

How Just Is Our Military Justice?

By Kelly Patricia O'Meara

The strange case of a Marine convicted of murder has critics of the Uniform Code of Military Justice calling for a review of a system with a 98 percent conviction rate.

I don't ask you to believe a word I say. I would prefer that you look at everything in my case as if you were pro-government. Don't listen to my opinions. Look for yourself and make your decision. Read both sides and weigh it for yourself."

These are the words of a convicted murderer, written in a letter to his mother from his prison cell. It is a request from a young man who has spent the last nine of his 29 years incarcerated at the federal penitentiary at Fort Leavenworth, Kan., for a crime it is hard to believe he committed. A judge and jury, however, listened to the evidence, heard both sides and sentenced him to life imprisonment without the possibility of parole.

It is this same evidence, if heard today, that his attorneys believe will clear him of the crime and set him free. But this is not a typical murder trial. This is a court-martial conducted under the Uniform Code of Military Justice (UCMJ), a system that began to attract public attention following the recent sinking of a Japanese fishing vessel by a U.S. Navy submarine in Pearl Harbor. It is a system being challenged as outdated and unfair [see "Rules Are Bent in Greeneville Court," April 30].

Many familiar with the UCMJ agree that the case of Lance Cpl. Kevin Holt is another reason to review the system of military justice.

In 1992, Holt was convicted of the premeditated murder of a fellow Marine, Cpl. Brent Arthurs. Holt knew the victim and, in fact, was one of three other Marines conspiring with the victim to rip off an insurance com-

pany. Arthurs' motorcycle was to be hidden and the insurance money that would be paid on the missing vehicle shared by the men. Although the foolhardy scheme seemed simple enough, Arthurs never collected. The facts of the case are as follows.

On the evening of May 8, 1992, Holt delivered Arthurs' motorcycle to Lance Cpl. Jon Spengler, who at the

The Uniform Code of Military Justice began to attract public attention following the recent sinking of a Japanese fishing vessel by a U.S. Navy submarine.

time was absent without leave and under investigation for other thefts at Camp Pendleton, Calif. Four days later, Arthurs' body was found in a remote mountain area east of Camp Pendleton. The coroner testified that the victim had been stabbed 46 times, possibly with two separate knives. On May 17, Shannon Stevens, the 16-year-old then-girlfriend of Lance Cpl. Chuck Sheldon, the fourth conspirator in the insurance scam, contacted the San Diego Sheriff's Department and fingered Holt for Arthurs' murder.

On May 19, 1992, three days before he was to be married, Holt was arrested by two seasoned homicide detectives of the San Diego Sheriff's Department in Washington state near his mother's home. The case quickly was turned over to military authorities.

As in most homicide trials, guilt or innocence is determined by the physical evidence; Holt's case was no different. The problem, however, is that there is a great deal of speculation about the validity and authenticity of the evidence, according to those familiar with the case. While it is impossible to list all the discrepancies at Holt's court-martial, there are a few glaring holes his attorneys are fighting to address in a new trial:

- Holt was wearing faded blue jeans, a T-shirt and leather jacket when he allegedly committed the murder. All of these items were entered as evidence and scrutinized by the San Diego Sheriff's Department homicide detectives, yet no mention was made in their report of any bloodstains on the clothing, particularly on the faded blue jeans.

- When the case was turned over to military authorities, the clothing was sent to Fort Gillem, Ga., for testing by U.S. Army forensic experts, reputedly some of the best in the world. No bloodstains were found on the clothing, even using an alternative light source that would reveal stains hidden in the fabric.

- The clothes had been in storage at Fort Gillem for nearly eight months when, at a cost of \$25,000, the prosecution hired an outside expert to find blood on the clothing. The "expert," Rod Englert, was a former deputy sheriff of a small town in Oregon and had no formal science education. According to Vaughn Taylor, an attorney who handled Holt's case early on, the pre-eminent forensic scientist, Herbert MacDonnell, referred to Englert as a "liar for hire" and a "charlatan." MacDonnell wrote that he wanted to know what he legally could do to dissociate himself from Englert.

More importantly, Englert's testimony at Holt's court-martial was at odds with the findings of both the Army's forensic experts and the homicide investigation of the San Diego Sheriff's Department, which found no bloodstains on any item in question belonging to Holt. Not only did the uncredentialed Englert testify that he had detected bloodstains, but also that they were visible to the naked eye.

- No fewer than 11 Marines testified at Holt's court-martial that they knew Holt's alleged victim and had either



One tough lady: Mother Ewing fights for her convicted Marine son Kevin.

Rehkopf says, "I've been defending people accused of serious crimes in the military for decades, and the systemic problem is that the least-experienced attorneys are used as defense attorneys. In 50 percent of the cases this isn't a big deal, but when you start getting into the more serious crimes you really need the more-experienced attorneys defending these people."

Augusta, Ga., attorney William Cassara has worked on the Holt case since late 1997 and tells *Insight*, "I truly don't believe Kevin did this crime, and it really bothers me. I've lost a lot of sleep on this one. When someone looks at spending the rest of their life in jail for something you don't believe they did, it is really hard to handle." Cassara continues, "What really ticks me off is that, if there is any question of Kevin's guilt, why not conduct DNA tests on the jeans that Englert claimed were blood-stained?"

"We've made several requests in appeals and petitions on behalf of Kevin for further tests to be performed on the jeans," Cassara explains, "and each request has been denied. The government refuses to conduct DNA testing on the clothes they used to convict him. Why? This is compelling evidence: The DNA test should be conducted so finally we can put this issue to rest."

That's a systemic problem, of course. What else? Cassara tells *Insight*, "There are a number of problems with the system, beginning with the fact that the base commander basically controls the process. The base commander recommends whether the case is sent for court-martial, holds the purse strings and then picks the jury. That system is in dramatic need of reform."

When *Insight* spoke with the office of the Navy/Marine Corps Judge Advocate General (JAG), spokeswoman Carolyn Alison claimed that no statistics on the rate of military convictions are kept, but "the JAG always wants the truth to come out. We're open and aboveboard, and I think there are more safeguards in place for the defendant than in civilian courts."

Alison forwarded a 10-page "overview" of the UCMJ for review. It states that "the purpose of military law is to promote efficiency and effectiveness in the military, and thereby to ensure the national security of the United States." The listed purposes of military

seen or spoken to him on Saturday — the day after he supposedly had been murdered. This testimony was dismissed by the prosecution as "Elvis sightings" when it became clear that Holt was not in Southern California on Saturday.

- Holt's Chevy Blazer was impounded and repeatedly inspected by the Army's crime lab, but no evidence was found linking him to the crime. Nor were any bloodstains found in the automobile, despite the prosecution's contention that Holt used the vehicle to flee the scene of the crime.

- No evidence was found in Holt's barracks to link him to Arthurs' murder either.

Rochester, N.Y., attorney Donald Rehkopf, of the law firm of Brenna & Brenna, has taken up Holt's case on a pro bono basis. Rehkopf has handled

military cases for more than two decades and is one of two attorneys now fighting for Holt. Rehkopf tells *Insight* that "in 26 years of practicing law this case is the most disturbing. I'm appalled at the lack of evidence." Strong words, and not directed at the Holt case alone. "The problem," says Rehkopf, "is systemic, and the system needs to be reviewed."

According to Rehkopf, "a lot of Kevin's case is about bad timing. Kevin's original defense attorneys weren't experienced in murder trials. Then 30 days before trial Kevin's lead attorney was replaced by a more experienced one, but his time to prepare for Kevin's defense was truncated. On the other hand, the prosecution had a very experienced attorney and seven months to prepare. That's hardly a level playing field."

(continued on page 39)



ORLIN WAGNER/AP/WWP

COURT-MARTIAL

(continued from page 23)

law do not mention justice. According to the JAG "overview," the military system is "specifically tailored for the armed forces and balances constitutional guarantees and fairness with the needs of good order and discipline." Which means that those subject to military law do not have the same constitutional guarantees afforded under civilian law, where the objective is not good order and civil discipline but justice, say critics.

When asked why the government refused requests for DNA tests in Holt's case, Alison becomes tentative and says she has seen no request in the most recent record but will look further. The fact is that four separate requests have been filed over a four-year period, and each has been denied.

Retired U.S. Army Maj. Glenn MacDonald is not surprised by the denials. He is editor in chief of MilitaryCorruption.com (www.militarycorruption.com), an organization made up of former military personnel dedicated to fighting for the truth and exposing corruption in the military. MacDonald is familiar with the Holt case and tells *Insight*: "As a former enlisted man, I'm familiar with the difficulties others in the military are experiencing, and I can relate to their situations. We try here to expose injustices like the Holt case. We're not saying that everyone who is court-martialed is innocent, but we're fighting for those who have obvious evidentiary problems."

MacDonald says flatly, "The military system of justice is broken down, and it's ironic that the service members who are sworn to support the Constitution often are deprived of those basic constitutional rights. There are certain cases that really are egregious, and Holt's is one of them. We believe by exposing these injustices we hold out some hope to other powerless people in the military."

Like MacDonald, Glenda Ewing also has gone public. She is Kevin Holt's mother and believes his chance for justice depends on her efforts to get her son a new trial. Ewing tells *Insight* that Citizens Against Military Injustice (CAMI), whose Website is at www.militaryinjustice.com, started as an effort to focus attention on Kevin's case. "Then I thought it would be a good idea to provide information concerning others who needed this kind of help. I did not want other families to go through what I did to get even the most basic information, and the Internet seemed the best way to help the largest number of people."

Ewing believes her son is innocent, and she won't let go. "The physical evidence," she explains, "has always been our main focus because of the discrepancies in the expert testimony. If the government would allow the DNA testing I would be satisfied with the outcome."

What if the evidence supports his guilt? Ewing responds candidly, "I can't tell you how I'd feel or what I'd do if the tests were to come back supporting Kevin's guilt, but I'm confident

Life without parole: Holt now is incarcerated at the U.S. Disciplinary Barracks at Fort Leavenworth. Will DNA test prove him innocent?

that won't happen. It is a shot all of us — including Kevin — want to take. We will accept the findings."

Laboring to free her son, says Ewing, she has learned more about the military system of justice than she ever dreamed possible. She says grimly, "Court-martials are out of control. There are an estimated 10,000 or more conducted each year — and add that to the 98 percent conviction rate, the untrained and understaffed defense attorneys and blatant command influence and it adds up to serious problems for military personnel who come face-to-face with the military rule of law."

Though the JAG office refused to confirm Ewing's claim that there is a 98 percent conviction rate, raising severe questions about built-in bias for conviction, civilian and JAG defense attorneys practicing military law tell *Insight* the number is about right.

Ewing sympathizes with all the men and women caught up in this system, which she regards as stacked outrageously for conviction, but her son's case remains her main focus. All avenues of appeal within the military system are exhausted, but Kevin's attorneys will file a writ of habeas corpus — a petition claiming his confinement is illegal and demanding his release. The petition once more will include the argument for DNA testing. ●