[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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