

# DUKE Magazine

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## For God and Country

by Jeffrey E. Stern

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Caught in a moral crisis, a Marine Corps prosecutor drops a high-profile terrorism case—and finds himself a symbol of the ambiguities of the war on terror.

An EA-6B Prowler jet swoops low into a valley, banking and weaving in perfect concert with contours of the terrain. It is a crystal clear day, the mountains' quietude broken only by the thunder of the aircraft's turbojet engines as they blast the plane through the valley at 550 mph.

It is the pilot's last flight on the Prowler—he is graduating to the F-18—and it is the navigator's last military flight ever, as he is leaving the service. Technically, they're flying too low, but this is their final flight, it's a perfect day for flying, and anyway the pilot has the best hands in the squadron. So they skim the riverbeds and buzz the trees on their way back to base, at times less than four hundred feet off the ground. They come over a rise in the terrain, stabilize the aircraft, and in an instant a blur of yellow flashes into view; they are only three seconds from hitting it. At the very moment the captain's brain processes the thought—"gondola"—he is banking the aircraft hard left, so that he misses a direct collision by no more than forty meters. But his right wing severs the cable that holds the gondola aloft. It tumbles over several times before striking the ground.

Describing the accident in the Dolomite mountain range near Cavalese, Italy, on February 3, 1998, Marine Lieutenant Colonel V. Stuart Couch '87 lowers his chin to his fists and winces as he remembers the twenty people who died. The destruction of the gondola and its occupants initiated the first high-profile case of his legal career: prelude to—and, in an odd way, preparation for—the moral crisis whose resolution thrust him into the limelight and earned him the reluctant celebrity he has only recently learned to embrace.

The crisis occurred after the towers came down on 9/11, and Couch volunteered for the military commissions President George W. Bush established under the aegis of the Defense Department to prosecute terrorist suspects. When he began to suspect that one of the defendants was being tortured, he was caught in a moral predicament that challenged his deepest convictions. Confronted with conflicting obligations—to his superiors, to his country, and to his God—Couch would draw on insights from his faith and his military career to inform the hardest decision of his life.

When The Wall Street Journal discovered that Couch had ultimately decided to drop the case, it ran a front-page feature that kicked off a flurry of media attention. As the leadership of the "war on terror" became less popular by the day, and America continued to hemorrhage credibility, here was the refreshing tale of a "colonel with a conscience." 60 Minutes, ABC News, TIME, and PBS all lined up to court Couch. The American Bar Association



Military force: Lt. Col. V. Stuart Couch '87

Patrice Gilbert

announced it would present its Minister of Justice Award to Couch in a ceremony in Washington on November 2. He will be the first military prosecutor ever to receive the honor.

When relaxed, Couch's mouth turns slightly downward, so unless smiling or laughing he looks permanently morose, a singular misrepresentation of his decidedly affable demeanor. Plaid shirtsleeves tucked firmly into jeans or khakis are standard fare for Couch, when he's not in uniform. The unabashed Southern accent and inflection—sirs and ma'ams all around—complete the impression of an uncomplicated good ol' boy, and it's easy at first blush not to take him seriously. But then, as a trial lawyer, he knows how to play the natural tendency to underestimate him to his advantage. "People let their guard down," he says, and during a cross examination, a small opening is all Couch needs. In an instant, he can activate a hardened austerity that is intimidating.

He learned this early in his career, prosecuting the notorious Dolomite mountains gondola case. Couch was only a year and a half out of law school then, a major, but because he was a prosecutor with an aviation background—he had been a Marine pilot before entering law school—and because he was stationed at the pilots' home base, he was asked to help prosecute one of the biggest cases in Marine Corps history.

Couch volunteered to be the liaison to the victims' families, the one in living rooms with a cup of tea and a saucer bearing witness to the alternating currents of unbearable pain and implacable rage. There was one woman in particular who for Couch crystallized the sense of outrage the victims' families felt toward the U.S. Emma Aurich was her name, a widow from Burgstadt, Germany, whose only child had been on the gondola that day. Once, when Couch was meeting with the families in Germany, she stood up overflowing with rage, screaming words as fast as her mind could conceive new condemnations while a shell-shocked interpreter struggled to keep pace. You people took my son and have done nothing to help us was her message, and Couch felt as if he were being held personally responsible simply because he was there, though that very fact should have absolved him.

One superior questioned the time Couch spent with the families, who, he reminded Couch, would only play a role in sentencing—if the case got that far—but not in securing a conviction. But, although Couch's loyalty is unwavering, he is an Evangelical Christian and has another duty to fulfill. "My magnetic north points to Christ," he says. One of the most profound obligations of his faith is to "respect the dignity of a fellow human being," and in his judgment, the treatment of the victims' families wasn't right. He saw suffering and sought to address it. "I've got a job as a prosecutor," Couch told the families, "but to the extent that I can, I want to be a voice for you. I want to help you make sense of the incomprehensible."

He and his fellow prosecutors labored for a year to build a rock-solid case, while he attended also to the emotional needs of the victims' families even as he seldom saw his own. And when it was time, Aurich and members of the families of other victims came to Camp Lejeune in North Carolina, to see the conviction handed down.

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But it wasn't. The pilot was acquitted of both negligent homicide and involuntary manslaughter. (The pilot was subsequently convicted of obstruction of justice for destroying a videotape record of the flight, and the navigator pleaded guilty to the same charge.) Couch turned to look at the families who had crossed oceans for this moment. A reporter caught him whisper the words "I'm sorry." The next day he stayed in his pajamas, floating in shadows around his home. "I know you're hurting," his brother called to say. "But, in the long run, this will be a valuable experience."

Couch and his wife went to a dinner the next night with some of the family members, a dinner that should have been a celebration of the end of this chapter in their lives, the realization of Couch's assurances that justice would be done. Now, Couch was as far down as he had ever been. He began to doubt himself. "Maybe I got too personally invested in it. I don't know."

And it was there, outside the restaurant, that Aurich came up to Couch and kissed him on the cheek and said, "How are you?" and he wept.

Couch wasn't always a man of ardent faith. Born at Duke Medical Center and reared in Asheboro, North Carolina, he was an observant Christian, just not a particularly pious one. He went to Duke just as both his parents, two of his grandparents, an aunt, and a brother had done and signed on with the Navy ROTC program, eventually rising in rank to battalion commander. On Christmas Eve his sophomore year, he saw a pretty girl in a store and said to himself, "I thought I knew all the blondes in town."

Her name was Kim Wilder, and her family was Evangelical. Being around them, Couch began to take his own faith more seriously, although he "still wasn't living for it at Duke." He was still "going to parties, Thursday night kegs, all that stuff." And while "some people graduated summa cum laude, some people magna cum laude," he says, "I graduated thank the good lawdy." He dropped out of his fraternity his last year, thinking "there's gotta be more to it than this."

Two years later, he and Kim, now his wife, were living in Morehead City, North Carolina. She took him to a church that her grandparents had attended, and a minister named King Cole came on, cracking jokes in the pulpit and generally taking himself less than seriously. "He had a resurrection party on Easter Sunday, with two kegs up

on his back porch." Couch started going to Bible study.

Being an Evangelical seemed to work for Couch in the military, and it served a purpose: He's seen how faith has empowered soldiers. "I've seen the believers. They're as fearless as anyone, because they say, 'Look, I already know what the rest of my deal is.'" Couch remembers a letter a staff sergeant who had died in Iraq left his family. It said, "You all need to be rejoicing with me, I am back with my creator. I did what I believed in, and now I'm reaping the rewards."

As he recites the letter, though, he realizes he could just as well be describing the bad guys. "That's where they think they are, too. It is similar, and that's why this battle we find ourselves in—it's not going to be over anytime soon."

Couch is a military man through and through, and whether he's exchanging an "ooh-rah, Marine!" with a passerby on the street or congratulating a commercial pilot for a "good crosswind landing" after arriving at Chicago O'Hare, evidence abounds that he relished his time in the Marines. Back in the early '90s when he was flying C-130s out of Cherry Point, North Carolina, he and Kim formed a social circle around his friends in the squadron. "It was like a fraternity," Kim Couch recalls. They made friends with people like Michael "Rocks" Horrocks, tall, good-looking, and athletic, with a pilot's typical personality profile: unflinchingly confident and always a joker. Horrocks' wife and Kim worked at the same hospital, and they all became part of a tight-knit community of pilots and their wives. They worked and played together, went out to dinner together, and that camaraderie was something they thrived on—this was one of the best times of their lives.

The litigation in the gondola case was over in June 1999. Couch left active duty soon afterward, brokenhearted. But in a peculiar way, the case had made him stronger; every challenge that came after would be minor, manageable. "What am I going to do, lose one of the biggest cases in the history of the Marine Corps? I've already done that."

As it turned out, even in defeat his career was jump-started. "You get this reputation as one of three people who tried this great big case—it put me on the fast track." He was soon sitting in his new office at a private law firm. He didn't stay long, though, because he's first and foremost a litigator, and he wasn't getting to litigate. So he moved on to the DA's office in Eastern North Carolina to prosecute "shrimp boat captains who get drunk and fight on Sunday night." All along, Kim wanted him back in the Marines, back in his element, doing what she knew made him happiest.

But Couch wasn't quite ready to return to active duty, the gondola case still fresh in his mind. Then, in August 2001, the opportunity came to help prosecute Marine officers accused of falsifying maintenance records related to the new MV-22 Osprey tilt-rotor aircraft. Couch was tempted.

"I really loved the Marine Corps, I liked working on a case like that, and I was thinking about returning to active duty anyway."

He could sign on for the life of the case, dip his toe in. If it didn't work out—well, no harm done.

Meanwhile, the Horrockses had gone on to have a daughter and then a son. Rocks became a flight instructor in Pensacola and then started flying passenger jets for United Airlines. The civilian world welcomed his experience, just as it had Couch's. Horrocks found himself sitting first officer on a flight one day, traveling from the East Coast on a brilliantly clear morning, when he heard a suspicious transmission from another plane, something that sounded like "stay in your seats." They radioed it to ground control, learned that the flight had been hijacked, and were ordered to keep their distance. Horrocks had just heard the last transmission from American Airlines Flight 11, which struck the north tower of the World Trade Center less than ten minutes later.

Then Horrocks' own aircraft changed beacon codes twice in the same minute. Curiously, it climbed above its assigned altitude. Air traffic control tried to contact the pilots but couldn't get a response. The plane then commenced a power dive, and just before 9:00, it began a sharp left turn, assuming a northeasterly heading toward New York City.

Couch logged onto Yahoo that morning, after staying up all night preparing a court motion. He saw the initial reports of an aircraft hitting the World Trade Center, immediately turned on the television, and watched the footage of his friend's plane crashing into the south tower.

The events of 9/11 galvanized Couch. Any hesitation he had about returning to military service disappeared. "I wanted to get back on active duty, because now we're going to war," he recalls. "Any time you have a war, military justice is going to be a necessity. And that's what I like best: I like being a Marine lawyer."

When the U.S. started capturing terror suspects and sending them to Guantánamo, Couch got a call from one of his mentors in the military justice system. "Look man," he said to Couch, "they're talking about doing military commissions. We haven't done those since World War II. You know they're going to be looking for people with experience."

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"I'm thinking they're terrorists, and now we're going to prosecute them, and I'm one of the more experienced prosecutors in the Marine Corps," Couch says. "I'll take my skill set and apply it to the war on terrorism." Before he started, he got a picture of Horrocks' wife and children that had appeared on the front page of USA Today and put it on his desk where he could see it every time he looked up.

There is a tacit assumption made by most casual observers of the war on terror that preventing terrorism and prosecuting it are complementary endeavors. In practice, it doesn't always work that way. When Couch joined the commissions in August 2003, they were talking about Mohamedou Ould Slahi, a key al Qaeda operative. The intelligence agencies had gathered copious amounts of information on Slahi, but the policies at the time kept them from sharing much of it with the prosecutors. "The intelligence side was doing their thing, and we on the law-enforcement side were doing our thing. And the insinuation was 'and ne'er the twain shall meet,'" he says. But the intelligence agencies—apparently more concerned with preventing attacks than with maintaining the integrity of prospective prosecutions—were impeding his ability to convict terrorists.

Without having all of the intel on Slahi, Couch was hamstrung and would have to base his case solely on Slahi's interrogation reports. And Slahi, for the moment, wasn't talking.

According to The 9/11 Commission Report, when the U.S. captured Ramzi bin al-Shibh, one of the key planners of the September 11 attacks, and began interrogating him, he mentioned Slahi. Bin al-Shibh said Slahi had sent him and three other students from Germany to Afghanistan for training. Osama bin Laden himself gave them their assignment: the 9/11 operation. Bin al-Shibh was the only surviving member of the foursome because the other three were the pilots, including Marwan al Shehi, who flew Horrocks' plane into the south tower. Apparently, the man Couch was prosecuting had sent bin al-Shibh to train.

In October 2003, Slahi suddenly began to talk—a lot. His intelligence reports became so overwhelming that Couch had trouble keeping up with them. Over the course of several months, he became increasingly suspicious of Slahi's treatment and started an unofficial investigation. A colleague had let slip that Slahi had begun a more intensive "varsity" interrogation program. Then Couch saw an obviously fake letter on State Department letterhead intimating that Slahi's mother would be brought to Guantánamo and possibly raped. "The implication was clear," he says. And for him, everything coalesced: Slahi was being tortured. (Slahi, still imprisoned at Guantánamo, now claims that, among other things, he was beaten, water-boarded, and sexually humiliated.)

Now there was duty to be considered; allegiance to God and country; the loyalty to superiors a military man knows never to question; ethical obligations that go along with the practice of law. It was not an easy decision, walking off the case. "I got Rocks' wife's picture on my desk.... You get the pang of what you want to do, and what you have to do," says Couch.

"What I wanted to do was make sure this guy never leaves Guantánamo. But could I stand up in front of a courtroom and put my credibility on the line for the type of evidence that was obtained from him? I couldn't do it."

Couch says he thought about asking the Marines to reassign him. "But I resolved that I would rather be fired than quit." He proceeded with work on other cases, including the prosecution of Salim Hamdan, who had been bin Laden's driver. With his broad experience, he was named lead prosecutor. The case, now famous as Hamdan v. Rumsfeld, went all the way to the U.S. Supreme Court. ("It's kind of strange," Couch observes now. "I always thought if I would have a claim to fame, it would be as the prosecutor working on Hamdan. Instead, I've become famous for a case I refused to prosecute.")

On June 29, 2006, the Supreme Court ruled against Rumsfeld and the Department of Defense, effectively derailing the further prosecution of the case indefinitely. Couch, who had already planned to leave the commissions as soon as the Hamdan case was finished, decided he'd had enough. "I was ready to go."

While prosecuting Hamdan and Slahi and the other cases for the commissions, he'd been working for the Department of Defense, on "loan" from the Marines. Now he went back to doing what he liked best.

The Marine Corps badly needed appellate judges, and because of his broad experience, with the Osprey case, with Hamdan—even, ironically, with the gondola case—he was an obvious choice.

Nearly a year later, Couch, now a judge on the Navy-Marine Corps Court of Criminal Appeals, is wrapping up a keynote address before an ethics conference sponsored by the Chicago Bar Association, the first of his many speaking engagements since The Wall Street Journal published "The Conscience of the Colonel." His speech has been billed as "Tales from the Trenches," and he's obliged by reciting as many as he can remember, including the one everyone wants most to hear about.

"I don't want to try to elevate myself higher than anyone else," he tells them. "I would have preferred the title of The Wall Street Journal article to be 'The Responsibility of the Colonel.' That is, if you think something's wrong, you've got the responsibility to make it right. And if you can't make it right, you need to tell somebody and make efforts to make it right. And that's just, in my view, that's Ethics 101.

"Having said that, I'll be glad to answer any of your questions.

—*Stern '07 is a freelance writer.*

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