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2 officers acquitted in death of Marine

By Darlene Himmelspach
 STAFF WRITER

CAMP PENDLETON — A jury deliberated for more than 12 hours before finding two officers not guilty of negligent homicide in the training death of a Marine during a live-fire exercise last year.

Capt. Nicholas Marano and Lt. Jeffrey Stevenson stood rigid as each verdict was read by the lieutenant colonel who served as foreman of the court-martial panel. Behind the men, their families and some fellow officers wept with relief.

Marano, who faced 10½ years in prison if convicted of three charges including involuntary manslaughter, said afterward, "It's a tragic event, but, thank God, it's over."

Marano, who had been slated for promotion to major before the death of Pfc. David Snellings last year at Twentynine Palms, held the brass oak leaf clusters of the new rank in his hands. "I'm going back to work," he said.

Stevenson, who could have been jailed for 3½ years if convicted, said he was "glad we went through with everything to see justice served."

Both officers also accepted hugs from Lt. Llewellyn Gallego, who testified for the prosecution during

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Kevin McDermott, chief counsel for Stevenson, said the court-martial "turned out exactly as it should have."

"If you are innocent, this is the best place in the world to be tried. If you are not, it's the worst," said McDermott, a former Marine lawyer.

John Barnett, chief defense attorney for Marano, said he was pleased that a very difficult trial was over for Marano and his family.

Both men "deserved to be acquitted flatly," said Barnett. "The verdict didn't surprise me. (The jurors) were careful. A Marine is dead and I don't want anybody to forget that. Capt. Marano hasn't forgotten it."

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with any responsibility in this case told Capt. Marano that it was good to go," said John Barnett, Marano's attorney. He said the accident occurred because Marano's orders were not followed.

Stevenson attempted to direct the fire away from his platoon, said his attorney, Kevin McDermott. He radioed for the machine gunner to shoot higher and to the left, but instead it was directed lower and to the right, McDermott said.

"My lieutenant did everything

'My lieutenant did everything according to plan.'

— KEVIN McDERMOTT
 Attorney for 1st Lt. Jeffrey Stevenson

according to plan," McDermott said.

The court-martial is expected to last three weeks. Maj. Kenneth B. Martin is the military judge. Four majors, a lieutenant colonel and a colonel, all Marines, are on the jury.

Jeff Stevenson had been the platoon commander for his unit for over a year and half. He has been tested as a leader through numerous deployments and CAX operations during that time. He had come to know his troops well and regarded them as his "kids." The "kids" had come to respect and trust the "El Tee" and they knew that the 29 Palms CAX would be routine with the exception that they would engage in a night fire exercise. Everyone was looking forward to the pyrotechnic show that would certainly light up the desert skies. However, when the exercise was aborted, they learned that one of their own had taken a round that blew off his jaw and their commander was to be charged with negligent homicide and dereliction of duty.

Jeff and his company commander would face a

general court-martial because, it was Government's theory, that they had placed their troops in such a manner as to insure a killing field of small arms fire that would fire into the exposed forward area of the company position.

From the East Coast where they resided, Jeff's family tracked down the services of attorney Kevin Barry McDermott. Upon being retained as counsel, McDermott successfully moved the military judge to order an Article 32 hearing; these men had been bound over to a general court-martial solely on the findings of a JAG investigation, a highly unusual and legally questionable tactic conducted by the staff judge advocate. During this hearing, it was determined through FBI forensic testing that Jeff's troop had not died from small arms fire but from a 50 caliber round. McDermott now began to suspect why a JAG investigation was used instead of an Article 32 hearing. Jeff and his company commander had not been tasked with the placement of the 50 caliber machine guns; that task had been left to higher command.

Despite the clear evidence that Jeff and his company commander had no control over the 50 caliber machine guns, the Government would not relent in its prosecution of the two men. During the course of the court-martial, it was determined which 50 cal. had been responsible for the round that killed Jeff's troop. Under an emotionally charged cross-examination, it was learned that this gunner had been given the order to elevate his line of fire and move it away from the forward positions after rounds were observed encroaching these positions. However, it was clear that this gunner had made a mistake and done just the opposite.

The officer members deliberated over a period of two days and on the evening of the tenth day of the court-martial found Jeff and his company commander not guilty of all charges.

Jeff's exoneration had been so convincing that he was able to pick up the rank of Captain at the next board.

McDermott has his practice in Tustin, California. He has been lead counsel for officer accuseds in over 50 cases, ranging from negligent homicide to conduct unbecoming stemming from the Tailhook investigation. He can be reached at his toll free number 800 723-6580 or at his e-mail address warlawyer@aol.com.