

## **Afghan Massacre Case Tests Military Justice System on Troops Accused of Killing Civilians**

The U.S. military has been criticized for its spotty record on convicting troops of killing civilians, but a hearing against Army Staff Sgt. Robert Bales involving a massacre in Afghanistan has shown that it isn't like most cases.

Government prosecutors have built a strong eyewitness case against the veteran soldier, with troops recounting how they saw Bales return to the base covered in blood. And in unusual testimony in a military court, Afghan civilians questioned via a video link described the horror of seeing 16 people killed, mostly children, in their villages.

Law experts say the case could test whether the military, aided by technology, is able to embark on a new era of accountability.

Bales faces 16 counts of premeditated murder and six counts of attempted murder. The preliminary hearing, which began Nov. 5 and is scheduled to end with closing arguments Tuesday, will determine whether he faces a court-martial. He could face the death penalty if convicted.

The U.S. military system's record has shown it is slow to convict service members of alleged war crimes.

A range of factors make prosecuting troops for civilian deaths in foreign lands difficult, including gathering eyewitness testimony and collecting evidence at a crime scene in the midst of a war.

At Bales' preliminary hearing, the prosecution accommodated the Afghan witnesses, including children, by providing the video link and holding the sessions at night. The military said it intends to fly the witnesses from Afghanistan to Joint Base Lewis-McChord if there is a court martial.

"I think it shows they're going to prosecute this case no matter what it takes," said Greg Rinckey, a former Army prosecutor from 1999-2004 who is now in private practice. "This was an atrocity. This is not the fog of war. It's not like we were calling in artillery and an artillery shell landed in a village."

Prosecutors say Bales, 39, slipped away from remote Camp Belambay to attack two villages early on March 11, killing 16 civilians, including nine children. The slayings drew such angry protests that the U.S. temporarily halted combat operations in Afghanistan, and it was three weeks before American investigators could reach the crime scenes.

Through a video monitor in a military courtroom near Seattle, Bales saw young Afghan girls

smile beneath bright head coverings before they described the bloodbath he's accused of committing. He saw boys fidget as they remembered how they hid behind curtains when a gunman killed people in their village and one other.

And he saw dignified, thick-bearded men who spoke of unspeakable carnage — the piled, burned bodies of children and parents alike.

From the other side of that video link, in Afghanistan, one of the men saw something else — signs that justice will be done.

"I saw the person who killed my brother sitting there, head down with guilt," Haji Mullah Baraan said Monday in an interview with The Associated Press. "He didn't look up toward the camera."

Baraan was one of many Afghan witnesses who testified in Bales' case by live video link over the weekend.

"We got great hope from this and we are sure that we will get justice," Baraan said.

Throughout history, troops have been accused of heinous crimes involving civilians in countries where wars are waged. But rarely have villagers who witnessed the horror testified in a U.S. military court — often because of the costs and logistics of bringing them to the United States.

Villagers may be leery to leave their homeland to go to a foreign country and confront members of one of the mightiest militaries in the world. And as foreign nationals, they cannot be subpoenaed.

While there have been cases of troops being sentenced to life in prison for committing atrocities, the vast majority of those convicted for extrajudicial killings have been let off with little to no jail time for crimes that in civilian courts could carry hefty sentences, legal experts say.

Former U.N. Special Rapporteur Philip Alston — who was invited by the United States to examine extrajudicial killings in Iraq and Afghanistan — pointed out the January 2006 sentencing of Chief Warrant Officer Lewis E. Welshofer Jr.

He was given two months confinement to his base, a fine of \$6,000, and a letter of reprimand after being found guilty of negligent homicide and negligent dereliction of duty for the death of an Iraqi general who had turned himself in to military authorities.

"Military records released in Freedom of Information Act litigation make clear that the Welshofer sentence is not an anomaly," Alston wrote in a 2010 report.

The military hasn't executed a service member since 1961, when an Army ammunition handler was hanged for raping an 11-year-old girl in Austria.

Defense Secretary Leon Panetta has said the death penalty is possible if Bales is found guilty.

Afghan witnesses recounted the villagers who lived in the attacked compounds and listed the names of those killed. The bodies were buried quickly under Islamic custom, and no forensic evidence was available to prove the number of victims.

The witnesses included Zardana, 8, who sipped from a pink juice box before she testified. She suffered a gunshot wound to the top of her head, but after two months at a military hospital in Afghanistan and three more at a Navy hospital in San Diego, she can walk and talk again.

None of the Afghan witnesses were able to identify Bales as the shooter, but other evidence, including tests of the blood on his clothes, implicated him, according to testimony from a DNA expert.

Several soldiers testified that Bales returned to the base alone just before dawn the morning of the attacks, covered in blood, and that he made incriminating statements such as, "I thought I was doing the right thing."

Prosecutors say he also made a mid-massacre confession, returning to the base to wake another soldier and report his activities before heading out to the other village. The soldier testified that he didn't believe Bales and went back to sleep.

Bales, an Ohio native and father of two from Lake Tapps, Wash., has not entered a plea and was not expected to testify at the preliminary hearing. His attorneys say he has post-traumatic stress disorder and suffered a concussive head injury while serving in Iraq.