



Hearing scheduled for Edmond soldier

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The Edmond Sun

EDMOND September 10, 2008 11:15 pm

— A preliminary hearing has been scheduled for an Edmond soldier accused by the military of allegedly shooting a former Iraqi detainee.

U.S. Army spokesman Sam Smith said an Article 32 hearing for 1st Lt. Michael C. Behenna is scheduled for Sept. 20. The hearing for Staff Sgt. Hal M. Warner, a Braggs resident, is scheduled for Saturday.

Jack Zimmermann, Behenna's attorney, declined to discuss case specifics, but he said if the rules are followed by the military, he feels confident about the eventual outcome.

Following counsel's advice, members of Behenna's family have not spoken publicly about the case. His mother, Vicki Behenna, is a federal prosecutor who played a key role in the Timothy McVeigh case. His father, Scott Behenna, is a former Oklahoma State Bureau of Investigation special agent.

Several friends of Behenna's, including his girlfriend, told The Edmond Sun in a previous report they do not question Behenna's character and ethics. Behenna's girlfriend, Shannon Wahl, said Behenna is a natural leader who is respected by his fellow soldiers.

Behenna grew up in Edmond and graduated from Edmond Memorial High School. He went on to the University of Central Oklahoma, where he was commissioned through Army ROTC in 2006.

Thus far, Behenna has not had an opportunity to enter a plea, but when he does, he plans to plead not guilty, Zimmermann said. In the military legal system, Behenna and Warner are considered innocent until proven guilty.

The military accuses Behenna and Warner of shooting and killing Ali Mansur Mohamed, an Iraqi detainee reportedly suspected of being a terrorist. Mohamed, believed to have been released by coalition forces in May, was shot near Behenna's forward operating base.

Behenna has been serving as an infantry platoon leader with the 101st Airborne Division in northern Iraq since September 2007. On July 31, he was charged by the military with premeditated murder.

Information about a legal defense fund set up for Behenna is available at www.defendmichael.com. The site states that any funds received to aid Behenna's defense will not be distributed directly to Behenna.

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According to the military, an investigation normally is directed when it appears the charges are of such a serious nature that trial by general court-martial may be warranted.

The Fifth Amendment constitutional right to a grand jury indictment is expressly inapplicable in the military setting, Zimmermann said.

In its absence, Article 32 of the Uniform Code of Military Justice requires a thorough and impartial investigation of the charges and specifications before the charges may be referred to a general court-martial, the most serious level of courts-martial.

Zimmermann said the purpose of the pretrial investigation is to inquire into the truth of the matter set forth in the charges, to consider the form of the charges and to determine what disposition should be made of the case.

The investigation also serves as a means of pretrial discovery for the accused and defense counsel in that copies of the criminal investigation and witness statements are provided and witnesses who testify may be cross-examined.

Zimmermann said the defense is given wide latitude in cross-examining witnesses. All testimony is taken under oath or

affirmation, he said. The accused may give sworn or unsworn testimony.

Court room players will include the investigating officer, two prosecutors, the accused and defense counsel, Zimmermann said. Behenna will have two Army defense counsel and a second civilian attorney.

For security reasons, Zimmermann declined to say if he would be in the court room in Iraq.

Ordinarily, Article 32 hearings are open to the public and to the media. The investigating officer announces the beginning of the investigation and its purpose, advises the accused of his right to counsel and identifies defense counsel.

The charges preferred against the accused will be formally read and the accused will be advised of his rights to make a statement or remain silent.

The trial counsel, i.e. the prosecutor, will call the witnesses for the government, and the defense counsel will call the witnesses for the defense.

Any evidence presented by the accused will be heard, as well as any statement by the accused or defense counsel. Any arguments by counsel also will be entertained.

Following the hearing, the investigating officer submits a written report of the investigation to the commander who ordered the investigation.

The report, which will contain the recommendations of the investigating officer, including disposition of the charges, will be forwarded to the convening authority for a decision.

In the military system, if a soldier is convicted of premeditated murder, a life sentence is automatic.

Zimmermann represented Edmond Marine Lance Cpl. Stephen Tatum, who originally was charged with the murder of Iraqi civilians during a counter-attack in response to an ambush in Haditha, Iraq. All charges against Tatum were dismissed with prejudice on the first day of the trial.

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