

What exactly happened that day in Fallujah?

By Laura Parker, USA TODAY

It is one of the Iraq war's grisliest photo images: the charred bodies of American civilians strung up on a bridge in Fallujah. Four private security contractors had been shot in an ambush in March 2004 and burned in their vehicles by an angry mob.

Three years later, the Fallujah attack is at the center of a legal battle that could prompt more government oversight of security contracting companies and determine the extent of their legal liability in the war zone.

The families of the slain men still don't know what happened that day when their loved ones were consumed by insurgent violence. They are suing Blackwater USA, the men's employer, for wrongful death in the hope that their questions will be answered.

The lawsuit is the most prominent in an emerging body of litigation surrounding the secretive world of private security contractors in the wars in Iraq and Afghanistan. As details about security operations are revealed in the court cases, pressure has intensified in Congress to regulate how armed contractors operate. The Fallujah lawsuit became part of a congressional hearing on Blackwater operations held by Rep. Henry Waxman, D-Calif., in February.

Legal experts say that more than a dozen lawsuits have been filed against contractors and that the Fallujah suit, filed in 2005, could have the biggest long-term impact on the industry.

"Blackwater has got to win this one to deter other suits," says Scott Silliman, director of the Center on Law, Ethics and National Security at Duke University Law School. "All the other private contracting companies are watching this case."

The lawsuit alleges that Blackwater sent Jerry Zovko, Scott Helvenston, Michael Teague and Wesley Batalona on a job with inadequate equipment and protection. The men were killed while escorting a convoy of three empty trucks to pick up kitchen equipment for a European food company. According to the lawsuit, the men should have been traveling in fully armored vehicles and should have had a guard in each vehicle acting as a rear gunner to protect them from attack.

Blackwater denies the allegations and has filed a \$10 million counterclaim. It says the families violated employment contracts that prohibit the men or their estates from suing the company.

Blackwater is one of the largest in a labyrinth of private security companies that collectively have assembled an armed force more than a third the size of the U.S. military presence in Iraq, according to congressional testimony and industry figures. The companies employ nearly 50,000 security professionals who escort convoys, guard U.S. diplomats, provide arms training and perform other duties.

The four men killed in Fallujah are among more than 990 American contractors who have been killed in Iraq and Afghanistan as of March 31, according to Labor Department estimates. That's more than one-fourth of the death toll of U.S. troops. Among the dead: 27 contractors for Blackwater, company spokeswoman Anne Tyrell says.

Unlike the practice with military casualties, no official reports are made on the circumstances surrounding the deaths of civilian security contractors.

The families' lawsuit has provided the most complete and only public account of events leading up to the Fallujah attack. Neither a military investigation nor a company report has been made public.

Several family members said Blackwater executives told them they'd have to sue to obtain the company's review of the ambush.

"Imagine having the people so near and dear to your hearts killed ... in a foreign country," Kathryn Helvenston-Wettengel, mother of one of the contractors, told Waxman's subcommittee. "And then have the employer tell you the details are confidential."

A growing civilian force

Private contractors, including cooks, truck drivers, translators, interrogators, and maintenance workers, have worked alongside American troops since the Revolutionary War. Since the Cold War ended and the U.S. military was downsized, the United States has become even more dependent on them.

In Iraq, the Bush administration has pushed the use of private contractors to an unprecedented level and assembled a civilian force of 126,000 people to support 146,000 U.S. troops, according to Defense Department and industry figures.

Private contractors often can finish jobs "better and faster" than the military, says Steve Schooner, an Army reservist and a law professor at George Washington University Law School in Washington, D.C., who specializes in government procurement law. "If you say, I need X now, they'll go out and hire more people, buy more trucks, get more planes."

A complication in the Iraq war, he says, is the heavy dependence on armed contractors. The government has no formal oversight policies that "embrace mercenaries," he says.

"We never made those decisions with arms-bearing contractors. The decisions in Iraq were, 'Holy moly, we don't have enough people, go get some people with guns.' "

Four years into the Iraq war, however, little is publicly known about what they do. Members of Congress complain that they have been unable to learn details about the nearly \$4 billion spent so far on private security contractors.

"There's no visibility on these contractors," says Rep. Jan Schakowsky, D-Ill. "Meaning no clue how much money we're spending. They are carrying out mission-sensitive activities with virtually no oversight whatsoever."

Jeremy Scahill, an investigative journalist for *The Nation* magazine, and author of *Blackwater: The Rise of the World's Most Powerful Mercenary Army*, says that litigation may shed more light on contractor operations than Congress thus far has been able to. "The one place we might be able to get actual information about the operation of these companies is through the court system," he says.

But even opponents of the government's reliance on armed contractors say oversight is the job of Congress, not the courts.

"The concept of second-guessing tactical decisions in a combat situation is not a good one," says retired Marine colonel T.X. Hammes, an expert on insurgencies. "There is no way for a court to determine what information was available on the ground. It will establish a dangerous precedent."

In court papers, the companies say they were working for the government and therefore are subject to the same protections against lawsuits as the military, which cannot be sued for the deaths or injuries of its troops. Blackwater argues that the four families' lawsuit "unconstitutionally intrudes on the exclusive authority of the military of the federal government to conduct military operations abroad."

In the two years since it was filed, the Fallujah lawsuit has bounced between state and federal courts amid a jumble of claims and counterclaims.

Last month, U.S. District Judge James Fox in North Carolina ordered the families and Blackwater into arbitration, a non-public procedure that is designed to resolve disputes without a trial. The families have appealed Fox's order.

Blackwater does not comment on litigation, company spokeswoman Tyrell says. The families of the men are honoring a North Carolina state judge's request to avoid media interviews.

A company with clout

Blackwater was founded in 1997 by Erik Prince, a former Navy SEAL and son of a wealthy Michigan auto-parts supplier. The

company, headquartered in Moyock, N.C., on a 7,000-acre compound, has deeply rooted political connections in Washington.

It counts former top CIA and Defense Department officials, including Cofer Black, former director of the CIA's counterterrorism center, and Joseph Schmitz, former Pentagon inspector general, among its executives. Blackwater's legal team once included Fred Fielding, now White House counsel, and now includes Kenneth Starr, the special prosecutor who investigated the Monica Lewinsky and Whitewater scandals during the Clinton administration.

If company executives represent Blackwater's military and national security prowess, the men ambushed in Fallujah were classic Blackwater contractors: highly skilled commandos with backgrounds in military special operations. Three were former Army Rangers: Batalona, 48, who lived with his wife on Hawaii's Big Island; Zovko, 32 and single, who lived near his immigrant parents in a Cleveland suburb; and Teague, 38, who lived with his family in Clarksville, Tenn.

Worked with Demi Moore

Helvenston, 38, of Oceanside, Calif., was an ex-Navy SEAL who had parlayed his expertise into a career as a Hollywood stuntman, according to court papers. He served as a consultant for the movie *Face/Off*, starring John Travolta and Nicolas Cage, and advised Demi Moore on how to act like a SEAL for her movie *G.I. Jane*.

The men earned \$600 a day, court papers say. Teague wanted to bankroll his son's college tuition. Helvenston was hoping to solve financial problems that had forced him into bankruptcy in 2002. But their families told Congress that the men had also been drawn to the war by the cause.

Andrew Howell, Blackwater's general counsel, told Congress that the men were appropriately equipped on their mission to Fallujah. In her testimony, Scott Helvenston's mother disagreed.

"They did not have heavy machine weapons," Helvenston-Wettengel said. "They were not able to conduct a risk assessment of the mission. They did not have a chance to learn the routes before going on this mission. In fact, when Scott Helvenston asked for a map of the route, he was told: 'It's a little too late for a map now.' "

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