



# THE ARMY LAWYER

*Headquarters, Department of the Army*

December 2011

## ARTICLES

**Why You Can't Always Have It All: A Trial Counsel's Guide to HIPAA and Accessing Protected Health Information**

*Major Kristy Radio*

**Working with Proximate Cause: An "Elements" Approach**

*Captain Daniel D. Maurer*

**Speedy Trial Demands**

*Captain Joseph D. Wilkinson II*

## TJAGLCS FEATURES

### Lore of the Corps

**A Butler in FDR's White House, Combat Infantryman in Italy, and Judge Advocate in the Corps:  
Rufus Winfield Johnson (1911–2007)**

### New Developments

*Administrative & Civil Law*

**Veterans' Benefits Act of 2010 Amends Servicemembers Civil Relief Act and  
Uniformed Services Employment and Reemployment Rights Act**

*Lieutenant Colonel Baucum Fulk*

## BOOK REVIEWS

**Court-Martial at Parris Island: The Ribbon Creek Incident**

*Reviewed by Major Paul Welling*

## CLE NEWS

## CURRENT MATERIALS OF INTERESTS

## THE ARMY LAWYER INDEX FOR 2011

*Department of the Army Pamphlet 27-50-463*

# Court-Martial at Parris Island: The Ribbon Creek Incident<sup>1</sup>

Reviewed by Major Paul Welling\*

*Whatever may have been its causes, the decision itself can never be justified. . . . That he did not intend the consequences does not excuse McKeon's negligence in exposing seventy-five young men, many of them there precisely because they were undisciplined, to a number of foreseeable hazards.*<sup>2</sup>

## I. Introduction

In the summer of 1956, a drill instructor in the Marine Corps led his platoon on a nighttime march into the swamps of Parris Island, South Carolina, resulting in the deaths of six recruits in his charge.<sup>3</sup> While this event may have faded even from the memories of Americans who were living at the time, during the spring and summer of 1956 it seized the headlines and the attention of Congress, demanding a meaningful response by Marine Corps leadership.<sup>4</sup>

In *Court-Martial at Parris Island*, Stevens investigates the drowning deaths in Ribbon Creek, focusing closely on the court-martial of the drill instructor involved, Staff Sergeant Matthew McKeon. Supporting his record with personal interviews of nearly all the survivors of the incident as well as an examination of the record of trial and news media reports, he provides an up-close look at the people and places involved.

Stevens' central purpose is to tell the story of the events at Parris Island objectively and in their entirety.<sup>5</sup> In so doing, he supplies an authoritative analysis of the legal and public relations maneuvering from the saga's beginning to its end.<sup>6</sup> This review compares the facts of the events as presented by Stevens with other published works and then examines the lessons to be learned on the impact of publicity on the military justice system.

## II. Background

John C. Stevens III enlisted in the Marine Corps and passed through boot camp at Parris Island in 1957, one year after the Ribbon Creek incident.<sup>7</sup> He received an honorable

\* Judge Advocate, U.S. Air Force. Currently assigned as Chief of General Law and International Claims, Headquarters Fifth Air Force, Yokota Air Base, Japan.

<sup>1</sup> JOHN C. STEVENS III, *COURT-MARTIAL AT PARRIS ISLAND: THE RIBBON CREEK INCIDENT* (1999).

<sup>2</sup> *Id.* at 169.

<sup>3</sup> *Id.* at 56.

<sup>4</sup> See, e.g., *id.* at 37–39, 62–63, 158–59, 162–64, 181–82 (detailing reactions by Marine Corps leadership, Congress, and the media).

<sup>5</sup> *Id.* at ix.

<sup>6</sup> *Id.* at 69–70, 151–54 (summarizing the effects of publicity on the legal outcome).

<sup>7</sup> *Id.* at xiv.

discharge in 1963 and graduated from Suffolk University Law School in 1969. Since that time, Stevens has practiced law as an attorney, judge, and mediator.<sup>8</sup>

## III. Comparisons with Other Published Accounts

The tragedy at Ribbon Creek in 1956 was widely and intensely covered in the national media immediately after the incident, during and after the court-martial, and in books and news articles appearing decades later.<sup>9</sup> Stevens distinguishes this book from other accounts, in part, by focusing on the human aspect and by examining the backgrounds of those involved.<sup>10</sup> Even more importantly to the judge advocate, Stevens provides a perceptive breakdown of the legal proceedings.<sup>11</sup>

Stevens takes pains to clear up misconceptions and misreported facts found in other accounts relating to the incident. He expends significant effort analyzing the facts surrounding the allegations that McKeon was under the influence of alcohol during the march into the swamp.<sup>12</sup> One prominent record of the event relates that “Medical tests showed [McKeon] had been drinking.”<sup>13</sup> Stevens' detailed analysis shows this may not have been the case.<sup>14</sup>

Although McKeon admitted to drinking some amount of alcohol earlier in the day,<sup>15</sup> none of the medical tests performed after the incident confirmed he was under the influence of alcohol.<sup>16</sup> The confusion of fact came about

<sup>8</sup> Profile of John C. Stevens III, <http://jstevensaccord.com/profile.htm> (last visited Jan. 22, 2012).

<sup>9</sup> STEVENS, *supra* note 1, at 181, 182.

<sup>10</sup> KEITH FLEMING, *THE U.S. MARINE CORPS IN CRISIS: RIBBON CREEK AND RECRUIT TRAINING*, at xi, xii (1990) (describing that the purpose of his book was to recount the response of the Marine Corps to the tragedy and to place the events of 8 April 1956 in a “military, political, and social history” context).

<sup>11</sup> See generally STEVENS, *supra* note 1, at 79–141 (recounting the events of the court-martial).

<sup>12</sup> *Id.* at 52, 56, 57, 63, 100, 102, 109, 110, 142, 147, 149, 150 (analyzing at length the facts surrounding McKeon's alcohol consumption).

<sup>13</sup> ALLAN R. MILLETT, *SEMPER FIDELIS: THE HISTORY OF THE UNITED STATES MARINE CORPS* 528 (1980).

<sup>14</sup> STEVENS, *supra* note 1, at 29–30, 43–44, 109–10.

<sup>15</sup> *Id.* at 121.

<sup>16</sup> *Id.* at 110.

because the military physician who ran the tests on McKeon testified before the court of inquiry that there was clinical evidence of intoxication. Unfortunately for the court of public opinion, this erroneous statement was not corrected until the physician was cross-examined at the court-martial nearly four months later, whereupon he testified that “Sergeant McKeon was not clinically under the influence of alcohol.”<sup>17</sup>

Another misconception clarified by Stevens was whether McKeon had violated regulations by taking the Marines into the swamp in the first place.<sup>18</sup> Other published accounts relate that marches into the swamp were in violation of an established general order.<sup>19</sup> Once again, as Stevens points out, the truth was more complex. Stevens examines trial testimony and the language of the order in question, which prohibited only swimming and bathing in the swamp, and shows that no order prohibiting marches into the swamp actually existed.<sup>20</sup> While the difference between swimming and marching may seem trivial in this context, the distinction is significant taken in light of the proceedings as a whole. McKeon, who was charged with “culpable negligence,” had a much stronger defense once evidence at trial showed that he had not acted in violation of an order, and that, in fact, nighttime marches into the swamp were common practice among drill instructors.<sup>21</sup>

Stevens’ characterization of a “swarming” national news media response is borne out by the abundance of published articles from the period.<sup>22</sup> For example, *Time* magazine ran three in-depth articles, publishing the first shortly after the incident and the last on 15 October 1956,<sup>23</sup> after Navy Secretary Charles Thomas took action reducing McKeon’s sentence. Stevens describes the impact excessive media attention had on the pre-trial, trial, and post-trial processes, on the strategies of the defense team, and on decisions by the military commanders.<sup>24</sup>

#### IV. Lessons in Public Relations: Trying a High-profile Case

Know your audience. This tenet is fundamental for any public affairs professional and should also be understood by trial attorneys. This is a concept the defense team in this case, particularly the well-known lead counsel Emile Berman, understood well.<sup>25</sup>

Berman understood that the audience was not merely the members of the court, but also the Marine Corps leadership and ultimately the public.<sup>26</sup> As history has shown, in high-profile cases where the facts are well known to the public, military leadership at the highest levels is influenced by public perceptions on matters of military justice and clemency.<sup>27</sup> Stevens points out how widespread, negative publicity at the outset affected the decisions of Marine Corps leadership with regard to McKeon’s court-martial.<sup>28</sup> The lesson for the judge advocate is not to underestimate the influence of public attitudes, real or perceived, toward a high-profile proceeding.<sup>29</sup>

Just as importantly, Stevens accurately emphasizes the importance of keeping commanders out of trouble when discussing legally sensitive issues with the media. Stevens’ account shows that right at the start, the Commandant of the Marine Corps, General Randolph Pate, was caught off guard by the media attention and committed a blunder that would affect the entire legal proceeding.<sup>30</sup> Failing to follow the advice of his legal officer and chief of staff, General Pate publicly stated that the accused appeared to be guilty, and would be punished to the full extent of the law.<sup>31</sup> As the author correctly surmises, this preemptive declaration of guilt disqualified General Pate and anyone under him from convening the court-martial.<sup>32</sup> Together with the subsequent remark about punishment, it may have affected the court members during sentencing.<sup>33</sup>

---

<sup>17</sup> *Id.* at 48.

<sup>18</sup> *Id.* at 54, 59.

<sup>19</sup> *E.g.*, MILLETT, *supra* note 13, at 530 (describing these swamp marches as “illegal”); *see also* JOSEPH DI MONA, GREAT COURT MARTIAL CASES 134 (1972) (stating that it was a violation of a general order to take men on marches into the swamp).

<sup>20</sup> STEVENS, *supra* note 1, at 94.

<sup>21</sup> *Id.* at 118, 119, 125, 136, 137 (supplying testimonial evidence of drill instructors taking recruits on marches into the swamp on other occasions).

<sup>22</sup> *Id.* at 59 (referring to the publicity as a “Media Feast”).

<sup>23</sup> *Death in Ribbon Creek*, TIME, Apr. 23, 1956; *The Trial of Sgt McKeon*, TIME, July 30, 1956; *The Road Back*, TIME, Oct. 15, 1956.

<sup>24</sup> STEVENS, *supra* note 1, at 152–54.

---

<sup>25</sup> *Id.* at 69–70, 75–76.

<sup>26</sup> *Id.*

<sup>27</sup> *See id.* at 70; *see also* DI MONA, *supra* note 19, at 283–86.

<sup>28</sup> *See* STEVENS, *supra* note 1, at 37–39 (describing how Marine Corps leadership took measures to deal with the threat to its continued existence in the aftermath of the tragedy).

<sup>29</sup> FLEMING, *supra* note 10, at xii (describing how the trial of Sgt McKeon illustrated the “complex nature of the justice system in America, and how public opinion can play a role in the ultimate outcome”).

<sup>30</sup> STEVENS, *supra* note 1, at 37–38.

<sup>31</sup> *Id.* at 37 (General Pate was asked by a reporter if Sgt McKeon was guilty of breaking regulations, he said, “It would appear so.”).

<sup>32</sup> *Id.* at 37–38.

<sup>33</sup> *See id.* at 37, 133, 149.

Just as troubling to the judge advocate is what occurred during the trial when General Pate was called to testify. Stevens relates that Berman successfully persuaded General Pate to testify on behalf of the accused.<sup>34</sup> Berman elicited a recommendation from General Pate that the accused should receive a relatively minor sentence, a position contrary to his earlier recommendation for a harsh penalty.<sup>35</sup> Once again, the Commandant of the Marine Corps had made a public declaration—this time while on the witness stand during the trial—recommending a punishment.

The media attention affected the final outcome of the proceedings as well. Stevens describes how the publicity surrounding the trial played a role in Berman’s ability to persuade the Commandant of the Marine Corps and Lt. Gen. (retired) Lewis B. “Chesty” Puller to testify on behalf of the accused.<sup>36</sup> Berman was able to use the possibility of a retrial—and all the publicity that would surely accompany such an event—against the Marine Corps in order to negotiate a reduction in McKeon’s sentence.<sup>37</sup> In sum, the defense team was able to reverse the effects of the negative publicity against their client, and then shape the proceedings to his benefit.

## V. Conclusion

Stevens’ account is thoroughly researched and provides a number of lessons on advocacy for the judge advocate. With his background as an attorney, judge, and Marine, Stevens is exceptionally suited to tell this story.

The book is not without its flaws, however. The storyline is at times disorganized, making his account difficult to follow. During the first half of the book, Stevens frequently skips forward and back along the timeline of events, breaking the flow of narration. While this narrative technique works well in some books, here it is perplexing. Overall, this flaw is minor. Stevens constructs the record well and resolves it conclusively with his final assessments of the legal issues and the lasting impact of the tragic events on the participants.<sup>38</sup> This story warrants the careful examination given to it by the author. The lessons for the judge advocate and military commander are as relevant now as they were then.

---

<sup>34</sup> *Id.* at 128–33.

<sup>35</sup> *Id.* at 133.

<sup>36</sup> *Id.* at 129, 137 (describing Lieutenant General Puller as the most decorated Marine living at the time).

<sup>37</sup> *Id.* at 152.

---

<sup>38</sup> *Id.* at 155–73.