

ARTICLES

BLOOD IS THICKER THAN BLACKWATER

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It is one of the most infamous incidents of the war in Iraq: On March 31, 2004, four private American security contractors get lost and end up driving through the center of Falluja, a hotbed of Sunni resistance to the US occupation. Shortly after entering the city, they get stuck in traffic, and their small convoy is ambushed. Several armed men approach the two vehicles and open fire from behind, repeatedly shooting the men at point-blank range. Within moments, their bodies are dragged from the vehicles and a crowd descends on them, tearing them to pieces. Eventually, their corpses are chopped and burned. The remains of two of the men are strung up on a bridge over the Euphrates River and left to dangle. The gruesome image is soon beamed across the globe.

In the Oval Office the killings were taken as “a challenge to America’s resolve,” according to the *LA Times*. President Bush issued a statement through his spokesperson. “We will not be intimidated,” he said. “We will finish the job.” Brig. Gen. Mark Kimmitt vowed, “We will be back in Falluja.... We will hunt down the criminals.... It’s going to be deliberate. It will be precise, and it will be overwhelming.” Within days of the ambush, US

forces laid siege to Falluja, beginning what would be one of the most brutal and sustained US operations of the occupation.

For most people, the gruesome killings were the first they had ever heard of Blackwater USA, a small, North Carolina-based private security company. Since the Falluja incident, and also because of it, Blackwater has emerged as one of the most successful and profitable security contractors operating in Iraq. The



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company and its secretive, mega-millionaire, right-wing Christian founder, Erik Prince, position Blackwater as a patriotic extension of the US military, and its employees are required to take an oath of loyalty to the Constitution. After the killings, Blackwater released a statement saying the “heinous mistreatment of our friends exhibits the extraordinary conditions under which we voluntarily work to bring freedom and democracy to the Iraqi people.... Our tasks are dangerous and while we feel sadness for our fallen colleagues, we also feel pride and satisfaction that we are making a difference for the people of Iraq.”

The company swiftly rose to international prominence: Journalists were flooding Blackwater with calls, and military types were clamoring to sign up for work. “They’re angry...they’re saying, ‘Let me go over,’” Blackwater spokesman Chris Bertelli told *The Virginian-Pilot* ten days after the killings, adding that applications to work for Blackwater had increased “considerably” in that time. “It’s natural to assume that the visibility of the dangers could drive up salaries for the folks who have to stand in the path of the bullets,” he said. A day after the killings, Prince enlisted the services of the Alexander Strategy Group, a now disgraced

but once powerful Republican lobbying and PR firm. By the end of 2004 Blackwater’s president, Gary Jackson, was bragging to the press of “staggering” 600 percent growth. “This is a billion-dollar industry,” Jackson said in October 2004. “And Blackwater has only scratched the surface of it.”

But today, Blackwater is facing a potentially devastating battle—this time not in Iraq but in court. The company has

been slapped with a lawsuit that, if successful, will send shock waves through the world of private security firms, a world that has expanded significantly since Bush took office. Blackwater is being sued for the wrongful deaths of Stephen "Scott" Helvenston, Mike Teague, Jerko Zovko and Wesley Batalona by the families of the men slain in Falluja.

More than 428 private contractors have been killed to date in Iraq, and US taxpayers are footing almost the entire compensation bill to their families. "This is a precedent-setting case," says Marc Miles, an attorney for the families. "Just like with tobacco litigation or gun litigation, once they lose that first case, they'd be fearful there would be other lawsuits to follow."

The families' two-year quest to hold those responsible accountable has taken them not to Falluja but to the sprawling Blackwater compound in North Carolina. As they tell it, after demanding answers about how the men ended up dead in Falluja that day and being stonewalled at every turn, they decided to conduct their own investigation. "Blackwater sent my son and the other three into Falluja knowing that there was a very good possibility this could happen," says Katy Helvenston, the mother of 38-year-old Scott Helvenston, whose charred body was hung from the Falluja bridge. "Iraqis physically did it, and it doesn't get any more horrible than what they did to my son, does it? But I hold Blackwater responsible one thousand percent."

In late 2004 the case caught the attention of the high-powered California trial lawyer Daniel Callahan, fresh from a record-setting \$934 million jury decision in a corporate fraud case. On January 5, 2005, the families filed the lawsuit against Blackwater in Wake County, North Carolina. "What we have right now is something worse than the wild, wild west going on in Iraq," Callahan says. "Blackwater is able to operate over there in Iraq free from any oversight that would typically exist in a civilized society. As we expose Blackwater in this case, it will also expose the inefficient and corrupt system that exists over there."

Scott Helvenston was a walking ad for the military. He came from a proud family of Republicans; his great-great-uncle, Elihu Root, was once US Secretary of War and the 1912 Nobel Peace Prize-winner. Scott was tall, tan and chiseled and, by all accounts, a model soldier and athlete. At 17 he made history by becoming the youngest person ever to complete the rigorous Navy SEAL program. He spent twelve years in the SEALs, four of them as an instructor, and then tried his luck with Hollywood. He trained Demi Moore for her film *G.I. Jane* and did a few stunts on reality television. In one, *Man vs. Beast*, he was the only contestant to defeat the beast, outmaneuvering a chimpanzee in an obstacle course. Once the cover boy on a Navy calendar, he also had several workout videos.

If it had been up to Katy Helvenston, her son wouldn't have been in Iraq at all. "We had argued about him going over there," she recalls. "I believe that we should have gone into Afghanistan, but I never believed we should have gone into Iraq, and Scott

bought the whole story about Saddam Hussein being involved with Al Qaeda and all that. He believed in what he was doing." He also had a financial motivation. In early 2004 Helvenston was between jobs and was eking out a living with the stints on reality TV, the movie consulting and the fitness videos. "It was good money, but it was never enough," his mother remembers. He was divorced but continued to support his ex-wife and two children. His mother says he took the job with Blackwater because the company offered short-term, two-month contracts, and Scott viewed it as an opportunity to turn his life around. "He said, 'I'm gonna go over there, make some money, maybe make a difference. I'll only be away from my kids for a couple of months.' That's why he chose Blackwater," she recalls.

Helvenston arrived for training at Blackwater's North Carolina campus around March 1, 2004. The man heading the training was Justin McQuown, nicknamed Shrek, after the green ogre movie cartoon character. According to the suit, McQuown lacked the credentials of Helvenston and other ex-SEALs. "During training, McQuown would often improperly instruct the class or provide erroneous information, tactics or techniques," the suit alleges. "On occasion, Helvenston would attempt to politely assist McQuown by offering his expertise on the correct manner of the particular training exercise. The fact that [McQuown]...was being exposed infuriated him." Scott's mother believes, based on Scott's e-mails and conversations with contractors who served with her son, that McQuown feared that Scott might replace him at the company.

After the training session, Helvenston got on a plane to Kuwait, where he touched down on March 18. It seemed like an ideal situation for him, as two of his friends from his days on the reality TV show *Combat Missions* were helping to run the Blackwater operations: John and Kathy Potter. When Helvenston set off for the Middle East, his family thought he was going to be working on Blackwater's high-profile job of guarding the head of the US occupation, Paul Bremer. At \$21 million, it represented the company's biggest contract in Iraq. As it turned out, Helvenston was slated to carry out a far less glamorous task. John Potter had recently teamed Blackwater up with a Kuwaiti business called Regency Hotel and Hospital Company, and together the firms won a security contract with Eures Support Services (ESS), guarding convoys transporting kitchen equipment to the US military. Blackwater and Regency had essentially wrestled the ESS contract from another security firm, Control Risk Group, and were eager to win more lucrative contracts from ESS in its other division servicing construction projects in Iraq. Unbeknownst to Helvenston, this goal would drive a series of events that would ultimately lead to his death.

According to former Blackwater officials, Blackwater, Regency and ESS were engaged in a classic war-profiteering scheme. Blackwater was paying its men \$600 a day but billing Regency \$815, according to the *Raleigh News and Observer*. "In addition," the paper reports, "Blackwater billed Regency separately for all its overhead and costs in Iraq." Regency would then bill ESS an unknown amount for these services. Kathy Potter told the *News*

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and *Observer* that Regency would “quote ESS a price, say \$1,500 per man per day, and then tell Blackwater that it had quoted ESS \$1,200.” ESS then contracted with Halliburton subsidiary KBR, which in turn billed the government an unknown amount of money for the same security services, according to the paper. KBR/Halliburton refuses to discuss the matter and will not confirm any relationship with ESS.

All this was shady enough—but the real danger for Helvenston and the others lay in Blackwater’s decision to cut corners to make even more money. The original contract between Blackwater/Regency and ESS, obtained by *The Nation*, recognized that “the current threat in the Iraqi theater of operations” would remain “consistent and dangerous,” and called for a minimum of three men in each vehicle on security missions “with a minimum of two armored vehicles to support ESS movements.” [Emphasis added.]

But on March 12, 2004, Blackwater and Regency signed a subcontract, which specified security provisions identical to the original except for one word: “armored.” Blackwater deleted it from the contract.

“When they took that word ‘armored’ out, Blackwater was able to save \$1.5 million in not buying armored vehicles, which they could then put in their pocket,” says attorney Miles. “These men were told that they’d be operating in armored vehicles. Had they been, I sincerely believe that they’d be alive today. They were killed by insurgents literally walking up and shooting them with small-arms fire. This was not a roadside bomb, it was not any other explosive device. It was merely small-arms fire, which could have been repelled by armored vehicles.”

Before Helvenston, Teague, Zovko and Batalona were ever sent into Falluja, the omission of the word “armored” was brought to the attention of Blackwater management by John Potter, according to the families’ lawyers. They say Blackwater refused to redraft the contract. Potter persisted, insisting that his men be provided with armored vehicles. This would have resulted in Blackwater losing profits and would also have delayed the start of the ESS job. According to the suit, Blackwater was gung-ho to start in order to impress ESS and win further contracts. So on March 24 the company removed Potter as program manager, replacing him with McQuown, who, according to the families’ lawyers, was far more willing than Potter to overlook security considerations in the interest of profits. It was this corporate greed, combined with McQuown’s animosity toward Scott Helvenston, which began at the training in North Carolina, that the families allege played a significant role in the deaths of Helvenston and the other three contractors.

Scott Helvenston and his team were to deploy to Iraq on March 29. But late on the evening of March 27, McQuown called Helvenston and told him that he needed to pack his things immediately, that he would be leaving at 5 AM with a completely different team. According to the lawsuit, “It was virtually unheard of to take a single person, like Scott Helvenston, and place him on a different group with whom he had never trained or even met.” Helvenston resisted the change. Several

other contractors stepped forward, offering to go in his place. McQuown refused to allow it.

Later that night, according to Scott’s mother, McQuown came up to Helvenston’s hotel room. “He was told at that time that he was not going to be doing security for the ambassador, Paul Bremer, and he was going to escort a convoy of trucks to pick up kitchen equipment. And Scott says, ‘You’re nuts,’ you know, he says, ‘I’m not goin’ in there to Falluja. You’re out of your mind. That’s not what I was hired to do.’ And at that point McQuown apparently told him that if he didn’t do it, he would be fired immediately. He would have to reimburse any monies that had been paid to him, and he was on his own to get home. Well, that left Scott no choice. So the next morning they were off.”

The night before he left, Helvenston sent an e-mail to the “Owner, President and Upper Management” of Blackwater, subject: “extreme unprofessionalism.” In this e-mail, obtained by *The Nation*, he complained that the behavior of McQuown (referred to as “Justin Shrek” in the e-mail) was “very manipulative, duplicitive [*sic*], immature and unprofessional.” He describes how his original team leader tried to appeal to Shrek not to reassign him, but, Helvenston wrote, “I think [the team leader] felt that there was a hidden agenda. ‘Lets see if we can screw with Scott.’”

Those were some of the last words Helvenston would ever write.

Callahan says that if Blackwater and McQuown

had done in the United States what they are alleged to have done in Iraq, “There would be criminal charges against them.” What happened between McQuown and Helvenston was no mere personality conflict. “Corporations are fictional entities—they only act through their personnel,” explains Miles. “You need to show intent. You need to put a face on these acts. With regard to the wrongful death of these four men, that face is Justin McQuown of Blackwater.” The company refused to comment on the case, but McQuown’s lawyer, William Crenshaw, told *The Nation* there are “numerous serious factual errors” in the lawsuit, saying, “On behalf of Mr. McQuown, we extend our sincerest sympathies to the families of the deceased. It is regrettable and inaccurate to suggest that Mr. McQuown contributed in any way to this terrible tragedy.”

On March 30, 2004, Helvenston, Teague, Zovko and Batalona left Baghdad on the ESS security mission. The suit alleges that there were six guards available that day, but McQuown intervened and ordered only the four to be sent. The other two were kept behind at Blackwater’s Baghdad facility to perform clerical duties. A Blackwater official later boasted, the suit says, that they saved two lives by not sending all six men.

The four men were, in fact, working under contracts guaranteeing that they would travel with a six-person team. But their personal contracts also warned of death and/or injury caused by everything from “civil uprising” and “terrorist activity” to “poisoning” and “flying debris.” In filing its motion to dismiss the lawsuit, Blackwater quoted from its standard contract, insisting that those who sign it “fully appreciate the dangers and voluntarily assume these risks as well as any other risks in any way

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(whether directly or indirectly) connected to the Engagement.”

Reading this, it would seem that Blackwater has a reasonable defense. Not so, say the families of the four men and their lawyers. They do not deny that the men were aware of the risks they were taking, but they charge that Blackwater knowingly refused to provide guaranteed safeguards, among them: They would have armored vehicles; there would be three men in each vehicle—a driver, a navigator and a rear gunner; and the rear gunner would be armed with a heavy automatic weapon, such as a “SAW Mach 46,” which can fire up to 850 rounds per minute, allowing the gunner to fight off any attacks from the rear. “None of that was true,” says attorney Callahan. Instead, each vehicle had only two men and far less powerful “Mach 4” guns, which they had not even had a chance to test out. “Without the big gun, without the third man, without the armored vehicle, they were sitting ducks,” says Callahan.

The men got lost on the evening of March 30 and eventually found a Marine base near Falluja where they slept for a few hours. “Scotty had tried to call me in the middle of the night,” Katy Helvenston remembers. “I had my bedroom phone ringer turned off—I didn’t get the call, so he left me a message. It mostly was, ‘Mom, please don’t worry, I’m OK. I’m gonna be home soon and I’m gonna see ya. We’re gonna go have fun. I’m gonna take care of you.’ You know, just stuff like that, which obviously wasn’t true. By the time I got the message he’d already been killed.”

Shortly after Helvenston left that message, the men left the base and set out for their destination. Without a detailed map, they took the most direct route, through the center of Falluja. According to Callahan, there was a safer alternative route that went around the city, which the men were unaware of because of Blackwater’s failure to conduct a “risk assessment” before the trip, as mandated by the contract. The suit alleges that the four men should have had a chance to gather intelligence and familiarize themselves with the dangerous routes they would be traveling. This was not done, according to Miles, “so as to pad Blackwater’s bottom line” and to impress ESS with Blackwater’s efficiency in order to win more contracts. The suit also alleges that McQuown “intentionally refused to allow the Blackwater security contractors to conduct” ride-alongs with the teams they were replacing from Control Risk Group. (In fact, the suit contends that Blackwater “fabricated critical documents” and “created” a pre-trip risk assessment “after this deadly ambush occurred.”)

The men entered Falluja with Helvenston and Teague in one vehicle and Zovko and Batalona in the other. “Since the team was driving without a rear-gunner and did not have armored vehicles, the insurgents were able to literally walk up behind the vehicles and shoot all four men with small arms at close range,” the suit alleges. “Their bodies were pulled into the streets, burned and their charred remains were beaten and dismembered.” The men, it goes on, “would be alive today” had Blackwater not forced them—under threat of being fired—to go unprepared on that mission. “The fact that these four Americans found themselves located in the high-risk, war-torn City of Fallujah without armored vehicles, automatic weapons, and fewer than the minimum number of team members was no accident,” the suit alleges. “Instead, this team was sent out without the required equipment

and personnel by those in charge at Blackwater.”

After the killings, Katy Helvenston joined the families of Mike Teague, Jerko Zovko and Wesley Batalona in grieving and in seeking details about the incident. Blackwater founder Erik Prince personally delivered money to some of the families for funeral expenses, and the company moved to get the men’s wives and children benefits under the government’s Defense Base Act, which in some cases insures those on contract supporting US military operations abroad.

But then things started to get strange. Blackwater held a memorial service for the men at its compound. The families were gathered in a conference room, where they thought they would be told how the men had died. The Zovko family asked Blackwater to see the “After Action Report” detailing the incident. “We were actually told,” recalls Zovko’s mother, Danica, “that if we wanted to see the paperwork of how my son and his co-workers were killed that we’d have to sue them.”

Thus began the legal battle between Blackwater and the dead men’s families. In one of its few statements on the suit, Blackwater spokesperson Chris Bertelli said, “Blackwater hopes that the honor and dignity of our fallen comrades are not diminished by the use of the legal process.” Katy Helvenston calls that “total BS in my opinion,” and says that the families decided to sue only after being stonewalled, misled and lied to by the company. “Blackwater seems to understand money. That’s the only thing they understand,” she says. “They have no values, they have no morals. They’re whores. They’re the whores of war.”

Since its filing in January 2005, the case has moved slowly through the legal system. For its part, Blackwater is represented by multiple law firms. Its lead counsel is Greenberg Traurig, the influential DC law firm that once employed lobbyist Jack Abramoff. The lawyers for the families charge that Blackwater has continued its practice of stonewalling. While some of that may be legitimate defense tactics, the lawyers argue that the company has actively prevented court-ordered depositions from taking place, including taking steps to prevent a key witness from testifying: John Potter, the man who blew the whistle on Blackwater’s removal of the word “armored” from the contract and was subsequently removed.

Attorney Marc Miles says that shortly after the suit was filed, he asked the court in North Carolina for an “expedited order” to depose John Potter. The deposition was set for January 28, 2005, and Miles was to fly to Alaska, where the Potters were living. But three days before the deposition, Miles says, “Blackwater hired Potter up, flew him to Washington where it’s my understanding he met with Blackwater representatives and their lawyers. [Blackwater] then flew him to Jordan for ultimate deployment in the Middle East,” Miles says. “Obviously they concealed a material witness by hiring him and sending him out of the country.” Callahan says Blackwater took advantage of the Potters’ financial straits to hinder the case against the company. “Potter didn’t have any other gainful employment, because many of these men who are ex-military, their skills don’t transfer easily into the

civilian sector,” he says, adding that after Potter was removed for blowing the whistle on the armor issue, the company abandoned him “until they needed him to avoid this subpoena and this deposition and they said, ‘We need you and we need you now.’ And zoom, off he goes.” Blackwater subsequently attempted to have Potter’s deposition order dissolved, but a federal court said no.

Blackwater has not offered a rebuttal to the specific allegations made by the families, except to deny in general that they are valid. It has fought to have the case dismissed on grounds that because Blackwater is servicing US armed forces it cannot be sued for workers’ deaths or injuries and that all liability lies with the government. In its motion to dismiss the case in federal court, Blackwater argues that the families of the four men killed in Falluja are entitled only to government insurance payments. That’s why the company moved swiftly to apply for benefits for the families under the Defense Base Act. Many firms specializing in contractor law advertise the DBA as the best way for corporations servicing the war to avoid being sued. In fact, Blackwater’s then-general counsel, Steve Capace, gave a workshop last May on the subject to an “International Super-Conference”

for contractors. In the presentation, called “Managing Contracting Risks in Battlefield Conditions,” Capace laid out a legal strategy for deflecting the kind of lawsuit

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Blackwater now faces. That’s why this case is being watched so closely by other firms operating in Iraq. “What Blackwater is trying to do is to sweep all of their wrongful conduct into the Defense Base Act,” says Miles. “What they’re trying to do is to say, ‘Look—we can do anything we want and not be held accountable. We can send our men out to die so that we can pad our bottom line, and if anybody comes back at us, we have insurance.’ It’s essentially insurance to kill.”

Given the uncounted tens of thousands of Iraqis who have died since the invasion and the slaughter in Falluja that followed the Blackwater incident, some might say this lawsuit is just warmongers bickering—no honor among thieves. Indeed, the real scandal here isn’t that these men were sent into Falluja with only a four-person detail when there should have been six or that they didn’t have a powerful enough machine gun to kill their attackers. It’s that the United States has opened Iraq’s door to mercenaries who roam the country with impunity.

“Over a thousand people died because of what happened to Scotty that day,” says Katy Helvenston. “There’s a lot of innocent people that have died.” While this suit doesn’t mention the retaliatory US attack on Falluja that followed the Blackwater killings, the case is significant because it could blow the lid off a system that allows corporations to face zero liability while reaping huge profits in Iraq and other war zones. “Scotty’s not going to die in vain,” says his mother. “I’m driven and I’m not going to quit. They will be accountable.”

Still, Blackwater has friends in high places. It’s a well-connected, Republican-controlled business that has made its fortune because of the Bush Administration. Company founder Erik Prince and his family have poured serious money into Republican causes and campaign coffers over the past twenty years. An analysis of

Prince's contributions prepared for *The Nation* by the Center for Responsive Politics reveals that since 1989, Prince and his wife have given some \$275,550 to Republican campaigns. Prince has never given a penny to a Democrat. While it is not unheard of for a successful business to cast its lot entirely with one party, it has clearly paid off. Shortly after George W. Bush was re-elected in November 2004, Gary Jackson sent out a mass celebratory e-mail declaring, "Bush Wins, Four More Years!! Hooyah!!"

The White House, for its part, has turned the issue of accountability of Blackwater and other private security companies into

a joke, literally. This April at a forum at Johns Hopkins, Bush was asked by a student about bringing "private military contractors under a system of law," to which Bush replied, laughing, that he was going to ask Defense Secretary Rumsfeld, "I was going to—I pick up the phone and say, Mr. Secretary, I've got an interesting question [*laughter*]. This is what delegation—I don't mean to be dodging the question, although it's kind of convenient in this case, but never—[*laughter*] I really will—I'm going to call the Secretary and say you brought up a very valid question, and what are we doing about it? That's how I work." ■
