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# Correspondents' Reports: A Guide to State Practice in the Field of International Humanitarian Law

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# Correspondents' Reports

## A Guide to State Practice in the Field of International Humanitarian Law




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### *2010 alphabetical list of reporters*

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Correspondents' Reports is compiled and edited by Tim McCormack with the excellent assistance of James Ellis, primarily from information provided to the *YIHL* by its correspondents but also drawing on other sources. The section does not purport to be a fully inclusive compilation of all international humanitarian law-related developments in every State, but represents a selection of developments during the calendar year 2010 that have come to the Yearbook's attention. Legal developments from early 2010 that were noted in Volume 12 of the *YIHL* are not repeated here. Readers are thus advised to consult this section in conjunction with Correspondents' Reports in Volume 12. We apologise for this inconvenience. Further, some 2009 humanitarian law-related developments came to our attention after Volume 12 went to press and could not be noted there. For the sake of completeness, we have included them here. Reference is also included to a number of legal developments which are not strictly-speaking related to IHL but which are nonetheless interesting and relevant for our readers, in particular relating to justice issues, jurisdictional questions, *jus ad bellum*, State security, human rights, refugees and internally displaced persons, and terrorism. Where citations or dates or other details have not been provided, they were not available or obtainable. The *YIHL* is actively seeking new correspondents, particularly in Africa, Asia and Latin America. Interested persons or anyone who is willing to contribute information should contact the Reports Editor at t.mccormack@unimelb.edu.au.

> We must continue—indeed, redouble—our efforts to reduce the loss of innocent civilian life to an absolute minimum. *Every Afghan civilian death diminishes our cause*. If we use excessive force or operate contrary to our counterinsurgency principles, tactical victories may prove to be strategic setbacks.[576]
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> ...
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> Prior to the use of fires [e.g., artillery or air strikes], the commander approving the strike must determine that no civilians are present. If unable to assess the risk of civilian presence, fires are prohibited, except under ... two conditions ...

The specific conditions were deleted from the press release and remain classified for reasons of operational security; however, they reportedly relate to the risk to ISAF and Afghan forces in particular situations.

> Protecting the Afghan people does require killing, capturing, or turning the insurgents ... But we must fight with great discipline and tactical patience. We must balance our pursuit of the enemy with our efforts to minimize loss of innocent civilian life, and with our obligation to protect our troops ... In so doing, however, we must remember that it is a moral imperative both to protect Afghan civilians and to bring all assets to bear to protect our men and women in uniform and the Afghan security forces with whom we are fighting shoulder-to-shoulder when they are in a tough spot.

Successfully balancing the duty to protect civilians against the need to protect friendly forces will obviously require good judgment and great discretion on the part of junior officers in the field.

BURRUS M. CARNAHAN[577]

*Government Reports—Afghanistan Casualties*

- Congressional Research Service, *Afghanistan Casualties: Military Forces and Civilians*, R41084 (3 February 2011)[578]

The Congressional Research Service issues a report which collects statistics from a variety of sources on casualties from Operation Enduring Freedom in Afghanistan. The report, which is periodically updated, reflects different categories of casualties, including American, coalition partners, and parses out Afghan casualties between Afghan civilians, the Afghan national army, and the Afghan national police.

*Cases—United States Military Justice System*

In 2010, the United States military remained deployed in two combat theatres: Iraq as part of Operation New Dawn; and Afghanistan as part of Operation Enduring Freedom. Over the course of 2010 the number of US service members in each

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[576] Emphasis in original.

[577] Information and commentaries by Burrus M. Carnahan, Professorial Lecturer in Law, The George Washington University, Washington, DC, USA.

[578] S. Chesser, 'Afghanistan Casualties: Military Forces and Civilians' (Congressional Research Services, 3 February 2011), <http://www.fas.org/sgp/crs/natsec/R41084.pdf>.

theatre inverted from years past such that there is now a greater number deployed to and in support of operations in Afghanistan than in Iraq.

Pinpointing examples of US enforcement of its obligations under various international humanitarian law agreements and treaties is challenging, both legally and practically. Legally there are questions of how the conflicts are characterized and which agreements apply.[579] Practically, the US military will ordinarily charge a person subject to the *Uniform Code of Military Justice* with a specific violation of that code[580] rather than a violation of the law of war.[581]

The military cases which follow are illustrative of how the US utilizes its military justice system where the victim is either Afghani or Iraqi and the offense occurred during an operational combat deployment. By way of brief introduction, US policy is that 'efforts should be made to maximize the exercise of court-martial jurisdiction over persons subject to the [UCMJ] to the extent possible'.[582] As a result, the cases which follow are examples of just that—the exercise of court-martial jurisdiction by the US military over its service members (as opposed to jurisdiction exercised by US Federal or State Courts).

Service members who receive a punitive discharge (meaning the characterization of the military service is either a bad conduct or a dishonorable discharge) and/or are sentenced to 180 days or more confinement are entitled to appellate review of their court-martial by a service specific appellate court. Subject to those qualifiers, that appeal is one of right. Following action by a service appellate court, service members may petition for review by first the Court of Appeals for the Armed Forces (CAAF) and then by the United States Supreme Court although, both those levels of appeal are discretionary.

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[579] The US answer is largely policy based. Pursuant to Department of Defense Directive 2311.01E, 'DoD Law of War Program', it is DoD policy that 'members of DoD components comply with the law of war during all armed conflicts however such conflicts are characterized, and in all other military operations', §4.1. Under this policy, the law of war is defined as 'encompass[ing] all international law for the conduct of hostilities binding on the United States or its individual citizens, including treaties and international agreements to which the United States is a party, and applicable customary international law', §3.1. See <http://www.fas.org/irp/doddir/dod/d2311_01e.pdf>. This policy generally results in the application of international armed conflict standards of conduct in all conflicts, 'no matter how characterized.' This approach also provides criminal sanctions for those actions that could be characterized as 'grave breaches' of the Geneva Conventions or Common Article 3 [accord the U.S. War Crimes Act 18 USC 2441]; other violations of the law of armed conflict may result in criminal or administrative sanctions: see, e.g., Geneva Convention Relative to the Protection of Civilian Persons in Time of War, opened for signature 12 August 1949, 75 UNTS 287, Art. 146 (entered into force 21 October 1950), which describes the requirement for 'suppression of all acts contrary to the ... convention'.

[580] Uniform Code of Military Justice, 10 USC §801 et seq (UCMJ), <http://www.law.cornell.edu/uscode/usc_sup_01_10_10_A_20_II_30_47.html>.

[581] Rule for Court Martial 307(c)(2) Charge (discussion).

[582] Rule for Court Martial 201(d) Exclusive and nonexclusive jurisdiction (discussion).

## United States Air Force

- *United States* v. *Flores* [2010] 69 M.J. 651 United States Air Force Court of Criminal Appeals

Flores, a non-commissioned officer in the US Air Force, was court-martialed in 2007 for misconduct committed while serving as a detention facility guard at Camp Bucca, Iraq. Then Staff Sergeant Flores' misconduct included 'blatant violations'[583] of lawful orders which prohibited photographing and videotaping detainees and fraternizing with or acting with undue familiarity towards any detainee. Flores was a 'quad shift leader and was entrusted with up to 250 detainees ... [a]s such, she was responsible for ensuring that the detainees in her quad were treated with dignity and respect and that the detainees received food, medical care, and other support'.[584] Flores was charged with four specifications of failure to obey a lawful order and two specifications of false official statement in violation of the UCMJ. She pled guilty and was found guilty by a military judge of two specifications of failure to obey a lawful order stemming from her inappropriate conduct towards and relationship with an Iraqi detainee. She was also found guilty of the other two specifications of failure to obey a lawful order and the specifications of false official statement. A military judge sentenced her to a bad-conduct discharge, confinement for 6 months, and reduction to the lowest enlisted grade.

In 2010, the United States Air Force Court of Criminal Appeals (A.F. Ct. Crim. App.) heard Flores' appeal, which alleged legal and factual insufficiencies at her court-martial and that improper comments by the military prosecutor deprived her of a fair trial. The Court of Appeals however found that a 'plethora of evidence' supported the charges against the appellant and that the Court was convinced beyond a reasonable doubt of her guilt. The Court did however determine that one of the prosecutor's comments on Flores' constitutional right to remain silent constituted error. But the Court held that there was no material prejudice to the appellant and that the error was harmless beyond a reasonable doubt. The Court ruled that the court-martial findings and sentence were correct in law and fact and thus affirmed.

- *United States* v. *Flores* [2011] 69 M.J. 366 United States Court of Appeals for the Armed Forces

While technically just outside the 2010 reporting period, the CAAF granted Flores petition for review and issued its ruling on 9 February 2011. The appeal focused exclusively on the A.F. Ct. Crim. App's ruling that only one of the prosecutor's comments at the court-martial constituted error, and harmless error at that. In a majority opinion, the CAAF held that more than just one of the prosecutor's comments constituted error but that even the cumulative errors were harmless

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583 *United States* v. *Flores* [2010] 69 M.J. 651, p 653.

584 Ibid.

beyond a reasonable doubt given the 'overwhelming' evidence of Flores' guilt.[585] The CAAF affirmed the A.F. Ct. Crim. App'.s decision.

## United States Army

- *United States* v. *Graner* [2010] 69 M.J. 104 United States Court of Appeals for the Armed Forces

Graner, an enlisted soldier in the US Army, was court-martialed in 2005 for his role in the mistreatment of prisoners at Abu Ghraib prison in Iraq. Then Specialist Graner was a military policeman at Abu Ghraib who 'exploited his position ... in order to abuse and demean Iraqi detainees'.[586] Graner was involved in a host of impermissible actions towards detainees, including, among others: punching a detainee unconscious, forcing naked detainees into a human pyramid, placing a leash around a detainee's neck, and taking pictures of detainees forced to masturbate or simulate fellatio with other detainees.

He was charged with conspiracy to maltreat prisoners, maltreatment, dereliction of duty by failing to protect detainees under his charge from abuse, assault with a means likely to produce death or grievous bodily harm, assault consummated by battery, and committing an indecent act, in violation of the UCMJ. Contrary to his pleas, a general court-martial comprised of members found him guilty and sentenced him to a dishonorable discharge, confinement for 10 years, reduction to the lowest enlisted grade, and forfeiture of all pay and allowances.

On review in 2009, the ACCA affirmed the findings and sentence. The Court of Appeals for the Armed Forces (CAAF) granted Graner's petition for review. Graner argued that the military judge erred at the court-martial by failing to compel the military prosecutor to produce various memoranda between high level United States Government officials which Graner claimed authorized the manner in which he treated detainees. He also claimed error in the military judge's denial of his request that a US Army intelligence officer be allowed to testify that superiors had authorized rough treatment of detainees and curtailment of the testimony of a defense expert on the use of force.

The CAAF held that Graner failed to establish the relevance of the various documents at issue and also failed to properly request their production as specified by the Rules for Court-Martial. The CAAF also upheld the denial of the intelligence officer's expected testimony 'given the total lack of evidence connecting' the testimony and Graner's conduct. Finally, the CAAF agreed with the restriction of defense expert's testimony as the expert had an insufficient basis for his conclusions that the naked human pyramid and neck leashes were reasonable uses of force. The CAAF affirmed the decision of the ACCA.

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[585] *United States* v. *Flores* [2011] 69 M.J. 366 p 19. One Judge dissented, agreeing with the majority in affirming the A.F. Ct. Crim. App. decision but disagreeing with how the majority applied the plain error doctrine.

[586] *United States* v. *Graner* [2010] 69 M.J. 104, p 106.

- *United States* v. *Harman* [2010] 68 M.J. 325 United States Court of Appeals for the Armed Forces

Harman, an enlisted soldier in the US Army, was court-martialed in 2005 for her role in the mistreatment of prisoners at Abu Ghraib prison in Iraq. Then Specialist Harman was a guard at Abu Ghraib and was involved in a host of impermissible actions towards detainees, including, among others: after a hooded detainee was placed on a box, affixing his fingers with wires and telling him he would be electrocuted if he fell off; taking pictures of and posing in front of a naked human pyramid of detainees other guards had forced the detainees into, and writing 'I'm a rapist [sic]' on a detainee's naked thigh. She was charged with conspiracy to maltreat prisoners, maltreatment, and dereliction of duty by failing to protect detainees from abuse, cruelty, and maltreatment in violation of the UCMJ. Contrary to her pleas, a general court-martial comprised of members found her guilty and sentenced her to a bad-conduct discharge, confinement for 6 months, reduction to the lowest enlisted grade, and forfeiture of all pay and allowances.

On review in 2008, the ACCA affirmed the findings and sentence. The CAAF granted Harman's petition for review. Harman argued that her conduct was legally insufficient for a conspiracy conviction and that her lack of proper training should preclude her conviction for maltreatment. As to conspiracy, the CAAF held that Harman actively participated in the abuse and stressed the ACCA's conclusions that Harman's 'smiling face, when seen with the "thumbs up" hand signals [in front of the detainee "pyramid"], shows approval and encouragement to her co-conspirators as they maltreated the prisoners'.[587] In rejecting Harman's argument concerning her lack of training, the CAAF noted that Harman had received 'training in the care, custody and control of detainees as well as in the basic requirements of the Geneva Conventions regarding their treatment'.[588] The CAAF affirmed the decision of the ACCA.

- *United States* v. *Maynulet* [2010] 68 M.J. 374 United States Court of Appeals for the Armed Forces

Maynulet, a commissioned officer in the US Army, was court-martialed in 2005 for killing a purportedly mortally injured and unarmed insurgent in Iraq in 2004. Maynulet was serving as a company commander of an armor company and was instructed to set up a traffic control point as part of an operation to kill or capture a high value target (HVT). Following a high speed chase, the vehicle believed to contain the HVT crashed into a wall. Members of Maynulet's company found only the driver still in the car and with a readily apparent grievous head injury from the crash. A US Army medic told Captain Maynulet that the driver would not survive. Captain Maynulet then shot the driver in the head, killing him. He was charged with assault with intent to commit voluntary manslaughter in violation of the

[587] *United States* v. *Harman* [2010] 68 M.J. 325, p 327.

[588] Ibid., p 328.

UCMJ. Contrary to his pleas, a general court-martial comprised of members found him guilty and sentenced him to dismissal from the US Army.

In 2008, the US Army Court of Criminal Appeals (ACCA) reviewed and affirmed the case. The CAAF granted Maynulet's petition for review. Throughout the proceedings Maynulet acknowledged that he had shot and killed the driver, indeed the incident was captured on video by an unmanned aerial vehicle. Maynulet claimed that he thought he was authorized to shoot the driver under the international humanitarian law concept of preventing unnecessary suffering and that even if that was not the case, because he believed his actions were consistent with predeployment legal training, that the court-martial panel should have received a mistake of law instruction. The panel was not so instructed, a decision first the ACCA and then the CAAF upheld. As the CAAF stated:

> the problem with [Maynulet's] argument is that the record is devoid of any erroneous pronouncements or interpretations of military law or the law of armed conflict upon which he could have reasonably relied to justify his killing of the injured driver. The best [Maynulet] can argue is that he had a subjective belief as to what the law allowed. However, this if the very kind of mistake rejected by the general rule regarding mistake of law.[589]

The CAAF affirmed the decision of the ACCA.

- *United States* v. *Smith* [2010] 68 M.J. 316 United States Court of Appeals for the Armed Forces

Smith, a non-commissioned officer in the US Army, was court-martialed in 2006 for his role in the mistreatment of prisoners at Abu Ghraib prison in Iraq. Then Sergeant Smith was a military working dog (MWD) handler who, contrary to the training he received at the dog handler course, employed his working dog, unmuzzled and barking, directly in front of a detainee's face, and removing the detainee's hood with its teeth. He was charged with conspiracy to maltreat prisoners, maltreatment, dereliction of duty, and indecent acts in violation of the UCMJ. Contrary to his pleas, a general court-martial comprised of members found him guilty and sentenced him to a bad-conduct discharge, confinement for 179 days, reduction to the lowest enlisted grade, and forfeiture of $750 pay per month for 3 months.

On review in 2008, the ACCA dismissed the charges alleging indecent acts and dereliction of duty, while affirming the remaining findings and the sentence. The CAAF granted Smith's petition for review. Throughout the proceedings, Smith claimed that his brigade commander had ordered the use of MWDs in conjunction with interrogations and that the military judge's failure to instruct the court-martial panel on obedience to lawful orders constituted reversible error. While there was evidence that MWDs were used in conjunction with at least one interrogation, that use did not involve Smith nor use of a MWD in the manner in which Smith did. Smith also claimed that he could not be guilty of maltreatment because, for, among

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[589] *United States* v. *Maynulet* [2010] 68 M.J. 374, pp 376–377.

other reasons, the detainees were not subject to his orders. The CAAF, in dismissing this argument, *sua sponte* referred to the Geneva Conventions for the general proposition that 'detainees are obliged to follow the lawful orders of their captors'.[590] The CAAF affirmed the decision of the ACCA.

- *United States* v. *Girouard* [2010] 2010 WL 3529415 United States Army Court of Criminal Appeals (unpublished)

Girouard, a noncommissioned officer in the US Army, was court-martialed in 2007 for ordering two subordinate soldiers to kill three recently captured Iraqi detainees. Then Staff Sergeant Girouard was a squad leader in an infantry unit conducting an air assault operation in the Sunni Triangle area of Iraq in May 2006. The unit conducted the operation under rules of engagement (ROE) and guidance from their commander that all military aged males in the objective area were hostile and to be killed. During the operation, members of Girouard's squad captured and secured three such military aged males. Shortly thereafter, Girouard held a squad meeting where he informed his soldiers that the unit first sergeant (1SG) had inquired why the detainees had not been killed during what the 1SG mistakenly thought had been a firefight. Girouard also relayed one squad member's desire to kill the detainees to the rest of the squad. The squad interpreted Girouard's comments as a 'suggested plan to kill the detainees' with which some of the squad expressed approval and others disapproval. Girouard assigned two of the soldiers who expressed approval the responsibility to guard the detainees. Those soldiers, Hunsaker and Clagett, then cut the ties off the detainees, forced them to run, and then shot all three detainees. A third member of the squad, Graber, responding to the gunfire found one of the detainees mortally wounded but still alive and shot him in the head, killing him.[591]

Girouard was charged with conspiracy to obstruct justice, violating a lawful order, obstruction of justice and negligent homicide in violation of the UCMJ. Contrary to his pleas, a general court-martial comprised of members found him guilty and sentenced him to a dishonorable discharge, confinement for 10 years, reduction to the lowest enlisted grade, and forfeiture of all pay and allowances.

On appeal to the ACCA, Girouard claimed that the military prosecutor had failed to prove beyond a reasonable doubt that his conduct proximately caused the detainees' deaths. While acknowledging the existence of the 'kill all military aged males' ROE, the ACCA ruled Girourard, and the members of his squad, knew that

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[590] *United States* v. *Smith* (2010) 68 M.J. 316, fn. 8. The military prosecutor 'did not introduce the Geneva Conventions into evidence at trial, nor ... brief or argue ... as to whether, how, and if the Third or Fourth Geneva Convention applied in the context of Abu Ghraib'. See ibid.

[591] All three were court-martialed in 2007. Hunsaker and Clagget pled and were found guilty of conspiracy to commit murder, attempted premeditated murder, and premeditated murder. Although they were sentenced to confinement for life, a pretrial agreement with the military authority which convened the courts-martial reduced their sentences to 18 years. Graber was found guilty of aggravated assault with a dangerous weapon and sentenced to 9 months confinement.

the ROE 'did not authorize the killing of [military aged males] once they had been detained, and that the killing of detainees under their control was an unlawful act'.[592] Noting that Girouard was an experienced squad leader, the ACCA held that the detainees' deaths following the squad meeting was reasonably foreseeable and that a reasonably prudent person in Girouard's position would have kept the detainees under his control and not placed them with a subordinate who openly expressed a desire to kill them. The ACCA affirmed the findings and sentence.

While likely to be the subject of the 2011 report, the following ongoing US Army military justice cases bear noting:

- *United States* v. *Stevens* [2010] Ft. Lewis, Washington

As at the time of submission of this report, twelve US Army Soldiers from the same unit face up to 76 charges under the UCMJ stemming from a wide range of alleged misconduct while deployed in Kandahar Province, Afghanistan, including killing Afghan civilians and taking body parts as trophies.[593] The first of the trials, involving US Army Staff Sergeant Stevens, occurred in December, 2010.[594] Stevens pled and was found guilty of lying to investigators, shooting in the direction of two Afghan men, and throwing a grenade despite the absence of a threat. He was sentenced to 9 months confinement, a bad conduct discharge, reduction to the lowest enlisted grad and forfeiture of all pay and allowance.

- *United States* v. *Miller* [2011] Ft. Campbell, Kentucky

In June 2011, Sergeant Derrick Miller is scheduled to stand trial by court-martial for allegedly murdering an Afghan male in 2010.[595]

### United States Marine Corps

- *United States* v. *Hutchins* [2010] 68 M.J. 623 United States Navy-Marine Corps Court of Criminal Appeals

Hutchins, a non-commissioned officer in the US Marine Corps, was court-martialed in 2007 stemming from the kidnap and murder of an Iraqi man near Hamdaniyah, Iraq in 2006.[596] Then Sergeant Hutchins was serving as a squad

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[592] *United States* v. *Girouard* [2010] 2010 WL 3529415, p 1.

[593] M. Archbold, 'Grisly Details in Charges Against Soldiers', *The Olympian* (Olympia, US) 9 September 2010, <http://www.theolympian.com/2010/09/09/1363486/grisly-details-in-charges-against.html#>.

[594] 'Soldier Pleads Guilty to Some Charges in Afghan Killing; Gets 9 Months', *CNN*, 1 December 2010, <http://articles.cnn.com/2010-12-01/justice/afghanistan.sport.killings_1_first-soldier-stevens-afghan-men?_s=PM:CRIME>.

[595] E. Graham-Harrison, 'U.S. Soldier Faces Trial For Afghan Civilian Murder', *Reuters*, 23 February 2011, <http://www.reuters.com/article/2011/02/23/us-afghanistan-civilian-idUSTRE71M1C420110223>.

[596] Six other Marines, members of Sergeant Hutchins' squad, and a Navy corpsman were court-martialed for various offenses related to the kidnap and murder.

leader and led six of his Marines and a Navy Corpsman to drag a retired Iraqi policeman from his home, kill him, and plant a shovel and an AK-47 near the body in an effort to support the false claim that he was an insurgent.

Hutchins was charged with conspiracy, making a false official statement, unpremeditated murder and larceny in violation of the UCMJ. Contrary to his pleas, a general court-martial comprised of members found him guilty and sentenced him to a dishonorable discharge, confinement for 11 years, and reduction to the lowest enlisted grade.

In 2010, the US Navy-Marine Corps Court of Criminal Appeals heard Hutchins' appeal. The Court exclusively focused on whether the departure of Hutchins' military defense from active duty prior to trial constituted good cause for severing the attorney–client relationship, whether Hutchins had voluntarily consented to severing the relationship, and the presumptions of prejudice which follow. The Court ruled that Hutchins had not consented, that departing active duty was not good cause, and that there was a presumption of prejudice. The Court set aside the findings and sentence. As a result, in the spring of 2010, Hutchins was released from confinement and assigned duties at Camp Pendleton, California.

- *United States* v. *Hutchins* [2011] 69 M.J. 282 United States Court of Appeals for the Armed Forces

While technically just outside the 2010 reporting period, The Judge Advocate General of the Navy certified the case to the CAAF, which issued its ruling on 11 January 2011. The CAAF reversed the Navy-Marine Corps Court of Criminal Appeals, focusing on the same issue, the departure of Hutchins' military defense counsel from active duty before his court-martial. The CAAF held that while the military judge erred in failing 'to ensure that the record accurately reflected the reasons for the absence', that the error did not materially prejudice Hutchins.[597] The CAAF stressed that notwithstanding the issue of the military defense counsel, Hutchins was represented by two other attorneys, a civilian with nearly 30 years experience whom Hutchins had selected and a Lieutenant Colonel Judge Advocate who had previously served as a regional defense counsel. Moreover, after the departure of the third defense counsel, Hutchins was provided a substitute, another Lieutenant Colonel Judge Advocate, this one with 6 years of military justice experience and civilian experience as a public defender. Because the Navy-Marine Corps Court had only considered the defense counsel issue and Hutchins had raised other challenges to the findings and sentence, the CAAF remanded the case for further review. As a result of the CAAFs action, on 18 February 2011, Hutchins returned to confinement to serve the remainder of his sentence while renewing the challenge to his conviction at the Navy-Marine Corps Court of Appeals.[598]

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[597] *United States* v. *Hutchins* [2011] 69 M.J. 282, pp 291, 293.

[598] 'Camp Pendleton Marine Returns to Brig for 2006 Killing of Iraqi', *LA Times* (Los Angeles, US) 18 February 2011, <http://latimesblogs.latimes.com/lanow/2011/02/marines-brig-lawrence-hutchins-iraq.html>.

**United States Navy**

- *United States* v. *Keefe, Huertas, and McCabe* [2010]

Keefe, Huertas, and McCabe are Special Warfare Operators (SEALs) in the US Navy who were separately court-martialed in 2010 for the alleged assault of a detainee they captured in Iraq. The three Sailors were part of a team that captured Ahmed Hashim Abed, who was purportedly involved in the murder and mutilation of four US security contractors (two of whom were former Navy SEALs) in Fallujah, Iraq, in 2004. Following Abed's capture, McCabe allegedly assaulted Abed, and Huertas and Keefe allegedly both failed to stop the assault and later lied about the incident. McCabe was charged with assault, dereliction of duty, and making a false official statement in violation of the UCMJ. Huertas and Keefe were charged with dereliction of duty and false official statement in violation of the UCMJ. In three separate special courts-martial comprised of members, each was acquitted. Media reports claimed that the court-martial panels heard 'too many differences between the testimony of a sailor who claimed he witnessed the ... assault at a U.S. base outside Fallujah, Iraq, and statements from a half dozen others who denied his account'.[599]

*Legislation—Terrorist Detention*

- *Terrorist Review Detention Reform Act*

A bill to provide for habeas corpus review for certain enemy belligerents against the United States was introduced in the US Congress in 2010.[600] The bill is still in committee. The bill would, among other things, result in the US Congress defining who is subject to detention, the quantum of evidence required for that detention, and the process of and limitations on detainees challenging their detention through petition for a writ of habeas corpus.

CHRIS JENKS[601]

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[599] L. Jakes, 'Military Jury Clears SEAL in Iraq Abuse Case', *Associated Press*, 22 April 2010, <http://www.navytimes.com/news/2010/04/ap_navy_seal_court_martial_042210/> (referring to Huertas' court-martial); 'Second Navy SEAL Found Not Guilty of Prisoner Abuse', *NY Post* (New York, US) 23 April 2010, <http://www.nypost.com/p/news/international/second_navy_seal_found_not_guilty_SrdAXqEHg9ItuIidpBLVGJ?CMP=OTC-rss&FEEDNAME=> (referring to Keefe's court-martial); 'Navy SEAL Acquitted of Assaulting Iraqi Detainee', *CNN*, 6 May 2010, <http://articles.cnn.com/2010-05-06/justice/virginia.navy.seal.trial_1_iraqi-detainee-two-other-navy-seals-assaulting?_s=PM:CRIME> (referring to McCabe's court-martial).

[600] L. Graham, 'Terrorist Detention Review Reform Act', 111th US Congress, 4 August 2010, <http://www.govtrack.us/congress/bill.xpd?bill=s111-3707>. The 111th Congress is no longer in session, having been replaced by the 112th. In the United States, proposed bills which have not been passed by the end of one Congress are cleared but may be reintroduced in the next Congress.

[601] This entry was prepared by Lieutenant Colonel Chris Jenks, United States Army, Judge Advocate Generals' Corps. The entry does not necessarily reflect the views of the Judge Advocate General's Corps, the United States Army, or the Department of Defense.