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Investigator Recommends Courts-Martial for 4 Soldiers

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BAGHDAD, Iraq, Sept. 3 — An Army investigator has recommended a court-martial on charges that could lead to the death penalty for each of four infantrymen accused of raping a 14-year-old girl and killing her and her family in March, according to a report issued Sunday.

In his recommendation, Col. Dwight D. Warren agreed with military prosecutors that “reasonable grounds exist to believe that each accused committed the offense for which he is charged,” including premeditated murder, which under the Uniform Code of Military Justice could be punishable by death.

Defense lawyers said they would file objections to the recommendation, which goes to a convening authority that will decide whether to follow it. Colonel Warren is the investigator in the case, and presided over the initial hearing in the case last month to determine whether enough evidence existed to recommend a court-martial.

The finding comes three days after another Army investigator recommended that four other soldiers, accused of killing three Iraqi men during a May 9 assault on an island north of Baghdad, face the death penalty in courts-martial.

The four soldiers involved in the most recent recommendation are charged with raping the girl and killing her, her parents and her 7-year-old sister in the family’s home in Mahmudiya, a town in what is known among American soldiers as the “triangle of death” because of the deadly attacks by Sunni Arab insurgents.

Specialist James P. Barker, Pfc. Jesse V. Spielman, Pfc. Bryan L. Howard and Sgt. Paul E. Cortez are each charged with rape and premeditated murder. The four, members of Company B of the First Battalion, 502nd Infantry, 101st Airborne Division, are also charged with arson; military prosecutors accused them of burning the body of the teenager with kerosene in an attempt to conceal evidence.

A fifth soldier, Sgt. Anthony W. Yribe, has been charged with dereliction of duty for failing to report the crimes.

A former member of Company B, Steven D. Green, was said to have conceived the plan to rape the girl, whom his unit had encountered on previous patrols, and kill her family. Mr. Green, discharged as a private in May after a psychiatric evaluation, is in custody in Kentucky, where he faces federal rape and murder charges. He has pleaded not guilty.

http://www.nytimes.com/2006/09/04/world/middleeast/04abuse.html?_r=1&oref=slogin&pagewanted... 9/4/2006

Colonel Warren's report was provided to The New York Times by lawyers in the case.

During the military hearing last month, a member of Mr. Green's former platoon, Pfc. Justin Watt, testified that he heard Mr. Green express several violent thoughts, and heard him say at one point, "I want to kill and hurt a lot of Iraqis."

Private Watt also testified that Private Howard told him before the episode that Mr. Green, Sergeant Cortez and Specialist Barker had planned to rape a girl, and that Private Howard was to be the lookout.

In the hearing, defense lawyers argued that the rape and killings occurred as a result of low morale and stress after attacks at an isolated military checkpoint that killed several comrades of the accused men. The lawyers also argued that the killings were spontaneous acts of violence unconnected to the girl's rape, and that the men had not planned to kill anyone when they invaded the family's home.

The distinction is crucial. A conviction of premeditated murder is punishable under military law by death, and carries a minimum sentence of life in prison with the possibility of parole. Unpremeditated murder — the equivalent of second-degree murder in civilian courts — cannot be punished by death and carries no specific minimum sentence.

Prosecutors have told defense lawyers that they intend to pursue the death penalty, said Capt. James D. Culp, a lawyer for Specialist Barker.

David Sheldon, Specialist Barker's civilian lawyer, on Sunday criticized the recommendation for not considering mitigating circumstances, and he lambasted Colonel Warren, who is a St. Louis prosecutor in civilian life, contending that he was biased toward military prosecutors.

"For 22 days, these junior enlisted soldiers were warehoused at one of the most dangerous checkpoints in the triangle of death," Mr. Sheldon said in an e-mail message from Washington on Sunday.

Captain Culp said that he and Mr. Sheldon would file formal objections to Colonel Warren's recommendation with the next five days.

Colonel Warren could not be reached for comment late Sunday. But in his report on last month's hearing, he said he believed the five soldiers' actions had probably damaged the military's mission in Iraq.