

Soldiers are convicted; Army assailed **Defense says command ignored Green's threats to kill Iraqis**

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By: Andrew Wolfson

PADUCAH, KENTUCKY - Wearing flip-flops, baggy shorts and a Johnny Cash T-shirt¹, former Pfc. Steven Green was led into a federal courtroom in Charlotte, N.C., on July 3, 2006.

He was ordered held without bond on the charge of rape and murder while "acting in an especially heinous, cruel and depraved manner."

Nearly four months after the atrocities at Yusufiyah, Iraq, — where a 14-year-old girl was raped and she and her family murdered — the revelation that U.S. soldiers were the alleged perpetrators triggered international outrage.

The Iraqi ambassador to the United States told ABC News that it was "extremely damaging to the standing of the United States and hurts the fight against terrorism." The American ambassador to Iraq apologized to its prime minister and the Iraqi people.²

The atrocities, an Army prosecutor later said, "gave the world a picture of Americans that many want to believe — that we are murderous, callous, inhuman, bigoted, warmongers."³

Green's co-defendants — Spc. James Barker, Spc. Paul Cortez, Pfc. Jesse Spielman and Pfc. Bryan Howard — were prosecuted first, in military court, because they were still in the Army. Howard, who had remained at the post, received 27 months and has been paroled.

Military prosecutors initially sought sentences of life without parole for Barker and Cortez, saying they should never be allowed to walk free again.

¹ Associated Press, July 3, 2006 report on Green's first court appearance.

² "Unusual apology for rape issued by top U.S. officials," International Herald Tribune, July 7, 2006, by Edward Wong.

³ Capt. Alexander Pickands, assistant prosecutor, in his opening statement in the court martial of Cortez.

But in exchange for their guilty pleas, and their promise to testify against their co-defendants, they received lesser sentences — 90 years for Barker and 100 for Cortez, with both eligible for parole⁴ in 10 years.

Before Barker was sentenced at Fort Campbell in November 2006, a military judge asked him why he participated in the rape of Abeer Kassem Al-Janabi and the killings of her and her family.

"Because I hated Iraqis,⁵ your honor," he said. "They can smile at you, and then shoot you in your face without even thinking about it."

But Barker also wept and apologized to his fellow soldiers for allowing them to be judged by the sordid deeds of a few.

Spielman pleaded guilty to obstruction of justice and wrongfully touching a corpse — for putting his hand on Abeer's breast.

He contested the more serious charges, however, saying he didn't know his fellow soldiers intended to rape Abeer or kill her family. His lawyers said he was a "bit player" who didn't directly participate in the crimes.

But a military jury found him guilty of rape and murder for aiding and abetting those crimes and gave him 110 years — though he also will be eligible for parole in 10.

DISORDER NO EXCUSE

Soldiers knew right from wrong, doctors say

Psychiatric experts testified that all three defendants suffered from acute-distress disorder — a condition similar to the better known post-traumatic stress disorder, but of shorter duration, which they said was triggered by witnessing life-threatening events in Iraq.

But the doctors also found that the soldiers knew right from wrong and were responsible for their conduct.

"This particular family wasn't any threat to you, were they?" Lt. Col. Richard Anderson, a military judge, asked Barker.

⁴ The sentences and parole eligibility are outlined in court martial proceedings.

⁵ Barker testimony at sentencing hearing in his court martial.

"No, your honor," he said.

"And you had no legal justification or excuse to do this? Not even your hatred of Iraqis?"

"No, your honor," Barker said.

Barker's lawyer, though, said that while the soldiers were to blame, the Army bore some responsibility for putting them on duty at a dangerous post with no supervision and broken leadership.

"The deaths of Fakhriya, Kassem, Hadeel and Abeer can't be undone," lawyer James Culp said.

"But these type of actions didn't happen in a vacuum."

When parents send "their young boys off to war," he said, "and they face things that shouldn't ever have to be faced, and they see the sort of things that human beings aren't born to see, and ... when they become altered by those things," officers should be "there to make sure that they do the right thing."

ARMY BLAMED

Lawyers also question use of civilian jury

As Green's lawyers attempt to keep their client from the death penalty,⁶ they also will try to show that trauma, fatigue, grief and the Army's negligence combined to produce the March 12, 2006, atrocity in the Triangle of Death.

"You had a severely undermanned operation that sustained a tremendous amount of casualties in a very short period of time," Green's co-counsel, Darren Wolff, said in an e-mailed response to questions from a Courier-Journal reporter.

"Add to that a command structure that paid little, if any, attention to the needs of the frontline soldiers, and you have a recipe for disaster," said Wolff, a former captain in the Marine Corp judge advocate general corps. "Something very bad was bound to happen."

Wolff and co-counsel Patrick Bouldin, an assistant federal public defender, also will try to prove that Army medical staffers committed malpractice⁷ when they returned Green, without proper treatment, to where he had seen his fellow soldiers killed.

⁶ Based on email responses from his co-counsel, Darren Wolff, as well as pleadings filed Wolff and co-counsel Patrick Bouldin.

To support their claims, they will cite a report by an Army psychiatrist, Dr. Marc Cooper, who reviewed the medical charts of Green and two of his co-defendants and found that none of them met "the standard of care for mental health in the Iraqi theater of operations."

Another Army review — of troop leadership in Bravo Company's 1st Platoon — found "numerous failures." Most notable, said the report by Lt. Col. John McCarthy, was "failure to supervise the operations and enforce standards at (checkpoints) by the company commander and platoon leader and platoon sergeant."

The defense team also is expected to argue that Green was following orders when he allegedly accompanied Cortez — the senior soldier at the post — to the crime scene.

Cortez acknowledged he didn't do his duty as a leader: "I should have been the one to stop it," he testified at his court-martial.

Finally, Green's lawyers contend it is unfair for him to be judged by a jury of civilians, rather than his peers — U.S. soldiers who understand the stress of combat.

Defendants charged with crimes on foreign soil normally cannot be prosecuted in U.S. courts. But Green faces just that because of a law Congress enacted in 2000 to cover offenses committed by military family members abroad, said retired Rear Adm. Don Guter, the chief Navy and Marine Corps lawyer who is now a law professor at Duquesne University.

The statute was passed because of outrage over a case in which the husband of a soldier who allegedly sexually abused his children in Germany couldn't be prosecuted in the United States.

Guter said he and other Pentagon lawyers never anticipated the law would be used against ex-soldiers.

Green will be tried in federal court⁸ in Paducah because that is the court closest to Fort Campbell, from which he was deployed.

Green's prosecution marks only the second time⁹ that a serviceman has been tried by civilian jurors for any war-time offense, according to professors who teach military law.

⁷ In a motion, Green's lawyers allege that "the psychiatric care rendered to defendant on or about Dec. 21, 2005, while in the Iraq theater of combat, deviated from acceptable standards of medical care."

⁸ Green is being charged under the Military Extraterritorial Jurisdiction Act.

⁹ According to Guter and Scott Silliman, a former Air Force lawyer who now heads the Center on Law, Ethics and National Security at Duke University.

The first, Jose Nazario, a Marine sergeant accused of executing two prisoners during the battle to retake Fallujah from insurgents, was acquitted last August in a federal court in Riverside, Calif.

After the verdict, several jurors said they were uneasy with the notion of civilians sitting in judgment of an action taken by a soldier during combat.

One juror, Nicole Peters, a high school guidance counselor, asked a blogger who covered the trial, "Who are we to decide¹⁰ what men in war are doing?"

THE PROSECUTION

Officials won't discuss their trial strategy

The government says Green deserves to be treated differently — and perhaps be executed — because he was the one who allegedly killed Abeer and her family.

Prosecutors Marisa Ford, an assistant U.S. attorney in Louisville, and Brian Skaret, a trial attorney in the Justice Department's domestic security section, wouldn't comment on the case or their trial strategy.

But if the courts-martial of Green's co-conspirators are any guide, they will argue that the crimes were coldly calculated and had nothing to do with the traumas of war; that Green and the others were not facing imagined or perceived enemies that day; and that they attacked innocent civilians who they were supposed to protect.

As for the Army's decision to return Green to combat after he was diagnosed with homicidal thoughts¹¹ toward Iraqis, such expressions were common among soldiers in Iraq, Lt. Col. Karen Marrs, the nurse practitioner who saw him, testified at Spielman's court-martial.

"Homicidal ideation does not imply either intent or plan," she said. Soldiers given the chance to "ventilate their thoughts and their feelings" would "be able to regroup and safely continue the mission."

¹⁰ Juror Nicole Peters was quoted in a Sept. 4, 2008 report by Nat Helms, a contributing editor to Defend Our Marines, posted at <http://warchronicle.com>. The issue of civilians trying soldiers is also discussed in a Los Angeles Times blog, "Nazario case: Can civilian jurors understand combat decisions?" by Tony Perry, Aug. 27, 2008.

¹¹ From Lt. Col. Marrs testimony in the court martial of Spielman.

Trying to anticipate Green's defense, federal agents have questioned his friends and family members on every aspect of his childhood, according to court records, from what books he read to whether he played with fire or was cruel to animals.

The government also has announced that it will present testimony from relatives about how the murders affected Abeer's surviving brothers, Mohammad and Ahmad, who were orphaned by the crimes.

The Army has no position on whether Green should be executed if convicted, said Lt. Col. George Wright, an Army spokesman at the Pentagon.

Wright declined to comment on whether Green should have been allowed to enlist or whether he should have been removed from combat¹² before the slayings.

Barker, Cortez and Spielman could be called as witnesses by the government, but testifying in their own cases, none directly blamed Green for the crimes.

"We were just to that point to where we couldn't take it," Cortez said. "We were left out there to die. We had no help. We just wanted to show somebody else what it felt like to feel the pain that we were going through."

But Barker also offered an apology.

"I want the people of Iraq to know that I did not go there with the purpose to do the terrible things I have done," he said. "My fellow soldiers and I went there to help the Iraqis. Somewhere along the way, somewhere inside the place known as the Triangle of Death, I changed."

"It was not right,"¹³ he said, "it just was."

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¹² Dr. Ritchie spoke generally about when soldiers should be evacuated in a Jan. 10, 2007 Associated Press story, "Soldier deemed homicidal months before Iraq attack," by Ryan Lenz. But Cynthia Vaughan, chief of public affairs for the Army Surgeon General, now says it would be "inappropriate to comment on whether Green should have been removed from combat or when that is mandated."

¹³ Barker testimony at his court martial.