

The Waller/Day Court-Martial - 1902

BLUF: For his part in the execution of Filipino carriers following the Samar march, the U.S. Army tried Maj. Littleton Waller. The Army court acquitted him, but the incident impacted his Marine Corps career going forward. Waller's immediate superior, Gen. Jacob Smith (USA), was tried and forced to retire for his part in the Samar expedition.

MAIN CHARACTERS: William H. Bisbee (USA), Adna R. Chaffee (USA), John H. A. Day (USMC), Jacob H. Smith (USA), William Howard Taft (G-G P.I.), and Littleton W. T. Waller (USMC)

SETTING THE STAGE: The Marine Corps mission in Samar ended on 26 February 1902 when Maj. Littleton Waller and his Marines were relieved by U.S. Army units. "The Waller March" lasted 22 days and resulted in ten Marine deaths and eleven Filipino carriers executed. Despite the heroic efforts of Marines such as Capt. David Porter, 1stLt. Alexander Williams, and GySgt. John Quick, the entire mission was considered a failure.

Following the Filipino carriers' execution on 20 January 1902 at Basey, P.I., Waller sent a telegram to Army Gen. Jacob Smith, stating, *"It became necessary to expend eleven prisoners. Ten who were implicated in the attack on Lt. Williams and one who plotted against me."* The telegram was followed by an extensive report to Smith, who passed the report to his superior MGen. Adna R. Chaffee (USA). Neither Waller nor Smith thought much more about the Filipino executions since BGen. James Franklin Bell (USA) had carried out similar executions on a much larger scale months before with no subsequent repercussions.

The political climate, however, had changed dramatically over the past year. Army Gen. Arthur MacArthur was replaced as the Military-Governor of the Philippines on 4 July 1901. His replacement was William Howard Taft, appointed by President William McKinley as the Governor-General of the Philippines. The appointment of Taft meant that control of the Philippines was now under civilian, not military control. Taft believed that the military's harsh treatment of Philippine civilians was the primary cause of increased hostilities toward the American presence in the islands. Chaffee, who was already in trouble with Taft for the Army's harsh policies, ordered Smith to investigate the matter thoroughly.

THE STORY: On 4 March 1902, Maj. Littleton Waller and 1stLt. John Day were officially charged with murder in violation of the 58th Article of War for executing without trial eleven Filipino carriers on 20 January 1902. An Army court-martial was convened on 17 March 1902, presided over by seven Army officers and six Marine Corps officers. Army Gen. William H. Bisbee served as the presiding officer of the court. The prosecutor assigned to the case was Maj. Henry P. Kingsbury (USA). John Day was charged because he was Waller's adjutant and should have counseled Waller against the executions. However, Day also faced a separate charge of torturing a Filipino prisoner before executing him.

The defense counsel for Waller and Day were CDR Adolf Marix (USN), Maj Edwin F. Glenn, 5th U.S. Infantry, and Oscar Sutro, a Canadian/American attorney who practiced law in Manila. Marix argued that all charges should be dropped on the first day of the court-martial because the Army did not have jurisdiction to try Marines. Gen. Bisbee decided that the court was without jurisdiction in the case but left open the possibility of reversing himself if instructions were received from the office of the Adjutant General of the Army. Once the Army Adjutant General sent their decision to the court, it was decided that the Marines were under Army jurisdiction when they committed the acts. Bisbee also stated that a *"brief lapse of jurisdiction cannot mitigate a murder charge."*

With the jurisdiction issue settled, the two Marine officers were asked to file a plea with the court. Both men plead *"Guilty, except to the words 'willfully and feloniously and with malice aforethought, murder and' - to those words, not guilty. To the general charge - Not Guilty."* Waller refused to allow Gen. Jacob Smith's orders, *"I want no prisoners. I wish you to kill and burn; the more you kill and burn, the better it will please me ...,"* to be used in their defense. Instead, they

relied on the rules of war and provisions of the 1863 *Lieber Code* (General Order #100) that authorized “*exceeding force*.” This was the same argument used successfully by BGen. James Franklin Bell (USA) in 1901, when he ordered the execution, without trial, over 100 Filipinos after the “Balangiga Massacre.”

The prosecution decided to call Gen. Smith as a rebuttal witness. On 7 April 1902, in sworn testimony, Smith denied giving Waller any special verbal orders. The defense then produced three officers who corroborated Waller’s version of the Smith-Waller conversation. They also provided copies of the written order he had received from Smith. Waller took the stand and informed the court that he had been directed to take no prisoners and kill every male Filipino over age 10. American newspapers extensively covered the trial, most of whom were not sympathetic to Waller and Day. During the trial, Waller was referred to as the “Butcher of Samar,” including in his hometown newspaper in Philadelphia.

The court-martial board voted 11-2 for the acquittal of Waller and Day. Thirty days later, the U.S. Army Judge Advocate General vacated the verdict and dismissed the entire case, agreeing that Marine Corps officers were not subject to an Army court. As a result of evidence introduced by Waller and Day’s defense team, Smith was court-martialed, convicted, admonished, and forced to retire.

AFTERMATH: If not for the political coincidences, the episode probably would have left Waller otherwise unscathed. In 1911, when Waller was being considered for Commandant of the Marine Corps, President Taft chose instead William P. Biddle, who sat on Waller’s court-martial as a major. To Waller, the order was a matter of protecting his mission. For this reason, perhaps, Smedley Butler later called Waller “*the greatest soldier I have ever known*.” Littleton Waller retired from the Marine Corps in 1920 with the rank of major-general.

John H. A. Day, however, was not so fortunate as the incident haunted his military career. He was promoted to captain in 1904, passed over for promotion five times until he was forced from the Marine Corps in 1915. From 1902 until 1915, Day served as a recruiter and administrative officer in stateside posts. Day worked a variety of jobs before dying in 1932 in Rhode Island at the age of 56.

QUESTIONS

1. What were the charges that Waller and Day faced in front of the Army court-martial?
2. What was the outcome of the court-martial?
3. In one’s opinion, were Waller and Day guilty or not guilty of the charges levied on them? Why?

SELECTED BIBLIOGRAPHY

- “A Court-Martial For Major Waller.” *The New York Times*. p. 3: 7 March 1902. Retrieved 20 March 2021.
- Dean, Christopher Thomas. Atrocity on trial: The court-martial of Littleton Waller. Tempe, AZ: Arizona State University Press, 2009.
- “The Lieber Code.” *U.S. War Department, The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies*, Series III, 3, pp. 148–164. Washington, D.C.: Government Printing Office, 1899. Retrieved 20 March 2021.
- “Major Waller Testifies.” *The New York Times*, p. 3: 9 April 1902. Retrieved 20 March 2021.
- “U.S. Senate Committee Hearings on Affairs in the Philippine Islands,” 2 February 1902 to 13 October 1903, volume 3. National Archives and Records Administration. Retrieved 17 March 2021.
- “Waller at Samar.” *Fortitudine*. Volume XV, Spring 1986, No. 4. History and Museum Division, Marine Corps Historical Center. Retrieved 26 February 2021.
- “Waller, Littleton. USMC” *U.S. Marine Corps Muster Rolls, 1798-1958. Microfilm Publication T977, 460 rolls. ARC ID: 922159*. Records of the U.S. Marine Corps, Record Group 127; National Archives in Washington, DC Retrieved 12 January 2021. Retrieved 24 February 2021.