

## Hazing Trial is Attributed to Influence of Politician

The civilian attorney for a second Hawaii Marine charged with hazing leading up to the suicide of Lance Cpl. Harry Lew in Afghanistan said Monday the only reason his client is on trial is because Lew's aunt Judy Chu is a congresswoman.

Sgt. Benjamin E. Johns, 26, who was in charge at remote Patrol Base Gowragi on April 3, the day Lew killed himself, was charged with violation of a lawful order for allegedly wrongfully humiliating and demeaning Lew and dereliction for allegedly failing to supervise and ensure the welfare of Marines under his care.

"I think the government feels a lot of political pressure to charge Sgt. Johns," said Honolulu attorney Timothy Bilecki, who is representing Johns. "I think in any other case, had Judy Chu not been involved and this didn't make it all the way up to (Washington) D.C., this would never be on trial."

Chu, a California Democrat who attended a hearing at the Kaneohe Bay Marine base Jan. 30 for another Marine charged in the case, said the Marine Corps system "broke down" in the hazing of her nephew, and called for congressional hearings into military hazing.

The general court-martial

trial of Johns was to start Monday but was postponed for a day when Bilecki objected to new charging language that he said the government, acting as the prosecution, introduced that morning.

Johns is accused of ordering Lew to dig a new foxhole late at night after Lew had fallen asleep that night and on several previous occasions while on sentry duty, Bilecki said. Lew, 21, from Santa Clara, Calif., shot himself at 3:43 a.m.

"Sgt. Johns pulled him out of that fighting position, and he ordered him to dig what's called a supplemental fighting position, basically a foxhole," Bilecki said. "Our position is that was an operational necessity -- that that foxhole was going to be dug anyway, and it was going to be used by all of the Marines, not just Lance Cpl. Lew."

The defense was told that was the basis of the hazing, Bilecki said.

On Monday morning, before the trial was to start, the government added an "entirely new theory of liability": that Johns also was derelict in his duties because another Marine had ordered Lew to carry a sandbag after he was found asleep and that Johns should have stopped it, Bilecki said.

"They give us this information 10 minutes before trial, which really, I don't want to say threw us off guard, but it's not appropriate, which is why we asked for them to not be able to expand that theory of liability," he said.

The military judge, Col. Michael Richardson, allowed the new language to stand, saying it was a "fair thing" for the government to amend what's known as a "bill of particulars."

Richardson also said the case should be resolved now because of the government expense, arranging to have witnesses and a jury, and with Lew's family flying in for the trial.

Richardson postponed the trial a day to give Bilecki time to re-interview witnesses and for the prosecution to provide the elements of the crime it alleges Johns committed, Bilecki said.

Johns was not aware of the sandbag-carrying issue until later, and then ordered that it be stopped, Bilecki said.

The Marine Corps said neither of the military prosecuting attorneys would comment on the case outside of court.

The Marines previously said Johns faced a maximum of 2 years' confinement and discharge for conviction.

Attorney Greg Rinckey

, who has expertise in military cases, said before any of the hazing cases began that convictions might be a tough sell for Marine actions in a combat zone.

Rinckey, a managing partner with the East Coast law firm Tully Rinckey PLLC, said he expected the defense to say the actions by the accused Marines were not hazing.

Whether their actions crossed the threshold into hazing in a combat zone, "that's the thin line where lawyers are going to disagree," he said.

Lance Cpl. Jacob D. Jacoby, 21, reached a plea deal and was sentenced last week to 30 days' confinement and a pay grade reduction for assault for kicking and punching Lew in the helmet and back while Lew was in the foxhole.

A third Hawaii Marine, Lance Cpl. Carlos Orozco III, 22, is charged with ordering Lew to do push-ups and to do leg lifts with a sandbag, pouring sand on his face and placing his boot on Lew's back.

Marine Corps Commandant Gen. James Amos signed a revised order Wednesday saying hazing can take many forms and includes subjecting other Marines to actions that are cruel, abusive, humiliating, oppressive, demeaning or harmful.