

Hazing-related Charges in GI's Death Could be Difficult to Prove

A low-ranking soldier is hazed and mistreated by his fellow troops and even his leaders.

He commits suicide. The military investigates.

Are his tormenters legally responsible for his death?

Last week, the Army charged eight soldiers in the hazing and death of Pvt. Danny Chen, 19, who the Army said was found dead of an "apparent self-inflicted gunshot wound" in an Afghanistan guard tower in October. Five of the eight troops face involuntary manslaughter and negligent homicide charges.

The Army hasn't released details of its investigation but the array of charges suggests a theory that Chen was driven to suicide by his tormentors' abuse. An Army official told Chen's family that he had been beaten by superiors and subjected to racially motivated taunts, according to an October story in *The New York Times*.

The charges appear to indicate the military is looking to make an example of the eight soldiers, to show that hazing will not be tolerated, legal experts say, but they also believe that the most severe charges will be difficult to prove.

"There are a number of cases that have been reported in the criminal justice system where people have committed suicide after harassment ... and a homicide charge is almost never successful," said Ralph M. Stein, a Pace University law professor who served as an Army intelligence officer in the 1960s. "The only way you're getting that up to manslaughter ... is if the person has clearly indicated that they've been pushed beyond a certain point. I don't think we've got it with this case."

"It's going to be a nightmare from a proof perspective for the judge advocate, especially if you try the case in Afghanistan with a jury that's been in combat," said Charles Rose, a law professor at Stetson University who retired as a colonel in the Army JAG Corps in 2004 and co-authored the book "Military Crimes and Defenses."

"It can be done, but it's a real logical leap," Rose continued. "If nothing else, it sends a message from a discipline perspective."

Last week's charges came amid continuing concern over suicides in the military. According to a recent report from the Center for a New American Security, 1 to 2 percent of military suicides and 4 to 5 percent of military suicide attempts "involve hazing in the unit or military workplace."

Through the end of November, 154 active-duty soldiers and 32 Marines had taken their own lives. The Air Force counted 41 suicides through Dec. 21, and the Navy recorded 46 suicides through Dec. 6.

A month before Chen's death, Marine Lance Cpl. Harry Lew killed himself in Afghanistan after being berated and assaulted by three Marines, according to charges filed in that case.

Earlier this year, a Stars and Stripes investigative report brought to light the case of Spc. Brushaun Anderson, who shot himself in a portable toilet in Iraq on New Year's Day 2010 after enduring "cruel, abusive and oppressive treatment," according to an Army investigation. Anderson's leaders, whom the Army deemed responsible for the maltreatment, escaped criminal charges and were essentially let off with a slap on the wrist.

The difference in Chen's case, lawyers said, is that his family has been at the center of media attention. About 500 protesters marched and held a candlelight vigil in Chinatown in Manhattan on Dec. 15.

"Let's not kid ourselves," said Mathew Tully, a New York lawyer who is also a lieutenant colonel in the New York National Guard and served on active duty as an artillery officer in the late 1990s at Fort Sill and in South Korea. "If it wasn't for the involvement of the Chen family in New York City, this would not be where it is right now."

'Product of this system'

Beyond the circumstances of Chen's death is the question of how much hazing truly goes on in the military.

Defense Secretary Leon E. Panetta added an anti-hazing mandate to his holiday message to troops worldwide, while Gen. Martin Dempsey, chairman of the Joint Chiefs of Staff, said on his Twitter and Facebook pages that the military is "investigating several allegations of hazing within our ranks," which he called "intolerable."

"Every servicemember should be aware that participating in hazing or even observing it without reporting it are both wrong," Dempsey's statement said.

But some current and former soldiers and Marines said hazing isn't just common, it's built into the fabric of the military culture — especially in combat units.

"If anybody says there's no hazing in the military, they're not serving with infantry units and field artillery units and combat units," Tully said.

He added that he defended a lieutenant colonel in a hazing case in 2004 or 2005 and got the charges reduced to a letter of reprimand that meant the officer could retire.

"Within the Marine Corps infantry especially, I feel like hazing is really a staple of that culture," said Maximilian Uriarte, 25, who served as an assaultman with 3rd Battalion, 3rd Marines during two tours in Iraq between 2007 and 2009.

Uriarte, who left active duty with the Marines in 2010, writes the online comic strip "Terminal Lance," which pokes fun at the Marine Corps "with an emphasis on the grunt lance corporal's point of view."

"It happens all the time," Uriarte said. "It's part of the way Marines are brought up. Without hazing, it wouldn't be the infantry."

Nevertheless, Uriarte said that as he gained more seniority after his two combat deployments, he resisted the idea of hazing newer Marines, known as "boots."

"There's a fine line between hazing and acceptable training and punishment," Uriarte said, and he cited examples of things he thought were excessive. "Guys would make people ... drink water until they puke," he recalled, or "make people wear their flak jacket and put on their sleeping bag and stuff to make it really hot until they pass out."

He sounded disgusted by the idea of a soldier being hazed to the point of suicide.

“They should definitely be punished,” he said. “Somebody needs to be held responsible. But the counter of course is if these guys that were hazing him were a product of this system that they were brought up in. Who do you blame at that point?”

'Didn't see this coming'

Chen was an only child, the son of Chinese immigrants who do not speak English.

“They were really sad that they don’t know why Danny passed away,” family friend Raymond Dong, 19, who had known Chen since third grade, told Stars and Stripes.

“That they found the people responsible,” Dong said, “they feel a lot better.”

Dong said Chen was the only one of their friends who joined the military, and that he enlisted rather than accept a full scholarship offer to Baruch College, a highly competitive public university in Manhattan. The two friends last chatted over Facebook on Sept. 27, just six days before Chen’s death.

In letters from Chen read publicly at the candlelight vigil earlier this month, the young soldier confided that he was regularly teased because of his Chinese heritage and he lamented that he’d run out of jokes to fire back in response.

“He’d only been there two months,” Dong said. “Danny was a funny guy, you know? He liked to joke around, and he [was] very dedicated to what he does. Very smart in school. ... He said he wanted to do something new in life. I told him not to join because it’s a risk. But I didn’t see this coming.”