

Casualty or crime?

Line between accident and accountability blurs in a stressful war zone

Stories by Kelly Kennedy
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Lt. Willie Davis brought his M16 into a briefing room in Baghdad's Green Zone. When another soldier told him weapons were not allowed inside, Davis protested that he had cleared it before entering. To prove it, according to witnesses, he aimed it at the head of 22-year-old Sgt. Joseph Tackett and pulled the trigger.

The weapon had not been cleared.

Tackett is dead and Davis is serving the maximum sentence possible for negligent homicide — 30 months in prison. He is one of six soldiers prosecuted under the Uniform Code of Military Justice for accidentally killing one of their own in the war zone. Tackett is one of as many as 60 American service members who have died of nonhostile gunshot wounds in Iraq and Afghanistan as of Sept. 19, according to the Defense Department. Of those, 22 have been ruled accidental discharges, and the others await rulings of suicide, negligent discharge or cases where soldiers inadvertently caused their own deaths through accidental weapons discharges.

Tackett's death and Davis' punishment underscore both how seldom such cases result in charges and how common such deaths are.

All of the Army's 16 training bases began a program of "weapons immersion" this year, in which soldiers in basic training are required to keep their rifles in their possession around the clock to increase their familiarity with



Joseph Tackett



Gunnar Becker

them, cut the chances of fatal accidents and mirror the practices they will adopt in the combat zone.

Nevertheless, the odds for serious accidents naturally rise in the combat zone, where soldiers are always carry loaded weapons, are under great stress and often have to take quick action.

"Of course you don't have [rounds] in the chamber while you are inside the wire, and all the practices I followed, you had to clear your weapon when you came in the entrance of every [forward operating base]," said Sgt. Erik Holtan, who served in Iraq in 2005 with A Company, 1st Battalion, 194th Armor. "We did have instances in chow halls or trailers with people accidentally firing, and I do know some people that did put their magazine in the chamber for things like sleeping and, in one case, loaded under their pillow to sleep every night."

During peacetime, a training accident can lead to a crackdown and better safety training, said Kathleen Duignan, executive director of the National Institute of Military Justice, a Washington, D.C.-based nonprofit organization



that advocates for service members' legal rights. Then, she said, things tend to get lax again. But during wartime, the numbers always go up.

In negligent-discharge cases, accountability can prove difficult.

"I know of no per-se rule governing the negligent discharge of weapons, but a serious breach in safety procedures will usually result in an AR 15-6 investigation," said Pentagon spokesman Sheldon Smith.

Accidental discharges that cause death require initial investigations. If criminal misconduct is found within those investigations, Sheldon said, commanders then can "take appropriate action, to include prosecution under the UCMJ."

Duignan said such cases "are always hard."

An accidental shooting could lead to a negligent-homicide charge. It could mean a lesser charge, such as conduct unbecoming or acts detrimental to discipline and good order. Or it could result in nonjudicial punishment, such as extra duty, Duignan said.

Determining whether the death

was an accident or a crime can be difficult. Davis pleaded guilty Aug. 31, 2005, to negligent homicide and negligent dereliction of duty because he did not clear his weapon and Tackett died as a result.

But in some cases, even the families who have lost a soldier are torn by the decision to punish the person who killed their loved ones.

After taking fire in a battle near Forward Operating Base Marez in Iraq on Jan. 13, 2005, Staff Sgt. James Parker, a tank commander from 2nd Battalion, 63rd Armored Regiment, 1st Armored Division, and his team returned to base to refuel another tank. Parker testified he thought he was going back into battle, said his lawyer, Thomas Roughneen.

But his soldiers — two privates not experienced in clearing and putting away tank guns and who had been ordered not to touch them — started to put the .50-caliber machine gun away. Roughneen said Parker was listening to the battle over his headset, thinking he was going back out. He did not know his soldiers were

putting away the gun, Parker testified.

Normally, all weapons, including tank weapons, are cleared upon returning to the FOB. But Parker testified that he did not clear the weapons because they were going back out.

As his soldiers dismounted the gun, it went off and killed Pfc. Gunnar Becker, 19.

Parker, the father of six children, was sentenced to six months in prison and reduced in rank to private on a conviction for negligent homicide and dereliction of duty. His petition for clemency was denied this spring, Roughneen said. Attorney Paul Bergin, who took over Parker's case, has filed statements in the hopes of an appeal, saying the case was mishandled because of the inexperience and poor preparation of Parker's Army-appointed defense team, Roughneen said.

But Becker's mother, Debey Senska, said Parker earned his sentence.

"The Army teaches responsibility," Senska said. "It was [Parker's] responsibility to unload that gun