

# **CAPT ROGER HILL CASE:**

## **Mister Secretary, it's time to end the double standard**

Bob Weimann | Saturday May 16, 2009 | [printable pdf version](#)

Open Letter to the Secretary of the Army:

Honorable Pete Geren  
Department of the Army  
107 Army Pentagon  
Washington, D.C. 20310-0107

"The time is ripe for a public debate on the double standards that tie our hands in combat while making it easier for the enemy to cut them off." Capt Roger Hill, former commanding officer Dog Company, 1<sup>st</sup> Battalion, 506<sup>th</sup> Infantry Regiment, 101st Airborne Division

**I recently had the privilege of meeting Captain Roger Hill.** The introduction and short discussion occurred over the phone while on a recent [radio-blog talk program](#). The Captain is a professional, intelligent, soft spoken, thoughtful officer with that inner strength that shines through in something we use to call exceptional character. Captain Hill's story is getting to be a familiar and almost routine saga for many our American warriors. The Captain was the commanding officer of Dog Company, on deployment to Afghanistan when, in his commanders opinion, he abused detainees and committed a war crime.

I am sure that the Army generals and the Pentagon crowd think that his legal proceeding is the way to demonstrate Army control and discipline. I, however, feel that it demonstrates the double standard that the US military general officers use to please their political Washington masters. I also think that it under minds the US strategy for fighting these wars. I think historians will eventually place this strategic shortcoming on the shoulders of not only the general's but also the civilian leadership, like you, Mr. Secretary.

Almost everyday we see and read about UAV strikes that kill our enemies with Hellfire missiles. Here are two recent examples:

### **US Predator strike in South Waziristan kills 25**

By Bill Roggio, [The Long War Journal](#), February 14, 2009

The US launched an airstrike inside of Pakistan's tribal areas early Saturday morning ... An unmanned US Predator strike aircraft fired two missiles into a compound ... Twenty-five extremists, most of them from Uzbekistan, were killed in the strike

### **US Airstrike in Pakistan's Kurram tribal agency kills 30**

By Bill Roggio, [The Long War Journal](#), February 16, 2009

The US appears to be expanding its campaign of cross-border strikes into Pakistan after several unmanned US Predator aircraft conducted multiple attacks in the Taliban-controlled tribal agency of Kurram. More than 30 people have been reported killed after four Predator aircraft launched at least four Hellfire missiles ...

The Hellfire was originally design to destroy tanks and bunkers and its lethality is famous. The missile exists in a number of variants but generally possesses a warhead with about twenty pounds of explosive and an ECR of about 20 meters (Effective Casualty Radius, a 90% probability of killing a person within the radius). This warhead is usually enough to ensure not only the death of the individual terrorist but also anyone else that happens to be in the targeted house or its general vicinity.

Additional casualties are routine and this body count is usually written off as collateral damage.

The interesting part is that no one ever charges the generals with murder for conducting these operations and we know that civilians are being killed.

We took out Zarqawi in Iraq with two 500 lb bombs and US citizens even got to [watch it](#) on their TV's in their living rooms. In the rubble of that Iraqi house, we not only found Zarqawi's body but also five others including the bodies of a woman and a child.

Compared the above headlines to the two Haditha incident headlines below:

### **US Marines Charged With Murder, Other Crimes in Haditha Killings**

By Mike O'Sullivan, [VOA](#), December 21 , 2006

Four U.S. Marines have been charged with murder in the killing of 24 Iraqi civilians in the city of Haditha November 19 2005.

### **Murtha: Marines Murdered 15 Unarmed Iraqi Civilians**

James Joyner, [Outside the Beltway](#), May 18, 2006

Rep. Jack Murtha, who came on our radar screen as a "hawk" (although always an opponent of the Iraq War) who called for rapid pullout of troops from Iraq on the basis that our mission has failed, has told the press that the Marines have killed Iraqi innocents in cold blood.

Five of the Haditha Marines never went to trial for lack of evidence. One other was found not guilty on all counts. The senior Marine officer's case, charged in the incident, was dropped for undue command influence; and the last charged Marine sits in legal limbo because the Marine prosecutors can not collect enough evidence to bring him to trial.

Looking at the above headlines and the trial results, the question then becomes: Why is there this seemingly double standard? One standard for soldiers and Marines, fighting face-to-face with the enemy and one for generals (and their civilian leaders), sitting comfortable in air conditioned headquarters, killing civilians with "precision" bombs.

The answer is relatively simple, at least in this old Marine's mind. General officers have, and use, the Laws of War as their standard to protect themselves. They also use the Rules of Law to "[judicially water board](#)" the combat troops fighting at the eyeball-to-eyeball level to satisfy and relieve any pressure they receive from the Washington political leadership.

The Laws of War have many names to include: Law of Force, Laws and Customs of War, Law of Armed Conflict, International Humanitarian Law, or the Geneva and Hague Convention. The Laws of War is the legal corpus comprised of the Geneva Conventions and Hague Conventions, as well as subsequent treaties, case law, and customary international law. It defines the conduct and responsibilities of belligerent nations, neutral nations and individuals engaged in warfare, in relation to each other and to protected persons, usually meaning "civilians." US military forces ROE (Rules of Engagement) are based on the Laws of War.

With the Laws of War, the principles of military necessity, distinction and proportionality are in play. For example, the Laws of War state that the killing of civilians is to be avoided but can occur because of "military necessity". The laws also state that the "field commander" determines military necessity. For example, in the above Hellfire missile strikes, I am sure the commanding general or "field commander" determined that the killing of civilians is a military "necessity" and that the precision bombing (with a warhead containing twenty pounds of explosive) is "proportional" for the target.

In the Haditha case, military necessity and proportionality is never discussed and instead we see charges of murder. Is this a double standard?

Incredibly, this politically correct gimmick the US military leadership is using now seems to be institutionalized down to the battalion level. Here are some of Captain Hill's headlines:

### **U.S. troops investigated for abuse of Afghans**

[Reuters](#), December 1, 2008

KABUL - Two U.S. soldiers based in Afghanistan are being investigated for alleged abuse of Afghan detainees, the U.S. military said on Monday.

Captain Roger T. Hill and 1st Sergeant Tommy L. Scott, both of the 1st battalion, 506th Infantry Regiment of the U.S. Army will be investigated under Article 32, the military equivalent of a civilian grand jury hearing.

In 2005, two U.S. soldiers were charged with abusing Afghan detainees at a base in the Uruzgan province in southern Afghanistan and media have alleged abuse of prisoners at Bagram, the U.S. army's main base in Afghanistan.

### **Area soldier's future in limbo**

[Chattanooga Times Free Press](#), January 29, 2009

In the eyes of the U.S. Army, Capt. Roger Hill is a poor leader with a trigger-happy finger whose recklessness led to the abuse of at least a dozen detainees in Afghanistan last year.

But those who know Capt. Hill personally say he simply fell on the sword of ultra-strict, post-Abu Ghraib torture policy and still deserves to come home to Bridgeport, Alabama, with honor.

What Captain Hill did on his base in Afghanistan is not in dispute. The captain has demonstrated an honesty that is exemplary in this affair. The captain was taking casualties in his less than 90 man company to the tune of thirty wounded and two killed. His company was being routinely ambushed and the last ambush accounted for his two killed-in-action soldiers.

A similar ambush in Captain Hill's area of responsibility provides a standard in which to measure the tenacity and barbaric nature of the enemy Captain Hill and his men faced. In this ambush, it was Captain Hill and his men who took the responsibility of recovering missing body parts of U.S. service members from another unit who were mutilated by the same enemy. The body parts were intentionally cut off by the enemy, sold and passed around at the local market as souvenirs. Insurgents like to do such things; it demonstrates their power and diminishes our forces protection of local Afghan citizens to a bad perception.

The captain, based on the ambushes and intelligence he gathered, is suspicious of his Afghanistan military partners who also help man his Forward Operating Base defensive perimeter. He sets up a sting operation and catches 12 Afghanistan soldiers, including his interpreter, again facilitating another ambush. The captain takes those 12 Afghan soldiers into custody and informs his battalion what has happened.

Apparently, the Army has formalized their catch and release program in Afghanistan by establishing a 96 hour rule for the release of detainees. For the next 80 hours (3 plus days), Captain Hill tries to get help from his battalion headquarters. At hour 80, isolated in "only God knows where" Afghanistan, with the clock running out, he takes matters into his own hands and with the help of his first sergeant conducts an interrogation.

His initiative is rewarded with charges of "detainee" abuse and other crimes. His additional reward is his discharge from the Army and his first sergeant losing a stripe.

The issues in this case with Captain Hill's chain of command, regarding bad leadership and bad counter-insurgency strategy, are almost innumerable but let's concentrate in the Laws of War.

The "detainees" are not detainees by any definition to include [DOD Directives](#). These 12 Afghanistan soldiers are in a completely different category called "spies". The Laws of War state:

*Article 29.* A person can only be considered a spy when, acting clandestinely or on false pretences, he obtains or endeavors to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party.

Under the Laws of War, spies are not entitled to prisoner of war status. Spies must be isolated in order to prevent the enemy from using the military information they possess. They are also to be placed on trial because spying is a war crime and if convicted, they can be executed. The DOD's own regulations basically define "detainee" as an enemy combatant, a prisoner of war, or a civilian and does not include spies.

Counter-insurgency strategy calls for small units to fight over disbursed areas in isolated villages and requires small unit leaders to show initiative. Because Captain Hill is the senior commander of an isolated base, he is, in fact, the "field commander" for this situation. His battalion headquarters also significantly contributes to this justification by not responding to his repeated requests. As the field commander, he has the authority to determine military necessity.

As the small unit leader, the captain realized the enemy has the upper hand in the intelligence battle and it is costing his soldiers lives. The military necessity is clear that Captain Hill needed to determine how this spy network is working and operating. In order to confirm the spying, he conducts his own interrogation to preserve his soldier's lives. The interrogation then nets 12 spies.

His interrogation is proportional because his prisoners are not physically harmed, as verified by medical authority. To avoid any physical harm, Captain Hill runs a ruse on the spies by creating a deception that he will execute them if they do not cooperate.

In the Haditha incident, we can see the same Law of War principles in play. The Haditha Marines were ambushed and military necessity dictated that they conduct a counter attack in order to preserve their lives. Civilians were killed because the enemy is committing a war crime by using civilians as a shield. The attack is proportional because the Marines use only their authorized squad weapons. Proportionality is further reinforced because the Haditha squad did not call in artillery, airstrikes or Hellfire missiles.

Any good military officer that knows anything about counter-insurgency warfare see's Captain Hill's sting operation for exactly what it is: an intelligence windfall and bonanza. In counter-insurgency warfare, intelligence is everything and it needs to be the primary driver in all military operations.

Captain Hill's chain of command from his battalion headquarters to the CENTCOM offices in Tampa, Florida should have lit-up like a Christmas tree when he requested help in interrogating 12 spies caught passing information to the enemy. Captain Hill's leaders should have flooded him with interrogators, because, if properly done, these 12 "detainees" could have potentially identified the entire shadow network existing in not only Wardak Province but also a good portion of Afghanistan. In other words, an economy of force operation conducted by a small infantry company, could have given the Afghanistan War a victory with an entire province as the prize. Hundreds of UAVs and Hellfire missiles operating around the clock could not achieve the same prize.

Now here is the kicker, Mister Secretary. DOD and all Service Directives state the same order very clearly. These directives order that: "All reportable incidents" (of Law of War violations) ... "are promptly reported, thoroughly investigated, and, where appropriate, remedied by corrective action" ... whether "committed **by or against** US or enemy persons..." (emphasis added to portions of DOD Directive 5100.77 December 9, 1998; DOD Law of War Program).

We are all painfully aware of how many war crimes our forces have been accused of committing and how many of these legal proceedings are viewed as an unfair double standard. We are also aware that our enemy does not take prisoners (accept to record their public execution by beheading); we are aware that the enemy routinely uses civilians as shields; and we are aware the enemy spies in order to commit these war crimes. To this date, we have yet to see any legal action against a single enemy combatant that committed any of the above war crimes against our troops. What does that say about the job the Service Secretaries (like yourself) and the Washington generals are doing in leading the US Armed Forces in this war?

Mister Secretary, now is the time to vacate and void Captain Roger Hill's and First Sergeant Tommy Scott's Non-judicial Punishment and reverse the double standard that ties our soldiers hands in combat by unjustly charging and judicially water boarding our service men for political purposes.

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For more about the Laws of War, see [here](#).



Bob Weimann, LtCol USMC Ret

**Bob Weimann**, a veteran of the first Gulf War, is the former Commanding Officer, Kilo Co., 3/1, and a senior contributing editor to *Defend Our Marines*.

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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.

Explore Haditha documents:

[Haditha evidence room](#)

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