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## Army Seeks Death Penalty in Afghan Massacre

By Kirk Johnson

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JOINT BASE LEWIS-MCCHORD, Wash. - A military prosecutor on Tuesday said the evidence against Staff Sgt. Robert Bales, presented over the last week here in a pretrial inquiry into the killings of 16 Afghan civilians, was so damning that the case should go forward as a capital crime.

“Terrible, terrible things happened — that is clear,” said the prosecutor, Maj. Rob Stelle. “The second thing that is clear,” he added, “is that Sergeant Bales did it.”

But a lawyer for Sergeant Bales, Emma Scanlan, making the defense team’s final argument, said the lingering questions about the crime, and especially the defendant’s mental and physical state, were far too great to proceed with anything but caution.

“Alcohol, steroids and sleeping aids,” Ms. Scanlan said, citing the prosecution’s own evidence about what Sergeant Bales, an 11-year Army veteran, may have had in his system in the early morning hours of March 11 when two villages in Kandahar Province were attacked. What would a cocktail of substances like that do to a man’s mind, Ms. Scanlan asked the court, in the “kinetic and high-pressure” environment of a combat zone?

“We don’t know,” she said.

The Army has charged that Sergeant Bales, 39, who was serving his fourth combat tour, walked away from his remote outpost in southern Afghanistan and shot and stabbed members of several families in a nighttime ambush in the villages. At least nine of the people he is accused of killing were children. In the decade of military conflict since the terrorist attacks of Sept. 11 2001, it was the deadliest war crime attributed to a single American soldier, with consequences that rippled through relations between the American and Afghan governments.

The hearings here, called an Article 32 investigation, beyond offering the first open-court airing of the evidence, are also intended to provide a sort of road map for where prosecutors might go from here in seeking a military trial. The investigating officer who presided over the inquiry, Col. Lee Deneke, said on Tuesday that he would have a written opinion by the end of the week. Higher-ups in the Army, in making a final determination, are not bound by the colonel's findings, however. The military has not executed a service member since 1961.

In the end, Sergeant Bales, who did not testify, and has not entered a formal plea, remained enigmatic. His own words, as reported by other soldiers who testified about what he said on the night of the killings — that he had “shot up some people,” as one witness recounted — were used against him. And he had blood from at least four people on his clothes when taken into custody, a lab examiner testified.

“It’s bad, it’s bad, it’s real bad,” Cpl. David Godwin, testifying for the prosecution, quoted Sergeant Bales as saying after he returned to the base.

Statements like that, Major Stelle said in his closing remarks, “demonstrate a clear memory of what happened and consciousness of guilt.” He said that the “heinous, brutal, methodical, despicable” nature of the crimes, especially the murder of small children, elevated the case to death-penalty significance.

But some of the most damning evidence, including the “real bad” quote, came from soldiers who Ms. Scanlan suggested in her final remarks were not particularly believable. Two men who reported hearing Sergeant Bales make incriminating comments, including Corporal Godwin, also admitted drinking with him earlier in the evening on the base, in violation of Army rules, and testified under immunity from prosecution. Ms. Scanlan urged Colonel Deneke to evaluate that testimony carefully.

“They drank a ton and they were all drunk,” she said.

A spokeswoman for the Bales family, Stephanie Tandberg, the sergeant’s sister-in-law, read a statement urging people who have followed the case in the news not to “rush to judgment.”

“We want to make sure this American soldier, citizen, husband and father has a fair trial with the due process that is guaranteed to all Americans,” she said. “We in Bob’s family are proud to stand by him.”

A claim before the hearings by another lawyer for Sergeant Bale, John Henry Browne, that his client suffers from post-traumatic stress disorder, went largely unexplored in the proceeding, and

Ms. Scanlan, in comments to reporters after Tuesday's adjournment, said the defense was still investigating those issues. Before the hearings began, she entered into the record a formal objection that the defense had been given insufficient time to prepare.

Major Stelle said the evidence revealed a man who knew exactly what he was doing when he left the base intent on mayhem. Eyewitnesses and victims who testified through a video link from Afghanistan over the weekend, in extraordinary night sessions here at the base where Sergeant Bales was stationed, about an hour south of Seattle, described a figure in the dark, illuminating his victims with a bright light before shooting them.

Ms. Scanlan said the prosecution's portrait of a steely-cool killer conflicted with the strange and anything-but-standard item of clothing that witnesses said Sergeant Bales was wearing when he returned to the base early on the morning of March 11: a cape.

"Why in the world is somebody who is supposedly so lucid wearing a cape?" she said.