CNN: “NO US ACCESS TO SITES OF AFGHAN KILLINGS”, BUT DID US ASK FOR ACCESS?

A story just posted at CNN.com addresses two crucial questions that have been raised at Emptywheel regarding the Panjwai massacre. Late last night, MadDog repeated a speculation he has raised several times regarding how Bales could have been undetected when he left the outpost twice on the night of the killings:

> Given the 3 points above, I’ll again wonder as I’ve done here before whether Bales himself was an individual assigned to provide the very security that he’s purported to have breached.

The CNN article confirms that very fact:

> The official said Bales, 38, was meant to have been on duty guarding the base that night, and would have had full body armour and weaponry as standard.

A point that I raised in an early post on this incident was that we would be able to tell how serious the US is in determining whether Bales truly acted alone or if other soldiers were present and fired weapons during the killings would be to observe how fully the US carries out forensic examinations of the crime scenes:

> Although the bodies appear to have been buried already, we will know just how serious the US is about establishing the number of shooters involved in the attack if they actually visit the homes invaded to recover shell casings and bullets. Even rudimentary forensic evaluation should be able to establish conclusively how many weapons were

> fired. Slightly more advanced forensics can determine whether all the weapons involved were in the possession of the soldier who has turned himself in.

Remarkably, over two and a half weeks after the attack, we now learn that the US has not yet had "access" to the crime scenes:

> U.S. military officials have yet to gain access to the sites in which 17 Afghans were killed in Kandahar, an obstacle that could impede efforts to prosecute the American soldier accused of the multiple homicides.
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> U.S. personnel had not been able to collect DNA from the sites or access the areas, although DNA collected by Afghan investigators may have been received, an official said.
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> However, DNA has been found in blood on the clothing of the suspect, Army Staff Sgt. Robert Bales.
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> "We do not have access to the crime scene," said the U.S. official, who has knowledge of the investigation but did not want to be identified discussing an ongoing inquiry.

With so much time having passed, it seems to me that the question of access now becomes moot. It seems virtually impossible that Afghan officials have sealed off the crime scenes and limited access there only to their own investigators, so any evidence gathered at this point is rendered virtually meaningless.

Not addressed by CNN is whether the US even asked for access to the crime scenes. It has been reported that the US transported at least some of the wounded for treatment. If that occurred, why did no troops remain behind to secure the scene for later investigation? It's hard to imagine why the Afghans would not have

allowed access to the crime scenes if the US had asked for it. Successful prosecution of whoever carried out the killings would seem to be a primary concern for the Afghans, so they should have been motivated to provide access to the sites. How difficult would it have been for a joint investigation to have been organized in the immediate aftermath? A joint investigative team collecting evidence together would have seemed to be a natural and rapid agreement given the circumstances.

Whatever the reasons for the US not getting access for analysis, whether due to refusal by the Afghans or the US not being interested enough in the outcome to even request access, Bales' attorney already has realized the importance of this developing gaping hole in the case against him:

> "They have no murder scene, no forensics," the lawyer said Thursday night outside his Seattle office. "I'm going to make them prove every claim."
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> Military law experts acknowledge that proving the case may be difficult, especially given that there are no autopsies to help prove the cause of death – in part because those killed were buried quickly, in accordance with Islamic tradition – and difficulty in getting witnesses to testify.
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> But Gary Solis, a former U.S. Marine Corps lawyer and current Georgetown professor, told CNN that any bullet rounds recovered from the scene could be matched with Bales' weapon – assuming it was "immediately seized" – which would serve as "powerful evidence for the government."

Solis does raise an interesting question. Was Bales' weapon (or weapons) seized immediately when he surrendered? As for the "bullet rounds" Solis discusses, now that we know no access to

the sites has been obtained, we are left with the very low probability that a casing or casings were picked up along with the wounded who were transported for treatment, along with any bullets or bullet fragments removed from them surgically. Any evidence from these sources would be only a small fraction of the total amount of evidence that would have been ready for collection in the immediate aftermath of the shootings. That evidence now has no chance of being used against the killer(s), unless Afghan investigators controlled the crime scenes and then documented and collected bullets and casings. The results of the Afghans' analyses, or the materials gathered, would need to be shared with the US for any prosecution to be successful.

Coupling this apparent complete failure to collect evidence at the crime scenes with the decision to hold Bales' trial in the US, making it virtually impossible for Afghans to testify, we get the distinct impression that the military is setting the stage for Bales to be the only suspect tried and for him to be acquitted due to lack of evidence.

Update: See this comment and the the comments related to it from MadDog and orionATL for links to photos and video of Afghan authorities appearing to collect evidence on the day following the killings. Will any evidence collected be shared with the US, and will it withstand scrutiny in a prosecution of Bales or anyone else? Why didn't CNN's source mention that the Afghans have collected evidence at the crime scenes?