



July 3, 2019
FOR IMMEDIATE RELEASE

**Eddie Gallagher's Acquittal is an Indictment
of the Military Justice System**

As a young attorney and an Army judge advocate with my sights set on being a career prosecutor, two pieces of advice resonated with me. The first was that a prosecutor's first duty is to seek justice, not just a conviction. Whether during an investigation or at trial, the prosecutor is the honest broker, whose integrity is beyond reproach, and who readily admits mistakes and misjudgments when they are made – all in the interest of pursuing justice on behalf of the country

The second piece of advice I took to heart was that the biggest, and most dangerous, mistake attorneys make is to create a narrative of a case before thorough investigation and thoughtful consideration, and then fill in the facts to support a prematurely hatched story. The path of any prosecution should be laid by a thorough investigation of the facts, and scrupulous application of the law to those facts.

Those leading the prosecution of Eddie Gallagher appear to have missed both these lessons, or abandoned them. From the outsider's perspective, it appears that the prosecution latched on to a convenient and tasty narrative, and ran with it before a thorough review of the actual facts. What else would explain the bombshell testimony of the medic who claimed that he, and not Gallagher, caused the death of the ISIS fighter? And for all of the emphasis on the brutality of the alleged crime, was there any thought put into the theory that Gallagher's disgruntled subordinates simply made up, or drastically embellished, the allegations? Could it be that the 21st-Century "fragging" is much more nuanced than it was during the Vietnam era, and now involves accusing a superior of war crimes, derailing a career and disrupting a family? The prosecutors appear to have overlooked these possibilities in their quest for a conviction.

Though the wisdom of bringing a case against Gallagher in the first place can be debated, there can be no dispute that the conduct of the prosecution was botched, shoddy, and illegal. Who on earth thought it was a good idea to surreptitiously monitor defense counsel's communications? And why did no one step up to put the brakes on such a hare-brained idea? The lack of judgment displayed by the Navy prosecutors on this one point is simply mind-boggling. And to compound that error, the prosecution invited the testimony of a SEAL who had been granted immunity to waltz in and save the day for Gallagher by admitting, without any consequence, that he had rendered the death blow to the ISIS fighter. All of this would be comical

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if the fate of a distinguished American warrior and his family did not hang in the balance.

In the end, the military justice system failed here. It failed Eddie Gallagher and his family, of course, because it allowed for a dogged pursuit of a prosecution that was ill-conceived in the first place, with missteps that were compounded by under-handed tactics on the part of the prosecution. But also, the military justice system failed the Navy and the American people. Those who have followed the media accounts of the allegations of brutality and cruelty that Gallagher was accused of committing are left wondering whether someone literally got away with a horrific murder.

When a jury delivers a verdict, there should be a certain satisfaction in knowing that justice has been done. Even if one disagrees with the outcome, there should be a sense of resolution and security in knowing that whatever cause has been put to the jury has been thoroughly examined, responsibly addressed, and scrupulously decided.

For the skeptics, and those who have condemned Eddie Gallagher based on what they have observed in the media, there is no such sense of security in Eddie Gallagher's acquittal. The sense of confidence in a verdict that should exist has been supplanted by bewilderment, as to how such a prosecution was brought in the first place, and how it was executed in such a haphazard and sophomoric manner.

Thank God the jury acquitted Eddie Gallagher. Nothing is more abhorrent to those of us who are dedicated to the rule of law than the thought of an innocent person being imprisoned for a crime he or she did not commit, or the result of a fundamentally flawed and unfair process. If the over-zealous prosecutors had their way, Gallagher would be in prison, and his family would have been ruined.

Above and beyond the preservation of the life and liberty of an innocent man and American warrior, the other saving grace here is that Eddie Gallagher's acquittal brings attention to a broader issue that involves the much-needed evolution and reform of the military justice system.

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