



**The Khobar Towers commander thought he had finally received justice, but the story had an unhappy surprise ending.**

# THE SECOND SACKING OF TERRYL SCHWALIER

By Rebecca Grant

**R**EMEMBER Brig. Gen. Terry J. Schwalier? A decade ago, he was a rising star in the Air Force, wrapping up a successful tour as commander of the 4404th Wing (Provisional) in Saudi Arabia and on the list for promotion. Then, disaster struck his troops. On the night of June 25, 1996, an unprecedentedly large terrorist truck-bomb exploded outside the Khobar Towers military billet in Dhahran, killing 19 airmen and wounding 240 others.

Secretary of Defense William S. Cohen, facing political pressure to fix blame, went against the views of his military advisors and fingered Schwalier, saying that he had decided to deny the general his previously approved second star. Schwalier then immediately retired and dropped out of public view.

Yet the Schwalier case didn't die. Far from it. As it happens, Schwalier and Air Force officials spent much of the past four-and-a-half years waging a behind-the-scenes struggle to clear his besmirched name. Specifically, they attempted to re-establish for Schwalier his major general's rank. And they encountered an unexpected opponent—the Office of the Secretary of Defense.

The effort began in 2001. Senior service leaders—notably, then-Secretary of the Air Force James G. Roche and then-USAF Chief of Staff Gen. John P. Jumper—strongly assisted Schwalier's actions. An independent Air Force review board sitting in Washington, D.C., ruled for Schwalier, officially declaring that he should be a major general on the retired list.

Unfortunately for Schwalier and his backers, the board's action did not mark the end of the story, either. Attorneys in the DOD Office of the General Counsel—the Pentagon's law firm—got involved, taking the unusual step of challenging the review board decision. They, in effect, overruled the Air Force on this sensitive matter.

Their action thwarted Schwalier's case, but didn't end his effort. He is now considering other options.

## From Clinton to Bush

Nearly a decade after the Khobar Towers disaster, the Pentagon still was taking pains to override USAF's legal authority in the case. A problem that first cropped up in the Clinton Administration seeped into the Bush Administration—and into the tenure of Secretary

of Defense Donald H. Rumsfeld. Even today, the Pentagon won't state for the record whether Rumsfeld was made aware of the Schwalier case.

Washington politics played a big role in Cohen's July 31, 1997 decision to deny Schwalier his promotion to major general. The facts of the bombing and its aftermath have been recounted many times over the years. This magazine published its own lengthy account, "Khobar Towers," in the June 1998 issue, p. 48 ([www.afa.org/magazine/june1998](http://www.afa.org/magazine/june1998)), and dealt with the subject on other occasions. Yet a few points bear retelling:

- The weapon used in the attack on Khobar Towers detonated with the force of at least 20,000 pounds of TNT, in the view of the Defense Special Weapons Agency. It was a danger of unparalleled size—twice as large as the bomb used in the 1983 attack on the US Marine Corps barracks in Beirut and 80 times the size of the largest terrorist device that had ever been seen in Saudi Arabia.

- Everything about the attack showed a new level of terrorist sophistication. It was long in the making and planned with meticulous care. According to a 2001 US federal indictment, terrorist planners began surveillance of the



target in 1993 and conducted regular reconnaissance for a year before the attack.

■ The Pentagon and the House National Security Committee, both of which sent investigators to the scene, put the blame mostly on faulty intelligence. “Our commanders were trying to do right, but ... had a difficult task to know what to plan for,” said then-Secretary of Defense William J. Perry. The House report cited “intelligence failures” throughout its pages.

■ Many in Congress, the media, and the public were angry that the Pentagon had based the wing’s quarters in a congested, hard-to-defend urban area such as Dhahran in the first place. Indeed, Perry immediately moved the 4404th Wing to a remote base in the Saudi desert, where it suffered no further attacks. (See “Desert Stronghold,” February 1999, p. 44.)

■ After the attack, the Pentagon appointed Gen. Wayne A. Downing, a retired Army officer and former commander of US Special Operations Command, to head an outside probe. Downing claimed Schwalier “did not adequately protect his forces from a terrorist attack,” yet his report was factually wrong on a key point—the size of the bomb. Downing said it was “most likely 5,000 pounds,” though it was four to six times that size.

■ In the wake of the Downing report, USAF conducted two comprehensive inquiries, both of which concluded that Schwalier had done all that reasonably could have been expected of him. They showed that Schwalier, far from ignoring the threat, implemented 130 separate security measures before the

Maine Republican Senator declared Schwalier “could and should have done more” to defend Khobar Towers. He announced he would stop Schwalier’s promotion, though it already had been confirmed by the Senate and had been scheduled under the Air Force’s official appointment system.

In disciplining Schwalier, Cohen said he found several security deficiencies, but he was most critical of two: the lack of an effective alarm system to warn of impending attack and a lack of acceptable evacuation plans.

In fact, Schwalier inherited a standard speaker and siren system, and it was one that commanders were reluctant to set off, lest the local residents fear they were under Scud missile attack. As for the issue of evacuation



USAF photo by SRA Paul Gritton

*Khobar Towers after the bombing. Schwalier (left) and Maj. Gen. Kurt Anderson, the commander of Joint Task Force Southwest Asia, taking questions on June 28, 1996.*

attack and had made 36 of 39 changes recommended in a recent vulnerability assessment.

■ The Joint Staff did not recommend action against Schwalier. The Chairman of the Joint Chiefs of Staff, Army Gen. John M. Shalikashvili, met with Cohen several times in weeks leading up to the decision, said a former Joint Staff officer, and “was not recommending action.” In fact, Cohen was advised to leave the matter to the military chain of command.

### Hindsight

In the end, Cohen put aside these factors and came to his own conclusion, which was greatly to Schwalier’s detriment. On July 31, 1997, the former

plans, Cohen emphasized Schwalier’s failure to conduct evacuation drills. However, Khobar Towers personnel had carried out six actual evacuation drills, triggered by suspicious packages.

Following Cohen’s announcement, a reporter asked whether he had made Schwalier a scapegoat. “He’s not being made a scapegoat,” said Cohen. “He is being held accountable.”

In reality, Cohen was responding to political demands in Congress and the media for a sacrifice. That, at least, was the way it looked to Gen. Ronald R. Fogleman, USAF’s Chief of Staff. Unable to stomach what he saw coming, Fogleman several days earlier had stepped down from the



**Secretary of Defense William Cohen.**

Chief's post and retired a year earlier than planned.

"You really do have to get up and look at yourself in the mirror every day and ask, 'Do I feel honorable and clean?'" Fogleman told *Aerospace Power Journal* "I just could not begin to imagine facing the Air Force after Secretary Cohen made the decision to cancel General Schwalier's promotion."

The case lay dormant for four years, until Americans and their political leaders were battered into the realization that acts of mega-terrorism are, in fact, acts of war.

Despite a new emphasis on military "force protection" and defense of civilian compounds, the terrorist attacks and deaths kept coming. In 1998, al Qaeda terrorists attacked US embassies in Nairobi, Kenya, and Dar es Salaam, Tanzania, killing hundreds, including 12 Americans.

In October 2000, al Qaeda operatives launched an audacious, waterborne bombing of the Navy destroyer USS *Cole* in Yemen's Aden harbor. Seventeen US sailors perished. After this disaster, which happened on Cohen's watch, the Pentagon chief did not seek a scapegoat. All realized that it was an act of war, and the ship's captain was not faulted. (See "From Khobar to *Cole*," March 2001, p. 48.)

However, the outrage of Sept. 11, 2001 changed everything—or so Schwalier thought. Thousands died from the attacks on New York's World Trade Center towers and the Pentagon and in the airliner that crashed in Pennsylvania. Terrorism finally was viewed for what it really was—warfare that produces casualties, just as

air combat and land and sea battles produce casualties.

### Time To Try

Schwalier, watching these events unfold over the years, concluded it was time to seek an official review of his own case. He hoped that, given the momentous events that had taken place on US soil, the federal government might be moved to see his service at Khobar Towers in a fairer light.

Nor had Air Force leaders forgotten what had happened to Schwalier. Even before the Sept. 11 attacks, the then-USAF Chief of Staff, Gen. Michael E. Ryan, had urged Roche, the newly installed Secretary of the Air Force, to take a fresh look at the Schwalier matter, with an eye toward reinstating the promotion. Roche agreed with Ryan's view and promised to follow through. Roche and Jumper, who succeeded Ryan as Chief of Staff, both believed that Schwalier's case should be reassessed. (Jumper, as a three-star general, had been Schwalier's boss through April 1996.)

Roche was especially bothered by what he viewed as the double standard of the previous five years. Noting the deaths in the 1998 embassy bombings, Roche asked, "What State Department official took the blame for that?" The case of USS *Cole*, in his view, was almost an exact copy of the case of Khobar Towers, but it produced a very different result.

"After 9/11," said Roche, "I started asking the question: 'Why isn't Donald Rumsfeld held responsible for the dead at the Pentagon if Terry Schwalier is held responsible for Khobar Towers?'" Roche's question was, of course, rhetorical in nature. The reason Rumsfeld was not held responsible, explained Roche, was because "he *isn't* responsible." Blaming an individual for not stopping such an act of war would be ludicrous.

Schwalier's case came back to life in October 2001, just as US forces embarked on operations in Afghanistan to destroy the worst of the world's Islamic terrorists.

In that month, Schwalier and Roche opened up e-mail communications. Roche's staff explored the 1997 decision for weaknesses, ones sufficiently large to allow the Pentagon to take another look at the Cohen decision.

Some civilians involved in the original decision might still be at Pentagon posts, said Roche, and all Air Force parties agreed that they were not

seeking a fight with OSD. Senior Air Force leaders hoped to smooth the way for Schwalier by reaching some sort of agreement with the new Pentagon leadership.

"We were all of one mind," Roche said.

It appears that worldwide military operations and other pressing matters served to delay action, and nearly a full year passed. By September 2002, however, Roche's office sent the word to Schwalier that officials were "very close to an agreement in principle on the language" that was "to go forward to SECDEF with the issue." In October 2002, Jumper wrote to Schwalier in a similar vein. "We have ... been working with our legal people on your case," he reported.

### Second Approach

During this period, however, the Schwalier case also was moving along a second path. While Roche and Jumper were pursuing quiet discussions with OSD, Schwalier was contacted by a retired Air Force general with another idea. This officer suggested that Schwalier take his case to the Air Force Board for Correction of Military Records (BCMR), a respected, independent review authority acting for the Secretary of the Air Force.

Several more months passed, with senior Air Force leaders still working the case. In December 2002, Jumper wrote a follow-up message to Schwalier.



**Gen. Ronald Fogleman, Chief of Staff.**

“Let us work this on your behalf before taking the BCMR step,” he said.

However, it now seems clear that Roche and Jumper encountered resistance from OSD lawyers, because, on April 3, 2003, Jumper wrote to Schwalier again. “We are engaged with the OSD lawyers regarding your case,” he said. “As you can imagine, they are not anxious to revisit this case, but there are options open to press this. Dr. Roche and our AF General Counsel believe that now is the time for you to submit your request to the BCMR.”

According to Roche, the Air Force’s plan was to have Schwalier launch his review case in a quiet, unobtrusive fashion and then simply “let the Board act.” The BCMR, said Roche, was “an institution we respect greatly” and could be expected to give the request a fair hearing.

Schwalier submitted his review petition to the Board on April 7, 2003, four days after Jumper flashed the green light. Among other things, the petition pointed out—factually—that Cohen’s 1997 decision “went against the will of the regional military commander [Army Gen. J.H. Binford Peay III, the commander of US Central Command], the military service chief [Fogleman], the recommendations of two Air Force investigation Boards [conducted by Lt. Gen. James F. Record, Lt. Gen. Richard T. Swope, and Maj. Gen. Bryan G. Hawley] specifically tasked with evaluating his actions, and the area US consul general [David Winn], who well understood the threat and knew what actions US commanders were taking in response.”

### “Final and Conclusive”

The Board’s *bona fides* were not in doubt. According to the Air Force Personnel Center, “The Air Force Board for Correction of Military Records (AFB-CMR) is the highest level of administrative review within the Department of the Air Force.” Under federal law, a Board decision “is final and conclusive on all officers of the United States.”

The Board, composed of senior Air Force civilians, can act for either of two reasons: to “correct an error” or “remove an injustice.” Authority for both is well-established in Title 10 of the US Code. It also is bolstered and extended by precedent in numerous federal legal cases.

Schwalier presented a case that went along both tracks. In going before the Board, Schwalier had one clear and

undisputed purpose, which still applies today. “I just want my case to be judged fairly,” said Schwalier. “Sure, I want my name to be cleared, but this case represents something bigger. ... When our commanders are sent into harm’s way, they need to know that they will be held to a high but attainable standard ... not a political one.”

The most powerful part of his petition was the “injustice” track. He cited seven specific points in which Cohen, in Schwalier’s view, traduced due process and unfairly made him the fall guy for Khobar Towers.

While Schwalier’s overall presentation was broad—even moral—in nature, his legal case gradually came to center more on the narrow “error” track. This entailed OSD’s alleged failure to follow some technical provisions of the military promotion process. It is possible that the Board tended to focus on this particular part of the case because it allowed the government, in a standard and routine process, to make amends and not stir political recriminations.

In any event, the Board, soon after initiating the review of Schwalier’s case, did find what it must have considered a major Pentagon error.

In 1995, Schwalier, then a brigadier, had been selected for promotion by a major general promotion board, and the White House had forwarded his name to Congress. The Senate had confirmed his nomination on March 15, 1996, months before he was due to leave Saudi Arabia. In line with the number of available slots and according to official Air Force procedure, the Air Force General Officer Management Office set Schwalier’s promotion date for Jan. 1, 1997.

When that date approached, however, the Khobar Towers probe still was open. Gen. Thomas S. Moorman Jr., the vice chief of staff, told Schwalier in December that his promotion would be delayed. Under Air Force instructions in effect at the time, six months’ delay was the maximum, and, absent formal action to stop it, the promotion would take effect on June 30, 1997.

In simplest terms, Schwalier’s promotion to major general, regardless of the investigation, would become final on July 1, 1997, unless somebody blocked it before that date. However, Cohen did not act against Schwalier until July 31, 1997. Cohen acted too late to affect events.

From the Board’s perspective, straightforward fairness required correction of this part of Schwalier’s record.



USAF photo by A1C Tanaya M. Harms

Gen. Michael Ryan, Chief of Staff.

The Board position was that Schwalier had already been nominated, confirmed, and appointed under the rules of the Air Force (officially representing the President), and this had happened four weeks before Cohen announced his decision.

### “Null and Void”

The Board’s official action came on Aug. 2, 2004. Members wrote that, “as a matter of law, he [Schwalier] was promoted to the grade of major general effective 1 Jan. 97, thereby rendering his removal from the major general promotion list null and void.”

In October 2004, the Board’s formal decision notice was forwarded to Jumper. It said Schwalier was to be deemed promoted to major general with a Jan. 1, 1997 date of rank and placed on the retired list as a two-star general, as if he had continued on active duty until Feb. 1, 2000.

In Roche’s words, the Board “did the right thing.”

However, the case was not yet closed—not by a long shot. The Pentagon’s “law firm” was about to play a big card. BCMR cases don’t usually draw the attention of these lawyers, but this was not an ordinary case.

Roche, as USAF’s civilian leader, was Schwalier’s most important supporter, but he wouldn’t be around for the final act in the case. In late 2004, he announced his decision to step down from his post and retire. He officially did so on Jan. 20, 2005, and it wasn’t long until things moved against Schwalier.

On Feb. 7, 2005, the Air Force



Gen. John Jumper, Chief of Staff, and James Roche, Secretary of the Air Force.

received a two-page memorandum from Paul S. Koffsky, the Pentagon's deputy general counsel for personnel and health policy. Koffsky said, "We are very troubled" by the legal reasoning behind the BCMR's decision in favor of Schwalier. He explained that the Pentagon did not think the Air Force Judge Advocate (which provided legal advice to the Board) had correctly interpreted federal precedents. He cited a 2004 decision that seemed, in Koffsky's eyes, to undermine Schwalier's case.

Eleven days later, on Feb. 18, 2005, USAF's deputy general counsel, W. Kipling Atlee Jr., countered with a closely reasoned, seven-page memo that disagreed with OSD's lawyers. The argument was technical, but Atlee's conclusion was clear. "We remain of the view that the action of the Air Force Board for Correction of Military Records ... was consistent with law" and that, under US Code, the Board's action "to correct records to reflect the promotion was final and conclusive."

OSD counsel took a full month to provide a reply. When it came, the response was signed by Daniel J. Dell'Orto, DOD's No. 2 lawyer, and it was sent to the acting Secretary of the Air Force, who at that time was Peter B. Teets.

This three-page March 24, 2005 memorandum repeated the earlier legal arguments and added a new claim—that there was no contemporaneous evidence that the Air Force had ever officially set Schwalier's promotion

date for Jan. 1, 1997. However, retired General Moorman, in a November 2003 letter to the Board, affirmed that date three separate times.

#### "Without Legal Effect"

In his concluding sentence, Dell'Orto advised that the Board's action was "*ultra vires* and without legal effect." He was saying, essentially, that the Board acted beyond its authority.

It is clear that the Air Force accepted the general counsel's "advice." On March 30, 2005, the Air Force's own top lawyer, Mary L. Walker, sent a memo to the Board, instructing it to adhere to the OSD opinion because the general counsel was "the final legal authority" on the matter. On May 11, 2005, Joe G. Lineberger, the director of the Air Force Review Boards Agency (overseer of the Board), gave Schwalier the bad news and asked if he wished to make any further comments.

Schwalier did—or, rather, his lawyer did. In a July 1, 2005 legal memo that ran to five pages, he reaffirmed Schwalier's view that the technical promotion argument was valid. He then went further, reviving the "injustice" track of the original petition.

The memo stated: "Any inability to 'correct an error' in no way interferes with this Board's independent ability

(indeed, its obligation) to 'remove an injustice.' In other words, the [Board] should proceed to address the 'injustice' prong of General Schwalier's application."

The lawyer's brief criticized "the public frenzy" around the Khobar Towers case in 1996 and 1997, noting that, "according to the thinking of the time, something bad happened, so somebody must have done something wrong." Schwalier was nominated for the blame, "and it is that injustice that, notwithstanding any error that might also exist in this case, should be rectified."

On Aug. 19, 2005, this plea was denied in writing. The memo noted, "This is the final Air Force decision."

Pentagon activity apparently ended. In January, *Air Force Magazine* submitted questions to DOD, but got a generalized response from a DOD spokesperson. Here is the pertinent part:

"There was never a public act of appointment taken by an appropriate Air Force official in the name of the President that appointed Brigadier General Schwalier to the grade of major general prior to the removal by the President of Brigadier General Schwalier's name from the list on July 31, 1997. Thus, the President's action on July 31, 1997 to remove Brigadier General Schwalier from the list was lawful and effective."

DOD's response did not take up the subject of injustice.

Schwalier has not given up on his effort. He is now weighing other options that might bring a reconsideration of the Khobar Towers matter.

As for Roche, he is concerned that OSD lawyers had managed to trump the Board itself. He called the Board independent and highly respected because of its independence. He added, "I'm bothered that they are second-guessing. If OSD takes that position, that will undermine the objectivity of the Board. People who disagree with its decisions will appeal to OSD."

More broadly, said Roche, he is disappointed that the Pentagon didn't move to rectify the injustice. What happened in 1997 was the application to Schwalier of a double standard. Continuing to blame Schwalier, even after 9/11, said Roche, was "worse than a double standard." ■

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