

Analysts: "Fragging" Verdict Shows System Works

A soldier's exoneration in the bombing deaths of two superiors in Iraq shows military juries are not just "rubber stamps" for commanders and can be independent thinkers, legal analysts said Friday.

A Fort Bragg jury on Thursday found New York National Guard Staff Sgt. Alberto Martinez not guilty of premeditated murder in the first alleged "fragging" case from the wars in Iraq and Afghanistan. Killing a superior officer in the military was known by the term during the Vietnam War.

The 14 soldiers on the jury, all of whom outranked Martinez, heard six weeks of testimony and deliberated nearly two days before coming to a conclusion that surprised some trial watchers.

Among civilians, there are probably concerns "that military court panels are hang-'em-high, kangaroo court, rubber stamps for the commander," said Michelle McCluer, a former Air Force attorney and executive director of the Washington-based National Institute of Military Justice.

"If you take a look at the numbers of acquittals in military courts ... it is clear that court-martial panels take their role as independent triers of fact seriously," said McCluer, who prosecuted and defended military cases for 11 years.

Martinez, 41, of Troy, N.Y., was accused in the deaths of his company commander, Capt. Phillip Esposito, 30, of Suffern, N.Y., and operations officer 1st Lt. Louis Allen, 34, of Milford, Pa. All three men were members of the 42nd Infantry Division. Martinez could have faced the death penalty if he had been convicted.

McCluer said many people following the case believed Martinez, who witnesses said threatened to kill Esposito, would be found guilty.

That included some in the courtroom, who reacted angrily after the verdict was read.

Allen's widow, Barbara Allen, exclaimed, "He slaughtered our husbands and that's it?" Others also yelled out before the judge quickly ordered the courtroom to be cleared.

Esposito's widow, Siobhan Esposito, said in an interview Friday that she's outraged.

"I'm in a state of shock," she said. "He threatened to murder my husband, and he did it. That jury let him walk away. He gets to go home to his family. My husband never got to do that because he took that away."

But the judge early in the trial said the case was circumstantial: There were no fingerprints or DNA linking Martinez to the bombing, no witnesses to say they saw him commit the crime.

McCluer said defense lawyers prefer such cases.

"Those are the ones you can poke the most holes in. But as a prosecutor, I have gotten convictions on purely 'he said, she said' cases," McCluer said.

Former military lawyer Greg Rinckey agreed. Now an attorney in Albany, N.Y., he handles military cases. He said testimony revealed Martinez felt violent urges toward his commander, but prosecutors "couldn't connect all the dots."

Martinez and the officers were based at Forward Operating Base Danger near Tikrit. Esposito and Allen were killed when hundreds of pellets from a Claymore anti-personnel mine in their window ripped through their room at the base late on June 7, 2005. They died the next day.

Prosecution witnesses testified that Martinez grew hostile after serving under Esposito, a by-the-book officer who thought Martinez's handling of his unit's supply room was sloppy. Witnesses said night vision goggles and gas masks had been misplaced and Martinez didn't believe in using receipts to track equipment he handed out.

Several witnesses said Martinez made derogatory comments about Esposito, and one witness said Martinez threatened to "frag" his commander more than once.

Martinez chose not to testify during the trial.

The Army's chief prosecutor at Fort Bragg, Lt. Col. Kerry Erisman, said the military wouldn't have charged Martinez if it didn't believe he committed the killings.

Defense lawyers portrayed Martinez as someone who didn't have the skills to commit such a crime, and they raised enough reasonable doubt to win an acquittal, said Rinckey.

"The military is going to drive on and respect the verdict of the panel," Rinckey said. "It sent a message that the Army took this very seriously and court-martialed a soldier and the evidence wasn't there."